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Education Committee
March 18, 2013

[LB356 LB365 LB540 LB575]

The Committee on Education met at 1:30 p.m. on Monday, March 18, 2013, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB356, LB540, LB575, and LB365. Senators present: Kate Sullivan, Chairperson; Jim Scheer, Vice Chairperson; Bill Avery; Tanya Cook; Al Davis; Ken Haar; Rick Kolowski; and Les Seiler. Senators absent: None.

SENATOR SULLIVAN: Welcome, everyone. It's right at 1:30, so I think we'll get started. This is the Education Committee, and I'm Kate Sullivan, the Chair of the committee. I'd like to introduce you to all the members and staff that are here. On my far left is Senator Bill Avery, District 28, Lincoln. To his right is Senator Tanya Cook, District 13, from Omaha. To her right is Senator Les Seiler, District 33, Hastings. To my immediate right is my able-bodied Vice Chair, Senator Jim Scheer of Norfolk. To my immediate left is Kris Valentin. He's the research analyst for the committee. And over there, on the far right, is Mandy Mizerski who is the committee clerk. We also have some pages helping us out today: Pheobe Gydesen from Lexington, who is a student at UNL; and Sean Miller, who is a student at the Doane-Lincoln campus. Today we have four bills that we will be hearing and, in order, it's LB356, followed by LB540, then LB575, and LB365. If you're planning to testify, I ask that you pick up a green sheet, a sign-in sheet that's on the table in the back of the room on either entrance. If you do not wish to testify but would like your name entered into the official record as being at the hearing, there are forms on the table to do that as well. If you do plan to testify, please fill out that green sheet ahead of time. Please print--and it's important that you complete the form in its entirety--and bring that to the table when you testify and hand that green sheet to our committee clerk. If you do not choose to testify, you may submit comments in writing and have them read into the official record, but please let us know ahead of time that that is your intent. If you have handouts during your testimony, please have 12 copies for the pages to hand out to the committee. When you come up to testify, please speak clearly into the microphone, tell us your name, and spell both your first and last names, again, so we have adequate record. I'd ask that you please turn off all cell phones, pagers, or anything else that makes a beeping sound. And please keep your conversations to a minimum. If you need to talk to someone, please go out in the hall and do so. The introducers of the bill, the senators that will be introducing each bill, will make their opening statements, followed by proponents, opponents, and neutral testimony. The closing remarks are reserved for the introducing senator. We are going to be using the light system for all testifiers. You'll have five minutes for your testimony. When you see the yellow light come on, that means that you need to wrap up your comments; and when the red light is on, that indicates your time has ended. I would like to also introduce two additional members of the committee. Over here, to my left, is Senator Ken Haar from the Malcolm area, and to my right is Senator Rick Kolowski from Omaha. So with that, we will begin our hearing with LB356. Welcome.

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JOSHUA EICKMEIER: Thank you. I am not Senator Karpisek. (Laughter) [LB356]

SENATOR SULLIVAN: I kind of gathered that. [LB356]

JOSHUA EICKMEIER: My name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r, and I'm the legal counsel for Senator Karpisek, who is also introducing a bill in another committee and asked me to be here with you today. So I appreciate the opportunity. This is LB356, to prohibit participation in extracurricular and cocurricular activities as prescribed. Extracurricular activities are an important part of a student's well-rounded high school education. While it is important for students to have extracurricular opportunities, it's also important that those opportunities be fair. One area that Senator Karpisek sees as unfair has been the public high schools' ability to compete fairly with private high schools. Today's focus is not on whether some coaches recruit or whether private schools can better control their enrollment in order to be in a particular class, although it should be noted that special education students do count towards a school's enrollment. Today's focus is on whether a private school should be able to deny special education services, which would then force affected students to a local public school that is required to provide those services. Under this bill, a private school that refuses a student because the school does not provide certain special education services would then be unable to participate in NSAA activities, unless the private school reimbursed the public school that did provide the special education services and provided the student with transportation to receive those services. Admittedly, there isn't a strong nexus between not providing special education services and participation in NSAA activities except that, by tying the two together, this bill gets people's attention. The issue of leveling the playing field between public and private schools is nothing new. Other states have taken various steps to address this issue. Some states use a multiplier when determining a school's enrollment for classification purposes. Tennessee is one state that uses a 1.8 multiplier for private schools that do not offer athletic scholarships. In other words, if a private school has 100 students, then, for classification purposes, that school would show an enrollment of 180 students. This would often move a private school up at least one class. Tennessee also has a separate division for private schools that do offer athletic scholarships. Such parochial leagues are common, especially in larger populations. In some states there are even specific Catholic leagues. I'm not suggesting that Nebraska should have separate private and public leagues, but I do see an unfair...or, I should say, Senator Karpisek sees an unfair advantage for private schools. Just to provide some recent anecdotal evidence, this past football season in Nebraska, the NSAA football champions for three of the four classes were private schools. The only class with a public school champion was Class A, in which only 2 of 28 schools are private. However, in the other three classes that saw a private school champion, the odds were almost as long. In Class B, only 4 of 32 schools are private. In Class C-1, only 10 of 48 schools are private. And in Class C-2, only 6 of 48 schools are private. These data suggest that there was a disproportionate number of private schools that won football championships. As for this

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year's boys basketball tournament in which 8 teams from each class qualify, out of 32 teams in class C-1, 2 of the 4 private schools made the tournament; out of the 48 teams in Class C-2, 4 of the 6 private schools made the tournament. So while private schools only represented one-fourth of the schools in Class C-2, the private schools represented half the teams that qualified for the state tournament. These data suggest that there was a disproportionate number of private schools participating in the Boys State Basketball Tournament. Senator Karpisek believes that private schools have an unfair advantage over public schools when it comes to extracurricular activities, simply because they can be selective in whom they admit. This is why Senator Karpisek believes we need to level the playing field between public and private high schools. While this bill may not be the solution, it is a way to start the conversation. Thank you, and I'd be happy to answer any questions. [LB356]

SENATOR SULLIVAN: Thank you, Josh. So do I take that last statement to mean, even though you're not the senator, you would entertain some questions from the... [LB356]

JOSHUA EICKMEIER: I will do the best I can. [LB356]

SENATOR SULLIVAN: Yeah, okay. Any questions for Josh? Senator Avery. [LB356]

SENATOR AVERY: Thank you, Madam Chair. Welcome, Senator. (Laughter) [LB356]

SENATOR DAVIS: Mayor. [LB356]

SENATOR COOK: Mr. Mayor. [LB356]

JOSHUA EICKMEIER: Don't start that rumor. (Laugh) [LB356]

SENATOR AVERY: Mr. Mayor, how do you define disability in this bill? [LB356]

JOSHUA EICKMEIER: I don't believe that it does specifically. One moment. Let me grab my green copy. I think it refers to in this, but I don't believe there is...I believe that the disability, as defined in Section 79-1117, and I don't have that in front of me so I'm not sure. [LB356]

SENATOR AVERY: Okay, thank you. I'll look it up. [LB356]

SENATOR SULLIVAN: Senator Scheer. [LB356]

SENATOR SCHEER: Is this bill about wanting nonpublic schools to provide special ed, or is this a bill about athletic allegiances or classifications? [LB356]

JOSHUA EICKMEIER: This bill as drafted, I believe, does both. As I mentioned, the

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nexus isn't an obvious nexus. You wouldn't necessarily connect the two aspects. I think they are connected in this bill. I think the bigger concern that Senator Karpisek has is that...is the leveling of the playing field. And part of that, I think, has to do with the enrollment numbers that do...are impacted by the total number of students, whether they are special education needs students or not. Those numbers do get calculated in. And I think part of the concern is that those numbers, the total numbers for a school's enrollment, would presumably be less because they simply would not offer or feel they could not offer those services. [LB356]

SENATOR SCHEER: Have you or the senator looked at gross numbers--for example, in a C-1 or C-2 school, assuming that maybe even, I'll give you, 10 percent may be special education, in and of itself, even if they had 10 additional students or 50, whatever the number would have been--that it would have moved any of those participants that you showed as qualifiers or winners of the state competition, would have changed them by class? [LB356]

JOSHUA EICKMEIER: Sure. That's an excellent question. For these purposes, Class A only has 2 of the 28, and that's Omaha, Creighton Prep, who has traditionally been the only one, although, when...the NSAA has since created a classification based on the top 28 schools, and so this year Lincoln Pius X, for example, is the smallest Class A school and moved up, just to give you some relation. [LB356]

SENATOR SCHEER: But I'm not specifically worried about Prep or Pius because both of those are in Class A. [LB356]

JOSHUA EICKMEIER: Right. [LB356]

SENATOR SCHEER: There is no place for them to move up. Class A is as large a district as you're going to get. My question was more specific to the C-1, C-2,... [LB356]

JOSHUA EICKMEIER: Sure. [LB356]

SENATOR SCHEER: ...and even D-1 and D-2, that, even having added a certain percentage to those...that student enrollment would have made a difference in the school's classification. [LB356]

JOSHUA EICKMEIER: Yes. For C-1 and C-2, for example, there is...the largest Class C-2 school is Kimball right now, at 121, versus Hartington Cedar Catholic, I believe, would be the next, with the largest private school, at 105. So... [LB356]

SENATOR SCHEER: Okay, so at 105, and assuming they had 10 percent, they're still below 121. [LB356]

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JOSHUA EICKMEIER: Right, right. [LB356]

SENATOR SCHEER: So it really...the fact that they did or did not provide special education would not have changed their rating as far as additional outside activities. [LB356]

JOSHUA EICKMEIER: Well, correct, and then, I believe, that's one of the reasons why many other states have looked at multipliers to also address that as part of that calculus. But in the example of the reason why I mentioned Lincoln Pius: You're correct, there is no larger classification; but historically, Lincoln Pius has been a Class B and has been the largest Class B. What separates Lincoln Pius, for example, from Columbus, which would be the next largest school, is, I believe, two students. [LB356]

SENATOR SCHEER: Um-hum. [LB356]

JOSHUA EICKMEIER: So in that case, there would be the ability, I would assume, if you're talking about a handful of students, that could alter that classification from being the smallest Class A school to, potentially, the largest Class B school. [LB356]

SENATOR SCHEER: What disabilities is the senator talking about providing services for? [LB356]

JOSHUA EICKMEIER: Correct. [LB356]

SENATOR SCHEER: Because, I have to tell you, right now many of the nonpublic schools that I'm familiar with, their students are provided those services, usually at the public school activities. They may spend part of the day in some additional enhancement towards education, but they spend the majority of the day in the parochial school. So if they are already servicing some of those, what disabilities are you talking about in your terminology of disability? [LB356]

JOSHUA EICKMEIER: I do not know what specific disabilities that would not currently be met by a particular school. My guess is that it's going to vary based on the schools. But if they are meeting those needs, then this would not affect them. Or if they did not meet the needs, if they provided the monetary funding,... [LB356]

SENATOR SCHEER: But this doesn't...it says, if they are not. [LB356]

JOSHUA EICKMEIER: Right. [LB356]

SENATOR SCHEER: And the students are getting services. They may be getting them through the public school, through their departments, but they spend the majority of the day in their own building. So based on the verbiage from...of the bill, they still wouldn't

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fall into compliance because they were receiving that service from a public school, not from the parochial school. [LB356]

JOSHUA EICKMEIER: And without knowing what the financial arrangement was, I can't answer that, because that is the other component to this is that, if the service is not being met but they were still funding that, then that would not be an issue either under this bill. So without knowing the specific school and their arrangement, I can't answer that. [LB356]

SENATOR SCHEER: Okay, thank you. [LB356]

JOSHUA EICKMEIER: But yeah. [LB356]

SENATOR SULLIVAN: Senator Kolowski. [LB356]

SENATOR KOLOWSKI: Thank you, Madam Chair. Josh, I'm not trying to put you on the spot with these. [LB356]

JOSHUA EICKMEIER: (Laugh) Why not. [LB356]

SENATOR KOLOWSKI: But from a Bill Drafting side, I'm guessing...well, I'm not sure if this is even legal to ask what you're asking or getting into the mix of all this. And like Senator Scheer, I'm kind of at a loss at the thrust of this bill. Is it about school class ranking for sports size? Is it about sports competition and the final results as all the classes you were mentioning? I think Marian is in that Class A list also as a girls school. [LB356]

JOSHUA EICKMEIER: Oh, okay, I apologize. I was looking at the football, with the way they broke down the football. [LB356]

SENATOR KOLOWSKI: Oh, well, thank you. I appreciate that. And for the sports competition final results or the services to SPED students, I'm not sure where this bill is fitting and...because it seems like it's kind of all over the place. [LB356]

JOSHUA EICKMEIER: Right. [LB356]

SENATOR KOLOWSKI: Specificity, in particular, would have helped me see it clearer, but that's just my concern right now. [LB356]

JOSHUA EICKMEIER: Yeah. No, that's a very fair point. I think the general theme is one of leveling the playing field and making sure that the students who have certain needs, the needs are being met, regardless of the school they wish to attend. But as far as...you're right, there...and that's one of the reasons why I mentioned some of the

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other...like Tennessee, which has the highest...I think 1.8 is the highest multiplier, at least when that article was published earlier this year, just to kind of give you the range from states, like Nebraska, that does not have a multiplier to having a larger multiplier. This does not deal with the multiplier issue specifically, but it just goes back to, sort of, that leveling the playing field. There have been studies--and I have one here from, I think, 2009--where they talk about, nationally, the disproportionate number of private schools that do win championships, for example. And I think that's one of the reasons why you do see, in states where they've...if you want to call it the extreme, depending on, I guess, your view, but going to the end of the spectrum where you do have separate leagues or separate conferences as a way to address those concerns. Even in the Tennessee article, this is, I think, the 15th year that Tennessee has had separate parochial and public school leagues. And even within the public school you can still be a parochial school in that league if you did not offer financial scholarships. That's not even touched in this bill at all, but that's another aspect of that as well. So I don't think Senator Karpisek would argue this is a comprehensive fix-all to all those concerns. I think his goal was, more or less, to get the conversation started and to get senators thinking about how this affects schools, especially those, like, for example, with C-2 is one that you mentioned has a larger proportion than the other classes. But I think it is still something that is a concern of his, so. [LB356]

SENATOR KOLOWSKI: Has he talked to NSAA on this and also the State Department of Education? [LB356]

JOSHUA EICKMEIER: I do not know. I have...I personally had spoke to them just with some specific questions about how enrollment works currently because you do have...being able to opt into a school district does change some of that dynamic for me to better understand. I do not know if the senator specifically had conversations on that. [LB356]

SENATOR KOLOWSKI: Thank you. [LB356]

JOSHUA EICKMEIER: Sure. [LB356]

SENATOR SULLIVAN: Any other questions? Thank you, Josh. [LB356]

JOSHUA EICKMEIER: Okay. [LB356]

SENATOR SULLIVAN: Will you be here for closing? [LB356]

JOSHUA EICKMEIER: No,... [LB356]

SENATOR SULLIVAN: Oh. (Laughter) [LB356]

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JOSHUA EICKMEIER: ...not after that. I'm leaving. (Laughter) Thank you all. Have a great day. [LB356]

SENATOR SCHEER: (Laughter) Thanks, Josh. [LB356]

SENATOR SULLIVAN: Thank you very much. We'll now hear proponent testimony. Welcome. [LB356]

MARLA FISCHER-LEMPKE: (Exhibit 1) Good afternoon. I wasn't here for all of that, but I'm guessing I might have...this might not be what I thought it was. But anyway, my name is Marla Fischer-Lempke, M-a-r-l-a F-i-s-c-h-e-r-L-e-m-p-k-e. I'm the executive director for The Arc of Nebraska. We're a statewide advocacy organization for people with intellectual and developmental disabilities and their families. We're affiliated with The Arc of the United States. We have 13 local chapters and about 1,000 members statewide. We offer our support for LB356 that prohibits the participation of nonpublic schools in cocurricular or extracurricular activities if a child with a disability is rejected admission. We support full community participation and inclusion of people with intellectual and developmental disabilities. We believe LB356 moves these positions forward. It ensures that families who seek out nonpublic education for their child with a disability are able to access the type of education they desire. Just as parents of children without disabilities are able to have their children receive an education in a nonpublic setting, children with disabilities must be provided the same option. We believe LB356 evens the playing field between public and nonpublic schools in the participation of cocurricular and extracurricular activities. If these schools and/or statewide activities are run with government funds, there is the potential of a violation of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The nonpublic school that does not admit a child with a disability--excuse me--may be running afoul of the antidiscrimination policy that the ADA and Section 504 seek to enforce. LB356 strives to set forth good policy to ensure that families access the type of education that is important to them and to ensure the full inclusion of participation of children with disabilities. It also may have the effect of assisting nonpublic schools so they don't unintentionally discriminate against children with disabilities. While we support the policy of the bill, we think it might be difficult to enforce it or pinpoint a specific reason for nonadmission by the public school without investigation or maybe even litigation. So in that vein, we think that more work might need to be done to ensure that its positive policy outweighs any negative effect. [LB356]

SENATOR SULLIVAN: Thank you. Any questions for Ms. Fischer? Senator Haar. [LB356]

SENATOR HAAR: Yes. Do you know, are there schools, private schools, that will not take kids with disabilities? [LB356]

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MARLA FISCHER-LEMPKE: I'm not aware of any specific situations myself. I would guess that it happens, but I'm not aware of anything specific. [LB356]

SENATOR HAAR: Thank you. [LB356]

SENATOR SULLIVAN: Senator Scheer. [LB356]

SENATOR SCHEER: How would you propose that we fund the private or parochial school for those services? Because, obviously, public schools do get funded for providing those additional services, so how do we constitutionally provide those funds? [LB356]

MARLA FISCHER-LEMPKE: My understanding is that special education services the public school is still responsible for. They're funded with those dollars, so they...I think those services are generally provided also in the public setting or some other place, unless it's agreed upon differently. [LB356]

SENATOR SCHEER: But that's already going on. [LB356]

MARLA FISCHER-LEMPKE: Right. [LB356]

SENATOR SCHEER: So...and you weren't here. [LB356]

MARLA FISCHER-LEMPKE: Right. [LB356]

SENATOR SCHEER: So one of my questions was that, in most cases that I'm familiar with, a child with a disability may be going to a nonpublic facility but still may go to the public facility, or the public district may send a service provider to that location to provide the services to that student. [LB356]

MARLA FISCHER-LEMPKE: Right. [LB356]

SENATOR SCHEER: So I'm not exactly sure where this would do anything differently than is already in place. [LB356]

MARLA FISCHER-LEMPKE: My understanding of it was that, sometimes, private entities can--not discriminate, I won't say that--... [LB356]

SENATOR SCHEER: Um-hum. [LB356]

MARLA FISCHER-LEMPKE: ...but can decide which students they will or won't take, definitely more so than a public institution can. And I think this might be trying to get at trying to include more people of...you know, with disabilities or different backgrounds so

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that...and maybe it just evens the playing field between public and nonpublic schools, I guess. I really don't know. It seemed a little bit cloudy to me in that area too. [LB356]

SENATOR SCHEER: Okay, well, thank you. [LB356]

MARLA FISCHER-LEMPKE: Sure. [LB356]

SENATOR SCHEER: Thank you, Senator Sullivan. [LB356]

SENATOR SULLIVAN: Um-hum. Any other questions? Thank you, Ms. Fischer. [LB356]

MARLA FISCHER-LEMPKE: Thank you. [LB356]

SENATOR SULLIVAN: Any further proponent testimony? We'll now hear opponent testimony. Welcome. [LB356]

JIM CUNNINGHAM: Good afternoon, Senator Sullivan and members of the committee. My name is Jim Cunningham, J-i-m C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Bishops Conference. And I'm appearing here this afternoon more specifically on behalf the diocesan superintendents of Catholic schools in Nebraska, in opposition to LB356. I have to tell you, the temptation was very great on our part just to ignore this bill and not run the risk of dignifying it or giving it any credibility in the public policy process. Nonetheless, this process creates a public record, and we don't want the public record to suggest that we don't have any interest in this bill or concern about it. We are concerned because it seems, to us, to be based upon a false and offensive premise: that nongovernmental schools don't care about children with disabilities and really only care about children with athletic skills, and fine and performing arts talent. Actually, from our perspective, the more subtle and alarming premise of this bill is that all Catholic kids who have disabilities ought to be enrolled in Catholic schools, and all Catholic kids who have athletic skills, and fine and performing arts talent, ought to be enrolled in public schools; otherwise, any respective consequences of those decisions will be scrutinized as denial of admission based on handicap or recruiting for athletics and other extracurricular activities. You know, there's one thing that's really ironic about this bill, and I hope that the representative of Arc will pay attention to this. Villa Marie School in Waverly, Nebraska, meets the needs of children with developmental disabilities, and it was started several years prior to the enactment of Public Law 94-142. That was a commitment on the part of the Diocese of Lincoln to children with developmental disabilities. I'm sure most of you know that Senator Krist's daughter attended Madonna School in Omaha, operated by the Archdiocese of Omaha, for children with developmental disabilities. We don't think that, in any way, is this bill a necessary, workable, or justifiable public policy. We reject and object to whatever the premise is for it. It seeks to manipulate the independent management and governance of nonpublic schools and also the independent governance of the Nebraska School

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Activities Association. I think that Senator Kolowski pointed out the disjointedness of this bill in the way that it is drafted. In practical terms, it probably would be unworkable and ripe for litigation, as applied, and it also manipulates and misapplies special education. Special education is a governmental response to the needs of children with disabilities. It is a governmental response that is paid for with taxpayer funds from all taxpayers. It is a governmental response that is implemented by means of public school districts because every child is a resident of the governmental unit known as a school district. Private schools do the best that they can for students with disabilities, but they are under no obligation to provide special education services. That is a governmental responsibility that is put in place by Public Law 94-142, IDEA, and the corresponding state enactment. In this particular context, I think Senator Scheer has hit on a couple of excellent points, and that is that students who attend our schools, in many cases, do receive special education services through their respective public school district in which they reside, and that's the way the law sets up the process. I think that it's fair to say that children in private schools with disabilities tend, more often, to be those with more limited disabilities, especially speech therapy and learning disabilities; and, in many cases, they do get services. We've had a history in Nebraska of having to fight real hard to get those services delivered in a meaningful way. And we do that and parents get frustrated about it, but we work with them. For children with more severe handicaps, our schools will work with the parents to let them know that the school may not have the resources to provide the special education services on site that they need and to work with them and even, perhaps, to suggest to them that, under the circumstances, the more practical reality would be to enroll the student in a public school where the services are more readily accessible. With those comments, I would close. And if this is going to turn into a debate about multiplier, we're willing to participate in that discussion. We participated in it when it was proposed to the Nebraska School Activities Association and was overwhelmingly rejected. But we're certainly willing to participate in that discussion if somehow that becomes an issue that the Legislature deems appropriate for legislative consideration. Thank you. [LB356]

SENATOR SULLIVAN: Thank you, Mr. Cunningham. Senator Avery. [LB356]

SENATOR AVERY: Thank you, Madam Chair. Welcome, Mr. Cunningham. [LB356]

JIM CUNNINGHAM: Thank you. [LB356]

SENATOR AVERY: To your knowledge, do the schools for whom you speak today ever engage in recruiting of athletes from public schools? [LB356]

JIM CUNNINGHAM: Not that I'm aware of. I just simply...I don't think so. I think what you'd find in Catholic Schools is the overwhelming majority of the students are of the Catholic faith, and they go to the Catholic school because that's the... [LB356]

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SENATOR AVERY: And they're just better athletes? [LB356]

JIM CUNNINGHAM: What's that? [LB356]

SENATOR AVERY: They're just better athletes? [LB356]

JIM CUNNINGHAM: No, I don't think that there's...there would be any indication of that or reliable evidence of that. If you ask me, well, you know, why do they...why are they successful? Well, I think, for one thing, it probably is pretty much a cyclical process and, at certain times, it appears that private schools are succeeding more. It certainly wasn't the case with boys or girls basketball this year. But in the other instance, the environment of the school is that there is a sense of cohesiveness, a sense of common purpose. There oftentimes are extensive family connections in the school. Perhaps that has something to do with the type of competition that these youngsters enter into. I can't say for sure. [LB356]

SENATOR AVERY: Thank you. [LB356]

SENATOR SULLIVAN: Any other questions? Thank you. [LB356]

JIM CUNNINGHAM: Thank you. [LB356]

SENATOR SULLIVAN: Any other opponent testimony, those wishing to speak in opposition? We'll now hear any neutral testimony. Well, and since closing has been waived, then that will end the hearing on LB356. And we will now move on to LB540. Senator Chambers. Welcome. [LB356]

SENATOR CHAMBERS: (Exhibits 1 and 2) Madam Chair, members of the Education Committee, my name is Ernie Chambers, I represent the 11th Legislative District. And I have something here that I would like to have shared with the members of the committee if somebody would be so kind as to pick those up. This is a bill, which at the time I had it drafted, I did not have the actual language of that Department of Education rule, so it was drafted based on what I had been able to gather from reading the papers. But now I believe it would be available in your bill book, an amendment exists which becomes the bill. But I have a few comments I want to put into the record. This bill is designed to nullify an end-run around the Legislature by the State Board of Education at its August, 2012, meeting when it revised Rule 10 by adding the following language at 00.12: (sic 003.12) Each public school district shall require each such district's schools to establish a period of time during the school day, when a majority of pupils is scheduled to be present, during which pupils will be led in the recitation of the Pledge of Allegiance in the presence of the flag of the United States of America, in grades kindergarten through twelve. Pupil participation in the recitation of the Pledge of Allegiance shall be voluntary. Pupils not participating in the recitation of the pledge shall

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be permitted to silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. Although not stating it specifically, it is presumed that a teacher is to lead the recitation. And a problematic situation would exist should a teacher have scruples against reciting such a pledge. And my view is that there was the intent by the members of the board to allow what I call peer pressure or fear pressure to silence any teacher who may have scruples against being involved in this or the parents of any child. When a teacher, or if a teacher could not participate, there could be serious negative repercussions in a community because somehow people equate being willing to say this pledge with determining whether or not you are patriotic. And as far as the students, with all the talk of being against bullying, this creates the perfect situation to foster it, because any child who behaves differently from the way others do is marked, odd child out, will be subjected to bullying. So a parent being concerned about his or her child and attendance at schools being mandatory, would against conscience require the child to go along with the program. And when you put that kind of coercion on a teacher or a child or the parents, it is totally inappropriate. But the main thing I'm doing today is upholding the integrity of the Legislature and its processes. This action by the board was taken in brazen disregard of the fact that the Education Committee, during the 2012 session, had refused to advance LB990 which contained a similar proposition. And here was the operative language of LB990: On and after August 13, 2012, all pupils enrolled in a school district shall be led in a group recitation of the Pledge of Allegiance to the flag of the United States of America during the first class of each day that school is open and in session. Such an action by a state agency, without authorization by the Legislature, and which bespeaks contempt for the Legislature as an institution, cannot be permitted to stand. An amendment which more appropriately addresses the actual language of that rule should be available to you, but again for the record this is the amendment that will become the bill. It is attached to the section that lays out things that the State Board of Education may do. Then this language: except that nothing in this section authorizes the State Board of Education to adopt and promulgate rules or regulations requiring, authorizing, or permitting any teacher in the public schools, or any other person, to lead students in the recitation of any pledge of allegiance to any flag or other object, idea, or entity. Any such rule or regulation adopted by the board prior to the effective date of this act is hereby declared null and void. And were I a member of the committee I would ask if people from the State Board are here by what authority they would do such a thing when the Legislature, just a short time before they acted, had indicated an unwillingness for this to be added to the statute. And as I've said on the floor repeatedly, of the Legislature, I will stand, if nobody else will, for the prerogatives of the Legislature. The Legislature is the body that, as its name indicates, provides legislation. The State Department of Education is a part of the executive branch of government. The two are separate; and when the executive branch is going to intrude into the legislative branch, after the legislative branch has acted, then that is totally unacceptable. Whether the flag salute was involved or any other thing by any state agency that goes contrary to the determined or expressed or indicated will of the Legislature should be set aside. I have acted when I thought the courts overstepped

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their bounds, when the Attorney General's Office had done such, or any other agency or entity, including the Department of Corrections. And if I could remember all of those that I have counteracted I would mention at this time. But that is what brings me here and I hope the committee will see fit to advance this bill whose purpose is to nullify and set aside that rule adopted by the State Department of Education. And that is my presentation. [LB540]

SENATOR SULLIVAN: Thank you, Senator Chambers. Any questions? Senator Scheer. [LB540]

SENATOR SCHEER: Thank you, Senator Sullivan. Senator Chambers. [LB540]

SENATOR CHAMBERS: Yes. [LB540]

SENATOR SCHEER: A couple of things,... [LB540]

SENATOR CHAMBERS: Uh-huh. [LB540]

SENATOR SCHEER: ...first, in your opening you read rule...or Chapter 10-3.12 which defined the Pledge of Allegiance rule that was adopted by the Department of Education. [LB540]

SENATOR CHAMBERS: Yes. [LB540]

SENATOR SCHEER: If you go to the Web site specifically underneath that, it would say: the primary points would be, (1) time must be set aside every day for the recitation of the pledge, (2) a flag must be present in all the rooms where the pledge is recited, and (3) all students K-12 must be involved, although any teacher or a student who elects to remain silent, as long as they are respectful of those reciting the pledge. Teachers are not required to lead this, students... [LB540]

SENATOR CHAMBERS: And that's why I offered the amendment. And I stated in my opening that it doesn't state specifically the teacher, does it? But this doesn't even go to the pledge itself, it goes to the inappropriate action by the State Department of Education. [LB540]

SENATOR SCHEER: Okay, now no, I don't. And I would draw conclusion on a couple of points. First of all, the Department of Education is not an executive branch division. It is an independent agency of the state of Nebraska. It is not part of the Executive Committee, it is independent. And... [LB540]

SENATOR CHAMBERS: But, Senator Scheer,... [LB540]

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SENATOR SCHEER: Yes. [LB540]

SENATOR CHAMBERS: The three branches of government are executive, legislative, and judicial. So even if you say that this is an independent agency,... [LB540]

SENATOR SCHEER: I would consider it an independent agency... [LB540]

SENATOR CHAMBERS: ...it's a part of the branch of the executive branch of government. [LB540]

SENATOR SCHEER: Well, we could...we could choose to argue if it's part of the legislative branch or the executive branch, but it is not, from my perspective, part of the... [LB540]

SENATOR CHAMBERS: I said executive branch and not the Governor's Office. [LB540]

SENATOR SCHEER: Fair enough, we'll agree to disagree on that part. The other point would be that you are assuming this was done because of the inability of the Legislature to do so. And I would just say for purposes of the record, this was discussed among the Board of Education long before Senator Fulton ever introduced that bill to the Legislature. So this wasn't in reaction to any legislation, or lack thereof... [LB540]

SENATOR CHAMBERS: Senator Scheer,... [LB540]

SENATOR SCHEER: ...it was simply that it was being discussed before that point. [LB540]

SENATOR CHAMBERS: Excuse me. [LB540]

SENATOR SCHEER: Um-hum. [LB540]

SENATOR CHAMBERS: But I said, they did it after the Legislature had acted. They did not do this before the Legislature had chosen not to act. [LB540]

SENATOR SCHEER: Um-hum. [LB540]

SENATOR CHAMBERS: The Legislature chose not to act and then the State Board acted. [LB540]

SENATOR SCHEER: Are you assuming that just because the Legislature didn't produce something that that should tie the hands of any other department from doing something? [LB540]

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SENATOR CHAMBERS: I said what I said. But what I am indicating is that when the Legislature has adopted a position, no state agency or entity should take action that goes counter to that. They should...they did not have the authorization... [LB540]

SENATOR SCHEER: But they didn't...they were not counter to the Legislature, Senator Chambers. [LB540]

SENATOR CHAMBERS: Well, like you said, I don't want to argue, but you have your opinion, I have mine. [LB540]

SENATOR SCHEER: Oh, fair enough, fair enough. [LB540]

SENATOR CHAMBERS: I know when the board acted and I've read things in the newspaper that people who supported this have said about how they got Senator Fulton to do this and then how they got the State Board to act after the Legislature would not act. So we both have heard various things. But regardless of that... [LB540]

SENATOR SCHEER: Well, I would just say...I would just tell you that a lot of things, like my mother told me, you can't believe everything you read. [LB540]

SENATOR CHAMBERS: Forgetting...then forget that. Go by what I said. [LB540]

SENATOR SCHEER: And I am. [LB540]

SENATOR CHAMBERS: I gave my reason for being here: to nullify action that I felt and feel was inappropriate by the State Department of Education, the State Board of Education. That's why I'm here; that's why I offered the bill. [LB540]

SENATOR SCHEER: Fair enough. [LB540]

SENATOR SULLIVAN: Senator Seiler. [LB540]

SENATOR SEILER: Senator, assuming that we have passed your bill, where does that leave you or leave the school system if, say, the superintendent decides at a local level to do the Pledge of Allegiance? [LB540]

SENATOR CHAMBERS: That is something that would be discussed by people... [LB540]

SENATOR SEILER: Are they in violation of any law? [LB540]

SENATOR CHAMBERS: No, that is something that the people in the community would have something to say about. This removes all discretion. And it must be done or a

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school can lose its accreditation. It's a compulsory type of thing. And I can tell you all, since we're getting... [LB540]

SENATOR SEILER: So we're just going to go back to being discretionary. [LB540]

SENATOR CHAMBERS: Just like it was. [LB540]

SENATOR SEILER: That's all I have. [LB540]

SENATOR SULLIVAN: Any other questions? Thank you, Senator. Will you be here for closing? [LB540]

SENATOR CHAMBERS: Say it again. [LB540]

SENATOR SULLIVAN: Will you be here for closing? [LB540]

SENATOR CHAMBERS: Yes, I wouldn't miss it. Thank you, ma'am. [LB540]

SENATOR SULLIVAN: All right, thank you. (Laughter) We'll now hear proponent testimony. Welcome. [LB540]

MIKE LEWIS: (Exhibit 3) Thank you. Good to be here. Good afternoon, Chairwoman Sullivan, and other members of the committee. My name is Mike Lewis. I live in Lincoln and I'm here today as the chairman of a new statewide grass-roots group called the Nebraska Secular Advocates. [LB540]

SENATOR SULLIVAN: Could you spell your name, please. [LB540]

MIKE LEWIS: Sure, Mike, M-i-k-e, Lewis, L-e-w-i-s. We represent atheists, agnostics, and other nonreligious Nebraskans, and we also welcome the participation of religious Nebraskans who share our commitment to the separation of church and state. We support LB540 and thank Senator Chambers for introducing it. We think that it is inappropriate that the State Board of Education has required public schools to set aside time for the Pledge of Allegiance. People who recite the pledge have to affirm the existence of God. And that's a religious idea that does not belong in a public school. We understand and appreciate that students and teachers can opt out of the pledge. However, the act of not participating can create discomfort and needlessly set students and teachers apart, making them seem unpatriotic. That's unfortunate, because nonreligious Americans are patriotic. Most of us enjoy singing the National Anthem, showing respect for the flag, and participating in other activities that demonstrate love of country. Many atheists and agnostics serve in the armed forces, the diplomatic corps, and the civil service. We are as proud to be Americans as our fellow citizens who are religious. A year ago I attended the Reason Rally on the National Mall in Washington,

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D.C., along with about 20,000 other nonreligious Americans. One of the most poignant emotional moments of the day was when a retired Army colonel led us in the Pledge of Allegiance. We recited it as Americans recited it during World War II, when our soldiers were helping free Europe from fascist tyranny. At that time, Americans could truly make that expression of patriotism as one nation, indivisible. Unfortunately, when Congress added the words "under God" to the pledge in 1954, they divided that nation. Those who believe in a monotheistic god can continue to say the pledge with a clear conscience. Those who don't believe, can't. So long as the Pledge of Allegiance makes reference to God, we cannot support setting aside time for it in the public schools. We ask the Legislature to pass LB540. Thank you. [LB540]

SENATOR SULLIVAN: Thank you, Mr. Lewis. Any questions? Thank you for your testimony. [LB540]

MIKE LEWIS: Thank you. [LB540]

SENATOR SULLIVAN: Further proponent testimony. Welcome. [LB540]

DAVID MOSHMAN: (Exhibit 4) Thank you. My name is David Moshman, D-a-v-i-d M-o-s-h-m-a-n and I'm testifying as a board member of both ACLU Nebraska and the Academic Freedom Coalition of Nebraska, AFCON. Imagine Nebraska in 2030. There is still a State Board of Education, but political tides have turned. The board decides to replace the traditional Pledge of Allegiance to the flag of the United States with the following: I pledge allegiance to the flag of the united nations of earth and to the organization for which it stands, one world, green forever, indivisible, with liberty and justice for oppressed people everywhere. Two centuries later, I'm happy to report, there is still is a state of Nebraska with a State Board of Education, but now updating to the twenty-third century, the State Board replaces the united nations pledge this time with this: I pledge allegiance to the flag of the united federation of planets, and to the confederation for which it stands, one galaxy, stars abounding, vast invisible, seeking out new life and new civilizations. Of course there are many more possible pledges to many more flags, objects, causes, and ideals. We may differ, and so may those who follow us, as to which pledge we like best. But we should all agree that we don't want the State Board of Education requiring all students be led in any of them. Of course Nebraska students must learn about many things, including the United States and its flag. But learning about something is not the same thing as pledging allegiance to it. Leading children in oaths and pledges is indoctrination, not education. The State Board of Education should have no power to require that students be led in oaths or pledges of any sort to anyone or anything. Let's all keep in mind the state board of the future that wants all students led in a pledge of allegiance to the united nations or the united federation of planets. Thank you. [LB540]

SENATOR SULLIVAN: Thank you very much. Any questions? Thank you for your

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testimony. Any further proponent testimony? We'll now hear testimony in opposition to LB540. [LB540]

GREG HOLLOWAY: I'll start. [LB540]

SENATOR SULLIVAN: Welcome. [LB540]

GREG HOLLOWAY: Good afternoon, Senator... [LB540]

SENATOR SULLIVAN: Good afternoon. [LB540]

GREG HOLLOWAY: ...and the Education Committee. My name is Greg Holloway, G-r-e-g H-o-l-l-o-w-a-y. I'm here representing the Department of Nebraska Disabled American Veterans and our 5,000-plus members. I'm the immediate past commander for that organization and represent them, too, in their legislative matters...matters that directly concern the veterans of this state and our members. I've had the opportunity to speak with many, many students about Vietnam. Over the past ten years I've spoken with the seventh grade class at the Waverly schools about Vietnam and, not patriotism, but life and justice and freedom and the fact that we are here in this country and in this great state of Nebraska to promote freedom for all persons. It's part of the pledge: freedom and justice for all. So you're not only saying a pledge, which I talked to some Lyons fourth-graders today in the hallway and I asked them how they felt about saying the pledge and they said they're fine with it. And I asked them, I said, does the teacher check your fingernails for dirt? Because mine did when I was in the fourth grade. They don't do that no more. But they were fine with saying the Pledge of Allegiance and I've talked to my grandkids about it. And trust me, my grandkids don't tell me what I want to hear just to please Grandpa. They tell me what they believe; and I've taught them to say what you believe and how you feel. I oppose this bill on many reasons. The fact that the Department of Education is entrusted to decide what is in the history books that we are teaching our children and to set aside time for the instruction of the history within our education process. Not any difference. Saying the Pledge of Allegiance, whether it has God in it or not, you say what you want to say. The person that stands up and respects our flag and also respects the freedom that that flag is given us. In March of 1968, I was in the DMZ in the Laos border fighting the North Vietnamese, actually March 18. I got in country March 8. My first letter home to my mother was March 8, 1968. A combat wounded veteran. And I proudly served. I was drafted. I was told by the United States government to enter the military. And I was sent to Vietnam to fight for the freedoms and justice that we are speaking of today. They elect the Board of Education; let them do their job. Let them not be micromanaged, because if we decide to not let them do what they feel is necessary to educate our children on this matter, then what is next? Are we going to say, all right, here is the history book that you have to have, the one that the Legislature of Nebraska decides that's the one that's going to be. I'm pretty passionate about this. And if this does come out of committee, I'll lobby against it and try

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to get the votes to not to let it pass. And if it passes, then I'll lobby the Governor not to sign it. We're a strong organization in this state. We love our state; we work hard for our state of Nebraska and our veterans for this state. And the flag that's standing behind your chairs today represent freedom and justice for everybody. Not just a pledge of allegiance to that flag. You're pledging allegiance to fight for freedom and justice for all people in this great state and this nation. And to learn that as you're growing up will make you a better citizen for the state of Nebraska and the country that I love most very much. Thank you. [LB540]

SENATOR SULLIVAN: Thank you, Mr. Holloway. Any questions? Thank you for your testimony. [LB540]

GREG HOLLOWAY: Thank you. [LB540]

SENATOR SULLIVAN: Um-hum. Any further testimony in opposition? We'll now hear testimony in a neutral capacity. Sir, what are you intending to do with... [LB540]

MARVIN HAVLAT: Just hold it up here. [LB540]

SENATOR SULLIVAN: Okay. [LB540]

MARVIN HAVLAT: Not good? [LB540]

SENATOR SULLIVAN: Sir, okay, go ahead and introduce yourself first. [LB540]

MARVIN HAVLAT: Good afternoon, Senator Sullivan. My name is Marvin Havlat, M-a-r-v-i-n H-a-v-l-a-t. [LB540]

SENATOR SULLIVAN: The only problem with your prop, sir, is that unless you can explain it, we'll have a hard time entering that into the public record. [LB540]

MARVIN HAVLAT: I will try and explain it to my best ability. [LB540]

SENATOR SULLIVAN: Okay, thank you. [LB540]

MARVIN HAVLAT: I'm here, not to take really sides, because I'm not sure I'm capable enough to understand the balances of power between the executive, the legislative, and judicial. I just want to bring up issues that I think that maybe each branch should think about. I'm a behavioral scientist, and when oaths to the government, which is what I think the Pledge of Allegiance, go unquestioned, this is what can happen historically. This is a picture of Dachau Concentration Camp and bodies of my relatives laying out front. Uncle Rudy Havlat took this picture and Uncle Charlie Havlat died fighting for these people who many survived. My father was wounded early in World War II in

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France. And Uncle Adolph stayed there one year taking care of the Nazi orphans and also burying gas canisters. Okay. When Uncle Adolph took care of the orphans, they had a real problem with it because they would bite, kick, and everything else, and yet he had nothing but good things to say about the adults, because the kids, I believe, were too really young to understand the propaganda that the Germans were feeding the young children. Being a Vietnam vet, a Navy fighter pilot, I went to war a hero and came home a zero. The zero was when us Vietnam vets marched in the Seward 1976 Fourth of July parade, and as we approached the courthouse, the boos, the catcalls, the laugh was resounding. I didn't know what those people knew about taking the oath to this country, but there was some countrymen there that went to war for them that were totally disrespected. I got in an argument with the executive leader of this state at a veterans meeting, maybe four or five years ago, and asked him why he was doing business with the man I went to war to feed his philosophy: Fidel Castro. Governor Heineman said, well, if I didn't sell the corn to Fidel Castro, somebody else would have. Okay. The judicial branch, I feel this is very patriotic: saving native prairie plants. I lost 250,000 of these to a plant digger, never to be replaced again. We don't know what's in these plants and I was just trying to save them from extinction. Neither the Seward County sheriff, the FBI, Jon Bruning, Senator Adams, and anybody else I could think of, or the railroad detectives, wouldn't give me the time of day to even discuss this. So I look at the legislative branch and I look up at the children in the north balcony and they're all clapping for them, but yet there's not a child in that balcony that doesn't have Atrazine and 2,4-D from the chemical farming that's going on in this state. Both of those are known to cause cancer. I go over to the Bryan cancer center, we've got all kinds of farmers over there. Some of them have got their heads cut off. Some of them their jaws are twisted. And I sort of sneak in there and ask them, you know, the farmers get poisoned by the ag chemicals and it's in our water everywhere. I don't think Osama bin Laden and the way it's going could have done as much damage to our future generations as you people have done. And so that's really all I wanted to say. I think we should have a total discussion about what does it mean to be a responsible citizen for this country. [LB540]

SENATOR SULLIVAN: Thank you very much for your testimony. [LB540]

MARVIN HAVLAT: Um-hum. [LB540]

SENATOR SULLIVAN: Any questions for the testifier? Thank you very much. Anyone else wishing to speak in a neutral capacity? Senator Chambers for closing. [LB540]

SENATOR CHAMBERS: Madam Chair, I stated my reason for being here: to uphold the prerogatives of the legislative branch. The people expanded the boundaries of the discussion. I was not drafted, I joined the Army. I got my honorable discharge in 1963. I'm going to share with my colleagues, because you may not accept my word for it, a letter of commendation I got during my second eight weeks of basic training where the

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captain said he would have promoted me himself except that regulations prohibited it. He said, among other things, that everybody in that company knew that when Senator Chambers undertook...not Senator, Private Chambers undertook to do anything it was with 100 percent; and then words to the effect that as graduation approaches they're sorry to see me leave the company, but they're glad that I was there. Anything I undertake to do...remember, I volunteered. Anything I voluntarily undertake to do, I do it the very best that I can. I voluntarily joined the Legislature and that is what I'm attempting to uphold. I was born into an oppressed group in this country. When I was going to the public schools, which this man can say his children got such great education in, I was the only black child in a class and they read a story called Little Black Sambo that was degrading, and all the little white kids were allowed to laugh and the teacher didn't say anything. When we went to music they sang a song called Old Black Joe. But I didn't sing it. All the white kids laughed and the teacher didn't say anything. Then when we got a little further along, they read a book called Huckleberry Finn and talked about Nigger Jim. And the white kids would look at me and nobody was there to speak in my behalf. I was a child then. My feelings were hurt, but nobody cared. I couldn't fight. I didn't know how to fight. And all this talk about how wonderful America is was wasted on me and the people who lived in the community where I lived and the school we attended. In addition to that, when we got out of school, there was no place to go; we were hounded by the police and we thought that was the way it was supposed to be. We thought that was what police did, that they frightened little black children. We were treated so badly in school, that's what we thought. But if you look at the words of this pledge, it is not true what they would be requiring or coercing or pressuring young black children and some white children to say. You're going to say America is one nation indivisible. What's happening in Congress? What did they tell us every day? The country has never been so sharply divided as it is right now. And children in high school who know this are going to be in a classroom where they have to sit and listen, even if they don't participate, to being told that this is one nation indivisible--and they see the divisions. They see it in school; they see it in the classroom. Then with liberty and justice for all? Are gay people not people? Are they treated with dignity and respect? Why is it necessary that we have a bill pending before us now dealing with racial profiling, if there's freedom and justice for everybody? Anybody with two brain cells working know that this country does not provide freedom and justice for everybody. And it's not out of the question to believe that there are some teachers who take seriously what they do and do not want to be compelled to participate in presenting the propaganda to children that is not true. This country does not provide liberty and justice for all. There was a committee established by the Supreme Court of this state to find, which they did, the racism, sexism, and discrimination in the judicial system in the state of Nebraska. I read. I know what's going on. I'm trained in the law. I graduated from Creighton. I read constitutional law, criminal law, and saw the racism done by people, not only citizens but by the courts in this country. And where they say the land of the free and the home of the brave, we say, the land of the tree and the home of the slave. William Jennings Bryan did not want to support doing away with making...did not want

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to go along with making lynching a federal offense because he did not want to offend his brethren in the South. So there we are as black people. And it's been documented with photographs of black soldiers in uniform who came back to this country lynched in uniform. When they came back from the war, which white people are so proud of, there were black soldiers who were guarding Italian and German prisoners of war in the South. And the white cops and the white military of police would go along with it when the black guard...these prisoners from countries that wanted to destroy America would go into a restaurant. The local police backed by the white MPs would tell the black soldiers in language I don't use, but the initials are MF, you go in this place and we'll blow your MF'in brains out--in America. And on trains, Senator Scheer, when they were moving Italian and Nazi prisoners of war, black soldiers who were their guards were told you will ride from this point onward in a segregated coach, and you will eat in a segregated car. And there was a black reporter, he got a Pulitzer Prize for the work that he had done, and he was in uniform, and they didn't have a coach for black people, so the white soldiers put a curtain that he was to sit behind to respect the rules of racial segregation in this land of the free and the home of the brave. But this is one time when a white soldier who knew him came up and he jerked down the curtain. He said, there will be no drawing of a curtain on a black soldier in this car this day. And I could go on and on and on. And you're going to have schools in Omaha and other places where there are young black men who are not going to tolerate being instructed to sit here and listen to this propaganda about the land of the free and the home of the brave and they know what happens in their communities at the hands of the police; to their parents on these jobs. So you may think that what you're doing is wonderful. I'm trying to save you without telling you all these facts of what's going to happen when you try to compel certain people to sit in a classroom and listen to this. For my part, because my children have to know that somebody protected them; they went to Fontenelle School, they went to Central Park School; when they were little they went to Lothrop School and they did not have to say the flag salute. And I went up to the school and I said, don't you make any distinction between my children and the other children. And guess what happened? In the classrooms where my children were, nobody said the flag salute. You all love it because it is your country. It hasn't done to you what it has done to us. Why do you think I'm the kind of man that I am now? Maybe if they hadn't mistreated a black child who couldn't fight and didn't know how to fight, you wouldn't deal with the kind of black man you're dealing with now. But my children are not going to go through the hell that I went through without somebody trying to stop it. Now when I came here, I didn't bring up these issues. I didn't bring them up. But every time I go somewhere I listen to these white people talk about how great everything is here. Maybe it is for them. But it's not for us. And our children are required to attend public schools, and there should be nothing in that school which is false that they're going to have to listen to as though it's true. I'm going back to the reason I came here. The Legislature is the legislative branch. If you want to look up which department of government the State Board of Education falls under, it's not the legislative branch. It's not the judicial branch. There is no agency of government which is just out there falling nowhere despite what some people might

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believe. The Legislature did not do what some people wanted done. So the State Board of Education said, well, we'll do it; forget the Legislature. I think this bill is appropriate. I think it vindicates the prerogatives of the Legislature. This bill will make it clear that no department of government, no state agency is going to usurp the prerogatives of the Legislature. And if such an attempt is made, then the Legislature will take steps to bring back into proper relationship the goings-on of all governmental entities, and that is my closing. But I will answer questions. And by the way, the gentleman who said he will oppose the bill and lobby against it, that happens all the time. That is what America is about. But how foolish would anybody think me if I said when I joined the Army in 1959 and was discharged honorably in 1963 that I was in there fighting for the rights of anybody. You know why I went in so soon? Because I wanted to get my time out of the way so I could go on into law school. I didn't shoot at anybody, nobody shot at me. I didn't go overseas. I didn't come back injured. I didn't come back crippled. My mind was not messed up. And I know why a lot of people went into the Army, the Navy, the Air Force, the Marines, Merchant Marines, and all the rest of them; it was not to be a hero. And when people are drafted, that means they would not have voluntarily gone. Somebody said, come and go to the Army or we'll come and get you; and if you don't step out there and take the oath, then we'll put you in jail. That's the kind of coercion. Then after they come out, then they talk about what patriots they were and what heroes they were; not everybody in the military is heroic. Not everybody who killed people in the military is heroic. William Calley who killed those women and children at My Lai was not deemed heroic. Right now they have a man on trial for urinating on the corpses of killed combatants--just urinating on the corpses. How's that hurt anybody? They're dead. Seems like if you're going to punish them you could punish them for killing a person. But there are in the artificial context of men killing each other with the sanction of their country, certain things that they say, even under these circumstances they are so degrading, they are so dehumanizing that even when war is going on where you're depriving people of their life, you're destroying countries, you're killing civilians, you will not urinate or in any other way degrade and debase the corpse of a dead enemy. My final comment: England under Churchill had a lot of problems with American soldiers, not because of the soldiers, but because of the American commanders who said that the soldiers in America come from a segregated society and they want segregation in England, so they wanted the barracks segregated and everything else just like it was in America, the land of the free and the home of the brave. And the British people said, we don't do that here and we don't make distinctions like that and they won't be made. If you have a piece of ground that you control as Americans, you do what you want to there, but you're not going to do it where the troops are together. In France, where the Croix de Guerre, which is the highest military award they can give was given to black soldiers, the American command in this country formally protested to the French government saying that black troops don't get that kind of consideration here; we don't want them to have it in France. Those are the things we know happened to black men in uniform. But remember, those are not the things that I brought up when I came here. I came here with a very narrow presentation. I presented an amendment that gave the

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reason for my being here. But if you have any questions of me, then I will answer them. [LB540]

SENATOR SULLIVAN: Thank you, Senator Chambers. Any questions for the senator? Senator Cook. [LB540]

SENATOR COOK: Thank you, Madam Chair. And thank you, Senator Chambers. You mentioned in your opening statement that if the State Department of Education were to testify, we might ask them under what authority they created this guideline. [LB540]

SENATOR CHAMBERS: Yes. [LB540]

SENATOR COOK: Since they did not come, can you offer any perspective on why...not why, but under what constitutional or even authority under executive rules or regs they were able to create that. And if that's the case, then is it legitimate? [LB540]

SENATOR CHAMBERS: I can only speculate on the basis of things that were said by those who supported this, that there are members in the Legislature who were chicken, so they got Senator Fulton to offer the legislation. And when it failed, then the State Board showed that it had more courage than the Legislature. [LB540]

SENATOR COOK: Okay. [LB540]

SENATOR CHAMBERS: That wasn't what the State Board said, but the people who supported it, and apparently were the ones who engineered its being brought to the Legislature in the first instance. But there is no basis for the State Board to order. And they are compelling all of the schools and every school district to set aside time for a pledge. And that is not something that I think the State Board has any authority to do. This is not the same as reviewing what will go into the curriculum where they have hearings, they have committees, and they do the things that are done that are considered best practice in the realm of education to determine the types of materials that ought to constitute a curriculum that is going to be acceptable to the state for the purpose of educating the students in a public school. A pledge doesn't fall within that. And there are groups, religious groups, Christian groups which will not say a pledge; they will not stand. There were some who wouldn't even stand in the presence of the king in England. But they were not executed or punished for it. The Quakers were some of them. [LB540]

SENATOR COOK: Thank you. [LB540]

SENATOR SULLIVAN: Any other questions? Senator Avery. [LB540]

SENATOR AVERY: Thank you, Madam Chair. Senator Chambers, I was here when this

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bill was brought to us. And I thought we did our duty. We discussed the bill and decided not to advance it. So I disagree with you that we shirked our responsibility. [LB540]

SENATOR CHAMBERS: No, I didn't say that the committee shirked its responsibility. I said that the committee did not advance it, and I said that indicated the position that the Legislature was taking. So an end-run was made around the Legislature by the State Board. [LB540]

SENATOR AVERY: And that I agree with. [LB540]

SENATOR CHAMBERS: I'm endorsing what the committee did. It did what it was supposed to do. But the State Board was dissatisfied with that. So they were going to do an end-run and do what ought to have been a legislative act if it was to be done at all. I didn't criticize the Legislature...or the committee; in fact, I wrote a letter condemning the bill and why it ought not to be enacted. So I was pleased by what the Education Committee did. But as soon as I saw that the Board of Education did this, then I had to come up with my idea of what could be done to undo it. [LB540]

SENATOR AVERY: All right. [LB540]

SENATOR CHAMBERS: So I wasn't being critical of the committee, not by a long shot. [LB540]

SENATOR SULLIVAN: Senator Haar. [LB540]

SENATOR HAAR: Well, the thing that...I didn't vote to get it out of committee last time. And the thing that bothered me is that I think any child that decided not to stand up for this would be bullied. And we already have a law that we passed saying, you know, we shouldn't be bullying in the schools. [LB540]

SENATOR CHAMBERS: Right. [LB540]

SENATOR HAAR: Do you know of any instances where kids have been bullied or made fun of for not? [LB540]

SENATOR CHAMBERS: I'm not aware of all the places where they make them say the Pledge of Allegiance even. I don't know if in all the black school...in the schools where black children go they try to make them say it. [LB540]

SENATOR HAAR: Under the current...I think under the current ruling though from the State Board they would be (inaudible). [LB540]

SENATOR CHAMBERS: Right, but that hasn't been...I think they've got still some

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additional time before they make it compulsory to take effect. So they haven't started compelling it, at least in accord with what the requirements of that rules are. But I'll tell you...well, no, my children are out of school, but I have grandchildren. My grandchildren have a protector, just like my children had a protector, and their grandfather will protect them. Since there are people who are not interested in the welfare and are not sensitive to our children, it's my job to fill in. And that's a part of the responsibility I assume and I will carry it out. [LB540]

SENATOR HAAR: Thank you. [LB540]

SENATOR SULLIVAN: Senator Kolowski. [LB540]

SENATOR KOLOWSKI: Thank you, Madam Chair. Senator Chambers, just to reiterate what was mentioned earlier, a local district can make its own rules and regulations as to the pledge. And before this law was passed, most districts did have that in place. And that's I know how the Millard schools had worked in the previous time. So I had no problem with that at all when that was there. [LB540]

SENATOR CHAMBERS: And see, by being locally dealt with, there's opportunity for people to participate. And if, for any reason, a school district thought whereas they were doing it, maybe they'll consider not doing it. Under this rule by the State Board of Education, you cannot do that. You've got to do it. [LB540]

SENATOR KOLOWSKI: That's correct. [LB540]

SENATOR CHAMBERS: You are compelled to do it. And if you don't, some people know the meaning of Rule 10. I believe people know. That's not where it's just a suggestion or a recommendation or good advice; you do it or else. That is as coercive as you can be in a setting like this. And there's no need even for the Board of Education to get into that area. You can see what kind of controversy, what kind of conflict there is. And I was also told...well, no, I don't want to tell on anybody on the board, so let me make this theoretical. There might be people sometimes who when they're put in a public situation will go along to get along, but they do not say a lot of things that indicate this is what I really think, this is what I really believe, I'm in a bind. So if adults can be pressured and made to feel that they must go along, what about children and what about the parents of children when those parents are in an unfriendly school district and school building anyway? Believe it or not, I'm trying to practice the maxim that prevention is better than cure. Nobody who brought that thing through Senator Fulton, nobody with the State Board of Education can show any compelling need for this to have been done. That's why I say it was a brazen insult to the Legislature to do something that they were not authorized to do and which there was no need shown for it to be done by anybody anywhere. The policy of the state is established by the Legislature, not any and every commission, board, or agency of state government.

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[LB540]

SENATOR SULLIVAN: Thank you, Senator. [LB540]

SENATOR CHAMBERS: And thank you for your indulgence...and do the right thing by advancing this bill, I might add. [LB540]

SENATOR SULLIVAN: That closes the hearing on LB540. We will now move on to LB575. Hello, Senator. [LB540]

SENATOR HARR: Good afternoon, Madam Chair, members of the Revenue...or excuse me, Education Committee. Education was not in the notes. [LB575]

SENATOR SULLIVAN: Oh, you wish (laugh). [LB575]

SENATOR HARR: Yeah. [LB575]

SENATOR AVERY: We spend it. We don't raise it. [LB575]

SENATOR HARR: (Exhibits 1, 2, 3) My name is Senator Burke Harr, spelled the proper way, H-a-r-r, and I am from Legislative District 8 in Omaha, and I have a lot of handouts; but I'm not going to give them until the end because then you'll be reading them while I'm speaking. So I'm here on a bill for K-12 education to have board members who oversee compulsory education receive compulsory education. So there's broad agreement among board members and their various representative bodies at the state and national level that the advent of performance-based accountability in education has dramatically changed the ground rules under which local boards operate. Since the early to mid 1980s, the states, with the encouragement of the federal government, have more or less completely bypassed local school districts and their boards in the design and implementation of accountability systems. We in Nebraska are one of the last states to have a plan or a policy to allow the State Department of Education to intervene directly in schools without conducting reviews, imposing remedies and solutions...yeah, without the consent of the local school boards. The role of the school boards has changed. The world of educational governance has changed, in historical terms almost, overnight. Local boards have to learn how to operate in a new environment, one in which all types of educational services, including the core business of running a school itself, will come under greater scrutiny and oversight and demand for transparency. In addition, traditional jurisdictional boundaries among levels of government no longer hold, allowing new and exciting relationships that may also contain pitfalls. It is important for school boards to understand their roles and responsibility, as was witnessed by the allegations in the last bill. Board practices appear to matter more than just structure and that's what this bill addresses is board practices. This is important because so much of public discourse around school boards focuses on structure rather

than practice. It is not the structure that limits the board, however. It is what the members do once on the board. The role of a school board is changing from that of an overseer of the superintendent, a holdover from the nineteenth century progressive era of reforms, to that of a co-leader with the superintendents. A board must be concerned with what, while a superintendent is in charge of how, policy is implemented. School boards must be fully engaged. To be fully engaged, they must understand the subject matter they are overseeing. Too often school board members have been overlooked as partners in reform. And yet when they are involved constructively and appropriately in focusing the attention of the district on achievement, great things can happen. I understand board service requires hard work and dedication and many long nights as problem solving. But it also must require a willingness of the board members themselves to learn. Education and board training will help to make such service much more manageable, an important consideration given that board members receive in Nebraska no pay and have multiple responsibilities, like a full-time job and a family. Board members must study broad practices that make a difference for children. They must know how to build a foundation for student success, stay focused on student achievement, and try to avoid many of the pitfalls that others have made. No one is born knowing how to be a good board member. Superintendents go to school for many years to learn to be a teacher and then again, as students, to learn how to be an effective administrator. Board members need information on local issues, policies and procedures, as well as knowledge of how the educational systems function beyond the communities in which they serve. Many decisions board members need to make involve complex information in situations such as tax caps, funding, curriculum, assessment, truancy, labor law, human resources, graduation rates, long-term strategies, long-term visions, legal issues, and other personnel. Each election cycle or appointment brings new members on to a board. Members need to learn what their role is as a board and get up to speed on the issues as quickly as possible. Continuing education and education for board members is as important as continuing education for teachers and other professionals entrusted with the education and supervision of our children. LB575 requires professional training for public school board members. The Legislature would require newly elected or appointed members to receive training on a variety of topics: compliance and financial issues, training on law, ethics issues, as well as specific training on their district's data, which would include educational assessments, truancy, and dropout rates. The bill also allows current board members to receive training on general information on any changes in the law regarding labor, education, and public records. On January 1, 2014, any newly elected or appointed board member would be required to receive no less than 12 hours professional training within 180 days of their election or appointment. On or after January 1, 2014, any board member who has served over one year or has been reelected or reappointed shall receive no less than eight hours of professional training each year. One of the hours should be dedicated to the creation and discussion of a board mission statement and strategic plan. The Nebraska State Department of Education would also be charged with providing the training. The training could also come from other institutional with the approval of the

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Nebraska Department of Education. This would include such organizations as the Nebraska Association of School Boards. Any member who fails to complete the required training would not be eligible for reelection or reappointment during the first election immediately following their term. So I wanted to find some enforcement mechanism. And obviously if you're doing this voluntarily, some states have criminal--I don't think that's appropriate--but we had to find an enforcement mechanism, and this is a little something we came up with. Since 1984, 23 other states have passed similar laws that require professional development training for public school board members. And I do have a handout on that that I'll hand out shortly. In 2012, I introduced LB1046 that required all law enforcement officers to receive 20 hours per year of continuing education. As with many professions, law enforcement is an ever-changing occupation. Laws, court decisions, technology, and indeed the society that we regulate and serve is in a constant state of flux. For this reason, it was necessary for law enforcement to keep abreast of their field so that they can more effectively serve their citizens, avoid civil liability, and develop necessary supervisory and managerial skills. If an officer failed to complete 20 hours of continuing education, that officer's certificate would be revoked. And it's interesting...it was an interesting bill in that it had the support of the police officers, the FOP, and ACLU because all the groups saw the importance of continuing education. Bob Lausten, who is the chief of police in La Vista, said: It's interesting that I would consider less complex occupations such as a barber, tattoo parlor operator, real estate salesperson and even defense attorneys, have continuing education requirements yet law enforcement doesn't. Local control is great, but there is a case where reasonable minimum standards should be established. That's what I'm looking for here. And then he goes on to say: What's good about this bill is it doesn't mandate exactly what the training is. A Cherry County deputy with court services may be different than an Omaha police officer with gang investigation requirements or a Falls City officer. And that's what this does. Again, it doesn't mandate what type of training an officer or, excuse me, a school board member receives. It leaves it pretty open and vague with some ideas of some areas are better than another. This goes on, Jeremy Kinsey, who is vice president of the Nebraska FOP, said: Not to take anything away from our predecessors in the law enforcement field, but the law enforcement officers of 2012 are entirely different from the law enforcement officer from the '50s and '60s. In fact, it is entirely different from the law enforcement officers of the '90s when I began my career. Law enforcement today is professional and expert and has many standards. Well, I would hold and argue that is the exact same way in education. The education of today is much different than the '50s, the '60s, and even the '90s; and we need to make sure our board members are up to date with the best...well, the most recent best practices. In closing, the Nebraska School Board Association, excuse me, Nebraska school boards would now be a part of other professionals that require continuing education. I have a handout, professions in Nebraska that have statutory requirements for continuing education/professional development, including elected officials and political subdivisions. Among those is barbers have a requirement for continuing education. So I went to their Web site to say, well, why should we do this? And their Web site says,

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"Continuing education is an educational opportunity that barbers can take advantage of after they've completed their training and have received their cosmetology license. It provides the opportunity for barbers to further develop their hairstyling skills and to learn new aspects of the business." Isn't that what we want our board members to do? The Nebraska Association of School Boards, on their Web site, states: NASB exists to prepare new board members for board service and to provide continuous support to the experienced board member. According to research, again this is their Web site, they don't cite the research, but it says: According to research, board members effective in the roles and responsibility of the board impact improved student learning and achievement through best practices, governance, policy, communication, and fiscal responsibility. I think that...you can't make much better argument for why we need to have board education. I would ask that you vote LB575 out of committee. And I would be happy to answer any questions you may have. [LB575]

SENATOR SULLIVAN: Thank you, Senator. Senator Haar. [LB575]

SENATOR HAAR: A brief statement and then a couple of questions. The name H-a-a-r is well established in the German and Dutch cultures. Is it true that H-a-r-r was for people sneaking into the country that didn't know how to spell? [LB575]

SENATOR HARR: There might be some truth to that. [LB575]

SENATOR HAAR: (Laugh) Okay. My questions: The fiscal note really seems pretty high for this. Did you... [LB575]

SENATOR HARR: Thank you. And also--can I have these handouts...I don't know where the...oh, over here, sorry--and it is. You know, there's the old saying, death by fiscal note. Currently we already...NASB does a lot of this already. They're a wonderful, wonderful organization in spite of what they're going to say in a couple of minutes. (Laughter) And they do a lot of this training already. So for cost to be an issue is probably not relevant because it's already available. And school districts, to their credit, are already doing this. So the fiscal note might become in managing this...the Nebraska Department of Education said two full-time employees to manage this. I'm not sure if that's quite accurate. I would think one person could oversee it. There are a lot more bar members than there are board members, state education board members, or, no, just education board members. And amazingly, the bar association is able to manage it with one FTE. There may be some cost associated with providing the training, but my argument is, what's the cost savings by having better educated and prepared board members who understand fiscal responsibility? [LB575]

SENATOR HAAR: Now the handout you just gave us here where it says, "Does the training include any mandated topics?" and there are a lot of yeses. There are a few nos in here, but... [LB575]

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SENATOR HARR: Yeah. [LB575]

SENATOR HAAR: ...you're saying that your bill really doesn't... [LB575]

SENATOR HARR: It has strong suggestions but no mandates. Excuse me, other than the last hour, you have to look at graduation, truancy rate, and assessment scores. But any good board is already doing that already and they can do that as a board. All they have to do is just certify that they're doing it, but that's what a good board should be doing. [LB575]

SENATOR HAAR: And then finally, I'm kind of surprised just that this bill is coming up. Is there a situation that was brought to your attention or is this just kind of a general concern you have? [LB575]

SENATOR HARR: Well, the answer is yes and no. So the answer is obviously last year this legislative body looked at shrinking the size of OPS School Board. But this in no way is an OPS School Board legislation. I have what I refer to as my little red book and it's not on communism, but it's called...I got this book. It's called The Essential School Board Book: Better Governance in the Age of Accountability and it's written by a woman, Nancy Walser, who is a professor of education at Harvard school of education. And reading this book opened my eyes to how to have high performing school boards and better performing school boards. And so that's...and I started to become very interested in how do we make school boards better. And it's true--it's not the structure that matters. It can have an impact, but the larger impact is what are the practices. How does that school board operate? Does it have stability? Does it have a long-term vision? How well do they manage their meetings? Are they always looking at achievement, student achievement, student achievement? Do they have a good mission statement? Do they even know what their mission statement is? And so looking at that, I said, you know, 11, 9, 7, 5; those are arbitrary numbers. And what's really important is good practices. And so that's where this bill comes from. That's where this proposed legislation comes from. [LB575]

SENATOR HAAR: Well, thank you, Senator Harr. [LB575]

SENATOR SULLIVAN: Senator Avery. [LB575]

SENATOR AVERY: Thank you, Madam Chair. I see in some of the material you gave us that even Mississippi requires some training for school board members, even Mississippi. [LB575]

SENATOR HARR: Well, when it's ever you and Alabama you're in trouble, and we aren't there yet. But we're getting close. We're getting close. I mean, as I said, in 1984

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no one required it, which isn't that long ago. And already we have 24 states, which is getting close to a majority, and other states including Nebraska have introduced legislation this year for just such...for, as I like to call it, compulsory education to oversee compulsory education. [LB575]

SENATOR AVERY: Did I understand you to say that the number of hours that you have in the bill are just kind of randomly selected? [LB575]

SENATOR HARR: Oh, no, no, no. I was saying the number of members. No, the hours I have in the bill... [LB575]

SENATOR AVERY: Where did they come from? [LB575]

SENATOR HARR: Looking at other states is where they came from. As you can see, there are 23 states so I kind of looked at what the majority of the states do and the hours they require. [LB575]

SENATOR AVERY: Twelve hours for new members, eight hours for continuing. [LB575]

SENATOR HARR: Yes. [LB575]

SENATOR AVERY: That's a lot of hours. [LB575]

SENATOR HARR: Well, it is and it isn't. One of the handouts I gave you you'll see is what every first board member should know. And my goodness, it's a thick handout. [LB575]

SENATOR AVERY: Surviving Your First Year. [LB575]

SENATOR HARR: Surviving Your First Year. Your first year is your hardest, whether you're here in the Legislature or if you're a school board member. There's a lot to learn and to take in. And, you know, NASB offers courses and there's a reason why they do because they see the importance of education. Remember, this is a...the Nebraska Association of School Boards is made up of school board members to oversee school board members. And they know the importance of education, of educating their members. Now they may disagree on the amount. I'm not an expert. These hours, again, came from, as I said, a survey of other states. I'm more than willing to work with the hours. But again, you have board member roles, responsibility, and governance. I mean this is their Surviving First Year. The other issues you have board/school operations; board/school authority, which we just heard some comments on; school districts and board member liability; employee issues; conflicts of interest; and how to deal with board attorneys. These are handouts that they have. There's a lot school boards, a good, proper, operating school board does. They set the policy. And so I think

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it's important that they're well educated. And while 12 hours seems like a long period, if done properly it really isn't. I'm required as an attorney to get ten every year. And I'll tell you every year I've gone over that ten hours. At the end of the day that... [LB575]

SENATOR AVERY: You're talking about continuing learning. [LB575]

SENATOR HARR: Continuing...that's continuing legal education, yeah. And, you know, you look at the list of how many industries, services, and professions have required learning; and it's amazing that the people who oversee our most precious asset in the state, our children, it's disrespectful that we don't require them--to our children--that we don't require these individuals to receive some training. I appreciate what they do. It's not easy what they do. But we want to make sure that they do as good a job as they can and that they are properly educated on how to do it properly. [LB575]

SENATOR AVERY: And you're expecting testimony from the NASB... [LB575]

SENATOR HARR: And the Learning Community, who may come out against learning. (Laughter) [LB575]

SENATOR SULLIVAN: Senator Harr, you indicate that the training should be overseen, directed by the Department of Education? [LB575]

SENATOR HARR: Again, that's taking a survey of the other states and that seems to be the most common form is to have it be overseen by the State Department of Education. [LB575]

SENATOR SULLIVAN: How does that dovetail with the work that's already being done which is, in some cases, quite extensive, by the school board association? [LB575]

SENATOR HARR: Well, and similar I can only speak to my own experience, which is as a lawyer I'm allowed to take hours anywhere I want. They just have to be approved by the bar association. And that's how I would foresee this occurring is that the Nebraska Department of Education would either...you would make an application to say do these hours. You'd have to have a party say, this is what we want to teach; this is how long it's going to be; and this is what it's about. And they just approve it or disapprove it, but they don't actually teach the courses. And I would see...originally in the legislation I had NASB as the person providing it. But as a general rule when we write legislation, we don't apply to outside parties, especially private. So then I looked at a survey of what other states do and that's how they do it. But I would see NASB being the leader and providing the majority of the hours for most of the board members, as they currently do already. [LB575]

SENATOR SULLIVAN: Senator Scheer. [LB575]

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SENATOR SCHEER: Senator Harr. [LB575]

SENATOR HARR: Yes, sir. [LB575]

SENATOR SCHEER: You are an attorney, correct? [LB575]

SENATOR HARR: Not a very good one, but, yes. [LB575]

SENATOR SCHEER: I'm not going to question that, but you are required to take how many hours a year of continued ed? [LB575]

SENATOR HARR: Ten hours. [LB575]

SENATOR SCHEER: Okay. And that is how you make your living. [LB575]

SENATOR HARR: No. [LB575]

SENATOR SCHEER: You don't make a living being an attorney? [LB575]

SENATOR HARR: What's that? Not a very good one. This takes up a lot of my time. [LB575]

SENATOR SCHEER: Okay. Your occupation would be classified as an attorney? [LB575]

SENATOR HARR: And I'm not trying to play semantics with you, but I do a lot of other stuff so I...I don't know...sometimes it depends on what I'm doing at the time. [LB575]

SENATOR SCHEER: Okay. [LB575]

SENATOR HARR: But, yes. [LB575]

SENATOR SCHEER: All right. Well, then let's just... [LB575]

SENATOR HARR: But I will tell you this, I will say this: My father is a full-time attorney. How's that? [LB575]

SENATOR SCHEER: That's okay. That's fine. Let's go to police officers because you made a large impact that everyone was in favor of continuing education for policemen. I think that's a great idea too. That is a profession, is it not, or an occupation? [LB575]

SENATOR HARR: It is, yes. [LB575]

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SENATOR SCHEER: Now do you see a distinction between a profession or an occupation and volunteer servitude? [LB575]

SENATOR HARR: And the answer is I see a distinction without a difference though... [LB575]

SENATOR SCHEER: Okay. [LB575]

SENATOR HARR: ...in that they're both overseeing other employees... [LB575]

SENATOR SCHEER: Okay, fair enough. [LB575]

SENATOR HARR: ...and rights. [LB575]

SENATOR SCHEER: Then let's go to the volunteer servitude. Quite a little pamphlet that the NASB puts out and, you know, it's very good. But this is my first year as a legislator. The material that I received when I came down to, and I will note a voluntary educational or indoctrination program last fall, was much more than this. And if you look at the duties of a state senator versus that of a local school board, the magnitude, not even close. [LB575]

SENATOR HARR: Oh, I would disagree with that. [LB575]

SENATOR SCHEER: Oh, well, believe me, Senator Harr, I've done them both. And if you think what you're doing has anything like a local school district, you're up in cloud nine because... [LB575]

SENATOR HARR: Oh, I'm sorry, I do agree. Yes, yes, yes. [LB575]

SENATOR SCHEER: Okay, all right. [LB575]

SENATOR HARR: That local school boards do a lot of work, yes. [LB575]

SENATOR SCHEER: Okay. So, you know, nonpaid...we get paid. There was no requirement for me to have any preeducation, there's not a requirement anywhere that I get any additional education anywhere any time that I serve the state of Nebraska as a state legislator, none. There...talk about education. Are you familiar with the Regents? [LB575]

SENATOR HARR: The ESUs? What? [LB575]

SENATOR SCHEER: Regents. [LB575]

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SENATOR HARR: Regents, yes. [LB575]

SENATOR SCHEER: Um-hum. Is there a requirement for them to have any additional education on a yearly basis? [LB575]

SENATOR HARR: Give me time. [LB575]

SENATOR SCHEER: Is there any requirement for them to have educational... [LB575]

SENATOR HARR: No, just like there isn't for school board members at this time. [LB575]

SENATOR SCHEER: Okay. How about community colleges? [LB575]

SENATOR HARR: Similar to school board members. [LB575]

SENATOR SCHEER: Okay, State College Board? [LB575]

SENATOR HARR: Similar again or just beginning. [LB575]

SENATOR SCHEER: Okay. How about county commissioners? [LB575]

SENATOR HARR: I can't speak to that. [LB575]

SENATOR SCHEER: The answer would be no. [LB575]

SENATOR HARR: Okay. [LB575]

SENATOR SCHEER: Mayors? [LB575]

SENATOR HARR: I don't have a copy of that list. [LB575]

SENATOR SCHEER: This is going to be real simple because it's going to be no every time. [LB575]

SENATOR HARR: Okay. [LB575]

SENATOR SCHEER: Councilmen? No. You have selected one of the few positions in the state of Nebraska that is exclusively volunteer. You are expecting them to take a full day out of their time at no compensation for that time to continue to have education. It will be, by the way, the financial...the A bill doesn't cover that. It would be on the local school district because there would be additional cost there. And I have to tell you, a

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little disingenuous here, I, from my standpoint, am a little tired of problems that are being created in certain school districts now becoming part of a statewide system that will change the dynamics of education or school board membership. I have served on a school board for well over 20 years. I have never heard of an event in a certain school district a problem with the membership... [LB575]

SENATOR HARR: Let's call it OPS. Let's be honest. [LB575]

SENATOR SCHEER: Well, if you want to call by names, that's one I was thinking of as well. And it seems to me that we are causing problems for the remaining part of the state, all local school districts, and only school districts, because of a problem that may or be perceived to be in one school district. You know, if there is a problem within OPS, then set this up to be districts of Class V school districts. We've already done that once so it's not a stretch to do it again. You know, small school districts, when you look at the 249 school districts, by far and away well over 200 would be districts I'm going to guess of 300 or less students. You have to go out and literally try to find people to serve in those capacities. It is a no-win deal. When you serve on those small communities, when you make the decision not to give that extra day after Christmas, people get torqued. So if you're the barber, guess what? You're going to be hard-pressed because you're not going to give any haircuts that day because we're going to boycott you because you did that. That happens on a local basis and they're not being compensated. [LB575]

SENATOR HARR: Yeah. [LB575]

SENATOR SCHEER: And so now we're going to put another further layer of bureaucracy on those individuals that are at least coming forward and providing that public service at no compensation when other individuals within the state are all compensated, doing vastly more as a composite for the people of not only those districts or the state of Nebraska, and we have required not one thing. So I guess from my vantage point, yeah, I give you time. Why don't you start with some that are compensated, that do have the resources to do this, and work your way down? Because it seems to me like you're starting at the wrong end of the stick. I consider what we're doing right now very, very important; and we have no educational training required of us at all. And we're even compensated, however little it may be, we're still compensated. [LB575]

SENATOR HARR: Yeah. [LB575]

SENATOR SCHEER: And it seems...it would appear to me that we're looking for a problem that doesn't exist on a predominantly statewide basis other than perhaps in a small segment of the state, not necessarily of student population, but a very small segment as far as leadership in schools. [LB575]

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SENATOR HARR: And you're going to hear people come in after you who are going to testify to exactly what you said. Why I want to do is not disingenuous at all. It's the exact opposite. It's because I don't live on cloud nine. It's because what your own words stated. You do a lot more as a board member than probably what we do here. [LB575]

SENATOR SCHEER: No, no, no. If you interpreted me to say that, it was exactly the opposite. [LB575]

SENATOR HARR: Oh. [LB575]

SENATOR SCHEER: What we are doing here is by far and away much larger scale and concept... [LB575]

SENATOR HARR: Oh, oh. [LB575]

SENATOR SCHEER: ...than a local school board member would ever have the feasibility. You talked about budgetary items. We're talking about the budget of the state of Nebraska, not the local school district. [LB575]

SENATOR HARR: Well, and maybe that's true in some smaller districts. But where I'm coming from is... [LB575]

SENATOR SCHEER: Again, but what district are we talking about then? [LB575]

SENATOR HARR: Oh, I'm talking about the state. [LB575]

SENATOR SCHEER: And why did...okay then... [LB575]

SENATOR HARR: If you're going to let me...yeah, I'll explain it to you. [LB575]

SENATOR SCHEER: All right, I'm sorry. [LB575]

SENATOR HARR: You know, I'm talking about the whole state and I'm looking at research. I'm looking at what the Panasonic Foundation did. I'm looking at what the New England School Development Council came up with. I'm looking at other, you know...there's research out here. Here, what are the practices of effective school boards from the American School Board Journal? And all of them mention the importance of making sure that you have well educated who understand the issues of a school board. And so what I'm looking at is just the opposite. I'm trying to make their time more effective and more useful so that they have an effective way in a very short time prepared by what I consider to be a good group--Nebraska Department of Education and/or the Nebraska Association of School Boards--saying, hey, here is labor law for schools laid out, boom, boom, boom, boom, boom. Now you can help set the policy for

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the school district. Here is human resources, boom, boom, boom, boom, boom. Here is what we look at for assessment scores. Here is how we got to where we are. Here is why we are where we are. Here is a policy generally on a state level because most school board members don't have experience on the state board level. Here is what the national trends are. Here is what laws passed last year and how they affect you. Here is...I mean it's countless. Here is what our truancy rates. Any good board, by the way, I mean at the end of the day it's really eight, but it's not because it's seven because, you know, a board addressing the issue of truancy, graduation rate, and assessments, they're doing that already if they're a halfway decent board. And if they aren't, they should be. So we are providing some oversight for that. And the answer is this is not an OPS issue. This is not an Omaha issue. This is an education issue. This is about what's best for our children. What are the best practices? So, you know, you talk about the other boards, community colleges, all that, state colleges, Regents, Nebraska Department of Education, which, by the way, I had in there but I took out because it would be kind of hard to have the Department oversee its bosses. So that's why they aren't in there. But the reason is, is what you do in elementary, primary school; what you do in junior high and what you do in high school has a lot larger impact on those kids. [LB575]

SENATOR SCHEER: Senator Harr, then would you tell me what district, patrons or individuals, have brought a concern to you about other than OPS? [LB575]

SENATOR HARR: What's that? Oh, I'm not going off of patrons. I'm not going off of constituents. This is something I'm doing based on education of what I've looked at are what best practices out there. What is best for a school board? It's not as though we're the lighthouse on this. We aren't the first ones out there beckoning with a bright beam showing the problems. We would be the 24th, maybe 25th, 26th state out there doing this. So this isn't something that's new. It's not something unique. Now in education we were the last state to have an assessment score, a statewide assessment. And I think now that we have statewide assessments we're starting to see some changes, and it's shining a light on some issues. This is by no means an OPS issue. I think everyone can do better. And I look for the best in people. And I think people who volunteer for the school boards, they're outstanding people. And you're right. Maybe they are taking some heat. But what I don't want is for that barber to take heat for something where they're wrong. So if they're going to take a stance on a controversial issue, I want to make sure that they're properly educated on the rights and the wrongs and that they have that training so they aren't out on a limb where they shouldn't be. I am not an apologist for school boards. I hold them up to high esteem, and I think they can do better, and I think they know they can do better. You can always do better. And I think, again, we're looking at our most precious asset, my children. I am entrusting another person with my child for eight hours a day. And I'm entrusting them with their education, which to a large degree will determine who and what they are. And I want that policymaker who determines what a superintendent does, what a school principal does,

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what a teacher does is properly trained so that they know what they should and shouldn't be doing and what they can and can't do and what are best practice out there and how do they implement those best practices. And I guarantee you, they're going to have an effect, not just on what happens in the classroom, but then how that kid goes home and how that kid acts at home. So they have a huge...that's why I say I'm not on cloud nine. I think school boards have a huge effect on who and what we are as a society and it's volunteering. It's amazing. Now that's a question for another day whether it should be voluntary or not. But don't ever underestimate the value of a school board and what they do and how they make our lives better. [LB575]

SENATOR SCHEER: Well, Senator Harr, my closing point to you is that I don't disagree that the school boards are very important. That as far as talking about the significance of education and what happens to your children and what they walk out of the school system at the end of their last day as a senior in high school or any other time is not because of the school board. It is because of the teacher in the classroom. [LB575]

SENATOR HARR: Yep. [LB575]

SENATOR SCHEER: And so consequently I agree with you. They are precious and they are our natural asset. But the true people that are making a difference in those children's lives is not the school board. [LB575]

SENATOR HARR: No. [LB575]

SENATOR SCHEER: It is the teacher. [LB575]

SENATOR HARR: The magic occurs in the classroom. We all agree on it. That's where the magic secret sauce is, is in the classroom with the teacher. But we have to make sure that those teachers have the ingredients for the secret sauce available to them. And that's what a school board does is they set the policy of how a teacher teaches and what a teacher teaches. And so as I said earlier, they set the how or what a school does. Superintendent sets how they do it and then that trickles down. But the secret sauce, they create the ingredients for the secret sauce. But you're right. The magic happens in the classroom. [LB575]

SENATOR SCHEER: Okay. I have monopolized the time so I'll go ahead and we'll talk some more. [LB575]

SENATOR HARR: Oh. And we can have more conversation on this because I enjoy it. [LB575]

SENATOR SULLIVAN: Senator Davis, did you... [LB575]

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SENATOR DAVIS: I just have a few points to make. And I will be totally honest with you that I'm coming from a very small district. I totally understand where Senator Scheer is coming from, and I can recognize some of your points have some merit. But I want to say this: NASB does a wonderful job and I've seen the OPS board there in force many, many times and it did not seem to solve any of their problems. [LB575]

SENATOR HARR: Yeah. [LB575]

SENATOR DAVIS: So all the education in the world is not going to steer somebody from a course that they choose to go on. [LB575]

SENATOR HARR: I mean...but the question is, and that's exactly right. But why we force kids to go to school then even. [LB575]

SENATOR DAVIS: If you're trying to solve that problem by... [LB575]

SENATOR HARR: Oh, I'm not trying to solve any problem though. [LB575]

SENATOR DAVIS: Please let me just make my point. By layering this on in rural Nebraska, we're talking about not just the eight hours, we're talking about a commute to wherever we're going to go. Most of those people are not...they're employees somewhere so we're either going to have to do it at night. If you talk to any school board member in any small district or any probably district of Senator Scheer's size, you'd be shocked at the amount of hours that these people are already putting in, in terms of being a good board member. They're going to the training 99.99 percent of them are. There are some things I think that would be valuable, and I think that there are training manuals that could be given just like this one that NASB does that could be handed out to these board members and say, this would be very valuable for you to read. Why don't you read through this and then bring it in. You know, I can see the merit to something like that, but I can't see a full-blown layering of bureaucracy on top of what the board members are already doing. Because to be honest with you, they work awfully hard. [LB575]

SENATOR HARR: Well, and you're exactly right. Probably 99 percent of them are doing it already. So why not get credit for it? Why not be held up to high accolades... [LB575]

SENATOR DAVIS: Why are we giving them credit for? We're saying, okay, now you've got this other little layer of hoops you're going to jump through. Even though you've been doing it right, now you've got to take the eight hours of training. And by the way, you're going to have to drive down to North Platte and that's a two-hour drive and you'll have to do it in two sessions. [LB575]

SENATOR HARR: I mean not in the modern world. There's nothing in the legislation

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that prevents it from being an on-line course. There's nothing that prevents it from being video, audio. [LB575]

SENATOR DAVIS: I don't see that it's there at the present time, Senator. [LB575]

SENATOR HARR: What's that? [LB575]

SENATOR DAVIS: I said I don't see that it's there. No, there's nothing that prevents that, but it's not there now. [LB575]

SENATOR HARR: Yeah. Well, I mean we could amend it to add it in there. I mean that's the idea is, I mean currently, again, I'm going to go back to...and maybe this is my prejudice coming in, but I take on-line courses for my CLE. When I was a county attorney and when I'm...which had required hours, and also or deputy county attorney, excuse me, and also as a lawyer in the private practice when I...which I do keep up. You know, it's not my full-time job. Again, it amazes me some of the feedback on this because we're already doing it. We're already doing it. And so I'm not sure why there's such a fight on this. And I'm not quite sure why anyone is against education. [LB575]

SENATOR DAVIS: Because you're making it mandatory with the implication that people are not doing it. [LB575]

SENATOR HARR: We already make education mandatory till you're...I think it was Senator Seiler's bill. You know, we raised the level of how long we make education compulsory. We as a society see an importance in education. And the last thing I want to do is warehouse a kid, put him in...not have a properly trained board and so that all we do is put that kid in a school until they're...they reach the age of majority and then they can go out into the world on their own. That's exactly what I want to avoid. And this isn't...I don't want to emote emotion, but this bill is based on best practices. This is not based on what I think, it's not based on what you think, it's what researchers have gone out in the world, looked at what works and what doesn't. And when they came back, they said this is what we want. Will it help OPS? I hope. [LB575]

SENATOR DAVIS: Senator Harr, I would stack up our boards in Nebraska against any state in the country. [LB575]

SENATOR HARR: You would what? [LB575]

SENATOR DAVIS: I would say our boards are better than probably any state in the country in terms of the commitment that they have to their community and to their students. [LB575]

SENATOR HARR: I know. I wouldn't disagree with that. That's why I'm so amazed that

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they're fighting this, that they're so for education for everyone but themselves. I know that amazes me. I still...there's that disconnect. I can't figure it out because I agree with you. We have really good school boards, and I think they would say, yes, we want to follow best practices. And I think for the most part they do. And you're exactly right. And that's...I'm missing something I think. [LB575]

SENATOR DAVIS: I think my point is if it ain't broke, don't fix it. [LB575]

SENATOR HARR: Well, and that's one view. I always say there's only one way to coast--downhill. And like I say, we can always do more; we can always do better. [LB575]

SENATOR SULLIVAN: Senator Seiler. [LB575]

SENATOR SEILER: Senator Harr, if you turn to Section 4, page 4 of the bill, I have a very picayunish suggestion. [LB575]

SENATOR HARR: Uh-oh. [LB575]

SENATOR SEILER: In the first sentence of that paragraph, you make it mandatory on the State Department of Education. [LB575]

SENATOR HARR: Yes, sir. [LB575]

SENATOR SEILER: Then without a connective, you started "The department may" and delegate it out. I'm wondering if you should have the word "or" or "however" in there going to their exception. I'd prefer the word...like I said, it's pretty picayunish. You're going from mandatory to permissive... [LB575]

SENATOR HARR: Yeah. [LB575]

SENATOR SEILER: ...and you really don't have an exception in there. It's a drafting. [LB575]

SENATOR HARR: Yeah, yeah, it's poor drafting on my behalf and I like that because the intent was that the board shall oversee it and then they can... [LB575]

SENATOR SEILER: Right. And then they authorize somebody else. [LB575]

SENATOR HARR: Yep. [LB575]

SENATOR SEILER: If you want to go to University of Virginia for the summer and learn about education, go and you get credit for it. I understand that. But I think you're going

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from... [LB575]

SENATOR HARR: Yeah. [LB575]

SENATOR SEILER: ...a very strict "shall," which is mandatory to saying "may" and without an exception or however in there. [LB575]

SENATOR HARR: Okay. [LB575]

SENATOR SEILER: That's all I have. [LB575]

SENATOR HARR: All right. Thank you. [LB575]

SENATOR SULLIVAN: Okay. Any other further questions? Are you going to be here for closing? [LB575]

SENATOR HARR: Yes. [LB575]

SENATOR SULLIVAN: Okay, very good. [LB575]

SENATOR HARR: Thank you. [LB575]

SENATOR SULLIVAN: We will now hear proponent testimony for LB575. Anyone wishing to speak in support of LB575? We'll now hear opponent testimony. [LB575]

SENATOR SEILER: Are you out there on a limb by yourself? [LB575]

SENATOR HARR: (Laugh) It's never easy to be 24th. [LB575]

JOHN BONAIUTO: Senator Sullivan, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, representing Nebraska Council of School Administrators and the Nebraska Association of School Boards. In some respect, reluctantly opposing the bill in that I'm not opposing what Senator Harr is saying about training, but I am here to oppose the mandate that is required in this bill. And so in my conversation with Senator Harr, he is very sincere. His intentions are those to help boards. He was in conversation with the School Boards Association during the interim, and he had a conflict in November and Andy Hale came to the NASB board meeting and did a very nice presentation to a 25-person board of directors. And after that conversation, the NASB board looked at what Senator Harr was trying to accomplish. And the requirement for just that group of elected officials, as Senator Scheer was pointing out, did not sit well with them. And I had a conversation in the hallway with Senator Harr a while back and I said, let me tell you about 18 years ago. I had...was frustrated with board training and went to at the time the Chairman of the Education Committee--it was Senator Ardyce

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Bohlke--was sitting in her office and I said, Senator, if you could just introduce a bill for us that would require school boards to go to training. And after a while she kind of looked me in the eye and she had been a former school board member in Hastings, and she straightened me out, as many of you do from time to time, and she said, John, why would the organization that promotes local control ask me to introduce a bill that would mandate your members to go to training? She says, you might want to approach that a little differently. So I went back to our staff and tried a little more radical approach and that was to improve our training, do better marketing, encourage people to...board members to come to the trainings because they were practical, worthwhile. And over the course of years, we were able to accomplish a great deal. And I would say that although it's voluntary, and I know that Senator Harr is saying we want all board members to have this experience, I believe the NASB data would show that 75 to 80 percent of the board members across the state are involved in attending some type of training. And something NASB instituted in recent years is whole board training. And sometimes a board will find that because members may not be attending something or meetings or getting the continuing education, they'll invite NASB staff to come to the board...to the district and have training with that particular board. And that's been effective and it's by invitation. NASB and the school administrators have had a longtime partnership and have many excellent conferences and seminars. The school boards association does new board member workshops which are extremely well attended and it's an all-day workshop. And they partner with the Department of Education on school finance and use business managers. There's a back to the basics law workshop where school attorneys are part of that. So I think there are a lot of things going on. And maybe there is a technology piece that's missing here that if we could do some things to even make it more convenient that we could raise the percentage of people, school board members, that are attending workshops. But I think that right now from what NASB and NCSA's experiences that we have more people, more school board members and school administrators than ever before that are taking part in continuing education and the workshops. With that, I will conclude my testimony, Senator. [LB575]

SENATOR SULLIVAN: Thank you, John. Senator Cook. [LB575]

SENATOR COOK: Thank you, Madam Chair, and thank you for joining us today. I had a question that emerged that I will offer you the opportunity to help me understand. How does checking for learning happen in these seminars? I'm imagining a well-meaning elected official on a school board from across the great state taking the course. Is it offered in kind of a lecture seminar? Are there tests? What if they fail the course? [LB575]

JOHN BONAIUTO: Senator, it's a good question in that because we do not have an academy-type organization where we do testing, we try to do as much as we can with information through...presentations through scenarios and getting people to work together and try to check for mastery or learning through feedback after board members

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have had a chance to listen, to discuss, and then come up with some solutions to issues to see if they're grasping the ideas. But I think if we did some things on-line maybe written mastery would be a part of that, but we're not doing that kind of mastery or written test with this voluntary-type group. [LB575]

SENATOR COOK: Okay. Thank you. [LB575]

JOHN BONAIUTO: Um-hum. [LB575]

SENATOR SULLIVAN: Senator Seiler. [LB575]

SENATOR SEILER: Do you know if your school board members are reimbursed for expenses, motels, mileage? [LB575]

JOHN BONAIUTO: Senator, they are. Right now they are and that's why the things that...and the cost here that you see in the fiscal note is to the department if they had to deliver this. Right now voluntarily, and I think boards, if you look at school budgets, there will be a line item in there that boards will put in for training. And we have...in November the conference that Andy attended, it's not unusual to have 1,000 to 1,200 individuals attend. [LB575]

SENATOR SEILER: Okay. [LB575]

JOHN BONAIUTO: So it is something that the board members would get mileage, reimbursement for lodging, and meals. And for much of the training that we do, the school boards association does and the school administrators, the cost for the training is for materials and meals. You know, that's basically where the expenses are. [LB575]

SENATOR SEILER: Thank you. [LB575]

SENATOR SULLIVAN: Any other questions? Senator Davis. [LB575]

SENATOR DAVIS: I was going to ask a question about the membership at your fall and you said around 1,000 to 1,200, John? [LB575]

JOHN BONAIUTO: Yes. [LB575]

SENATOR DAVIS: And then you do the fall membership meeting. Is there... [LB575]

JOHN BONAIUTO: It's travel around the state, and I know that a number of you have attended those and so there are area membership meetings where NASB and the staff travel to different parts of Nebraska and there will be a learning component and then an opportunity for board members to interact and have some networking and have a meal

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together. And then NASB does have an awards of achievement program for board members that have spent time in training, and NASB keeps track of all the hours board members have for the trainings and then give board members different level awards, level 1, level 2, level 3, all the way up to, gosh, double digit level awards. So there are many board members that really stick with this and do a considerable amount of continuing education. [LB575]

SENATOR DAVIS: Thank you. [LB575]

SENATOR SULLIVAN: Senator Scheer. [LB575]

SENATOR SCHEER: And just, in so much to a question to John, but in response to Senator Cook, sometimes as far as how you keep track of it, remember that these are continuing education units. So technically you are being given the information, the education. A lot of times there's nothing you have to pass and it's number of hours. So if you went to a six-hour credit class, that means that you're there for six hours. The information lasts for six hours to get the credit for that continuing education. Now just like John had mentioned, you can get the stuff on-line; and a lot of times in my profession with insurance you may get a six-hour on-line course, but you have to pass...they'll give you questions that you have to be able to pass as you go forward. And then at the end, it prints out a certificate. But by and large, I think a lot of the continuing education is just simply what I would consider seat time that you are there absorbing whatever information is being given to you, not necessarily having to pass anything that you fully comprehended it or that you're able to regurgitate it. It's just that you are there to receive it. [LB575]

SENATOR COOK: And that would be my addition in terms of micromanaging this bill is that we somehow ensure that the knowledge that we want them to apply has been actually imparted to the participant. [LB575]

JOHN BONAIUTO: Well taken and I think that with the conferences and the area membership meetings and many of the activities, one of the really most beneficial things is the opportunity for board members to network with each other, talk to each other from the different districts. And I find that the board members learn from each other and really take a lot of good ideas back to their district hearing from other board members. [LB575]

SENATOR SULLIVAN: Thank you, John. Senator Haar. [LB575]

SENATOR HAAR: Yes, thank you. Would you consider it a best practice that people do the kind of training that you offer? [LB575]

JOHN BONAIUTO: Yes. [LB575]

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SENATOR HAAR: Is that in any...are there any districts that have that in their bylaws?
[LB575]

JOHN BONAIUTO: No. Well, as far as requiring board members to... [LB575]

SENATOR HAAR: Or even suggesting. [LB575]

JOHN BONAIUTO: I think because of the relationship that the school boards association and school administrators have, both associations work with their memberships and really encourage the continuing education. The superintendents, by and large, attend the meetings with the board members so they're hearing the same thing their board members are hearing. And that's a good thing, that's positive. So I think we do a lot of encouraging. I don't think any boards...I don't know of any. There may be some that require it, but I think that more often than not boards have polices or practices that maybe not every board member goes to every meeting. They'll send two or four or they'll alternate years for half the board goes this year, half the board goes another year so that it's more that kind of procedure than requirement. Just how do we do this with our board and afford to take care of the costs? [LB575]

SENATOR SULLIVAN: Senator Avery. [LB575]

SENATOR AVERY: Thank you, Madam Chair. I see here on the last page 5 that any board member that does not complete all the required professional training would be barred from reelection or reappointment. Do you see a constitutional issue with that, an arbitrary exclusion from the ballot of people who might otherwise be eligible to run for office? [LB575]

JOHN BONAIUTO: That may be a problem, Senator Avery. When I read that, I thought more about how difficult it is to get board members to run in many communities, and that would even be a bigger deterrent. But I hadn't thought about the constitutional part. [LB575]

SENATOR AVERY: State election law and court cases... [LB575]

JOHN BONAIUTO: Yes. [LB575]

SENATOR AVERY: ...have established rather firmly that if there is a compelling state interest then you can have certain restrictions on access to the ballot. But it has to be a very clearly established, compelling state interest. I guess I should save this question for Senator Harr's closing. [LB575]

JOHN BONAIUTO: Well, and I'm listening to Senator Harr's, his introduction. I know he

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was looking for a way to make sure that people understood that this was serious. And that's the way I read it so. [LB575]

SENATOR SULLIVAN: Okay. Any other questions? Thank you, John. [LB575]

JOHN BONAIUTO: Thank you. [LB575]

SENATOR SULLIVAN: Any other testimony in opposition to LB575? Anyone wishing to speak in a neutral capacity? Senator Harr. [LB575]

SENATOR HARR: Thank you. And I'll be brief but probably not. I want to thank Mr. Bonaiuto for coming to testify. If he weren't such a nice guy, I would impugn some nefarious motive since they're the ones who currently provide the training. But the fact of the matter is, they would probably still be the ones to continue to provide the training. The training that he mentioned in November that they went to, that's exactly what I would like to see board members go to; and they already do--75 to 85 percent of them. And school districts are already picking up the charge. So this really isn't aimed at the ones who are already going. This is aimed at the ones who aren't going. You're probably only as strong as your weakest link. And so we want to get those weak links in there. You know, just like a teacher: You got to find a way to teach those kids. And I think you got to find a way to teach some of those board members. You know, as far as the fiscal note, you heard Mr. Bonaiuto say they're already tracking how many hours board members are taking. So I'm not quite sure. I think it has to do more with that fiscal note with what Senator Seiler said. Maybe if I clarify the drafting a little bit we can bring down that fiscal note to more accurately depict the cost to the state, because otherwise, I'm not sure where the cost is. In the handout I gave you that shows all the other professions that require education, the highlighted ones are elected officials. So again, we're not in virgin territory here trying to penetrate an area where no one has been before. This is...there are quite a few schools or elected officials that already do require this local or, excuse me, require training. As far as local control, if you don't get on board, you're probably going to get passed up. And if school boards don't take more responsibility and show that they are exercising best practices, the federal government has already shown they're willing to fill the void. You have a piece of legislation in front of you that you passed out of committee. Senator Adams made it his personal priority, Speaker Adams, that looks at the state taking control of schools where local boards have failed. And so we're realizing that not all school boards are perfect, and we have to find ways around that. Well, if you're for local control, you want to make sure that that local entity is as well trained as possible so that you don't have the state and federal government coming in. Superintendent Lutz at Millard Public Schools says it's his goal to make state and federal regulators and regulations irrelevant because they set a standard so high and those are the floor. And that's what I want to do with this bill is I want to make sure that we are going as far as we can and making sure these board members are as well trained and understand what their roles and responsibilities, what

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they should and shouldn't do. And I guess in closing, I'm going to leave you with what NASB said themselves on their Web site. The organization itself exists to prepare board members for board service and to provide continuous support to the experienced board members. Again, and this is their language, not mine: According to research, board members effective in the role and responsibilities of the board impact, improve student learning and achievement through best practice governance, policy, communication, and fiscal responsibility. That's why we're here. That's why I'm introducing this legislation. And I think that answers Senator Avery's what the state interest is in making sure that these board members receive the education that the majority, the vast, the supermajority already are receiving today. Thank you. [LB575]

SENATOR SULLIVAN: Senator Seiler. [LB575]

SENATOR SEILER: It seems to me like you both have the same end goal in mind. [LB575]

SENATOR HARR: Yes. [LB575]

SENATOR SEILER: And you ought to sit down and pound out either a policy that's adopted by both of you or a statute that you both agree on. [LB575]

SENATOR HARR: And I would agree with that. [LB575]

SENATOR SEILER: And that's from my observations of your testimony. [LB575]

SENATOR HARR: And I would agree with that. We both have the best interests of the child at heart. [LB575]

SENATOR SEILER: Well, you have the best interest of educating the school board members. Yours is compulsory; his is voluntary, and there's got to be something in the middle. [LB575]

SENATOR HARR: Yeah. Thank you. [LB575]

SENATOR SULLIVAN: Senator Scheer. [LB575]

SENATOR SCHEER: Just for clarification and thanks for bringing this up, Senator Harr, the list that you have highlighted, just for record purposes, there are six, four of which you have to be an attorney to do, which is a profession; and the other two are law enforcement, a law enforcement officer or a sheriff. And that's the extent of those that are highlighted. [LB575]

SENATOR HARR: And since then, you know, I've also seen, I know county assessors

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are required to get training and that didn't make that list. So while that list is...but the requirement in there is not the same requirement as for...for instance, county attorney has a requirement of learning that existed, predates what lawyers have to receive, and same with public defenders and judicial services. So, yeah... [LB575]

SENATOR SCHEER: Well, but I guess I would also say that other than the coroner and a lot of times your county attorney would act as the coroner, these are all full-time positions, paid full-time positions. [LB575]

SENATOR HARR: Yeah. And coroner isn't a full-time job. And I really think the only place it's a full-time job is Douglas County. [LB575]

SENATOR SCHEER: No, I understand. [LB575]

SENATOR HARR: Yeah. [LB575]

SENATOR SCHEER: In most places your county attorney is the coroner, but again, that goes back as an attorney... [LB575]

SENATOR HARR: It's separate. Yeah, and it's separate. [LB575]

SENATOR SCHEER: ...and that would be a full-time paid position. [LB575]

SENATOR HARR: Yeah, exactly. And I will continue, for the record, to work with Mr. Bonaiuto and others because I do think, you know, at the end of the day we do agree and it is about best interest of school policy because that's the best interest of the children. [LB575]

SENATOR SULLIVAN: Senator Avery still has a question. [LB575]

SENATOR AVERY: I want to come back to that compelling state interest. Suppose I am a board member presently and I decide not to take the training. And then I want to run for reelection and the Secretary of State says, I'm sorry, the law says you cannot so I'm not going to put you on the ballot. I decide to sue, and I sue because there has been no clearly stated compelling state interest for keeping me off the ballot. That's the only way that you can keep anybody off the ballot is to have a compelling state interest to do so. You are the attorney now arguing for the state. What would your argument be for the compelling state interest? [LB575]

SENATOR HARR: I would go back to the legislative record that we are creating today. And hopefully the attorney is better than I am. But what I would look at is, again, what we stated is research indicates that well-functioning boards create better outcomes for students, and that we have a constitutional duty to educate our children, provide

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education. And that overarching concern is to provide quality education. And that's where I would come up with the state interest for this. And research would back that up. And I'd probably create something like a Marshall Brief which shows all the data out there on what is so important for...why good school board governance is so important for our children and for our schools. [LB575]

SENATOR AVERY: But you'd also have to show that not having this training would lead to... [LB575]

SENATOR HARR: The detriment. [LB575]

SENATOR AVERY: ...detriment of educating our children. [LB575]

SENATOR HARR: Yeah, yeah and... [LB575]

SENATOR AVERY: That would be hard to do. [LB575]

SENATOR HARR: You know, and I don't have it in front of me the exact outlines of what you have to do, but I've always wondered how a felony is to the detriment. You know, that person could be very good, very well educated and yet we don't allow them on the ballot either. I think the emphasis would have to be on what we can be better and what the compelling state interest is to do that. And the reason not to is we don't want to fall behind. And, you know, there's anecdotal evidence as to Nebraska and how we aren't always on the front end or even on the middle curve when it comes to education. But we have solid families and that makes up for that difference. But imagine if we had great schools and great families how great the state would be. [LB575]

SENATOR AVERY: Well, to go back to your example about the felonies in the classroom. I mean that's really a question about character. And you could make a very compelling case for compelling state interest on that grounds. [LB575]

SENATOR HARR: I would say as an old prosecutor, we've made everything a felony almost anymore and everyone...I'm not sure it has the same level of disrespect that it did in common law. [LB575]

SENATOR SULLIVAN: Senator Haar. [LB575]

SENATOR HAAR: Yes, Senator Harr, could a law say that it is in Nebraska interest to have this done? I mean that's another... [LB575]

SENATOR HARR: And I think I would make an amendment with that intent language in there so that it is clear, and that's what I'll work on. If the committee sees (inaudible), I will work with the committee and I'll come up with some language to that degree.

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Otherwise, I'll probably have to come back again. [LB575]

SENATOR SULLIVAN: Senator Davis. [LB575]

SENATOR DAVIS: Senator Harr, would you and Mr. Bonaiuto get together and could you produce just a record for me of the school districts that attend the NASB fall convention so that we kind of know how many are going most of the time and where they're coming from, just to see if we've got a problem? Because if we don't have a problem, I don't think we should be putting laws in place to fix a problem that's not there. [LB575]

SENATOR HARR: Yeah. And I'll gladly do that. You know, the question is, what value do we put on that 15 to 25 percent that don't go? And you heard Mr. Bonaiuto... [LB575]

SENATOR DAVIS: Let's be sure that that's what the case is, though. You know, maybe they come one year and they don't come the next year. [LB575]

SENATOR HARR: Okay. I can do that. Thank you. [LB575]

SENATOR SULLIVAN: Any other questions? Thank you. [LB575]

SENATOR HARR: Thank you. It was a pleasure as the first time in front of this committee. [LB575]

SENATOR DAVIS: Thank you. [LB575]

SENATOR SULLIVAN: Okay. That closes the hearing on LB575. We'll move on to LB365. Senator Avery. [LB575]

SENATOR AVERY: Good afternoon, Madam Chair. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y, representing District 28 here in south-central Lincoln. I am bringing to you LB365, which actually has its origins in some requests from my constituents. It's a very simple bill really, and what it does would, beginning in the year 2013-14 school year, students enrolled in Nebraska schools must complete an instructional program in first aid, CPR, and automatic external defibrillators, AEDs, and how they operate and must pass a written test that covers CPR and AED operation prior to graduation. The instructional program must be established by the American Heart Association and the American Red Cross or another nationally recognized program. The course must be taught by an educator or an instructor, a member of the American Heart Association, the American Red Cross, or their affiliates, or a community member who is licensed under the Emergency Medical Services Practice Act in our state. CPR may be taught in a psychomotor skills class. These are classes where hands-on practice is taught to support cognitive learning. It also could be taught by way of video

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presentation as well as hands-on training. Certification would not be required, but it is encouraged. A school administrator may waive this requirement for a student with disabilities or students who already hold a valid CPR certificate. And I think many lifeguards have these certificates. Some Eagle Scouts have them. The statistics are pretty compelling. Each year, more than 250,000 Americans die from sudden cardiac arrest. The American Heart Association notes that at least 20,000 could be saved annually by the prompt use of AEDs. Ultimately with broad deployment of AEDs among trained responders, as many as 50,000 deaths could be prevented each year. Sixteen states require some form of CPR training prior to graduation so this would put Nebraska in the early states or among a few states that are doing this. As of January 2012, 56 bills in state legislatures were pending or had been acted upon which related to AEDs, including training and availability of AEDs in the workplace, at schools, in medical facilities, in gymnasiums, government buildings, community centers, golf courses, and various places of that sort. Emergency action plans for school districts, now mostly including AEDs. Good Samaritan immunity for civil liability for the use of AEDs is also in many statutes. Tax credits for the cost of AEDs also. You'll note that the fiscal note to this bill indicates a \$1.2 million annual cost to schools, which will begin to affect TEEOSA calculations starting in 2015-16. I think most of that fiscal note is determined by the cost of AEDs. I would point out that Iowa purchased its equipment from a federal safe and drug-free school grant program, which is designated for alternative education initiatives. This grant money is explicitly barred from being spent only on security-related equipment and issues. This is something that Nebraska school districts could consider. It is my hope that school districts can partner with local fire and rescue departments to achieve this goal. In fact, the Lincoln Fire and Rescue Department was able to visit us here in the Capitol recently, and they conducted a 30-minute class on CPR, which I think was quite instructive and useful. We now know that the American Heart Association has eliminated the recommendation for mouth-to-mouth resuscitation as part of CPR training, and they've changed the awareness program to prompt just two lifesaving concepts. First, call 911 and, second, push hard and fast on the center of the chest until help arrives. No need to go to the dangerous process of mouth-to-mouth. These are simple steps that can more than double a person's chance of survival in the case of sudden cardiac arrest. We're talking about saving lives, and one of the best ways to do that is to make CPR training and knowledge about how it's used more widely available. And doing that in schools would go a long way toward achieving that goal. With that, I thank you for your time and I will answer any questions. [LB365]

SENATOR SULLIVAN: Thank you, Senator Avery. Do you have any idea how many schools right now offer this sort of training and variety of different circumstances and situations? [LB365]

SENATOR AVERY: In Nebraska? [LB365]

SENATOR SULLIVAN: Uh-huh. [LB575]

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SENATOR AVERY: I do not know. [LB575]

SENATOR SULLIVAN: Okay. [LB575]

SENATOR AVERY: But it's not required so my guess is if it's offered it would be on an elected basis. [LB575]

SENATOR SULLIVAN: And of those 250,000 people that die as a result...probably wouldn't or had they had CPR, do you know how many of those take place in school? [LB365]

SENATOR AVERY: Actually, probably not very many. In cases where you have sudden cardiac arrest in schools, it's usually a condition that involves I think the medical term is hypertrophic obstructive cardiomyopathy. It's a very rare disease that affects young athletes, often who drop dead on the basketball court at maybe 16 or 17 years old. This might help. But the key here is to get them the training so that when they go out in the world that they have that training. They might be walking down the street in Chicago, somebody drops to the sidewalk from sudden cardiac arrest. They've had the training; and if they have the willingness, they can apply it right on the spot. [LB365]

SENATOR SULLIVAN: Okay. Thank you. Questions? Senator Davis. [LB365]

SENATOR DAVIS: Senator Avery, why are you requiring the understanding of how the defibrillators work and the use of the defibrillators? [LB365]

SENATOR AVERY: You know, this might not be a necessary part of the proposed legislation because these AEDs are so easy to use and so self-explanatory. I include it because, one, I think that a lot of these kids probably never heard of an AED; and, two, they've probably never seen one. And this would, if you had one available, at least they'd have some hands-on experience or at least they'd know what one looked like and what the procedure might be to use it. [LB365]

SENATOR DAVIS: The reason I put that note in there, I'm thinking, you know, if you're walking down the street and somebody has a heart attack, you're not going to have access to that. [LB365]

SENATOR AVERY: But you know that the depression on the chest... [LB365]

SENATOR DAVIS: Yes. [LB365]

SENATOR AVERY: ...which can for the period of time you're waiting for an ambulance could make the difference. [LB365]

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SENATOR DAVIS: And so and your intention is to require that they pass a test in how to do CPR in order to graduate from high school? [LB365]

SENATOR AVERY: No. My expectation is that they would just receive the instruction. [LB365]

SENATOR DAVIS: Okay, because in the bill it says successfully pass a written test on CPR. [LB365]

SENATOR AVERY: That was not my intent (laugh). [LB365]

SENATOR DAVIS: Which I thought might complicate graduation for some schools. [LB365]

SENATOR AVERY: Yeah. [LB365]

SENATOR SULLIVAN: Senator Kolowski. [LB365]

SENATOR KOLOWSKI: Thank you, Madam Chairman. Senator Avery, a laudable bill, no question about that. I can think of many places within a high school curriculum this could be available for students to checkpoint, check off that they've had the instruction and have the background. So I think that's very positive because you never know when something could happen. But one of my questions was just asked. Do we have any idea how many schools are without an AED, for example? No data on anything like that? [LB365]

SENATOR AVERY: I'm not sure if the Department of Education maintains that data. I doubt if they do. [LB365]

SENATOR KOLOWSKI: Okay. [LB365]

SENATOR AVERY: You see them in a lot of places. We have one at the Legislature that saved the life of a good friend of mine just a couple of years ago. And I guess if you're going to have sudden cardiac arrest, it really matters where you have it. [LB365]

SENATOR KOLOWSKI: Very much so. [LB365]

SENATOR AVERY: And it just happened that Dr. Michels was here, was on the spot right away and the Speaker went and got the AED and the guy is doing fine now. But, you know, it could have happened somewhere else. And I think that the more people we have who have this training, the more people there are on the streets who have this training, everybody goes to high school, everybody would be exposed to this, then the

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better off we're going to be. [LB365]

SENATOR SULLIVAN: Senator Seiler. [LB365]

SENATOR SEILER: I'd like to thank you for bringing this bill. You and I both could have probably used it at some time since we both had triple heart... [LB365]

SENATOR AVERY: I never got to that part. [LB365]

SENATOR SEILER: ...had triple bypass. But I have been honored by the American Heart Association for using the CPR. It happened to be Tom Osborne's dad and brought him back. And I think the training is just excellent. [LB365]

SENATOR AVERY: Good for you. [LB365]

SENATOR SEILER: So I recommend that every high schooler use it because it's needed. You never know where. [LB365]

SENATOR AVERY: Right. [LB365]

SENATOR SULLIVAN: Senator Haar. [LB365]

SENATOR HAAR: I think this sort of is the geezer preservation bill. (Laughter) Would it require schools to buy an AED? [LB365]

SENATOR AVERY: That's implied and that's where the fiscal note comes from. But there are a number of ways that you can get grant money to make these purchases. And I mentioned the federal safe and drug-free schools grant program. That's probably the best source. [LB365]

SENATOR SULLIVAN: Senator Kolowski. [LB365]

SENATOR KOLOWSKI: Also...thank you, Madam. Also the...many service clubs would go to bat within many different locations to help you try to get something like this for your school if you just simply let them know how it's being used and that all students are being trained on this. [LB365]

SENATOR AVERY: And you can have local EMTs come into the schools and do the training for the kids. And I'm sure that most of them would be happy to do that. [LB365]

SENATOR KOLOWSKI: Contrary to popular belief, most attacks don't take place in the principal's office. I just want to make sure people understand that also. [LB365]

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SENATOR SULLIVAN: Thank you. Would there need to be some clarification, though, as far as the requirement being done...the teaching being done by a certified instructor? But then we've also got Rule 10 that requires a certificated teacher to do the teaching in the classroom. So I'm not quite sure how we get around that or work through that. [LB365]

SENATOR AVERY: I don't know either. [LB365]

SENATOR SULLIVAN: Okay. [LB365]

SENATOR AVERY: But I think that sitting right next to you on your left is a very, very creative mind and he'll fix that for us. [LB365]

SENATOR SULLIVAN: Okay, all right. Senator Kolowski. [LB365]

SENATOR KOLOWSKI: Madam Chair, sometimes the Red Cross instructors for aquatics programs are not teachers in our program, but they are certified and have all the requirements and that meets the...fits it to a T usually most of the time. [LB365]

SENATOR SULLIVAN: Okay. All right. Any other questions? Okay. Thank you. We will now hear proponent testimony for LB365. [LB365]

KELSEY NEAL: Hi. [LB365]

SENATOR SULLIVAN: That green sheet you can give to the page. Thank you. Welcome. [LB365]

KELSEY NEAL: (Exhibit 1) Hi. My name is Kelsey Neal, K-e-l-s-e-y, Neal, N-e-a-l. I'm here to testify for the LB365, which would require high school students to be trained in CPR before they graduate. And this bill hits home for me because five years ago I had a cardiac arrest and luckily my parents were home and my dad performed CPR on me until the EMS arrived with an AED and because my dad was able to perform CPR on me because he received training when he was in high school. After I was stable in the hospital, the doctors told my parents that if he hadn't performed CPR, that there would have been a higher chance of me dying or have severe brain damage. (Crying) [LB365]

SENATOR SULLIVAN: You're doing fine. [LB365]

KELSEY NEAL: Yeah, it's very simple to learn and yet so effective. Every year in the U.S. EMS responds to 383,000 out-of-hospital cardiac arrests and so that's about 1,000 per day. If the victims receive immediate and effective CPR, that doubles or even triples their chance of survival. I graduated with a class around 300 students, and can you imagine the ripple effect if every student that graduated would know how to perform

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CPR, the amount of lives that could be saved? And if one of your family members was saved by a high schooler who learned CPR when they were in school, what price would you put on that? So I just urge you to pass this LB365 requiring high school students to be trained in CPR before graduating with the faith and knowledge that many lives will be saved because of your actions. [LB365]

SENATOR SULLIVAN: Thank you, Kelsey, and we appreciate you being here telling us your story. [LB365]

KELSEY NEAL: I'm open to any questions. [LB365]

SENATOR SULLIVAN: Any questions for Kelsey? Senator Seiler. [LB365]

SENATOR SEILER: Have you taken the course? [LB365]

KELSEY NEAL: Yes, I have. [LB365]

SENATOR SEILER: Do they still have the Annie, the lady that's had the heart attack and you work on her? [LB365]

SENATOR AVERY: Resusci Anne. [LB365]

SENATOR SEILER: And then the little baby that you...? [LB365]

KELSEY NEAL: There was just the main mannequin. [LB365]

SENATOR SEILER: Oh. [LB365]

KELSEY NEAL: Actually, we did for a day care that I worked for, we had the...we learned the CPR for the baby and like for an adult. [LB365]

SENATOR SEILER: Okay. Thank you. I guess my training is still good. [LB365]

SENATOR SULLIVAN: Any other questions? Thank you so much, Kelsey. [LB365]

KELSEY NEAL: Thank you. [LB365]

SENATOR SULLIVAN: We're glad you're here. Welcome. [LB365]

BRETT NEAL: Good afternoon. Thank you. My name is Brett Neal, B-r-e-t N-e-a-l, and I am Kelsey's father; and I appreciate your time. I'll keep my comments pretty brief. And you can imagine we're big fans of CPR. And I just wanted to mention a couple of things. As Kelsey said, I did learn it in high school and didn't think much about it at the time. It

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was I guess a nice afternoon we got out of our normal classes, got trained in CPR, never thought about having to use it much after that. And I guess you always have this thought in your mind that if you do use it--maybe you come upon a car wreck, somebody collapses going down the street--the fact is most cardiac arrests happen in your home. And the odds are pretty overwhelming that if you give someone CPR it's going to be a family member or somebody you know, somebody that you love. And so, you know, it's very hard to put a price on that. And again, if I...you know, if you don't learn it in high school, I guess I'm not sure how many people are going to go out of their way to go out and do that. And I don't know what else you can do in life that is so simple really and yet has such a profound payoff, a profound award, you know, if you ever have to use it. So I'm sure you sit here and listen to all kinds of ideas all day long and you might question, well, would that really work, would it really have a payoff. There's a lot involved in it. What are the costs, the risks? You know, to me this seems pretty simple. You know, there's not a lot of risk, not a lot of cost, and the payoffs are absolute. I mean it's documented. You know, there's not a lot of question about CPR and what it does. In our case, a lot of things went right the night of Kelsey's cardiac arrest. We were home. Fortunately, we heard it happen. You know, if it had happened an hour later, she would have been in bed. We'd have never known. So we were there, we heard it. I was able to start CPR while my wife called 911. Another thing I would mention: While I'm an absolute fan of teaching CPR is, you know, the AED was very critical in her case as well. And we were very fortunate that there was a Lincoln police officer who had an AED in his car. I don't remember the exact numbers, but I looked later on the 911 records, and I think from the time that we made the call till the time that he was at our house and shocked her was something like nine minutes. And that's just huge because every minute beyond the first couple, you know, your chances of survival start to go down about 10 percent a minute and so time is critical. And I notice now that wherever I go--churches, auditoriums, schools, golf courses--there are AEDs. So I know that, you know, there's a question about the cost of AEDs, but they're already out there in a lot of places. And so, you know, Senator Avery mentioned that yearly estimate maybe 20,000 to 50,000 people a year might be saved if more people knew CPR. And if you know that you're most likely to use it in your house, it's 20,000...any kind of a number compared to even just 1, you know, if that one person you might save. So if we could teach kids all across Nebraska how to do this, maybe they in turn teach their kids some day, you know, I think the ripple effect would be huge. And so I appreciate your time, and I'd be happy to answer any questions that you have. [LB365]

SENATOR SULLIVAN: Thank you, Mr. Neal. I was sort of under the impression that you had to periodically have a refresher course. And you look really young, but for you to say that you learned it in high school, have you had any training since that time? [LB365]

BRETT NEAL: I had not. And so it had been, you know, 20-some years since I'd had the training. And, you know, when you're in a situation like that, you know, you don't stop

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and say, should I do it or should I not do it. You do it. You hope you're doing it right. You pray you're doing it right. And, you know, when we got Kelsey to Children's Hospital late that night, you know, once they sort of had her in ICU and everything else was going on, they pulled me aside and, the doctors, and started asking me questions about it. And I thought, oh, boy, did I mess this up? You know, did I do this wrong? And as it turns out, they were just curious about when did I start, how quickly did we get to her, how long did we do it because, you know, as they mentioned to us that it did play a big part in her outcome. So, you know, it's not a question so much that you're doing it wrong. It's just a question that you're doing it. We had the good fortune to help Lincoln Fire and Rescue do a commercial recently about hands-only CPR. And, you know, one of the things that they mentioned to us is that there is a reluctance for people to do it, possibly because of the mouth-to-mouth issues. And I think in some cases, people just might be afraid of doing it wrong. So, you know, I think doing it is much more important than doing it absolutely correctly. [LB365]

SENATOR SULLIVAN: Okay. Thank you. Senator Seiler. [LB365]

SENATOR SEILER: Yes. I'm just curious. How many ribs did you break on Kelsey? [LB365]

BRETT NEAL: You know, I don't think I broke any, cross my mind. [LB365]

SENATOR SEILER: I broke a bunch of them on Tom's dad, but... [LB365]

BRETT NEAL: Yeah. [LB365]

SENATOR SEILER: The other thing, did that nine minutes seem like forever? [LB365]

BRETT NEAL: In some ways, yes, it did. And in some ways, it was a blur, you know, not that I'm the best at reacting in those situations. I can tell you that later someone called me from one of the news agencies and wanted to visit with me about the police officer that used the AED. And I said the police officer there was Lincoln Fire and Rescue. I didn't even realize it until a few days later it wasn't a Lincoln police officer. I was doing CPR. I remember his knees coming down, getting everything ready. I didn't even look up at his face, but so. [LB365]

SENATOR SEILER: Congratulations. [LB365]

BRETT NEAL: Well, thank you. [LB365]

SENATOR SULLIVAN: Any other questions? Thank you, Mr. Neal. [LB365]

BRETT NEAL: Thank you for your time. [LB365]

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SENATOR SULLIVAN: Welcome. [LB365]

JILL DUIS: (Exhibit 2) Good afternoon. Good afternoon. My name is Jill Duis, J-i-l-l D-u-i-s. I'm a registered nurse, I'm a mom, a grandma, and I'm a heart and a stroke survivor. Every year in the United States, you've heard from Kelsey and Brett the statistics, and Senator Avery, about EMS treating 383,000 people who suddenly die or have...experience a cardiac arrest. And you've heard that that's about 1,000 per day. A sudden cardiac arrest is different than a heart attack. A sudden cardiac arrest is actually where there's a kind of a depolarization in the heart and that causes an erratic rhythm and the heart simply just quits beating. A heart attack is caused by a decreased amount of blood flow to the muscle of the heart. A heart attack can cause a cardiac death. Almost 80 percent of sudden cardiac deaths and arrests happen at home and they're witnessed by a loved one, just as in the instance of Kelsey and her dad Brett. So put very simply, the life that you save may be the life of a loved one. Effective bystander CPR provided immediately after sudden cardiac arrest can double or triple the victim's chance of survival. A sudden cardiac arrest can happen to anyone at any time, even to 13-year-olds. Many victims appear completely normal and very healthy. To illustrate how effective bystander CPR is, I'd like to tell you a story about my friend, Ginny Curley. Ginny and I are both volunteers for the American Heart Association and we share some things in common. We're both wives; we're both mothers. She and I both have what is called an implanted cardiac defibrillator. Kelsey has one as well. Ginny awoke one morning gurgling and gasping for breath. Her husband, recognizing that something was wrong, called 911. In that time he told the 911 operator that Ginny was now pulseless and breathless. The 911 operator asked him, have you ever done CPR? He said, I took the course one time in college. So he proceeded to perform CPR on Ginny. Ginny is alive today because of that action. It was the moments of him providing that cardiac or those compressions that restored the blood flow to her vital organs and she survived. She wanted to be here today, but because of that action, she remains a productive member of society and she's teaching at a college level today. So as you can also imagine, Ginny, along with many of her family and her friends, strongly support this bill. As of today, it's my understanding that six states now require their students to learn CPR before graduating from high school and these states include Alabama, Minnesota, North Carolina, Vermont, Tennessee, and our neighbor to the east, Iowa. Just a few years ago Iowa was the only state that required CPR training as a prerequisite for high school graduation. It is also my understanding that there are at least currently 16 states that have legislation introduced that would require CPR training as a graduation requirement. So you can see the trajectory that we're on--in the coming years, more states will be requiring this. That being said, I would simply ask to please not wait to be the 15th or the 34th or the 47th state to require this important measure. The Legislature has this opportunity today to lead on this now and begin saving lives. I respectfully urge the committee to pass this legislation that will result in literally thousands of potential lifesavers trained in CPR. And I thank you for the opportunity to testify on such an

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important matter. I might also add that I am also an instructor for CPR for the AHA so I would be glad to entertain any questions. [LB365]

SENATOR SULLIVAN: Thank you very much. Any questions? Thank you for your testimony. [LB365]

JILL DUIS: Thank you. [LB365]

SENATOR SULLIVAN: Any further proponent testimony? Anyone wishing to speak in opposition? [LB365]

JOHN BONAIUTO: Senator Sullivan, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, registered lobbyist representing the Nebraska Association of School Boards, Nebraska Council of School Administrators. And I'm one of the geezers that would hope that every one of these students would learn CPR and how to use a defibrillator. I happened to be on the back stairs when Tom Vickers crumbled two years ago. And we were kind of running around and the Speaker got the defibrillator out of the Clerk's Office. And I was thinking to myself, I would not want to learn how to use a defibrillator in a situation like that. It walks you through it, but I'd just as soon have some knowledge beforehand. Here's our opposition to this bill. I think this is something that...a path that we should go down. When we were talking earlier on the first bill, should the State Board have done this or should the State Board have done that, I think this is something that the State Board should do and the department should be involved in. We're talking about graduation requirements and a test and to take a look at what the real cost would be. I think that if we're going to look at real curriculum and require students to have some kind of a performance standard, that then maybe we should be doing this through the State Board of Education. Now my testimony isn't to delay or to circumvent having this happen. Because as we did see when the Legislature did not take up the pledge issue, within six months the State Board had worked on that issue. And it's just a matter of how we go about this because, you know, there are other really important things. I mean this is extremely important, but I would hate to see the practice start that when there are issues that rise to this level of importance we put it in statute rather than to deal with it in Rule 10 and with another elected board. So I think this is...I would like to see this happen. Another question that I got is what about age level? Now there are some schools that are doing this, and they may be doing it at the middle school level. They may be doing it at 8th grade and not at 9th grade or in high school. So that would need to possibly be clarified. But as far as doing it, I think it's the right thing to do. And I would conclude my testimony there. [LB365]

SENATOR SULLIVAN: Thank you, John. Any questions for Mr. Bonaiuto? Thank you. [LB365]

JOHN BONAIUTO: Thank you. [LB365]

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SENATOR SULLIVAN: Any further opposition? Anyone wishing to speak in a neutral capacity? Senator Avery. Senator Avery waives closing so that concludes our hearings for today. Thank you all for attending. [LB365]