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Government, Military and Veterans Affairs Committee  
February 08, 2013

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[LB98 LB371 LB372 LB429 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, February 8, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB98, LB371, LB372, LB429 and a gubernatorial appointment. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; John Murante; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. We have an agenda outside the room. We will be following that agenda starting with a gubernatorial appointment to the Nebraska Tourism Commission. That will be followed by a public hearing on LB98, then following that will be another public hearing on LB371 and then LB372 and then LB429. Before we start, let me introduce the members of the committee. Over on the far end down here--notice I'm not saying far right, Senator.

SENATOR MURANTE: You sat me down here deliberately. I know that's why you did it.

SENATOR AVERY: On the far right down here is Senator John Murante from Gretna. Next to him is Senator David Bloomfield from Hoskins. He is next to Senator Scott Lautenbaugh of Omaha. Next to him is Senator Scott Price, the Vice Chair of the committee, from Bellevue. And to my immediate right is Christy Abraham, the legal counsel of the committee. And to arrive later is Senator Russ Karpisek, on my left, from Wilber. Next to him is Senator Norm Wallman from Cortland. And then Senator Scheer will be here in a few minutes--there he comes now--who is from Norfolk. The last person on the end down there is Sherry Shaffer. She is the committee clerk. She keeps the records and operates the light system. If you want to testify for or against any of the bills that we will be hearing today, there is a green form that we ask you to fill out. It is available at the entrance to the room, on each one of them. Please print the requested information and then give that to the clerk when you take the seat at the table there. If you want to record your support for or opposition to any of these bills but do not wish to testify, there is a white sheet of paper for you to fill out and we request that you do that. If you have any exhibit material that you want us to see, we need 12 copies. If you don't have 12 copies, then we have pages who will get them for you. One of our pages just left the room, so I will introduce William. Will Rahjes from Elwood will be helping us today; and Cicely Batie, who just walked out, from Lexington will be working with him. I'm going to ask you if you have any electronic equipment such as a cell phone, to turn them off so as not to disrupt the proceedings. Also, if you have a nervous habit of clicking a pen, don't do it. That was yesterday. I don't know if you noticed it but it was driving me crazy. No. No. It was in the audience. We run a fairly friendly and relaxed committee except on Mello day, which is today. But it is important that you not have your cell phone on because when they go off it is disruptive. We will be using the light

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

system. Three lights: the green light, you have four minutes to give your testimony. And when the amber light comes on, that means you have one more minute to red light. Red light means you should be finished. We do this so that everybody has a fair chance to make their statements without eating up all the time that perhaps some other people might need. The order of procedure will be that we give the introducers opportunity to give initial statements. That is followed by an opportunity for proponents of the bill, then the opponents, and then the neutral testimony. And then, if the introducing senator wishes to close, we give them an opportunity to do that. Now we have first an appointment by the Governor to the Nebraska Tourism Commission. Mr. Tony Moody, come forward, please. [CONFIRMATION]

TONY MOODY: Yes, sir. [CONFIRMATION]

SENATOR AVERY: Welcome. [CONFIRMATION]

TONY MOODY: (Exhibit 1) Good afternoon, Senators. [CONFIRMATION]

SENATOR AVERY: Is this your first time in the Capitol? [CONFIRMATION]

TONY MOODY: No, sir. [CONFIRMATION]

SENATOR AVERY: No? First time in a seat like that? [CONFIRMATION]

TONY MOODY: No, sir. [CONFIRMATION]

SENATOR AVERY: No? So you've been appointed to other positions?  
[CONFIRMATION]

TONY MOODY: Oh, I've not been appointed to other positions in this state but I've had the pleasure of discussing tourism in front of several of these fine senators before.  
[CONFIRMATION]

SENATOR AVERY: Oh. Well, tell us something about yourself and why you think you should be on this commission. [CONFIRMATION]

TONY MOODY: My name is Anthony Moody. I was born and raised in Conway, Arkansas. I have been in the hospitality, tourism business most of my adult life. I have had the pleasure of spending the last 12 years here in Nebraska which is almost unheard of in my business. I've moved 13 times before throwing up stakes here in Omaha. I was the general manager of the downtown Embassy Suites when I first came to town in 2001. I opened the La Vista Embassy Suites Conference Center and Courtyard by Marriott in La Vista. And fortunately, as good fortune would have it, was recently promoted to regional vice president over 16 of Mr. Hammons' hotels and was

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

told I could live anywhere, and I chose to stay in Nebraska. [CONFIRMATION]

SENATOR AVERY: That's what I did. [CONFIRMATION]

TONY MOODY: North Carolina, right? [CONFIRMATION]

SENATOR AVERY: Right. Tell me something about your impression of the Tourism Commission. You know it was just recently made an independent, freestanding commission, no longer a part of the Department of Economic Development. [CONFIRMATION]

TONY MOODY: I think it's a wonderful group of individuals from across the state with a very diverse background that will do a great job of looking after tourism for the state of Nebraska. I think it was a great move to make it its own independent commission. Tourism is our third largest industry in the state. Tourism as an education program, was eliminated from the University of Nebraska several years back. We were able to get that restarted four or five years ago. And now I think they're boasting over 200 students in their program, and it's a four-year degree. You know, we're just scratching the surface. You know, when I first came to Omaha and everybody thought no conventions would come here. And, you know, since that time the Qwest Center has opened up, the Pinnacle is being built, some of the turnback taxes from the Omaha Qwest Center is helping other smaller communities do things similar. You know, tourism is alive and well and people do like to visit Nebraska. And I think this commission will help that and help increase our tax base and keep our younger people here working in our industry. [CONFIRMATION]

SENATOR AVERY: I'm going to ask you a pretty esoteric question. It's on your resume. You refer to increasing EBITDA. What is that? [CONFIRMATION]

TONY MOODY: EBITDA--earning before interest, taxes, depreciation, and amortization. [CONFIRMATION]

SENATOR AVERY: Oh, okay. And what is REVPAR? [CONFIRMATION]

TONY MOODY: Revenue per available room. Kind of how we judge it. [CONFIRMATION]

SENATOR AVERY: Okay. Those are industry terms, I take it. [CONFIRMATION]

TONY MOODY: Yes, sir. [CONFIRMATION]

SENATOR AVERY: Okay. I have one other question. You graduated in 1982 and then your career starts in '91. Were you messing around all those ten years, nine years?

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

[CONFIRMATION]

TONY MOODY: No. On resumes they say you're only supposed to go back until it's relevant. And so as far as relevant industry applications... [CONFIRMATION]

SENATOR AVERY: Like many of us, you had a few years of irrelevancy, didn't you? [CONFIRMATION]

TONY MOODY: I've had more than my fair share of years of irrelevancy. [CONFIRMATION]

SENATOR AVERY: Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you, Chairman Avery. Sir, in looking at the future of tourism, are there some specific sectors where you see that you can focus on in different areas of the state that you have in mind to grow? [CONFIRMATION]

TONY MOODY: I am very fortunate that I get to represent three different counties with the...we have the Embassy Suites here in Lincoln, we have the La Vista complex which is in Sarpy, and then the downtown hotel in Embassy, that's Omaha. My appointment is for the eastern part of the state that attracts more than 50 percent of its business from outside visitors, but I am a firm believer in one tide rises all boats. Tourism isn't about a section or an area, it's all-encompassing. And I think...and as one of the beautiful things I think of this commission, it has a very diverse group on it. And they're there to address tourism from Ogallala to Omaha to the northern and southern parts of the state. We just started. I mean, you know, San Antonio--everybody thinks San Antonio is just a beautiful place, and it is. I moved here from there. Tourism is alive and thriving, it's the number one industry, it's huge, it's great. Terrible place to live. Omaha is a great place to live and it's a great place to visit. And the more we change the perception of Nebraska, the easier it is for businesses outside of the tourism industry to attract people to live here, to want to live in the Midwest, to want to raise their families. I think tourism is all-encompassing. What a lot of people...you may know, when a tourist comes to town only 17 cents of that goes to the hotel. The remaining--and this is in Nebraska--the remaining dollars go to Betty's beauty shop, the T-shirt shop, the gasoline store down the street. I mean, it goes to a lot of other things, but it kind of falls on the hotel industry to be the watchdog of tourism and the tourism tax dollars. And so I just...it's incredible. We turn around and every dollar that's spent on tourism, every dollar that we pay our associates, it rolls over into our community 2.7 times. So... [CONFIRMATION]

SENATOR PRICE: Well, I appreciate that. I can speak from having had the (inaudible) redistricting of having had the La Vista conference center in my district and the tremendous boon that is and the wide array of national programs that are brought into the state and how that helps. So hats off to what you've already done, and I look

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

forward to seeing what you can do in the future. Thank you. [CONFIRMATION]

TONY MOODY: Thank you. We even had an international group from all over the world--International Modelers. And no, it wasn't the female modelers like everybody really wanted it to be, it was the little toy models. But yeah, Omaha is a great place. Nebraska's a great place--La Vista. You know, I was just out in Ogallala for a meeting--absolutely incredible. I mean, there's just so many beautiful parts to this state that we need to be promoting, and we need more people visiting it. [CONFIRMATION]

SENATOR AVERY: There is a new strategic plan, I believe, that the commission just recently had done for them. Do you see something in there that you think might be of help to the commission in promoting tourism? [CONFIRMATION]

TONY MOODY: I think there's a lot of things in there, sir. And I think you assisted with I believe it was LB684 a year or two ago. And there's a reason why a lot of this is advancing as it is right now. And it's a very good strategic plan. It was developed by a company outside of our state that has done this for other areas, and it is a working document that the Tourism Commission is using and checking things off as we go down it. There are many things and are many, many more things to come. [CONFIRMATION]

SENATOR AVERY: You've been serving since September 12, so you've attended some of these meetings already? [CONFIRMATION]

TONY MOODY: Yes, sir. [CONFIRMATION]

SENATOR AVERY: Okay. Any other questions from the panel? Thank you very much, sir. We'll have an Executive Session today briefly to vote on your confirmation, so we appreciate you coming. [CONFIRMATION]

TONY MOODY: Thank you, Senators. It's an honor and a privilege. Thank you. [CONFIRMATION]

SENATOR AVERY: Thank you. All right. That will end the hearing on the gubernatorial appointment. We'll now move to the Heath Mello portion of the agenda, the next three bills. He is a busy man these days so we had to make sure his bills came up all at...when he was not doing something else. So we will start with LB98. Senator Mello, welcome. [LB98]

SENATOR MELLO: Thank you, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. As the committee may remember, last session I introduced legislation, LB1013, which would have made a handful of changes to the Administrative Procedure Act. These changes were designed to address

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

actions by primarily code agencies that potentially violated the Administrative Procedure Act. These actions more or less fell into two general categories: the first, policy changes, which should have been made through the APA instead of being made by some type of informal guideline such as provider bulletins in the Department of Health and Human Services; and the second, the enforcement of rules and regulations prior to the completion of the required promulgation procedures under the Administrative Procedure Act. An interim study held by this committee this fall, LR496, further examined these agency actions and potential legislative solutions. The bill currently before you, LB98, does include two of the provisions from last year's piece of legislation. First, the bill clarifies that a rule or regulation cannot be enforced by an agency unless that rule or regulation has completed the promulgation process under the APA. Second, the bill provides for the awarding of attorney's fees in cases where a rule or regulation is declared invalid because it was adopted without the compliance with statutory procedures. At both the bill hearing and the interim study hearing this fall, the overwhelming concern from state agencies was that the new definition of rule or regulation in last year's LB1013 cast too wide of a net and would essentially force agencies to follow APA promulgation procedures to take virtually any action affecting the public. After meeting with many smaller, noncode agencies over the interim to discuss their concerns with this legislation, the new definition was not included in LB98. During the interim study hearing, a major point of discussion was the issue of legislative oversight in the Administrative Procedure Act process. As some of you may know, from 1978 to 1986 the Legislature actually had a special committee called the Administrative Rules and Regulations Review Committee. This committee was empowered to field complaints on rules and regulations, suspend any rule or regulation that was thought to exceed the statutory authority or intent of the Legislature, and introduce legislation invalidating rules and regulations. Ultimately the committee was eliminated due to concerns with constitutional separation of powers issues. The legislation that created a scaled-down version of that committee was introduced by former Senator Pat Bourne in 2001 and by myself in 2011. While there is currently a process in statute that allows individuals who feel aggrieved by a particular rule or regulation to file a complaint with the Executive Board, this procedure has been rarely utilized. Given the recent attempts by some state agencies to skirt the APA process, LB98 provides for an expansion of another complaint process currently available through the Legislature's Ombudsman Office, referred to in statute as the Public Counsel. While the Ombudsman currently has the authority to field complaints about any administrative act of any administrative agency, the bill would specifically require that the Ombudsman investigate allegations that an agency is enforcing or attempting to enforce a rule or regulation that has not been fully promulgated under the APA. Once the Ombudsman has made a determination as to whether such a violation occurred, he or she would report their findings to the Governor, the Secretary of State, the Attorney General, the Exec Board of the Legislature, and the appropriate agency director. As members of the Legislature, too often we forget that many of the laws we pass depend upon the promulgation and implementation of rules and regulations by executive branch agencies. In an era of term

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

limits, however, I believe it's increasingly important that the authority we delegate as a Legislature to these agencies is being exercised in accordance with this Legislature's intent. When agencies can willfully disregard the established procedures in the APA, then clearly the pendulum has swung too far in one direction. LB98 is an important step to establish greater legislative oversight and ensure that rules and regulations are not being enforced prior to promulgation. There's a number of organizations testifying today that will demonstrate some specific examples of occurrences that have led to both the introduction of LB1013 last year and LB98 this year. But otherwise, I'd be happy to answer any questions the committee may have. [LB98]

SENATOR AVERY: Thank you, Senator. Questions from the committee? This is similar to your bill last year? [LB98]

SENATOR MELLO: Correct. [LB98]

SENATOR AVERY: And you are asking the Legislative Ombudsman to be given authority to investigate complaints. And that is a part of the legislative branch, so you don't have a problem here with separation of powers? [LB98]

SENATOR MELLO: Correct. [LB98]

SENATOR AVERY: Right. I don't see any questions. [LB98]

SENATOR MELLO: All right. Thank you. [LB98]

SENATOR AVERY: I think you're going to be staying around awhile, right? [LB98]

SENATOR MELLO: Well, hopefully not too long. [LB98]

SENATOR AVERY: All right. Proponent testimony? [LB98]

MARSHALL LUX: Good afternoon, Senators. My name is Marshall Lux, and I am the Ombudsman for the state of Nebraska, also known as the Public Counsel, which is the terminology which is used in LB98. I wanted to make three quick points to the committee about this bill. Number one, I do support this piece of legislation. I think it's an excellent idea. I met with Senator Mello and talked to him about this two or three months ago. I told him then that I thought it was a good idea and I still think that it's a good idea. Secondly, what the bill would do insofar as involving the Ombudsman's Office is something that is entirely compatible with our office and its traditional powers and duties. The fact of the matter is that our office has always had jurisdiction over the administrative agencies of state government. We could have, and have, I'm sure, over the years taken complaints of this nature. What this changes is how we respond to it in terms of creating a written report and submitting it to the officials that Senator Mello

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

mentioned. That is not a big change as far as I'm concerned, and it will not involve any fiscal impact whatsoever for our office. The final point that I would like to make is that I want to thank Senator Mello for bringing this to your attention. It's rather dry subject matter to some people, but the Administrative Procedure Act is actually a very important piece of legislation going all the way back to the mid-1940s. It's a reform act which was essentially designed to bring the bureaucracy of state government under control, and it was a recognition that a bureaucracy in our public agencies had gotten bigger, stronger, more pervasive, and more complex. And this particular piece of legislation, as Senator Mello has mentioned, has to do with transparency because what we have discovered, of course, is that too many important policies are being made not in the Legislative Chamber but in the board rooms of public agencies. There needs to be transparency when that is done, and that's what the promulgation procedure is all about. And so to the extent that this helps to strengthen that procedure and emphasize it, I think it's an excellent idea. I'd be happy to answer any questions. [LB98]

SENATOR AVERY: Thank you, Mr. Lux. I don't think you've been before this committee before. [LB98]

MARSHALL LUX: Not since you've been the Chair. [LB98]

SENATOR AVERY: Right. Actually I've known of you for a long, long time. But I don't think I've ever seen you in person. [LB98]

MARSHALL LUX: I'm sorry. We'll have to do something about that, Senator. [LB98]

SENATOR AVERY: Questions from the committee? No questions. Thank you, Mr. Lux. [LB98]

MARSHALL LUX: Thank you. [LB98]

SENATOR AVERY: Any other proponent testimony? Don't be shy. Welcome, sir. [LB98]

ROBERT McEWEN: (Exhibit 1) Thank you. Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. On behalf of Nebraska Appleseed, my name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n, and I'm a staff attorney in our child welfare program. I'm here to testify today about some of the issues Nebraska Appleseed has seen surrounding the adoption and promulgation of rules and regulations. The Nebraska Administrative Procedure Act, as you probably know, is codified at Section 84-901 et seq. It provides for minimum procedures for state agencies to follow when making rules or regulations. Generally speaking, it provides the public with notice of rule changes and a chance to be heard before a rule goes into effect. The APA requires transparency, clarity, and communication from the administrative agency. At Nebraska Appleseed on several recent occasions we have witnessed the



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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

implementation of policy that has neglected to follow the required APA process. For purposes of brevity, I will go through only two of the specific examples today. In April 2011, the Department of Health and Human Services released provider bulletin number 11-21 which stated that providers must bill specified speech therapy procedure codes for each treatment encounter, not for the first time incurred. In other words, the way that we understood it is if an encounter takes two hours, a provider previously could have submitted a claim for reimbursement for four 30-minute units. Under these changes, the provider was only able to bill for one unit of time for the entire two-hour encounter. Since the change was promulgated through a provider bulletin, it had no opportunity for the public to comment on the change. The second example--and the one that I'm most familiar with--began in March of 2011. The Department of Health and Human Services began to issue and disburse draft regulations making significant changes to Chapter 32 of the Nebraska Administrative Code. These regulations had not followed the required process and should not have carried the force of law or had any effect. Some providers started to comply with the draft regulations regardless to ensure that they were not violating any state law. In November of 2011, these draft regulations were officially proposed only to have the process terminated prior to the final promulgation several months later. Currently the department is proposing changes to Chapter 32 pursuant to the APA section by section--there's eight sections in Chapter 32. In short, the process followed here has been unclear at best and unlawful at worst. We support LB98 because it will help address some of the noncompliance issues that we've seen at Nebraska Appleseed. Specifically, we support the provision that allows the Public Counsel to investigate allegations that an administrative agency has improperly enforced rules or regulations. By creating an official process to review the validity of an agency's actions, it will help to increase transparency and accountability in the rule-making process. Although the Public Counsel's determination may not nullify the rule under LB98, it would clearly indicate the office's opinion regarding the action taken and thus would provide a mechanism for keeping agencies accountable. We also support LB98 because it clarifies that administrative agencies not following the APA, those are not enforceable rules and regulations. This too, we believe, provides a mechanism for oversight and accountability. In conclusion, we'd like to thank this committee for your dedication to ensuring that there is oversight and clarity in the rule-making process, and we respectfully request that you vote to advance LB98. If there are any questions, I'll do my best to answer them. [LB98]

SENATOR AVERY: Thank you, Mr. McEwen. Questions from the committee? I don't see any. Thank you. [LB98]

ROBERT McEWEN: Thank you. [LB98]

SENATOR AVERY: We will accept more proponent testimony. Welcome, sir. [LB98]

BRUCE RIEKER: Good afternoon, Senator Avery and members of the committee. My

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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name is Bruce Rieker, that's B-r-u-c-e R-i-e-k-e-r. I'm vice president of advocacy for the Nebraska Hospital Association, and on behalf of our 89 hospitals that we represent, we are here in support of LB98. We supported the similar proposal that Senator Mello had in a previous session. We think that this particular version is much streamlined and very much on target. The reason that we supported it in the past and we continue to support this premise is because there needs to be more accountability, as well as enforcement, on the agencies that promulgate the rules for the laws that you pass and forward to them. There are many times, especially in our healthcare field, where there are rules that are enforced--that affect payment--before they've ever gone through the entire process through the Administrative Procedure Act, as well as those that affect how we deliver care, many of those instances causing, well, financial hardship or a change in a payment process for what we do or what we cannot do, as well as some recent examples of where you have passed laws. And then the rules that are promulgated, depending on the agency, are deeply inconsistent, very much inconsistent with the intent of the law. And so we think that the accountability, the addition or the inclusion of attorney's fees, as well as the investigative powers on the part of the Ombudsman, and the reports that that gentleman or woman in that position would have is to report to the various entities is a proper way to do it. And that way, the respective body that may be so inclined can take action, if necessary, but mainly oversight and enforcement of the agencies. [LB98]

SENATOR AVERY: Thank you for your testimony. Let me ask you, do you have any specific examples that illustrate this need? Anything other than what our previous testifier discussed with Chapter 32? [LB98]

BRUCE RIEKER: I don't have them with me today but I can bring them, where there were rules that...proposed rules that were being enforced before they were ever finalized. I can put those together and I can bring a...I can submit a report to the committee. [LB98]

SENATOR AVERY: Did you ever see an example where draft rules were published and then when the final rules came out, you had something quite different from what was in the draft and there was no opportunity for public comment in between? [LB98]

BRUCE RIEKER: Absolutely. [LB98]

SENATOR AVERY: I'd like to see that. [LB98]

BRUCE RIEKER: We'll produce those for you. [LB98]

SENATOR AVERY: That would be good. Thank you. Any other comments, questions? Thank you, Mr. Rieker. [LB98]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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BRUCE RIEKER: You're welcome. [LB98]

SENATOR AVERY: Additional proponent testimony? [LB98]

NICK FAUSTMAN: Good afternoon. [LB98]

SENATOR AVERY: Thank you. [LB98]

NICK FAUSTMAN: I'm Nick Faustman, that's N-i-c-k F-a-u-s-t-m-a-n. I represent the Nebraska Health Care Association, the NHCA. We're a nonprofit trade association representing nonproprietary, proprietary, and governmental long-term facilities, both nursing facilities and assisted living facilities. It also serves as the parent organization to the Nebraska Health Care Learning Center, the Licensed Practical Nurse Association of Nebraska, and the Nebraska Hospice and Palliative Care Association; and the NHCA supports LB98. LB98 empowers the Ombudsman to investigate state agencies that enact rules and regulations without first going through the proper process dictated by the Administrative Procedure Act. The bill also awards court attorney fees to the party challenging the agency's change in policy. I'd like to premise my comments by saying that the NHCA enjoys a solid working relationship with state agencies, particularly the Department of Health and Human Services. It's not the intent of my testimony to sound disrespectful or accusatory in any manner. Last session, the NHCA testified in support of LB1013 which was essentially the same bill as LB98. At that time we shared with the committee our experience with the Department of Health and Human Services making changes to policy through provider bulletin. Some of you were members of the committee at that time and so you might recall that the Department of Health and Human Services changed the methodology for reimbursing nursing facilities when a resident was out of the building for hospitalization or therapeutic care and the facility was following the federal and state laws and holding the bed for the resident's return. The change was implemented and the facilities were informed through a provider bulletin prior to the publication of rules and regulations, a public hearing, or approval by the Attorney General's Office. Most recently, registered nurses who receive continuing competency hours at our Nebraska Health Care Learning Center were audited by the department. And the continued competency requirements set forth in Title 172 of the Nebraska Administrative Code, Chapter 101, require a nurse to have 20 hours of continuing education which includes, among other things, at least ten hours that are formally peer reviewed in approved continuing education. Nowhere in this regulation does it state that the ten hours must be peer reviewed or approved by a nursing organization, nor has the department ever required--since passage of the regulations in 2000--that the hours be peer reviewed by a nursing organization. In Nebraska these courses are peer reviewed by the Commission on Dietetic Registration, and NHCA has obtained that peer review approval since 2000 when peer review came into existence. Despite this, the department inexplicably took the position that only a nursing group may provide peer review approval for continuing education for a nursing license. Therefore,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

---

not only were the licenses that these nurses held not valid, but the courses offered by our Learning Center were suddenly no longer considered peer reviewed. By suddenly denying peer reviewed courses based on the position that they were allegedly not approved by a nursing body, the department changed its 13-year implementation of its regulations and did so without following proper procedure, and the decision was retroactive. We immediately disputed the new policy with the department and they retracted it. Our courses were once again approved as peer reviewed and the nurses' continuing education hours were also approved. I share this story with you to show just how important the APA is and how it is supposed to facilitate public dialogue before a law is implemented. The NHCA strongly supports this bill because it allows trade associations like ours to discuss issues with the Legislature, and it also reinforces the intent of the APA. For these reasons, we urge the committee to advance LB98 to General File. [LB98]

SENATOR AVERY: Thank you. Any questions for Mr. Faustman? I don't see any. Thank you. [LB98]

NICK FAUSTMAN: Thank you. [LB98]

SENATOR AVERY: We're still on proponent testimony. Any proponent testimony? All right, we'll move now to opponent testimony. Anyone wish to speak in opposition? How many more wish to speak on LB98? Okay. Welcome. [LB98]

WENDY WUSSOW: (Exhibit 2) Good afternoon. Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Wendy Wussow, Wendy, W-e-n-d-y, Wussow, W-u-s-s-o-w, and I serve as legal counsel for the Nebraska State Patrol. I appear today in opposition to LB98. The Nebraska State Patrol promulgates rules and regs as required by Nebraska law. In 2012 the agency adopted six versions of different rules and regulations, all due to statutory changes. We appreciate that responsibility and it is one the agency takes very seriously in encouraging an open and public process in developing rules and regulations. Some of the rules and regulations that the agency has adopted have involved more than one public hearing with hours of testimony. For members of the committee who may not have been involved in the rule and reg process in the past, please understand it typically takes three to six months to promulgate just a small statutorily required change. The checklist that we follow has 20 steps to perform after drafting regulations and having them approved by the agency director. The agency is committed to the open process and tries to engage members of the government and the public in promulgating its rules and regulations. The proposed bill would require that an agency not enforce a rule or regulation until such rule or regulation has been approved under the act. Currently, Nebraska Revised Statute 84-908 states that "No adoption, amendment, or repeal of any rule or regulation shall become effective until the same has been approved by the Governor and filed with the Secretary of State after a public hearing,"

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

which makes it clear that a rule or regulation is not effective until such time as the agency has completed the rule-making process. Additional language on this subject may not be clarifying and may add confusion, as the plain language of the current statute seems quite clear. Requiring the Public Counsel to investigate complaints that a rule or regulation is being enforced prior to approval seems unnecessary as the Public Counsel already has the power to investigate any administrative act of any administrative agency pursuant to Nebraska Revised Statute 81-8,245(1). Of additional concern is the attorney fee provision for challenging rules and regulations. The awarding of attorney fees has the potential to generate a tremendous volume of litigation without promoting the goal of having an open and public process. Attorney fees are typically borne by the person for whom litigation is important and is not subsidized by the taxpayer. Such attorney fees promote further litigation about the appropriateness of the fee, as was the case in the recent sex offender lawsuit filed in federal court in which the attorney sought and received \$13,000 in fees for simply arguing about how much their attorney fees should be. Even if the state of Nebraska prevails and is found to have acted properly, there is no means by which the state or the agency can recover its fees in defending the action. All of this is promoted with no requirement that the person challenging the agency to participate in or exhaust the administrative process and offer remedies to cure any alleged defect in the process. It would be more beneficial to the state of Nebraska, the citizens, and everyone affected by the rule or regulation, if the entity making the challenge brought forward their concern to the agency during the rule-making phase. The underlying rationale for the doctrine of exhaustion is to promote accuracy, efficiency, agency autonomy, and judicial economy. LB98 does the opposite of that and would encourage a party not to engage with the agency in the rule-making process, but rather wait and sue, hitting the taxpayer with the legal expense. I would thank you for your consideration and the opportunity to appear here today. I would be happy to address any questions you may have. [LB98]

SENATOR AVERY: Thank you. You say that your agency does a lot of rules and regs, right? [LB98]

WENDY WUSSOW: We do. [LB98]

SENATOR AVERY: And you also indicated that you do everything you can to engage members of the government and the public in the process. [LB98]

WENDY WUSSOW: We do. [LB98]

SENATOR AVERY: How do you go about doing that? [LB98]

WENDY WUSSOW: Well, for example, when we had the duty to write the regs for the carry conceal handgun permits, we actually offered two hearings to the public to allow them to come in and testify. We had over...we had 31 people testify. We had 47 written

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

exhibits entered into that hearing where persons provided written commentary. And in...like example, we had to write the purchase permits for the sheriffs to purchase handguns, so we actually offered to the Police Chiefs Association, the Police Officers' Association of Nebraska, and the Sheriffs' Association all to send delegates and we did it by teleconference so they all could participate in that process because those rules and regs were going to affect them. We then did a public notice as well and offered opportunity for the public to come in and testify at a hearing. They chose not to because I think the purchase permits had been around for so long and they're so normal now that I don't think there was that much interest; but nonetheless, we offered that. [LB98]

SENATOR AVERY: Is that a typical process that you follow? [LB98]

WENDY WUSSOW: It is a typical process at the State Patrol, yes. [LB98]

SENATOR AVERY: Okay. Questions from the committee? Thank you for coming and testifying. [LB98]

WENDY WUSSOW: Thank you. [LB98]

SENATOR AVERY: (Exhibits 3, 4) Any other opponent testimony on LB98? All right. Neutral testimony? I don't see any, Senator. Let me, for the record, read into the record a letter of support for LB98 from Topher Hansen, president of the NABHO; another letter of support from Deborah Boye of Lincoln, Nebraska, representing herself. Do you wish to close, Senator? [LB98]

SENATOR MELLO: Briefly because I know we have other bills, Senator Avery. I appreciate the committee's attention to this important issue in regards to the Administrative Procedure Act. I would note, however, last year, as we heard, this bill--which is somewhat similar in the sense of two of the three main components--none of the code agencies that we had heard from last year had just referred to two of the major components of the bill as being problematic in last year's piece of legislation. So I find it uniquely odd that this year now the two pieces that we did keep in, that seem to be the noncontroversial parts of that piece of legislation, now is to be a big concern to at least one code agency that came in opposition today. The underlying issue, though, in regards to a concern that the...if anything, I think that this committee knows that I've gone out of my way over the last five years that when we do have concerns that are brought in front of pieces of legislation, that I try to find ways to seek compromise in regards to some of the issues that are surrounding the legislation. I think at the end of the day when it comes down to the Administrative Procedure Act, our bureaucracy in our state executive branch ultimately doesn't want to see any changes made to the statute whatsoever. Well, ultimately, we as a Legislature have a responsibility to see oversight in that power that we delegate to the executive branch. As Marshall Lux, our Legislative Public Counsel or Ombudsman stated, if anything that we could do moving

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

forward, providing more authority to the Legislative Ombudsman Office to lay out in clear language his or her ability to investigate the rules and regulations process when a complaint is filed with his office or with the Legislature, should serve I think, as a foundation of where this committee's conversation goes in regards to any potential changes that we want to see made to the statutes concerning the Administrative Procedure Act. As I always have said, I keep an open door to any state agency who may wish...or provide other examples or feedback in regards to ways to streamline and provide more legislative oversight and public oversight over the APA process to ensure that the public is not lost and/or there is not an abuse of power as it comes to promulgating rules and regulations. So with that, thank you, Senator Avery. I'd be happy to answer any other questions the committee may have. [LB98]

SENATOR AVERY: Senator Scheer. [LB98]

SENATOR SCHEER: And I apologize, I probably should have asked this in your opening, Senator Mello. But can you explain your thought pattern, because looking at the process, if the Ombudsman is available for any complaints or concerns, why would there be the need for legal action or a suit if it can be resolved on that? [LB98]

SENATOR MELLO: The language that allowed for attorney's fees to be compensated or reimbursed--essentially, if there was a successful legal challenge--ultimately goes to a third-party entity. The Ombudsman...the way I kind of see the LB98 laid out is that an affected party ultimately could bring a concern to us as individual senators of saying that agency X is not following the Administrative Procedure Act, and request that we as senators have the Ombudsman Office investigate whether or not that agency is violating...or whether or not they're violating the Administrative Procedure Act in that rule and regulation promulgation. Ultimately, that is about the furthest step that we as a Legislature can take, I believe, at least, in regards to constitutionally of involving ourselves in the rule and regulation process by having the Ombudsman Office do their investigation, make their determination of whether or not they see that the agency was violating or not violating the Administrative Procedure Act, and provide a report both to us, the Legislature, the Governor, the Secretary of State, the Attorney General, and the affected agency. At that point in time, the affected party ultimately could determine, if the agency chooses not to make changes and/or chooses not to restart or go back in the Administrative Procedure Act--that process--and they were found to be in violation by our Legislative Ombudsman, that would provide that third party the ability to be able to take that agency to court in the sense that they were violating the Administrative Procedure Act. I think that the underlying policy that I think all of us want to see is to make sure that state agencies are not abusing this very sacred power that we have given them from the Legislature of being able to make changes above and beyond what goes currently through the APA process and ultimately trying to involve the public through public hearings. You heard a few of the proponents today emphasis that there have been changes made, at least in one agency, that ultimately they felt skirted the

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

Administrative Procedure Act; policies that ultimately should have had a public hearing, policies that ultimately should have started from point A and ended at point Z of making a significant policy change as it relates to rules and regulations in which the agency skirted that. Ultimately, for one reason or another, that's left up to the agency to explain themselves. But the underlying point is that there are aggrieved parties that feel that state agencies are finding ways to make changes without having to go in front of the public. And I think having our Legislative Ombudsman serve as our representative of investigating this matter, I think only serves our ability as senators to be able to bring our constituent issues forward as it relates to the Administrative Procedure Act. [LB98]

SENATOR SCHEER: Thank you, Senator. Thank you, Senator Avery. [LB98]

SENATOR AVERY: Any other questions or comments? Thank you. That ends the hearing on LB98. We will now move seamlessly into LB371. Please open, Senator. [LB98]

SENATOR MELLO: (Exhibits 1, 2) Thank you. Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. Since becoming a member of the Appropriations Committee in 2009 and now as Chairman of that committee, I've long been an advocate for increased transparency in our budget process and state spending. Unfortunately, our current system of state contracts which accounts for more than \$2 billion of our state budget on an annual basis, is one area where I believe transparency may be lacking. The committee should have just received a series of letters between my office and the Department of Administrative Services. In the initial correspondence I requested fairly simple information: the total number and dollar amount of DAS contracts, both for the purchase of goods and for services, with a breakdown of the origin of those goods and services. As you can clearly see, the response for each question that I asked was essentially the same. "There is no statutory requirement for DAS to track this. Therefore, DAS does not track this information." LB371, which would adopt the Transparency in Government Procurement Act, stands for the simple proposition that DAS should be tracking this basic information on state contracts and would put requirements that they do so in statute. The committee should have also received a copy of AM190, a white-copy amendment which makes several changes to the bill to address the information in the fiscal note from the Legislative Fiscal Office. Under the amendment, the Transparency in Government Procurement Act would only apply to contracts entered into by DAS on or after July 1, 2013. Under the amendment, DAS would create an annual report detailing the total number and dollar value of contracts they award, the estimated dollar amount and origin of the goods and services contracted for, and whether those contractors or suppliers are located in the state of Nebraska, outside of the state, or even outside of the United States. This report, the first of which would be due on June 30, 2014, would cover the immediately preceding fiscal year. Section 4 of the



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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

amendment would also require that each contract subject to the Transparency in Government Procurement Act include provisions that require the contractors and suppliers to provide DAS with any and all information necessary to comply with the reporting requirements. Taking a look at the fiscal note for the green copy, I believe the amendment should address most, if not all, of the costs listed by the Legislative Fiscal Office. First, the amendment clearly states that the act would only apply to new contracts entered into beginning in the 2013-2014 fiscal year. Second, the amendment narrows the bill so that only contracts handled through DAS would fall under the requirements, eliminating the fiscal impacts for other agencies. Finally, and perhaps more importantly, the amendment eliminates any reference to subcontracts, minimizing the reporting requirements for contractors and suppliers and reduce the amount of information that DAS will be gathering. Ultimately, colleagues, the fact is that this really basic information about state contracts is currently unavailable, and it should be troubling to all Nebraskans. While I respect the fact that there may be details to be worked out with regards to the specific reporting requirements in LB371 and the amendment, I think taxpayers ultimately deserve to know how their procurement dollars are being spent and ultimately where those dollars are being spent at. Thank you for your time, and I'd be happy to answer any questions you may have. [LB371]

SENATOR AVERY: Yes, thank you. What do you think...do you have any comments on the rather large estimated General Fund impact? I know you addressed some of that, but I'm looking here at the University of Nebraska estimates over \$500,000. [LB371]

SENATOR MELLO: I think, Senator Avery, to some extent with the white-copy amendment--and my office will be glad to share that white-copy amendment with the Department of Administrative Services as well--I think, in part, some of the language initially may have been a little too broad and may have...while advantageous to try to require contracts in the sense that if I was to...if I, as the state, would enter into a contract with you, as a business providing this service, and that you ultimately subcontract part of that service out to let's say Senator Murante's business, that ultimately that the state needs to know all of the information regarding the services and where the origin of those services and goods come from--the subcontractor, in this case. We originally went there and realized that that was an awful lot of information to initially go after. This is trying to provide, I think, a glimpse in regards to where the state procurement dollars currently are going, whether they're going to in-state, out-of-state, or frankly, going out of our country. And so in discussing this with the Legislative Fiscal Office in regards to how they came up with a fiscal note, ultimately we kind of came to our own conclusion that making this ultimately just be the main contractor, not the subcontractors, and limiting it, so to speak, to DAS, initially provided I think that remedy instead of not involving other agencies that do their own procurement, because I know, as this committee has heard before, a good number of state agencies do not use DAS for their procurement services. They usually...a good number of them do them on their own, as does the university or state colleges--which are separate state agencies--have

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

their own procurement operations. We wanted to try to initially leave the other agencies out of this and initially start a pilot project of trying to provide these reporting requirements with DAS that serves as the main procurement agency for the state. [LB371]

SENATOR AVERY: Thank you. Questions? Senator Price. [LB371]

SENATOR PRICE: Thank you, Chairman Avery. Senator Mello, in looking at this and having discussed with you a bit previously, you state that the data...it wasn't statutorily required to be collected. But does that mean the data is not available? [LB371]

SENATOR MELLO: No, that does not mean the data is not available. But currently, right now, it's just not statutorily required that the Department of Administrative Services request that information. [LB371]

SENATOR PRICE: So then with this white copy, when you look into the future sections where you're defining what is considered made in the United States, what is not, they would already have that available? It would take no extra effort to determine that? [LB371]

SENATOR MELLO: Well, that leads us to part of the solution in the bill which is future contracts moving forward that DAS would enter into. They would request this information from ultimately the awardee of the contract in regards to the estimated amount or estimated value or dollar value of their services and where those services are being produced or being ultimately being served at in new contracts moving forward. That was part of...in our conversation, it's something that we took into consideration, my office did in talking with you, is in the sense of how is it that we can try to mitigate some of the costs that were associated in a fiscal note or issues we've heard in this committee in previous legislation that either I or others had brought in regards to not going to back contracts of having to have a department of this state go and investigate information about current contracts we're in, but being able to change the procurement process moving forward. And so that process is changed moving forward where the Department of Administrative Services ultimately would collect this information as they're letting out bids for this contract. It would make it so that it would not be difficult in regards to acquiring it, because it would actually become part of the state's contract with regards to finding out where the goods and services are being produced and/or created. [LB371]

SENATOR PRICE: Okay. You said two things there. You said, yes, that data is available, but now we're going to levy a new requirement they collect the data. So we're actually having a bifurcated process. So that data you wanted to get, they couldn't provide you now because they didn't ask for it, but now you're... [LB371]

SENATOR MELLO: Because statutorily, they're not required to ask for it or collect it.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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Thus, they didn't have the information available. [LB371]

SENATOR PRICE: Okay, thanks. [LB371]

SENATOR AVERY: Any...Senator Scheer. [LB371]

SENATOR SCHEER: Thank you. Real quick, Senator Mello, you certainly defined what's made in America as far as manufactured product, but I've also noticed on a lot of items we now have assembled in the United States. So how are we going to distinguish between those things that may have a component part that is perhaps imported but the vast majority of the product may be manufactured in the United States, but not necessarily in its entirety? [LB371]

SENATOR MELLO: Are you referring to Section 3, Senator Scheer, the green copy? [LB371]

SENATOR SCHEER: Well, actually, I was looking at the white copy. I'm assuming it's probably the same. [LB371]

SENATOR MELLO: Section...what was that again, Senator Scheer? [LB371]

SENATOR SCHEER: It's in Section 3, and it talks about the manufacture in the United States and then contracts awarded to foreign contractors under (c), estimate the dollar value of articles and materials or supplies purchased that were manufactured outside of the United States. And my point is, some products are assembled in the United States not necessarily with all products that were manufactured within the United States. How do we distinguish? I mean, if you're buying a product--we'll say a syringe--and perhaps the needle component is imported from China or Taiwan or someplace in South America, wherever the case might be. The plastic molding came from the United States. Is it an American product or is it a foreign product? [LB371]

SENATOR MELLO: I think if you look--and maybe I'm mistaken here--on subsection (i) and (ii) under...section (b), subsection (i) and (ii) under that main third section, I think it discusses "All the manufacturing processes for the good take place in the United States"; and "All of the components of the product are of United States origin. A component will be considered a good of the United States if all the manufacturing processes of the component have taken place in the United States, regardless of the origin of its subcomponents." So I think by all means, I'd be more than willing to work with the committee and the committee's legal counsel if we needed to clarify that further. [LB371]

SENATOR SCHEER: I don't know that you can clarify it further. I'm just pointing out that I'm not sure all that information is available to any vendor that may be selling a product

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

to the state as a item. I mean, you're expecting a vendor to know where all the commodity products came from, and that's not necessarily always available to that vendor. That part is as specific, probably, as you can get. But I'm not sure that really that's what we're thinking about. [LB371]

SENATOR MELLO: And that's a great question, Senator Scheer. And to some extent, the way the legislation is drafted there is no penalty, there is no requirement that products need to be completely made in the United States or all subcomponents or assembled or manufactured. It's simply providing more information, I think, to the public in regards to: one, who are our contractors; two, those contractors, where are they assembling and/or producing or manufacturing these goods and services? And in providing that information to the public ultimately to see whether or not our state tax dollars are going in state, they're going out of state, could be going out of our country, for all we know. And so there's no penalty, there's no--I don't think--there's no incentive or penalty associated with reporting this information. It's simply a reporting requirement that...and we tried. And by all means, I'd be more than willing to continue to work with the committee and the committee counsel to change the language. We did incorporate in the reporting estimate to try to make it a little bit more flexible for the Department of Administrative Services in regards to them providing estimated dollar amounts, dollar values in regard to the services of these...of the contracts, understanding that we know not every contractor will be able to give a clear-cut, 100 percent accurate estimation of where their goods or services may all be made. And so we've tried to provide a little bit of language. But I understand that, reading through the white copy, we may need to be a little bit more flexible in that sense of trying to provide a little bit of give and take, so to speak, in regards to allowing DAS as well as their contractors to be able to provide estimated amounts if need be. We tried it, the estimated amount, in the beginning of the white copy of the amendment in the reports, but maybe we could try that similar language as DAS requests that information from contractors. [LB371]

SENATOR SCHEER: Okay. Thank you. Thank you, Senator Avery. [LB371]

SENATOR AVERY: Senator Price. [LB371]

SENATOR PRICE: Thank you, Chairman Avery. In that discussion, Senator Mello, I'm wondering if you could share briefly, if you can, the public service that is derived from the generation of the report. So as we've been hearing, and we will hear more bills on what I would prefer to call the Nebraska Records Modernization Act versus transparency, is that if the data isn't collected and it isn't easily retrievable, that's one...those are two challenges. The third thing--now we're going to have our leviathan report. If we can get the data collected and it's retrievable, I'm not sure where the benefit is for the Legislature getting the report on where everything came from as opposed to being available for the public to see. They can go and they can get it. So that's my question. I wonder how many senators will pore over the number of gauze

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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pads that were bought for the prison system or sheets. It doesn't rise to the level of our review as opposed to it could be an industry that wants to do it. So I'm...share with me the why we're getting a report. [LB371]

SENATOR MELLO: Usually I think the model we followed, Senator Price, is that the Legislature receives a good number of reports in regards to issues that affect fiscal and budgetary matters. Your underlying question premised those. Is this report more beneficial maybe to the public at large and/or potential businesses who'd like to contract with the state? Absolutely. The report is probably more beneficial, I would say, to those entities and those Nebraska entities primarily who would read a report and notice that this particular contract is getting 95 percent of its services or goods outside of the country, for an example, where they feel they have a business that provides that same service, let's say, in Wayne, Nebraska. And they would like to try to find a way to work with the state in regards to when that contract becomes available next time, to put a bid on that contract and provide that same service. No doubt that report that would be created under this act is more beneficial to, let's say, that business in Wayne, Nebraska. But ultimately us, as legislators--and you'll hear a little bit more on the following bill which this bill is a quasi, I would say, from the interim study we had this fall in regards to state procurement policies, before we can do any kind of, I think to some extent, massive changes in state bidding preferences, we ultimately need to know where our current contract dollars are going. And that was part of the tandem bills that I put in with both LB371 and LB372, the bill this committee will hear next, on the Buy Nebraska Act, is we need to know, one, where our state contract dollars currently are going, where those contractors may be getting their services or goods. And so we tried to lay that out initially in this bill, while we talk more about the bidder preference in the second bill. [LB371]

SENATOR PRICE: Thank you. [LB371]

SENATOR AVERY: Yeah, I'm waiting for that second bill. What is your ultimate objective then with LB371? Is it to lay the foundation for LB372? [LB371]

SENATOR MELLO: I think, Senator Avery, I understand it that LB372 is faced...general bidder preferences faces some opposition, I know, generally in this committee. And there will be, no doubt, those who will testify in opposition to LB372 which provides a Nebraska bidder preference for state contracts. I understand that's going to be an ongoing issue that's going to be continually debated. But I felt for the Legislature to be able to start making...I think to be able to find where our state dollars are currently going to help us to evaluate bidder preference policies, it's best to know exactly where our current dollars are going, which through current statute is not required for the Department of Administrative Services or any state agency to report that information. I think Senator Price made a very good point where I think this is not simply a matter...this entire policy area is not simply a matter of transparency. But ultimately I

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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think as a Legislature, we need to strongly consider the modernization of our state procurement policies as well as our records management policies as we move forward, which LB371 does essentially deal more with, I think, a records management as much as anything else, as well as providing some transparency in the procurement process. But I think it is kind of a foundation for, I think, the longer ongoing conversation that not just myself but other senators have in regards to looking at giving preferences in state contracts whether it's to in-state businesses, whether it's to certain preferences to maybe veterans' groups, to those who are visually disabled like we currently have in statute; different preferences that may help keep more of our state tax dollars in Nebraska instead of seeing those dollars go out of state or overseas. So I'd be the first to tell you that this is more of a reporting issue, more of a records management issue Senator Price has said. But for us to continue to have this bigger policy debate, we ultimately need to know more information about what we're currently doing as you can see by my correspondence with DAS which shows that nothing is being tracked and nothing is planned on being tracked in the future. [LB371]

SENATOR AVERY: And so then you would describe the public purpose that this LB371 serves as just more information for the public? [LB371]

SENATOR MELLO: I think the public purpose is the taxpayers have a right to know where their tax dollars are going in regards to where those goods or services are being produced, manufactured, or created. I think to some extent...I believe this Legislature back in the mid-2000s, there was an issue in regards to a call center in regards that the state had contracted out. But ultimately, had the calls...the calls were being done by an overseas business that calls were being routed through India. That caused significant uproar, I think, amongst the public at large knowing that they were trying to...I believe it was dealing with the Department of Labor and unemployment insurance calls or unemployment insurance claims that were being done not just out of the state, but ultimately out of the country. And it was causing concerns in regards to those who were trying to get their claims who were not receiving satisfactory customer service. So I think for the public's right to know where their goods and services that we as the state are ultimately providing, I think it's a worthwhile public knowledge, and I think it's a public good that we should consider not just for DAS but ultimately I think it should be for all state government. I've compromised in the sense of trying to be fiscally mindful in regards to some of the agencies that provided information that this may be a larger undertaking for them to take on right now without changing and doing some reorganization or reengineering of their current operations. That's why the white-copy amendment only goes after the Department of Administrative Services' process in regards to trying to help move and reengineer their process moving forward. [LB371]

SENATOR AVERY: Do you expect that they're going to be here to testify in support? [LB371]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR MELLO: Senator Avery, I have come to believe that...I think believe, with the exception of maybe one bill over my five years, I've not had the Department of Administrative Services testify in support of any piece of legislation I've done in front of this committee, so I think that record probably no doubt will be the same as it is today with both LB371 and LB372. [LB371]

SENATOR AVERY: Any other questions? Senator Murante. [LB371]

SENATOR MURANTE: Senator Mello, as...okay, so as I read it, your green copy included all state agencies; your white copy just includes DAS. [LB371]

SENATOR MELLO: Correct. [LB371]

SENATOR MURANTE: Why did you pick DAS? [LB371]

SENATOR MELLO: DAS is the largest procurement agency in the state of Nebraska. Ultimately there's a number of other state agencies that ultimately have their procurement done in-house, which if you look at the fiscal note, the major...I think the major procurement issue dealt with the University of Nebraska System being the other main procurement entity in the state that would have had a fiscal impact. So I wanted to start with the largest procurement office first, since they handle a significant portion of our procurement, and seeing what can be done with them in regards to the processes they have, knowing the way--without getting too wonky with the budget--there's a revolving fund process that involves how DAS charges and bills other agencies for the services that they provide. Thus, it is a way to be able to do this where it would have minimal fiscal impact. If DAS does it first, it can then translate...I believe can translate out to other agencies. [LB371]

SENATOR MURANTE: So you're starting with number one and then come back later for number two? [LB371]

SENATOR MELLO: If this committee so chooses to put out LB371. I think the issue itself will continue to probably...will probably continue to affect other agencies. I think the University of Nebraska would be the next main agency that has such a large procurement budget that they would, I think, be the natural number two of seeing if they do any kind of computer programming. And if you look at their fiscal note, it was mostly...I believe it was \$160,000 in computer programming, and they felt they needed to hire additional staff to be able to comply with the green copy of the bill if we make...with the significant changes from the green copy to the white copy amendment. I'm going to be visiting with the university to see ultimately if it's still the great need they have of new staff. It's simply contracts they enter into moving forward to be able to collect that information and report that information to us, the Legislature, and the public at large. [LB371]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR MURANTE: Now we don't get a lot of fiscal notes in here. Every once in a while we'll get one, but I believe so far this is our biggest and it will be our biggest until you open on LB372. Would you go back to the Appropriations Committee? Are you budgeting for this right now? I mean, it goes from an enormous fiscal note to, it seems like after the white copy--if it gets adopted--goes to just a really big fiscal note. So are you taking this into account right now? [LB371]

SENATOR MELLO: Well, I...Senator Murante, I think to some extent. If you look at the Legislature...the Legislative Fiscal Office's fiscal note to some extent is significantly different than what ultimately is submitted by state agencies. And at the end of the day, our Legislative Fiscal Office is the only fiscal note that this Legislature considers as its fiscal note process. For an example, I will...I want...I could probably read a couple components, so to speak, of their fiscal note, so to speak. For an example, the Department of Banking and Finance had no fiscal impact. Department of Administrative Services estimates a need of 9.5 full-time employees. Their estimate carries a cost of approximately \$700,000 per year. This estimate is primarily revolving funds which will be charged off to other state agencies utilizing services provided by DAS. DAS Materiel notes that the bill's provisions may have an impact on a number of contractors who are willing to provide the required information and, therefore, the number of bids received. This could, in turn, impact the cost associated with contracts. Ultimately our Fiscal Office tries to provide, I think, a very clear interpretation of what they get from the agency and ultimately what they value or what they see as the ultimate fiscal note. I'll have you turn to page 2 of the fiscal note and ultimately go to the last section. Our Legislative Fiscal Office says, "In addition, it should be noted that there is a question regarding the contracts to which the bill shall apply. The work faced if existing contracts are included in the bill's provisions is much greater than if only new contracts are included. For the purpose of clarity, this issue should be addressed directly." That alone shows that there is ultimately, I think, a gray area in regards to what the fiscal note may or may not be in regards to whether this clarification of this bill only applies to current contracts or all contracts, current and moving forward, where if it is only contracts moving forward there would be a significantly less...I should say, a significantly minimal cost of making changes to future contracts in regards to legal documents and ultimately the tracking that would happen in the system. I'm not one to go at length on an issue, but ultimately is this committee--probably prior to your tenure on this committee--the Government, Military and Veterans Affairs has seen multiple fiscal notes from the Department of Administrative Services on pieces of my legislation that have no doubt been questionable at best, and which our own Legislative Fiscal Office has noted that multiple times that this agency has tried to provide sometimes inflated fiscal notes, has tried to provide information that frankly is questionable in regards to how they get to their information, and ultimately always tries to take--which we'll see on the next bill--tries to take a worst-case scenario on pretty much every single thing that involves procurement-related issues. I will give them the full credit and ability to come and



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Government, Military and Veterans Affairs Committee  
February 08, 2013

---

provide their testimony of how they came up with their fiscal note but noted that our own Legislative Fiscal Office did not completely agree with their fiscal note as usually our Fiscal Office will agree with them if they see there's rationale behind it. As you will notice on LB372, which we'll hear next, our Legislative Fiscal Office provided a different perspective than what DAS provided on their fiscal note, and that happens on a regular basis. For what reason DAS chooses to provide these inflated numbers on pieces of my legislation, I do not know why, Senator Murante. But ultimately I hope this committee will take that into consideration as it debates and discusses this legislation moving forward. [LB371]

SENATOR AVERY: Any more questions? Thank you Senator...oh, I'm sorry. Senator Scheer. [LB371]

SENATOR SCHEER: Senator Mello, I appreciate the answer you just gave but I didn't hear a yes or no. So my point would be--back to Senator Murante's question--as our Appropriations Committee, you are prepared to be able to fund these type of requests? [LB371]

SENATOR MELLO: No. [LB371]

SENATOR SCHEER: Okay. [LB371]

SENATOR MELLO: Ultimately, without explaining the entire budget process, ultimately if there is available funding after the budget is passed or actually when the budget is released, there will be determination of whether or not there's any available General Funds above the minimum 3 percent required variance that we, as a Legislature, must leave in regards to having a balanced budget. Some years there is an amount that is in the millions, some years there's \$200,000 above the minimum reserve which means there's very few A bills. Myself, like all 49 of us, ultimately may have pieces of legislation that cost General Funds; and it's left up ultimately for the entire Legislature to make that determination of whether or not this piece of legislation is a bigger priority than another piece of legislation if it involves General Fund dollars. That incorporates and includes also any tax-related bills which may reduce our state revenues is also included in that conversation in regards to bills that ultimately have a fiscal impact. So I believe with the changes that we made to LB371 in regards to taking the Legislative Fiscal Office's fiscal note, evaluating it, and make a determination that there will be a minimal fiscal impact if we only focused on DAS, we only focus on future contracts moving forward, and we ultimately we are more flexible in regards to both the contractor and DAS providing that information in a report, that it would have a minimal fiscal impact to their ongoing day-to-day operations. That ultimately...the process, just so as a reminder to everyone on the committee, that new fiscal note will not be generated unless this amendment to the bill--which in theory would replace the bill--is adopted by the Legislature. So if this committee chose to adopt the white copy or make a change and the legal counsel

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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would provide the committee with an amendment to the bill that would strike all the language and replace that language, then the Fiscal Office would redo a new fiscal note based on the new language that the committee has chosen to put forward. [LB371]

SENATOR SCHEER: Okay. Thank you. Thank you, Senator Avery. [LB371]

SENATOR AVERY: Thank you. Thank you, Senator. [LB371]

SENATOR MELLO: Thank you. [LB371]

SENATOR AVERY: All right. We will receive proponent testimony on LB371. Welcome, sir. [LB371]

STEVEN WOLF: Good afternoon, Chairman Avery and Senators. My name is Steven Wolf, and I'm the president and CEO of Issues Management Solutions, LLC, an entirely veteran-owned small business incorporated in Nebraska in 2001. Our primary office and my residence is in Omaha and our clients are within the state and our operations and services are provided nationally, as well. I recognize that LB371 and LB372 are entirely separate pieces of proposed legislation, but from my perspective they are two peas in the same pod and directly linked to the...as layers of skin to the same onion, which is perhaps the Department of Administrative Services and our state government procurement system. So my comments on one bill probably may have some overlap on the other, and I'll certainly parse them to each bill. But I do want to thank Senator Mello for introducing these bills and the senators who chose, at this time, to cosponsor them. So I'm excited about what the conversation is here. And what I'd like to try to do...these bills affect me as a citizen of this state as a taxpayer, and they affect me as a businessman trying to do business with the state of Nebraska. I can tell you that I have a background as a certified contracting office, represented from my previous life as a federal executive, so I have a lot of experience in procurement as a government official. As a businessman, I do business with the federal government, do business with the state of Nebraska, and I'm registered to do business with 13 other states; so I have an interesting perspective. And my take of what's going on here may be a little different than the letter of what Senator Mello introduced, but I think the spirit and intent is consistent. You get the impression that when you--on the transparency issue in LB371--you get the impression, as a businessman, that when you register with the Department of Administrative Services that you have, in a sense, by inference, been able to open yourself up to do business with the entire state of Nebraska, with every agency. And what you find in practice is that's far from the reality of what it's like to try to do business with this state. So one of the things you find is that rather than it being a one-stop shop, you essentially have to basically turn around and register with all 60-some departments of this state if you want to have a chance to be a competitive member of the business community with this government. And what I think the problem is here--and I want to go back to something that the Senator said earlier as far as the

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

cost of this legislation because I think there's probably a good fix to that, what you find is that you have a base set of rules in your procurement requirements here but there are so many exceptions that allow each agency to ignore the registry at the Department of Administrative Services. And quite frankly, I am constantly hearing about bid opportunities that I never had a chance to bid on that my firm is absolutely qualified to bid on. And so there are so many exceptions and caveats that it makes doing business with the state very difficult. I'll give you a couple of examples here. One of the things I do, I do some consulting work in the area of risk communication, things like that. And I have a colleague that actually back in my federal days is somebody I helped to develop that individual's professional skills in this area. In fact, I use him as a sub on contracts all the time--not necessarily here in Nebraska but in other places--and the Nebraska Policy Center goes out to this gentleman who resides in Tennessee and goes out and awards a contract to him and I never get a chance to see that contract. I have no...and I know exactly what his rates are because I know what he charges me. And so you're paying for airfare and certainly there's some economic impact when he stays in the hotel here. But I can guarantee you my rates are better and I can guarantee you, as well, that my credentials are as long as his are, and I helped establish his. So I don't have a problem with competition, by the way. But if this is a matter of what is in the best interests of the taxpayers in Nebraska and are they getting the best rate for legitimately qualified services, I think we have some room for improvement here. I had another situation working with the Department of Roads. And part of what I do as well is facilitation, mediation, dispute resolution work, community involvement, things like that. And that's a big part of a lot of projects for the Nebraska Department of Roads. Well, I sat down with some officials there, you know. They were asking me some questions about a project I worked in Columbus a few years ago, and come to find out that they had procured the facilitation services of a firm in Arizona. And I'm like, well, I registered to do business with NDOR. I never saw the bid. Well, we have this, you know, exception to this rule and blah, blah, blah. And so, you know, again the question becomes, how can you look any taxpayer in the eye with the way our system is set up right now and say that they are, in fact, getting the best qualified and most cost-effective solution to the state's contracting needs? [LB371]

SENATOR AVERY: Can you bring this to summary end? Your red light is on. [LB371]

STEVEN WOLF: Oh, I'm sorry. Yes. Well, just very quickly, the cost of the legislation...I think the real question here...honestly, I don't know the value of the point of figuring out where something is manufactured, where the parts came from. But I do think that if this Legislature is giving these agencies an appropriation, they know their budget. And if they're writing and signing a contract with a dollar amount affixed to it, it should be that--whether it's you, Senator Avery, Senator Mello, myself as a citizen--if I ask the question--and I don't know how the Senator asked the question in the paper he presented to you--but if you ask the question of how much money did you spend and where did it go, you should be able to answer that. The answer should never be, that's

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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not required by statute. I don't understand the accountability of that kind of a flip answer to a straight-up question. I can answer that question when my wife asks me that about our checkbook, I have to do that with my CPA. And that's how I pay my taxes to the state, by keeping those kinds of records. So I think... [LB371]

SENATOR AVERY: Can you bring this to an end? Your red light has been on for about five. [LB371]

STEVEN WOLF: Yes. Yes, Senator. Well, I just...I'm in support of this bill and I agree that it is a first step and there are some significant challenges with the way the state is doing business with businesses and for the taxpayers' benefit. [LB371]

SENATOR AVERY: All right. Thank you. I'm sorry to cut you off but we do have a five-minute limit. [LB371]

STEVEN WOLF: I'm sorry. [LB371]

SENATOR AVERY: Are you going to take questions? [LB371]

STEVEN WOLF: Oh, sorry. Yes. [LB371]

SENATOR AVERY: Questions from the committee? Senator Scheer. [LB371]

SENATOR SCHEER: Thank you, Senator Avery. I'm confused and maybe you were talking about the different bill, but in LB371 where does that provide for the additional in bidding process? I'm... [LB371]

STEVEN WOLF: Well, I think, you know, the title "transparency," the title of the bill I think is key here. [LB371]

SENATOR SCHEER: Just a...no...I'm...where in LB371 does it talk about the bidding process? Because you went on about not having the ability to bid for a project or didn't know a project was with the Department of Roads or this? And I understand that they all do that independently, but specifically in LB371 I don't find any of that addressed. [LB371]

STEVEN WOLF: Right. Right. What I mentioned at the very end of my comments is that I completely agree with the idea that as a starting point--and you all mentioned a starting point--that to try to figure out where our dollars are going and whether or not it's giving the taxpayers of the state the best value for their buck, that that legislation is very good in establishing a baseline to figure out where the money is going. I know for a fact that had you looked at the Department of Administrative Services Web site, in 2012, that you would see that more than 80 percent of the contracts awarded by that agency

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

---

did, in fact, go to out-of-state companies. [LB371]

SENATOR SCHEER: I can appreciate that,... [LB371]

STEVEN WOLF: Okay. [LB371]

SENATOR SCHEER: ...but I was trying to follow your comments with the legislation and they weren't necessarily matching up, so that's why I was confused. I thought I had looked at the bill and I wasn't finding the exact correlation to the bidding process that you were alluding to several times in your...I understand your frustration. [LB371]

STEVEN WOLF: I guess what I'm doing, Senator, I said I was trying to put a face to the impact of following the numbers because that's what this bill does address. [LB371]

SENATOR SCHEER: I appreciate that. [LB371]

STEVEN WOLF: And is there a spirit and an intent to why would we want to look at these numbers and figure out what's going on in our state's procurement system? [LB371]

SENATOR SCHEER: I understand. Thank you. Thank you, Senator Avery. [LB371]

SENATOR AVERY: Senator Price. [LB371]

SENATOR PRICE: Thank you, Senator Avery. To bring it to a succinct point, if you can't search data records because they're not available, you don't know what contract is coming up, is it fair to say that if you look at the INPUT which is a national contract database where you can go and you can find out when a contract is awarded, how long it was awarded for, the period of performance, the elements of performance, the prior contract awardees, subcontractors. This gives you an opportunity to find out when it may be awarded again, therefore you'd be able to bid on it. I think that's the value, and I'll just ask you to either agree or disagree that the value of what this bill would purport to do is have the agency create a database, a record where people could go in and search, because right now with all the exceptions how is it that a person in Tennessee knows an opportunity is available unless it's either good old boy networks or happenstance, they fell over it. And this is where we see it'd be best for our citizens, let alone the state, for accountability but also in that business by collecting the information. [LB371]

STEVEN WOLF: You're correct. It would from a business perspective. If I put that businessman hat on versus the taxpayer hat, you're absolutely right. That kind of information I can get in two seconds searching the federal Web sites. And I, in fact, do business with the state of Tennessee, and I can get that information in a heartbeat. And

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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it helps me to be more competitive and maybe I can actually go in there with a lower bid, which ultimately then serves the taxpayer hat as well. And I cannot do that in the state of Nebraska right now. [LB371]

SENATOR PRICE: Thank you. [LB371]

SENATOR AVERY: Any more questions? Thank you, Mr. Wolf. [LB371]

STEVEN WOLF: Thank you. [LB371]

SENATOR AVERY: Okay. Additional proponent testimony? Welcome, sir. [LB371]

LAWRENCE DeSOUZA: How do you do? My first time over here so I'm going to work with this with you guys as I go, okay? Senators, it's a pleasure to sit here and give testimony about the subject of LB371 and LB372. My name is Lawrence DeSouza, D-e-S-o-u-z-a. As you may guess, I am an ex-military man. I was retired out of Offutt Air Force Base. I am also a business owner in Omaha, Nebraska, and I am a Nebraska citizen. My interest on LB371 and LB372 is this: Many people think that my business which is to do international trade, in commodities especially, is a business about commodities; but it's not. My business is about information. I buy and sell information. My information makes me money and makes money to everybody that deals with me. Let's put this in perspective. When I started my business--and I retired as an intelligence officer in the United States Air Force--I started with a budget of \$7,000 in 2009. With a budget of \$7,000, I created the business that made \$20 million in 2011. And that is because 90 percent of my money on those first two years went to information. Now not everybody in Nebraska has the capabilities that I have. Not everybody in Nebraska has the money that I had available. But a lot of people in Nebraska have the desire to promote business and the success of this state, including me. And to that purpose, I'd much rather have a bunch of people here in Nebraska that don't know nothing about information because then I have more money. I can sell you more, I can import you goods from any country in the world, and make a killing in this state. However, I would be negating my fellow citizens. And most of all I'd be negating the ability of my fellow veterans, and I'm not willing to do that. I would rather export what we make over here and bring money into this state. So I think that pretty much sums it up. [LB371]

SENATOR AVERY: Thank you. [LB371]

LAWRENCE DeSOUZA: Any questions? [LB371]

SENATOR AVERY: Questions from the committee? Are you...I presume you'll be testifying on the next bill. [LB371]

LAWRENCE DeSOUZA: Yeah, I guess I will. I guess my points were pretty much made

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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on this one. So... [LB371]

SENATOR AVERY: Well, then I will ask you the question I would ask you on the next bill. You're involved in international trade? [LB371]

LAWRENCE DeSOUZA: Yes, sir. [LB371]

SENATOR AVERY: So you have some idea about the concept of comparative advantage? [LB371]

LAWRENCE DeSOUZA: Absolutely. [LB371]

SENATOR AVERY: Then if we were to accept this bill and the next one, wouldn't that violate a very important economic principle which says if I make widgets and you make gadgets and I make my widgets more efficiently with lower costs, and I can sell them at a lower cost--high quality but lower costs--if you make gadgets better than I can with lower costs and you can sell it cheaper but it's still a good product, why shouldn't I buy yours and why shouldn't you buy mine? And if I say I'm only going to buy from my neighbors here and I'm not going to buy from you no matter how good your product is, isn't that bad for business overall? [LB371]

LAWRENCE DeSOUZA: Well, I'm not talking about preference, I'm talking about consideration; and that's something that business is not getting--consideration. I believe that we have extremely qualified, extremely qualified businesses in Nebraska; businesses that are making \$40 million in federal contracts and zero contracts in Nebraska. That, to me, is mind-blowing. How can I go and compete in another state and I cannot compete here? [LB371]

SENATOR AVERY: And you think LB371 would go a long way toward resolving that problem? [LB371]

LAWRENCE DeSOUZA: I think LB371 gives opportunity for the little guy. You know, when I had a budget of \$7,000, if I did not know what the value of the information was, having that information easily available to me and having the experts on the SBA, on the NBDC in the Nebraska University come to me and say, look at this. This is exactly what you need. If I had that information easily available to me when I was the small guy, I would have had, you know, saved me--I don't know--\$50,000, \$70,000 that I spent over the years in information that I had to buy. [LB371]

SENATOR AVERY: I can understand how the number and value of contracts and subcontracts might be valuable, but what difference does it make where the product is produced? What difference does it make what country it comes from or how much of a foreign origin or foreign component you might have in that product? What difference

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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does that make to your business? [LB371]

LAWRENCE DeSOUZA: Well, you tickle my fancy in several ways with that question, okay? As an ex-intelligence officer, I'll tell you something. There's a lot of things that I don't want to be manufactured overseas. There's a lot of things that I'll pay the value in gold in order to keep it here in America just simply for the question of security. As a businessman, I recognize that if my house is on fire I'd rather sell my neighbor's product than sell the product of the enemy. You know? [LB371]

SENATOR AVERY: Well, wait. I'm not talking about defense-related materials or information. [LB371]

LAWRENCE DeSOUZA: Uh-huh. [LB371]

SENATOR AVERY: We're not talking about trading with enemies. [LB371]

LAWRENCE DeSOUZA: Uh-huh. [LB371]

SENATOR AVERY: We're talking about...what about products from Great Britain? [LB371]

LAWRENCE DeSOUZA: Right. Well, and here's the thing. I believe in competitiveness like everybody, and the free market is the only way to go. You know, I mean, that is true. Okay? However, we need to give a chance to those in our house first because a bankrupt state or a bankrupt city with people that are not bringing foreign revenue here...and let me give you a little spiel about what I believe. I believe that nobody in China should make a dime if I'm not making a cent on it. In Brazil where my family comes from...I tell you something. My mother is a state researcher, data researcher. My uncle is an economist. All my other uncles are lawyers. My father is an international consultant. And I decided to be military--intelligence. Well, we all deal with data, we're a family of data consumers, okay? And the success of Brazil, the growth of Brazil relies on the fact that they make their data available to their citizens first, starting at the city, then the state, and then the federal level. That produces growth. Information is power, simply said. If you want to empower Nebraskans, we need to give data to Nebraskans. [LB371]

SENATOR AVERY: That's not free trade, sir. Any other questions? All right, thank you. [LB371]

LAWRENCE DeSOUZA: Thank you. [LB371]

SENATOR AVERY: Any other proponent testimony? Welcome, sir. [LB371]



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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

KEN MASS: Senator Avery, my name is Ken Mass, K-e-n M-a-s-s. I am here today representing the Nebraska AFL-CIO and in support of LB371. Although it's been discussed many times, I think it's very clear that I think it's important for you all as state representatives and me as a taxpayer to know where Nebraska is spending the money. And I think this is a logical way to do that. It's too bad we hadn't started many, many years ago. You got a due date of June this year, that would go forward. Interesting comments have been made that what's wrong with protecting Nebraska? I understand, Senator Avery, we may have a difference of opinion of trade. We have a fair trade and you represent a free trade. So anyway, it's protecting Nebraska; Nebraska first. You're talking about an income tax you've been talking about a couple of days here--taxes. You make great jobs in Nebraska by this legislation. Great jobs and great employees who pay taxes to the great state of Nebraska. And I think that's all I need to say because I don't want to get wound up too far because we've got another bill coming. So anyway, I have...if there are any questions, I'll look forward to it. [LB371]

SENATOR AVERY: Don't you think, though, if we accept your argument that, let's protect Nebraska... [LB371]

KEN MASS: Uh-huh. [LB371]

SENATOR AVERY: ...that at some point in protecting Nebraska by only purchasing Nebraska products, that pretty soon I was going to say, well, Nebraska won't buy from us so we won't buy from them? And then Wyoming is going to say, they won't buy our products so why should we buy their products? That is the kind of thinking and the kind of strategy that got the world into a Depression back in 1929 with the Smoot-Hawley Act. I don't think you really want that, Mr. Mass. I really don't. Anyway... [LB371]

KEN MASS: Mr. Avery, I know where the products in my house are bought and made because I ask for it, I look for it, and I deserve that by being the taxpayer buying those products. I know where all of the services of Nebraska are made and what they make. If you need to know what products you may want to do, give my office a call. We have every unionized contract in Nebraska, what product they make, and we're more than welcome to give that to you. [LB371]

SENATOR AVERY: Well, I'd be happy to see it, but I'm talking about the larger picture. [LB371]

KEN MASS: I understand what you just said. [LB371]

SENATOR AVERY: I mean, it's not just the widget out by Kmart. It's what happens after that. What happens when it's time for the state of Nebraska to go outside the state to sell a product and they say, whoa; you don't buy our products, why should we buy yours? [LB371]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

KEN MASS: I appreciate your comment saying you shop at Kmart, not Walmart.  
[LB371]

SENATOR AVERY: You know, I make that...it's not even...it doesn't exist anymore.  
That's how much I shop. Thanks for the correction. [LB371]

KEN MASS: Thank you. [LB371]

SENATOR AVERY: Any other proponent testimony? [LB371]

BREC WILSHUSEN: Yes, sir. Senator Avery... [LB371]

SENATOR AVERY: Thank you. I mean...I'm sorry. State your name for the record.  
[LB371]

BREC WILSHUSEN: My name is Brec Wilshusen, B-r-e-c, last name is W-i-l-s-h-u-s-e-n. This is my first time standing...sitting in front of an august group like this as well. I'm a 20-year veteran of the United States Air Force, civil engineer by degree and by trade. Moved home after my 20 years because I was born and raised here--about an hour and a half north of here--went to school here. And I am the owner and principal of a service-disabled veteran-owned engineering firm, SolidEn Engineering and Consulting. So as a small businessman, I do capture planning, market development, soup to nuts, everything. I also represent the Veterans in Business Forum with both...with Omaha and now Lincoln, as well. And we are dealing with some of the anecdotal information that we've assembled so far and that four-fifths of the contracts go to out-of-state...the state contracts go to out-of-state entities. As we are digging and prying and clawing our way through information, particularly I look at the Department of Administration's Web site and of those contracts that have been let. You have to open each and every one of them. There's no summary report, and the ability to go in and do something like you would find on USAspending or things like that, where you readily research and query the data. LB371 is a wonderful first step. I would like to see it go further. Now, mind you, I'm not...I'm staunchly against preferences, but I would appreciate a level playing field and the ability to be able to reach across the data and arm myself, as a small businessman, to be able to parse information, be able to dig into certain areas looking at how much...ultimately, how much the small businesses might be getting or as a subcontractor might be getting of any particular procurement action. So as we continue our research with the Veterans in Business Forum, we stand ready to help. And I rise in favor of this bill. [LB371]

SENATOR AVERY: Thank you, sir. Questions from the committee? I don't see any. Thank you for coming. Any other proponent testimony? All right. We'll now accept opponent testimony. Welcome, sir. [LB371]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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RANDY PETERS: (Exhibit 3) Good afternoon, Senator Avery, members of the committee. My name is Randy Peters, R-a-n-d-y P-e-t-e-r-s. I am the director and state engineer for the Nebraska Department of Roads. I'm here to testify in opposition to LB371. The NDOR aspires to be transparent in all of its public activities. However, considerable effort and resources will be required in order for the Department of Roads to comply with this complex reporting process. The December 31, 2013, implementation requirement adds to our challenge in that regard. The bill would cover most of the department's contracts and subcontracts, including the following areas: highway construction, engineering by consultants, roadside mowing, rest area maintenance, building maintenance and building construction. The NDOR would not be responsible for reporting on its commodity and equipment contracts, as those are processed through the Nebraska Department of Administrative Services. To comply, the NDOR would need to gather a vast amount of information from its contractors and their subcontractors, including where they are located and where they purchase their supplies. The NDOR's standard contracts would have to be rewritten in order to make the applicable aspects of such reporting a part of each contract. The findings section, Section 2, may blur the distinction between a reporting requirement and a solicitation requirement. By federal law, the NDOR is required to ensure that qualified consultants, whether in-state or out-of-state, are given a fair opportunity to be considered for the award of a contract. That requirement also appears in the Nebraska Consultants' Competitive Negotiation Act at Section 81-1713(3). Thank you for the opportunity to testify. That concludes my remarks, and I'd be glad to answer any questions. [LB371]

SENATOR AVERY: I wish you would comment on a theme that's been running throughout the proponents and that is that they can't get the information they need to compete for contracts in the state of Nebraska. Do you have any information that would help us understand that, why that would be the case? [LB371]

RANDY PETERS: We advertise on our Web site and in the professional trades every time we do a consultant selection or do a construction contract for bidding, so I'm having difficulty understanding why it's opaque to people. [LB371]

SENATOR AVERY: How would...I'm wondering, how would knowing the origin of a product or a material or the partial...let's say if a product is partially produced abroad, how would that help with the procurement process? I mean, I'm sure you don't like the legislation. It's probably the wrong person to be asking, but... [LB371]

RANDY PETERS: How would it help with the... [LB371]

SENATOR AVERY: We want to promote Nebraska industry. We want to help Nebraska businesses get the information they need to compete for contracts. We want them to be awarded the contracts. And I'm having a hard time figuring out how LB371 does that.

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 08, 2013

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[LB371]

RANDY PETERS: I don't have an argument for how it would help the procurement. But in terms of the reporting, you know, when we have 140 construction contracts this year proposed--and just a typical highway resurfacing project might have a prime and three consultants, and a heavy project like I-86 lighting might have a prime consultant and ten consultants--so if you've got 140 projects times three, you know, there's 450 subcontracts to find out where they bought their seeds and their steel and their materials and where they're located. And we're currently not structured to have that, so we'd have to gear up for that reporting. [LB371]

SENATOR AVERY: And you do publish the available contracts widely through a Web site and in the trade journals? [LB371]

RANDY PETERS: We do. The apparent low bidders are posted so you can find that out. And if you're interested in drilling down into those records, then you can...I admit, it's not on the Web and retrievable. But it is...you can call us and get it. [LB371]

SENATOR AVERY: Why is it not on the Web? [LB371]

RANDY PETERS: It's just not set up into retrievable data fields and with searchable elements and organized that way... [LB371]

SENATOR AVERY: It's a poor Web site. [LB371]

RANDY PETERS: ...to go...to drill down from a prime contract into the...all who the subcontractors are. [LB371]

SENATOR AVERY: So it's not very user friendly, is that what you're saying? [LB371]

RANDY PETERS: I think that's...for this purpose, for this purpose. [LB371]

SENATOR AVERY: Yeah. Senator Scheer. [LB371]

SENATOR SCHEER: Thank you, Senator Avery. And you might not be able to answer the question, but I'm assuming on your contracts everything is specified so whenever you purchase either an oil filter or an air filter or a battery, it's based on amps or plates or, you know, whatever those specifications. And when you're road construction, if it's rebar, it's the size of the rebar and however closely it has to be tied intermittently. And, I mean, all that would be spec'ed in the contract, correct? So when you're...I guess what I'm getting at is your specifications are A or better, correct? [LB371]

RANDY PETERS: That's true on the commodities and construction services. On the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

---

consultant services, there's a qualifications-based aspect. [LB371]

SENATOR SCHEER: Well, I'm dealing with more just the product portion of it. [LB371]

RANDY PETERS: Sure. [LB371]

SENATOR SCHEER: And maybe everyone here was talking about the consulting part of it. That's...I'm just trying to figure out in my own mind, as you then look for the source of origin on all that, I mean, down to the wire where you're putting your rebar together. Not that it's not important, it's a component. It just seems that it can get, you know, pretty lengthy as far as each one of those items. Thank you. Thank you, Senator Price. [LB371]

RANDY PETERS: I agree. [LB371]

SENATOR PRICE: Senator Wallman. [LB371]

SENATOR WALLMAN: Thank you, Senator Price. Thank you, Mr. Peters, for coming here. I travel the Homestead Expressway every day. And I have to ask, why did we have to mill it and pour this oil on there? You know, it got slick and then we had to...outside of Lincoln here. [LB371]

RANDY PETERS: Uh-huh. [LB371]

SENATOR WALLMAN: Now was anybody responsible for that besides the Department of Roads, the contractor that did that or... [LB371]

RANDY PETERS: Well, we have to seal the cracks that develop on the road to prevent water from getting down into it and doing more damage. That's the reason for it. The fact that the...I'm not really aware of a project that failed there. I'm aware of one that used very coarse aggregate on the shoulders and the people who bike from Beatrice to Lincoln didn't like that for a minute. I'm not familiar with the one that turned oily. It sounds like a failed effort to seal the cracks. [LB371]

SENATOR WALLMAN: Yeah. It was really dangerous. Yeah. And the Road Department, you know, you'll go from Canada to the Dakotas, then Wyoming. In a drought year I think the farmers would mow the roadside, you know. I know that Game and Parks doesn't necessarily like that, but I think during tough economic times we can save money for the farmers and the roads. [LB371]

RANDY PETERS: This past year we issued 700 permits for roadside mowing, and that was tenfold more than in any previous year. [LB371]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

SENATOR WALLMAN: Thank you. [LB371]

SENATOR PRICE: Thank you, Senator Wallman. Director Peters, I have a couple of questions for you and I'm not at all trying to be in any way flippant or anything. Earlier we had spoke about modernizing our records to which I think a lot of this bill goes to as a component of it. Are any of your contracts that you know of written not using word processing capabilities? [LB371]

RANDY PETERS: No, they're all word processed. [LB371]

SENATOR PRICE: So there's an electronic copy available at some point in time. I would submit that most people could do their own data analysis if they had a Word product or Excel product or PDF, but that the product doesn't exist is part of the question here. And so, thank you. And the second question is, do the Federal Acquisition Regulations apply to roads that use federal dollars over \$100,000...over the value of \$100,000 within the state? [LB371]

RANDY PETERS: They do. [LB371]

SENATOR PRICE: Did the...do you know if the Federal Acquisition Regulations have any reporting requirements? [LB371]

RANDY PETERS: Well, Federal Acquisition Regulation I think goes more towards commodities than general contracting. I mean, there's a whole...Title 23 of the CFR deals with construction...highway construction related. But there are reporting requirements and there are federal requirements to buy American on federal projects. [LB371]

SENATOR PRICE: Okay. Yeah, we've talked about that previously about steel, and that's well established and I don't think there's any question. I just (inaudible) that we're dealing with a semantic point for later on and I didn't want to ambush you if something comes up later that you can help, I'd really appreciate that. So I appreciate that. Are there any other questions from the committee? Seeing none, thank you for your testimony today, sir. [LB371]

RANDY PETERS: Thank you. [LB371]

SENATOR PRICE: Any further opponents? Come on down, it's okay. There's a table between us. Good afternoon, sir. [LB371]

BO BOTELHO: Good afternoon, Senator Price. Good afternoon, Senator Avery and members of the committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o, I'm general counsel for the Department of Administrative Services. I am here today to provide

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

testimony in opposition to LB371. The bill requires state agencies to create an annual report which contains every purchase and contract entered into or made by the agency as well as the dollar value for those contracts. The agency must also include the total number and dollar value of contracts and subcontracts awarded to contractors and suppliers within the state, and the total number and dollar value of contracts and subcontracts awarded foreign contractors and suppliers. The agency must determine and document whether the articles, materials, or supplies purchased were manufactured in the state of Nebraska or manufactured out of the United States. In regard to services, the agency must determine the total dollar value for those services which were performed within the state of Nebraska and those services performed outside of the United States. The annual report will also be required to contain an itemized list of any waivers of any preference provided by laws of the state. In addition, the agency must document the total procurement value expended on iron, steel, or manufactured goods manufactured outside the United States. In the case of manufactured goods, the bill would require agencies to research and make a determination as to whether all the manufacturing processes of the goods itself, as well as the goods' components, took place in the United States. The bill would create a logistics system which is untenable with the existing DAS work force. In cases where the agency were to purchase goods, materials, articles, or supplies directly from the merchant--which for some of our divisions and Administrative Services happens frequently--it is up to the agency to ascertain the origin of those goods, materials, articles, and supplies, as well as their components if they have components. In addition to the additional state employee time, the bill places the same burdens on any vendor contract with the state of Nebraska. This will require contractors to allocate resources to ascertain the origin of all materials, products, and articles sold to the state or used by the contractor in furtherance of their contract. This will increase the cost of doing business with the state of Nebraska. This increased cost will be passed on to the taxpayers. The state work would discourage vendors from doing business with the state of Nebraska. I am happy to answer any questions you may have to the best of my ability. [LB371]

SENATOR AVERY: Thank you, Mr. Botelho. Senator Wallman. [LB371]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming down. You know, on a lot of this stuff I'd think you'd want that information for as far as the quality of the product. You know, like on Beatrice to Lincoln, that Homestead Expressway, some of those culverts are already rusted out. And I don't know where they come from but other...I know some of it came from a different country. So how do you keep track of this stuff? [LB371]

BO BOTELHO: Well, the quality of the product is determined by the specifications. When the agency bids for a product or service they require those products be provided within the cert. of their specifications. I don't know if the origin or where that product was

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

made necessarily is determinant of the quality as long as they meet the specifications of a product. [LB371]

SENATOR WALLMAN: But do you see what I'm getting at? If you don't know the complete origin of the product, how do you keep track of the warranty? They've surely got some kind of warranty on these products. [LB371]

BO BOTELHO: Well, the contractor or whoever you purchased the product from will hold the warranty. And again, that's independent of where the product was made. That's just part of the contract. We hold the contract...whoever is engaged in the contract with the state, they're liable for the product, the quality of the product, and the quality of their workmanship. They're not liable for where the product was made as long as the product does what they say it's supposed to be doing. [LB371]

SENATOR WALLMAN: Okay. Thank you. [LB371]

SENATOR AVERY: Any other questions? Senator Murante. [LB371]

SENATOR MURANTE: Senator Mello in his introduction had suggested...well, I think he just outright said that the Department of Administrative Services inflates their fiscal notes to overestimate the costs of his legislation. Would you like to comment on that? [LB371]

BO BOTELHO: I did not inflate the costs of this fiscal note. The fiscal note for this bill was based on just the number of people I would need to get the bill completed as it's written. And you had a couple of individuals come up to testify and say that they were veterans. You know, I'm a veteran as well; six years in the Submarine Force. I know how to follow orders. You know, I will invade hell if directed to but at least give me a soul just to have a fighting chance, and that's what this fiscal note is. I mean, at the very least, that's what I would need to try to enact this policy. We just don't have the work force to do this. I mean, if you look at the requirements of tracking the origin of every product, every piece, every component, I mean, that is an onerous task. And that's what this fiscal note was based on. [LB371]

SENATOR MURANTE: Thank you. [LB371]

SENATOR AVERY: Any other questions? Thank you, sir, for your testimony. [LB371]

BO BOTELHO: Thank you, Senator Avery. [LB371]

SENATOR AVERY: We are still on opponent testimony. Welcome, sir. [LB371]

KERRY WINTERER: Good afternoon. [LB371]



SENATOR AVERY: Good afternoon. [LB371]

KERRY WINTERER: (Exhibit 4) Senator Avery and members of the Government, Military and Veterans Affairs Committee, my name is Kerry Winterer. That's spelled K-e-r-r-y, last name Winterer, W-i-n-t-e-r-e-r. I am privileged to be the CEO of the Department of Health and Human Services. I'm here today to testify in opposition to LB371 which requires state agencies to provide an annual report with information regarding the number and value of contracts and subcontracts awarded by each state agency within Nebraska and outside the United States, including the dollar value of any articles, materials, supplies, or services purchased or contracted. I know that Senator Mello has mentioned that he is contemplating an amendment. All we can respond to at this point is the green copy of the bill, so this is relevant to the green copy that I believe you all have. The department has serious concerns about the feasibility of compiling and subsequently reporting the significant amount of information outlined in LB371. In its current form, LB371 must be read to require the reporting of each item purchased by state agencies, whether through an ongoing procurement invoice, a purchase of software and support services, or a contract. For us, this raises logistical concerns of accounting for all office supplies, educational materials, and other small yet often purchased items in addition to items which may be used by a contractor as parts for services such as a facility repair. Probably more importantly, it will also be very difficult to account for the goods, materials, or services that would be used in completion of a subcontract. In many cases, we have no reason to know who our contractors' subcontractors are and certainly have no records to allow us to include their products or services on this report. We, like other state agencies, will have to rely on the contractor to work directly with all of its subcontractors to account for and eventually compile all the required information. It is reasonable to assume the contractor and subcontractor will include the costs of collecting and reporting this data into each contract or bid, resulting in increased cost to the state. DHHS currently has 3,424 contracts and letters of agreement in place. Assuming that on average each of these contractors has ten subcontractors--which I think is a conservative estimate--providing products or services to the contractor, the result would be 34,240 separate agreements that would need to be considered in compiling the report. In addition, we have over 100 locations and ten 24-hour facilities. This bill would apparently extend to those locations and the goods and services that they routinely purchase locally. Compliance with the reporting requirements of LB371 will obviously have a fiscal impact. We project that there will be a fiscal impact associated with the tracking and compilation of information that will be included in each annual report. It is anticipated that the department will be required to add full-time employees whose positions will be exclusively focused on preparation and submission of the annual report required by LB371. It is important to note that the duties of these additional employees will extend beyond a simple aggregation of data and involve the much more time-consuming task of tracking each and every item or service purchased by the agency. In addition, entities competing for state contracts will have the

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

added burden of complying with the disclosure requirements of LB371, potentially driving up costs to the state. Our fiscal note projects an additional at least three full-time positions at a cost of \$156,226 the first year and \$208,301 the second year of the biennium. This does not include costs for time spent by staff in each office and facility. We are not the only agency, obviously, that has these fiscal concerns. Our question is, what are the benefits from this bill that would justify this kind of expenditure by DHHS and other state agencies? There are significant hurdles, fiscally and practically, to compliance with these reporting requirements. I thank you for the opportunity to be here today, and I will be happy to respond to questions that I can. [LB371]

SENATOR AVERY: Thank you. Questions from the committee? Senator Scheer. [LB371]

SENATOR SCHEER: Thank you, Senator Avery. Mr. Winterer, could you...if you gave us a financial...a document, could you tell me how many dollars you think it might take your department...additional dollars to provide the needed information under this bill? [LB371]

KERRY WINTERER: The fiscal note that we provided which I...unfortunately, I don't think it was provided in ultimately the materials that you were provided, had about \$156,000 just for the three positions the first year and about \$208,000 the second year. That's for what we anticipate are at least three full-time positions for the two years of biennium. Was that the question? [LB371]

SENATOR SCHEER: Yes, and that would be an ongoing expense? Those would be new and additional employees? [LB371]

KERRY WINTERER: Yes, that would be ongoing for the foreseeable future so far as I know. [LB371]

SENATOR SCHEER: Okay, thank you. Thank you, Senator Avery. [LB371]

SENATOR AVERY: Do you have any idea why your aspect of the fiscal note didn't make it into our material? [LB371]

KERRY WINTERER: I don't have an answer to that other than the fact that I understand it was probably late getting to your Fiscal Office, and I have...I can provide a copy of our note if you're interested. [LB371]

SENATOR AVERY: It appears that the estimate you gave us is not dissimilar to what other agencies have estimated. [LB371]

KERRY WINTERER: Yes. Yes. I looked at the other fiscals and I think we're consistent

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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probably with many of those. [LB371]

SENATOR AVERY: Yes. Any other questions? Thank you, sir. [LB371]

KERRY WINTERER: Thank you. [LB371]

SENATOR AVERY: Any other opponent testimony to LB371? Good afternoon. [LB371]

PATRICK COLE: Good afternoon, commissioner...Senator Avery. My name is Patrick Cole with the Nebraska Game and Parks Commission. I'm a budget officer so I'm used to addressing our commissioners so...I apologize for that, senators on the committee. We're here in opposition as well. I won't belabor the fact... [LB371]

SENATOR AVERY: Spell your name for us. [LB371]

PATRICK COLE: Excuse me. Patrick Cole, that's P-a-t-r-i-c-k, C-o-l-e on the last name, Cole. The testimony that DAS provided and HHS provided essentially is the same information that I would provide you. You should have our fiscal note in your packets, I presume. Senator Scheer, you had the question of finding out where the source of origin was for a lot of those things. We find that that would be quite onerous for ours. We have a number of offices as you no doubt--in the park system--locations around the state and so we deal with a lot of local entities as well. In trying to gather that information, we'd need additional staff to pull that material together. Just looking at a quick analysis of the coding that's available in lines of coding for the things we purchase and we think would be covered under LB371 as originally provided in the green form--not the amendment--some of our concerns might be eliminated with the amendment that Senator Mello indicates he has presented to you, but I can't address that having not seen it. But we have over 23,000 lines of coding for the items we purchased this last fiscal year and each one of those is generally a conglomeration of things within a particular object code so there's lots of items. Just looking at the office supplies, as someone mentioned, there are very few things in our office supply cabinet that are not made in another country. The BIC pens are in China, Pilot pens are from Japan, and one other pen is from Mexico--are assembled in Mexico. So there's a lot of little pieces, parts that the concern is trying to aggregate that information for reporting purposes. With that, I'll just answer any other questions you might have. [LB371]

SENATOR AVERY: Thank you, Mr. Cole. Questions? I don't see any. Thank you for your testimony. Continue with opponent testimony on LB371. Nobody appears to be moving. All right, we'll have neutral testimony on LB371. Don't see anybody wanting to testify. Senator Mello. Are you...you're going to close on this and then... [LB371]

SENATOR MELLO: (Exhibit 5) I'll close quickly only because of...quickly. It's about 3:40. I will try to close extremely quickly. I appreciate the committee's questions and

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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ultimately I look forward to following up with individual agencies in regards to seeing what information they currently do provide in regards to their contracts and in regards to whether or not that information in regards to those service contracts and goods...material and goods contracts are provided to Nebraska businesses or the money goes out of state or out of the country. I would pass this out and ultimately you can ask the page to make a copy of it. Prior to today's hearing, I did get on-line quickly just to be able to provide the committee an example of what ultimately is available on-line if you go to the Department of Administrative Services Materiel Division and see what information they publicly make available. And as the handout...once again, I only made one copy, it is about...I think it's about 36 pages and I double-side printed it to try to save a little paper in the process. Ultimately you'll see when you see that handout in incorporation with other information is that they provide information about who the vendor is, what the contract is about, who does the contract in DAS. Ultimately, you could easily see whether or not what they produce right now is one simple addition in regards to whether that is an in-state company, out-of-state company, or an out-of-the-country company in regards to where that contract is currently being done or served. So that serves more, I think, as a visual, I think, reminder in the sense of how this is not a very complicated issue much to, I think, the disagreement of code agencies who came and testified today ultimately in regards to how difficult this would be and ultimately how time consuming and costly it would be as well. And in that same vein, to some extent I want to make sure I clarify something that Senator Murante asked the Department of Administrative Services. And I think it's worth noting in the sense of questioning an agency's fiscal note in relation to our Legislative Fiscal Office's fiscal note. If you would go to the Department of Administrative Services' fiscal note at the last paragraph on page 1, they take an assumption. It's assumed that the increased contractors' overhead may result in bids that are inflated on the average over .5 percent of the overall project cost, assumed that SBD is involved and \$30 million in divisional and statewide construction projects in an average year, the estimated annual cost increase amounts to \$150,000. Our Legislative Fiscal Office ultimately questioned that and ultimately they said, DAS Materiel notes that the bill's provision may have an impact on the number of contractors who are willing to provide the required information and, therefore, the number of bids received. This, in turn, could impact costs associated with contracts. That simple clarification in the sense of an agency saying this is going to cost a certain amount, in comparison to our Legislative Fiscal Office saying that it may or may not cost a certain amount, I think is worth noting. And I think the reality is, is we as a legislative branch ultimately trust our Fiscal Office to provide an interpretation when we believe state agencies may or may not be inflating certain fiscal information to provide a political point in regards to their opinions on pieces of legislation. No doubt, for the new senators--and I don't have to remind any returning senators--this has happened, no doubt, to all of us before, not just myself. So when I say that at times there may be a frustration in regards to what a state agency may or may not provide you in regards to a fiscal note, it's always wise to go back to what our own Legislative Fiscal Office produces. We may not always agree in regards to how they get there, but

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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ultimately they are a neutral party that tries to provide an independent analysis aside from political or a determination in regards to whether or not a policy is good policy or bad policy. With that, I'd take any questions the committee may have. [LB371]

SENATOR AVERY: Thank you. Any more questions? Senator Bloomfield. [LB371]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Mello, there seems to be a great concern that you were trying to get down to where the paper clips came from and the Band-Aids and whatnot. Is that, in fact, your intent or is there some way we could put a dollar amount on here and make this a little more palatable? [LB371]

SENATOR MELLO: That's a good question, Senator Bloomfield. I think the overarching policy area is a transparency issue. And to some extent, I kind of agree with Senator Price's perception that it's a modernization in regards to our records management, of being able to provide the public more information of where these contracts are going, in-state, out-of-state, or out of the country. It's not, I think, the policy issue--while the legislation can be ultimately amended and no doubt I probably will talk with most of the senators individually in regards to getting feedback thoughts and a determination of what the next steps may or may not be--the reality is, is that we ultimately can go as wide as we need to go or as narrow as we need to go to. I think...hearing from some of the supporters and the opponents today, I think it would be in the best interest of the committee to consider going on the more wider perspective instead of the more narrow perspective because, yes, we probably don't need to know where paper clips are ultimately being produced in the sense of every state agency. But when they do do a service contract, let's say with--let's take, for example, they do a contract with a small office supply company in Wayne, as an example--it would be wise to know whether or not they're doing that office contract with a small company in Wayne or if they're doing it with Office Depot in Atlanta, Georgia. That, I think, is the underlying issue of what we're trying to address in LB371. It's maybe not the issue in regards to ultimately where the paper clips that they're ultimately purchasing or coming from, but where's the contract going and where is the dollars that follow those contracts. Are they going to an in-state company or going to an out-of-state company or out of...or a company out of the country? [LB371]

SENATOR BLOOMFIELD: Okay. Thank you. [LB371]

SENATOR AVERY: Any other questions? Thank you. That concludes the hearing on LB371 and we will now move to LB372 and, again, welcome Senator Mello. [LB371]

SENATOR MELLO: (Exhibit 1) Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. As the committee may remember, last session I introduced LB923 which would have adopted

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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the Nebraska Buy American Act. While the buy American concept in the legislation generated significant discussion on its own, many Nebraskans who contacted my office about the proposed legislation asked why it was focused broadly on American-made goods and not more narrowly focused on benefiting Nebraska companies. Regardless of which approach is taken, the goal of buy American and buy Nebraskan policies is to ensure that our state tax dollars are used in an efficient manner that helps create jobs in Nebraska. LB372 which would adopt the Buy Nebraska Act is the next step in the discussion about reforming our procurement process to maximize the economic-development impacts of state contracts. Currently 49 states have some form of resident bidder preference either in statutes or in rules and regulations governing their procurement offices, although these preferences vary widely. For an example, 35 states award bids to in-state companies in the event of a tie. A handful of states provide preferences for veteran-owned businesses or businesses which employ the blind and visually impaired. And at least 38 states have what is known as a reciprocal resident bidder statute which gives preferences to in-state companies in the event that they are bidding against companies from states which provide preferences to companies from their own state. With the Buy Nebraska Act, Nebraska-based companies would be given an advantage over non-Nebraska companies in the procurement process through the Department of Administrative Services. The provisions in the bill are modeled after former Indiana Republican Governor Mitch Daniels' Buy Indiana initiative which was initiated via an executive order in the state of Indiana in 2005 and fully implemented in 2007. The overarching goal of the Buy Indiana initiative was to spend 90 cents of every tax dollar spent on procurement with Indiana-based businesses. As the committee will see from the 2007 progress report that's just being handed out now, in just two years the state of Indiana was spending 84 percent of their procurement dollars within their state, up from an estimated 60 percent when the initiative was launched. That 24 percent jump represented almost \$1 billion in additional dollars spent in in-state Indiana companies. Under LB372, basic contracts for goods or services would be given a small percentage preference to Nebraska businesses. The amount of preference would vary depending upon the total value of the contract with 5 percent being given for contracts less than \$500,000, 3 percent for contracts between \$500,000 and \$1 million, and 1 percent for contracts over \$1 million. Furthermore, the bill gives Nebraska businesses an additional percentage preference of up to 3 percent if two or more bids submitted were the same and the Nebraska businesses providing goods that were manufactured, assembled, or produced within the state. For more complex procurement contracts which would require DAS to utilize the request for proposal RFP process, Section 4 of the bill requires the department to establish a new point scale for awarding contracts that gives additional points to Nebraska businesses. As I testified during the committee's interim hearing on the procurement issues, the state of Nebraska currently has a reciprocal resident bidder statute that dates back to 1967. Based on information my office received from the Department of Administrative Services over the interim, DAS is currently interpreting the definition of resident bidder in the statute to include any company that registers to do business with DAS, which has the practical effect of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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ensuring that the reciprocal preference is never triggered. LB372 would repeal the existing reciprocal resident bidder statutes and replacing them with new language in the Buy Nebraska Act. Under Section 5 of the bill, DAS would develop a process for determining if another state offers preferences to businesses from their state that exceeds the preferences given to Nebraska businesses under the Buy Nebraska Act. If this is found to be the case, then the Nebraska business bidding on a procurement contract can choose between taking the basic preference under Section 3 or the reciprocal preference under Section 5. Of course, LB372 provides a definition of what constitutes a Nebraska business under the Buy Nebraska Act. To meet this definition, a business must: one, have its principal place of business located in the state; two, pay a majority of its payroll in dollar volume to Nebraska residents; and three, employ Nebraska residents as a majority of its employees; and lastly, four, make significant capital investments in Nebraska or have a substantial positive economic impact on Nebraska as defined by the criteria developed by DAS in consultation with the Department of Economic Development. Any business wishing to claim a preference under the Buy Nebraska Act would have to provide information to DAS that will help determine that they meet the definition of a Nebraska business. One of the first Nebraska companies that contacted me last year after I introduced the buy American bill were the owners of Priority Data, an Omaha-based company that lost out on a potential contract with the Nebraska Game and Parks Commission by just \$20. Unfortunately, this situation is the perfect example of how our current procurement does a great disservice to Nebraska businesses. Had the Buy Nebraska Act's modest resident bidder preferences been in place, instead of sending thousands of dollars to an out-of-state company those dollars could have been given to a Nebraska company with Nebraska employees who, in turn, would pay state income and sales taxes and spend their money in our local economies. Just yesterday it came to my office's attention that the state of Nebraska agreed to be subject to the provisions of the World Trade Association's Government Procurement Agreement, the GPA, in 1993 which may ultimately conflict with some of the provisions in LB372. My office is currently researching the effect that the GPA may have on the bill and may ultimately seek an Attorney General's Opinion on that subject. Based off our initial research, there are states that are similarly subject to the GPA that have modest preferences for in-state businesses and are also states which have subsequently withdrawn their consent to be bound by the GPA primarily because countries like China continue to restrict access to their procurement systems for American-made products. Thank you for your time, and I'd be happy to answer any questions you may have. [LB372]

SENATOR AVERY: Questions from the committee? Senator Scheer. [LB372]

SENATOR SCHEER: Thank you, Senator Avery. Senator Mello, just wanted to run some information by you. In your section for purposes of defining the Nebraska business--and I'll just start on page 2 and I'm going to start at (e) and then go up--it talks about "substantial positive economic impact" when a business that if the tax bill LB405

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

would go into effect would be paying an additional \$30 million into the state's coffers. Item (d) is to make a "significant capital investment in the state," and they would have over a \$1 billion worth of investment in the state right now and we're looking at probably another \$225 million expansion and renovation but might have to put a hold on that based on some uncertainty. "Employs residents of the state," it would employ 1,000 employees. "Pays a majority of its payroll," which would be in excess of \$70 million. And the "principal location," unfortunately, they have 60 locations in the United States. Its corporate headquarters, which is not a mill, is in South Carolina. And so based on your definition, that entity is not a Nebraska business. And personally, I find that sort of hard to swallow because that's Nucor Steel and that's in my district and they are a positive economic force for the state, for my district, for them...their employees and for the community and state in its entirety. They're great corporate partners for the state and for the community and the county. In order for me to support this...I understand on the back part you can claim to be a Nebraskan but I think we need to do some refining somewhere because that's certainly to me, if that doesn't spell a good Nebraska business, I'm not sure what is. So... [LB372]

SENATOR MELLO: That's a great question, Senator Scheer. And ultimately Nucor Steel testified in support of our buy American bill last year actually, LB923, in the sense of being a producer of American-made steel and iron in which...I have it here, and we've had discussions after the bill that was introduced with a variety of organizations that had some similar concerns in the sense of whether or not an entity needed to meet all of these requirements or meet one of those requirements to be a Nebraska-based company. It's something that by all means it's not something that's obviously etched in stone as ultimately this committee, before the entire body, could weigh in, in regards to whether or not that language needs to be changed. And to preempt that...I've noticed and as I've stated earlier, it's been brought to my attention that to move forward we would desperately need to reevaluate that definition to see if there's ways to incorporate, like I say, an either/or in some of the (a) through (e) components because there are companies that do have a sizeable impact in Nebraska that possibly would not fall under this current definition. And so that's an area that needs to be redefined a little bit more, and by all means I'd be happy to talk with you further to find ways to be able to do that. [LB372]

SENATOR SCHEER: Okay. Thank you, Senator Mello. Thank you, Senator Avery. [LB372]

SENATOR AVERY: Thank you. Any other questions? Senator Murante. [LB372]

SENATOR MURANTE: Thank you, Senator Mello. I'm wondering, if we pass this and Iowa promptly adopts the buy Iowa act, are you going to be driving down to Des Moines testifying in favor of it saying it's good public policy for them too? [LB372]



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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR MELLO: It's funny that I believe you'd choose Iowa, Senator Murante, because they do have a similar bill already introduced in the state of Iowa doing a very similar thing that's a buy Iowa that gives preference to Iowa companies for state contracts. [LB372]

SENATOR MURANTE: Do you support that? [LB372]

SENATOR MELLO: I think it's up to each individual state. It's not for me to determine whether or not the state of Iowa's House of Representatives and State Senate makes a determination of what's good for their own state. I'm simply stating that it's an issue that we explored after last year's buy American bill where there's a significant number of Nebraska businesses that would prefer to see this Legislature consider preferences for state contracts to Nebraska-based companies. So whether or not Iowa chooses to do that, that's simply left to Iowa. I do know Wyoming has a similar in-state preference for Wyoming-based companies. I understand that there's always concern to some extent in regards to whether or not different states had different preference or bidder preferences, which is up for...that's a policy debate that I know this committee...we had last year on the buy American bill and I expect that we would have that similar dialogue this year in regards to giving in-state preference to Nebraska businesses. [LB372]

SENATOR MURANTE: That's really the public policy question. I mean, obviously, we don't have any control over what the Iowa Legislature and South Dakota Legislature does, but we do understand that our actions have consequences. And what we're talking about here is a public policy issue and each one of the 50 states could determine just as we are doing right now or have the opportunity to do right now, that this is the right public policy direction to go in. I'm wondering if that, as a matter of principle, is the right way to proceed notwithstanding whatever Iowa or Governor Daniels has done. [LB372]

SENATOR MELLO: I think that's, once again, I think that's a public policy issue that we have, I think, the unique opportunity as 49 senators to debate. We are obviously starting the process through the introduction of LB372 but as I said in my opening, there are 49 states with current, some form of resident bidder preferences now. There's 35 states that have some kind of preference given to businesses if there's a tie with a company from out of state. And there's a handful of other states that already have not only in-state preferences like what we have in LB372, but they go a step further in regards to narrowing those preferences down to those who employ people who are visually impaired as well as those who are veteran-owned businesses. So the policy debate itself has obviously happened across the country in regards to finding ways to keep more state tax dollars in their state, recycled through the state economy through providing contracts to state-based companies. I think Senator Scheer's question which is probably one of the bigger questions of the policy is, what defines a Nebraska-based company? And ultimately, it was part of the interim study that Senator Avery and his

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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committee had in the fall in regards to defining ultimately our current resident statute whereas it essentially has never been utilized. The way the Department of Administrative Services carries out the policy, it's never enacted. So I think that was part of the learning process for myself, I think, and this committee in the fall is realizing that preferences we have on the books now are not utilized. And ultimately, the way they're interpreted and the way they're being implemented through the executive branch are essentially so that anybody...there is no preferences, which is ultimately up to the decision of the executive branch to be able to do. I think that's why the policy discussion we're having here with LB372 is not just the buy Nebraska preference, but also eliminating our current preferences so that we have, I think, a good, solid, one preference, that it's not a piecemeal approach. And hopefully it's very clear in regards to how it's supposed to be implemented through the executive branch. [LB372]

SENATOR MURANTE: So if a number of states have the tie-goes-to-the-home-company rule, how many states do it this way? Do it the way you have proposed? [LB372]

SENATOR MELLO: I can give you that information, and I believe we have a report or we did provide a report of that to the committee back in the interim study. I'll double-check. I want to believe it was 12 states have a in-state preference for businesses. I want to be...I'll tell you up-front, I could be wrong. I have a number in my head of thinking it's either 7 or 12. So one way or the other, I can get you that information to the report we handed out to the committee in the fall. [LB372]

SENATOR MURANTE: Okay. I look forward to seeing that. Thank you. [LB372]

SENATOR AVERY: Let me revisit a conversation I had with a previous testifier. You're familiar with comparative advantage? If you and I both produce a product and I can produce my product better than you, cheaper than you, and you can produce your product better and cheaper, doesn't it make sense that I buy from you and you buy from me and that both of us prosper rather than have me try to continue to produce a product that may not be very competitive? You would continue to produce that product that's not very competitive. You can't find buyers and I can't find buyers. Buy from me, I buy from you, and then everybody does better. And let's say Nebraska can produce some things much more cheaply and a much better product at a better price than the state of Iowa. Then Iowa should buy those products from us and we should buy what they do better than us from them, and we all rise together. Why don't you accept that? [LB372]

SENATOR MELLO: Part of that, Senator Avery, I think and to some extent is, in an academic sense, that may work but the reality is this: We know state contracts in Nebraska are not renewed or opened up, let for bid every time in which that bid is supposed to end. It's actually, I think, another policy issue that this committee should consider in regards to investigating a little bit further in regards to the number of state

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

contracts that are simply extended and not reopened for bid to make that fair argument you just made in the sense of finding the lowest-cost bidder, so to speak. The other component, I think, to some...and this is a misconception and it's laid out, I think, fairly clear in the report from former Governor Daniels in regards to the procurement process itself. That state Legislature appropriates money to an agency for a contract. Ultimately that contract may be \$200,000. They get two bids. They get a bid from a company in New York for \$180,000 and a company in Nebraska for \$182,000. Ultimately, if you'd interpret both bids, ultimately both fall within the budget so ultimately the state is going to ultimately save money still in regards to the budgeted amount for that contract. The question that the in-state bidder preference considers is what's the economic impact to the state's economy through that contract? I don't disagree that we live within a globalized society, and you and I have had multiple conversations I think in the sense of finding, I think, a balance between fair and free trade. But the underlying issue is, what's the economic impact from that \$180,000 contract in comparison to that \$182,000 contract when both contracts are well below the appropriated, budgeted amount for that state agency's contract? It would make sense that we could keep that \$182,000 in Nebraska instead of sending \$180,000 outside of Nebraska and still save taxpayers' money. It's the general understanding, I think, of state procurement that makes everyone believe that costs are going to go up because we're going to give a preference to somebody. Costs are budgeted by that agency. The agency can't spend more than \$200,000 for the contract. They're going to try to get a contract the best deal they can get, but they know they have that much allocated, budgeted for that project. That's, I think, the underlying misconception of bidder preferences and state procurement is that it's always going to cost more money to give preference to someone else when, in fact, it only gives them preference if they're still within the budgeted amount on which the state agency was going to spend on the contract anyway. I think these are very modest...much more modest proposals than was presented last year in the buy American bill, which I believe last year was a 10 percent bidder preference where for contracts over \$1 million a 1 percent bidder preference is literally exactly to that example I gave in my testimony. What we heard last year is a company based in Omaha that lost thousands of dollars worth of contracts of data entry by \$20 where ultimately that agency felt they had to take the lowest bid contract regardless of the economic impact that additional \$20 would have made in Nebraska. So I understand the theory because, as we've discussed this before and classes I've taken from you when we were both at the University of Nebraska-Lincoln together, I understand the trade policy arguments. I understand the global economic arguments of why not go for the lowest produced-cost products since that, in theory, will save money on both ends and it provides more competition? I think the reality, as we know, is that government doesn't work that way. Ultimately we know procurement processes don't work that way. And if we're still trying to save taxpayers more money, ultimately saving them more money and growing our economy at the same time, I don't think is something that are opposing values, so to speak, or opposing objectives that ultimately I think LB372 tries to bring those objectives more in line with one another. [LB372]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR AVERY: As I remember, you were an A student. I wonder if you've forgotten everything you learned. Let me ask you a serious question. How did you establish or calculate these margins for preferences? [LB372]

SENATOR MELLO: We...Senator Avery, we...the research that we had done from last year's bill in front of this committee to the interim study that was held back in December was looking at other states' preferences and programs that looked to cut across any kind of ideological or partisan perspective. And ultimately, senator or former Governor Mitch Daniels...former Republican Governor Mitch Daniels ultimately had established the most recent in-state bidder preference that was...that tracked the results that they had. And they ultimately set out benchmarks in regards to what they were trying to achieve. They wanted to try to achieve 90 cents out of every dollar would go to an Indiana-based company. And what Iowa and other states have done, it seemed that was a very, I think, it was a very articulate and a very, I think, performance-based process in which the state of Indiana embarked on to try to make sure that they were trying to save taxpayers' money but also in the same vein trying to direct their existing state contracts to state businesses if and when it's applicable. We used that model and the exact numbers that they used in Indiana in this piece of legislation. [LB372]

SENATOR AVERY: It's much better than it was last year but I still wonder how you can...how do you know that a 5 percent, say, on a purchase less than \$5,000, is going to be enough to get the contract without actually costing the state more money than if they bought, say, from Indiana? [LB372]

SENATOR MELLO: I would argue ultimately that the contract...I think the process itself lays out that if the contract with the preference...the preference lowers, essentially, their contract amount as at the end of the day. And Indiana...the report we gave you actually is a pretty good diagram of how the contract process works in the sense of the \$182,000 contract from the Nebraska company, the \$180,000 from the Indiana company, and the \$200,000 that was appropriated and budgeted for the contract. Both entities are below the appropriated budgeted amount on the contract. If you take that 5 percent that would ultimately go in regards to that \$182,000 contract, that company actually falls below the \$180,000 contract and would get the award. But it's...once again, we try to base it off what Indiana did, in part, because of their results. They saw a 24 percent increase over a two-year period of Indiana state tax dollars going to Indiana state businesses to a tune of \$1 billion that was recycled back into the Indiana economy. Those were probably the most clearest performance goals and results that we saw in regards to any preference...state contract preferences given. And they seemed to be fairly...I think they're fairly persuasive in a sense of with a state like Nebraska that spends \$2 billion a year on state contracts, where we could possibly see...you know, if we had an 84 percent that the state of Indiana had, that would be recycling--give or take--almost...it would be pretty close to recycling \$1.75 billion back

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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into the Nebraska economy on an annual basis where right now, as you heard from my previous piece of legislation, we don't even know how much is going to Nebraska companies let alone how much is being recycled back into the Nebraska economy. [LB372]

SENATOR AVERY: Well, I'm not going to continue this anymore. Senator Karpisek. [LB372]

SENATOR KARPISEK: Thank you, Senator Avery. And I shouldn't do this, but...so, Senator Mello, just thinking, is there a way that we could figure out, okay, the percentagewise, that company is going to pay income tax. They're going to...assuming we're going to keep income tax--ha-ha, okay, yeah--and then their workers are going to pay income tax. I mean, somewhere in there, there has to be a thought, well, the state money is going to go to in-state and then it's going to come right back to us. [LB372]

SENATOR MELLO: Yes. [LB372]

SENATOR KARPISEK: And there's got to be a percentage. [LB372]

SENATOR MELLO: That's...you know, that's a great question, Senator Karpisek. And that, ultimately, is the research we're still trying to find and what other states have done and what other research is out because it's that process and that model of why you give a preference to an in-state company because you know their in-state employees are paying taxes that gets recycled back into the state government through incoming sales taxes. We're trying to find more research available to, I think, make that complete economic argument beyond that report that you see from the state of Indiana, which I think is a good report. But I think exactly your question, I think, holds the key to why I personally...I feel and think that in-state preferences work economically. But I think Senator Avery's questions...my hope would be...that's the information we're still trying to find an answer to Senator Avery's main question in regards to why not simply go whoever can provide this service at the lowest cost because it provides more competition and ultimately it lowers the cost for everybody involved, where we know the way our economies are based, the way our state tax collections are situated, you have to incorporate, I think, that into the argument to that model. And, once again, we're looking for that information. [LB372]

SENATOR KARPISEK: Well, and I'm probably pretty famous for thinking things pretty elementary but I break it down to, if you have a brother that's selling suits or somebody else that's selling suits and they're the same price, are you going to buy it from your brother or not--for no apparent reason other than it's going to help him and that if it falls apart, you can yell at him? But I don't want to get into it. And Senator Avery and I have discussed this over the years and we're not going to agree. But anyway, thank you. It's an interesting topic, especially for a Friday afternoon. Thank you, Senator Mello.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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[LB372]

SENATOR MELLO: Thank you, Senator Karpisek. [LB372]

SENATOR AVERY: I don't see any more questions. Thank you. We will now accept proponent testimony on LB372. Proponent testimony. [LB372]

SENATOR KARPISEK: I guess he didn't schedule this, though, did he? [LB372]

DON WESELY: Good afternoon, Chairman Avery... [LB372]

SENATOR AVERY: Welcome. [LB372]

DON WESELY: ...members of the Government, Military and Veterans Affairs Committee. My name is Don Wesely, registered lobbyist for Blue Cross Blue Shield of Nebraska, and I'm here to testify in support of LB372, the Buy Nebraska Act. For 75 years Blue Cross... [LB372]

SENATOR AVERY: You want to spell your name for us, Mayor? [LB372]

DON WESELY: W-e-s-e-l-y. Thank you. For 75 years, Blue Cross Blue Shield of Nebraska has been a trusted partner for Nebraskans seeking quality healthcare. As the state's largest insurer and the only major health insurance carrier based here in Nebraska, Blue Cross is proud to cover more than 600,000 Nebraskans. One of every three people in Nebraska carries a Blue Cross Blue Shield of Nebraska card and enjoys unparalleled access to doctors and hospitals across the state. Blue Cross and Blue Shield of Nebraska continually develops strong working relationships with providers across Nebraska opening doors for our members to 93 percent of physicians and 100 percent of nongovernmental, acute-care hospitals in the state. Nebraskans have grown to trust and count on Blue Cross Blue Shield for their healthcare financing. Blue Cross and Blue Shield of Nebraska requested the Omaha Chamber to perform an annual economic impact analysis of Blue Cross Blue Shield of Nebraska on the Omaha metropolitan statistical area. That study was performed by the Chamber...Omaha Chamber economist, Scott Strain, in December of 2010, so we're talking about a study that's a little over two years ago. Summarizing that study indicated that annual tax revenue generated by the workers both of Blue Cross Blue Shield and then the spillover activities, including additional business-to-business spending and household spending, was a total of \$12.8 million. So the annual tax revenue from Blue Cross Blue Shield was \$12.8 million. The analyst modified the model to account for the \$57,000 average wage provided by Blue Cross Blue Shield, and the results show that the net value-added impact to the Omaha economy by Blue Cross Blue Shield's presence there is \$296.6 million. So basically, Blue Cross's economic impact is almost \$300 million on an annual basis. Additionally, the study concluded that each worker at Blue Cross Blue Shield

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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supports the activities of an additional 1.6 workers in the regional economy, and because we have 1,200 employees here in Nebraska, our spending power in the state employs another 1,920 people in the state who would not have jobs if we were not spending our money in Nebraska. Nebraska-based businesses like Blue Cross Blue Shield of Nebraska are committed to the betterment of Nebraska through creating a positive economic impact and by being a productive and supportive corporate citizen. LB372 is a vehicle to offer Nebraska-based businesses an advantage in contracting in order to keep business, jobs, revenue, and citizens in our great state. Thank you for the opportunity to provide you with information on Blue Cross Blue Shield's economic impact on Omaha and Nebraska, and we ask you to advance LB372 to the legislative floor. I would like to follow up on Senator Scheer's question. And Senator Scheer, while you were asking the question--it was a very important question--on page 2 of the bill, it talks about what criteria it takes to qualify as a Nebraska business. And it's got that set of criteria but it doesn't say "and" at the end, it says "or," so any one of those criteria would qualify. And the one criteria you did identify was substantial positive economic impact on the state of Nebraska. And then it goes on following to talk about how that will be determined. But I can't see how Nucor or any other business of that size or impact wouldn't qualify as a company that would qualify under this act and not...and would, actually, have an advantage under it. So...and then Senator Murante had a question about neighboring state, Iowa, and that's on page 4. It talks about--on lines 24 and 25 and then on to the next page, 1 and 2...lines 1 and 2--it talks about neighboring state, bordering states. If they don't have a preference greater than our preference, then the preferences don't apply. So that in Iowa, if they didn't have a preference greater than ours, then there would be no preference. So for border states we, I think, adjust to that. And then for Senator Avery's question, and it's the fundamental one, you know--the free market and it's pretty hard to answer that--but I will say that on the arena project here in Lincoln, as you know, voters voted for that approval. But then they also were hopeful that even though the contract went to an out-of-state company overall as the general contractor, as many jobs and subcontractors would be Nebraskans. And so people, you know, they...there's a fine line here. But there is a desire to try and make sure when tax dollars are spent, as much as you can, make it benefit as many Nebraskans as possible. So... [LB372]

SENATOR AVERY: Thank you. [LB372]

DON WESELY: Uh-huh. [LB372]

SENATOR AVERY: Let me ask you about the arena because that seems to be a good way to get our arms around this because it's local. But was the preference for hiring local, was that required by the GPA or was it suggested, in a contract, recommended? As I recall, I don't remember it being a requirement. And there certainly was not a percentage put on it. [LB372]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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DON WESELY: No. I don't recall that it was a requirement. I think it was a goal. [LB372]

SENATOR AVERY: Yeah. But we're talking about requirements here. [LB372]

DON WESELY: Uh-huh. [LB372]

SENATOR AVERY: Questions from the committee? Well, you know how to talk...you know a lot about the subject of procurement... [LB372]

DON WESELY: Yes. [LB372]

SENATOR AVERY: ...since you've been in this place and over there and at the mall too. [LB372]

DON WESELY: Yes. [LB372]

SENATOR AVERY: So we appreciate your testimony. [LB372]

DON WESELY: Thank you. [LB372]

SENATOR AVERY: Still on proponent testimony. Welcome back, sir. [LB372]

KEN MASS: Long time no see. Mr. Avery, Senator Avery and members of the committee, my name is Ken, K-e-n, Mass, M-a-s-s, representing Nebraska AFL-CIO and here today in support of LB372. I think it's been discussed enough, and we thank Senator Mello for bringing the bill forward. The thing that needs to remember is it seems like a lot of people get themselves in the position we have to take the low bid. The low bid is necessary and that's what we've got to do. Everybody that goes after contracts ought to get in their mind low qualified. And low qualified would take care of a lot of contractors in Nebraska and employers in Nebraska. Another thing is we have last couple of days talking about several different things on dealing with taxes, income tax, that kind of thing. And I want to make clear, Nebraska AFL-CIO supports economic development. In Nebraska, it's neat to have economic development, to have new contractors and employers come to Nebraska. But Nebraska has to remember, let's don't forget about the good old boys who have been here in Nebraska, employers for many, many years that haven't come to the water trough and looked for assistance. They just want to do business in Nebraska and they employ good, qualified Nebraskans. With that, I'd ask if there are any questions. [LB372]

SENATOR AVERY: Well, would you be amenable to language that said the lowest qualified bid? [LB372]

KEN MASS: Within Nebraska, yes. [LB372]



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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR AVERY: Lowest qualified Nebraska bidder. I got it. Thank you. Thank you. All right. Additional proponent testimony? Mr. Cole, right? [LB372]

BREC WILSHUSEN: Mr. Wilshusen. Brec Wilshusen, B-r-e-c W-i-l-s-h-u-s-e-n. Members of the committee, Senator Avery, I want to thank you for the opportunity to rise in favor of this bill. As you mentioned in the previous discussion, I do believe that these two bills do go hand in glove. I'm not sure which one is the hand, which one is the glove. But I will say that as we...as in representing the Veterans in Business Forum, we look at the data that we've seen so far, that four-fifths of the contracts go out of state. But then we don't know if that's the prime or the subs because we cannot decipher that level of information. So the...as I look across the information here as was written in the bill, the level of information required for...excuse me--without going back to the transparency bill--the Buy Nebraska Act, if we knew that state contractors were also provided, as in the case of the arena, it does alleviate a lot of the angst and stress. But the root cause here, this bill is a very good replacement for the existing policy of where the other procurement officers have to know what the other states require as far as any punitive measures when our bids are let and opened. And so this bill allows the...for a direct, controlled application of our rules as opposed to the...what other states apply. And I will yield the balance of my time to the gentleman from Lincoln. [LB372]

SENATOR AVERY: Thank you. Hold on, you might have questions. Don't see any. Thank you. [LB372]

BREC WILSHUSEN: Thank you. [LB372]

SENATOR AVERY: Any other opponent...proponent testimony? Sorry. Have a seat. [LB372]

STEVEN WOLF: Good afternoon again, Senator Avery and Senators. Steve Wolf from Omaha, Nebraska. I'm a small business owner with my business being incorporated here in the state of Nebraska. The Buy Nebraska Act provides a sound and consistent approach to the stated goals of the Nebraska Department of Economic Development and the Nebraska Business Development Center. It's often not enough to draw new business investments into the state as much as it might also be a benefit that our state government procurements reflect the benefit of keeping in-state dollars circulating through our local economy for business growth and increased revenues to our government rather than those funds flooding out of the state. And as I had mentioned earlier in the other bill, when we looked at the DAS Web site last year they indicated that 80 percent of their procurements were going to out-of-state businesses. Both government and private business measures the tumbling effect of a dollar spent in the local economy. The provisions of LB372 provide an appropriate starting point and a reasonable formula for ensuring that state government procurement represents the best

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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overall value and greatest good for the people of this state. Rhetorically speaking, do the people of Nebraska actually save money or have an improved economy for all to better prosper if the lowest bids or other bids go out of state? Again, I say that the measures in the Buy Nebraska Act provide appropriate and reasonable formulas to better circulate and discern the most beneficial state procurement decision for the citizens and the businesses of this state. Other states use similar methodologies in their procurement and their decisions, and I think it's time for Nebraska to level that playing field. As I mentioned earlier, I not only do business in Nebraska with the state government, but I'm also registered with 13 other states. And I have to compete with provisions that are, in fact, probably a little more harsh than--I would even suggest what here is harsh--but that I have one hand tied behind my back when I go in, and sometimes I win, sometimes I don't. But I know that going in. And I honestly don't feel that inhibits free trade in any regard. I think there's a significant difference in this discussion in regard to what is free trade in the private sector and whether somebody--Wyoming--wants to sell something to a business here versus a government procurement scenario. So I think we're talking about economics under a broad umbrella, but I think state procurement and free market enterprise in the private sector aren't exactly the same discussion. But anyway, I think I would ask you to...I certainly support this and I ask you to favorably consider this bill. Maybe it needs a little more work in the formula threshold of what constitutes the trigger for the state. But, you know, we want to be able to compete, but we also want to do it in a way that benefits all Nebraskans and helps to sustain our...I think it's a more sustainable approach that government has a procurement methodology that actually kind of perpetuates its existence to a certain degree. Thank you. [LB372]

SENATOR AVERY: Don't you think that the \$20 example Senator Mello gave us might be an extreme one? [LB372]

STEVEN WOLF: No. Quite frankly, I see stuff like that all the time. [LB372]

SENATOR AVERY: Just a few dollars determined the awarding of the bid? [LB372]

STEVEN WOLF: I've seen, you know, a couple thousand. Now depending on the size of the procurement, maybe that's not a big deal and then ultimately the taxpayer has saved. I know I've beat my competition by that amount, and I'm sure in that given state they're going, what the heck just happened here? And that's the way it goes, and I choose to, you know, my free-market approach is I go in there and I mix it up with them. You know, I don't know if that's the best advantage for their state. And I've lost contracts on things like that as well. So I think that's just part of the playing field, and at the end of the day, while I...you know, I'm a net gainer for my state. You know, I bring in federal contracts, I bring in other state contracts. And I think this bill, quite frankly, it really creates a win-win for Nebraska through and through. If the state company doesn't get the contract, then you probably gave it to a lower bidder and you saved some money

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 08, 2013

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there. But because of this measure and depending on the threshold of what triggers that, you know, tie breaker or whatever you want to call that, that decision to go to Nebraska first, that's still a net gainer for Nebraska because you're keeping that money tumbling in this economy. [LB372]

SENATOR AVERY: Does it bother you at all or do you worry that if we were to adopt this legislation, that the other 12 states where you do business--you're in 13 states, I presume you're counting Nebraska--the other 12 states might say, wait a minute now. This guy is bidding on a contract here in Kentucky, and they just passed legislation in Nebraska that says they're going to give preferences to him in Nebraska. And then here we are in Kentucky being asked to sign a contract with him, and we're not giving any preferences. So maybe we ought to start doing that. If he wants to compete on a level playing field, why don't we do the same thing Nebraska is doing and apply it to his business? [LB372]

STEVEN WOLF: Right. Well, you know as I mentioned, that's in fact the reality I deal with now in some of those 12 states. And again, some of them have more state-favorable requirements in their procurements than what's being proposed in this bill that Senator Mello put forward, so I can choose not to try to do business in those states. But I think sometimes, too, the fact that, you know, we are a cost-effective place for me to own my business, I can get a competitive advantage over, you know, states on the East Coast; North Carolina, for example, one of the places we do business. I can usually whip them on price because I have lower overhead operating out of Nebraska. Other days, I lose it, it just depends on the circumstances. I honestly, Senator--and I'm a free-market warrior, I think, like you are--and again, I see a distinct difference between--you know, and I do business in the private sector. I'm not just 100 percent government contracts--I don't have a problem with this. And I think it will, in fact, level the playing field because the senator did cite references to roughly 38 other states already have varying degrees of something like this on the books. So I honestly feel...you know, quite frankly, I'd like to maybe spend a little bit more time doing business here in Nebraska than living out of a bag doing stuff in North Carolina, although the leaves look beautiful in the fall in the mountains there. But outside of that, I'd really like to see, you know, this be more pro Nebraska. [LB372]

SENATOR AVERY: Any questions? Senator Karpisek. [LB372]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Avery probably has some property there so maybe he could put you up. [LB372]

STEVEN WOLF: Well, if that gives me a cost advantage on my bid, I'd love to work a deal with you. [LB372]

SENATOR KARPISEK: There you go. [LB372]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR AVERY: Thank you, Mr. Wolf. We appreciate your testimony. [LB372]

STEVEN WOLF: Thank you, Senator. Thank you. [LB372]

SENATOR AVERY: Any other proponent testimony? No more proponents. All right. We'll now accept opponent testimony. Welcome, sir. [LB372]

BRUCE KEVIL: (Exhibit 2) Thank you. I'm Bruce Kevil, B-r-u-c-e K-e-v-i-l, representing Associated Builders and Contractors, the Nebraska Chapter. Senator Avery and members of the Government and Military Affairs, we're going to be brief. The Cornhusker Chapter of the Associated Builders and Contractors opposes LB372. We believe it's incumbent on all branches of government to be responsible stewards of taxpayers' dollars and they should award contracts only to the lowest responsible bidder. Using preferences to favor one group over another only serves to distort the principles of free enterprise and free markets. As is pointed out in the fiscal note, starting such a regime could be very expensive to the Nebraska taxpayers. We ask the committee not to go down this road of preferences and to not report the bill out. [LB372]

SENATOR AVERY: Thank you very much, sir. Any questions from the committee? I think we're getting worn down. [LB372]

BRUCE KEVIL: I'm trying to help you. [LB372]

SENATOR AVERY: Additional opponent testimony? Welcome, sir. [LB372]

JAMES OVERCASH: Good afternoon, Mr. Chairman, Senators. My name is James Overcash, J-a-m-e-s O-v-e-r-c-a-s-h. I'm an attorney that's been involved in the construction industry for more than 20 years. I'm here today on behalf of the Associated General Contractors Building Chapter to testify in opposition to LB372. First, I want to say that I think the members of our organization, the AGC Building Chapter, are some of the best in the industry and have historically worked with the Legislature on legislation that affects all Nebraskans, especially construction in Nebraska. Additionally, the Building Chapter appreciates your time and, frankly, Senator Mello's time and his efforts to improve the business environment for Nebraska employers and employees. Although we don't believe it's intended, we believe that LB372 will be detrimental to the construction industry because of the creation of preference and the additional administrative burdens. Currently, other states around the country have--and there's been some talk of them--mirroring statutes. Locally, just for your information, Missouri, Iowa, South Dakota, Colorado, and Kansas have mirroring statutes like Nebraska's. That being, if we create a preference, they would create, in effect automatically, a preference like our statute currently works. The Building Chapter's concerns about LB372 are as follows: first, LB372 creating a building preference...a bidding preference

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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we think hampers our work in other states. Lots of contractors in Nebraska go to other states to do work, especially states that are close to us. We believe that Nebraska companies, based upon the quality of their employees, have a built-in competitive advantage in performing work in other states. This advantage would be undermined by having to overcome the application of a preference. Now in this statute, there is a provision regarding neighboring states. But we think once you go down the road of preferences, it will cause a reaction from other states, in effect, of build up against each other. We don't believe we should go down that road. Second, we believe LB372 may discriminate against companies and employees that work for companies that are good Nebraska citizens, but because of a larger operation in a different state may not qualify as a Nebraska business. We don't believe that these businesses should be penalized. Third, the Building Chapter believes that the development of standards that attempt to define who is a Nebraska-based business will be difficult and ultimately will lead to companies from other states taking steps to comply with the letter of the law but with not the spirit of the law or regulation. An example is, a company may set up a separate Nebraska subsidiary to comply with the law, but the general facts of what's going on haven't changed. Finally, the Building Chapter believes that the work to demonstrate that a current Nebraska business may comply with what the ultimate requirements are of LB372 will lead to additional administrative burden and overhead to those Nebraska companies' operations. Finally, thank you for your consideration of our comments regarding LB372. The Building Chapter looks forward to continuing to work with senators regarding legislation this session. I'd be happy to answer any questions you may have for me. [LB372]

SENATOR AVERY: Thank you, Mr. Overcash. Senator Bloomfield has a question. [LB372]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Mr. Overcash, would you repeat those states that have the mirror agreements? [LB372]

JAMES OVERCASH: What I gave you, Senator, were all the states that border Nebraska except for Wyoming... [LB372]

SENATOR BLOOMFIELD: Okay. [LB372]

JAMES OVERCASH: ...has a mirror requirement. [LB372]

SENATOR BLOOMFIELD: Okay. Thank you. [LB372]

JAMES OVERCASH: So anything that touches Nebraska has a mirror statute. So, in effect, you've got sort of a zone with all those states that nothing is going on because it currently all mirrors...currently...there's talk about a legislative bill in Iowa. Currently, Iowa is just a mirroring statute similar for Nebraska. Only one caveat I would give to

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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you, Senator, is I'm also talking today about construction. There may be a different type of preference statute for someone who buys--the only examples that comes to mind is office products because there was a paperclip discussion earlier--but I'm not sure about those issues in terms of paperclips or something else. [LB372]

SENATOR BLOOMFIELD: Okay. Thank you. [LB372]

SENATOR AVERY: I don't see any more. Thank you, sir. [LB372]

JAMES OVERCASH: Thank you. [LB372]

SENATOR AVERY: We are still on opponent testimony. Welcome back, sir. [LB372]

BO BOTELHO: Thank you, Senator. Good afternoon, Senator Avery and members of the committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o, general counsel of Administrative Services. I'm here today to provide testimony in opposition to LB372. This bill creates a buy Nebraska preference and sets forth a price-scale preference for Nebraska businesses and outlines at least two preference models to be applied to the purchasing of goods and services as well as allow the application of either model to any bid, depending on which is the most advantageous to Nebraska businesses. DAS generally opposes any bidding preference due to the fact that they limit competition, drive up costs to the taxpayers, disrupt market conditions that potentially impede Nebraska companies doing business in other states. Our agency view is that we operate in a global marketplace and that a fair and open competition is good for the taxpayer. The two preference models establish point preferences and price preferences, create and encourage situations where one Nebraska business could receive a greater preference than another Nebraska business, allow for the models to be applied differently based on out-of-state bidder states' proximity to Nebraska, require agencies to evaluate the impact of both Nebraska models and any applicable out-of-state preference for Nebraska business prior to awarding any contract. The bill is complex, so it could create confusion among vendors as to what the applicable preference would be in any given situation. The state would have no way of knowing how to apply the preference or which preference would be applied until each preference system, including any applicable out-of-state system, is applied in every award situation. The bill does not increase transparency. It only further complicates the awarding of contracts and could hamper more than help Nebraska businesses as well as deter any out-of-state businesses trying to do business with the state of Nebraska. Thank you, and I'd be happy to answer any questions I can. [LB372]

SENATOR AVERY: Thank you, sir. Questions from the committee? Don't see any. Thank you. [LB372]

BO BOTELHO: Thank you, Senator. [LB372]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR AVERY: We're still on opponent testimony to LB372. Let me see a show of hands of others who wish to testify. Just one? Okay. Welcome back, sir. [LB372]

RANDY PETERS: (Exhibit 3) Good afternoon again, Senator Avery, members of the committee. I'm going to abbreviate my testimony as a courtesy to the committee. [LB372]

SENATOR AVERY: You're Mr. Peters? [LB372]

RANDY PETERS: I am Randy Peters, R-a-n-d-y P-e-t-e-r-s, director and state engineer for the Nebraska Department of Roads, and I'm here to testify in opposition to LB372. I've handed out my testimony. I'd would just like to bring forward something that hasn't been discussed before this. I'd like to point out that the NDOR already follows Buy America's standard for certain construction materials. Existing federal law has Buy America requirements for all federally funded highway and bridge projects for iron and steel materials that are permanently incorporated into Nebraska's roads, bridges, and appurtenances. I want to emphasize that the Department of Roads utilizes the federal Buy America requirements on all highway projects, including state-funded projects. And furthermore, federal regulations prohibit the use of a price differential or other procedures for articles and materials produced within the state on federal aid highway projects. The citation is 23 CFR 635.409. Having said that, LB372 would not impact either our Buy America process or our no-price-differential policy because the NDOR is solely responsible for highway contracting, not DAS. Thank you for the opportunity to testify. I'd be happy to answer any questions. [LB372]

SENATOR AVERY: Thank you, Mr. Peters. Questions? Thank you. Don't see any. [LB372]

CURTIS SMITH: Trying to be more efficient here for you. [LB372]

SENATOR AVERY: Good, Mr. Smith. Welcome. [LB372]

CURTIS SMITH: Thank you. Senator Avery, members of the committee, my name is Curtis Smith, C-u-r-t-i-s S-m-i-t-h, I'm the executive director of the Nebraska Chapter of Associated General Contractors. I would say, first of all, we would echo Mr. Overcash's comments regarding when he brought forward in regard to the Building Chapter. We're the horizontal highway guys. Our people also work with many states outside, and we think that it is the...we believe that the public is best served by an open and transparent bid process on a level playing field, no preferences in place. That would conclude my testimony. [LB372]

SENATOR AVERY: You have a consistent policy of opposing preferences, don't you?

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Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 08, 2013

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[LB372]

CURTIS SMITH: Beg pardon? [LB372]

SENATOR AVERY: Your organization has a consistent policy of opposing preferences. You were here the other day giving similar testimony. Yes. [LB372]

CURTIS SMITH: We do, yes. We...you've noticed that since last Friday. Yes. Oh, yeah. [LB372]

SENATOR AVERY: Yes. I just want to get that on the record. I don't see any questions. Thank you, Mr. Smith. [LB372]

CURTIS SMITH: Thank you. [LB372]

SENATOR AVERY: Any other opponent testimony? Still on LB372. Don't see any. Any neutral testimony? You don't produce neutral testimony, Senator. [LB372]

SENATOR MELLO: Not in this committee at least. [LB372]

SENATOR AVERY: So please go. [LB372]

SENATOR MELLO: I'll be brief. Thank you, Senator Avery and members of the Government, Military and Veterans Affairs Committee for, I think, a very spirited dialogue this afternoon. I would point out one aspect of the fiscal note was mentioned, I believe, by one of the testifiers in opposition. And part of, I think, of the conversation it's, to some extent, Senator Murante, who is not here right now, asked a question on the previous bill. And I'd take you to page 2 of the fiscal note on this piece of legislation where it says the Department of Administrative Services has calculated the bill's price preferences as if they were applied to the contracts the State Purchasing Bureau has processed on behalf of state agencies. The total dollar figure they estimate is \$24,871,890. The concern, obviously, I have raised in front of this committee prior to these bills today--actually, every year I think I've had a bill in this committee, I've raised the concerns in regards to the overestimation from the Department of Administrative Services on their fiscal notes--our Legislative Fiscal Office clarified what they provided ultimately on this bill. At the end of that paragraph, our Legislative Fiscal Office says, "Clearly not every contract will be fulfilled with a Nebraska business. A portion of that total will be qualifying businesses, but not all of them." Ultimately, it's just more of a point of clarification in the sense of ensuring that when we see numbers on fiscal notes from agencies--and in this case, from the Department of Administrative Services--that essentially estimated that every single state contract will go to a Nebraska business, thus will raise the cost of every contract even though--as I provided the committee and some others provided some research--it shows that it wouldn't cost the state any more



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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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money than what the state had budgeted for that contract, shows the concern sometimes that we get from state agencies who at times I feel have the tendency to take maybe political positions on pieces of legislation through their fiscal notes. And why it's wise for all of us, myself included, to constantly communicate with our Legislative Fiscal Office in regards to seeing what information they provide, ultimately what information they research. And in this case, our Fiscal Office said that DAS ultimately is incorrect. Not every contract will go to Nebraska businesses, and their estimated \$24 million cost is overinflated. So with that, I'd be happy to take any questions you may have. [LB372]

SENATOR AVERY: Thank you, Senator Mello. I don't see any questions. [LB372]

SENATOR MELLO: Thank you. [LB372]

SENATOR AVERY: Is that your closing? [LB372]

SENATOR MELLO: That is. [LB372]

SENATOR AVERY: All right. That ends the hearing on LB372. We now will move to LB429, our final bill of the day, and invite Senator Crawford to join us. (See also Exhibits 4, 5.) [LB372]

SENATOR CRAWFORD: (Exhibit 1) Thank you, Senator Avery and members of the committee. [LB429]

SENATOR AVERY: Welcome. [LB429]

SENATOR CRAWFORD: Thank you. Thank you. We've had some great discussions this morning, and I assume this afternoon, about transparency and modernization. And so I'm happy to join in that discussion. My name is Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. There's a quote above the north entrance of the State Capitol which states, "The salvation of the state is watchfulness in the citizens." This bill provides a tool for that all-important watchfulness. The state of Nebraska has at least 3,485 current service contracts in place. Active service contracts within the Department of Administrative Services account for over \$127 million alone. LB429 allows citizens to see how their hard-earned money is spent, who receives contracts, and what contractors are responsible for doing. We have circulated an amendment to LB429, which we bring before the committee after extensive discussions with Treasurer Stenberg, the Department of Administrative Services, the Nebraska Department of Roads, and the Department of Health and Human Services. The amendment requires all state contracts and amendments to those contracts active as of January 1, 2014, be easily accessible and searchable. I appreciate the input of all the departments on the legislation, and

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 08, 2013

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encourage the committee to adopt the amendment. These changes will also significantly reduce the fiscal note, as many concerns raised in the fiscal note are due to the inclusions of subcontracts in the original bill language that's now dropped. We're also in discussions with the State Patrol and the Department of Health and Human Services to ensure confidential information of peace officers and clients contained within contracts remains confidential. I mean, the bill already clarifies that the legislation does not require disclosures of information that is confidential under state or federal law. We're also talking about ways to identify or tag contract classes or contract components so that private information can be excluded without the need to have paralegals reviewing documents as suggested in the fiscal note. The assumption of contract-by-contract screening comprised most of the cost of the high fiscal note for the bill. In 2009, the Legislature adopted the Taxpayer Transparency Act which required the State Treasurer's office to create and maintain a publicly available and searchable Web site. That Web site, [www.NebraskaSpending.gov](http://www.NebraskaSpending.gov) provides information on state tax receipts and expenditures for citizens. Treasurer Stenberg will testify about the Web site and discuss how contracts would enhance the Web site. The Department of Administrative Services' current Web site makes most, if not all, of its contracts available on-line, albeit with a more limited search capacity. So we already have a start on this effort. However, most other state contracts held by departments and agencies are unavailable on-line or difficult to find even though they are no doubt already in electronic format. In many cases, a citizen who wants to see a contract would need a public records request. LB429 would allow citizens to gain direct access to contract information quickly and efficiently, and it also helps government agencies more efficiently respond to public information requests that they receive regarding contracts. LB429, as amended, would require copies of all state contracts active as of January 1, 2014, to be available on-line and organized in a format that's searchable by vendor, agency, department, and dollar amount. It would also create an electronic archive that would allow the Department of Administrative Services to archive contracts as they expire. Each department or agency would provide electronic copies of such contracts to the Department of Administrative Services who will host the information and will link to the [NebraskaSpending](http://www.NebraskaSpending.gov) Web site. I want to spend just a couple of minutes coming back to the fiscal note and amendments to the original bill. The fiscal note assumes coverage of subcontracts which we have withdrawn from the amendment. And there will be startup costs for the Web site and for getting all existing contracts up. However, after that initial start up, the requirement will be just one more step in the contract process. And our discussion with multiple departments indicates that this additional step for new contracts is manageable. So the FTE from the Department of Administrative Services will be very important at the beginning but may not be required after this startup period. Most of the costs in the fiscal note assumes that four paralegals must review contracts for DHHS to redact private information. We are confident that procedures can be adopted that do not require this level of staff and, for example, letters of agreement were raised as a major concern. These are contracts for individuals so there is private information in those contracts. However, in reviewing a sample letter of agreement,

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Government, Military and Veterans Affairs Committee  
February 08, 2013

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there is a clear, identifiable section that identifies the individual. And this section could be eliminated from the bill's requirements and thus protect the identity of the individual. The bill allows...as is amended, allows the Department of Administrative Services to establish policy procedures. So we are confident that we could establish procedures to allow for contracts to be sent to DAS and posted and protect this private information that's of a concern...valid concern to departments. Our amendment also includes the posting of contract amendments. We've had discussions with the Department of Roads about that provision as well. As you can see, we've had numerous conversations with a variety of agencies who will be impacted by this bill. LB429 has created momentum behind this effort and brought these agencies to the table. Now is the time to complete and pass this important legislation. And I thank you for your time on this Friday afternoon, and I would be happy to answer any questions you may have. [LB429]

SENATOR AVERY: Thank you, Senator. Questions from the committee? Those of us who remain are exhausted. [LB429]

SENATOR CRAWFORD: Are exhausted, yes. [LB429]

SENATOR AVERY: Are you going to stay to close? [LB429]

SENATOR CRAWFORD: I will stay to close and answer any questions that are raised by that. Thank you. [LB429]

SENATOR AVERY: The committee will now accept proponent testimony. Welcome, Mr. Treasurer. [LB429]

DON STENBERG: (Exhibit 2) Well, thank you, Mr. Chairman. For the record, my name is Don Stenberg, S-t-e-n-b-e-r-g. And I am the Nebraska State Treasurer, and I appear in support of LB429. It'll take a moment to get set up so I'll just give you a brief overview of my testimony before that's done. And I'm well aware that it's the last bill on Friday, and it's almost five o'clock. So I will be as expeditious as I can and will not anticipate a lot of questions. What I'm going to do first of all, is briefly demonstrate what can be done and what we're already doing with what's called the state's checkbook in [NebraskaSpending.gov](http://NebraskaSpending.gov). And I'm just going to give you a very brief demonstration to kind of show you the search capability of that. Secondly, I'm going to show you what's currently available on-line, and I'm not going to reach out to other agencies that may have but just the DAS Web site that we link to for contract information. And then I've done a bit of an analysis of the fiscal note. And I know quite a bit of time was spent on that subject but I think in view of the numbers that were presented, I think I need to take a few minutes to give my own views on what I think the costs might be. How are we coming in terms of getting ready here? [LB429]

\_\_\_\_\_ : We're almost there. [LB429]

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Government, Military and Veterans Affairs Committee  
February 08, 2013

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DON STENBERG: All right. Well, in the interest of time what I could do is reverse my testimony and talk about the fiscal note first while they're getting this set up. And I do have a handout. And while that's being handed out, I'd like to make a general observation that when it comes to public records that folks...okay, thank you. Do we have [Nebraska.gov](http://Nebraska.gov) up? Why don't you get [Nebraska.gov](http://Nebraska.gov) up for me. When it comes to public records, the public officials know they can't not provide them, so the approach is to simply say, well, Ms. Jones, we'd be happy to provide you with those documents, but that'll be \$3,000, and we need that in advance. And, Senator Avery, I know you've got a bill to deal with that situation. I commend you for doing that. We kind of see the same thing with state agencies. You know, you don't want to be against open records, and you don't want to be against warm puppy dogs, and so on. And so what you do is you send a great big fiscal note about we'd be so happy to do this work but it's so expensive. And so if you now have in front of you the handout, you might want to just follow along with that. And I start with benchmarks. And the first is what did it cost to get [NebraskaSpending.gov](http://NebraskaSpending.gov) started, and this was done by my predecessor as State Treasurer. In 2008 he got a grant from the State Records Board for \$25,000 that got the site up and running; and in 2009, another \$20,000 grant from the Records Board to further enhance it and get some additional capability. We're currently spending about \$25,000, or of that about \$10,000 to \$12,000 each year goes to a contractor who maintains the site and makes the improvements that we ask to have made each year. Another \$12,000 to \$13,000 is staff time and my time, so it's not really an additional cash expense, but if we take some of the staff time, then I would probably value it at \$12,000 to \$13,000. So that's what we spent to get this started, what we spend to keep operating what I'll be showing you soon. The University of Nebraska submitted a fiscal note on this bill and it was zero dollars. And I would like to commend the University of Nebraska in this particular instance for recognizing that this is just part of the cost of doing business, so to speak. You have staff, you have contracts, it's not that hard to take an electronic contract and send it to the Department of Administrative Services. So we have one very large agency that has a large number of contracts that says this will cost them zero. Now the DAS...the next section here is on DAS. And as Senator Crawford noted, but I'll emphasize, part of the cost from DAS is because subcontracts were in the original version of the bill. People under the bill as now written--or under the amendments--subcontracts are excluded, so we're going to eliminate some of that. DAS said that one FTE was needed just for subcontracts so we can cross out the \$64,412. Now the development and annual maintenance--I've had some discussions with Nebraska Interactive or [Nebraska.gov](http://Nebraska.gov). They're under contract with the State Records Board. And I'm optimistic that they will be able to provide both the development and annual maintenance as part of the existing contract without additional expense to DAS. So I would cross those out. Arguably, to get this up and running perhaps one FTE for one year in DAS would be justified. I agree with Senator Crawford that after the first year--and that's because we've got a backlog of contracts to pull in and get up--once this is up and running all you do when you do a contract, when you sign the contract,

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 08, 2013

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you just put it up on the Web site. And so once we have a system up and running, there really shouldn't be any additional expense beyond what [Nebraska.gov](http://Nebraska.gov) could do to maintain the system. Now HHS is the next section down here, and they sent a fiscal note for the first year of \$353,000 and for the second year \$471,000. Now that's a little more than it cost to get the whole Web site up and running. This reminded me of class work I used to do at Harvard Business School when I was given a bunch of numbers and asked to analyze them. So I took the opportunity to do that. They say they need four paralegals and 1.5 FTE staff. Now there's no explanation of what the staff assistants are to do so it's pretty hard to address why they're needed. The four paralegals are supposed to review all these contracts that HHS has and make sure that there's no confidential information disclosed, which is certainly appropriate. But the numbers just don't seem to add up. You've got four paralegals--if you want to follow along here--four paralegals, 2,000 hours at 8,000 hours per year. Now you take 8,000 hours divided by what HHS says is the number of contracts, 2,358, that's 3.4 hours per contract to find confidential information and delete it. If you do it per minute, if you've got a ten-page contract, that's 20 minutes per page. And if you've got a 20-page contract, that's 10 minutes per page to find some confidential information on it. Now I have at the bottom of the page here is what I would suggest is a more efficient approach for Health and Human Services. We've got the 2,358 contracts and at 30 minutes a contract--which I think is very generous having done legal work in the past, I think you could easily review almost any contract if all you're doing is looking for confidential information--so you hire some law clerks at \$20 an hour, 1,179 hours for a total sum of \$23,580. Assuming the lawyers they already have--and when I was the Attorney General, HHS had 12 to 15 lawyers, in that ballpark. I don't know how many they have today but I'll bet there's been no reduction. So they've got quite a few lawyers who could set aside a little time, so we don't even need the law clerks. But that's my view on the fiscal note. [LB429]

SENATOR AVERY: By the way, let me explain to all here that the Treasurer and I had a conversation earlier and agreement that he would not be bound by the light system because of his special need to demonstrate what we now have available. [LB429]

DON STENBERG: All right. This is [NebraskaSpending.gov](http://NebraskaSpending.gov). I think many of you've seen it before. And I'm just going to focus on two things that are kind of relevant. The first is fiscal year expenditures. This is what we call our checkbook, and I'll just show you briefly some of the capabilities. One, you can look for state spending by amount, and I'm going to set a floor for this particular demonstration of \$500,000. Okay, \$5,000...you can select by account, and I will come back and do that. You can choose the payment dates you want to look at. You can choose the payee, and you can choose an agency. And just to demonstrate it, I'm going to go with Department of Roads. These are individual payments, checks actually--we do them electronically but I'm going to call them checks because that's the way I grew up--but so the checks that were written by the Department of Roads of over \$500,000 during the 2011-2012 fiscal year. There are over

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

200 of them, and you can see you get the payment date, who it was to, the amount, you know, \$500,000, \$1.3 million, Department of Roads. And sometimes a little bit of...a very brief description--highway construction--which could be, of course, anywhere or whatever. But at least you have that information available. Now if you just wanted to know how many payments were made, say, to Hawkins Construction Company of that amount, and there are the payments to Hawkins Construction during that fiscal year by the Department of Roads. And so you can get an idea of how much business any particular company might be doing with the state of Nebraska. Now I'm going to clear this...well, no I'll go back to Roads. And let's say you want to look at a particular account, and there's a whole lot of them. And just to look at something, we'll look at board and lodging, let's say over \$100, paid by Department of Roads in the last full fiscal year. And so there are all the...oops, I didn't get the Department of Roads. There they are. There are all the payments the Department of Roads...well, Revenue? Excuse me. I have to clear this...yes. There we go. So there are all the payments, Department of Roads, over \$100 per whatever, and there's 10,450 pages of that. So you can find a lot of information. And I'm just going to do one last demonstration here. [LB429]

SENATOR AVERY: May I ask a question while you're doing that? [LB429]

DON STENBERG: Yes, absolutely. [LB429]

SENATOR AVERY: Was this...this was not entered manually? These...this was all scanned in or what? [LB429]

DON STENBERG: Yes, most of this...early on, some of it was. But we're now to the point where we can pull this in out of the state accounting system. [LB429]

SENATOR AVERY: Okay. Electronically? [LB429]

DON STENBERG: Yes. Yes. So you can also, let's say you want to see how many payments were made to a state employee, and I'm going to use John Munn--because he has been a friend of mine, hopefully still will be--director of Department of Banking, and so you can see the payments that were made to him and paid board and lodging for various things. And there's...and you can do that for any state employee. Now we'll go to...so I just wanted to...I did that to show you the search capabilities that we have there and that I think we should have for state contracts. Now under state contracts, we're still on our NebraskaSpending Web site, and we do have a list of all the contracts--not the contracts themselves--but a listing of the contracts. And you've got a contract number, what agency it is, the dates, who the contract is with, and a very brief description of what's in there. Now we know that Hawkins Construction Company had quite a few payments so we can look and see how many contracts they have here if we're interested in them. Here we go. And so those are the contracts that Hawkins Construction has with the state of Nebraska. You can also on our Web site search by

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

---

agency so that, for example, if you wanted to know all the current contracts that the Legislative Council has, you can go here. And that's current contracts the Legislative Council has. And I'll just note the number here, 53291. Now as it says here, you may search for copies of contracts on the Nebraska Department of Administrative Services' Web site by clicking here. And as I told the committee in December, you can search but you're not going to find much. You can search by contract number which I'm going to do here right now. That number you may remember from the Legislative Council, is 53291. And if you search, it says there are currently no contracts listed for your search. This is very, very common because state agencies generally speaking, are not required to provide copies of their contracts to DAS. There's exceptions to that. We don't need to take the time to go into all that, but generally speaking many agency contracts DAS does not have copies of and so this is what you get here. You can search by category--I'm going to go back and do that in a minute. You can search by vendor name. I will tell you, for that to work you've got to know the exact precise name of the vendor as it is entered by DAS. Coming close won't work. So if it's Hawkins Construction, Inc. in the system and you type Hawkins Construction, you're not going to get it. It's very limited. By your initials is all well and good. Now if you just click "submit query," you get a list of contracts, and some of them have some helpful information. This is movable walls. (Technical difficulties.) [LB429]

SENATOR BLOOMFIELD: This is why I love technology. We all need to carry a tech guy with us to find out what the heck is going on. [LB429]

DON STENBERG: Well, we're not going to be able to do it. I'll just tell you what you would see. On that particular one, it would come up with something that says contract award, which is sort of a summary of the contract. It doesn't have any attachments, it doesn't have a contract itself--if there is one--beyond the bid award. So it's helpful, but not much. But if you click on most of these and if you click on this one and this one and this one, what you will get...I wish one of them would come up. What comes up is a message from DAS that says, this contract is not available on-line. You must contact us to obtain a copy of this contract. And you can go down that list and entry, after entry, after entry that's what you get. [LB429]

SENATOR AVERY: And that's what you showed us this summer. Didn't you show us that this summer? [LB429]

DON STENBERG: I did show you that. [LB429]

SENATOR AVERY: Yeah. [LB429]

DON STENBERG: So I'm sorry I can't show you that, but that's basically...there's not much to see so you didn't miss much. I guess that's the way to put it. [LB429]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR AVERY: So now, how would this bill change that for us? [LB429]

DON STENBERG: Under this bill, number one, every state agency would be required to provide copies of their active contracts to DAS in electronic form, and it would be up to DAS to specify how to do that. And then DAS would be responsible for putting those all on-line with the search capability of dollar amount, vendor, and so on, as specifically spelled out in the bill as Senator Crawford mentioned. So I...it just seems to me to make sense. I mean, as was pointed out earlier, we're spending hundreds of millions of dollars. We can find out from the checkbook who is getting how much money, but you don't know what the project is, you don't know where it's being spent, you don't know...there's a lot you don't know if you can't see the contract itself. You just know some company is getting a lot of money and they're building roads or they're funding a child facility or whatever it is they're doing. But you don't really know the extent of what's going on. [LB429]

SENATOR AVERY: Would you be willing to work with Senator Crawford and the Fiscal Office to correct this? [LB429]

DON STENBERG: I'd be happy to visit with the Legislative Fiscal Office. [LB429]

SENATOR AVERY: Well, you have direct experience with this. [LB429]

DON STENBERG: Yes. I used to be the DAS director once upon a time. That was...that's when computers filled up a whole room. Yeah. [LB429]

SENATOR AVERY: Oh, yes. You're dating yourself. [LB429]

DON STENBERG: Exactly. I know it's late. I'd be happy to answer questions, but I don't want to prolong things here for you. [LB429]

SENATOR AVERY: All right. Do we have questions? Thank you, Mr. Treasurer. [LB429]

DON STENBERG: You bet. [LB429]

SENATOR AVERY: All right. We're still on proponent testimony. Welcome, Mr. Gould. [LB429]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d. Thank you for being so patient and staying here. I only have a 41-minute CD that I'd like to show you if that's possible. As you know, Common Cause has a longtime interest in open records and open government, and we've been here many times to testify on the subject. We believe that the public has the right to see how their money is spent, and we feel that contracts are something that should be made



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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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available. We also think that that's good for both business and for the public having access. Over the years, we do get calls from private citizens generally asking about contracts, and we have two pieces of advice for them usually. One is to contact the agency, obviously, talk with the operator and try to get to the right person, and then make your request for the contract. The other way is to file a public records request which is somewhat adversarial, you know, in four days that maybe an agency gets a little bit angry with that. Sometimes that's the only way to do it though. The trouble is that both of those approaches generally end up in, whoever the person is that's making the request, they're going to have to pay. They're either going to have to pay anywhere from 15 cents a copy to \$1 a copy for whatever they're going to get. And it would also include an undesignated secretarial fee and possibly a legal fee. And so putting this on-line is such a great thing to do. It saves money, it saves time, it gives the public better access, and we really believe that it's the right way to go. And I want to thank the committee also for advancing LB363 which we feel--and unanimously--which is a great step forward and might avoid some of those expenses that I just mentioned. Thank you. [LB429]

SENATOR AVERY: Thank you. Questions? Thank you, Mr. Gould. [LB429]

JACK GOULD: You bet. I'll take that 41-minute CD. [LB429]

SENATOR AVERY: More proponent testimony? [LB429]

KORBY GILBERTSON: Good afternoon, Chairman Avery, members of the committee. For the record, my name is K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Media of Nebraska, Inc., in support of LB429. As most of you know, Media of Nebraska is a group of both print and broadcast media interests that gather for the interest of protecting First Amendment, open meetings, and public records rights. And this bill falls right into that category, and we would support anything that would make it easier for the public to gain access to those public records. I'd be happy to answer any questions. [LB429]

SENATOR AVERY: Thank you, Ms. Gilbertson. Questions? Don't see any. Thank you. [LB429]

KORBY GILBERTSON: Thank you. [LB429]

SENATOR AVERY: Any other proponent testimony? Any opponent testimony? Any neutral testimony? How about that? [LB429]

SENATOR CRAWFORD: All right. [LB429]

SENATOR AVERY: You get to close with all positive remarks. [LB429]

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

Government, Military and Veterans Affairs Committee  
February 08, 2013

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SENATOR CRAWFORD: Thank you. Thank you. Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee for the opportunity to appear before you today, and I appreciate your patience this Friday afternoon. And I would like to thank Treasurer Stenberg for joining us and testifying today and discussing the possibility of working with [Nebraska.gov](http://Nebraska.gov) to help maintain the Web site. I also want to extend my thanks to the cosponsors of the legislation, Chairman Avery and Senator Mello, for their support on the issue. We have worked with the Department of Administrative Services, Department of Roads, the Department of Health and Human Services, and the State Patrol in discussing their concerns, and I believe that's the reason they are not testifying in opposition, as opposed to just the lateness of the time. [LB429]

SENATOR AVERY: That does help, doesn't it? [LB429]

SENATOR CRAWFORD: Yeah. No, seriously, they...I mean, they did talk to us ahead of time about their intent not to testify in opposition. And we appreciate their cooperation and are happy to have the chance to work with them to make sure this bill is something that is feasible as well as being something that advances transparency in the state. And we feel that the language that allows the Department of Administrative Services to establish policy creates...and the protections against the need to reveal confidential information provides protections that will help the bill to work. We'll be happy to work with the committee in the future on any language concerns that you have in moving forward with the bill. And again, I want to thank you for this opportunity and ask that you vote to advance LB429 to the floor for full consideration, and I'd be happy to work with you on any of the concerns you have about the bill. Thank you. [LB429]

SENATOR AVERY: Thank you. Are there questions? That ends the hearing on LB429 and since there's nothing else to do, the hearing for today. [LB429]