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Transcriber's Office

Government, Military and Veterans Affairs Committee
February 12, 2014

[LB945 LB1037 LB1058 LB1084 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 12, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1037, LB1058, LB1084, LB945 and gubernatorial appointments. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Dave Bloomfield; Tommy Garrett; Russ Karpisek; Jim Scheer; and Norm Wallman. Senators absent: Scott Lautenbaugh.

SENATOR AVERY: Good afternoon. Welcome to the Committee on Government, Military and Veterans Affairs. We have a fairly ambitious agenda today. But first, we're going to have a hearing on two gubernatorial appointments and then we'll move to the bills. And I will start with the appointment or the nominations first. And then I will talk about procedures and introduce the committee to all of you. We'll start with Mr. John Grimes, who has been nominated for the position of a member of the State Emergency Response Commission for a term that would start in June 11, '13--you're probably already on, Mr. Grimes--and end on June 13, '17. Not June, September 13, 2017. So please come forward, sir.

JOHN GRIMES: Thank you. [CONFIRMATION]

SENATOR AVERY: Welcome. So you are already on the committee or the commission. [CONFIRMATION]

JOHN GRIMES: Yes. [CONFIRMATION]

SENATOR AVERY: Tell us a little bit about yourself. [CONFIRMATION]

JOHN GRIMES: (Exhibit 1) Myself, I reside in Norfolk with my wife and we've got four kids, two beautiful granddaughters. And I've been working for Affiliated Foods Midwest as their corporate safety director for...well, since 2006; been with them since '79. I've been chairing our Local Emergency Planning Committee. We've got a six-county LEPC up in the northeast corner there of the state for several years, since 2004. And recently just took over chairmanship of the Norfolk Safe Communities Coalition that we've just begun there. [CONFIRMATION]

SENATOR AVERY: So you have quite a background in the... [CONFIRMATION]

JOHN GRIMES: Safety emergency management... [CONFIRMATION]

SENATOR AVERY: Yeah. [CONFIRMATION]

JOHN GRIMES: ...planning. Yes, sir. [CONFIRMATION]

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SENATOR AVERY: Questions from the committee? Senator Bloomfield.
[CONFIRMATION]

SENATOR BLOOMFIELD: It's less of a question than a comment. I've known Mr. Grimes for a number of years through both of us being employed at Affiliated Foods.
[CONFIRMATION]

JOHN GRIMES: Yeah. [CONFIRMATION]

SENATOR BLOOMFIELD: He has one vote no matter what everybody else may say about him in here. He's done a phenomenal job up there and I'm sure he will do so here. [CONFIRMATION]

SENATOR AVERY: And you're hoping this doesn't hurt you, aren't you?
[CONFIRMATION]

JOHN GRIMES: Thank you, Senator Bloomfield. [CONFIRMATION]

SENATOR BLOOMFIELD: And that only cost him a few dollars. [CONFIRMATION]

JOHN GRIMES: Yeah. Thank you, Senator. [CONFIRMATION]

SENATOR AVERY: Any other comments, questions? Senator Karpisek.
[CONFIRMATION]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you for being here and thank you for volunteering to do everything that you do. It doesn't always get a lot of glamor, but. Do you see...we hear a lot about the transmission, the communications part of all of everything in the state. Is there something that we really need to be looking at, as a Legislature, to help the whole response out? [CONFIRMATION]

JOHN GRIMES: You know, I would be somewhat going off of what I've heard from our emergency managers in the area. The new system, which I'm not totally familiar with, seems to be a plus. But I can tell you that every drill that we run or exercise we run, communication is the one main thing that we can always improve on. I think that's true anywhere in our life. But specifically, I don't...you know, they haven't mentioned a certain path, or. [CONFIRMATION]

SENATOR KARPISEK: So the infrastructure isn't a...it's getting better...maybe?
[CONFIRMATION]

JOHN GRIMES: It certainly sounds like there's been improvements made, yes.

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[CONFIRMATION]

SENATOR KARPISEK: But I realize you probably been there long enough to...
[CONFIRMATION]

JOHN GRIMES: Yes. [CONFIRMATION]

SENATOR KARPISEK: ...get a real good handle on it... [CONFIRMATION]

JOHN GRIMES: Yeah. [CONFIRMATION]

SENATOR KARPISEK: ...but we do hear a lot about that, that one agency can't talk to another and all those sort of things. [CONFIRMATION]

JOHN GRIMES: Yes, it has been a problem but, from what I hear, it sounds like that has been a big improvement lately. [CONFIRMATION]

SENATOR KARPISEK: Good. Again, thank you, Mr. Grimes. [CONFIRMATION]

JOHN GRIMES: Yeah. Thank you. [CONFIRMATION]

SENATOR AVERY: Senator Scheer. [CONFIRMATION]

SENATOR SCHEER: Thank you Senator. And I'm not exactly sure why we're just still discussing this. This person is, obviously, more than adequately... [CONFIRMATION]

SENATOR AVERY: Because he's from Norfolk. [CONFIRMATION]

SENATOR SCHEER: Absolutely. [CONFIRMATION]

JOHN GRIMES: Thank you, Senator. [CONFIRMATION]

SENATOR SCHEER: So there should be enough said. We can move on to the next. Welcome. [CONFIRMATION]

SENATOR AVERY: Well, I'm going to ask him a question. [CONFIRMATION]

SENATOR SCHEER: Just because I said we shouldn't? [CONFIRMATION]

SENATOR AVERY: You've been on...already been on this commission since June.
[CONFIRMATION]

JOHN GRIMES: Yes, sir. [CONFIRMATION]

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SENATOR AVERY: Have you been there long enough to develop some opinions about how the commission operates and perhaps ways that it could be improved?
[CONFIRMATION]

JOHN GRIMES: I wouldn't say I've been there long enough to bring any suggested improvements. But I would also say doing the different things I've done, being LEPC chair for so many years, I've been pretty familiar with a lot of the SERC players already. So I know quite a few of those. However, I was not aware until this came up for the SERC appointment that really what the SERC did. So I'm finding that very interesting. I'm looking very much forward to getting into there and just representing industry across the state of Nebraska and see what improvements we can make with our industries and safe chemical handling. [CONFIRMATION]

SENATOR AVERY: Thank you. Any other...Senator Bloomfield. [CONFIRMATION]

SENATOR BLOOMFIELD: Again, thank you for doing this. And I'm going to put words in Senator Scheer's mouth right now. But if there's anything here I can do to help you as you go down this, let either one of us know. [CONFIRMATION]

JOHN GRIMES: Appreciate that. [CONFIRMATION]

SENATOR BLOOMFIELD: And we're pretty close to you up there. [CONFIRMATION]

JOHN GRIMES: Yeah. I appreciate that. Thank you very much. [CONFIRMATION]

SENATOR AVERY: Any other questions? I don't see any. Thank you very much for appearing. We will have an Exec Session later today to take up the vote and we'll let you know right away what the vote is. [CONFIRMATION]

JOHN GRIMES: All right. Thank you, appreciate it. [CONFIRMATION]

SENATOR AVERY: All right, thank you. All right, that will close the hearing on the nomination of Mr. Grimes to the State Emergency Response Commission. We'll now invite Mr. Benjamin... [CONFIRMATION]

SENATOR BLOOMFIELD: Any opponents, proponents? [CONFIRMATION]

SENATOR AVERY: ...any...I don't like to do this. Anyone here wish to speak against this nomination? Thank you. That ends the hearing on this...the appointment or the nomination of Mr. Grimes. Now we will ask or invite Mr. Benjamin Salo to come forward. He is also nominated for a position on the State Emergency Response Commission for a term beginning November 7 of 2013 and ending September 13 on 2017. Welcome,

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sir. [CONFIRMATION]

BENJAMIN SALO: (Exhibit 1) Thank you, Senator. [CONFIRMATION]

SENATOR AVERY: Tell us a little bit about yourself and why you want to be on the commission. [CONFIRMATION]

BENJAMIN SALO: Currently, I reside in Gretna, Nebraska, and where I have for the last two years. I'm employed by Union Pacific Railroad where I'm the manager of hazardous materials where I'm responsible for the prevention, preparedness, response, and recovery of transportation emergencies, particularly pertaining to the transportation of chemicals throughout the rail system. My primary response territory is central and eastern Nebraska and western Iowa as well. Part of my duties with that are also, I'm the regional coordinator for TRANSCAER, the Transportation Community Awareness Emergency Response organization to where we reach out and provide training to local responders throughout the United States and Canada as well. Previously, I was in the fire service and emergency management working for local, county, and tribal agencies holding various positions as a firefighter and as a assistant emergency service director for tribal government as well. My reasons for the SERC is to help provide some of the experience and to serve the citizens in a capacity that I feel is...that I possess those skills for, sir. [CONFIRMATION]

SENATOR AVERY: Thank you. Have you had the opportunity to attend any meetings? [CONFIRMATION]

BENJAMIN SALO: No, Senator, I have not. [CONFIRMATION]

SENATOR AVERY: You haven't. So you probably don't have a whole lot of opinion about how the commission operates yet. Let me ask you this, if you were to find yourself in a conflict of interest situation, how would you handle it? [CONFIRMATION]

BENJAMIN SALO: I would immediately remove myself from that position. [CONFIRMATION]

SENATOR AVERY: Thank you. Questions? We do have a senator here from Gretna, Senator Murante. Senator Karpisek. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Senator Avery. I'd hate for you to come all the way here and not ask you something. Thank you for you, too, for serving and you sound like you're the man for the job. Obviously, a lot of your professional background will carry over. But there will be more things than just what you do on the whole thing. I mean, do you know, are you going to be just kind of a specialist for one thing or be spread out on all issues. And since you haven't been to a meeting, I'm sure you don't really know.

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[CONFIRMATION]

BENJAMIN SALO: From what I understand per the SERC coordinator is, I'll be focused on transportation as kind of a representation of the transportation industry.

[CONFIRMATION]

SENATOR KARPISEK: Very good. Again, thank you. [CONFIRMATION]

BENJAMIN SALO: Sure. [CONFIRMATION]

SENATOR AVERY: Any other questions? Thank you, Mr. Salo. Wait...yeah, we're finished with you for now. [CONFIRMATION]

BENJAMIN SALO: Thank you, Senator. [CONFIRMATION]

SENATOR AVERY: Anyone here wish to comment on this nomination? Okay. That ends the hearing on Mr. Salo. And we will, again, we'll do the same with you. We'll Exec today and we'll let you know soon, very soon about the vote. All right. Now we're going to move into the part of our agenda today that deals with legislative bills. Before I do that, I need to talk a little bit about how we conduct these hearings. But first, I need and want to introduce members of the committee. On the end to the right here, is Senator Tommy Garrett. Senator Garrett is from Omaha. Did I get that right or is it Bellevue? [CONFIRMATION]

SENATOR GARRETT: Bellevue, part of Papillion, Sarpy County.

SENATOR MURANTE: And not Omaha.

SENATOR GARRETT: Not Omaha.

SENATOR AVERY: Okay, not Omaha. Next to him is Senator Bloomfield from Hoskins. And there is a vacant seat there for Senator Lautenbaugh who is also from Omaha. And Senator John Murante, the new Vice Chair of the committee, from Gretna. Seated next to me on my right is Christy Abraham, the legal counsel for the committee. I am Bill Avery and I represent District 28 here in south-central Lincoln and I chair the committee. On my left is Senator Russ Karpisek from Wilber. Next to him is Senator Norm Wallman from Cortland. Next to him is Senator Jim Scheer from Norfolk. At the very end is the committee clerk, Sherry Shaffer. If you are here and wish to testify on behalf of any of these bills or against any of these bills, we ask that you fill out the green sheet. Please print and then give the original to the clerk and she will enter your information into the record. If you have an opinion about any of these bills and wish to be recorded for or against any of them but do not wish to testify, there is a form at the table on each entrance. And take this and sign up, print your name and all the information provided

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and that will become a part of the record as well. We will be using the light system today. The green light is a four-minute light. And when that is on, you are within your four minutes. When the amber light comes on, you have one minute to wrap up your testimony. And the read light means you should be finished and we ask that you respect that so that we have plenty of time for everybody to have their say. If you brought written testimony, we'd like to have a copy. We need 12 copies. If you do not have 12 copies, give the original to the clerk. She will have copies made and the person who will help us with that is Colton Wolinski, our page from here in Lincoln. The order of business: The introducer goes first and makes initial statements, followed by proponents who are followed by opponents and neutral testimony. Closing remarks are reserved for the introducing senators. We ask that you listen carefully to prior testimony so that you do not repeat what has previously been said. And that will help us move things along as well. We do respect your right to be a part of this process. And I would just remind you that the Unicameral is one of the few Legislatures in the entire country that requires that every bill have a public hearing. And we welcome you here to participate in this hearing. Please, if you have a cell phone that is on, turn it off or put it on silent mode. And if you have any other electronic devices that make noise, we'd ask you to do the same with that. All right. We'll start with the agenda as it is displayed outside the room with LB1037 and invite Senator McGill to address us. Thank you, Senator McGill. [LB1037]

SENATOR MCGILL: Thank you, Senator Avery and members of the Government Committee. I am, indeed, State Senator Amanda McGill, M-c-G-i-l-l, and I'm here today to propose LB1037, a bill to authorize the Auditor of Public Accounts to examine any entity formed under the Interlocal Cooperation Act consisting of more than one natural resource district. This legislation would provide needed transparency and accountability of these entities, entities that have the authority to spend millions of Nebraska taxpayer dollars without answering to independent oversight. In preparation for introducing this bill in front of you today, I consulted with the Auditor's Office to confirm that this change was necessary for an independent examination of the financial records and expenditures of these entities. While this legislation does not single out one particular project, the impetus for the bill came from a project that was created through an interlocal agreement in October of 2012 and is known as the Nebraska Cooperative Republican Platte Enhancement Project or N-CORPE. According to a preliminary fact sheet published in January of 2013 by the NRDs in the interlocal agreement, the total estimated cost of the Nebraska Cooperative Republican Platte, N-CORPE, is \$120 million to \$130 million. The project will be paid for by the occupation tax on irrigation collected by the individual NRDs. NRD members of this particular interlocal agreement are each responsible for providing 25 percent of the revenue needed for the project. So the Auditor can audit the NRDs and see, oh, 25 percent of their revenue is going into N-CORPE. But he can't...he or she cannot look at how that money is being spent within the interlocal agreement. The \$120 million to \$130 million is only the estimate for how much this project will cost. We're talking about over \$100 million of taxpayers being

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spent without independent oversight. And I've heard some people say it's easily going to get up to \$200 million by the end of the project. LB1037 would provide for that oversight and defend taxpayer dollars. Again, this bill is intended to improve the transparency of not just one project, but any future entity formed under the Interlocal Cooperation Act consisting of more than one natural resource district. This is about strengthening our safeguards and making government more effective and efficient. As noted in the letter of support from the Auditor's Office--which I think...I hope all of you have or I can get you that--this bill remedies a clear deficiency in our state's current auditing statutes. I was notified that the language in the bill may affect some areas that were not originally intended when I drafted this and would be willing to further examine if there are necessary changes to the language to target the scope of the authority as we move forward. You know, I brought this bill with a particular intent. And if there are any other unforeseen consequences from when I drafted it to now, I'd be happy to work on those. [LB1037]

SENATOR AVERY: Thank you. [LB1037]

SENATOR MCGILL: Uh-huh. [LB1037]

SENATOR AVERY: I have a question about the...who pays... [LB1037]

SENATOR MCGILL: Uh-huh. [LB1037]

SENATOR AVERY: ...because under most circumstances, the division being audited pays for the audit. And in this case, the Auditor's Fund will be used to pay? [LB1037]

SENATOR MCGILL: I think so. But I can get clarification on that real quick before I come up for my close. Yeah. [LB1037]

SENATOR AVERY: Okay. Questions from the committee? Senator Scheer. [LB1037]

SENATOR SCHEER: Thank you. Welcome. Do you know just off...as you were doing some research, is...I'm assuming there are more than one interlocal agreement amongst the NRDs or is this it, at this point in time? [LB1037]

SENATOR MCGILL: Well, this is it that I'm aware of. I know there are...just doing the research, there are a lot of other interlocal agreements that, arguably, should also fall under the State Auditor that aren't currently. But by the time I had this bill drafted and it was time to turn it in, I didn't feel comfortable expanding it to all those other ones. But I think there's certainly room for growth in that...in our statutes in that way. [LB1037]

SENATOR SCHEER: Okay, thank you. [LB1037]

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SENATOR MCGILL: All right. [LB1037]

SENATOR AVERY: Any more questions? I don't see any. Thank you. [LB1037]

SENATOR MCGILL: Okay, thanks. [LB1037]

SENATOR AVERY: Are you going to stay for closing? [LB1037]

SENATOR MCGILL: I think I will. [LB1037]

SENATOR AVERY: Okay. Proponent testimony? We will now accept proponent testimony. This is LB1037. Welcome. [LB1037]

AMY SVOBODA: Thank you. Good afternoon, Senator Avery, members of the committee. My name is Amy Svoboda, I'm a Lincoln attorney but I'm here today as a citizen interested in good government and also as a member of a family who farms and irrigates in two of the NRDs that have formed together with two other NRDs to form N-CORPE that Senator Amanda (McGill) referred to in western Nebraska. I first became acquainted with interlocal agreement entities when I worked...when I was on the board of an ESU in western Nebraska. And it alarmed me because those entities have a tendency, in my perception, to have a sort of attenuated accountability. But when this...the NRDs' N-CORPE was beginning to formulate the idea of their project...I don't know if you're familiar with their project. My brother and my dad and I all testified before numerous hearings and meetings. This is a project that--Amanda was correct--on books it's now \$120 million. But easily, there's going to be another \$75 million in interest. And this project doesn't include...I should tell you, a minute, about the project. This is a project in which they are going to be mining 93 pivot irrigation borders and they're going to be sending the water, some of it to the Platte River and then some of the river is supposed to go to Kansas to meet the requirements of the Republic River Compact. Now there's a lot of controversy over whether the water will actually reach Kansas and whether Kansas will accept the water, in any case. And I know that's not the purview, unfortunately, of the State Auditor. But my family feels that it would be a great addition if the...this particular interlocal entity--and probably any interlocal entity--could have the benefit of an oversight by the State Auditor. It could create conscientiousness. And also, in all fairness, these NRDs have small staffs and the interlocal agreement entities even, sometimes, this...N-CORPE doesn't have any paid staff. And so, you know, the boost that a overview by the State Auditor could be, you know, greatly appreciated. Now...so besides the enormity of the project and the uncertainty of the project, the other reason that I'm coming to you is because my family is one of the people that are going to be paying for the project. And it is through taxes on land that's being irrigated. And I think it's important to know that the taxes for this mammoth project is going on really a few people. Matter of fact, for example, my sister owns a quarter of irrigated land and she pays, now, \$4,500 in taxes. And the occupation tax--so-called occupation tax, which is

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really a land tax--is going to add another \$1,400 to her taxes. So it's a huge burden. When we spoke at the various hearings, my family, we pointed out that, yeah, now--this was, you know, two years ago--this was a time...a rare time in which the commodity prices, corn particularly, were high and that wouldn't be a burden. But now, just barely two years ago...two years since then, you know, the prices are 40 percent lower now. And, you know, it's, you know, it's not necessarily easy. And when you think about it, right now with that amount of money, we're indebted for 25 years to pay that occupation tax. People have been figuring out how much the project costs and how much it has cost so far and there's no room in that occupation tax to pay for any more. And yet, they still...we don't know where the money is going to be coming from or the monies accounted for to...for the big amount of water that's coming down the river for the railroad ties, some of the flowage easements, for the dam. There's a dam that needs to be repaired. So I guess in closing, you know, any help that you can give through adopting Amanda McGill's bill would be greatly appreciated by those people that are going to feel the burden of these interlocal agreements such as N-CORPE. Thank you. [LB1037]

SENATOR AVERY: Thank you for your testimony. Wait, let's see if there are any questions. Okay? Questions from the committee? You were anticipating. Thank you. Any other proponent testimony? All right. Seeing none, we'll move to opponent testimony. Welcome, sir. [LB1037]

DEAN EDSON: (Exhibits 1, 2, 3) I apologize. I dropped my packet of stuff before I came up here so it'll be a minute to get organized here a little bit. Senator Avery and members of the Government Committee, my name is Dean Edson, D-e-a-n E-d-s-o-n. I'm presenting testimony today on behalf of the Nebraska Association of Resource Districts in opposition to the bill, as drafted. Let me make that perfectly clear, as drafted. I want to also make it perfectly clear that the NRDs are not opposing to have the State Auditor audit the financials of a local district. This has been done in the past and we think the statutes should continue to allow for such. Our opposition to the bill is the language that's used to single out only interlocal agreements with NRDs. If the state wants to audit interlocal agreements, I think the language should be drafted to apply to all state and local interlocal agreements. I'm going to give you a couple of examples. The NRDs have gone together to form an intergovernmental risk pool for health insurance coverage. This is formed by an interlocal agreement following the risk pool statutes. We are subject to quarterly reports to the Nebraska Department of Insurance. In addition, this entity is subject to audits by the Nebraska Department of Insurance once every four years. We have operated this for seven years and been audited twice by the department. There was no significant findings for corrections. The way this bill is drafted, the entity would be subject to audits by the State Auditor as well. I think this is overregulation. I also want to point out that the Nebraska Association of Resources Districts is created by an interlocal agreement. If state law is going to allow for audit of associations of political subdivisions, it should apply to all, not just ones by NRDs. I

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found out late yesterday that this bill is targeted at N-CORPE, which is an entity created by the four entities to build water augmentation projects for compliance with the Interstate Water Compact on the Republican River and the three-state agreement for the Platte River Recovery Program. I want to point out, the NRDs have not delegated any of the taxing authority to N-CORPE. Thus, the interlocal agency has no taxing authority. The funding and financing of N-CORPE, one interlocal agency, which the districts have always worked with works in the fashion outlined below here: The N-CORPE board adopts a budget which is prorated to the individual member districts included in their respective budget. The overhead and administrative expense is shared equally by all the members. Capital project costs, which are constructed to benefit the member districts, are prorated based on the benefit to each of the member districts. While N-CORPE issues the bonds to pay for these capital costs, the revenue source is the bond issued by the individual member district, which are repaid by taxes collected in the individual districts. Again, these individual districts can be audited. This structure prorates expenses amongst the multiple districts and the transactions pass through the districts. Thus, when the district is audited on an annual basis, the transactions involving the interlocal agency are audited by each district's auditor. Each board approves the expenditure of its funds that are used to pay interlocal agency expenses in addition to their approval by the interlocal agency board. Thus, there is, arguably, an additional step of oversight in the process than there is if the funds were expended directly by the districts themselves. The N-CORPE board has engaged a certified public accountant to review the accounting of the interlocal agencies and assist with preparing financial statements and also to engage an auditor to perform the annual audit. These processes are already being implemented, not because of some alleged impropriety, but rather that each director can assure their board that each district is paying its fair share and only its share of the project. These cost accounting estimates have already been provided by the design engineers based on the quantities in the bid awarded. The N-CORPE board is also in the process of hiring a separate CPA firm to do an audit on N-CORPE. Again, our opposition to the bill is the language that's used to single out only interlocal agreements with NRDs. Again, if the state wants to audit interlocal agreements, the language should be drafted to apply to all state and local interlocal agreements. I also wanted to provide to you a summary of the N-CORPE project and what it does. And I'm not going to go through and read it. I also want to provide you with the minutes of the N-CORPE meeting in October of 2013 that outlines on page 2 the auditing and accounting services and the contracts that are trying to engage. With that, I will close it and try to answer any questions you may have. [LB1037]

SENATOR AVERY: Thank you. Any idea why interlocal agreements have not been a part of the auditing process by the Auditor? [LB1037]

DEAN EDSON: I really...Senator Avery, I really don't know why all the interlocal agreements for all political subdivisions aren't included in that. There's, obviously, some history back somewhere. I tried to do some research on it but I've not been able to find

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out why they're not. [LB1037]

SENATOR AVERY: And your position, just to summarize it, is that you're not opposed to being audited by the Auditor of Public Accounts. You just don't think that your NRDs ought to be the only interlocal agreements that would be audited. [LB1037]

DEAN EDSON: Correct. There's a lot of interlocal agreements out there involving other political subdivisions and they're not subject, currently, to the audit process. And I might also point out on that, I had talked to Senator McGill's staff yesterday about this bill and offered to suggest to help draft some language that if they wanted to audit interlocal agreements, I'd help try to draft the language and work with her office to do that and this committee. [LB1037]

SENATOR AVERY: I note that you point out that you already have a CPA firm hired... [LB1037]

DEAN EDSON: Yes. [LB1037]

SENATOR AVERY: ...to do auditing of your accounts, including the interlocal? [LB1037]

DEAN EDSON: Of the association accounts? [LB1037]

SENATOR AVERY: Yeah. [LB1037]

DEAN EDSON: Yes. We...our association goes through annual audits every year. We have a separate CPA firm that helps us with financial tracking of both the risk pool for the health insurance and for the association work, that we hire a separate accounting firm to do the auditing. And those audits are submitted to the Department of Insurance. We also have those quarterly reports that are required with the Department of Insurance. And those have to have...they have to do actuarial analysis on those...on the insurance side of it. And it has to meet the standards required by the Department of Insurance. [LB1037]

SENATOR AVERY: And N-CORPE is in the process of hiring a CPA to do... [LB1037]

DEAN EDSON: They've hired...I found out they've hired the CPA out of North Platte to do...help them with their financial accounting. They are in the process of finalizing the contract with a separate CPA firm to do the audit of N-CORPE. [LB1037]

SENATOR AVERY: Do you...is it your opinion that CPA firms can be relied upon, if they are hired by a subdivision or an entity, that they can be relied upon to do full and fair audits? I know that the Auditor of Public Accounts has a very strong opinion about internal audits versus his audits. [LB1037]

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DEAN EDSON: I think the CPAs have a pretty tough, high standard on what they audit. I don't think you're going to influence some CPA to do something different or to hedge something or skew something. I think they've got a lot more at risk with their licensing to do something like that. The CPA firm and audit firms that we've used for the association and the ones that have been identified in the minutes for N-CORPE, those are companies that have been around a long time. And I think they've got a pretty good history of being honest and fair with their auditing procedures. [LB1037]

SENATOR AVERY: Senator Scheer. [LB1037]

SENATOR SCHEER: Thank you, Senator Avery. I just want to make sure I'm clear in what you've discussed. Up until this point, there had not been an audit of the N-CORPE interlocal agreement. Is that correct? [LB1037]

DEAN EDSON: It's less than two years old. [LB1037]

SENATOR SCHEER: Understand. [LB1037]

DEAN EDSON: Yeah. [LB1037]

SENATOR SCHEER: But there had not been an audit done? [LB1037]

DEAN EDSON: No. The individual districts have gone through audits on that. And what they've decided to do is...and they did this back in October is, decided to move forward and hire an auditor...a separate CPA firm to audit N-CORPE. [LB1037]

SENATOR SCHEER: Okay. But the answer would be, no, then, that we have not really audited their expenditures for the last two years. [LB1037]

DEAN EDSON: No. [LB1037]

SENATOR SCHEER: Okay. [LB1037]

DEAN EDSON: They didn't issue the bonds until about a year ago. [LB1037]

SENATOR SCHEER: Okay. Second question is, in this interlocal agreement, what income goes in there? Did I understand you correctly that the NRDs are paying the bonds directly themselves? So the funds that would be used from the occupation tax, those funds are not going into this? Those are directly staying in the NRDs and the NRDs are paying those? [LB1037]

DEAN EDSON: Those...yeah, they go into N-CORPE to repay the bonds. [LB1037]

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SENATOR SCHEER: Okay, so N-CORPE does pay the bonds. [LB1037]

DEAN EDSON: Yes. [LB1037]

SENATOR SCHEER: So the funds...you...the NRDs collect the funds and transfer the funds into N-CORPE and N-CORPE makes those payments then? [LB1037]

DEAN EDSON: Yes. [LB1037]

SENATOR SCHEER: Okay. [LB1037]

DEAN EDSON: Then again, every district is audited on the amount that they put in. [LB1037]

SENATOR SCHEER: Well, I understand. But, you know, the money that's going in...you know, the previous testifier, I mean, makes a legitimate point that money goes in but, you know, if there's no audit on how the money is going out, one can assume that the money is appropriately in there. But if we don't have any transactional data on that, it would be really hard to know that. [LB1037]

DEAN EDSON: Yes. [LB1037]

SENATOR SCHEER: So I certainly could see as being a concern. [LB1037]

DEAN EDSON: Yeah, and that's why if you look at the minutes and read through those, they've...and all the minutes are up on the Web site. They're posted on the Middle Republican NRD board. Each one of the boards has had concern about making sure that they're doing this right. And that's why they, last October, decided even though it probably wasn't required for them to have an audit, they decided to move forward and do that. [LB1037]

SENATOR SCHEER: Now in relationship to the audit--taking the other side of the fence--your...this interlocal agreement is actually four different institutions as equal partners? [LB1037]

DEAN EDSON: Yes. [LB1037]

SENATOR SCHEER: So consequently, this is not the same as you, as an NRD, hiring your own auditor to come audit your accounts and the auditor is working for you. In essence, this auditor is working for four different institutions, not one. Would that be a correct statement? [LB1037]

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DEAN EDSON: That would be correct. [LB1037]

SENATOR SCHEER: Okay. [LB1037]

DEAN EDSON: When they come in to audit N-CORPE... [LB1037]

SENATOR SCHEER: Right. [LB1037]

DEAN EDSON: ...they'll be working for four. [LB1037]

SENATOR SCHEER: Right. Okay, thank you, Senator. [LB1037]

SENATOR AVERY: Thank you. Senator Bloomfield. [LB1037]

SENATOR BLOOMFIELD: Thank you, Senator Avery. I'm going to lead us a little bit astray here probably again. Senator Karpisek, Senator Wallman, and I are working on another bill in another committee and we were told how horrendously expensive it would be to audit a very small entity. You've had some audit work done. How expensive is that for a small entity? [LB1037]

DEAN EDSON: Well, the audit work that the Department of Insurance does on our insurance program the first year cost us \$14,000. And the next year... [LB1037]

SENATOR BLOOMFIELD: You're worse than the numbers I heard before. [LB1037]

DEAN EDSON: The second time they did it, they...it only cost us around \$8,000. [LB1037]

SENATOR BLOOMFIELD: Okay. Again, you said "only." We're looking at the possibility of auditing a little entity that may only be worth \$3,000. And if we're going to have to pay that kind of number, it suddenly has to go away. Thank you. [LB1037]

SENATOR AVERY: Isn't N-CORPE involved in some rather expensive bonding issues? Aren't they issuing bonds of about \$75 million? [LB1037]

DEAN EDSON: They're about \$120 million once they all get done because you've got...the purchase of the N-CORPE property cost \$83 million. The districts had enough money to make the down payment and then finance the rest and then bond that portion. And, again, it's split equally. Your infrastructure costs, there's going to be pipelines that will be buried to go both directions, both to the Platte and to the Republican. Those will add another up to about maybe another \$30 million to \$40 million. [LB1037]

SENATOR AVERY: Should I be concerned that you're talking about taking water out of

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the Platte? [LB1037]

DEAN EDSON: We're...yeah. If we want to get into the hydrology of this, we can get into that discussion. But where this property is located at, there is recharge from the Platte River to that area from some surface water diversions from NPPD. And it's in an area where there are groundwater increases. The table is increasing. A little bit more history on this project, if any of you remember Initiative 300 to prohibit corporate ownership of farms, if you remember that, the farm that was purchased by N-CORPE, the 124 pivots, that was the poster child for Initiative 300. We are taking that property and reverting it back to native grass. It is going out of crop production and is going to get reestablished the way it was prior to the mid-'70s when Prudential came in there and tore it all up. [LB1037]

SENATOR AVERY: Should I also be concerned that you have \$120 million in bonds that are going to be issued, if not already, and there are no clear provisions for auditing? [LB1037]

DEAN EDSON: Well, there's...well, I guess, every year each one of the districts is audited on that. And what N-CORPE is doing is auditing it...the N-CORPE, the four districts.. [LB1037]

SENATOR AVERY: Internally. [LB1037]

DEAN EDSON: Internally. Those audit reports will be made available to the public. If there's some concern over what we're doing with those audits, it will be made available to the public and the public can bring that up. Again, I want to make it perfectly clear. We don't have any problem with the Auditor auditing the individual districts. The way the bill is drafted, it applies way beyond that. It applies to other entities created by the NRDs that I don't think should be subject to audits by the Auditor. [LB1037]

SENATOR AVERY: Any...Senator...is that finger there? [LB1037]

SENATOR BLOOMFIELD: That is, yes. [LB1037]

SENATOR AVERY: Okay. Senator Bloomfield. [LB1037]

SENATOR BLOOMFIELD: Why would any tax dollar not be subject to a public audit? [LB1037]

DEAN EDSON: Well, the health insurance is run through health insurance premiums paid by the... [LB1037]

SENATOR BLOOMFIELD: Correct. That is not my tax dollars. [LB1037]

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DEAN EDSON: Yeah. [LB1037]

SENATOR BLOOMFIELD: Well, my question is, why should any of my tax dollars not be subject to a public audit? [LB1037]

DEAN EDSON: Well, that's what I think we're arguing here is that, if you're going to audit interlocal agreements, audit them all. Don't just single out the NRDs, audit them all, every one of them. And if that's the purpose, if you want to make sure that there's oversight on interlocal agreements, don't just single out the NRDs. Single out... [LB1037]

SENATOR BLOOMFIELD: It's a place to start. [LB1037]

DEAN EDSON: Yeah. [LB1037]

SENATOR AVERY: I don't see any more questions, Mr. Edson. Thank you... [LB1037]

DEAN EDSON: Thank you. [LB1037]

SENATOR AVERY: ...for your informed testimony. [LB1037]

DEAN EDSON: All right. [LB1037]

SENATOR AVERY: You should know the subject, shouldn't you? [LB1037]

DEAN EDSON: Kind of do. We were involved with a lot of the public information meetings out in that area two years ago, so. [LB1037]

SENATOR AVERY: I'm going to have to look into N-CORPE a little bit. You're taking water out of the Platte. That's Lincoln's drinking water. [LB1037]

DEAN EDSON: We're putting it...piping it back in, too. [LB1037]

SENATOR AVERY: All right. Thank you. [LB1037]

DEAN EDSON: And I apologize. I didn't quite have 12 copies, I think there was only 10 in there. So you'll take care of that? [LB1037]

SENATOR AVERY: We'll take care of that. [LB1037]

DEAN EDSON: Thank you. [LB1037]

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SENATOR AVERY: Any more opponent testimony? Any neutral testimony? Senator McGill. Let me correct myself. I looked at the fiscal note here and it is the case that... [LB1037]

SENATOR MCGILL: That the entity pays for it. [LB1037]

SENATOR AVERY: ...the entity pays for it. [LB1037]

SENATOR MCGILL: Yeah. I looked it up too. [LB1037]

SENATOR AVERY: But there is a statement here that any costs would be paid from the Auditor's Cash Fund. [LB1037]

SENATOR MCGILL: Yeah. [LB1037]

SENATOR AVERY: And that's a little confusing. [LB1037]

SENATOR MCGILL: It is to me too. So we need to get that a little bit more clarified. But I think the committee, just judging from your questions, understand why I brought this bill in the first place. I was made aware of the situation. I didn't know that interlocal agreements weren't under the purview...unless, if an interlocal agreement also has taxing authority, then they have the ability to be audited by the State Auditor. But I...this one was brought to my attention, in part, because it's so much larger than most interlocal agreements; very. I can't name another one that's \$120 million. I know between Lincoln and Lancaster County we have a lot of interlocal agreements. Those are much, much, much smaller in nature. This one is a heck of a lot of taxpayer dollars and we're not...the Public Auditor can't look at how that money is being spent. And I think that's a problem, that's why I brought it. I didn't intend for it to reach over into the health insurance pool they were talking about. So I'm happy to try to clear that up. And I'd be happy to work with the committee either if they choose to now look at other interlocal agreements or if that wants to be a project for future Legislatures. I know Senator Schimek--in the brief research I did--she did bring a bill at one point to allow all interlocal agreements to be audited. I think there was a heck of a lot pushback, as you can imagine. You know, just looking at this one entity here, there was a lot of that. And it didn't end up advancing but it's something that I think is definitely worth looking at. [LB1037]

SENATOR AVERY: Thank you. [LB1037]

SENATOR MCGILL: All right. [LB1037]

SENATOR AVERY: (Exhibit 4) Any more questions for Senator McGill? All right. Before we close the hearing on LB1037, I have a letter of support from Dan Estermann from

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Wellfleet, Nebraska, to be read into the record. [LB1037]

SENATOR KARPISEK: Amanda. [LB1037]

SENATOR MCGILL: I have a note. [LB1037]

SENATOR AVERY: All right. That ends the hearing on LB1037. And we'll now move to LB1058. Welcome, Senator Murante. I'll be right back. [LB1037]

SENATOR MURANTE: Wonderful. Thank you, acting Chairman Karpisek and members of the Government, Military and Veterans Affairs Committee. My name is John Murante, for the record, spelled J-o-h-n M-u-r-a-n-t-e. I represent Legislative District 49 in the Nebraska Legislature, which comprises portions of northwest Sarpy County, Gretna, Chalco, portions of Papillion and La Vista. And I'm here today to introduce LB1058. LB1058 is a proposal that this committee and this Legislature has heard in years past. It would include Nebraska into the interstate compact for the national popular vote and it would award our electoral votes based on the results of the popular vote for President of the United States. And as you know, this bill is part of a larger and ongoing discussion that this committee has had about what we can do to make the elections in the state of Nebraska more relevant. This committee prioritized my LB1048, which focused on the primary process and the unique ways in which we have made ourselves irrelevant to the primary process in the race for President of the United States. And this bill focuses on the general election. And as we know, the electoral college was conceived in a way to benefit smaller states and to give them more of an influence on national elections. And to some extent, that goal has been accomplished. According to my brief calculations, our state in the 2012 elections, made up approximately .009 of 1 point of the electoral college. And if we had gone by the popular vote, we would have made up .006 of 1 point of the electoral college. So by going through the electoral college, we do have .003 of 1 point more influence than if we had gone by the popular vote. Let's talk a little bit about what we're giving up for the .003 of 1 point. First of all, I doubt anyone here would argue that from the perspective of national campaigns for President, the state of Nebraska is completely ignored. We had talked about that earlier this year on the winner take all bill. I believe this is a proposal that accomplishes the ends of making Nebraska more relevant and more important, but it does so in a nonpartisan and certainly a bipartisan way. But we know that our state is ignored on...from the perspective of Presidential campaigns. Presidential candidates seldom, if ever, visit the state of Nebraska. They seldom, if ever, spend money in the state of Nebraska. They seldom, if ever, send surrogates to the state of Nebraska. And it's not simply a matter of our state's size. We know that as Presidential campaigns develop their strategy and figure out where they're going to spend their time and resources, they look at the states they can win. And Nebraska is a state that, in every Presidential election on both sides of the aisle, candidates know where we're going to land. And because of that, they don't have to spend their resources in Nebraska or any of the 35 other states that are...can

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broadly be defined as safe states where we generally know before an election even starts, which candidate for President the state is going to vote for. And because of that system that we have set up, we incentivize candidates to spend their time and resources in states that aren't any different from us populationwise. They'll spend their money and time in Iowa, which isn't so substantially more populated than Nebraska that it would make a substantive difference from a population standpoint. But they spend their time and their money in Iowa. And it's not because Ames, Iowa, is a more attractive place to go than Norfolk, Nebraska. It's because Iowa is a swing state. And because of the way we elect Presidents right now, that makes Iowa more important than Nebraska. And we aren't just ignored from the campaign side of Presidential politics. We know that Presidents and members of Congress, like most politicians, make decisions, in part, based on what will get them reelected. And when decisions have to be made on the federal level, which state is impacted by a decision is also going to be considered, necessarily. And so when the federal government talks about shutting down an Air Force base, they're going to be taking into consideration the fact that Nebraska is not a state which is competitive in Presidential elections but Florida is. And it is going to be making decisions based on the fact that Florida is a state that both parties know that they have to win and Nebraska is not a state that is remotely competitive. And we do that to ourselves. We have an opportunity to opt out of that and make every person in every state, every vote, count the exact same way. And we know that if we do this, there is...we are still going to be a small state. But the advantages that other small states have, simply by virtue of being swing states, will be minimized and I believe we will have a greater influence in how Presidential elections are conducted and how the public policy is made on the federal level. So we could go on for a long time on this but I know there are testifiers wishing to speak after me. But I would be happy to answer any questions that you have. [LB1058]

SENATOR AVERY: Thank you, Senator Murante. I had good timing. [LB1058]

SENATOR MURANTE: You have wonderful timing. [LB1058]

SENATOR AVERY: Senator Bloomfield. [LB1058]

SENATOR BLOOMFIELD: I was afraid there for a minute you were going to suggest we import more Democrats. But you didn't go there, so. [LB1058]

SENATOR MURANTE: I have a comment but I'll say it off the microphone. [LB1058]

SENATOR KARPSEK: I know what it is. [LB1058]

SENATOR MURANTE: That would not be my suggestion, Senator Bloomfield. [LB1058]

SENATOR BLOOMFIELD: I'm glad to hear that. [LB1058]

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SENATOR AVERY: Senator Scheer. [LB1058]

SENATOR SCHEER: Thank you, Senator. Senator Murante, why would any of the swing states want to join this coalition if they're already receiving more than their share of...so I mean, you know, coming up with the other 270 electoral votes, how do you perceive to get those interested if, you know, a great number of those are already receiving the dollars and the infusion of other activities? Why would they want to join this versus what they already have? [LB1058]

SENATOR MURANTE: They would have to make a principled, philosophical argument to do that which is not in their own self interest and what would cost them money for the advancement of a greater principle, which is to allow every vote from every citizen to count the exact same way regardless of what state they are in. I would find it highly unlikely that states like Ohio and Florida and Virginia are going to be eager to jump on this bandwagon because they would be costing themselves both money and time with candidates. But with that said, the number of states in this country which are not swing states--the safe states, so to speak--far outnumber the swing states. [LB1058]

SENATOR SCHEER: Well, they may outnumber them but I'm not worried about the number of states because we're looking at the number of electoral votes. [LB1058]

SENATOR MURANTE: Sure. [LB1058]

SENATOR SCHEER: And so those that would contain...270 is half of the electoral college. [LB1058]

SENATOR MURANTE: Uh-huh. [LB1058]

SENATOR SCHEER: So trying to get half of the electoral college to determine this in their best interest, and as you have said, in some of those cases it would have to be at the detriment of themselves. [LB1058]

SENATOR MURANTE: Uh-huh. [LB1058]

SENATOR SCHEER: And I'm just wondering, legitimately, if we can expect those states to do that. It doesn't cost us anything. I understand. [LB1058]

SENATOR MURANTE: Sure. But...yeah, and I agree with you. But the 12 swing states that we have in this country--and it's, I guess, a debatable point as to what a swing state is--do not amount to anywhere close to 270 electoral votes. [LB1058]

SENATOR SCHEER: Well, but those that are the strong, one way or the other, I would

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venture to say probably would not be as interested in joining this either because big numbers of electoral votes bring dollars into those states as well. So we're not looking at just swing states. You know, New York is not going to join that and they're going to continue to keep those electoral votes in play simply because it's a big number any more than California because they do get the play. [LB1058]

SENATOR MURANTE: Sure. [LB1058]

SENATOR SCHEER: And there would be no advantage to either of those states, for example, to join... [LB1058]

SENATOR MURANTE: Well, California has already joined. They're already part of the compact. [LB1058]

SENATOR SCHEER: Okay. [LB1058]

SENATOR MURANTE: New Jersey, Washington State, Illinois, there are enormous states that have already joined because even though they're enormous states, they're not competitive in Presidential elections and they understand that they can have a bigger influence. And there is a disproportionate amount of attention paid to much smaller states--like Iowa, New Hampshire--that... [LB1058]

SENATOR SCHEER: So you're saying the big boys want even more than they're getting, in other words. [LB1058]

SENATOR MURANTE: Well, that's a little bit of a... [LB1058]

SENATOR SCHEER: A more even distribution, let's put it that way. [LB1058]

SENATOR MURANTE: Certainly. There would be...I think more time would be spent--by all accounts--more time would be spent in states that are now considered safe than is currently being spent given our current situation. [LB1058]

SENATOR SCHEER: Thank you. Thank you, Senator Avery. [LB1058]

SENATOR AVERY: Any other questions? Thank you. All right, we'll now receive proponent testimony. Good afternoon, Ms. Brod. [LB1058]

LAURA BROD: (Exhibits 1, 2, 3, 4, 5, 6, 7) Thank you. [LB1058]

SENATOR AVERY: You're welcome. [LB1058]

LAURA BROD: Thank you very much, Mr. Chairman. My name is Laura Brod, that's

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L-a-u-r-a B-r-o-d, I'm a former state representative from the state of...the great state of Minnesota and a current member of the board of regents and a current adder to your economy through my son who is a Cornhusker. So, Mr. Chairman, I appreciate the opportunity to be before you today to talk to what I think is a critical and absolutely important issue, for not just Nebraska but for our country, in terms of how we elect the President and how we make every vote in every state in every election matter to the candidates as they're seeking the votes of the people of this country. And Senator Murante did a fantastic job explaining the basis of the bill and in how the bill works. What I think I will do is just give a brief update relative to where we're at, where we're trying to get to in terms of getting to the 270. And then maybe hit a couple of the misconceptions that you might hear out there relative to what we're trying to do with this legislation and what the results of it we think will be. So first of all, let me just give you an update. The bill has passed 31 chambers in 21 different states. It's been enacted by ten states equaling 136 electoral votes. And now that's 136 electoral votes that are toward the 270 that are required, then, to trigger the compact into effect. So how it works is that the states pass laws, pass legislation just like they pass any other law, entering into an agreement with other states by which those states agree to award their electors in a block to the candidate who wins the most votes in all 50 states. But it's critical to know that 270 trigger because the compact, if Nebraska passes the compact tomorrow, nothing changes until enough other states have joined Nebraska to equal that 270 to leverage the votes of the people of the entire country for the election of the Presidency. Across the country, you're starting to see a broad bipartisan movement on this piece of legislation. I think partially, it's driven by the understanding of the shrinking battleground. You know, we now know about in August of the election, the three to five states where all of the attention, all of the dollars, all of the issue focus will actually be. If you think about it this way, 99 percent of the campaign dollars--and keep in mind that's a lot of dollars, \$800 million--some in the Presidential election in the last race--but 99 percent of those are spent in 15 states. Two-thirds of that are spent in five. Now it's not necessarily just about the money. But when the candidates aren't polling, when the candidates aren't spending the dollars, when the candidates aren't landing their planes or driving their cars or their RVs across your state, they're not seeking the opinions of the people of your state. And they're not talking about the issues that are important to the people of your state. And they certainly aren't trying to drive out the vote and turn out the vote for the people of your state. We believe that every voter in every state is equal. And we believe that the national popular vote bill will move us in that direction. I think I also wanted to address, Senator Scheer, your concern relative to the number of the electoral votes and how we get to the 270. We are seeing large states and small states joining this interstate compact because, to be perfectly honest, the 55 electoral votes in California are actually equal to the number you have here in Nebraska in this way. The number of votes isn't what creates influence under the current system of the state by state winner take all rules across this country. Its influence comes from whether your votes are in play, whether your votes are sought after. So if you're a reliably red state, like Nebraska, or a reliably blue state, like California, it doesn't matter how many

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votes you have in the total. Your votes are ignored and your votes are ignored by the candidates. Our bill does not. Our bill preserves the electoral college. It does not render the electoral college irrelevant. It just simply awards the votes and leverages the votes of the people differently than you do today. You think about it this way. The flyover status has afforded you the opportunity to have Presidents fly into other states to talk about the issues that other states care about. It has afforded you the opportunity to watch other states get 11.5 percent more federal grant dollars in the two years leading up to the Presidential election. We think that's wrong. And there's an easy way to fix and it's a state-based approach, it's a bipartisan approach. It is the only bipartisan election reform movement that is aimed at ensuring that every vote in every state in every election actually counts and actually matters. And Mr. Chairman, I'll wrap it up by saying that the founders made a lot of votes over a lot of days. And what the founders decided is that it's in the purview of the states to make the decision as to what's best for the people that they represent. We've gotten into a tradition in the current way of electing the President. You, here in Nebraska, have been able to actually understand and utilize those state powers. And all we're suggesting is that more states utilize their state powers to advance the cause of their states. And that's what state's powers are all about. Thank you, Mr. Chairman. [LB1058]

SENATOR AVERY: Thank you. Let me ask you this. [LB1058]

LAURA BROD: Certainly. [LB1058]

SENATOR AVERY: We have a bill pending in this committee. We've had a hearing on it but we haven't acted on it. And it's a faithless elector bill. And it's being, essentially, sponsored by the Uniform Law Commission. [LB1058]

LAURA BROD: Uh-huh. [LB1058]

SENATOR AVERY: How would this bill, were it adopted by the Unicameral, how would that affect faithless electors? [LB1058]

LAURA BROD: Mr. Chairman, that's a great question. I think it's also important when we think about faithless electors to know that only one time in our nation's history, with Samuel Miles, did actually the faithless elector intend and think that his vote change would actually change the outcome of the election. So 1 out of 17 of those faithless electors' moments in our nation's history actually was intended to change the outcome. But having said that, this won't change that at all, in this way. We don't change--under the national popular vote legislation or under your current law--the way that the electors are actually chosen remains the same. Electors are generally party faithful. There's a slate of electors for each of the parties that is on the ballot. You'll have a Republican slate of electors, a Democratic slate of electors. And in our legislation, the only thing that changes is the pool of votes on which you determine which slate of electors goes to

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the Capitol to cast that vote a month after the election. So you won't have Republican electors voting for Democratic candidates or Democratic electors voting for Republican candidates. The states will always vote for the candidates that they're attached to just like they do today. So there will be no change. [LB1058]

SENATOR AVERY: All right. What about...let's say that I am an elector from the state of Nebraska. Nebraska votes overwhelmingly Republican. And yet I would, possibly under this bill, I might have to vote in a way that's contrary to the majority vote in my state. Right? I have a problem with that because that can be viewed as a betrayal of your state and your state's popular vote. What's your answer to that? [LB1058]

LAURA BROD: Well, I think you've got to remember, Mr. Chairman, that your state will always have the identity of your state. You will know on the night of the election who won Nebraska. You will know who won Nebraska and by how much. You will know that every vote in Nebraska was leveraged and cast for the candidate that it was attached to. So as a Democratic vote, for example, that Democratic vote would always stay with the Democratic candidate when you're counting up the votes here in Nebraska, but also when you're counting up the votes in the national popular vote. Every Republican vote in the state will stay with the Republican candidate. So you leverage your votes. And so the question really becomes, is Nebraska happier that they voted for Mitt Romney or would...been...Nebraska...I mean, talking as a red state, would it be happier if their guy or gal was actually sitting in the White House? The state identity is really, I think, retained. But again, Mr. Chairman, it's really about leveraging the votes in your state. Currently, the Republicans leave--and I was just looking for the number I wrote down earlier--but the Republicans leave, I think, it's something along the lines of 150,000 to 175,000 excess votes on the table. And conversely, the Democrats have 300,000 votes that are never used to actually elect a Democratic President. And I think that's why you're starting to see such a strong bipartisan support on this bill across the country is that, whether you're in a red state or a blue state, all the votes of the people in this country are not being used for the candidate for whom they were cast. And under national popular vote we can fix that. But we can fix that while retaining the structure of the electoral college that was designed by the founders. [LB1058]

SENATOR AVERY: Why do you think, if the electoral college is so unpopular, as it seems to be--me, the others--why do you think we have such a hard time changing it and we have to come up with schemes like the national popular vote or like the way Nebraska distributes its electors? Why do you think that that is the case if it is so unpopular? [LB1058]

LAURA BROD: Well, Mr. Chairman, I think it's because of states' rights. When you think about how the founders set up the structure of the college, they said a couple things. They said very little, by the way. The words "electoral college" are not even in the constitution. What the founders said is, that it's the states' power so the state

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legislatures in a manner of...thereof..as they direct. So the founders distinctly gave the state power to you, as a state legislator, to make the decision as to how best to advance the cause of your people. The checks and balances on the federal magistrate are critical because imagine, if we had a peer popular vote without that Republican or Federalist check and balance in there, which is what the electoral colleges was really set up to do in addition to some other things. But it's that check and balance. They didn't want the federal government and the friends in Congress making the laws that elect the President. So they made it a federalist system so states make the laws. The states make the election laws. And so, Mr. Chairman, I would make the case to you that the appropriate place to change a state election law is at the state level. And that's what we're trying to do. An elimination of the electoral college would do two things. One, it would eliminate the bipartisan support that we see on this bill across the country. And the second thing it would do is, it would eliminate an explicit and plenary state power that was in the original document of the constitution. I always say that it's states' powers before states' powers were cool, under the Tenth Amendment. This is not enumerated or this is not a reserved power, this is an explicit state power. And so I think if you eliminated the college, you would be eliminating a powerful state power that was designed by the founders to create checks and balances on the federal magistrate. [LB1058]

SENATOR AVERY: Don't you think the founders were really mostly concerned about a popular election of the President? [LB1058]

LAURA BROD: Mr. Chairman, some of them were but not all of them were. It's interesting, when you look at Hamilton in The Federalist Papers, you know, what he envisioned--and I think what many of the founders envisioned--was something a little bit more akin to the College of Cardinals where a group of well-read, well-reasoned men...and I do mean that... [LB1058]

SENATOR AVERY: Property owners. [LB1058]

LAURA BROD: ...would be sitting in a room and making determination based on all, you know, what they thought would be the best people to make the decision as to who becomes President. [LB1058]

SENATOR AVERY: That was not Hamilton's finest hour, really. [LB1058]

LAURA BROD: Well, you know what, Mr. Chairman? I'm not sure others agreed with him because others thought that a popular vote was a really good idea. So they took a number of votes along the way. And what's really interesting is what they decided was they were moot on method relative to how states awarded the electoral votes. But what they were sure about was that that power should reside at the states. So some of the founders believed one way, some of the founders believed another way, but what they

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all could agree on was the fact that this decision should remain with the states. In fact--I was just looking for the number--they took 30 votes over 22 days. And some of the votes were on popular votes, some of the votes were on other systems, congressional district, other ways of doing it. But what they landed on is that they didn't want to make the decision at the national level. They wanted to leave that power with the states. And so we don't believe or I don't believe that a national popular vote bill that we're moving forward and supporting is a popular vote, generally. It's a federalist, Republican form of government that utilizes the power of the states, the legislative purview, to advance the cause of each and every one of the states. [LB1058]

SENATOR AVERY: Thank you. Senator Scheer. [LB1058]

SENATOR SCHEER: You know, I do have to sort of take exception with the comment that, wouldn't you rather have a guy in office that we voted for or that our electoral votes went for. And I don't know that that's necessarily the case because I'm not naive enough to believe that whoever the President of the United States is doesn't know where those numerical numbers came from. And so, honestly, I'm not sure that the current administration would be much more inclined to provide Nebraska anything if we had provided him with the five electoral votes whatever given day they met and he was elected President. I can see how it may help the larger number ones where there are larger contributing numbers. It may make some difference to a Republican candidate that feels if he comes to Nebraska he can either solidify or maybe pick up some marginally. But, honestly, if they're getting the percentage that they're getting in Nebraska, even if he or she shows up in Nebraska, I don't know that it transforms into that many more raw numbers on their behalf. And so I understand your premise, I'm just not exactly sure that for Nebraska that it works or it doesn't work. I can see some fallacies in your comments both ways. [LB1058]

LAURA BROD: Sure. And Mr. Chairman, if I may. Senator Scheer, I appreciate your comments. But what I'll ask you to do is, take a look...and I think in the packet there's a map of Iowa. And if you look at Iowa, Van Meter, Iowa, about 1,500--some people got a visit from one of the candidates. When your votes matter, you're not too small for the candidates to seek those votes. If you think about it this way is that, right now, they aren't coming to places not because they're small. They're not coming to places because they know they're either never going to get those votes or they're going to have them in their back pocket. And so when you think about a national popular vote, every voter becomes equal in a different way because whether you're Republican, you need to drive out the votes where you're strong and just turn out enough where you're weak or Democratic, it's the same strategy. It's like if you think about how you run your elections, do you ignore parts of your district because they're too small? And when you think about, also, why would they come to Nebraska? While from a cost per vote standpoint, from a campaign standpoint--we'll just talk campaigns--cost per vote in places like your state and my state, are a heck of a lot cheaper in terms of effectiveness

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and driving votes than it is for them to campaign in some of the larger, really heavy media markets. [LB1058]

SENATOR SCHEER: I don't mean to be argumentative... [LB1058]

LAURA BROD: Uh-huh. [LB1058]

SENATOR SCHEER: ...but I understand your point with Iowa. But that is exclusive to Iowa and so, yes, 500 or 5,000 votes could have a dramatic effect in the outcome of Iowa and in the outcome of those electoral votes. But Nebraska, the additional 15,000 or 5,000 on a national number count is somewhat insignificant. [LB1058]

LAURA BROD: Well, Mr. Chairman and Senator Scheer, actually, it becomes more significant because it's insignificant when you have margins. Margins start mattering under a national popular vote whereas margins don't matter today. So under national popular vote, whether it's an additional 5 percent... [LB1058]

SENATOR SCHEER: But then we're not changing at all. That's...the problem I'm having with the premise is, we're only really changing half of the world. It goes into effect when we change half of the electoral college. [LB1058]

LAURA BROD: Okay, I understand what you're saying. [LB1058]

SENATOR SCHEER: And so if it's...to me, it works...your premise is fine if it works in all 50 states. But if not all 50 states do that, then I'm not sure that those that are, are not at a disadvantage from those that do. [LB1058]

LAURA BROD: Great. Mr. Chairman and Senator Scheer, I appreciate you explaining that to me because I think I want to make something clear that I apologize if I didn't make clear before which is, when we count the votes in terms of determining what the compacting states are going to do relative to awarding their electoral votes, every vote in every state in all 50 states are utilized in making that determination. So while every state doesn't need to join the compact, every vote in every state is considered for the popular vote. So it's not just half of the voters in the country. It may be half of the electoral votes that are applied to the compact or are pledged to the compact, but it's all the votes in all 50 states that are used to determine who's going to get those votes. So every vote in every state is important under that scenario where it wouldn't be...you would be absolutely right. And to be perfectly honest, if the scenario that you're suggesting were true, this thing wouldn't work. If you only took the compacting states and the votes in the compacting states, you would have collusion between states that would be really strange. And I think that is where I hear your concern and I would be concerned with that too. However, we count all the votes from all 50 states in making the determination so every vote is equal, whether you're inside the compact or whether

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you're outside the compact. [LB1058]

SENATOR SCHEER: But you are still awarding the electoral votes, correct? [LB1058]

LAURA BROD: You would be awarding...Mr. Chairman, you would be awarding the electoral votes of the compacting states based on the popular vote in all 50 states. So if a noncompacting state... [LB1058]

SENATOR SCHEER: Ma'am, I don't want...I understand. We're going to disagree on this maybe. [LB1058]

LAURA BROD: Okay, sure. [LB1058]

SENATOR SCHEER: So I don't want to use the rest of the time. [LB1058]

LAURA BROD: Sounds good. Thank you. [LB1058]

SENATOR AVERY: You lost a vote there. [LB1058]

LAURA BROD: What's that? [LB1058]

SENATOR AVERY: You may have lost a vote there. [LB1058]

LAURA BROD: Well, Mr. Chairman, I appreciate that. We're going to keep working this bill. I think it's a critical bill and I really appreciate the conversation. It's a complex issue. It's an absolutely complex issue but it's a big one. [LB1058]

SENATOR AVERY: You've made a lot of progress over the last seven or eight years, you really have. Questions from the committee? I don't see any more. Thank you, Ms. Brod. [LB1058]

LAURA BROD: Thank you very much. [LB1058]

SENATOR AVERY: Any additional supporting testimony? Okay. Welcome, Mr. Geis. [LB1058]

GAVIN GEIS: Chairman Avery, members of the committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm the executive director of Common Cause Nebraska. Common Cause supports LB1058 and I won't go over all of my testimony because previous testifiers did a very good job. There are a few things that I would like to point out, though. First of all, it hasn't been noted that we don't, in the current system, give equal weight to every vote. For example, in 2004 George Bush outpolled John Kerry nationally by more than 3,000 votes. But if Kerry had received about 59,000 votes in Ohio, alone,

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he would have won the Presidency because he would have received 271 electoral votes. Of course, Kerry didn't win. But in that scenario, those 59,000 people had more weight on their votes than 3,000 other or 3 million, I should say, other Americans. The other thing worth noting is that in polling in Nebraska, most Nebraskans or a majority of Nebraskans are in favor of a national popular vote system. A 2011 poll by Public Policy Polling showed that 67 percent of Nebraskans from--of course, that's averaged between Independent and Republican and Democrat--67 percent were in favor of national popular vote. So in a lot of ways, I think this is the sort of bill that extends upon what we've already done in our state to change the way we handle the electoral college. Our initial change about 20 years ago was to give more weight to individual voters to break it down and allow people to feel like they have more of a say. This is just another step on that path. We were alone when we first started talking about this and looking at changing the way we did this. But now you have states like Massachusetts, Hawaii, Illinois, Maryland, California, New Jersey, and the District of Columbia that have all joined on. And as previous testifiers said, there's 30-some other states that are talking about it. So overall, we think that this is a good bill. We support it and we urge you to do the same. Thank you. [LB1058]

SENATOR AVERY: Thank you. Questions? I don't see any. Thank you, Mr. Geis. [LB1058]

GAVIN GEIS: Thank you. [LB1058]

SENATOR AVERY: Additional supporting testimony? Proponent testimony? Okay, we'll now go to opponent testimony. Seeing none, any neutral testimony? Senator Murante. [LB1058]

SENATOR MURANTE: Thank you, Chairman Avery. I'll be very brief in my closing. I think that, at some point in American history, the national popular vote is going to be our method of electing the President of the United States. How...the reasoning that our Founding Fathers had in terms of establishing the electoral college had some merit. There's no doubt about it. And there was a time and a place for it. But in twenty-first century America, there is clearly too many downsides to the present system. And there is nothing we can do to make our state more populated--except for, maybe, abolishing the income tax which would draw people here undoubtedly--but there is nothing we can do in the immediate term to make our votes more important. But I believe that going to the national popular vote, just like we've talked about the changes in the primary process, it's just not done the same way that it was 100 years ago nor should it be. There is a progression to these things and I believe this to be the way of the future. And if...I was certainly a skeptic when I first started educating myself on the topic when Senator Haar had introduced it. But I've been convinced that this is the way to make Nebraska as relevant and as important as possible. And I'd encourage your support. Thank you. [LB1058]

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SENATOR AVERY: Thank you. Any more questions from the committee? Senator Scheer. [LB1058]

SENATOR SCHEER: I would just say, I don't disagree with you, John...Senator, other than I think if you're going to change the system, we need to change all the states, all the systems rather than doing something on a proportionate basis. That's where my (recorder malfunction)...disconnect. [LB1058]

SENATOR MURANTE: Okay. [LB1058]

SENATOR AVERY: Senator Karpisek. [LB1058]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Murante, what...I'm a little confused on our split electoral vote and what this would do to that. [LB1058]

SENATOR MURANTE: This would award the...our...we wouldn't really have a split electoral vote anymore, I suppose. This would award all five of our electoral votes to whomever gets the most votes in all 50 states plus the District of Columbia. So in that sense, it would resolve that debate and we'd never have to talk about it again. So all the more reason to pass this bill. [LB1058]

SENATOR KARPISEK: I won't after this year anyway. Thank you, Senator Murante. [LB1058]

SENATOR MURANTE: You can always come back, Senator Karpisek. [LB1058]

SENATOR KARPISEK: Well, that's true, just to bother you. [LB1058]

SENATOR MURANTE: Uh-huh. [LB1058]

SENATOR AVERY: Senator Bloomfield. [LB1058]

SENATOR BLOOMFIELD: So if Nebraska voted 97 percent for one candidate and the popular vote went the other way, our votes just automatically go to the guy that won 3 percent? [LB1058]

SENATOR MURANTE: Yes... [LB1058]

SENATOR BLOOMFIELD: Enough said. Thank you. [LB1058]

SENATOR MURANTE: ...comma, however, Senator Bloomfield, I think it's important to note that in the way our system is--and it was mentioned briefly, but it's important to

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note--that once you get to the point where a candidate has won by one vote, every vote after that doesn't make any difference anymore. So a candidate who wins 97 percent of the vote has much more benefit from the state of Nebraska in a popular vote system than they do in the electoral vote system because they could have...winning a state 97 percent to 3 percent is no different than winning a state 51 percent to 49 percent. It doesn't make any difference in terms of the value which is why right now, nobody comes here, nobody bothers or wastes their time in Nebraska because they already know who's going to win the state. [LB1058]

SENATOR AVERY: But they may not know who's going to win the 2nd District. [LB1058]

SENATOR MURANTE: That's true. That's happened once in our history. Although I'm not sure that's a compelling reason to block progress on the national popular vote simply because the 2nd Congressional District, in one election cycle, was a toss up. [LB1058]

SENATOR AVERY: Yeah, I might agree with that. [LB1058]

SENATOR MURANTE: Uh-huh. [LB1058]

SENATOR AVERY: Senator Bloomfield. [LB1058]

SENATOR BLOOMFIELD: Just a statement for the record: Clarity and beauty are both in the eye of the beholder. What you see as perfectly clear, I may not. [LB1058]

SENATOR MURANTE: That much is absolutely certain, Senator Bloomfield. [LB1058]

SENATOR AVERY: Any other questions? [LB1058]

SENATOR MURANTE: Thank you. [LB1058]

SENATOR AVERY: (Exhibits 8, 9, 10, 11) Thank you very much. Before I close the hearing on LB1058, I have a letter of support to read into the record from Adam Morfeld of Nebraskans for Civic Reform. I have a letter also to read into the record of opposition from the Secretary of State, John Gale; a letter of opposition from Curtis Gans, director of the Center for the Study of the American Electorate; and a letter of opposition from Tara Ross who is a...from Dallas, Texas. Thank you very much. That ends the hearing on LB1058. We'll now move to LB1084. Senator Tommy Garrett. Welcome, sir. [LB1058]

SENATOR GARRETT: (Exhibit 1) Good afternoon, Senator Avery. Good afternoon, members of the Government, Military and Veterans Affairs Committee. For the record,

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my name is Tommy Garrett, T-o-m-m-y G-a-r-r-e-t-t, and I represent the 3rd Legislative District in Sarpy County. I come before the committee today to bring you LB1084 which adds city council seats to the list of vacancies in which a political subdivision has 45 days to fill the vacancy. The idea for this bill came from a dispute in filling a vacancy on the Bellevue City Council last year. A city councilman resigned as of March 31, 2013, and there was a disagreement between the mayor and the city council on how to fill the vacancy. During the dispute, the Bellevue city attorney was asked to give his opinion regarding 32-567. His opinion stated that since city council seats were not specifically mentioned in 32-567, the 45-day deadline to fill the vacancy in the statute did not apply to filling that vacancy. After many months, the mayor and council finally decided to hold a special election to fill the vacancy. And an election was held on October 13, 2013, more than seven months after the city councilman had resigned. This bill was designed to add city councils to the list of offices. This law in no way changes the method by which a political subdivision chooses to fill a vacancy, it just gives a time line by which the city has to fill a city council vacancy. Under the scenario of deciding to hold an election to fill the vacancy, if the city chooses to hold an election and makes this decision within 45 days, then they would be in compliance with the statute even though the election would not be held in the same 45-day period. I also bring before the committee an amendment which would reinsert the stricken sentence "unless good cause is shown that the requirement imposes an undue burden." I was informed that there are some situations in which filling the vacancy might be impractical, such as a county assessor resigning and there is difficulty finding a candidate with the proper license to fill the vacancy, thus lengthening the selection process. Thus, there needs to be some flexibility. It is my understanding that the Sarpy County Election Commissioner will be testifying on this bill and can give you some insight on the situation in Bellevue. Thank you all for your time and I will be happy to answer any questions that the committee may have. [LB1084]

SENATOR AVERY: Thank you, Senator. Any comments or questions from the committee? You answered them all. [LB1084]

SENATOR GARRETT: Thank you. [LB1084]

SENATOR AVERY: Proponent testimony? We will now receive proponent testimony on LB1084. Welcome, Mr. Bena. [LB1084]

WAYNE BENA: Afternoon, Senator--thank you--and members of the committee. For the record, my name is Wayne Bena, W-a-y-n-e B-e-n-a, and I serve as election commissioner for Sarpy County, Nebraska, Nebraska's third largest county now with 100,000 registered voters. I'm here in support of this bill today. And it's an idea that came forth during the Bellevue election, as Senator Garrett mentioned. Originally I had thought this might just throw this into LB964 that we talked about last week. But I thought this was a little more substantive and you probably wanted to break in the new

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guy so I offered it to Senator Garrett. And he was very gracious to listen to this concern and it's something that he heard in his district. After the city councilman in Bellevue resigned, my office became a hotbed of answering questions, not only from the public but from the city attorney in Bellevue, the mayor, and also city councilmembers, not only on how they fill the city council seat but how long that they had. And under the statute, it provides a list of many different political subdivisions and how those vacancies are filled. And then at the end, it states that there is after...45 days to make...fill that vacancy. The city attorney in Bellevue made note that since it wasn't specifically put in the statute, that it didn't apply to the city council race. Some might argue--and this is why you have courts and why you have lawyers--that the last paragraph of that provision would apply to all vacancies, as it says "all vacancies." And some would argue that only the ones that are listed specifically in the statute are in there. To provide any...so there's no ambiguity, we add city council to this list. As mentioned before, this is not changing the method by which a city fills that vacancy, it just provides a little bit of clarity of when that vacancy is going to be filled. Why my office was put in the middle of it is, there was a debate of whether or not to fill that vacancy with a person or to have a special election. My office is required to have 50 days' notice of having a special election and we're more than willing to do so. However, my office was stuck in the middle of a six-month battle of whether or not...I did not know from every two weeks if I was going to have an election 50 days ahead of schedule. There was one point that I had four employees that wanted to take summer vacation and I did not know if I was going to be able to do that because I did not know in an even time if I was going to have a special election. So this is to allow my office some flexibility to know that within a 90- to 100-day period from the ending of a...someone resigning, that within that 45-day period I may be asked in the scenario to run a special election. And from that point they have to have 50-days' notice. So I've got 100 days that I know that this election is probably going to happen if I have to hold it. Without this, I went every two weeks giving an opinion to the city attorney of what date the election would be on. And so it provides a little more stability for my office to be able to conduct its work. I appreciate the senator adding back the sentence that was stricken. I know that some people behind me were opposed to that sentence being stricken out. It wasn't something that I wanted. It...there are situations in which you're not going to be able to fill it in 45 days, as Senator Garrett mentioned. As well, I'll also point out that the only...there is no cop going out there arresting city councilmembers for not filling it within 45 days. The method of...is going to court and asking for a writ of mandamus, saying that...force the body to act. And so in this situation, if someone...if they can't fill it in 45 days...and I don't think someone is going to sue at 46 days but someone might sue at six months. And so the city would have to provide good reason why they would not be able to fill that vacancy in that time just like anything else. And if they can prove that good cause, then they can continue on. This provides us just a good base line by which my office can know if we have to hold a special election and when that's going to be. So I'm looking to answer any questions you might have. And one last thing I do want to say before that, since I do have probably 30 seconds. This will be my last time testifying before you this year.

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Some of you are probably thankful for that. But for those members of the committee that will...this will be their last year, Senator Wallman, Senator Karpisek, Senator Lautenbaugh, and Senator Avery, I want to appreciate you taking the time to listen to me and ask questions. As an election official, this allows me an avenue to continue on my service. And I appreciate the questions that you've given me over the years. It's worth the 50-mile drive--that's sometimes once a week--to be here. And I appreciate your letting me input on some of these things and be involved in the process because outside of actually running an election, this is the favorite part of my job. So I wish you the best in your future endeavors. And for those of you that are left and choose to continue your tour of duty on this committee, I look forward to working with you in the future. And I beat it. [LB1084]

SENATOR AVERY: And they will see you again. [LB1084]

WAYNE BENA: And I'm under five minutes. [LB1084]

SENATOR AVERY: Yes. Thank you. Thank you. Questions? Senator Scheer has a question. [LB1084]

SENATOR SCHEER: Wayne, just out of curiosity because the list in the statute of what is covered is pretty extensive. So are we assuming that...was there some intent the reason it was not there? Or do we just think it is an oversight because, I mean, literally...I mean they even have resurrected and put in the Learning Community but, yet, city councils were sort of excluded. So I'm just curious. [LB1084]

WAYNE BENA: I'm unaware of that. I do know that city council is not the only race that's not listed on that list. And one...and discussions on this statute with the Secretary of State's Office at one point, one thought was you take that entire statute and drag it down to do its own so it covers everybody. Looking at it doing some research, some of the ones that are not listed on that have their own specific deadlines in statute. And so looking at the city council ones, there wasn't anything specific in the city council statutes that provided a deadline. So I believe in doing my research, this was the easiest avenue to add it in. Again, not changing the way that it's done. That's not my place to say how the decision is. But the time line, I thought was best for all parties involved, so. [LB1084]

SENATOR SCHEER: Would there be concern that this was exclusive to local communities that they would be able to do this internally or on their own basis of filling those positions? [LB1084]

WAYNE BENA: Each class of city has a different way to...the way a primary class and a first class and all the different classes have different ways of doing it, which is still put in the statute. And again, by inserting that language, showing good cause if there is a reason why someone couldn't do it. Again, if they could show good cause in court, if

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they were even sued in the first place, then I wouldn't imagine a situation a judge wouldn't take that into consideration. And the worst thing that would happen, the judge would say, get it done, so. [LB1084]

SENATOR SCHEER: Okay. Thank you. Thank you, Senator. [LB1084]

SENATOR AVERY: Any other questions? Senator Bloomfield. [LB1084]

SENATOR BLOOMFIELD: Thank you. The 45 days, not only in the city council case, but if someone were to...if they were looking at a November general election, somebody died the end of August, you're 60 days from the election. Are we going to force a special election in October to take care of what could have been done in November? [LB1084]

WAYNE BENA: In those situations, that would fall under the good cause. And the good cause is you're going to have someone filling that seat. There's different rules of when you can actually even hold a special election. So when you know an election is coming up, like such as those, so a special election wouldn't even be done. But I would contend is, if that were to happen, if the city councilman were to pass away who was on the ballot against someone else and there's an election, you're not going to have to appoint someone to do that because you're going to have an election. So that could be the good cause that could be shown. [LB1084]

SENATOR BLOOMFIELD: Thank you. [LB1084]

SENATOR AVERY: Any other questions? Thank you, Mr. Bena. [LB1084]

WAYNE BENA: Thank you for another great year. [LB1084]

SENATOR AVERY: Any other proponent testimony? I don't see any. Any opponent testimony? Neutral testimony? Here we go. Good afternoon. [LB1084]

GARY KRUMLAND: (Exhibit 2) Senator Avery, members of the committee, my name is Gary Krumland. I'm with the League of Nebraska Municipalities. My name is spelled G-a-r-y K-r-u-m-l-a-n-d. Appearing in a neutral capacity. I don't think we have any concern about setting a deadline or a date on getting an appointment done but I don't know that 45 days is the appropriate amount of time considering the procedure a city has to go through. And I don't know for sure, but that may be why cities were not listed here in the first place. For example, the law provides that cities with their own charter, which is Omaha and Lincoln, set up their own procedure for filling vacancies in the charter. And I don't have that in front of me, but they may have a different forum. The procedure for other cities to do it--and that's what this handout is--if you look on the second page, section 32-569, when a vacancy is created because of resignation, the resignation has to be in writing and presented at a meeting of the city council or the

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village board. And then there's another statute that requires that the city council or the village board accept the resignation by a vote of the council or of the board. That triggers a notice in the newspaper or a posting to let people know that there is a vacancy. And then sometime within the next four weeks, either at the next regular meeting or special meeting, the mayor or the president of the council makes an appointment. If the council consents, the appointment is made and that's done. However, if the council rejects that and does not consent, you go to the next regular meeting or a special meeting and then the mayor or the president of the council makes another appointment. If that's rejected, the way the statute reads is, you sit in that meeting and keep making appointments until somebody is accepted. There are some city councils of cities of the same class, which are some of the smaller ones and virtually all the village boards, who only meet once a month. So if you're having three regular meetings in a row, you're probably talking somewhere in the area of 60 days, depending on how many days there are in the month that you're going. Like, say, you meet the first Tuesday of the month. So I guess our only concern is 45 days may be a little bit quick in that situation. If it was 65 days, it probably would fit in with what the current procedure is for making appointments. And so that would be, I guess, what our suggestion and concern would be. It would still set a deadline but it would follow what the current procedure is in the statutes. [LB1084]

SENATOR AVERY: Thank you, Mr. Krumland. Questions from the committee? I don't see any. Thank you. [LB1084]

GARY KRUMLAND: Uh-huh. [LB1084]

SENATOR AVERY: Additional neutral testimony? Good afternoon. [LB1084]

ELAINE MENZEL: Good afternoon. Chairman Avery and members of the committee, my name is Elaine Menzel, it is M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials. I didn't intend to testify but the Sarpy County Commissioner suggested that we might be coming forward. But our interest in the bill is related to the stricken language related to the undue hardship. And as the Senator suggested, he would like that added back in and we would be supportive of that measure. So I would respond to any questions if there are any. [LB1084]

SENATOR AVERY: We have an amendment drafted here that does that. [LB1084]

ELAINE MENZEL: That was my impression, that that would be offered, so. [LB1084]

SENATOR AVERY: Thank you. Any questions? I don't see any. Thank you for your testimony. Any other neutral testimony on LB1084? Senator. [LB1084]

SENATOR GARRETT: Again, thank you for the opportunity to present this bill. And we

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did have discussions with the Sarpy County Election Commissioner about putting that language back in and the League of Municipalities' concern about the...for those city councils that just meet once a month that 45 days would be probably an undue hardship. But we thought that that fit under the stricken language that was added back in where it poses an undue burden. It would meet that requirement so they could have longer to do that. But we certainly wouldn't be opposed to amending it to making it 60 days either, so. [LB1084]

SENATOR AVERY: Thank you. Any more questions for the senator? Senator Murante. [LB1084]

SENATOR MURANTE: I'll just say that it's nice to have you around so that Wayne has someone other than me to come to with all his stuff. [LB1084]

SENATOR GARRETT: Outstanding. Thank you very much. [LB1084]

SENATOR AVERY: All right. I don't see any more questions. Thank you, Senator Garrett. All right, that ends the hearing on LB1084. We now go to the last item on today's agenda, LB945. Senator Davis. Welcome, sir. [LB1084]

SENATOR DAVIS: (Exhibit 1) Good afternoon. [LB945]

SENATOR SCHEER: You realize you are the last. [LB945]

SENATOR DAVIS: I'm always the last. [LB945]

SENATOR MURANTE: Let the record so reflect. [LB945]

SENATOR DAVIS: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I am Al Davis, A-I D-a-v-i-s, and I represent the 43rd Legislative District. Today I am introducing LB945. The concerns that LB945 would address were brought before this committee in November during the interim study hearing on LR341. The Government Committee received oral and written testimony about the problems several cities have had in getting payments from the state's Emergency Fund for damage caused by the 2011 Missouri River flood and other disasters. Cities had to wait a year or two to get a response to their applications for emergency aid. They also had to wait a year or more after the application was received to receive the payment...was approved to receive the payment. These delays created a hardship for them when responding to the disasters. LB945 would establish time frames in which the Nebraska Emergency Management Agency would be required to respond to applications from local governments for emergency assistance under the Governor's Emergency Program. The bill would provide that the Adjutant General or his or her representative must acknowledge receipt of an application's supporting documentation

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within 30 days and notify the political subdivision what, if any, additional supporting documentation is necessary to complete the political subdivision's request for aid. LB945 would also provide that when either state or federal funds have been obligated and an application has been approved, such aid shall be remitted to the political subdivision 60 days after acknowledging receipt of all necessary supporting documentation. The provisions in LB945 are not intended to be a criticism of the NEMA staff that have been faced with several emergencies over the last several years and personnel resources have been stretched thin. In fact, additional NEMA staff may be a way to address that problem. Rather, the provisions in LB945 would simply enable cities to know what to expect and when to expect it when they request emergency assistance from our state. I have a letter to offer in support of LB945. It is from Erv Portis, city administrator of Plattsburgh, who described his concerns and expressed support of this bill. I believe there are additional testifiers who will follow me to describe the needs of the bill. Thank you. Any questions? [LB945]

SENATOR AVERY: Thank you, Senator. Question from Senator Wallman. [LB945]

SENATOR WALLMAN: Thank you, Chairman. Senator Davis, do you believe in Santa Claus? I have went through NEMA processes. There's numerous stuff you have to fill out. Do you think 90 days is too quick for them? I can tell you from personal experience, it takes...it took us more than a year through a tornado in our area. [LB945]

SENATOR DAVIS: I think if the city submits their documentation, they are entitled to know whether they've submitted everything within an appropriate period of time. And it seems to me, 30 days is the appropriate period. If the committee feels that that's too short, I would suggest an amendment to extend that out. [LB945]

SENATOR WALLMAN: I just think it's unrealistic, you know, all the stuff you've got to do. [LB945]

SENATOR DAVIS: Are you talking on the part of the city or on the part of NEMA? [LB945]

SENATOR WALLMAN: Yeah. [LB945]

SENATOR DAVIS: This does not put any restrictions on the city. What this does is, it says to NEMA, the city of Papillion has submitted all the documentation. [LB945]

SENATOR WALLMAN: Uh-huh. [LB945]

SENATOR DAVIS: You really shouldn't have to...Papillion shouldn't have to wait a year for that decision to be made. You know, if a year goes by and then NEMA comes back and says you need to submit additional documentation, it gets a lot harder for them

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because that file has moved to the bottom of the desk... [LB945]

SENATOR WALLMAN: Yeah. [LB945]

SENATOR DAVIS: ...and you know how that is... [LB945]

SENATOR WALLMAN: I understand. [LB945]

SENATOR DAVIS: ...serving in here. [LB945]

SENATOR WALLMAN: Thank you. [LB945]

SENATOR AVERY: Senator Bloomfield. [LB945]

SENATOR BLOOMFIELD: Thank you. Senator Davis, do you have a copy of the bill with you? [LB945]

SENATOR DAVIS: I do. [LB945]

SENATOR BLOOMFIELD: Page 4 of the bill, line 11, "shall be remitted to the political subdivision not less than sixty days..." [LB945]

SENATOR DAVIS: That, I believe Gary Krumland is going to address that. I've got that circled in here and I thought if the question came up...we think that that is an error that was made in Bill Drafting. [LB945]

SENATOR BLOOMFIELD: Okay. [LB945]

SENATOR DAVIS: And that should be "more than." Yeah. [LB945]

SENATOR BLOOMFIELD: Okay, "more than." Okay. I agree with Senator Wallman. I think you're being a little optimistic but that sure didn't read right to me. [LB945]

SENATOR DAVIS: Yeah. [LB945]

SENATOR BLOOMFIELD: Thank you. [LB945]

SENATOR AVERY: Any other questions? I don't see any. Are you going to stick around to close? [LB945]

SENATOR DAVIS: Probably not. I've got a bill in Natural Resources. [LB945]

SENATOR AVERY: Okay. [LB945]

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SENATOR DAVIS: But if there are questions or concerns or the committee has issues they'd like me to deal with, let me know and we'll try to draft an amendment. [LB945]

SENATOR AVERY: Thank you, Senator. [LB945]

SENATOR DAVIS: Thank you. [LB945]

SENATOR AVERY: Proponent testimony? LB1045...LB945. Welcome, sir. [LB945]

RODNEY STORM: (Exhibit 2) Mr. Chairman and members of the committee, my name is Rodney Storm, city administrator for city of Blair, Nebraska, R-o-d-n-e-y S-t-o-r-m. I'm here today testifying in support of LB945 on behalf of the city of Blair, the Blair Airport Authority, and the Nebraska Association of Airport Officials. The changes, as outlined in LB945 from page 3 through page 4, go a long way in helping relieve the financial hardships that have been created for our cities, counties, and other political subdivisions that have suffered severe losses due to numerous natural disasters over the past several years and the future disasters that we, unfortunately, know will occur. First, let me clarify that my comments and testimony are in no way intended to be interpreted that we do not have the utmost respect and admiration for the personnel of the Nebraska Emergency Management Agency and the job that they do. Quite honestly, we feel that they are doing an excellent job serving the citizens of the state. But in saying that, we feel that they do not have the personnel and the resources to be able to meet all the needs in a timely manner. We believe that NEMA needs the authority or the authorization, if they don't already have it, to contract with outside sources to help with administrative paperwork and help complete the task of verifying costs for submission to FEMA and for the determination of eligibility for state emergency funding. If you look at the attached sheet on the back of this testimony and look at the first two claims listed, Blair submitted claims on October 6, 2011, to NEMA totaling \$2.2 million-plus for FEMA and NEMA reimbursement. We received the FEMA reimbursement through NEMA for roughly \$1.6 million on September 13, 2012. This is almost one full year from the time that it was submitted. Now, almost 18 months after receiving the FEMA payment, the city of Blair still has not been reimbursed the state funds of a little over \$278,000 that we are eligible for. In NEMA's defense there was the usual back and forth clarification of certain costs for eligibility that took a couple of months and we know their personnel was stretched thin from the fact that they were trying to help every other county, city, village, township, airport, drainage district from Gavins Point to southeast Nebraska, along with the cities and the counties along the Platte River from the flooding of 2012. In addition, there was a fact that numerous public entities from across the state, including Blair, were still submitting and finishing up projects from previous disasters in 2009 and 2010. Add to that, that NEMA staff had to spend most of late spring and summer of 2012 dealing with drought and wildfires across the state. That task in itself, assisting those public entities that needed state and federal assistance to help them simply

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survive was extensive on NEMA's part. As much as I would like to have had NEMA staff sitting in Lincoln working on our projects so that we could get reimbursed, we acknowledge that at that point, our cost recovery was secondary to the survival of the others. We understand that NEMA, we feel, is short staffed in being able to deal with the natural disasters that occur. We do believe, though, that the prompt payment reimbursement provided in LB945 is overdue. When the disasters hit, Nebraskans from Blair to Kimball do what we have to, to take care of our family, friends, neighbors, and our communities. We do what we need to clean up, rebuild, and move forward. But when assistance is needed and available from our federal and state partners, it is needed on a timely basis. As you can see from the attached spreadsheet, from the flooding of 2010 and '11, the cost to city of Blair, over \$3.3 million in direct costs with two roads and a creek crossing still to be rebuilt at an estimated cost of over \$600,000. That's equal in property tax just over 81 cents for every \$100 of valuation in the city of Blair. And those costs don't include the cost of interest on warrants and construction grant anticipation notes that has added an additional 2 percent to 3 percent to our recovery bill. We believe that LB945 goes a long way into help the cities, counties, and other political entities recover from the natural disasters. [LB945]

SENATOR AVERY: Thank you, sir. Questions? Senator Scheer. [LB945]

SENATOR SCHEER: I think we've got two problems here. I mean, it doesn't appear that it's financial and they can cut the checks. It's more of a personnel problem, maybe, within the agency that they don't have enough staff. But having said that, in looking at your spreadsheet, it seems a little odd because there are several of them...for example, if you look down the 2010 flooding. The very first one you submitted essentially the same time as the rest, within four or five days, two weeks, whatever. And for some reason, it literally took three years. Now is that one that maybe there was documentation that was off or what? That just seems like a long time for an undisputed claim. [LB945]

RODNEY STORM: You know...yeah...a lot of that goes back and forth on cost and the accept of that. In NEMA's defense from the other side of that is, we do not know how long FEMA will take to actually transfer or approve those costs and transfer the funds to the state for payment to the state. I think what we're looking for is the ability for NEMA to be able to respond to those disasters, respond with staff to help get the paperwork done, get it submitted to FEMA, and then once FEMA has been able to process and authorize the payment back, that we get those payments out in a prompt as possible to the public entities so that we can take care of fulfilling those costs that we've obligated the taxpayers of our communities for. [LB945]

SENATOR SCHEER: But in fairness to NEMA, the time portions are here but it doesn't give us a true reflection of when the state might have received those funds as well. I mean, it almost appears, well, they're sitting on the information because or they're

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sitting on the money. You submitted it, we'll say you know, 10/6/11 and you got payment 9/3/12. But what we don't know from your spreadsheet is perhaps the state only received the money...maybe they only received the money on August 15 and you literally got the money within 30 days and so... [LB945]

RODNEY STORM: And we wholeheartedly agree with you. And that's, you know, and that's why we're not condemning NEMA. We just...we know that there's a downfly (phonetic). At the same token, though, when you look at that spreadsheet and we received payment from FEMA for that \$1.6 million and we're almost 17, 18 months out and we have not yet received reimbursement from the state for those eligible funds. Those funds have...those costs have already been determined to be eligible was our assuming because NEMA and FEMA has paid them. Why can't the state funds be processed and help reimburse to go along with that and to make sure that we have personnel that FEMA or NEMA can get all the paperwork done on a timely basis? I can tell you...I mean, we don't have exact dates and so forth but we know that our claims were sitting there to be worked on, to be processed and they didn't have the personnel to do it. You know, we try to follow up with them to say, where are we at? And they're just bogged down. [LB945]

SENATOR SCHEER: And I don't...and that part I...sir, I don't dispute that. I understand there's a labor problem. But what I'm talking about, from your information, we still can't technically know at what point in time the state did receive the funds. And that could distort those dates dramatically... [LB945]

RODNEY STORM: Right. Uh-huh. [LB945]

SENATOR SCHEER: ...one way or the other. So I'm not arguing about that, I'm just looking at the information available. And it makes it look like they really, really drug their feet in some respects. But we don't know that... [LB945]

RODNEY STORM: Right. [LB945]

SENATOR SCHEER: ...because we don't know when they received their funding. So that's all I was getting at. Thank you, Senator. [LB945]

SENATOR AVERY: Senator Wallman. [LB945]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming down here. These temporary protection measures, you know, like when there are dikes or levees... [LB945]

RODNEY STORM: The costs or our costs? [LB945]

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SENATOR WALLMAN: Yes. [LB945]

RODNEY STORM: Our cost for construction was primarily the construction of some--I'm careful how I say it, I'm not for sure. One agency it's levees, one it's dikes, one something else. But we'll...for the sake of this hearing, we'll say they were dikes... [LB945]

SENATOR WALLMAN: Okay. [LB945]

RODNEY STORM: ...for to keep the water out from our wastewater and water treatment plant. We had to build to be able to, literally, keep the lake...Missouri from flooding our water and wastewater plants. We had tremendous costs with setting up temporary pumping to be able to, when water...when you keep the water out, the rainwater that falls after that, you've got to keep it pumped over the levees. When we're treating water...the city of Blair, like, we take our water all from the Missouri River. We've got to discharge all of that back into the river. It's a undaunting pumping process to try to keep up with that total process. Then the cleanup after that was, you know, the removal of the sand, debris, and everything from the park and other facilities in that area. [LB945]

SENATOR WALLMAN: And in regard to that, is the city of Blair responsible also for Cargill out there? [LB945]

RODNEY STORM: We furnish all of the water to the Cargill plant, yes. [LB945]

SENATOR WALLMAN: Thank you. [LB945]

RODNEY STORM: So when we were trying to protect that plant, we were trying to protect those thousand jobs and that \$1.5 billion investment that was there. From the city of Blair, we do have a pumping backup through the NRD rural water system where we can take about 1 million to 1.5 million gallons a day from MUD in an emergency basis. That goes a long ways to taking care of 8,000 people compared to having to truck it if you would lose those treatment facilities. But it doesn't do anything for that industry that needs that 12 million to 15 million gallons of water every day. [LB945]

SENATOR WALLMAN: Thank you. [LB945]

SENATOR AVERY: Senator Bloomfield. [LB945]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Mr. Storm, is there any concern that at some point NEMA would say, we can't do this in 60 days, let's just deny the claim? [LB945]

RODNEY STORM: Well, you know, I think the 60 days, I think that's something from our

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standpoint, we're not--for lack of a better term--married to that, that time. We just want things to be able to be handled in a timely manner. We think that, potentially, the ability for the state to be able to, in a major disaster such as the flood of 2012, to be able to contract with, I'll say, an accounting firm or somebody to help be able to handle some of that paperwork versus the state, necessarily, trying to ramp up a large staff to...and maintaining that. You know, it's not every year you have the big disaster. You know, so it's hard to be able to ramp up to be able to meet those types of staffing needs. But they may be able to contract and do some things that would help be able to...those communities and sort of get those paperwork and so forth processed so they can get it approved and sent in to FEMA for reimbursement. [LB945]

SENATOR BLOOMFIELD: Yeah. I was upstream of you in South Sioux when you were fighting the battle down there. And I think 60 days, as stated here, we're cutting them way too tight. What would six months do for you? [LB945]

RODNEY STORM: And yeah, it's hard for me to sit here and pick a date. I think from our standpoint, we'd be more than willing to look at it, to talk about it, and try to come up with something that was reasonable from your standpoint and something that, you know, would help us be able to get those reimbursements in a timely manner. [LB945]

SENATOR BLOOMFIELD: Okay, thank you. [LB945]

SENATOR AVERY: Any other...Senator Scheer. [LB945]

SENATOR SCHEER: Just out of curiosity, would it make sense to you if various states maybe had some type of an agreement because you're talking about, well, contracting with some other deal. But you'd have to bring those people up to speed on what they're trying to do. I'm just wondering, if this isn't unique to Nebraska, if this, you know, you get a devastating...an occurrence, you know, you can never have enough people. And I'm just wondering--and there may be days that they're not very pushed, as well, for things, you know, for their duties--if it would make sense to have some type of a interstate, intrastate agreement so that if Colorado and Wyoming and Montana and other states were all part of the agreement, if...in Nebraska so that if something hit over in Wyoming and we don't have a problem, we could send maybe one of our staff over to facilitate that because you're already used to the same forms, they're federal forms. [LB945]

RODNEY STORM: Uh-huh. [LB945]

SENATOR SCHEER: Conversely, you know, if...when we have those type of emergencies that some other state could provide some additional staff for maybe the two, three weeks to get all the paperwork done. And then it really isn't an additional cost to any state because you're doing it on a (inaudible) basis. [LB945]

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RODNEY STORM: And part of what we were looking at is, lack of a better term, as much as FEMA gets criticized across the country, they...when a disaster hits, they bring on contractors to come in and help with those local disasters to process it. They don't keep 10,000 people sitting around... [LB945]

SENATOR SCHEER: Correct. [LB945]

RODNEY STORM: ...waiting for the next disaster. And I guess that's what we're looking for is maybe some way that NEMA would be able to have some similar... [LB945]

SENATOR SCHEER: Sure. [LB945]

RODNEY STORM: ...capabilities so that when you do have that major disaster, that they could, then, be able to ramp up and get the assistance that they need to be able to handle the paperwork and so forth. [LB945]

SENATOR SCHEER: Short-term assistance. Okay. Thank you. Thank you, Senator. [LB945]

SENATOR AVERY: Thank you. Any other questions? Senator Garrett. [LB945]

SENATOR GARRETT: I almost wonder--I can understand what you're getting at, Senator Scheer--I wonder if, as part of an additional duty, we could train some Nebraska National Guard folks to do that as part of an additional duty on an as-needed basis. And having...being a retired military guy... [LB945]

SENATOR SCHEER: Federal forms. [LB945]

SENATOR GARRETT: ...we frequently have lots of additional duties that we get trained on occasionally. And we don't always have to do those things... [LB945]

SENATOR SCHEER: You're used to federal forms. [LB945]

SENATOR GARRETT: ...but certainly I think when FEMA, when the federal government pays the money to the state, we have a duty of, you know, in the private sector in the Prompt Payment Act where, I think, it's incumbent upon us to get the money to the municipalities as quick as possible once we've received the funds from the federal government. That only makes sense. [LB945]

RODNEY STORM: And I think to get you one step further on that, it's not--as I think Senator had indicated over here--they may have paid us within 24 hours of when they got the money. The important thing is make sure they've got the ability to be able to get that paperwork done and get it submitted to FEMA so that FEMA can get it back so that

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the state, then, can take their 12 hours or 24 hours and get it to us promptly. [LB945]

SENATOR GARRETT: Right. Thank you. [LB945]

SENATOR AVERY: Thank you. Any more questions? Thank you, sir... [LB945]

RODNEY STORM: Thank you. [LB945]

SENATOR AVERY: ...for coming down. Any more proponent testimony? Good afternoon. [LB945]

NANCI WALSH: (Exhibit 3) Good afternoon. Chairman Avery and members of the committee, my name is Nanci Walsh, N-a-n-c-i W-a-l-s-h. I'm the city treasurer for the city of South Sioux City. In the summer of 2011, the Missouri River recorded a flooding event for over 90 days and exceeded a 500-year-flood level. As a result, we had over \$6 million in damage to public infrastructure. For the qualifying damages we are to receive 75 percent from FEMA and 12.5 percent from NEMA. We have 54 approved projects and have recently completed the repairs on all of them. We are requesting first that the FEMA request be processed in a reasonable manner and secondly, to have the NEMA funds released as the projects are approved. The NEMA staff have worked hard on our behalf. But with \$6 million in damages, we were forced to borrow money to pay for the projects underway with FEMA, through NEMA, paying their share as the projects were processed and NEMA holding the 12.5 percent until the end of all the projects are done. In our case, this represents \$750,000-plus from NEMA and \$4.6 million from FEMA. By way of explanation, here are some examples of time and money for our nine large projects that we've submitted all the paperwork on. Project 195: Paperwork was submitted 10/26/12 and paid...the FEMA share was paid on 12/13/12, it should be; it was 45 days. Project 204: Paperwork submitted 11/28/12 and we received the FEMA share just this January 13 of 2014, which is 13.5 months. There were other projects as well with...that took five and a half to six months and some that we are still waiting on. Project 142 was for emergency protective measures which are the things you do to prepare for the flood. And all the documents were submitted when FEMA wrote the project in December of 2011 and we are still waiting for the FEMA share on that. For the small projects, we received the FEMA share in April of 2012 and August of 2012. Total federal FEMA dollars to date is about \$1.5 million. Now that we've completed all the projects we will get the rest of the paperwork to NEMA. In my experience, once I've gotten NEMA to actually review what I've sent in, then the money has come quickly. But you have to kind of keep reminding them. I know they're just overworked. But, in essence, South Sioux City supports this bill and I'd be happy to answer any questions. [LB945]

SENATOR AVERY: Thank you. Senator Scheer. [LB945]

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SENATOR SCHEER: But part of it, at least according...if I'm reading or listening correctly, part of it is FEMA though, as well, because you're stating that it took 18 months to get your FEMA money. [LB945]

NANCI WALSH: That comes through the state. The state has to...NEMA has to send or ask for that money. The projects were written...all written in December, November and December of 2011... [LB945]

SENATOR SCHEER: Uh-huh. [LB945]

NANCI WALSH: ...and a couple of them in January 2012. [LB945]

SENATOR SCHEER: Okay. [LB945]

NANCI WALSH: We got formal approval of those throughout the next year; I don't know exact dates. Then we started submitting the paperwork to ask for reimbursement. [LB945]

SENATOR SCHEER: Okay. [LB945]

NANCI WALSH: And when we asked for the reimbursement, 75 percent, then as soon as they looked at the paperwork they would send me something and say, okay, we're going to process the federal share. But everything comes through the state side and I think they're just understaffed. [LB945]

SENATOR SCHEER: Okay, but when...but so, when you finally submit that for the funds to come to the state, are you saying that at that point it took another year to get that through, or? [LB945]

NANCI WALSH: Well, for example, on Projects 65, 93, 149, and 159 that we just got paid for in January, those were submitted back in July and one of them further back, November of 2012. Let me... [LB945]

SENATOR SCHEER: Okay, but...just a minute. No, because you're confusing me. So I don't want you to go forward... [LB945]

NANCI WALSH: Okay. [LB945]

SENATOR SCHEER: ...because it won't make any sense to me. [LB945]

NANCI WALSH: Okay. [LB945]

SENATOR SCHEER: All I want to know is...couple of things. You get paid when the

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projects are done or when they're submitted? [LB945]

NANCI WALSH: When they're...we submit...FEMA came and had contractors write the projects that they felt were eligible. And then we got approval notice back. Then we submit the paperwork asking, you know, the ones that we had to do repairs on... [LB945]

SENATOR SCHEER: Uh-huh. [LB945]

NANCI WALSH: ...or replace something, we submit all the documentation: copies of the checks, invoices, contracts with the contractors, all of that. And then once NEMA reviews that to see that it's all in order, then we get the FEMA money. Some of those were submitted in November of 2012 or July of 2013 and they weren't reviewed--because of staff time, I believe, with NEMA--until December of 2013 is when I talked to their office about those. [LB945]

SENATOR SCHEER: So you're saying they sat on them for a year. [LB945]

NANCI WALSH: One of them. [LB945]

SENATOR SCHEER: Okay. [LB945]

NANCI WALSH: And it's just...I think it's just overwhelmed by the number of projects. With 54 projects alone on our side and I know, you know, every city and county along the river had some and there were other disasters as well, I think it's just a quantity of work. It's certainly not the quality... [LB945]

SENATOR SCHEER: No. [LB945]

NANCI WALSH: ...because we...they've been very helpful and we're certainly not saying that. [LB945]

SENATOR SCHEER: Sure. [LB945]

NANCI WALSH: It's just a long process to get reimbursed for a lot of money. [LB945]

SENATOR SCHEER: Okay. But...and I'm not trying to belabor your point. Just for my own mind, when exactly does the federal government issue the money, then? I mean, the state's responsibility is the 12 percent. So at what point in time does...I mean, when you submit all the stuff to Nebraska then Nebraska e-mails, does whatever to Washington and said, okay, we've got it and everything seems in place. Or do we simply say, okay, we reviewed it. It looks okay. Here it is, now you guys review it as well. Or how does that work? [LB945]

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NANCI WALSH: I'm not 100 percent sure. I know that there was talk that as soon as the projects were written... [LB945]

SENATOR SCHEER: Uh-huh. [LB945]

NANCI WALSH: ...and sent to FEMA and the approval came back--and we get an approval letter on each one--that that money was federally obligated and waiting for us. And then when we submit the request for reimbursement to NEMA, it's been my experience, once they look at it and send that request through, it doesn't take very long for the dollars to come back to us. [LB945]

SENATOR SCHEER: Okay. So it's really just the part of Nebraska... [LB945]

NANCI WALSH: The getting all the... [LB945]

SENATOR SCHEER: ...sending Washington a note saying it's now...the obligated money should be sent to us. [LB945]

NANCI WALSH: It seems to be that way... [LB945]

SENATOR SCHEER: Okay. [LB945]

NANCI WALSH: ...in my experience. [LB945]

SENATOR SCHEER: Okay. But we're not positive. [LB945]

NANCI WALSH: But I'm certainly not an expert. This is my first flood. [LB945]

SENATOR SCHEER: Okay. Okay, fair enough. [LB945]

NANCI WALSH: You know, just the way it's flown. [LB945]

SENATOR SCHEER: I was just trying to figure that out myself. But thank you for your indulgence. [LB945]

NANCI WALSH: Uh-huh. [LB945]

SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. [LB945]

NANCI WALSH: Thank you. [LB945]

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SENATOR AVERY: Additional proponent testimony? Welcome back. [LB945]

GARY KRUMLAND: Senator Avery and members of the committee, I'm Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB945. I will get...mention that--and Senator Bloomfield raised the question--there is a typo and we'll take responsibility for that because we did not catch it before the bill got drafted. So on page 4, line 11, the word "less" should be "more." And so I just wanted to make that clear and that needs to be amended. I also mention, too, that the time, the days in your time lines are not hard and fast. We do think there should be some standards for timeliness. If these dates are not appropriate, we'd be happy to work with the committee with e-mail to define something. But we do think it would be helpful to the applicants to have some time lines in there so that they know what the standards are and have an idea of when to get things back. I'll be happy to answer any questions. [LB945]

SENATOR AVERY: Thank you. Questions? Senator Bloomfield. [LB945]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Do you know if Senator Davis has any intent of prioritizing this or what field we're looking at here because I think there's a misunderstanding within the committee about what's going on here too. [LB945]

GARY KRUMLAND: Okay. [LB945]

SENATOR BLOOMFIELD: And maybe we can educate ourself through the... [LB945]

GARY KRUMLAND: I don't think he...as far as I know, he is not planning to prioritize this. I was hoping that, you know... [LB945]

SENATOR BLOOMFIELD: Maybe the Speaker would? [LB945]

GARY KRUMLAND: No, no, I don't know about that. We'll have to talk to him about that. [LB945]

SENATOR BLOOMFIELD: Okay, thank you. [LB945]

GARY KRUMLAND: But we do think it's... [LB945]

SENATOR AVERY: Were you relying on the committee to prioritize this bill? [LB945]

GARY KRUMLAND: No, I...well, if you wanted to, I won't reject. [LB945]

SENATOR AVERY: We've already prioritized it. [LB945]

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GARY KRUMLAND: Yeah, I know. [LB945]

SENATOR AVERY: I don't see any more questions. Thank you, Mr. Krumland. [LB945]

GARY KRUMLAND: Thank you. [LB945]

SENATOR AVERY: Additional proponent testimony on LB945? [LB945]

ELAINE MENZEL: Chairman Avery and members of the committee, hello again. My name, for the record, is Elaine Menzel, it's M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials in support of LB945. And rather than repeat what everybody else indicated, it's just our hope that you will facilitate something of this process for purposes of timeliness for the political subdivisions that are impacted. And I will open myself up to questions if you have any. [LB945]

SENATOR AVERY: Okay. Questions from the committee? Thank you. [LB945]

ELAINE MENZEL: Thank you. [LB945]

SENATOR AVERY: Any other proponent testimony? We're on LB945. Seeing none, any opponent testimony? Welcome, sir. [LB945]

AL BERNDT: (Exhibit 4) Thank you. Senator Avery and members of the Government, Military and Veterans Affairs Committee, I'm Al Berndt and it's A-l B-e-r-n-d-t, assistant director of the Nebraska Emergency Management Agency, NEMA. I'm appearing today to give testimony opposed to LB945. The process of reimbursing local applicants for disaster response and recovery costs is a time-consuming and complex process. I appreciate the concerns expressed by many of the individuals today. And I would say, I appreciated the comments of Mr. Storm, too. This bill requires NEMA to reimburse applicants for the federal share of disaster assistance regardless of whether we have received the funds from the federal government. The proposed language on page 4, (4)(c), lines 7 through 11 states, in part, "Upon receipt of all necessary supporting documentation submitted as a request for aid by a political subdivision for which either state or federal funds have been obligated and an application already has been approved, such aid shall be remitted to the political subdivision". This makes no allowance for the availability of funds within either the Federal Disaster Relief Fund or the Governor's Emergency Fund. The amount of funds obligated within the Governor's Emergency Fund or the Governor's Emergency Program, on a more holistic basis for federal disaster payments, represents only 12.5 percent of the total state and federal funds obligated. At any given time, the potential impact of the Governor's Emergency Fund is seven times higher than the obligated amount within the fund. This puts Nebraska into the position of paying out federal share with state dollars, i.e.,

supplanting, while waiting to recover such funding from the federal government. Should issues arise which result in the federal government paying less than the amount requested and already dispersed, the applicants may need to repay such funds to the Governor's Emergency Fund or the Governor's Emergency Fund would suffer additional losses. Either way, more funding for the Governor's Emergency Fund would be required to meet the requirements of LB945. I will now address other provisions within LB945 regarding the repayment and reimbursement time line for disaster declarations. Generally, when the Governor issues a state disaster declaration and authorizes assistance to local government, costs are shared on a 50-50 basis. Local governments submit requests on forms prescribed in the Governor's Guide and after preaudit, reimbursements are made. Our existing law is section 81-829.42(1), that vests my agency with adequate power and authority within the limitation of available funds appropriated to the Governor's Emergency Program to meet any disaster, emergency, or civil defense emergency. Our interpretation of current statute is, you can pay the bill as long as there are available funds appropriated to the Governor's Emergency Program. Since 2007, NEMA has had to suspend state payments from the Governor's Emergency Fund a total of four times to keep a \$1 million unobligated balance available to be able to cover state disaster costs when the Unicameral was not in session. In the past two years, the federal government has suspended payments from the Disaster Relief Fund twice, which also has implications on the availability of funds within the Governor's Emergency Fund, i.e., even though we have an appropriation earmarked within the Governor's Emergency Program, the funds are not available to draw down from the Disaster Relief Fund. We can't draw funds, we can't pay money. Because this bill would require additional documentation on receiving and acknowledging local disaster documentation even when there is not a federally declared disaster, NEMA would likely need to further standardize forms and implement the same process for state disasters as that utilized when a federal disaster is declared. If this bill is enacted, the Nebraska Emergency Management Agency will need to add three additional staff positions to receive, process, monitor, and inspect projects prior to paying the bills within the time lines allotted. Associated delays with the disaster payments can be caused by a variety of reasons, delays in receiving the request, total volume of requests submitted, insufficient staff or availability of staff to process, duplicate requests, overpayments, and delays in completing inspection. As an example, the fires of 2012 bills from Region 24 were submitted to NEMA on November 30, 2012, five months after the fires, and found to be deficient. Corrections were then received mid-December through mid-March 2013. Payments were then made to the Regional Emergency Management Agency on March 12 and, finally, on April 9 of 2013. On one fire event during the preaudit of multiple fires, staff determined nine instances of double billings on them. Because of the variance of the state and federal disaster program, it is not simple to expeditiously process and pay bills without additional agency staff, resources, and processes at both the state and local level. And I'd be ready to address any questions that were raised on the previous testimony. [LB945]

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SENATOR AVERY: Thank you. It looks like we have a mess. Would you agree?
[LB945]

AL BERNDT: Well, sir, I don't know if I would agree that we have a mess. What we have here is a multifaceted, multilegged process dependent upon what you're talking about in terms of a disaster. Is it a state-declared disaster? Is it a federally declared disaster that we're going to get reimbursement on? Is it a fire-management assistance disaster? Is it a disaster for emergency protective measures and emergency work? There's about five or six different ways that you can receive disaster assistance at both the state and the federal level. And then within that program, there are different rules and regulations in terms of the policy guidance that you have to follow. One of the things I wanted to point out that was raised in my testimony, what you need to understand, that within the federal government, there's a difference on how they look at emergency work, emergency protective measures, whether it's a large project, whether it's a small project. If it's a small project, you can get your money--theoretically--right away. If it's a large project, it's going to go through the process. The process is, you know, they're going to have a applicants' workshop. FEMA is going to bring in what they call core employees--these are FEMA employees--that will write the project worksheets. And then depending upon whether it's to current codes and standards, updated codes and standards, the Corps of Engineers is involved, etcetera, etcetera. There's a level of approvals that have to go through. So then, if you've already done the work prior to the project getting written...prior to them approving the project, the project is now eligible. And after they submit all the paperwork to get working through this, we do pay on federal share as work is completed. I do not pay the state 12.5 percent until all the work is completed and the local entity has signed a certification that's called a P-4 that the work has been completed to codes and standards the way they were submitted. Why do we do this? We have found projects that...where paperwork has been submitted and the work has never been done. On inspection, we have found projects, a project, a large project that was a bogus project, i.e., it never existed. And we had to recoup money back on that. So we don't pay the state's share and they haven't certified until the P-4 comes in and we inspect and certify the project. On the basis of whether you can have more staff and get more staff or not, please bear in mind that there's been 52 federal disaster declarations...emergency declarations since 1960 involving the state of Nebraska. I might be off one. Twenty-six of those have occurred in the last 14 years while I've been the assistant director of NEMA. Twenty-two of those have occurred since 2005. As I peruse the status of the Governor's Emergency Fund right now, please remember I said that the total liability could be as much as seven times higher than what we're facing if we paid out state dollars when federal dollars weren't available. Currently, my obligated balance that I am sitting on is \$15,578,800.90. That's the state share on projects dating back to December of 2006 on disasters. We still have disasters open to back to 2006, trying to close these out with FEMA. That's \$105 million obligation that if we just paid it out--if that's what we need to do, etcetera, by virtue up--I need to get the Governor's Emergency Fund a whole lot bigger than what the Governor's

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Emergency Fund is right now and, specifically, in disasters that are currently open. In 2011, we had...we actually had two flooding disasters in the state. One was Nebraska declared disaster 4013, the other one was Nebraska declared disaster 4014. If you remember, we had two floods going on simultaneously at the same time, one involving the Platte River in the western side of the state, one involving the Missouri River. I currently have state obligations sitting there of \$116,900.41 on 4014. This is the Platte River. I currently have obligations--this is the state's share--of \$5.8 million sitting out there waiting to be reimbursed on...to close 4014 or 4013, the Missouri River flood. This disaster--I do not have it in front of me right now--but I believe when it started out, the total federal obligation on this was a little over \$140 million. So the process in and of itself is not easy. It is time consuming. The issue of contractors--I'm preempting a little bit, may be some questions--the issue of contractors...I try to be proactive in terms of hiring contractors in relationship to the big floods that came in. I currently have two contractors left. They are temporary employees, long-term, temporary employees. One is doing inspections, the other one is doing nothing but handles paperwork in the agency. These are the last two left of ten that I hired. I terminated the others because of lack of performance. They felt...the main problem seemed to be they felt, by being contractors, they didn't have to come to work when we thought they did. So we have tried that. I have looked at contracting with big companies like James Lee Witt Associates, etcetera, etcetera, and found that to be cost prohibitive because the state would start picking up the entire 25 percent on those, so. Other questions? [LB945]

SENATOR AVERY: Senator Scheer. [LB945]

SENATOR SCHEER: Well, I understand that...my question was, well, you know, is it a manpower problem? And the answer is, yes. And that may dictate, from time to time, based on the severity of your disasters. But I think a lot of departments in the state adjust their hiring based on the workflow. So I, you know, I'm sympathetic... [LB945]

AL BERNDT: Uh-huh. [LB945]

SENATOR SCHEER: ...that you have problems with your temporary help but, you know, that doesn't...you know, that's really...if you owe me money, if I'm one of those that you're owing me money, you know, it's nice to know why but it still doesn't put the cash in my bank account, so. And I understand that if you have too low of balance in your fund, you are unable to write checks. My question in relation to that, if you or the director has had conversations with the Governor in order to make any type of substantial change or any change at all on this level so that there would be additional funds made available so that during the areas of disasters that we've experienced the last couple of years, that it would be more forthcoming? [LB945]

AL BERNDT: Yes, in the budgetary process, that's a conversation that's had frequently. And I think last year we saw a deficit appropriation come in where you made an infusion

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of money into the Cash Fund of the Governor's Emergency Fund to get us back to a positive balance. That in and of itself was a policy level question that I can't answer. [LB945]

SENATOR SCHEER: Thank you. [LB945]

SENATOR AVERY: Senator Bloomfield. [LB945]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Speaking for myself, and I don't know about the rest of the people in here, I have learned more about how your department works in the last hour than I've learned in the three years I've been down here. If a senator were to request an interim study, would you be willing to work with this committee to maybe try to educate us a little more on how you work and what you do and how you do it? [LB945]

AL BERNDT: Yes. [LB945]

SENATOR BLOOMFIELD: Thank you. [LB945]

SENATOR AVERY: Is it fair to say...never mind, I'll come back to it. Senator Wallman. [LB945]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming. You know, we had that Hallam tornado and stuff through my district. And FEMA was down there right away with their administrative trailer, you know, and offices. And I was impressed. And I think you guys were down there. [LB945]

AL BERNDT: Well, that wasn't FEMA, that was us. [LB945]

SENATOR WALLMAN: That was you? Okay. I was impressed. But dealing with underinsured people and older people, if you didn't have any insurance, does NEMA have to cover you? [LB945]

AL BERNDT: Well, that's a totally separate program, first of all. That's the Individual Assistance Program. However, the same staff run that program within the agency too. And individual assistance is, basically, predicated upon income level. And so FEMA, in and of itself...it's important to remember that FEMA is always the insurer of last resort from the federal government. If there is any other federal program that has funds available to take care of disaster costs, etcetera, you must go there. So on the Individual Assistance Program, when people sign up, register, etcetera, what they're really screened for is if they qualify to go into SBA. And then if they qualify under SBA, they are steered in that direction. So you really have to be the indigent to get individual assistance. [LB945]

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SENATOR WALLMAN: Thank you. [LB945]

SENATOR AVERY: Is it fair to say that this bill, as written, badly underestimates the complexity of this issue? [LB945]

AL BERNDT: My opinion is that it attempts to put a simple fix to a complex problem. [LB945]

SENATOR AVERY: So the answer is, yes. Any other questions? Thank you, Mr. Berndt. [LB945]

AL BERNDT: Thank you. [LB945]

SENATOR AVERY: It was very helpful. Any other opponent testimony on LB945? Opponent testimony? Any neutral testimony? Seeing none, that closes the hearing on...oh, except, Senator Davis, you're here. I didn't know you were back there. You said... [LB945]

SENATOR DAVIS: I got done in Natural Resources. I got back earlier than I anticipated. [LB945]

SENATOR AVERY: (Exhibit 5) Okay. Let me read a letter of...into the record a letter of support for LB945 from Gerald Stilmock, representing the Volunteer Firefighters and the Fire Chiefs Association. Okay, closing. [LB945]

SENATOR DAVIS: Thank you, Senator Avery. Let me say first of all, the intent of the bill is not to obligate NEMA to put out funds that they don't have. So if that's the understanding, we need to clarify that and we can amend the bill. But the intent of the bill is really to get some funding for communities that are desperate for resources. These towns have lost a lot in these floods and storms. And when we're years and years out and we're still not getting the payments to them, it's just not the way it ought to be done. I sympathize with the situation that NEMA deals with. They're dealing with a federal agency that's much bigger than they are and they have to wait. If we have to wait for FEMA to make a payment, that's fine, let's wait for them. But, you know, you'll notice in some of the letters that we're still waiting on state payments back from 2011. I just can't see what the problem is. If the problem is, in fact, that they're short staffed--and I think you've seen in the letters that there are references to that--then NEMA needs to hire somebody to do the work, plain and simple, because you got communities out there that are hiring people to come in and clean up, do the work that has to be done. And now those cities have accruing balances from those contractors who expect to be paid for the work. That's the way we do business. You know, we do work for someone. When the work is done, we submit a bill and we expect to be paid for

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it. And it shouldn't take seven, eight, nine years for that to take place. It's just not the way business ought to be done. So I think NEMA needs to knuckle down and hire another staff person or two to do the work or find contractors who can do them. There are people that need work in this state. I think probably that's all I really need to say. You know, I think it's important that you listened to what was said here today and that you recognize that there's a really legitimate concern as to why it's taking so long. And, you know, let's try to clean it up and get...and do the job that we are here to do, which is to represent our constituents--our constituents are some of these people that are affected--so that they can get on with the business of running their cities rather than worrying about have I submitted the appropriate invoice for something that happened seven years ago. Thank you. [LB945]

SENATOR AVERY: Thank you. Senator Bloomfield has a question. [LB945]

SENATOR BLOOMFIELD: Senator Davis, do you have a plan to move this bill forward if it comes out of committee this year? [LB945]

SENATOR DAVIS: Am I going to prioritize the bill? [LB945]

SENATOR BLOOMFIELD: Well, that's one way of putting it. [LB945]

SENATOR DAVIS: I would like to see the bill move forward. You know as well as I do, that things are going very slowly. If there's a way that we can do it, I would like to do that. I'm not going to commit to whether I'm going to prioritize it today or not. [LB945]

SENATOR BLOOMFIELD: How upset would you be were a certain senator to request an interim study on this so that we can better understand what FEMA is dealing with? [LB945]

SENATOR DAVIS: I don't have a problem with that, Senator Bloomfield. [LB945]

SENATOR BLOOMFIELD: Okay. [LB945]

SENATOR DAVIS: You know, let me remind you, we did an interim study last summer and that's how this information surfaced in the first place. And you were here the day that discussion came up. [LB945]

SENATOR BLOOMFIELD: Yeah. [LB945]

SENATOR DAVIS: And I know one of the things we talked about that day was response on fires. And I remember you saying, four hours is just...half a day is way too long for NEMA to respond. [LB945]

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SENATOR BLOOMFIELD: It is, yeah. [LB945]

SENATOR DAVIS: So, you know, maybe we need to do a more thorough examination and interim study, at some point, of the agency and see how we can help it to do a better job. [LB945]

SENATOR BLOOMFIELD: Yeah. [LB945]

SENATOR DAVIS: But if that's what you choose to do, I think that would make sense. [LB945]

SENATOR BLOOMFIELD: Yeah. Well, that's just me. It's not up to me. There are a bunch of other people, including the Chairman of this committee, that make that decision. But I may make a request. [LB945]

SENATOR AVERY: That would be this summer, wouldn't it? Yeah. Looks like I'll still be involved. [LB945]

SENATOR BLOOMFIELD: It would look like. [LB945]

SENATOR DAVIS: Do not go gentle into that good-night, Senator Avery. [LB945]

SENATOR AVERY: Any other questions for Senator Davis? I don't see any. Thank you very much, sir. [LB945]

SENATOR DAVIS: Thank you. [LB945]

SENATOR AVERY: Now that ends the hearing on LB945 and the hearings for today. So we would ask you to depart the room because we... [LB945]