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Government, Military and Veterans Affairs Committee
January 20, 2016

[LB682 LB695 LB702]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 20, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB695, LB702, and LB682. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Joni Craighead; Mike Groene; Matt Hansen; and Tyson Larson. Senators absent: Beau McCoy.

SENATOR MURANTE: Everyone, welcome to the Government, Military, and Veterans Affairs Committee. My name is John Murante, I'm the Chairman of this committee and the state senator for District 49, which represents Gretna and northwest Sarpy County. We are here today for the purposes of conducting three public hearings, which we will do shortly. Before we begin, I'd like to introduce the members of the committee. To my far left is Joni Craighead, state senator from Omaha. To her right, Senator Beau McCoy, also from Omaha. Senator McCoy is representing the state of Nebraska and this Legislature at the Council for State Governments and will not be here today. To my left is State Senator Matt Hansen, who represents Lincoln. To my immediate right is Andrew La Grone, research analyst for this committee. To his right, State Senator Tommy Garrett from Bellevue, Nebraska. Senator Garrett is the Vice Chairman of this committee. To his right, State Senator Dave Bloomfield from Hoskins, Nebraska. To his right, Senator Tyson Larson; and to his right, Senator Mike Groene from North Platte. If you are here to testify in favor of any bills, we ask that you fill out this green testifier's sheet, which is located on the corner on either side of this room. If you are here and wish to register your opinion but do not want to testify, we have a sign-in sheet located on those same tables where you can indicate your support or opposition to any of the bills before us. We will be using the light system today, but given the attendance that we have we'll probably be not sticklers on that rule today. But that doesn't mean to go too far over on your time limit. When you testify, please state and spell your name for the record, which is very important for our transcribers. The process we'll be using is that the introducer of the bill will give an opening statement. We'll then proceed to hearing proponent testimony. Then we will hear the opponents of the bill, followed by those who wish to testify in the neutral capacity. Then we'll give the introducer the opportunity to close as well. We'd ask at this time that you turn off all electronic devices or anything that makes a noise. This is a committee which is equipped for technology, so you'll see some members using laptops and other electronic devices that's used for taking notes, and we don't want you to think that we're not paying attention. So with that, we'll begin with Senator Crawford's LB695. Senator Crawford.

SENATOR CRAWFORD: Thank you and good afternoon, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. My name is Senator Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District, which includes Bellevue, Offutt, and eastern Sarpy County. LB695 is a bill to address an election issue that is unique to sanitary and improvement districts or SIDs. I'll give the committee just a short background on SIDs. An

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S-I-D is a type of limited purpose political subdivision that is unique to Nebraska. Primarily utilized in urban areas to facilitate growth outside of city limits, SIDs tend to be heavily concentrated in the Omaha metropolitan area. As of 2014, there are approximately 320 SIDs statewide. More than 80 percent of them are located in either Douglas or Sarpy County. Following Douglas County's 144 SIDs and Sarpy County's 118 SIDs, the next highest county is Cass County which has just 8. So they're very heavily concentrated in those two urban counties. SID elections do not follow the basic principle of one person, one vote. Boards of trustees for SIDs are, instead, elected by a vote of the property owners within the SID on two separate ballots. One ballot, which only residents of the SID can vote on, and another in which property owners get one vote for each piece of property they own within the SID. In cases where the same person owns multiple lots within the SID, that person gets multiple votes. So if a developer still owns 30 lots within the SID, the developer's vote counts 30 times. SID elections are not held during the primary or general election but, instead, are conducted entirely by mail ballot in a special election that takes place on the first Tuesday after the second Monday in September. Another unique component of SID elections and the one that led to the introduction of LB695 is the fact that corporate entities, such as corporations, partnerships, and LLCs, are entitled to vote in SID elections if they own property within the SID. In some cases, a person serving as the designated voting representative of a corporate entity will receive multiple sets of SID ballots: one for property owned by the corporation and another for property they own personally. While the SID election statutes specify that the Election Act applies if an SID election is contested, SID elections generally do not follow the Election Act. In a mail election under the Election Act, if two mail ballots were returned in the same return envelope, those ballots would not be counted. In most elections, a single voter clearly should not have multiple ballots. In SID elections, if a designated voting representative of a corporate entity returned multiple sets of SID ballots in the same return envelope, it is less clear whether these ballots should be rejected because a single person can legitimately have multiple ballots. LB695 would change the procedure for the return and rejection of mail ballots in SID elections mirroring the procedures for all-mail special elections under the Election Act. Under the bill, if more than one SID ballot is returned in the return envelope, the ballot will not be counted and the return envelope will be resealed and marked as rejected. Sarpy County Election Commissioner Wayne Bena, who brought the bill to my office, is behind me to testify in more detail about the SID election process, but I would be happy to answer any questions the committee may have at this time. [LB695]

SENATOR MURANTE: Thank you, Senator Crawford. Are there any questions? Senator Bloomfield. [LB695]

SENATOR BLOOMFIELD: Thank you. What all types of issues are voted on by... [LB695]

SENATOR CRAWFORD: Well, this is an election to select the board of trustees. So, and then the board of trustees is the one that will be making decisions about... [LB695]

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SENATOR BLOOMFIELD: Is that the only thing they ever vote on is the board of trustees?
[LB695]

SENATOR CRAWFORD: It is my...that's what this ballot issue is about, is electing those...the board of trustees. [LB695]

SENATOR BLOOMFIELD: Okay. Thank you. [LB695]

SENATOR MURANTE: Thank you, Senator Bloomfield. Any additional questions? Seeing none, thank you, Senator Crawford. We'll welcome Senator Hansen and Senator Groene to the committee. I would make a point of emphasis for the committee members that we've been advised by the Speaker's Office that our microphones have been upgraded in the last year, so any conversations off the microphone may well be caught on the microphone, transcribed, and kept forever, so you might want to take that into consideration. So we'll now proceed to proponent testimony. Any proponents wishing to speak? Welcome. [LB695]

WAYNE BENA: Good afternoon. Members of the committee, my name is Wayne Bena, W-a-y-n-e B-e-n-a, and I serve as election commissioner for Sarpy County, Nebraska. And we have, as mentioned earlier, the second most number of SIDs in the state. And as Omaha starts to annex even more, we might become the number one, so. We brought this bill to the attention of Senator Crawford, because a situation developed in the last time that we did SID elections, that we wanted a little more guidance on how to follow. We had in a SID a person who had three different ways that they could vote in the election. They had property themselves in the election in which they got a ballot. They owned a company in which they had multiple lots which they were the designated representative, so they got another ballot with a certain amount of votes. And they also owned another corporation that had specific sort of lots that had their own separate ballot. The individual in that specific instance, that each one received an envelope with a return envelope and a ballot. When it came back to our office, only one of those return envelopes came back to our office and all three...there were three pieces of paper in it. If this was a normal Election Act election, that would not be allowed to be counted. And so we see that happen. Sometimes a husband and wife will put their ballot into one envelope to save postage. That's not allowed. The SID election statutes are very limited. In fact, really the one thing that we saw in there was that if you were to dispute the election, you would follow the Election Act for the dispute. So the thought process was, if you're going to sue me in regards to the Election Act in contesting an election, the Election Act probably should be a guide for us of how we should conduct the election. Because of this, we wanted a little more clarification on what to do in the situation when ballots came back in an envelope that were not given in the first place, and especially when we've had situations in which people have just faxed the ballot back to us or just mailed it in not the return envelope. So those were easier when we just have a ballot faxed, you

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know, we weren't going to accept it. But at the same time, if we're going to do this, I wanted to add that in it as well. These are very analog-type elections. They're sent out by mail, they're hand counted, very low turnout. But we wanted a little more specificity of what to do in this situation and make sure we were on solid ground of what we were doing in these unique situations. With that, I'll answer any questions that you might have. [LB695]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Groene. [LB695]

SENATOR GROENE: You're not disputing that if you own more lots you should have more votes? [LB695]

WAYNE BENA: No, not at all. In this instance, there was the individual who had the ballots had three different ways they could vote a ballot and had three different ballots mailed to them versus their entities. Unfortunately, for two of them, it didn't come back in the return envelope we're required to give them. They were all put into one. [LB695]

SENATOR GROENE: Just one technical election law. It's not about... [LB695]

WAYNE BENA: Yes. Yeah, if you have 30 lots, you get 30 votes. But you can't put a ballot of somewhere else into that ballot of the one that was (inaudible) 30 votes, so that was the issue. [LB695]

SENATOR GROENE: But if that one corporation had 30 lots, they could put all 30 votes in that one envelope? [LB695]

WAYNE BENA: Yes. [LB695]

SENATOR GROENE: All right. [LB695]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Senator Garrett. [LB695]

SENATOR GARRETT: Senator Murante. Wait, let me get this straight. So somebody who owns multiple lots, they're still going to have to send them back in separate envelopes? They can't... [LB695]

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WAYNE BENA: No. For the situation...if you have a company, "XYZ Corporation," the "XYZ Corporation" owns 30 lots, you're given a ballot and an envelope. And on that ballot at the bottom, it's 30, it's times 30. So whatever your vote is times...your vote counts 30 times. [LB695]

SENATOR GARRETT: But if you're also...your personal residence is in that SID, can you include that in that envelope or it has to be a second envelope? [LB695]

WAYNE BENA: No. We are required to give you, under the law, a return envelope with the ballot that we sent you. What we want more clarification is, is that that ballot has to come back in the return envelope you sent to and not in some other...not some other method, including another return envelope for a ballot that they didn't get with that return envelope. [LB695]

SENATOR GARRETT: So if the person combines all of their votes into one envelope and sends it back to you, it's not in...you're going to reject it? [LB695]

WAYNE BENA: Yes. That's what this bill would do. [LB695]

SENATOR MURANTE: Senator Groene. [LB695]

SENATOR GROENE: No, Senator Bloomfield had his hand up. [LB695]

SENATOR BLOOMFIELD: I think we were going for the same question. Are you going to notify them that that is, in fact, the case? [LB695]

WAYNE BENA: In...well, actually, we put it in the instructions currently and the instructions weren't followed in that case. I believe I was on solid ground. The individual understood what he did. And because he could have disputed the election under the Election Act and I don't know what a judge is going to do in this situation--I thought I was on solid ground in this situation because I was following Election Act procedures--we want it clarified in here that since the law requires us to give you a return envelope with your ballot, your ballot has to be returned in that return envelope. So that's what this is clarifying and that you just can't fill it with all sorts of other things. [LB695]

SENATOR BLOOMFIELD: That is already explained in the instructions you send out? [LB695]

WAYNE BENA: Correct, yeah. [LB695]

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SENATOR MURANTE: In the event that a regular general election ballot that was a vote by mail, early voting by mail and let's say somebody put five ballots from everyone in their household into one single envelope, those would be rejected? [LB695]

WAYNE BENA: Correct. [LB695]

SENATOR MURANTE: And would you notify the voters in that household that their ballots were rejected in that instance? [LB695]

WAYNE BENA: No. [LB695]

SENATOR MURANTE: Okay. Senator Groene. [LB695]

SENATOR GROENE: Thank you, Chairman. So if he's got two corporations and he sends it back in the envelope with the one corporation, his private one, plus the other corporation, the 30 votes that were accurate to that envelope get counted or do you throw them all out? [LB695]

WAYNE BENA: Throw them all out. That's what this would say. [LB695]

SENATOR GROENE: Even though one of the votes was in the right envelope? [LB695]

WAYNE BENA: Correct. And under the current law, if there are two ballots in one envelope, even if the ballots are marked exactly the same, the ballot is rejected because only one ballot can be in the envelope. [LB695]

SENATOR GROENE: So that's the qualifier? [LB695]

WAYNE BENA: Yes. [LB695]

SENATOR GROENE: Not that one is in the right envelope and one isn't? [LB695]

WAYNE BENA: You know, when I first started we had that situation in which we had a--I don't want to muddy the issue--but we had a husband and wife each sign the back of the husband's ballot envelope. So we had a signature, we had the ballots, but the law is specific that the ballot envelope can only contain one ballot of the voter. The only other situation that we've ever had...that we've had is that we've opened up the envelope and there was another envelope of the wife's that they just stuck it in the envelope. Well, that we could take it out and just that ballot

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had a separate...was delivered in another envelope. We were able to count that. And so they saved postage and it was ingenious. We see it all, Senator, in an effort to save a little money. [LB695]

SENATOR GROENE: I have a question, one last question. Did the fellow who did this lose the election in the people he wanted elected? [LB695]

WAYNE BENA: Yes. It effectively...since he was the developer, the representatives on both sides of the election...the people that were on there before did not get on there. So he realized it, we know what he did, and he was very gracious about it. Like I said, I think I...I believe I was on solid ground. I want to be crystal clear that I was solid ground on this one, because I don't want to have to make that decision again, so. [LB695]

SENATOR MURANTE: Okay. Any additional questions? Seeing none, thank you for your testimony. Are there additional proponents wishing to testify on LB695? Are there any opponents? Any neutral testimony? Seeing none, Senator Crawford, you're recognized to close. Senator Crawford waives closing and that ends the hearing on LB695. And we'll proceed to the next item on the agenda, LB702. Welcome, Senator Crawford. [LB695]

SENATOR CRAWFORD: Thank you. Good afternoon. Chairman Murante and members of the Government, Military and Veterans Affairs Committee, my name is Senator Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District, which includes Bellevue, Offutt, and eastern Sarpy County. LB702 is a technical bill that was introduced by the Urban Affairs Committee to harmonize references in the statutes governing city councils in cities of the second class. State statute classifies Nebraska municipalities into five categories based upon population and cities of the second class have a population between 800 and 5,000. There are currently 117 cities of the second class in Nebraska. The issue being addressed by LB702 was actually brought to the Urban Affairs Committee's attention by a constituent of Senator McCoy's that had contacted his office. The statutes governing cities of the second class state that cities of the second class should elect their city councilmembers by ward but make no reference to the fact that cities of the second class can change their city council membership to be elected at-large instead of by ward. In the case of Senator McCoy's constituent, he had researched the statutes for cities of the second class and saw that they said he should have a ward represented and was concerned he was unable to determine which city councilmember in his city, the city of Valley, represented his ward. After the issue was brought to my office's attention, Urban Affairs Committee staff quickly determined that Valley had utilized the procedure in the Election Act to change to at-large elections. Since the change needed to clarify the situation did not amend the Election Act and would just require language in the second class city statutes to reference the possibility of at-large councilmembers, LB702 was introduced as an Urban Affairs Committee

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bill to reconcile the two sections of statute. LB702 simply adds a reference in two sections of the second class city statutes to harmonize with the section of the Election Act that allows political subdivisions to change from ward elections to at-large elections. Thank you for your time. I would be happy to answer any questions the committee may have at this time. [LB702]

SENATOR MURANTE: Thank you very much, Senator Crawford. Are there any questions? Seeing none, thank you for your testimony. [LB702]

SENATOR CRAWFORD: Thank you. [LB702]

SENATOR MURANTE: Are there proponents wishing to speak on LB702? Welcome. [LB702]

GARY KRUMLAND: Senator Murante, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB702. And appreciate Senator Crawford and committee introducing this bill. As Senator Crawford explained, it really doesn't change the law, but it does clarify it and harmonize law. If you just look at second class city statutes you could be confused about how you set up your city council. And when, for example, generally a city of the second class comes into being when the population of a village grows above 800, so it becomes a city of second class. And the statute says you need to form your city council by ward. The election law does allow though, the voters to change that so that you have election at-large. But the second class city statutes don't make that reference, so if you just looked at that it could be confusing. And this clarifies it so the average person or even city officials looking at it will know that there are two statutes that may affect it and they need to check both places. So we do support the bill. [LB702]

SENATOR MURANTE: All right. Thank you very much for your testimony. Are there any questions? Senator Bloomfield. [LB702]

SENATOR BLOOMFIELD: Thank you, Chairman. I assume--and you know what happens there--that it takes a vote of the people to switch from the ward system too? [LB702]

GARY KRUMLAND: Yes or back and forth, yeah. [LB702]

SENATOR BLOOMFIELD: Thank you. [LB702]

SENATOR MURANTE: Any additional questions? Senator Groene. [LB702]

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SENATOR GROENE: Thank you, Chairman Murante. So the person in Valley, there was no...in their city...whatever you call it--not the ordinances--it said that they had a vote at such and such a time in 1975 or something and changed it. [LB702]

GARY KRUMLAND: Yeah. My guess is what happened is, after they became a city of second class--and it could have happened many years after that--there was a vote of the people and they determined that they wanted to elect at-large rather than by ward. But the person thinking, well, I want to know what the law is, so they looked at the statutes for cities of the second class. And that...all that says is, by ward. They didn't realize they had to go to the election law to see what the other part of the law is. [LB702]

SENATOR GROENE: They should have been able to go to the city office and look at... [LB702]

GARY KRUMLAND: Well, I mean, yeah, if they would have done that and the city should been able to tell them, yeah, if you go back 20 years, we had an election then. But this will help somebody just looking at the statutes. And kind of an aside here, we're finding as people are doing research on the Internet, they're looking at specific statutes. They may not quite understand how they fit in with other things, so I think this will be very helpful. [LB702]

SENATOR MURANTE: Senator Bloomfield. [LB702]

SENATOR BLOOMFIELD: Thank you again. If a village--and I don't know where the numbers all break down--you're saying 800 and up. If a village is sitting at 790 one year, it goes over, 10 years later it falls back off that 800 number, how is that handled? [LB702]

GARY KRUMLAND: Well, yeah. A village is below 800; a city of second class is from 800 to 5,000. When they go over that, based on the census, they are supposed to change. However, they can, through a vote of the people, remain, for example, a village. Or if a city of the second class drops below 800, they can remain a city of the second class with the vote. [LB702]

SENATOR BLOOMFIELD: Okay. So if they decided to go to a ward system and industry leaves town, the population falls back to 750 again, they can still have the ward system? [LB702]

GARY KRUMLAND: If they remain a city of the second class. If they drop below 800 and become a village, villages are elected at-large by law. [LB702]

SENATOR GROENE: They have to? [LB702]

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GARY KRUMLAND: Yeah. [LB702]

SENATOR BLOOMFIELD: Sounds a little confusing here if you happen to be on the board (inaudible), but... [LB702]

GARY KRUMLAND: Well, and it is confusing and that's why this bill will help clarify that. [LB702]

SENATOR BLOOMFIELD: Thank you. [LB702]

SENATOR MURANTE: Okay. Thank you. Any additional questions? Senator Groene: [LB702]

SENATOR GROENE: Thank you, Chairman. Is it decade by census? [LB702]

GARY KRUMLAND: Generally, yeah. It's usually based on the official census. There are situations where a city can ask the Census Bureau to do a special census and that would count too. And there's even a procedure in the statutes that says that if a city annexes an area and that area, based on the last census, has a certain number of population, and by adding that to the city, it changes the population enough to change that would...the Department of Revenue would recognize that too. [LB702]

SENATOR GROENE: So if you are a village and you go over, you can stay at-large? Can you vote to stay at-large? [LB702]

GARY KRUMLAND: If you are a village and your population increases, the way the law reads I think you have to start off by ward. And then after you have the wards established, then you can put it to a vote of the people whether you want to go at-large. [LB702]

SENATOR GROENE: You understand that where I'm coming from, in the city of North Platte at 24,000, we have a hard time sometimes to get one candidate for ward. And I can see a town of 900 trying to get (inaudible.) [LB702]

GARY KRUMLAND: Yeah. And I think that was the reason why this was allowed; it not only applies to cities, but other political subdivisions. But, yeah, when you have a smaller community, sometimes you don't have interest in one section of the community and (inaudible)... [LB702]

SENATOR GROENE: So they can stay as open by a vote? [LB702]

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GARY KRUMLAND: Yeah, there's ways to do it. You might have to go through a couple of steps, but... [LB702]

SENATOR GROENE: Thanks. [LB702]

SENATOR MURANTE: Senator Garrett. [LB702]

SENATOR GARRETT: And it raises a question in my mind. Thank you, Senator Murante. A municipality that has both city councilmembers by ward and at-large, can they have both? [LB702]

GARY KRUMLAND: Yeah. There's...the cities of the primary class--which Lincoln is the only city of primary class--and cities of the first class, which are those between 5,000 and 100,000, by specific statute can vote to have partially elected by wards and some of the councilmembers elected at-large. [LB702]

SENATOR GARRETT: Who makes that determination? [LB702]

GARY KRUMLAND: The voters. [LB702]

SENATOR GARRETT: Okay. Thank you. [LB702]

SENATOR MURANTE: Senator Bloomfield. [LB702]

SENATOR BLOOMFIELD: Is there a rule guiding how many wards has to be in that town that's (inaudible?) [LB702]

GARY KRUMLAND: No. The only rule is, is that you have to elect two members of the council from each ward. [LB702]

SENATOR BLOOMFIELD: So you may have two wards that you could (inaudible?) [LB702]

GARY KRUMLAND: Yeah. And to be honest, a lot of cities of the second class have two wards and have four councilmembers. [LB702]

SENATOR BLOOMFIELD: Okay. Thank you. [LB702]

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SENATOR MURANTE: Okay. Seeing no additional questions, thank you very much for your testimony. Any additional testifiers in favor of LB702? Are there any opposing testimony to LB702? Neutral testifiers? Seeing none, Senator Crawford again waives closing. And that will end the hearing on LB702. Thank you, Senator Crawford. We'll proceed to the last item on the agenda, LB682 by Senator Joni Craighead, Omaha, Nebraska. [LB702]

SENATOR CRAIGHEAD: (Exhibits 1-3) Good afternoon, Chairman Murante and fellow committee members. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d. I represent Legislative District 6 of Omaha in Douglas County. I come before you today to introduce LB682 at the request of local election officials in Nebraska. This bill would amend various sections relating to deadlines for requests for early voting ballots and the mailing of ballots in special elections conducted by mail. The bill provides a June 1 operative date and repeals the original sections. Election officials in this state as well as across the nation have begun to see the results of operational changes that were made by the United States Post Office in an effort to cut costs. The post office has closed or consolidated mail processing centers across the country, including those in Lincoln, Grand Island, and Norfolk. The days of local overnight mail delivery are a thing of the past. The evidence is shown in the numbers that have been tracked by local election officials and are being passed out to you by the pages. LB682 is divided into four sections. Sections 1 and 2 would amend Nebraska Revised Statutes 32-941 and 32-947 to change the deadline by which a voter can request that an early ballot be delivered to them by mail in a primary and general election from the current deadline of no later than 4:00 p.m. on the Wednesday preceding the election to no later than the second Friday preceding the election. This deadline change allows at least three extra days for a ballot to reach the voter. The second Friday before the election is also the voter registration deadline. An amendment I submit to the committee would add at "the close of business" to the changes to these statutes. Section 3 would amend Nebraska Revised Statute 32-949.01 to change the date by which a voter can request that a replacement ballot be delivered by mail. The bill would change the deadline for returning such requests from the fourth business day before the election to the second Friday preceding the election, consistent with the first two sections of the bill. Section 4 would amend Nebraska Revised Statute 32-953 to change the date by which an election commissioner shall mail the official ballots in special elections by mail. The date would be changed from not sooner than the 20th day before the set election date, which is a Wednesday, to not sooner than the 22nd day before the date set for an election, which is a Monday. This allows election officials the flexibility of getting the ballots out early if they are ready to be sent. LB682 is a bill that puts the focus on getting ballots to voters given the new post office delivery standards. It is my understanding that we will have testimony from local election officials regarding their experience with the new delivery standards. I hope you will support this bill. Thank you. [LB682]

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SENATOR MURANTE: Thank you, Senator Craighead. Are there any questions for Senator Craighead? Senator Hansen has a question for you, Senator Craighead. [LB682]

SENATOR CRAIGHEAD: Thank you, Senator Hansen. [LB682]

SENATOR HANSEN: Thank you, Chairman Murante. Senator Craighead, I just wanted to clarify. You said that you envision an effective date of June 1? [LB682]

SENATOR CRAIGHEAD: Yes. [LB682]

SENATOR HANSEN: I just wanted to clarify where...because I had also thought I'd saw an emergency clause in the bill and just wanted to clarify I guess what your intent is rather than maybe what the language says. [LB682]

SENATOR CRAIGHEAD: Okay. The intent I believe is to...well, yeah, it would be...we do need to clarify that, Senator Hansen. That's good. I don't know if it should be by the end of the session or June 1. [LB682]

SENATOR MURANTE: No, I...you have an operative date on page 6, line 12. [LB682]

SENATOR CRAIGHEAD: Okay. [LB682]

SENATOR MURANTE: So the bill becomes law but the bill becomes--immediately--but it becomes operative on June 1, 2016. [LB682]

SENATOR HANSEN: Thank you, Senator and Chair, for that clarification. [LB682]

SENATOR CRAIGHEAD: Thank you. Thank you. [LB682]

SENATOR MURANTE: That's why you pay me the big bucks. No problem. All right. Any additional questions for Senator Craighead? Seeing none, thank you, Senator Craighead. Proponent testimony to LB682. Welcome back, Commissioner Bena, to your Committee on Government, Military and Veterans Affairs. [LB682]

WAYNE BENA: (Exhibit 4) Good afternoon again. Members of the committee, my name is Wayne Bena, W-a-y-n-e B-e-n-a. And I serve as election commissioner for Sarpy County as well as the legislative cochair for the clerks, register of deeds, and election commissioners division of

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NACO. Post office delivery standards have changed. According to an article in the August 25, 2015, Omaha World-Herald being provided to you, in a cost-cutting measure the post office has been consolidating operations, including merging some mail-processing operations in Grand Island, Norfolk, and Lincoln into Omaha. The post office has also dropped its former standard of delivering local single-piece mail within a day. In a December 15, 2015, letter to the Postmaster General, provided in your packet, the U.S. Election Assistance Commission--which, Senator Murante, you serve as an advisory board member--lists post office ballot delivery and return as the first two main issues of concern of vote-by-mail programs nationwide. LB682 is the result of the input given to me by my fellow election officials across this state and is our recommendation to how Nebraska election law should adapt given the reality of these new postal standards. The bill can be separated into two parts. The first three sections amends the deadline by which a voter can request a ballot or replacement ballot in a primary or general election. The fourth section allows election officials to mail ballots in special elections by mail 22 days in advance instead of the current 20 days. As this fourth section has the least controversy associated with it, I will limit my comments to the first three sections but can answer any questions on any part. On Wednesday, January 13, I sent each of your offices a letter in a manilla envelope asking for your support of this bill. This letter was to mimic a ballot being sent by my office on the current application deadline of Wednesday at 4:00 p.m. prior to an election. The first letters arrived in your various members' offices starting on Friday, January 15, two days from Papillion to Lincoln. Some of the offices got it on Tuesday. And I'm not using those because they didn't pick up their mail on Friday and, of course, Monday was a holiday, so that would be cheating on my part to say Tuesday for those. But from all that I can gather, most of your offices received the letter on Friday. And so that's what we're basing just one standard of delivery on. I will note, for many election officials applications received at the current deadline would not be fulfilled until the Thursday before the election given different mail pickups in each county. In my county we have a 4:00 deadline to get mail out. Anything by about 3:00 we'd be able to get out. But many counties have 10:00 a.m. when the mail picks up in their office, so going on the basis that the minimum most counties could get it out is Thursday on the deadline day. This is an important distinction when you look at the next document in your packet. There you will see provided the last election our office conducted, which was a Gretna Public Schools bond issue in May of 2015. And this was a document I gave to you earlier in the interim studies held late last year. In this election you will see that ballots were sent on a Wednesday, the current 20-day deadline. The first ballots were returned to our office starting on the Monday following. In talking with voters in the district at that time, ballots began arriving in Gretna on that Friday, two days after; and those ballots delivered to us on Monday were a result of those voters that turned around and mailed the ballot back the same day. I would also point out on the trend of mail delivery on Tuesdays on that document. On the three consecutive Tuesdays during this election we saw a dramatic decline in ballot delivery, as well as mail in general since then. I would encourage you to talk with your own offices and ask, have you seen a decrease in mail volume on Tuesdays, because clerks across this state have been seeing that not only in ballots but just in their local,

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their normal mail that they receive. Finally, you see the 220 ballots delivered to our office the day after the election. Of those 220 rejected ballots, 218 were postmarked on the previous Monday before the election, again showing at least two days for delivery. Thus, in my county where the mail is sent directly to the Omaha processing center each day, a ballot mailed on a Thursday would make it to the voter most likely on Saturday, and only if the voter turns around on Saturday does the ballot stand a chance of making it back to my office on Tuesday, a day for some reason which sees reduced volume. Can I continue, Senator? [LB682]

SENATOR MURANTE: Feel free. [LB682]

WAYNE BENA: If that's what my office experiences, then please imagine what it's like in our rural areas of the state where the mail needs to get to Omaha first before it goes back to the community. This bill proposes to change the current deadline to the second Friday before the election, which is also the voter registration deadline. The one thought in this was that you combine two deadlines, it's one less deadline that the voter has to recall in any given election. This allows three extra days for the ballot to get to the voter, as I mentioned before that ballots received, applications received on that Friday might not be sent out till Monday, thus, we're getting three extra days. This deadline change only represents 4 percent of the total number of days a voter has to request an early voting ballot with the start date currently at 120 days prior to the election. And we're already starting to see those come into my office. This change can be easily implemented after the June 1 operative date as our offices cannot accept applications for early ballots for the general election until July 11. This provides enough time for election officials to incorporate the new deadline on their applications. I have provided our early voting application as an example in your packet of how we display the deadline on there. Senator Murante and Senator Garrett, feel free to fill out that document. I'll take it back and process it if you'd like to vote early in the primary. In conclusion, bills such as this are not the subject of much publicity or fanfare. But let me conclude my testimony by framing this issue in the terminology of the one election bill that has received the most news coverage so far this session. You're not going to be able to take a ballot selfie if you don't get the ballot (laughter), and that's what we're trying to do from the administrative standpoint of our offices getting the ballot to the voter. There has been much discussion in the last few weeks regarding this bill and the clerks are willing to compromise on the date in regards to should it be Friday, should it be Monday, should it be something else. We just want to ensure that we are prepared come this general election where we're going to see 25 to 30 percent of the people vote by mail and vote early, that we're getting them the ballot so they can make the informed decision of how they get it back. I thank you for the consideration and the extra time on this legislation. And I am eager to take your questions. [LB682]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
[LB682]

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SENATOR HANSEN: I would. [LB682]

SENATOR MURANTE: Senator Hansen. [LB682]

SENATOR HANSEN: Thank you, Chairman. Mr. Bena, I had a question about just...I asked Senator Craighead about the date. Do you think there's an issue of, I don't know whether it would be fairness or confusion, but having one standard for the primary and one standard for the general election in the same election year? I know it's just potentially a switch of a few days. But I just wanted to hear your take on that. [LB682]

WAYNE BENA: The rationale behind June 1: If this bill were to rocket to being passed and signed, we didn't want it to go into effect for the primary election because we're already starting to take those applications and what have you. [LB682]

SENATOR HANSEN: Right. [LB682]

WAYNE BENA: I would say that the majority of the people that ask for an early ballot use the local county official's application and that will be on the application. We have changed these type of things in election years before. We've changed laws within the election before. I was fine with not bringing any election legislation this year. [LB682]

SENATOR HANSEN: Sure. [LB682]

WAYNE BENA: And based upon what we saw in this past year, especially with the Grand Island and Norfolk mail processing centers, it was too important for me not to bring the issue up. It's up to this body to determine whether or not this is set for passage. But we...I am the kind of person that anticipates problems and I would rather nip this in the bud now than have to come back to you because there...you have angry voters not getting their ballot that requests that are at the deadline. So I'm anticipating this issue and it's brought to our attention because...I would have brought this last year if I would have seen a little more. But it's been a little more dramatic last year than we saw the year before, so. [LB682]

SENATOR HANSEN: Thank you. I appreciate that. And I also wanted to follow up on your...the results you gave us from the Gretna Public Schools special election. I believe you also gave us those numbers at an interim study and they...I found them surprising at the time as well. Was that an all-mail special election? [LB682]

WAYNE BENA: Correct. [LB682]

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SENATOR HANSEN: And I was wondering, if that's an all-mail special election, how would that bill impact...how would this bill impact all-mail special elections in terms of if we're just talking about the deadline to request a ballot and the ballots already get sent out automatically? I'm not sure, while these numbers are alarming, I'm not sure where the connection is or what impact it would have to say. [LB682]

WAYNE BENA: Right now, are you talking about the fourth section of the bill that moves from 20 to 22? [LB682]

SENATOR HANSEN: I'm kind of talking about the bill in general, if there's a specific section I should be looking at. [LB682]

WAYNE BENA: Well, Section 4 allows us to send the ballots two days earlier to the voter if we have them ready. In the last two or three special elections that I have held by mail, I was ready, you know, I was ready to go. And I have to...and I can't send them out any earlier because the law states it's at 20 days. So if I have them ready to go, it allows us to get them out earlier. And when you get them out earlier, you hope you get them back sooner. So we think that...and again, if the voter is not...if the election office is not ready to send those out, they don't have to on the 20th day. But if you are ready you can, and we're getting them in the voter's hands sooner, so. [LB682]

SENATOR HANSEN: Okay. Thank you. [LB682]

SENATOR MURANTE: Thank you, Senator Hansen. Senator Groene. [LB682]

SENATOR GROENE: Thank you, Chairman. This still don't help the voter procrastinates and says, I'm going to sit down Friday before Tuesday and fill it out and drop it in the mail, doesn't make any difference if he got it earlier. How does he, does the voter know that we have this crisis that if he mails it on Friday or Saturday it probably isn't going to get there by Tuesday? [LB682]

WAYNE BENA: And I know from my standpoint we're adding it to the instructions to talk about... [LB682]

SENATOR GROENE: Are you going to... [LB682]

WAYNE BENA: Yeah. [LB682]

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SENATOR GROENE: ...tell them you'd better get it in? [LB682]

WAYNE BENA: But it's hard for us to make that guarantee. If I say...I've been struggling with this because I know Monday it's not getting to my office right now. So what do I...if I got back and say, well, make sure you get it in by Friday, and if they get it in by Friday and it still doesn't, then, you know, my instructions are...they could use my instructions against me because on a third party that I don't know, the post office, of when they're going to get it to my ballot...when they're going to get it. In that Gretna special election I had ballots postmarked May 6, six days before the election, that came to my office late. [LB682]

SENATOR GROENE: Does the voter know his vote didn't count? [LB682]

WAYNE BENA: They can if they...yeah, I mean it's just public record whether or not a vote has been rejected. My role as an election official is to provide ballot access. And this was a more administrative purpose of I want to make sure that we get the ballot to the voter so they can make the appropriate decision of how they get it back. And what we're saying is with the current deadline, for many, especially in rural areas, there's no guarantee they're even going to get the ballot on election day, let alone be able to do something with it. [LB682]

SENATOR GROENE: Okay. [LB682]

WAYNE BENA: We're trying to get them the ballot. And while you have a right to vote, you have also the right not to turn the ballot back in too. And so I think it's a separate public policy decision of what we do in regards to how we inform and how we make it easier to accept ballots because of the new postal deadline. But that's not our role as election officials. [LB682]

SENATOR GROENE: No. [LB682]

WAYNE BENA: We're trying to get you the ballot. [LB682]

SENATOR GROENE: So walk me through this. If they call you right now they've got to...they can call you up to the Wednesday before. [LB682]

WAYNE BENA: The Wednesday... [LB682]

SENATOR GROENE: You got to drop it in the mail to them, mail it to them. Then you've got to get it, fill it out, and get it back within six days on that next Tuesday. [LB682]

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WAYNE BENA: If they want to mail it back, but you can also bring it back to your office, bring it back to the office as well. So again, we're trying to get the voter the ballot so they can make the decision of how they get it back. [LB682]

SENATOR GROENE: Thank you. [LB682]

SENATOR MURANTE: And if someone walks a ballot back to your...gets a ballot back to your office they have until election day when the polls close to get it back to you? [LB682]

WAYNE BENA: Correct, at 8:00 p.m. [LB682]

SENATOR MURANTE: All right. Any additional questions? Seeing none, thank you very much for your testimony. Looks like there is additional proponent testimony to LB682. Mr. Shively, welcome back to the Government Committee. [LB682]

DAVID SHIVELY: Thank you. Thank you, Senator Murante. My name is David Shively, D-a-v-i-d S-h-i-v-e-l-y. I'm the Lancaster County Election Commissioner here today in support of LB682. I'd like to thank Senator Craighead for introducing this bill. This bill helps us with an issue that we have seen in the last year with mail service. I won't reiterate a lot of the information that Commissioner Bena stated, but I will remind people, too, that even though it's the last day that we can mail a ballot would be changed to the Friday, voters still can come in and vote early in the office and also can come in and pick up a ballot or have an agent come in and pick up a ballot that last week as well for them. So it's not eliminating getting ballots out. It's just the way we mail the ballots. We've noticed with our city elections that we had in April and May of last year some issues with getting applications in, in a timely manner, and getting those out and getting them turned around, specifically after the Lincoln mail sorting facility closed here and made all of our mail here in Lincoln now goes to Omaha and comes back. It's very unlikely that you're going to have...you're not going to have next-day service to our office. And this allows us to be able to get that ballot to the voter earlier. That way they can get it filled out earlier and hopefully back to us earlier in a timely manner. People deliver ballots to us back on election day, so we get hand-delivered a lot of ballots on election day. So it gives them plenty of time to do that and get that turned around back to us. I support this bill. I wish that you would pass this out so we can make those changes and make sure that we are able to get that ballot to the voter in a timely manner. With that I'd be happy to answer any questions. [LB682]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today. [LB682]

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DAVID SHIVELY: Thank you. [LB682]

SENATOR MURANTE: Additional proponents wishing to speak on LB682. Mr. Erickson, welcome back to the Government Committee. [LB682]

NEAL ERICKSON: Good to see you again. [LB682]

SENATOR MURANTE: Looks like you brought the band back together. [LB682]

NEAL ERICKSON: (Laugh) Yeah. It's been awhile, an extensive interim. Good afternoon, Chairman Murante, members of the committee. My name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n. And I'm Deputy Secretary of State for Elections. And I'm here to testify on behalf of Secretary of State John Gale in support of LB682. This bill has, as just been mentioned, would move the last day for a voter to submit a request to have a ballot mailed from the Wednesday before an election to the second Friday before the election. Recent changes in the U.S. postal system have made it more difficult to predict the transit time for both outgoing and incoming mail. With election-related mail this is a concern not only in Nebraska but also nationwide. The USPS has attempted to address these concerns through various approaches such as prioritizing election mail that contains specific election marking on the envelope. One more recent change included the consolidation of mail processing centers, which caused anecdotal caution that mail might take substantially longer to reach its destination. Certainly there is broad interest in making sure that voters who choose to vote by mail have an opportunity not only to receive their ballot but also cast the ballot and return it prior to the close of polls on election day. The provisions of LB682 would clearly provide a helpful buffer of additional time for the receipt and return of those ballots. The U.S. Postal Service is certainly aware of the importance of having election mail delivered in a timely manner. Without detailed statistical information on the transit time and the reason if there is a delay, alternative solutions may be elusive. LB682 can provide a solution. It provides additional time for the voter to receive, cast, and return the ballot. There may be additional approaches depending on a clear picture of the extent of any delay of the mail process and the reasons for that delay. With that I will close my testimony in support of LB682 and answer any questions you may have. [LB682]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down. [LB682]

NEAL ERICKSON: Thank you. [LB682]

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SENATOR MURANTE: Appreciate it. Additional proponents wishing to speak on LB682. Seeing none, is there any opposition testimony to LB682? Are there neutral testifiers to LB682? And welcome back to the Government Committee. [LB682]

BRI McLARTY: Thank you for having me. Members of the Government Committee, good afternoon. My name is Bri McLarty; that's B-r-i M-c-L-a-r-t-y. And I'm here in my capacity as the director of voting rights with Nebraskans for Civic Reform, a nonpartisan, nonprofit advocacy organization dedicated to making elections more accessible and modern. Having spoken extensively with Mr. Bena about the turnaround issue he and Senator Craighead are attempting to remedy with LB682, NCR understands the method but has decided to testify in a neutral capacity specifically because of the deadline proposed in the legislation. NCR has no issue and supports the language giving county election officials the flexibility to send ballots out in the special election earlier if they are ready and we, in fact, encourage county election officials to do so as it will give voters more time with their ballot. However, we have concerns with moving up the deadline to apply by mail for early ballots and our concerns are both with the operative date in creating a different deadline between primary and general election, as well as the reduction in days by five. As an advocacy organization focused on the right of the individual voter, NCR generally does not support legislation that further burdens the individual voter. We recognize the turnaround issue discovered by Mr. Bena and the solution proposed here is a solution for the election administrator and not necessarily for the voter. This bill cuts five days from the time in which a voter may apply for an early ballot via mail. Constrained by the hours of the election office to vote early in person, VBM mail applications provide a convenient method for voters to seek a ballot outside of the typical 9:00 to 5:00, Monday through Friday work week. As mentioned before, NCR understands. We understand the administrative burden placed on the election official with the post office closings and delays in service and we can see how the bill as written addresses that specific issue. However, we have concerns on the impact that this solution would have on the voter, particularly the reduction of the application period by five days in moving it from the Wednesday before to the second Friday before. In evaluating the issues of late returns of ballots due to postal delays we really don't see how LB682 solves that particular problem, especially, as noted before, in the special elections where the ballots are sent to every registered voter 20 days in advance. This bill still doesn't solve the issue that a voter may mail a ballot on Saturday, yet it still won't get there in time on Tuesday. Regardless of the fate of LB682 this session, NCR tends to address the voter side of this issue that we've been talking about in the next session. And we thank Mr. Bena for bringing forth the issue of the delay in postal delivery and its impact on elections, and we plan to address that in the future. We ask that the committee consider the impact of LB682 on the voter given the operative date attached and the fact that it is an election year when the election calendar has already been published and distributed. In our attempts to find common ground a proposed compromise of changing of the language from the second Friday to the second Monday has been brought up. And we are working right now to compile a list of state-by-state guidelines and deadlines for the committee

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to look over so you kind of have a big picture of what's going on nationally, just that that might serve as any sort of purpose. I had a little fight with my printer so I couldn't bring it to you today, but I'll be sure to drop it by and e-mail it to all your offices. And with that I would like to answer...I'd be happy to answer any questions. [LB682]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today. [LB682]

BRI McLARTY: Thank you. [LB682]

SENATOR MURANTE: Thank you. Are there additional neutral testifiers on LB682? Seeing none, Senator Craighead, would you like to close? [LB682]

SENATOR CRAIGHEAD: Thank you, Chairman Murante and fellow committee members, for listening to the testimony today on LB682. I want to close today by emphasizing that LB682 was put together at the request of local election officials in Nebraska. They are the experts in the area of elections. The numbers speak for themselves showing the operational changes made by the United States Post Office have caused changes in the timely delivery of ballots to voting citizens. I don't believe that the election officials of Nebraska need an outside lobbying group with political affiliations to influence the process for which ballots are received and counted. LB682 is simply a bill that puts the focus on getting ballots to voters in a timely manner given the new post office delivery standards. I hope you will support this bill. Thank you. [LB682]

SENATOR MURANTE: (Exhibits 5-7) Thank you, Senator Craighead. And before we close the public hearing on LB682 I will read into the record letters of support for LB682 from Diane Olmer, Platte County Election Commissioner; Mary Eickhoff, Richardson County Clerk; and Brian Kruse, Douglas County Election Commissioner. And with that we close the hearing on LB682 and we end the hearings for the day. [LB682]