

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

[LB80 LB85]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 18, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB80 and LB85. Senators present: John Murante, Chairperson; Tom Brewer, Vice Chairperson; Carol Blood; Tom Briese; Mike Hilgers; John Lowe; and Justin Wayne. Senators absent: Joni Craighead.

SENATOR MURANTE: (Recorder Malfunction)...committee. My name is John Murante. I am the state senator for District 49, which includes Gretna and northwest Sarpy County, and I am the Chairman of this committee. We are here today for the purposes of conducting two public hearings. The order in which we will be taking these bills up is the order in which they appear on this agenda, which is located outside of this room. If you wish to testify on any of the matters before the Government Committee today we ask that you fill one of these green sheets out. They are located on either side of the room. If you are here and wish to state an opinion on a matter before us but do not wish to testify, we ask that you sign in and state your support or opposition to the matters before us. If you fill that out and submit it to us your opinion will be taken into account just as if you had testified. If you do testify we ask that you begin your testimony by stating and spelling your name for the record, which is very important for our Transcribers Office. The order of proceedings will be that the introducer of the legislation will be permitted an opening. After that we will listen to proponent testimony, those who support the bill, followed by opponent testimony, and then neutral testimony, and we will conclude with the introducer of the bills having an opportunity to close. We ask that you listen very carefully and to try not to be repetitive. If you hear things that have already been stated and you don't wish to reiterate them again, please fill out the sheet, let us know that you were here, and state your support or opposition to the matters before us. We do use the light system in the Government Committee. Each testifier is permitted four minutes to speak. When the yellow light comes on you have one minute remaining, we ask that you begin concluding your remarks. When the red light comes on we ask that you conclude your remarks and we will open the committee up to any questions they may have of you. At this time I would like to remind everyone in the audience and everyone on the committee to silence or turn off any cell phones or electronic devices, anything that makes any noise. If you have a prepared statement, an exhibit, anything you would wish to be submitted to the committee we ask that you provide 12 copies. Give it to the page, the page will distribute them to us. If you don't have 12 copies, that's fine, again, give it to the page and the page will make copies for you. Our page today is Joe Gruber of Omaha, Nebraska. That is a bit of how we do things here and so we'll proceed to the introduction of members. To the far left, Sherry Shaffer is the Government Committee clerk. To her right, Senator Carol Blood from Bellevue, Nebraska. To her right, Senator Joni Craighead represents Omaha. Senator Craighead has a bill in the Judiciary Committee right now, but I anticipate her being here before the hearings are out. To my immediate left, Senator Justin Wayne from Omaha, Nebraska. Andrew La Grone is the

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

Government Committee legal counsel. To his right is State Senator Tom Brewer, Senator Brewer is the Vice Chairman of this committee. To his right, Senator Mike Hilgers; Senator Hilgers represents Lincoln, Nebraska. To his right, Senator Tom Briese. And to his right, Senator John Lowe. And that is your Government Committee for the next two years, so it's a good crowd. So with that, we will proceed to the first item on the agenda, which is LB80. Our aim for the day is Senator Carol Blood, so welcome to Carol Blood day in the Government Committee. Welcome.

SENATOR BLOOD: Thank you. Chairman Murante and members of the Government, Military and Veterans Affairs Committee, thank you very much for hearing my bill, LB80, this afternoon. My name is Senator Carol Blood, spelled C-a-r-o-l B-l-o-o-d, and I represent the wonderful people of District 3. Today I bring forth a rather simple bill in the form of LB80, which moves certain law clerks and law students from the classified service designation to unclassified service. I should point out that this bill will only affect those law clerks and law students who are working for a county attorney or public defender's office in counties with populations between 150,000 and 300,000. County officials have come to me in the last few months and made it very clear that the hiring process under the County Civil Service Act makes it extremely difficult to recruit higher and then retain top-notch law clerks because of strict framework laid out when it comes to promotions and pay scale, specifically for classified employees. Moving law clerks and law students to an unclassified status will put them in the same hiring status framework as attorneys, which in turn makes it quite a bit easier to transition those clerks who are working for the county attorney or public defender's office to full-time attorneys. I believe there are representatives from both the county attorney and public defender's offices who are here and will be testifying, and can certainly give you better details than I of what moving these employees from classified to unclassified would entail. But again, I truly believe this is a fairly simple and painless bill. And I'd be happy to answer any questions you might have, but I would defer to the experts on I'm sure many of your questions. [LB80]

SENATOR MURANTE: Thank you, Senator Blood. Are there any questions? Seeing none, we will proceed to the proponents. Are there any proponents to LB80? Welcome. [LB80]

BONNIE MOORE: Thank you. Good afternoon, members of the Government, Military and Veterans Affairs Committee. My name is Bonnie Moore, spelled B-o-n-n-i-e M-o-o-r-e, and I'm the Deputy Sarpy County Attorney. I want to first thank Senator Blood for sponsoring this bill. There. Just to reiterate some of the things that Senator Blood said in terms of recruitment of law clerks, because they're considered classified employees now, they have to go through the same recruitment process as every other county employee, which includes reviewing the job description, posting the job for five days within the county, and then seven days externally, reviewing and ranking those positions, interviewing the law clerks, and then any post-interview, maybe like a writing sample, reference checks, etcetera. This subject is near and dear to my heart. I was the HR director for Sarpy County prior to January 4 of this year. So because of this

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

very rigid process, the county's ability to go out and recruit at, for example, a job fair at a law school, is difficult because unless there is an open position and posting at that time, anyone that would be recruited from a job fair at a law school wouldn't be able to then go and apply for the position. So just to also...attorneys are already considered unclassified so the transition for law clerks in within the county attorney's office or the public defender's office would be a much easier transition. So in closing, changing the status of law clerks from classified to unclassified greatly helps the county in its recruitment and retention efforts and also puts them in the same status as attorneys. Thank you for your consideration and I'm happy to answer any questions. [LB80]

SENATOR MURANTE: Thank you very much for your testimony. Senator Hilgers. [LB80]

SENATOR HILGERS: Thank you, Attorney Moore, for your testimony today. Question on the transition that you mentioned. Currently, if they're classified, they would be unclassified as an attorney. Can you speak to the difficulties or problems that that transition poses? [LB80]

BONNIE MOORE: Sure. So there's a separate set of rules that applies to classified and there's different, like a vacation schedule, sick-leave schedule, there's different benefits in general. And so it would put those law clerks in the same category I guess of benefits and other employment matters as attorneys. [LB80]

SENATOR HILGERS: Is there a particular paperwork requirement to transition them to the unclassified? [LB80]

BONNIE MOORE: There is. There is and it's not as, you know, there's paperwork involved and there's also just a different understanding of kind of the rights and the benefits of being an unclassified versus a classified employee. [LB80]

SENATOR HILGERS: Thank you. [LB80]

BONNIE MOORE: You're welcome. [LB80]

SENATOR MURANTE: Thank you, Senator Hilgers. Any additional questions? Seeing none, thank you very much for your testimony. Appreciate it. [LB80]

BONNIE MOORE: Okay, thank you. [LB80]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR MURANTE: Welcome. [LB80]

THOMAS P. STRIGENZ: Welcome. Good afternoon, Senators. Thomas P. Strigenz, S-t-r-i-g-e-n-z, Sarpy County Public Defender, appearing in support of LB80. Again, I would like to thank Senator Blood for offering this bill. I will tell you that I was the cause of this problem in Sarpy County and my predecessor HR director, who just testified, she was the one who informed me that I was doing things wrong. And that's why I asked that this bill be drafted and the language changed. I will tell you, in addition to what Ms. Moore indicated, what my issue is, is law clerks in my opinion are very similar to residents in medical school, who are also considered unclassified under the current statute. And this bill, if passed and becomes law, will basically make better lawyers because in my office, for example, one of the things the Civil Service does is it doesn't really let me keep my law clerks past a year. And that was probably the biggest issue that I had. And I like to keep my law clerks for two years, basically I like to have two or three law clerks in my office as a second-year. And then I like to train that person to become a third-year law student in the second year of employment with my office. They can then also mentor the new upcoming law clerks. Why that's important is a third-year law student also can become senior certified, basically they can appear in court, you know, again, just like a resident in medical school, a hands-on training. And so basically the biggest reason that I strongly encourage this committee to support this bill is to let these law clerks work basically more than a year. And that's really what the biggest standard is. And again, the legalities as the HR director, Ms. Moore can tell you about that. But again, I was doing it, she told me I couldn't, so I needed to make sure I got the change done. So that's really what the support of my office, lawyers become better, law clerks become better, they become better lawyers, more ethically and then properly trained for the state of Nebraska. So that's basically my support. [LB80]

SENATOR MURANTE: All right, thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. [LB80]

THOMAS P. STRIGENZ: Thank you. [LB80]

SENATOR MURANTE: Much appreciate it. Is there additional proponent testimony? Welcome. [LB80]

BETH BAZYN FERRELL: Thank you. Good afternoon, Chairman Murante, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l, I'm with the Nebraska Association of County Officials and I'm appearing in support of LB80. Although our board hasn't actually met yet to take positions on bills, we're confident that this is an issue that our board would support. It would facilitate the hiring, recruitment, and retention of law clerks and law students. So I'd be happy to answer questions. [LB80]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR MURANTE: All right, thank you very much for your testimony. Are there any questions? Seeing none, simple enough. Thank you very much. Additional proponent testimony to LB80? Seeing none, is there any opposition testimony to LB80? Is there any neutral testimony? Seeing none, Senator Blood, would you like to close on LB80? [LB80]

SENATOR BLOOD: I would just like to state again it's a pretty simple bill and we're not asking to make any drastic changes. It's obvious it's going to be beneficial to the counties that we can apply it would be beneficial to. And I just ask for your support in moving it onto the floor for debate. [LB80]

SENATOR MURANTE: Thank you very much. And that closes the hearing on LB80 and we'll move to the next item on the agenda, LB85. Senator Blood, welcome back. [LB85]

SENATOR BLOOD: (Exhibits 1, 2, 3) Good afternoon and thank you again to the committee and Committee Chair Senator Murante for scheduling my bills both for hearing today. I'm sincerely appreciative. My name is Senator Carol Blood, C-a-r-o-l B-l-o-o-d, and again I represent District 3, which is located in Sarpy County. Today I am here to present LB85. The purpose of LB85 is to allow the Nebraska Accountability and Disclosure Commission the ability to collect outstanding civil fines that may have been avoided or purposefully not paid by a public servant or potential public servant, while providing easy access to information on fines to those involved with the processing of candidate filing. Elected officials' salaries are paid by the public. These jobs place us in a position of public trust and I believe should be held to a higher standard than others. Officials are frequently called upon to reflect their personal values and ethics while serving the public or considering potentially running for public office. I believe it is the job of the Legislature to support these goals of good governance by providing ongoing reevaluation of policies that may act as a hurdle in our ultimate goal of accountability. When we address issues such as nonpayment of NADC fines, we continue to foster an ethical, moral culture that also expresses that certain behaviors have consequences. This bill is to provide statute that supports the Nebraska Accountability and Disclosure Commission and their efforts in attempting to collect outstanding civil fines, as well as protecting the Governor's Office in potentially appointing an individual that may not feel accountability is a personal ethic that they feel is important. I should also note that after receiving the fiscal note from the Nebraska Secretary of State's Office that I'm also bringing forward an amendment and it is my hope that the committee will adopt this amendment. This amendment removes the late fees as part of the statute and addresses only those that have civil penalties. We have been assured by doing this that it should no longer be a financial burden on this office. I believe you've also received a letter from the Secretary of State's Office in reference to the neutral testimony and hopefully you've received the list of civil penalties that we reported as of November 17. The one thing that I'd like to point out on that is that if you were to average it out, it's approximately \$6,000 per person on this list, even though a short list. But when you look at the total amount of \$42,550, is that really the true

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

amount that it costs taxpayers, and I say it most definitely is not the true amount that it costs taxpayers because staff is constantly trying to seek ways, be it going to the court system, be it trying to find financial information on these people, trying to recoup this money. So it costs taxpayers far more than the civil fines when you're talking about addressing this issue. And so in closing I would say that it is our job to create good policy that shows citizens that we take this job seriously and that we support good morals and strong ethics. And at this time I would entertain any questions anybody might have. [LB85]

SENATOR MURANTE: Thank you, Senator Blood. Are there any questions? Senator Hilgers. [LB85]

SENATOR HILGERS: Thank you, Senator Blood, for introducing this legislation. I am wholeheartedly in support of the principle behind it. One question, you may not know the answer to it, but do you know if the Accountability and Disclosure Commission currently has the authority to garnish wages from officeholders? [LB85]

SENATOR BLOOD: They do indeed, and I think Frank Daley is here, I'm not sure, and can speak on more than I can. But I do know in fact that they do have the ability to garnish. In fact, I should point out that actually there's quite an extensive process. Should you feel that fine is an unjust fine you can take it to every level of the court system, including the Supreme Court here in Nebraska. And so I have to say the NADC and the state of Nebraska gives everybody a full opportunity to fight it, should they not agree with it. I would also like to add that I believe that this is a comparable bill to LB400 that Senator Smith brought forward two years ago to this committee, I'm sure Senator Murante remembers that, in that it's quite clear in the State Constitution under Article III, Section 18, that this is not a prohibited use of our power. There is nothing in the State Constitution that restricts our ability to create new policy in this area and I was unable to find any Supreme Court rulings that say that we're restricted from creating this type of policy. [LB85]

SENATOR MURANTE: So the question on constitutionality would be what, that the constitution dictates qualifications and we're adding something beyond that? I'm trying to impose upon you what is potentially an argument that you don't agree with, but I'm curious what... [LB85]

SENATOR BLOOD: I have to be really...I'm sorry to interrupt, sir. I have to be honest, it was a question brought up to me by Senator Hilgers on the floor this morning and I told him I would research and I'm addressing. So perhaps he can answer that question more extensively than I could. [LB85]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR HILGERS: I wasn't...the question was exactly as you articulated and it wasn't that I necessarily agreed with the objection. That was the question, whether or not we have the authority to impose obligations or qualification requirements beyond what is currently imposed in the constitution. [LB85]

SENATOR MURANTE: Okay, I understand. [LB85]

SENATOR BLOOD: And so I would point out that on February 19 in 2015 that the seven sitting members on this committee, Senator McCoy was not present that day, all voted in favor of LB400, which actually sets a similar guideline in reference to the C-1 Statement that if indeed you do not file within five days of the deadline, which I believe is March 1, that you would have been unable to run for office. [LB85]

SENATOR HILGERS: And my legal research comports with Senator Blood's was that unable to find any case on point. [LB85]

SENATOR BLOOD: I bet you paid a lot more for your education than I did, though. [LB85]

SENATOR MURANTE: All right, additional questions? Senator Briese. [LB85]

SENATOR BRIESE: Senator Blood, individuals have a right to appeal the decisions of the NADC, correct? [LB85]

SENATOR BLOOD: Absolutely. [LB85]

SENATOR BRIESE: Are there circumstances in which a potential candidate may have to forfeit that right to appeal in order to file for public office? [LB85]

SENATOR BLOOD: I think that's a question for Frank Daley. But it is not my intent to disenfranchise anybody with this bill. My intent...this is a bill about bad guys and gals. [LB85]

SENATOR BRIESE: And I certainly agree with the concept. [LB85]

SENATOR BLOOD: So I will defer to Mr. Daley. [LB85]

SENATOR MURANTE: And, Senator Blood, as a matter of principle, I think that this is the first I've seen Secretary Gale's letter. The third paragraph, where he says, and I'll quote, "I believe the

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

bill would be burdensome to my office and would deny candidates access to the ballot for what could be minimal late filing fees statutorily assessed to candidates," so my question is you have an amendment which takes out the late filing fees. [LB85]

SENATOR BLOOD: Right. [LB85]

SENATOR MURANTE: Do you think it is appropriate for us to put some sort of level on saying this amount of civil penalty and you can't run for office, or is it just a dollar and you're out? Do you think there should be a minimum level? [LB85]

SENATOR BLOOD: And again, I want to defer to the experts on this, but I can give you my personal opinion. And my personal opinion is that a civil penalty is because you violated campaign rule. [LB85]

SENATOR MURANTE: Absolutely. [LB85]

SENATOR BLOOD: And if you violated campaign rule, we're talking about morals and ethics. Is it ethical of somebody to be a public servant and to purposefully ignore their fines? I'm saying that it is not. So be the fine...what is the minimal they can fine on...? [LB85]

SENATOR MURANTE: The minimum they can fine I think can go as low as...I'll ask Frank Daley when he gets up here, but I think there is a minimum. They can go as low as a penny as far I... [LB85]

SENATOR BLOOD: So, so...and the other thing I wanted to point out...oh, I'm sorry. [LB85]

SENATOR MURANTE: Yeah, as far as... [LB85]

SENATOR BLOOD: The other thing I want to point out is that the one thing that all of us know that have ever worked with NADC is that they are very gracious in working with campaigns. So they're not seeking people out to give them fines. And we want to be careful, too, to point out as well that this doesn't disenfranchise people who have limited financial means, that the NADC will work with them to work out a payment plan. So it's again much like what Senator Smith's bill was, LB400. This is about bad guys and setting the bar high. And either we're going to walk the walk and talk the talk or we're not. And as far as the amount goes, I think Mr. Daley can probably address that better than I. [LB85]



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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR MURANTE: Senator Hilgers. [LB85]

SENATOR HILGERS: Two questions. Logistically, for someone who for instance files near the deadline, I asked Colonel...Senator Brewer before when he filed I think, what did you say, 15 minutes before? So would this, and I can ask this question to Mr. Daley as well, but the verification process is that is this just a phone call to the Accountability and Disclosure? [LB85]

SENATOR BLOOD: It's going to be up on the Web site for NADC, so be you in Sarpy County, Douglas County, in the Capitol, the Secretary of State's Office, election commissioner, they can bring the Web site up. And the information we were told is going to be put up immediately, so there won't be a 48-hour waiting period. So if indeed Senator Brewer, which I know he does not, were to have civil fines... [LB85]

SENATOR BREWER: Could happen. [LB85]

SENATOR BLOOD: I don't believe that. For negative...for violating campaign rules, we would know right away, even if it was 15 minutes before. And if indeed it was 15 minutes before and he had refused to pay his civil penalties, then unfortunately Senator Brewer would not be able to run for office. And he should not be, as a strong, ethical, retired military person who sets a very high standard for himself. [LB85]

SENATOR HILGERS: If...let's just say that there...Senator Brewer, I'm going to use you as an example. [LB85]

SENATOR BREWER: Thanks. [LB85]

SENATOR HILGERS: It's a snowstorm, this is March, he's filing, and the systems are down. Is there a mechanism by which the county official could accept the request provisionally? Or would they...if they didn't have access to the information what would they do? [LB85]

SENATOR BLOOD: Well, they could still pick up the telephone. And it's pretty rare nowadays, I mean, I grew up out in the country, most telephones are underground nowadays, the cabling. [LB85]

SENATOR HILGERS: Well, I just played out the hypothetical just because, and we're making a record here, too, so if this becomes law and someone has a question about what happened I think it would be helpful just to tease it out. Let's just say could they or could they not? [LB85]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR BLOOD: Well, since we're talking scenarios, I think that would be better from Mr. Daley,... [LB85]

SENATOR HILGERS: Okay. [LB85]

SENATOR BLOOD: ...because it is his office who would be held accountable for this. [LB85]

SENATOR HILGERS: I have one more question, I'm sorry,... [LB85]

SENATOR BLOOD: That's fine. [LB85]

SENATOR HILGERS: ...if you don't mind. [LB85]

SENATOR BLOOD: Did he give you permission? [LB85]

SENATOR MURANTE: Have at it. [LB85]

SENATOR HILGERS: What happens if someone gets a fine after they file for office in March, something comes up in August or September? Would there be some sort of eligibility issue at that point? [LB85]

SENATOR BLOOD: When you're in office it's your responsibility to pay that fine. Now, if you were to run for reelection and that fine was still outstanding, then you would need to pay that to run for reelection. This is not, we're not out to hunt anybody. This isn't about any one person; this again is about what's right and what's wrong. And we're held to a higher standard and I think it's our...I believe it's our job to constantly revisit state statute. How can we make it stronger, how can we raise that bar? And this is one way we can do it. And to be quite frank, I'd like to revisit it once we get the state back in strong financial order and possibly bring in the late fees as well. But in order to get our foot in the door and to really make a statement I think it's a good place to start right now, with civil penalties. [LB85]

SENATOR HILGERS: Thank you. [LB85]

SENATOR MURANTE: All right. Thank you, Senator Hilgers. Any final questions? Seeing none, thank you very much for your opening. And we will proceed to proponent testimony on LB85. Are there proponents? [LB85]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

GAVIN GEIS: Chairman Murante, members of the Government 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, a nonpartisan, good government watchdog and advocacy organization. I'll be very brief. Senator Blood said really more than enough. The main thing I wanted to bring up was when I heard about this bill I spoke to some of my colleagues around the nation who have similar, basically, similar laws on the books--that includes Chicago, specifically I think just Chicago, maybe the broader Illinois, Rhode Island, Massachusetts--with the angle of, what have you seen being a problem with these laws, have you ran into any issues whatsoever? And the broad consensus was, no, not really, nobody ever really gets hung up on it. The one problem is a question of breadth. There are some states that have made this a really, really broad law, that say, hey, do you have a parking ticket? Can't run for office. Do you have late fees on a book at the library? Can't run for office. And that's the clear issue, when you're telling someone they can't run for office simply because they have a late filing fee...not late filing fee, book fee. But when that's not the case, most of the states I spoke with said no issues whatsoever. It's common sense, it's simple, and it does the job at creating that high standard. If this were in any other area of the law, if we were talking about let's move it out of the NADC and talk about other areas, we may have issues with that. But this is the area that governs elections, it governs elected officials, so it seems like a pretty simple segue into requiring fees be paid before they can go further into that realm of law as an officeholder or running for office. And that's really it, not many issues around the country other than that. So keep it narrow and we're good. That's it, thank you. [LB85]

SENATOR MURANTE: All right. Thank you, Mr. Geis. I'll ask you a comparable question I asked Senator Blood. In your view is there an amount of money that...on a philosophical level, should a person who has one dollar of a civil penalty imposed against them, who wants to run for Governor of the state of Nebraska, as a matter of principle do you think they should be precluded or is just any amount of money and they ought to be elected? [LB85]

GAVIN GEIS: I don't see a reason to draw a line because I think that's a larger philosophical issue when we start saying this amount of money and this amount of money. If it's a dollar, I'm sure they can get campaign funding. Well, they can talk to Frank Daley and maybe he'll loan them the dollar, he's a generous man. So, no, on a philosophical level I see no reason to actually draw a line. That's a bigger issue. [LB85]

SENATOR MURANTE: You'd have to check conflict of interest laws on that one. I think that would be kind of a fascinating (inaudible). [LB85]

GAVIN GEIS: They're not an elected official yet, I'm assuming. [LB85]

SENATOR MURANTE: All right, Senator Hilgers. [LB85]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR HILGERS: While we're talking philosophical issues, is there, maybe you've seen it but just walk this through with me, I mean, suppose someone gets fined and they think Frank Daley just got it wrong. He's wrong, they've appealed it, whoever agreed with Mr. Daley is wrong. They just...it could be 10 cents, it could \$1,000, it doesn't matter, they just refuse to pay it on principle. And now are we saying you need to agree essentially with a ruling that you disagree with in order to exercise your right to be able to run for...to be able to run for office, not your right to run for office. But in order to run for office, you've got to acquiesce to this decision. [LB85]

GAVIN GEIS: You have to acquiesce. Well, I mean, just from my experience watching the NADC work, if we're going to talk, let's talk realistically. The NADC is very fair, their fines are not, you know, assessed egregiously. So from that perspective, they're always fair, they're never partisan. So that worry feels a little not Nebraskan, right. That's not what other countries...other countries...other states have that problem, not Nebraska. We're very good Accountability and Disclosure Commission. But in terms of just you can't run for office because of those fines, that is just part of the law and I'm sure many other areas of law. You preclude yourself from certain rights by not obeying the law. You don't get to vote when you're in prison. This is a simple take it through the court system, if the court system disagrees with you or rules against you, we go by the rule of law. And so it seems pretty simple to say if the law says you are wrong, you're wrong, we're sorry. [LB85]

SENATOR MURANTE: Okay, thank you. Any additional questions? Seeing none, thank you for coming down. [LB85]

GAVIN GEIS: Thank you. [LB85]

SENATOR MURANTE: Much appreciate it. Ms. Rex, welcome back to the Government Committee. [LB85]

LYNN REX: Thank you very much. Senator, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We appear before you today in strong support of this measure. Frank Daley needs to be commended. He has...he's a man with great patience. He does training for our newly elected officials and experienced officials across the state of Nebraska. There are, for those of you that are new, 530 cities and villages in the state of Nebraska, five forms of government, five classes of cities. And he's been very patient continually in doing training seminars for us, as he'll be doing at the end of February in Lincoln. We strongly support this measure because we do believe that the folks that make the laws need to follow the laws. Very difficult to be in a position where you expect people to pay their taxes, you expect people to do the things, follow the regulations that you put in place, just as local elected

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

officials do the same thing, whether they're appointed or elected. And we do think that it's important to have that as a standard. So we strongly support it. And by the way, the League of Nebraska Municipalities is a lobbying organization, is under the purview of the NADC under Chapter 49, Article 14, as well. We just have a different set of rules. So that being said, I'd be happy to respond to any questions you might have. For some of you, you've never seen me before. And the reason for that is the League has always taken the position that we are not allowed as staff who are lobbyists, we are not allowed to attend fundraisers for any candidate. We are allowed to attend fundraisers for diseases and other sorts of things of that nature, so if you're doing a juvenile diabetes fundraiser, please feel free to give me a call. But other than that, that is why you have not seen me. And we look forward to working with all of you, and a special welcome for those of you that are newly elected. I'd be happy to respond to any questions that you might have and we hope that you will advance this bill. We would be supportive of the decision to take out the late filing fees. I hope at some point the Legislature is in a position to reinstate that language or to put that language in. I think that would be important too. And again, on a local level, comparable sorts of things are happening on a local level, where if you are running for the mayor and council of our cities across the state or a village board there are certain requirements that you have to meet too. And so we just think it's very important. Again, if you make the laws, you need to follow the laws. With that, I'd be happy again to respond to questions. [LB85]

SENATOR MURANTE: All right, thank you very much for your testimony. Are there any questions? Seeing none, thank you so much. [LB85]

LYNN REX: Thank you so much. Thank you. [LB85]

SENATOR MURANTE: I appreciate it. Additional proponent testimony? We got a Frank Daley lovefest today so far. [LB85]

FRANK DALEY: If only it were so. Good afternoon, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission and I'm here today to express the commission's support of LB85 with the amendment submitted by Senator Blood. Under the amendment an individual owing civil penalties to the Accountability and Disclosure Commission would not be able to file for election to a public office and would be ineligible to be appointed to certain offices. I think there are two main reasons to support LB85. First, it provides the Accountability and Disclosure Commission with an additional tool to collect civil penalties. It helps us to avoid the expense of engaging in litigation and collection activities, etcetera, etcetera, etcetera, so that it's an inducement for someone who foresees a future political career to take care of their responsibilities and pay any late filing, excuse me, pay

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

any civil penalties that have been assessed. The second reason is that it addresses what I consider to be an important public policy question which frankly has been posed to me frequently over the last several months. And that question is, how is it that someone that owes a civil penalty to the Accountability and Disclosure Commission of the state of Nebraska can be allowed to run for office anyway? My response over the last few months has been, well, they can do it because there's nothing that prohibits it. It would seem to me that LB85 would be a better response to that question. That is, they can't. Let me address a couple of the questions that the folks on the committee have raised. First of all, there was the question as to whether or not the state can garnish wages and things of that nature. The state of Nebraska does have that authority. State agencies do not necessarily have that authority; however, in our case, the Attorney General has appointed our general counsel, Mr. Danberg, as a special assistant attorney general for the purpose of collecting late filing fees and civil penalties. So to that extent he's authorized to file lawsuits and garnishment actions and collection actions, so forth and so on, to collect those. There was a question about the constitutionality of this type of provision. Well, I guess I can tell you there's certainly other types of prerequisites to running for office, constitutional offices, which are not in the constitution. They're things such as having to pay a filing fee to get your name on the ballot or, if you can't pay the filing fee, doing an affidavit to file (inaudible), filing a statement of financial interest. So we have all of those types of activities that apply to constitutional offices and the Legislature, and for every other office they're just built into the statute. So I think it would be very consistent with all of that that we could have a provisions such as this. There was the question from Senator Briese about appeals. Currently, LB85 contains no provision as to what happens if there is an appeal of a civil penalty. You should know that any civil penalty assessed by the Accountability and Disclosure Commission that case is appealable to the district court, to the Court of Appeals, and to the State Supreme Court. Now, there are a couple ways to handle the pendency of the appeal situation. First of all, it seems to me that the candidate-to-be could pay it, proceed with the appeal, and if he or she were successful in the appeal the Accountability and Disclosure Commission would be required to repay that money. That's one method. And frankly, most civil penalties are for amounts of less than \$1,000, so that shouldn't be a big issue for most. In fact, most civil penalties are for less than \$500, so that shouldn't be too difficult. The other process would be to simply add a provision to LB85 saying something to the effect that the provision will not apply during the pendency before any state court of an appeal of the matter in which the civil penalty was assessed. That would be another approach as well. There was the question I believe, maybe it was Senator Hilgers, about deadlines and how quickly. Generally speaking, we tend to have fewer than eight civil penalties pending at any one time. Most of them are paid pretty readily. We would simply post on our Web site around election time or around the filing deadline time the names of those who owe civil penalties and the amounts involved. Certainly county election commissioners, the Secretary of State could call us for clarification. We could change what's on the Web site immediately, if someone were to make a payment. Since civil penalties are not assessed on a very, very regular basis, it's not something that changes very much, such as late filing fees do. That's all I really

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

have. I do want to thank Senator Blood for bringing this bill and thank members of the committee for hearing my testimony. [LB85]

SENATOR MURANTE: Thank you, Frank. Okay, I have a couple of questions for you. [LB85]

FRANK DALEY: Yes. [LB85]

SENATOR MURANTE: We'll start with your remedy to the appeals process, which is something I haven't considered prior to this very moment. But it seems to me that I find it somewhat problematic that a candidate would pay a fine or a civil penalty, appeal it potentially when...because I think if...in this hypothetical, they're in the middle of a political campaign and they will have just paid a civil penalty that's under appeal. So regardless of the legality of it, the perception is going to be an admission of guilt from my...at least the opposing side I think is going to campaign that way. So I find that particular remedy to be a little bit problematic, but I find the concept of maybe waiting until there is finality to be a remedy that is better. I'm wondering, like in the cases of C-1s, we have to demonstrate to you and to the Secretary of State's Office that we have filed. But it is not the filing officer's responsibility to know that we have filed, if that makes sense. As I read this bill, the burden is on the filing officer, not on the candidate, to demonstrate that they don't have any civil penalties. I'm wondering if there is a way to do it that is nonintrusive, with forms that we currently have, where the burden comes to the candidates rather than to the filing officers themselves. [LB85]

FRANK DALEY: You raised two issues, the first was the pendency of the appeal. Certainly one approach as we discussed is that during the pendency of the appeal this provision wouldn't apply. Another approach, rather than paying the amount, which you indicate some folks would say, "aha," would be to post a bond for the amount. So if the appeal were successful the bond would be released; if the appeal were not successful the money would go to the state of Nebraska to pay the civil penalty. That's also another approach. Posting a bond maybe is different than paying a civil penalty. So there's that. The second part of what you're talking about is how do we shift the burden on things. Well, I suppose there are a number of ways. Number one, we could certainly provide candidates that want it a certificate that says something to the effect this individual does not owe any civil penalties as of this state. That's one way to do it. Another approach I suppose would be to facilitate the filing officers a method of contacting us very, very easily, whether it's on the Web site, special telephone line, things of that nature. We could certainly respond to e-mails, things of that nature. We're certainly open to any approach that makes life easier, makes the process move more smoothly. [LB85]

SENATOR MURANTE: Okay. All right, that's the questions I have. Senator Briese and then Senator Hilgers. [LB85]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR BRIESE: You're suggesting the posting of the bond would be a suitable remedy here to suspend or to make this work during the course of the appeal? [LB85]

FRANK DALEY: Yes, because if done correctly, if at the end of the appeal process it's determined that the decision of the Accountability and Disclosure Commission will stand, there's essentially immediate payment. So it resolves the problem. So even if the person is in the process of trying to get on the ballot or running for office at some point, the matter is paid. [LB85]

SENATOR BRIESE: Okay. To suspend this statute during the course...or to suspend this provision during the course of the appeal doesn't seem like a very practical alternative to me, in that someone could prolong the process for an indeterminate amount of time, not have the statute apply to them, gain election to the office and then not have it apply basically. [LB85]

FRANK DALEY: That's the downside of suspending it during the pendency of the appeal. You could have someone who was assessed a civil penalty, appeals, files for public office, and ten months later the appeal is thrown out but they've managed to get their name on the ballot. I agree, that is a problem. [LB85]

SENATOR BRIESE: Thank you. [LB85]

SENATOR MURANTE: Senator Hilgers. [LB85]

SENATOR HILGERS: Thank you, Mr. Daley, as always, for your testimony and insight on these issues. My question is one that I posed to Senator Blood, which is this gap between the filing date, when eligibility is initially determined and when the election occurs. Unlike say for financial interest, which is filed at a certain date and only required as of that date, and a filing fee, which is paid once and...those are static variables, this is something that could change. So what happens if you file, you have no fines at that point, but in August or September or October before the election now maybe there is a fine? What...now it's not...I don't think it's addressed actually in the statute specifically, but I just wanted to get your thoughts philosophically about how that might work. [LB85]

FRANK DALEY: Actually, I think that the bill speaks in terms of this person shall be eligible to file for public office. So it's one of those things that if at the time of filing there is no civil penalty they can file for public office. And if a civil penalty is assessed later, the statute doesn't apply. [LB85]



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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR HILGERS: I would agree with you on the reading of the statute. I guess that's why I say philosophically do you think it would be a bad approach to have that change potentially? [LB85]

FRANK DALEY: I don't because I think the overriding philosophy or policy ought to be not creating places where the election process can go awry. And so one of the things that you do not want to do is create multiple situations where a previously eligible candidate becomes ineligible because of some intervening cause. And so while I suppose the bureaucrat in me likes the idea of being able to hold a hammer over someone to pay if civil penalties are ultimately assessed, the citizen in me says I don't want the electoral process upset. [LB85]

SENATOR HILGERS: I would agree. Separate question, another way to address this would be through some sort of expedited or more streamlined garnishment process. I mean, I know there are exceptions, but if you know you've got \$5,000, \$6,000, \$7,000 in fines, and I know there are exceptions to this, and you can't run for office and the NADC hasn't been able to garnish those funds, wouldn't another approach be if they file away? They can use it in the political advertisements against me, but if I win I know that these fines are going to come right out my paycheck directly to the NADC. [LB85]

FRANK DALEY: Yep, that's a possibility. That's certainly a possibility, but that's not something I really want to hang my hat on. Gee, I hope the violator wins public office so we can garnish his wages. [LB85]

SENATOR HILGERS: No. Well, Mr. Daley, it's not hanging my hat on anything. It's that...you made the point earlier that this is a good way of going about this. But if you're closing off people from the process and you're not garnishing, then you're not getting the funds at all. [LB85]

FRANK DALEY: True. [LB85]

SENATOR HILGERS: And so I'm not saying that that's the best way to go get funds, but I'm saying it's another way to address this issue. [LB85]

FRANK DALEY: It is, it is. [LB85]

SENATOR MURANTE: Seeing no additional questions, thank you very much. [LB85]

FRANK DALEY: Thank you, one and all. [LB85]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR MURANTE: Much appreciate it. Additional proponent testimony to LB85? Welcome. [LB85]

BILL O'DONNELL: (Exhibit 4) Thank you. I'm Bill O'Donnell from Bellevue, Nebraska. I thank the committee very much for hearing my testimony. O'Donnell is O-'D-o-n-n-e-l-l. Ladies and gentlemen, people who served in the military as I did and as Senator Brewer did or who worked for government as employees or whom the people hire as elected officials, we answer to a higher calling. Anybody wanting to serve as an elected official has a moral and an ethical obligation to the electorate that his or her candidacy reflects the highest standards of honor, integrity, and adherence to laws and their associated rulings. Whether it's in personal life, business, a nonprofit, the military, government, or politics, the person in charge is responsible and accountable for whatever happens with that effort. We expect our elected officials to set an example and be accountable for their actions. The 16...or, excuse me, ten enforcement actions for 2015 and two in 2016 on the NADC Web site, that's too many. Disregarding legal sanctions basically tells the voters that the candidate believes he or she is above the law and can disregard without penalty the laws and rules that govern our society. As rulemakers and legislators, elected officials at all levels have a moral obligation to act with stainless integrity and honor. Voters may consider an elected official a wise leader or they may consider him an idiot, but they should never, ever have reason to question the honesty and the honorable intent of a candidate for office. That's why LB85 is so important. People aren't perfect, but it doesn't mean voters should have to accept behaviors or actions that disregard the rule of law and accountability. If a candidate flouts the law in one instance, might that person make decisions in elective office with similar disregard? Candidates and elected officials who exhibit a cavalier attitude toward the law set a lousy example for others because compliance with the rule of law is a fundamental tenet of our society. If you're going to be responsible for making laws and ordinances it's hypocritical to selectively thumb your nose at a law or ruling because you don't like it or you don't agree with it. We have legislative and judicial mechanisms people can use to reverse laws and administrative rulings. It's a personal decision whether someone wants to seek redress, but until a person does that successfully, the law or the ruling they don't like is still going to stand. So here's the real true test of character for our candidates. You don't win every battle in life. Sometimes you lose a decision in a court or administrative tribunal. It hurts. It costs money. But unless you satisfy such obligations promptly as a candidate you're asking the people to put someone in office whose disregard for the law undercuts the credibility, fairness, and effectiveness of government. It creates doubt about a candidate's honesty and integrity, as well as suspicions about the actions he or she might take if elected. All candidates and elected officials must be worthy of the sacred trust we place in our elected officials. Their honesty and integrity must be above question. They must not consider themselves above the law. LB85's ounce of prevention may well save a city, a county, a state government from a much bigger problem in the future. Thank you for your time and consideration. [LB85]

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

Government, Military and Veterans Affairs Committee  
January 18, 2017

---

SENATOR MURANTE: (Exhibit 5) And thank you for your testimony. Are there any questions? Seeing none, thank you for coming down today. Much appreciate it. Is there additional proponent testimony to LB85? Seeing none, is there any opponent testimony to LB85? Is there any neutral testimony to LB85? Seeing none. Before we close the hearing, I have a letter from John Gale, Secretary of State, who is neutral on LB85. And, Senator Blood, if you would like to close, now would be your opportunity. [LB85]

SENATOR BLOOD: So after Mr. O'Donnell's testimony all I can say is power to the people. He's made it very clear what the intent of this bill is, as a private citizen, how it will affect him as a voter. I ask for you to not micromanage the bill, to not try and change the bill to the extent that it no longer exists in its original form, and to please consider passing it through today in committee to the floor so we can debate this as a body. [LB85]

SENATOR MURANTE: Okay. And that closes the hearing on LB85 and ends the public hearings for today. So thank you all for coming down and we will be having an Executive Session. [LB85]