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Transcriber's Office

Government, Military and Veterans Affairs Committee
February 23, 2017

[LB644]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 23, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB644. Senators present: John Murante, Chairperson; Tom Brewer, Vice Chairperson; Carol Blood; Tom Briese; Joni Craighead; Mike Hilgers; John Lowe; and Justin Wayne. Senators absent: None.

SENATOR MURANTE: (Recorder malfunction)...Veterans Affairs Committee. My name is John Murante. I am the state senator for District 49 which includes Gretna and northwest Sarpy County and I'm the Chairman of this committee. We are here today for the purposes of conducting one public hearing on LB644. If you are here and wish to testify for the bill, we ask that you fill out one of these green sheets of paper. The green sheets are located on either side of the room. If you're here and you wish to demonstrate your support or opposition but you do not wish to testify, we ask that you fill out one of the sign-in sheets. The sign-in sheets are located on either side of the room as well. If you do testify we ask that you begin by stating and spelling your name for the record which is very important for our Transcriber's Office. Our order of proceedings will be a little bit different than normal today. Our legal counsel will be going through the boards and commissions that we are dealing with, then we will listen to proponent testimony, opponent testimony, and neutral testimony of the boards and commissions individually. If...we ask that you listen very carefully to the testimony that has come before you and try not to be repetitive. We do use the light system in the Government Committee. Each testifier is permitted three minutes to testify. When the yellow light comes on you have one minute remaining and we ask that you begin concluding your remarks. When the red light comes on, your time has expired and we will open the committee up to any questions that they may have of you. At this time I would like to ask the members of the committee and everyone in the audience to turn off or silence any cellphones or other electronic devices, anything that makes noise. If you have a statement, a prepared exhibit, anything you would like distributed to the committee members, we'd ask that you provide 12 copies to our page who will distribute them to the committee. If you don't have 12 copies that's fine. Give what you have to the page and he will make copies for us. Our page for the day is Joe Gruber. Joe is from Omaha. Our committee members--we'll start on the far left--is Sherry Shaffer. Sherry is the Government Committee clerk. To her right, State Senator Carol Blood. Senator Blood represents Bellevue. To her right, Senator Joni Craighead. Senator Craighead represents Omaha. To my immediate left is Senator Justin Wayne. Senator Wayne also represents Omaha. To my right, Senator Tom Brewer from Gordon, Nebraska. Senator Brewer is the Vice Chairman of this committee. To his right, Senator Mike Hilgers. Senator Hilgers represents Lincoln. He informed me that he has a place to be right now but he will be with us very shortly. To his right, Senator Tom Briese from Albion, Nebraska. And on the far right, Senator John Lowe from Kearney. I would like to take just a minute or two to go over what LB644 is and why we are all here today. LB644 represents the boards and

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commissions report of the Government, Military and Veterans Affairs Committee. State law requires this committee every four years to do a review of every single board and commission in the state of Nebraska and prepare a report and deliver it to the Legislature. Over the past year, this committee has worked with every single board and commission, of which there are about 200, to solicit feedback and basically ask everyone to justify their existence. We came together with a report of 25 boards and commissions which it suggests to be either modified or deleted in their entirety. Today is a continuation of that process where we will hear from the public the information that we have and we are glad that you are all with us today. So that is how we got to where we are. The information we have was provided by every board and commission in this state over the course of the last year and our legal counsel, who has done a tremendous amount of work and done a great job over the last year, will go item by item as we testify. Our order of business is we're going to start with those boards and commissions who have not indicated any desire or we have not received any notification from the public that there is any contention of the deleting or modifying the boards and commissions that go first. So we'll do the easy ones first and then we'll do the more contentious ones later. And with that, I will ask legal counsel to begin and we will start with the Aging Nebraskans Task Force. [LB644]

ANDREW LA GRONE: Thank you, Chairman Murante, members of the committee. For the record, my name is Andrew La Grone, A-n-d-r-e-w, La Grone, L-a G-r-o-n-e. I'm the legal counsel for this committee. The first entity that the bill eliminates is the Aging Nebraskans Task Force. The purpose of the task force was to develop statewide strategic plans for addressing the needs of the aging population of the state and the needs of individuals with Alzheimer's or related disorders. The task force is eliminated by the bill because it completed its work and sunset on January 1, 2017. The second entity is the Carbon... [LB644]

SENATOR MURANTE: Let's stop right there. What what we'll do first now is that is a review of the first board to be deleted and we'll take any comments from the public. Is there anyone here in support of removing the Aging Nebraskans Task Force? Is there any opposition? Is there any neutral testimony? Seeing none, we'll move on to the Carbon Sequestration Advisory Committee. [LB644]

ANDREW LA GRONE: The Carbon Sequestration Advisory Committee is eliminated by the bill. The purpose of the committee is to encourage the production of educational advisory materials regarding carbon sequestration on agricultural lands. The committee is included within the bill because it has not met yet. Last four years do not indicate any accomplishments during that time. [LB644]

SENATOR MURANTE: Okay. Are there any questions from the committee? Okay. Is anyone here to testify in favor of the abolition of the Carbon Sequestration Advisory Committee? Are

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there any opponents? Is there any neutral testimony? Seeing none, we will move to the committee to carry out purposes of Agricultural Opportunities and Value-Added Partnerships Act. [LB644]

ANDREW LA GRONE: This committee is included in the bill because it did not respond to our request for information and it was my understanding that it did so because it no longer is functional, intended to be eliminated. [LB644]

SENATOR MURANTE: Okay. Are there any questions from the committee? Seeing none, is there anyone here to testify in support of the abolition of this committee? Are there any opponents? Is there any neutral testimony? Seeing none, we'll go to the Community Gardens Task Force. [LB644]

ANDREW LA GRONE: The Community Gardens Task Force, it was created to study community gardens in the state, provide recommendations on how to expand the gardens and their impact. The task force is eliminated by the bill because it issued its report in December 2016 and there's no indication that there's any remaining work for the task force to accomplish. [LB644]

SENATOR MURANTE: Okay. Are there any questions from the committee? Seeing none, is there anyone here who wishes...do you have a question, Senator Blood? [LB644]

SENATOR BLOOD: I do. Is it possible for you to give us the starting page number or part of the statute that it applies to so we can follow along in the bill? [LB644]

ANDREW LA GRONE: So the order we're going in is in alphabetical order. It's not... [LB644]

SENATOR BLOOD: I noticed that. Yeah. [LB644]

ANDREW LA GRONE: ...in order by section by the bill. [LB644]

SENATOR BLOOD: Okay, so is that a no? [LB644]

ANDREW LA GRONE: Let me see if I can find that for you. [LB644]

SENATOR BLOOD: I'm not trying to drag this out and make it any more difficult. I just want to be able to follow along. [LB644]

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ANDREW LA GRONE: I believe that one is towards the beginning of the bill since it goes by statute number and ag statutes are...start with 2 so they're generally first. [LB644]

SENATOR BLOOD: Chairman, if it's...if it creates a problem and it going to slow things down, don't worry about it. [LB644]

ANDREW LA GRONE: Okay. [LB644]

SENATOR MURANTE: Okay. Is there anyone here to testify in favor of the abolition of the Community Gardens Task Force? Are there any opponents? Is there any neutral testimony? Seeing none, we'll move to the Exchange Stakeholder Commission. [LB644]

ANDREW LA GRONE: The Exchange Stakeholder Commission is eliminated by the bill because the commission sunset on July 1, 2016. Prior to that time, the commission provided recommendations regarding the implementation, operation of an affordable insurance exchange. As I said, the commission has sunset and is no longer operative. [LB644]

SENATOR MURANTE: Okay. Are there any questions? Is there anyone here to testify in favor of the abolition of the Exchange Stakeholder Commission? Is there any opposition? Is there any neutral testimony? Seeing none, we'll move to the Health Advisory Board to the DMV. [LB644]

ANDREW LA GRONE: This advisory board was supposed to provide medical advice to the Director of the DMV regarding applicants' mental and physical capabilities to safely operate a motor vehicle. The DMV informed the committee that the board has not met for a number of years and is functionally obsolete. [LB644]

SENATOR MURANTE: Okay. Any questions from the committee? Is there anyone here to testify in favor of the abolition of the Health Advisory Board to the DMV? Anyone opposed? Is there any neutral testimony? Seeing none, we'll move to the Health Care Data Base Advisory Committee. [LB644]

ANDREW LA GRONE: This committee was created to make recommendations regarding the creation and implementation of the Nebraska Health Care Data Base. The work of the committee was completed with the issuance of its report in December of 2014 and, therefore, it is eliminated by the bill. [LB644]

SENATOR MURANTE: Okay. Any questions from the committee? Is there anyone here to testify in favor of the abolition of the Nebraska Health Care Data Base Advisory Committee?

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Any opponents? Is there any neutral testimony? Seeing none, we'll move to the Intergenerational Poverty Task Force. [LB644]

ANDREW LA GRONE: The purpose of the task force was to analyze information regarding intergenerational poverty in the state of Nebraska. At the time of the survey, the task force indicated that it completed its fact-finding duties and that it would be making its recommendations in an October report to the Legislature. The task force did so and then sunset on December 31, 2016. [LB644]

SENATOR MURANTE: Okay. Are there any questions of the committee? Is there anyone here to testify in favor of the abolition of the Intergenerational Poverty Task Force? Anyone opposed? Is there any neutral testimony? Seeing none, we'll move to the Medical Home Advisory Council. [LB644]

ANDREW LA GRONE: The council assisted DHHS in the design and implementation of the Medical home pilot program. It sunset on June 30, 2014. [LB644]

SENATOR MURANTE: Okay. Any questions? Anyone here to testify in favor of the abolition of the Medical Home Advisory Council? Any opponents? Any neutral testimony? Move to the Medicaid Reform Council. [LB644]

ANDREW LA GRONE: The council oversaw the state's Medicaid reform plan. As the plan no longer exists, the council no longer meets, and the department informed the committee that the council was no longer necessary. [LB644]

SENATOR MURANTE: Okay. Any questions? Is there anyone here who wishes to testify in favor of the abolition of the Medicaid Reform Council? Any opponents? Any neutral testimony? Seeing none, we'll move to the Noxious Weed Advisory Committee. [LB644]

ANDREW LA GRONE: The purpose of the committee was to advise the Director of Agriculture concerning responsibilities under the Noxious Weed Program. The committee's survey indicated that it had not met in the last four years. [LB644]

SENATOR MURANTE: Okay. Senator Blood. [LB644]

SENATOR BLOOD: Thank you, Chairman Murante. So I am going to ask you to go to the bill. So that part of the bill starts on approximately page seven-ish, six, talking about noxious weeds. And then I get to the bottom...I get to page 10. Is page 10 still part of the Noxious Weed

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Advisory Committee bill, part of the bill because if indeed it is I have a have a question in reference to the Nebraska Potato Inspection Act, which was in front of Ag. [LB644]

SENATOR MURANTE: It looks likes Section 5 moves us to...line 6 on page 10 moves us to a different section of statute. [LB644]

SENATOR BLOOD: So what part of the statute that we're looking at, because I'm not seeing anything that leads up to it that matches any of these, except for Potato Development Committee. Is that...is it separate from the Noxious Weeds, and if so, I'm not understanding what it's supposed to fall under. [LB644]

ANDREW LA GRONE: So Section 5, it has nothing to do with the Noxious Weed Committee. Section 5 goes into the Potato Development Committee under the Potato Inspection Act which is later on. [LB644]

SENATOR BLOOD: Yeah, alphabetically I see it's at the end of the list. [LB644]

ANDREW LA GRONE: Correct, correct. The noxious weed statute, when Bill Drafters puts a statute in there and changes statute, puts the full thing in there. So the reason it continues for a number of pages is there is a change. Section 4 deals with this committee and it starts on line 10 on page 7. [LB644]

SENATOR BLOOD: So it ends on--I know that nobody can see what we're talking about--it ends on the bottom of page 9 then and then it goes in...? [LB644]

ANDREW LA GRONE: It ends at the top of page 10, line 5. [LB644]

SENATOR BLOOD: So Section 5, 2-1814 goes to Potato Board. [LB644]

ANDREW LA GRONE: Correct. [LB644]

SENATOR BLOOD: Okay. Sorry to stop you. [LB644]

SENATOR MURANTE: All right. [LB644]

SENATOR BRIESE: I have a question now. [LB644]

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SENATOR MURANTE: Yeah, Senator Briese. [LB644]

SENATOR BRIESE: But this is the language stricken out on line 20 and 21, that doesn't specifically eliminate the Noxious Weed Advisory Committee, does it? [LB644]

ANDREW LA GRONE: Correct. This is one...it's referenced in a few different statutes. And so there are a couple statutes that need to be altered in order to eliminate the committee. [LB644]

SENATOR BRIESE: Okay. [LB644]

SENATOR MURANTE: Okay. Is there anyone here to testify in favor of the abolition of the Noxious Weed Advisory Committee? Is there any opponents? Is there any neutral testimony? Seeing none, we'll move to the Nursing Home Advisory Council. [LB644]

ANDREW LA GRONE: The council was created to advise and assist the department regarding the administration of the Health Care Facility Licensure Act. There have been no new appointments to the council since 2011. The council has not met in the last four years. The council informed the committee that it is no longer functional. [LB644]

SENATOR MURANTE: Okay. Any questions from the committee? Seeing none, is there anyone here to testify in favor of the abolition of the Nursing Home Advisory Council? Is there any opposition? Is there any neutral testimony? Seeing none, we'll move to the Out of Home Data Pilot Project Advisory Group. [LB644]

ANDREW LA GRONE: This group oversaw the pilot and considered whether an independent external oversight data warehouse could be created by building an existing state agency data system or systems currently used to account for children and juveniles in out-of-home placement. The group's work was completed with the issuance of its report in January 2016. [LB644]

SENATOR MURANTE: Okay. Any questions? Seeing none, is there anyone here to testify in favor of the abolition of the Out of Home Data Pilot Project Advisory Group? Any opposition? Any neutral testimony? Seeing none, we'll move to the Perfusionist Committee. [LB644]

ANDREW LA GRONE: The committee is the licensing entity for perfusionists in the state of Nebraska. However, the committee has not met in the last four years, although their survey did indicate that licenses have been acted upon. Due to the lack of meetings but the issuance...the action on licenses, it does not seem the committee is necessary to complete these duties. [LB644]

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SENATOR MURANTE: Okay. Senator Blood. [LB644]

SENATOR BLOOD: Can you give a better description of what the Perfusionist Committee does, because perfusionist is when you put fluids inside someone's body that is destined to be directed to an organ. [LB644]

ANDREW LA GRONE: Correct. [LB644]

SENATOR BLOOD: So do they...are they doing the licensing or is that's part of their role? [LB644]

ANDREW LA GRONE: So under the current statute, that is what they...one of the things they are charged with advising the DHHS licensure unit on carrying out. However, the survey response indicated that actions have been taken on licenses. Although it also indicated that the Perfusionist Committee had not met in four years. During that four years if the actions had been taken on the licenses while the committee had not met, it was not clear the committee itself was necessary in order for those actions to be carried out. [LB644]

SENATOR BLOOD: And what was the reason they gave for not meeting? You said that you did have contact with them. [LB644]

ANDREW LA GRONE: Yes, so we had contact with each entity that responded to the survey. Let me pull up their specific one. So in their survey they had just indicated they had not met in four years. They also indicated that recommendations for licensure on 11 applications and regulations for the profession under the statute became effective in 2014. So there was no...they had been taking actions on licenses, the department had, without...as indicated by the survey without the board actually meeting. So it was a question of whether the board was still necessary. [LB644]

SENATOR BLOOD: So DHHS has said that they don't need this committee in order to give out licenses and there's no other power they have except for reviewing these licenses? [LB644]

ANDREW LA GRONE: So that was what was indicated by the survey. The practice of every time this report is done is generally to...if there is a question like that to introducing a bill, and then this hearing serves as the forum for that. [LB644]

SENATOR BLOOD: And so we surveyed and asked if they didn't meet, did we survey and ask that they felt that they still needed to exist? [LB644]

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ANDREW LA GRONE: So the questions that we ask are actually defined by statute. [LB644]

SENATOR BLOOD: Okay. [LB644]

ANDREW LA GRONE: And so one of the questions is whether or not they had met. And so their recommendation whether they are still necessary or not was based on that information. There is not a defined question in the statute that says, are you still necessary? [LB644]

SENATOR BLOOD: What are the other questions that were asked in the survey? [LB644]

ANDREW LA GRONE: I can go through them all here for you. [LB644]

SENATOR BLOOD: Sorry. Get it out of the way then we have it for everybody. [LB644]

ANDREW LA GRONE: So according to statute: the name of the commission; contact person for the commission; the purpose; how many Nebraskans are affectable, so theoretically could be served by the commission; how many individuals are actually served; the year the commission was created; the year the commission was active; if there is a sunset date for the commission, what that sunset date is; and then the authorization citation for the commission; the number of members of the commission; who appoints the commission; whether those appointments require legislative approval; qualifications of the members; per diem; expense reimbursement; the length of the terms of the members; whether those terms rotate or expire all at once; and then the meetings that are required, and it sections out the last four years for those meetings because this report happens every four years, the last four years is what we're looking over; whether they have any support staff; whether that staff is shared or...is separate to the entity or if it's shared with the department; and then the budget for each of the last four years; any other funding sources if they exist and whether they have spending authority; and then accomplishments since the last time they reported to the committee, so in this case it's July 1, 2012. [LB644]

SENATOR BLOOD: And do they have any monies in their coffers? Any monies that...?
[LB644]

ANDREW LA GRONE: No, they did not indicate. They indicated a budget of \$0. [LB644]

SENATOR BLOOD: So we only know by survey whether they've met within the last four years and that's the main thing that we base it on. But on most of these they're not medical but we have some things that involve protocol and medical that I'm sure we'll probably have people here

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talking on. Are we worried at all about...do they set protocol as well for the perfusionists? Do they...do we know any of that? [LB644]

ANDREW LA GRONE: So they have regulatory authority over them. The question that is out there is, do you need this commission in order to do this? It does not appear from the information that we got that it is necessary. And so that was the purpose of putting them in the bill is to have that conversation. [LB644]

SENATOR BLOOD: So...and I'm sorry, I'm just trying to clarify this in my head. So who regulates it if it's not them--DHHS? [LB644]

ANDREW LA GRONE: It would appear that it would be the department, yes. [LB644]

SENATOR BLOOD: Who are not specialists in this area, the Perfusionist Committee is probably people who actually understand what perfusion is and does. Is that not...? [LB644]

ANDREW LA GRONE: Whether one group or another should be the one regulating this is a policy question that would be up to the committee to determine. [LB644]

SENATOR BLOOD: Okay. Thank you. I appreciate it. [LB644]

SENATOR MURANTE: Any additional questions? Okay, is there anyone here from the public wishing to testify in favor of the abolition of the Perfusionist Committee? Any opposition? Any neutral testimony? Seeing none, we will move to the Small Employer Health Reinsurance Program. [LB644]

ANDREW LA GRONE: The purpose of the committee and its program was to provide a reinsurance mechanism for insurance companies who provide insurance for small employers. The board met once in the last four years and informed the committee that it is obsolete due to changes in federal law. [LB644]

SENATOR MURANTE: Okay. Any questions from the committee? Seeing none, is there anyone here to testify in favor of the abolition of the Small Employer Health Reinsurance Program? Any opposition? Any neutral testimony? Seeing none, we will move to the Stem Cell Research Advisory Committee. [LB644]

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ANDREW LA GRONE: This committee approved several awards for the purpose of conducting nonembryonic stem cell research. The committee has only met twice per year and has an annual budget of \$15,000. Therefore, it was unclear whether the committee was necessary to carry out this grant function due to its few meetings and large budget. [LB644]

SENATOR MURANTE: Okay. Any questions? Seeing none, is there anyone here to testify in favor of the abolition of the Stem Cell Research Advisory Committee? Is there any opposition? Is there any neutral testimony? Seeing none, we will move to the Technical Advisory Committee of the State Records Board. [LB644]

ANDREW LA GRONE: The committee used to make recommendations to the State Records Board regarding grants to state and local entities. However, the committee did not report any meetings in the last four years, although during that same time grants were issued during that period indicating that the committee is no longer necessary in order to perform that function. [LB644]

SENATOR MURANTE: Okay. Any questions? Seeing none, is there anyone here to testify in favor of the abolition of the Technical Advisory Committee of the Nebraska State Records Board? Any opposition? Is there any neutral testimony? Seeing none,...oh, apologies. And is your testimony in neutral? [LB644]

STEVEN CHASE: Neutral. [LB644]

SENATOR MURANTE: Neutral, okay. [LB644]

STEVEN CHASE: I feel bad for making him move all his stuff. My name is Steven, S-t-e-v-e-n, Chase, C-h-a-s-e. I am the executive director of the Nebraska State Records Board. What is said here is correct. For Senator Blood, that is Statute 84-1205.01 and as stated, it would...there's just a three-member committee that was the legislative...the IT...looking at the statute here, representative from the computer services group of the Legislative Council so you get him back; the Chief Information Officer, representative of their office; and somebody from the state agency that's responsible for public records. As stated, it's been approximately four years there has not been big meetings, but there had been substantial meetings with this board from 2006 to 2013. I'd be happy to answer any questions about this if you wish. [LB644]

SENATOR MURANTE: Okay. Thank you for your testimony. Are there any questions? Seeing none, thank you for coming down today. [LB644]

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STEVEN CHASE: Sure. [LB644]

SENATOR MURANTE: Is there any additional neutral testimony to the Advisory Committee of the State Records Board? Seeing none, we'll move on to the Committee of Experts to Advise the Department of Agriculture on the Development of an Assessment Matrix. [LB644]

ANDREW LA GRONE: In its survey response, the committee indicated its purpose was to advise the department on the development of an assessment matrix. It also indicated that the task had been completed. Therefore, it appeared that the committee became obsolete on August 30, 2016, with the issuance of the assessment matrix. Since introduction of the bill, we have received communication that the committee has intended to play an ongoing role in assessing the matrix and, therefore, does still have a purpose. [LB644]

SENATOR MURANTE: So to be clear, we have received notification both from Senator Watermeier who introduced the bill which created the assessment matrix and from the department that it is an ongoing function and it would be my intention to remove this committee from the bill when we get time to voting. So that is my intention, but I wanted to make the members aware of that. All right, are there any questions? Seeing none, is there anyone here to testify in support of the abolition of the Committee of the Department of Agriculture for an Assessment Matrix? Is there any opposition? Is there any neutral testimony? Seeing none, we'll move to the Critical Incident Stress Management Council. [LB644]

ANDREW LA GRONE: The Critical Incident Stress Management Council is eliminated by the bill. CISM provides coordination activities and emergency response for program members. In its survey response the council indicated that it was no longer necessary. However, since the bill was introduced, we received information from the council indicating that sentiment was included in the survey response as a mistake and it is indeed an ongoing commission that is still functional and performing a purpose. [LB644]

SENATOR MURANTE: Okay. Thank you very much. And much the same as we had with the Assessment Matrix, it has been made clear to this committee I believe that this council continues to serve an ongoing purpose. It would be my intention to remove this council from the bill when it comes time to vote. So with that said, we will see if there is anyone here to testify in favor of the abolition of the Critical Incident Stress Management Council. Is there anyone opposed to its abolition? Come on forward. Welcome. [LB644]

JON KAYNE: My name is Jon, J-o-n, B., Kayne, K-a-y-n-e. I'm a professor of clinical counselling and psychology at Bellevue University. I'm also the statewide clinical director for the CISM program and I would like to testify not only in the case of LB644, but should the question

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ever arise again about the program. Briefly, my background is I was in the military and I was in law enforcement quite a while ago, experienced trauma firsthand. And for better or worse, the trauma moved me to get education in clinical counseling, psychology. And I've committed myself to working with victims of trauma ever since then, including first responders and military veterans. When I began practicing in 1975, the concept of PTSD didn't even exist. It came into account in 1980. I came to Nebraska in 1987 fully committed to doing the work, found out about this seminal program that no one else has put up as a statewide program except Nebraska, and it has set an international example. I became active and I've been working for the last 30 years in the program. Since that happened workmen's compensation also begin to recognize the legitimacy of posttraumatic stress and PTSD as a disability that is compensable. And I want to say that this program has served thousands of emergency responders since it's been involved and with complete confidence and satisfaction with our services. To end our services in any way would jeopardize the safety of the community because of the damage done to first responders from doing their job. I might make one more comment that specifically in the new Fifth Edition of the Diagnostic and Statistical Manual, the American Psychiatric Association which details all recognized and legitimate mental disorders, they specifically note that first responders are extremely vulnerable to PTSD because of their experiences and preparatory and preventative intervention is indicated. I thank you for your patience. [LB644]

SENATOR MURANTE: And thank you for your testimony. Are there any questions? Senator Blood. [LB644]

JON KAYNE: Yes. [LB644]

SENATOR BLOOD: Thank you, Chairman Murante. I've got to get permission from him first. No, keep sitting. So the question I have for you, and you may not know the answer, is that when the survey was sent out, who from your council filled out the survey? [LB644]

JON KAYNE: I actually have no idea. But the program has...it statutorily mandates eight working councils. And it's my understanding that someone mistakenly was talking about one of those committees and that the other seven have been working all along. And the problem with the eighth committee that hasn't been working has been more of...there's no way to put it politely--they have much more clout than anybody else and it's been their decision they didn't think they needed to meet that frequently. I personally and professionally think that that committee still has a function despite the fact they haven't met and perhaps the better approach would be to suggest to them that they do need to meet. [LB644]

SENATOR BLOOD: So how could we eliminate something like this happening again, because I don't know if you know, my name got pulled off the bill, I pulled my name off the bill probably

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within 48 hours of initially signing on. And this council and the next two are the reasons why, because I was aware that they were still functioning and the good works that they had done. How can we not make...I don't know if we've necessarily made a mistake but there's obviously been miscommunication. How can we do better? [LB644]

JON KAYNE: I think that we have actually rectified that. Again, I don't know all the details but some of the support staff that operates within the program. I might make a quick comment that we're all volunteer with support from Nebraska government. But we did do some prying in there and try and get the information and the individual...and again, I don't know who may have made that mistake, didn't realize that it wasn't worded properly. And since that has been rectified and I believe this will not come up again because of this particular issue. I just worry about future considerations coming from other direction possibly. [LB644]

SENATOR BLOOD: Well, and I want to thank you for your volunteerism. First responders are always close to my heart. I've always volunteered for first responders for various...if you're from Bellevue you know that. So thank you so much and thank you for explaining that to me. [LB644]

JON KAYNE: Thank you. [LB644]

SENATOR MURANTE: Thank you for your testimony. Welcome. [LB644]

BRIAN MONAGHAN: Thank you. Hello, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. My name is Brian Monaghan, Brian, B-r-i-a-n, Monaghan, M-o-n-a-g-h-a-n, and I am testifying on behalf of the Nebraska Emergency Medical Services Association. Our organization is dedicated to providing the highest quality pre-hospital care to the citizens in the state and we strive to serve the membership...the needs of our membership. NEMSA opposes the elimination of the Critical Incident Stress Management Council. It serves as a very important purpose and should remain in place. Critical Incident Stress Management Program trains volunteers to provide crisis support, to reduce the harmful effects of critical incident stress for law enforcement officers, firefighters, emergency medical services, corrections, hospitals, and emergency management personnel as well as dispatchers. As an EMS provider, I've experienced the unimaginable. In one particularly horrible incident, I was called to the scene where children had been playing in a deep freeze, became trapped, and ultimately perished. The trauma of working to resuscitate a child that was the same age as my own was an especially shocking experience and I needed help. The Critical Incident Stress Management Program assured that help was there for me and ensured that that the assistance was there for others who need it. We request that the committee amend Section 55 of the bill to remove the repeal of the CISM statutes, Section 71-7101 through 71-7113. The Nebraska

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Emergency Medical Services Association appreciates the committee's consideration and I urge you to maintain the CISM program. Thank you and I'd be happy to answer any questions. [LB644]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down today. Much appreciated. Welcome. [LB644]

MICHEAL DWYER: (Exhibit 1) Welcome. Thank you. Good afternoon. Chairman Murante and members of the committee, my name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and in a couple weeks I'll be a 34-year member of the Arlington Volunteer Fire and Rescue Department. I'm also secretary/treasurer of the Nebraska State Volunteer Firefighters Association. And I'm here today to testify in opposition to the portion of LB644 that would eliminate the CISM team I believe as we're referring to it in the bill. We know it as the team. I'm going to sort of eliminate some of this testimony in the interest of time and with respect to the other people that will testify. But very briefly, personally I've experienced CISM four different times. And from a number of different perspectives, this is incredibly important to volunteers. In addition our office has heard from many of the members of our association, the Nebraska State Volunteer Firefighters Association, about how incredibly important CISM is. Virtually every volunteer and EMS provider has a story of that horrific call that they struggled to recover from. The tiny cost of CISM relative to the cost of untreated PTSD to volunteers and their communities, their departments, and their families is staggering. With that, I'll conclude and would be happy to answer any questions. [LB644]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Seeing none, thank you for coming down today. Welcome. [LB644]

MICHELE BANG: Thank you. My name is Michele Bang, M-i-c-h-e-l-e B-a-n-g. I'm a captain with the Omaha Police Department. And I'm here to testify in opposition of this component of the bill for...a proponent for the CISM program. I'm a 23-year veteran of the Omaha Police Department and during my tenure I've work a number of high stress job assignments to include homicide, sexual assault, and crimes against children. And I can tell you that over the years, many of these incidents and investigations have stuck with me, some of them for years. And prior to 2010, the Omaha Police Department did not...while we embraced mental health treatment for officers, we didn't really embrace the CISM program. And in 2010 we started to and this was in response to a number of our officers who had to leave for various reasons. And we know that it was related to posttraumatic stress as a result of being exposed to critical incidents. In 2013, we developed a robust peer support program. So for a city like Omaha where we have lots of mental health services, we have a large department, this is not going to be as detrimental. But I can tell you that even in Omaha in the last two years, we have utilized the CISM program a number of times. As you recall, a couple of years ago Detective Kerrie Orozco

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was killed in the line of duty. And that was an all hands on deck and the CISM program was extremely important in getting our department back on its feet. In my time, I've had three officers killed in the line of duty. And I can tell you that for many of our officers, they were very young when Kerrie died and they had never even experienced death in their own family. So they were very traumatized. So we had six formal CISM sessions that impacted 206 attendees including families, departmentwide groups, unit specific groups including the investigators that had to deal with investigating the death of their own...their coworker. We also had a number of smaller critical incident stress debriefings. This is just in the last two years: 12 involving 107 attendees. We've had 22 peer support team members that have attended eight-hour CISM training at a very low cost to our department, usually \$50 per person and we receive best practices training in that. We've also been trained to do rapid roll call debriefings. And I can't even give you a number there, but well over 50 of those have probably been done over the last couple of years so again this program, for Omaha, yes, could we get by? Yes, but we would not be nearly as robust or have the same amount of credibility without it. And I as a Nebraskan am going to be a proponent for those volunteer agencies and those smaller agencies. They don't have the mental health resources that we have in Omaha and this is absolutely needed for them. Do you have any questions? [LB644]

SENATOR MURANTE: Thank you for your testimony. Senator Blood. [LB644]

SENATOR BLOOD: Thank you, Chairman Murante. So if I hear you correctly, do they also help you set protocol? [LB644]

MICHELE BANG: Yes. [LB644]

SENATOR BLOOD: And how...can you kind of walk me through how they do that. [LB644]

MICHELE BANG: Well, when we first developed the program, at that time it was Dr. Jack Weinmann (phonetic). He was the mental health coordinator for the program. He met with us a number of times and kind of discussed what critical incident stress debriefings were, how we could operate those within the department. At that time they didn't have a peer support component, so in...our peer support component is actually supplement to critical incident stress debriefing. But he provided us with direction, insight. He answered questions. He came down. And these are volunteers. I want to make sure that's clear. These mental health practitioners that go through this program, they are there for us and they come and volunteer. And so it allowed me to go back to my department heads and give them a credible information so that they understood that this was a needed program. After we started losing a couple employees to posttraumatic stress...were expensive. Were expensive to train and then it takes years to get the job experience you really need to become good at your job. Additionally, stressed out officers are

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not good law enforcement officers. They're more quick to anger. They're more quick to use force or miss key evidence or not be on their game when they're having to do a suspect interview. And I can tell you being in those interview rooms, that takes stamina. It takes the ability to pay attention to detail and you cannot be not focused on your job. And I'm quite certain that the firefighters have similar things that they have to be paying attention to. So that's how they helped us get our program started. And since then our officers have been those officers who have gone out and done those critical incident stress debriefings with our smaller agencies around us. And that's given us an opportunity to see that other agencies also are experiencing similar things and we can go back to our own agency and be better. And then those smaller agencies have provided that same support to Omaha. In fact, some of the officers that have helped us through Kerrie are here today. And so it truly is a wonderful program. I'm sorry that Omaha was slow to utilize it because when I was a detective we didn't use utilize the program as we should have, so.
[LB644]

SENATOR BLOOD: So, Captain, thank you to you and all the others for protecting and serving eastern Nebraska. [LB644]

MICHELE BANG: Thank you. [LB644]

SENATOR MURANTE: Any final questions? Seeing none, thank you for your testimony. Welcome. [LB644]

BILL BOWES: (Exhibit 2) Thank you. Senator Murante, members of the board, it's a pleasure to be here with you this afternoon for a few minutes to share our experiences. The letter that's being passed out will provide our rationale both for this topic and the next one. My name is Bill Bowes, B-i-l-l B-o-w-e-s. I'm the fire chief in Papillion and La Vista and I'm here representing the Nebraska Municipal Fire Chiefs Association. So our rationale is laid out in the letter before you and I'll let you read that on your own. But I wanted to share with you related to CISM a personal experience. I was a young paramedic firefighter with the Omaha Fire Department at the time. On a Sunday afternoon in April, we got dispatched to a car accident. As we approached the scene, we saw a white car a little ways up the street with front-end damage. A red two-door car over on this street that had been hit right behind the driver's door and started to make an assessment of the situation and figure out what the injuries might be. We parked at the scene and a gentleman with a fair amount of blood on him ran over to my door, opened my door, grabbed me and said you got to help my little girl. And he pulled me over next door, next to the red car that had been parked there. And a little three-year-old girl was laying unconscious on the ground. She had been at the point of impact of the collision, not restrained. This was back in the early '90s, not long after the CISM program came to Nebraska. She was dead from the injuries she suffered in the accident. But given that dad was there, there were five other people in that car,

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two people in the white car that was up the street just a bit that had caused the accident, I focused all my attention on the little girl when I should have been focused on all the other injuries that were there. It turned out that there was one critical patient and one other that was close to critical in that red car as well. But I had devoted all my time and resources to the little girl who had already passed away. After that incident wrapped up, we had a CISM, critical incident stress management debriefing at the station and it broke us down. The process of critical incident stress is to talk through the situation: What did you do, what did you see, what did you feel, what do you think about it? And just through that process of sharing with our crews, we were able to get over that hump. And while I have...while I carry with me the vivid memories of that incident, I don't have the weight of that incident on me and I credit that incident with encouraging me to go on to become a peer review person or a peer support person in the CISM program following that. So we appreciate your consideration in keeping the CISM program active in Nebraska. [LB644]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down today. Much appreciated. [LB644]

BILL BOWES: Thank you. [LB644]

SENATOR MURANTE: Is there additional opposition testimony? [LB644]

JANE TOOLEY: Good afternoon. Many of the comments that I had prepared have already been brought up and discussed... [LB644]

SENATOR MURANTE: Can you spell your name for the record, please. [LB644]

JANE TOOLEY: (Exhibit 3) Oh, yes. Jane, J-a-n-e, Tooley, T-o-o-l-e-y, and I was an active law enforcement officer for 36 years, I've been on the Bellwood Fire Department for 6 years and I've been a volunteer with the CISM program for over 20 years. One of the things that I do want to...my comments have been given to the clerk so they can be distributed to you. But one of the things I need to...feel I need to point out is that many of the firefighters, EMS personnel in the state of Nebraska are volunteers. They don't have an Employee Assistance Program. They don't have the other support systems that a full-time position might create for them. And it's very important that we provide these...CISM provides these services to the volunteers across the state of Nebraska. And I think it's very important that we continue providing these services for our law enforcement and EMS personnel. So any questions? [LB644]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you. Additional opposition testimony. [LB644]

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TIM NORRIS: Hello, my name is Tim Norris, N-o-r-r-i-s. I am an active CISM member. I do debriefings around the state. It's an excellent program. I'm also on the Bennet Fire Department. I'm also a chaplain for the Lincoln Police and Fire Department. So I'm active in all kinds of fields. But one of the greatest joys happened to me again this last Monday night in that somebody that I had a debriefing with months ago came up and says, I know you from somewhere. And all of a sudden he realizes and says, thank you. We're doing better. I know that what we do changes lives and helps them have a better life. There's nothing that you can do about taking images and memories out of their minds, but you can help them in the process of coping to have a better life. We don't want to lose our volunteers. We don't want to lose those people that are running toward danger, not away from danger. I do know that there are people that didn't get help and after they've been through some trauma, they will never be involved again. So I think to eliminate this part of our CISM program would be a major mistake in caring for those that are running toward danger. That's all I have to say. [LB644]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Senator Hilgers. [LB644]

SENATOR HILGERS: Thank you, Mr. Chairman, and thank you for your testimony. This is really more a comment but I think your testimony helps give the foundation for the comment. Appreciate everything you said and all the work that's done. I think it's important for everyone to understand the committee is not singling out this committee because of anything we disagree with its purposes. This is a statutory obligation that this committee has to undertake every year based on the responses we get, or in some cases, the responses we don't get. We have to take some action. So just so you know and all the people you work with and all the good work you do, just...we're not singling you out based on the work that you do. So I appreciate your comments and your work very much and the work that you do. [LB644]

TIM NORRIS: Thank you. [LB644]

SENATOR MURANTE: Additional opposition testimony to the Critical Incident Stress Management Council. Seeing none, is there any neutral testimony? Seeing none, we'll close the hearing on that and move to the Board of Emergency Medical Services. [LB644]

ANDREW LA GRONE: The EMS Board is a similar situation to Critical Incident Stress Management. This board is a licensure...licenses emergency medical service providers in the state of Nebraska. In its survey response, it also indicated that it was no longer necessary. However, again, we received information from the council indicating that that information was included as a mistake. [LB644]

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SENATOR MURANTE: And as before, for the committee's notification and for those in the audience, it is my intention to have the Board of Emergency Medical Services also removed from the bill and their program to continue as well. But that's it. Thank you very much. Is there anyone here to testify in favor of abolishing the Board of Emergency Medical Services? Seeing none, opposition testimony. Come on forward. Welcome. [LB644]

MICHEAL DWYER: Thank you, and again my name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r. And again, I'll make my testimony very short. Under the leadership of Dr. Smith who is the president of the EMS board, and of Tim Wilson the new EMS and trauma director, the board has begun a real reinvention of their mission and goals and their relationship with volunteer providers that quite frankly is rare to see in a government entity. They are listening, helpful, and caring. Our members believe that it would be a mistake at this particular time to interrupt this incredibly important work. I'll end my testimony there and answer questions. [LB644]

SENATOR MURANTE: Okay. Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down. Much appreciated. Welcome back. [LB644]

BRIAN MONAGHAN: Thank you very much, Chairman Murante and members of the Committee. My name is Brian Monaghan, B-r-i-a-n, Monaghan, M-o-n-a-g-h-a-n, and again, I am testifying on behalf of the Nebraska Emergency Medical Services Association. NEMSA opposes the elimination of the Board of Emergency Medical Services as it serves a significant purpose and should remain in place. The EMS board is tasked with protecting the health, safety, and welfare of the public by setting the standards of proficiency and competency for credentialed professionals serving in our field. State of Nebraska currently licenses emergency medical responders, emergency medical technicians, advanced emergency medical technicians, and paramedics as out-of-hospital emergency care providers. These professionals are on the front lines of direct patient care in Nebraska every day. As technology has progressed, the tools of the trade have become increasingly advanced and now including defibrillators, airway devices, and certain controlled drugs, it is imperative that professionals are properly trained and that consideration is given to the unique perspectives to the various providers in the field. A representative of the EMS board provides checks and balances to the Department of Health and Human Services and the board ensures that no one person dictates the system but rather provides input from a variety of healthcare providers, patients, urban and rural, career and volunteer. To retain the EMS Board and its critical functions, please strike Sections 18-31 from LB644. This concludes my testimony and I'd be happy to take any questions. [LB644]

SENATOR MURANTE: And thank you for your testimony. Are there any questions? Seeing none, thanks for coming down today. Continuing on opposition testimony. [LB644]

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BILL BOWES: Bill Bowes, B-i-l-l B-o-w-e-s, representing the Nebraska Municipal Chiefs. Thank you, Senator, for your comments on pulling this out of the bill. We will just let it go at that. You have our rationale with a letter in front of you. So thank you very much for your consideration. [LB644]

SENATOR MURANTE: And thank you for your testimony. Senator Blood. [LB644]

SENATOR BLOOD: Thank you, Chairman Murante. How's the merger gone between Papillion and La Vista, just out of curiosity? [LB644]

BILL BOWES: Very good. [LB644]

SENATOR BLOOD: Has it? I had to ask that while I had you in front of me because you are a part of my district. I've asked a couple people this question. Do you know how we can better avoid having mix-ups like this in the future? Do you have an opinion on that? [LB644]

BILL BOWES: That was the question that ran through my head as well with these. I don't think I have an answer. I think the members of the board would be well-suited to answer that question for you though. [LB644]

SENATOR BLOOD: If indeed they come up and speak or you bump into them in the future, I would be really curious to hear input on that because it's...you were all kind enough to drive across the state to come here and testify today. As people, we make mistakes because we're human. But it would be nice if we just didn't make the mistake. So I would hope that we could learn from this and form a symbiotic relationship where this never happens again. [LB644]

BILL BOWES: Yes, Thank you for looking into that. [LB644]

SENATOR MURANTE: Thank you. And I believe I'm the only member in the committee who's been through this boards and commissions report. We actually joked about in the...there always seems like there is a board or commission that just gets lost in the fray and somebody responds back and they don't give the response that is reflective of the board as a whole. And the only guarantee is, A, that it will happen, and B, it will not happen to the same board and commission twice. (Laughter) It never happens to the same one twice. So that's...thank you for your testimony. [LB644]

BILL BOWES: Thank you. [LB644]

SENATOR MURANTE: Welcome. [LB644]

JAMES SMITH: (Exhibit 4) Senator, committee members, thank you. My name is Dr. James E. Smith, J-a-m-e-s E. S-m-i-t-h. I'm chairman of the State EMS Board and I'm testifying on their behalf. We are requesting that you consider an amendment removing the EMS Board from the list of those to be eliminated from LB644. The EMS Board is comprised of subject matter experts in EMS that DHHS doesn't have and will not be able to replace. EMS Board members hold memberships or are affiliated with departments that are part of numerous organizations. EMS Board held 11 listening sessions throughout the fall of 2015. We have board members that are part of numerous organizations and we have over 340 years of experience with our board members. The 11 listening sessions that we had were anywhere from Kimball to Omaha, from Edgar to Ainsworth. As a result of these open forums, 27 pages of feedback were compiled and on April 8 of 2016 we held the first ever EMS strategic planning session. It was held in Lincoln. It was open to the public and all interested stakeholders. Through the efforts of the EMS Board, we formulated a vision statement and formed working groups to address eight priority areas identified and to develop a road map to guide us in overcoming the challenges facing EMS in Nebraska. Through these efforts we have bridged communication gaps with key stakeholders across the state. Subsequent to these efforts was the formation of an EMS jurisdiction committee, a working group including Senators Bostelman and Kolterman that had begun to meet with numerous stakeholders with the goal of establishing a plan to provide accountability for EMS throughout the state of Nebraska. Members of the EMS Board volunteer all their time and it's estimated volunteer is...our volunteered hours are 1,428 hours annually for just the board meetings alone, not including travel time. For example, I come from North Platte. The board plays a vital advocacy role for quality EMS throughout Nebraska. The board meetings also allow for public participation and input in a venue pursuant to the Open Meetings Act. The board reviews current medical evidence so EMS providers are practicing evidence-based care. For the last three years, the EMS Board has been requesting for statutory changes and regulations to enhance the work of the board and we've recently received permission to do so. And we've already placed over a hundred hours into changing those rules and regs. I'll finish with our vision. In 2021, Nebraska residents and visitors will be served by EMS services that are, above all, patient centered, part of a planned system with an appropriate distribution of resources appropriately led and regulated at a state level by various parts working collaboratively and communicating internally and externally, seen, valued, and funded as an essential public service providing the appropriate level of clinical care with engaged medical direction fully staffed with workers who are valued and reasonably educated, supported, and held accountable, locally sustainable and reliable, and integrated into a larger healthcare system. Thank you. [LB644]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down today. [LB644]

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JAMES SMITH: Thank you for your time. [LB644]

SENATOR MURANTE: Appreciate it. Additional opposition testimony on the Board of Emergency Medical Services. Is there neutral testimony? Seeing none, we will move to our judiciary-related commissions. [LB644]

ANDREW LA GRONE: The next three commissions that the bill deals with are the Judicial Nominations Commissions, the Judicial Qualifications Commission, and the Judicial Resources Commission. These three commissions were included in the bill to be altered or eliminated because they did not respond to the committee's requests for elimination as they are required to do due to Statute 50-1304. I'll start with the changes made to the Judicial Nominations Commissions. These commissions filter the candidate field from which the Governor can appoint an interested individual to fill a judicial vacancy. The bill makes the following changes to the commissions, all aimed at making the commission more transparent and easier to fill. First, it eliminates a subcategory party requirements. The constitution demands that no more than four members of the Judicial Nominations Commission be from the same party. Current statute states that no more than two citizen members be of the same party, no more than two lawyer members be of same party. The bill eliminates these subcategory requirements and requires citizen members be of the Governor's political party. This works with the constitutional requirements to require the bar to elect four members that are not of the Governor's political party. To be clear, the total partisan makeup requirements of each commission remains unchanged that is in the constitution. Second, the bill eliminates term limits for members of commissions. Third, the bill changes which entity nominates candidates for lawyer member vacancies in the event that an insufficient number of candidates put their names forward. Currently, that duty rests with the executive council of the Bar Association. The bill gives it to the Governor. Fourth, the bill removes the authority of Judicial Nominating Commissions to hold confidential meetings. It requires that all meetings be open to the public. Further, it requires that all communications that concern the qualifications of an individual who has applied to fill a judicial vacancy and that take place during the vacancy with or by members of the Judicial Nomination Commission for the vacancy are public records. These records must be included in the reports required of the commissions. The bill maintains that communications between the members of Judicial Nominating Commissions and between any member of the commission and any prospective candidate for judicial office and all other communications with members of the commission shall be privileged from use in any legal action except when charging misconduct in office of a member of a Judicial Nominating Commission or one involving contempt of court or misconduct of an attorney based on such communication. Finally, the bill requires that each member of a Judicial Nominating Commission shall have been affiliated with the political party he or she is representing on the commission for at least ten years or continuously since he or she registered to vote. The next commission is the Judicial Qualifications Commission. The Commission on Judicial Qualifications is responsible for reviewing, investigating, and making recommendations

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regarding complaints filed against Nebraska judges. The commission did not respond to the request for information, so the bill makes two changes to how the commission operates. First, it requires that all members appointed by the Governor be present in order to constitute a quorum. Second, it requires that a majority of the members appointed by the Governor concur in any action by the commission in order for the action to be valid. Next is the Judicial Resources Commission. The JRC determines when a judicial vacancy exists and makes a binding recommendation to the Legislature, binding in that it isn't a negative effect on legislative power in terms of the Legislature cannot create a judgeship without such recommendation from the Resources Commission. The commission did not respond to the request for information. Under the bill, the commission's responsibilities would be given to the Supreme Court. [LB644]

SENATOR MURANTE: Okay. Thank you. I'd just like you to respond, I'm sure, that there will be people who will be responding behind you as to why...it's my understanding that the judiciary didn't respond because they felt that due to the separation of powers, we were not able to ask them that question. I'd like you to make an argument as to why you believe that we are required to ask them for the information. [LB644]

ANDREW LA GRONE: Correct. So this a conversation I had with Court Administrator Steel. So how the process played out was we sent our initial letter that we sent to every board and commission in the state. He called me indicating that he did not feel that they were required to report due to the fact that under 50-1302 the report concerns entities made part of or placed in the executive branch of state government. I agreed with that interpretation subject to saying that I could not say, yes, these do not need to report, determination of whether or not they're part of the executive branch. I looked into that. Obviously the first place to start is the Separation of Powers Clause, Article II, Section 1 of the Nebraska Constitution. And that states that government is divided into three distinct branches and you cannot have essentially a commingling of those except as expressly directed or permitted by the constitution. Now the only entities in that constitution that have some form of joint membership are the Judicial Nominations Commissions and the Judicial Resources Commission. Now that doesn't definitively answer the question. To determine whether or not they were in fact part of the executive branch, obviously I had to go to case law to determine that. And the line of cases on that point culminates in State ex rel. Stenberg v. Murphy. In that case, the Supreme Court was dealing with an executive branch commission that upon which a judge sat. And the court looked at the power that the commission exerted and the membership of the commission. And it looked at whether that power belonged...what power that branch belonged to and also what branch its members belonged to. So the analysis for each of these three is a little different so I wanted to lay that out. Applying that to the Judicial Nominations Commission, that power has never been a judicial power--the power to filter judgeships...filter the field of candidates from which the Governor can select who fills a judicial vacancy. That is always...in Nebraska, that has always been either with the voters or the executive branch. So the power indicates it was part of the executive branch. The

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membership, obviously the judge...the attorney members and the judge chairing the commission are obviously officers of the judicial branch. There's no question about that. Their status is...that does not violate separation of powers of them being on there due to the clawback in Article II, Section 1. And the lay members appointed by the Governor, applying the same framework in the Murphy case indicates that because the Governor appoints those members and those members are continually beholden to the Governor for reappointment, essentially their membership on the commission is determined entirely by the chief of the executive branch, they would be executive branch officers. So for the Judicial Nominations Commissions, applying the framework laid out by the Nebraska Supreme Court of looking to the power and the membership, the Judicial Nominations Commission exercises an executive power and has a membership of both judicial and executive officers. So that one is pretty clear cut that it fit in as being a joint executive-judicial commission and, therefore, due to the "made part of" language in 50-1302, this committee not only had the authority to ask for that information, the committee was required to ask for that information. And then the commissions were required to respond under 50-1304. Now to the Judicial Qualifications Commission, dealing with complaints against judges is obviously a judicial power. There's no question about that. So it's different in that respect from the Judicial Nominations Commission. However, those members appointed by the Governor are still continually beholden to the executive branch and, therefore, executive branch officers. That makes it...that gives the commission a joint makeup, again, bringing it under the provisions of 50-1302. Now the Judicial Resources Commission is...has a few more issues. Obviously that is not in the constitution so there is undoubtedly a separation-of-powers issue there. And the reason that I concluded we still were required to ask for information from them is I started out by applying constitutional avoidance which is a general principle of statutory interpretation. If there is a plausible interpretation of a statute that does not cause constitutional problems, you go with that interpretation. So I was looking for is there a way to interpret this entity as being a judicial entity, one, so it's not unconstitutional and, two, so that we don't have the authority or the responsibility to ask for information from it? There's no way to do that with the Judicial Resources Commission. Its membership is made up of judicial and executive officers and it exercises a legislative power. There's no way to get around that and due to the membership of the executive officers, it was my determination that we were required to ask for that information under 50-1302. Now there is a counterargument to that that if a statute has constitutional problems, it's void from its enactment and cannot confer duties or responsibilities and, therefore, could theoretically relieve the committee of its responsibility to ask for that. But if you accept that premise, then that means that this statute that is providing that is also void and, therefore, the bill would just be eliminating nonoperative lines of statute. So that was a nonstarter. So there were so many issues there and without being able to escape the nature of the executive officers on the commission, I felt that the committee was required to ask for the information. [LB644]

SENATOR MURANTE: And based on your research, has there ever been a time where we have not received an answer to these questions? [LB644]

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ANDREW LA GRONE: No. In the past, all three commissions have always responded. There has never been an issue. [LB644]

SENATOR MURANTE: Okay. Senator Blood. [LB644]

SENATOR BLOOD: Thank you, Chairman Murante. I'm still a little confused. So you were able to justify and explain that indeed we had the right to survey them and expect a response. [LB644]

ANDREW LA GRONE: Not only did we have the right, we were required to. [LB644]

SENATOR BLOOD: That part I understand. However, once you were able to glean that information and relay that to the parties that were responsible for responding back to us, did they then again refuse or did we go back to them a second time and say...? [LB644]

ANDREW LA GRONE: So we sent initial letter that we sent to all the boards and commissions saying we need this information. [LB644]

SENATOR BLOOD: Right. [LB644]

ANDREW LA GRONE: Court Administrator Steel called me. We had that conversation. I eventually called him back and indicated, no, you are required to respond. He sent a letter indicating that he would not respond. And actually, just to be clear, there were five entities that he indicated in his initial response that he did not feel that we have the authority on. I agreed that two of them were purely judicial entities and we took those off the list. After that, we sent another letter to Court Administrator Steel indicating the conclusion, that these three did need a response. And then we did not receive a response until after...so then there was another letter that got sent out to every board or commission that had not responded by that point, not just these. There were more at that time. Everyone else eventually got back to us. And then we received another letter from Commissioner (sic) Steel on August 18 indicating that he would not be responding to our request for information. [LB644]

SENATOR BLOOD: And so was the expectation that they understood that state statute was going to be changed as a result of that? The reason I'm asking is because this was one area that I received so many phone calls and e-mails about. And I know it's not your job to say, hey, if you don't contact us we're going to change state statute. But at the same token I've got a disconnect in the explanation. I'm not sure I understand what that disconnect is. [LB644]

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ANDREW LA GRONE: Every single letter that we sent made abundantly clear that if there was no response the commission would be altered or eliminated. And that is in line with every past Chairman that has conducted the survey--Senator Avery, Senator Aguilar, everything that we could find. They had all stated...so I used the previous letter and just updated it slightly for the dates. And it was...it's in every single letter: If you do not respond, your commission will be altered or eliminated. [LB644]

SENATOR BLOOD: And in this case we're altering? [LB644]

ANDREW LA GRONE: Correct, because we can't eliminate them without a constitutional amendment since two of them are in the constitution. The Judicial Resources, since it's not in the constitution, is eliminated. [LB644]

SENATOR BLOOD: So unlike a lot of these others that are obsolete, in this one instance we seem to really not be eliminating it as much as amending it and that's the area that I'm confused about I think. [LB644]

ANDREW LA GRONE: So because we...because it's in the constitution and we went the alteration route because it could...you could actually alter the statutes, the policies that were put forward were put forward due to the fact that we lacked a response. So the ultimate goal is transparency in there. So that's why you see the confidentiality portions removed and you also see it being connected to an elected office rather than the Bar Association in certain circumstances. The partisan requirements were changed to make the spots easier to fill. And that is said because for the attorney positions there is a mechanism by which to nominate individuals and have them fill those positions. For the lay member positions, if a spot goes unfilled with no applicants there's a problem filling those positions. So the theory was that if you connect the partisan requirements of the lay members to the same party as the individual appointing them, in this case the Governor, they would be better able to fill those positions. [LB644]

SENATOR BLOOD: And this is something in the past we've had trouble doing? [LB644]

ANDREW LA GRONE: From my research it appeared that...and again I was somewhat limited because we did not get the information. I had to go out and try to make changes based upon that. It appeared based on the Governor's Web site of vacancies existing, that most of the vacancies on Judicial Nominating Commissions that I could find from lay members were of the opposite political party of the Governor. So that's what made logical sense in that instance. [LB644]

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SENATOR BLOOD: I'm sorry, I...sincerely, it's just not hitting home. Okay, so the concern after...and I'm truly trying to understand this. The concern after researching it was that there is too many of one party on the committee? [LB644]

ANDREW LA GRONE: No, this does not change the partisan makeup of any commission at all. So some of these commissions have numerous vacancies. And so it appeared that a lot of those vacancies were of the opposite political party of the Governor and, therefore, because the lawyer members have a mechanism to nominate individuals to fill those spots it seemed logical to flip that if from the information I...you know, looking at that it seemed that there might be a connection between party and filling that that it would make more sense to do that. To be clear, this is a first initial draft. This was brought forward because we didn't have a communication. That's the reason we're here. So it was meant as a first attempt. [LB644]

SENATOR BLOOD: So not to put you on the spot but again this kind of the final piece of the puzzle of me trying to understand it. So are you implying that maybe they weren't doing the job that they were supposed to be doing by nominating and getting people up to the...? [LB644]

ANDREW LA GRONE: Not at all. Not in any way, shape, or form. [LB644]

SENATOR BLOOD: Okay. [LB644]

ANDREW LA GRONE: No, it appeared that they just did not have people applying for those positions. And so the theory was that if there is spots that people are not applying for and there's an applicant pool for other spots, why not try to connect the applicant pool to the open spots. [LB644]

SENATOR BLOOD: All right. I think I have a better understanding. Thank you. [LB644]

SENATOR MURANTE: Senator Briese. [LB644]

SENATOR BRIESE: Thank you, Senator, and thank you for presenting this. As I look at Section 24-719(1), it's on page 13, lines 22 and 23: Action of the Commission on Judicial Qualifications shall not be valid unless concurred in by a majority of members appointed by the Governor. However, the constitutional provision governing that commission says the commission shall act by a vote of majority and no action shall be valid unless concurred in by a majority of its members. Am I missing something here or is that constitutional to do that? [LB644]

ANDREW LA GRONE: So two things. [LB644]

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SENATOR BRIESE: When we're creating a higher standard in statute than is required... [LB644]

ANDREW LA GRONE: Right, right. With the Commission on Judicial Qualifications, this one was a more difficult one to deal with in terms of policy because there's not as much policy within the statute itself. Because they failed to respond, the point was to keep the policy of past Chairs of doing something to ensure that entities continue to respond to these type of surveys. So with the theory of trying to make this more transparent, it was attempted to connect those offices, the elected offices to the members more so. And since the Governor appoints these members, it was thought that that would at least take a step towards the transparency goal. With respect to the question of constitutionality, that could get into a gray area. However, it does not change that...it was attempting to alter it without...no matter how you altered this one, it was going to probably get questionable. And that was what I saw as the least questionable way to do it. [LB644]

SENATOR BRIESE: Okay. It appears to me it could be unconstitutional on its face by requiring a higher standard in the statute as what is required in the constitution it would seem to me. Thank you. [LB644]

SENATOR MURANTE: Senator Hilgers. Oh, I'm sorry. Were you done, Senator Briese? Senator Hilgers. [LB644]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you for your testimony today. I do have some issues with some of the substance, but we can talk about that a later date. I do want to talk to you little bit about the process. To clarify the Chairman's question which was, have you...have they ever not responded before, I want to give this explicitly on the record. My understanding of Chapter 50-1302 and the following provision...sections, were all enacted in 1999, is that correct, or thereabouts, do you know? [LB644]

ANDREW LA GRONE: So its most recent version was 2008. But yes, they've been in effect since, I believe, late '90s. [LB644]

SENATOR HILGERS: So the initial four-year requirement started in 2000. So we had 2000, 2004, 2008, 2012, 2016. [LB644]

ANDREW LA GRONE: I believe prior to 2008 it was a two-year requirement. [LB644]

SENATOR HILGERS: It was a two-year requirement. [LB644]

ANDREW LA GRONE: Yes. [LB644]

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SENATOR HILGERS: So 2000, 2002, '04, '06, '08, then '12, '16? [LB644]

ANDREW LA GRONE: Yes. [LB644]

SENATOR HILGERS: Okay. So for '12 and before to when the statute was initially enacted, is there any instance in which those commissions did not respond to the letter? [LB644]

ANDREW LA GRONE: No. [LB644]

SENATOR HILGERS: Okay. In your correspondence with Mr. Steel, and I appreciate your discussion of the State ex rel v. Murphy decision and I would appreciate at some point to review (inaudible). [LB644]

ANDREW LA GRONE: Absolutely. [LB644]

SENATOR HILGERS: Did Mr. Steel ever respond to any of the legal arguments that you had, that you put forward here to us and in your correspondence? [LB644]

ANDREW LA GRONE: So the only letter that contained anything close to that was the August 18 letter from Mr. Steel. And in that he indicated his position that the statutory test is the sole test to determine whether an entity must respond. And that to me did not solve the issue because... [LB644]

SENATOR HILGERS: Hold on a second. Hold on. Let me take one...hold on. So his argument was that the statutory test was the sole test. [LB644]

ANDREW LA GRONE: Correct. [LB644]

SENATOR HILGERS: Did he...and I can get a copy of the correspondence but I think it's important to get it on the record. So what he...meaning that...just referring to that provision that you cited earlier in 50-1302. [LB644]

ANDREW LA GRONE: Section one, yes. [LB644]

SENATOR HILGERS: That you just look at that nothing further. [LB644]

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ANDREW LA GRONE: Correct. [LB644]

SENATOR HILGERS: Is there any case that he cited or case that you found in your research that actually says what he says? [LB644]

ANDREW LA GRONE: These statutes have never been acted on in a court. [LB644]

SENATOR HILGERS: Okay, so now tell me your response to that. [LB644]

ANDREW LA GRONE: So I did apply the test in the statute. As you know, you take the statute, plain language of the statute and when a term is ambiguous you look for ways to resolve that. Executive branch obviously was the term at question here. Were these entities part of the executive branch? And so that's what I went to case law for, of when is an entity considered part of the executive branch and that is where Stenberg v. Murphy comes in and that whole line of cases. And that was where I found the test to determine what branch of government an entity belongs to. And so that was the test I applied to the entities to determine whether they were part of the executive branch and therefore subject to the reporting requirements. [LB644]

SENATOR HILGERS: Okay, you said Stenberg v. Murphy. [LB644]

ANDREW LA GRONE: State ex rel Stenberg v. Murphy. [LB644]

SENATOR HILGERS: Oh, got it. Okay, okay. [LB644]

ANDREW LA GRONE: I can get you the citation. [LB644]

SENATOR HILGERS: I can get it outside the hearing. I appreciate that. [LB644]

ANDREW LA GRONE: It's 247 Neb. 358. [LB644]

SENATOR HILGERS: 247 Neb. 3... [LB644]

ANDREW LA GRONE: 358. It's from 1995. [LB644]

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SENATOR HILGERS: 358. Thank you. And I just, again, to make it clear on the record, this legal analysis that you have articulated to the committee today was at some point put into writing and articulated to Mr. Steel? [LB644]

ANDREW LA GRONE: It was indicated not in explicit legal terms. It was sent to Mr. Steel indicating the conclusion that they were joint executive-judicial entities and, therefore, subject to the reporting requirements under 50-1302. The whole analysis of Stenberg v. Murphy I did not include in the letter...I did not send in a brief if that's what you're asking. But I think the arguments were pretty clear from the letter. [LB644]

SENATOR HILGERS: And I don't mean to pick on Mr. Steel. He's just the one you were communicating with as the representative for the body. [LB644]

ANDREW LA GRONE: Correct, correct. [LB644]

SENATOR HILGERS: The last set of questions are so we've heard the agencies and commissions that are on this list seem to fall into a couple categories. One category is they responded and said we're of no use...you can cancel us, you can get rid of us. They didn't respond and we're cancelling them. And this falls I guess into the latter group? [LB644]

ANDREW LA GRONE: Correct. [LB644]

SENATOR HILGERS: Okay. Okay, thank you. Well, I guess we're not...I'm sorry, we're not obviously getting rid of the commissions. We're just modifying them. [LB644]

ANDREW LA GRONE: Correct. I'd actually go so far as to say there's four categories: there's those that responded and were sunset; there are those that responded and indicated that although they weren't sunset, they had no further purpose; there are those that there seemed to be a discrepancy of whether they really are necessary based on their response; and then there were the three judicial entities that did not respond. [LB644]

SENATOR HILGERS: Okay. Thank you. [LB644]

SENATOR MURANTE: Okay. Seeing no additional questions, thank you for your opening. We'll let him pack his things up and then undoubtedly we'll have a lot of proponent testimony. All right, proponent testimony to the judiciary portions of this bill. Seeing none, the opposition testimony. Welcome. [LB644]

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ELIZABETH NEELEY: (Exhibits 5 and 6) Thank you. Chairman Murante, members of the committee, my name is Elizabeth Neeley, E-l-i-z-a-b-e-t-h N-e-e-l-e-y, testifying today on behalf of the Nebraska State Bar Association in opposition to LB644 specifically addressing Sections 9-11 and 13-16 related specifically to the Nominating Commissions. So Judicial Nominating Commissions are charged with reviewing candidates for judicial vacancies and forwarding qualified candidates for consideration by the Governor. It is of paramount importance that nominating commissions operate independently from other actors in the judicial selection process. Their primary purpose is to assist appointing authorities in the selection of qualified, inclusive, and independent judiciary. And to facilitate this goal, the nominating commissions must be an independent body that expresses opinions about judicial candidates based on the commission's independent findings. If the influence of politics colors its judgment, the commission loses the confidence of the citizenry. We are concerned with the changes proposed by LB644 because they unnecessarily politicize the judicial selection process in Nebraska and in several respects, are in direct conflict with the structure and process outlined in the Nebraska Constitution. And I've provided you with the constitutional language as well. For example, currently the Governor appoints four lay members not of the same political party to serve on the Judicial Nominating Commission. LB644 requires that citizen members be affiliated with the political party of the Governor. This requirement is in direct conflict with the Nebraska Constitution which states that, "Not more than four of such voting members shall be of the same political party." I think in his opening he kind of described this process as removing some subcategories. I think that his argument hinges on the fact that the Bar Association would then need to appoint four people of the same political party for lawyer members. So I don't think that we've really accomplished anything with that. Secondly, lawyer members of Judicial Nominating Commissions must reside in the district which the commission serves. LB644 would remove the residency requirement, which means that lawyers living in Omaha, with no familiarity of the area or legal community, would review candidates applying for a judicial vacancy in Chadron, Nebraska. This is also in direct conflict with the Nebraska Constitution which states, "The members of the bar of the state residing in the areas from which the nominees are to be selected shall designate four of their number to serve as members of said commission." LB644 would also remove the Executive Council of the Nebraska State Bar Association's ability to nominate additional candidates if solicited nominations are insufficient. This is contrary to the Nebraska Constitution, which explicitly directs that lawyer members are selected by the bar, not the Governor. Nebraska deserves great judges. Let's keep the process of judicial selection about the qualifications of the applicant, not their political party. The changes proposed in this bill allow the Governor to stack the deck, so to speak, and would certainly discourage qualified candidates from other political parties from putting their name forward. For those reasons and the fact that this bill is in direct conflict with the Nebraska Constitution, we strongly encourage you to oppose LB644. Thank you. [LB644]

SENATOR MURANTE: Thank you. Senator Hilgers. [LB644]

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SENATOR HILGERS: Thank you, Attorney Neeley, for being here and giving us your testimony. I certainly do have some concerns as I've mentioned before about the substance of this portion of LB644. However, my view is that there's a really important threshold question here which is the commission's failure to provide answers to a question that put us on this track. But for that failure, we would not be here and we have to protect the jurisdiction of this committee. And so in some ways, in some ways, the changes are secondary, although I understand they're part of the bill and they're primary in that respect. So I guess my question for you is, does the State Bar have a position on that threshold question which is whether or not the commission should have answered the surveys in the first place? [LB644]

ELIZABETH NEELEY: You know, that was not discussed by the Bar Association. I don't personally have an opinion on whether or not it was appropriate or not for them to reply or not. But I think the fact that we're here today to discuss the merits of this bill is what we're here to testify on and maybe we can just think of this as a happy accident and an opportunity to educate you about the important role that these commissions play. [LB644]

SENATOR HILGERS: And I by no means do I mean to minimize your testimony. I very much appreciate it and I do think there's a value in going through this and looking at it with fresh eyes. I just think that there's other important questions. But I appreciate that the bar doesn't have a position on it. Thank you. [LB644]

ELIZABETH NEELEY: Thanks. [LB644]

SENATOR BREWER: Okay. Next question. [LB644]

SENATOR WAYNE: You stated that the Governor appointing the laypersons violates the constitution. I'm not quite seeing how that does. [LB644]

ELIZABETH NEELEY: The Governor does currently appoint the lay members. The constitution states that they not all be from the same political party. LB644 changes that and allows the Governor to make all four of the lay member appointments from the same political party. [LB644]

SENATOR WAYNE: It just says that not four, not the Governor's appointments, but just four shall not be from the same party. [LB644]

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ELIZABETH NEELEY: Correct. So if the Bar Association appoints four and the Governor appoints four, then that means if the Governor is appointing four from his political party, then the Bar Association would have to change their appointees is the way I would read that. [LB644]

SENATOR WAYNE: So walk this out for me in a practical sense. During the conversations, who would have more influence in that conversation--the layperson or an attorney? [LB644]

ELIZABETH NEELEY: Absolutely the lawyers. [LB644]

SENATOR WAYNE: So if the attorneys pick people opposite of the Governor, wouldn't they potentially have different judicial nomination nominees? [LB644]

ELIZABETH NEELEY: They may. I mean I think our interest in this process is that it...we should keep the politics out of it. It was designed to be bipartisan on purpose and that's what we should stick with. [LB644]

SENATOR WAYNE: Because right now the current process is the Governor appoints two attorneys and then two... [LB644]

ELIZABETH NEELEY: No, the... [LB644]

SENATOR WAYNE: All four laypeople. [LB644]

ELIZABETH NEELEY: All four laypeople of different parties. The bar also appoints four lawyer members from different political parties, so there's currently balance and it's to that process. This changes the balance. [LB644]

SENATOR WAYNE: That's assuming that the Governor appoints truly people from a different party, not just on name of party. [LB644]

ELIZABETH NEELEY: Well, and I guess we would also have to wait and see who the Governor appointed. And if there was a vacancy and he changed, that could throw off the balance. I mean right now it works because the balance is instructed: two and two. I think that logistically would be difficult if a vacancy occurred and he did appoint from a different party. It would change who is eligible on the other side. [LB644]

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SENATOR WAYNE: But it wouldn't necessarily be unconstitutional, just the bar would have to appoint somebody from the other side. [LB644]

ELIZABETH NEELEY: Correct, but if we make our appointments first, then I think it would limit the Governor's ability to do appointments all from the same political party. [LB644]

SENATOR WAYNE: Thank you. [LB644]

SENATOR BREWER: Okay, any additional questions? Tom Briese. [LB644]

SENATOR BRIESE: Thank you and thank you for being here. On your second part there you talk about LB644 would remove the residency requirement. Where's that at in here? [LB644]

ELIZABETH NEELEY: In the bill? [LB644]

SENATOR BRIESE: Yes, please. [LB644]

ELIZABETH NEELEY: I didn't bring my copy of the bill up with me. [LB644]

SENATOR BRIESE: Okay, probably page 15, 24-806. [LB644]

ELIZABETH NEELEY: Yes, 24-806. [LB644]

SENATOR BRIESE: Like you say here, the constitution does require those members to be from that geographic area, correct? [LB644]

ELIZABETH NEELEY: Correct. [LB644]

SENATOR BRIESE: Okay. The statute doesn't require them to not be from the geographical area, correct? It just removes the requirement that they are. [LB644]

ELIZABETH NEELEY: Yes. [LB644]

SENATOR BRIESE: Okay. Thank you. [LB644]

SENATOR BREWER: All right, one more time around. Any additional questions? [LB644]

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SENATOR HILGERS: One last one. One last question, there's a provision here in the statute that is not in here I just wanted to make sure that...the bar had a position on it which is the provision outlining I believe it's that members...they have to be members of the same party for a period of years, whereas I don't think now there's any sort of restriction or a requirement that a member be of that party of some period time before. Does the bar take any position on that provision? [LB644]

ELIZABETH NEELEY: We do not. [LB644]

SENATOR HILGERS: Okay. Thank you. [LB644]

SENATOR BREWER: All right. Any additional questions? Seeing none, thank you for your testimony. [LB644]

ELIZABETH NEELEY: Thank you. [LB644]

SENATOR BREWER: Next. Welcome. [LB644]

TED KESSNER: Thank you. Vice Chairman Brewer and members of the committee, my name is Ted Kessner, T-e-d K-e-s-s-n-e-r. I'm testifying on behalf of the Nebraska State Bar Association against those provisions of LB644 which affect the Judicial Nomination Commission. I am past president of the State Bar Association and fellow of the American College of Trial Lawyers. And one of the missions of the organized bar is to make sure we have an independent judiciary. And the Nebraska merit system for the selection of judges has no peers. It is the best there is. It was adopted in...the constitutional amendment was adopted in 1962 with broad support from labor, business, agriculture, newspaper editors. It is absolutely the finest system and it takes politics out. That there's never been a problem that I know of with the political part of the makeup of the commission. It's always been fully staffed when they met. Somehow they have...the Governor has found people opposite his party. We've had I believe four Democratic Governors and five Republican Governors who have made appointments under the scheme of laws that now exist and we have a fine judiciary. It's been my privilege to practice law in courts from Harrisburg to Dakota City to Falls City. And we have a fine judiciary both at the trial level and at the appellate level. My major concern about the provisions in LB644 relate to the public disclosure of information. Applying for a judgeship is a traumatic moment for anybody. You're affecting your partners if you're private practice, your clients if you work for somebody, your boss. And the application process is very extensive. The application itself is public information but the supporting material is not and should not be. It goes into the personal lives of the applicants. And the meetings of the commission itself should be in confidence as well. Now this is true of political decisions by school boards, county boards, city council when you go into executive

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session to talk about political...or personnel issues. In my opinion, if you make all of this information public it will have a chilling effect upon people applying for the judgeships. And also if the committee meetings are also public, it will have a chilling effect. People will not say things that will be public. If I want to make a comment about Bill Mueller applying for a judgeship and I don't think he has the temperament to be a judge, I'm not going to put that in writing so it'll be made known to Bill Mueller. So I urge you to leave the system alone. It works well. Thank you very much. [LB644]

SENATOR BREWER: Thank you. Questions? Senator Wayne. [LB644]

SENATOR WAYNE: So I know, I'm a practicing attorney so I watch judgeships and I've also watched judges be qualified from the commission, nominating commissions to not get appointed and then years later when there's a new Governor somehow not make it on a commission. How do you explain that? [LB644]

TED KESSNER: I can't because the commission, my thought would be that the commission changes. It's not the same. So if I applied to a commission five years ago, it doesn't mean that if I apply today that the lawyer members or the nonlawyer members will be the same people. And maybe the other people that apply at that time...the role of the commission--and I've served on two--is to find the best qualified or well-qualified people. There could be eight well-qualified people, but you try to cut it down to two or three. And so maybe the difference in the applicants at that time may make a difference whether you make it out of commission or not. [LB644]

SENATOR WAYNE: I just find it ironic that multiple times people can come out of the commission being qualified for a judge and when the Governorship changes, they no longer can come out of commission. I find that ironic. [LB644]

TED KESSNER: Well, from my experience, Senator, politics or political party affiliation has not ever been an issue in the two commissions that I served on. The Republican people didn't sit on one side of the table and the Democrat on the other side. The political affiliation of the applicants themselves is not on the application. I assume when it gets to the Governor, being a political person, he will find out what their political affiliation is and that might affect his appointment. [LB644]

SENATOR WAYNE: Fair enough. [LB644]

SENATOR BREWER: All right. Additional questions? [LB644]

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SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you for your testimony today. I just want to focus again on that threshold question that I have which is the whole reason in my view that we're here and not doing this in a collaborative way over the summer. Do you have any position on whether or not the commission should have responded to the inquiry that we're required to provide? [LB644]

TED KESSNER: As a practical matter it seems to me they should have responded. Now as a legal matter, Senator Hilgers, I don't know. It shouldn't stand on, I'm not going to. There should be some dialogue and obviously I think everyone would agree, including the counsel for the committee, the Judicial Qualifications Committee is a necessary part--it's in the Constitution and it's played a vital role for 55 years. So we need it. And does it need to be tweaked? In my opinion it does not, but there should be some dialogue on that issue with the Court Administrator or whoever responds. [LB644]

SENATOR HILGERS: Thank you very much. [LB644]

SENATOR BREWER: Go ahead, Senator. Senator Wayne. [LB644]

SENATOR WAYNE: Is there a statutory obligation to cut it down to two or three Supreme Court...judge nomination because you mentioned eight. And I just want to say if there's eight great people, then why not send all eight? [LB644]

TED KESSNER: I think that commissions have probably thought about that. How do you exclude somebody? But it's an open discussion, the ones I've been involved in. It's not dominated by the lawyers. Obviously lawyers talk more than nonlawyers, but everybody has their say. And the chair of the commission who's a member of the Supreme Court tries to move people towards a limited number of candidates. And usually it's two. It's three. But I don't know of any that have been more than three. And so it's a judgment call by eight people. [LB644]

SENATOR WAYNE: Maybe that's the...therein lies the problem. Maybe we shouldn't put limits on it unless they don't qualify. [LB644]

TED KESSNER: Now but...the people of Nebraska in 1962 made a decision that this is the way we're going to appoint judges based upon merit and remove politics from it as much as we can. It will never be totally out of the selection of judges, in my opinion. [LB644]

SENATOR BREWER: Okay. Additional questions? Senator Briese. [LB644]

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SENATOR BRIESE: Thank you, Senator, and thank you for being here. You just mentioned a little bit ago in the two commissions you served on, politics didn't really play a part, correct? [LB644]

TED KESSNER: That's correct. [LB644]

SENATOR BRIESE: We implement the provisions of this bill, would you anticipate politics playing more of a role? [LB644]

TED KESSNER: Well, it most certainly will from selection of the participants in each commission. Each commission then, if the Governor has to appoint them all from his party, as Dr. Neeley said, then the Bar Association obviously will have to appoint or elect, choose, whatever process there is. So there will be a political affiliation impact on the makeup of the commission. But I still don't believe that politics affiliation, political affiliation plays a very major part at the commission level. It does when it gets to the Governor I'm sure. [LB644]

SENATOR BRIESE: But at the commission level, these changes might not make a whole lot of difference. [LB644]

TED KESSNER: They will. They will if...certainly on...if they're all Republicans, since Governor Ricketts is a Republican, then all the lawyers are going to have to be Democrats or Independents. [LB644]

SENATOR BRIESE: Sure. [LB644]

TED KESSNER: And that's not true now. We're divided. We send out a ballot and vote for Republican, vote for a Democrat, Independent. [LB644]

SENATOR BRIESE: Okay. Thank you. [LB644]

SENATOR BREWER: Okay. Additional questions? All right. Thank you, sir, for your testimony. [LB644]

TED KESSNER: Thank you. [LB644]

SENATOR BREWER: Next up. Welcome. [LB644]

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TERRY WITTLER: Thank you. Good afternoon, Vice Chairman Brewer and members of the committee. My name is Terry Wittler, T-e-r-r-y W-i-t-t-l-e-r. I'm testifying today on behalf of the Nebraska State Bar Association in opposition to LB644. Specifically I address Section 8 of the bill relating to the Commission on Judicial Qualifications. The Commission on Judicial Qualifications is responsible for investigating complaints from citizens against judges who may have violated the judicial code of conduct or in some other way failed to carry out their duties of their office. The bill would make two changes to the requirements for the commission action. Article V, Section 28 of the Nebraska Constitution provides that the commission shall have three members who are judges appointed by the Chief Justice of the Supreme Court, three members who are lawyers appointed by the Nebraska State Bar Association, and three lay members who are appointed by the Governor. The Chief Justice also serves and is chairman of the commission. Currently a quorum consists of six of the ten members. The bill would require that all three lay members be present in order for the commission to act. In my opinion, this is not a practical requirement. The commission meets six times a year. Many laypersons would not be able to commit to attend every meeting and if even one of the three lay members could not attend, the commission would have to delay action for another two months since we only meet six times a year. Adding this requirement would also limit the number of individuals who would consider serving on the commission since they would have to commit to being present at all six meetings. Second, the bill would require that the commission could not act unless two out of the three lay members vote in favor of the action. The constitution currently provides that no action of the commission shall be valid unless concurred in by the majority of its members. Adding a requirement that two out of three lay members would have to concur in any action may well violate the constitution's provision for simple majority rule. Finally, in my three years serving on the commission, I do not recall any circumstance where there was a significant difference of opinion between lay members and other members. Thank you for your time. I would be happy to answer any questions. [LB644]

SENATOR BREWER: All right. Thank you for your testimony. Questions? Oh, sorry. Need to be up just a little higher. [LB644]

SENATOR BLOOD: I was in stealth mode. Thank you, Vice Chair. So if I hear you correctly, if it's not fixed...if it's not broken, why try and fix it? I mean you don't feel it's broken in any way and that it should just be left alone. [LB644]

TERRY WITTLER: Yes, and I think that one of the proposed fixes probably violates the constitution. [LB644]

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SENATOR BLOOD: And I hear that loud and clear. So it would be your...since there seems to be so many from the Nebraska State Bar Association here, is it clearly your intent to ask us just to remove it and leave it alone? [LB644]

TERRY WITTLER: Yes. [LB644]

SENATOR BLOOD: Thank you. [LB644]

SENATOR MURANTE: Senator Hilgers. [LB644]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Wittler, for being down here and your testimony. I do appreciate your (inaudible) of the substance of the bill. I'm going to ask you the question I've asked previous witnesses...opponents and I, at this moment at least, would intent to ask others. Do you have an opinion on the threshold question because we're only here in my view again and I don't want to beat a dead horse but I will continue to beat it for at least now. Do you have any opinion on that threshold question of the lack of response to this committee's request for information? [LB644]

TERRY WITTLER: Well, my understanding is that the committee is charged with deciding whether or not commissions should be eliminated. In the sense the Judicial Qualifications Commission is established by constitution, the committee would not have the authority, as I understand it, to eliminate that commission. So I don't really see the purpose of the inquiry. [LB644]

SENATOR HILGERS: Well, this is actually...I appreciate your testimony and response because I think this is a good teaching point because I had some of the same questions you had. Here's how I understand the process to work. We are statute...we the Government, Military and Veterans Affairs Committee is statutory required to send out a request for information, not a...we're not required to put out forth a bill to cancel a...eliminate a committee or commission. We're statutory obligated to send out a request for information that is...that must be responded to. If they do not respond, it is my understanding that in the history of this committee, every Chair, Republican or Democrat alike, has put forward a bill that has included either a modification to the commission that did not respond or a bill to eliminate the commission that did not respond. Now of course that includes broader categories as Mr. La Grone mentioned such as those who responded and say we have no further purpose, you can eliminate us as well. So it isn't that we are required to eliminate. We're not required to eliminate, but we are required to ask for information. And if we don't get that information that is required to be given to us and in this case has been given to us every single year, that at least as we've heard earlier, every single time before this time, now we're put in a position where we have...we're forced to act or relinquish, in my view, some of this

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committee's jurisdiction. So in any event, I guess that was not a...that last one was not a question but I do appreciate your response because I think it helps to articulate exactly why we're here and what my concerns are with why we're here. So thank you. [LB644]

SENATOR MURANTE: Okay. Senator Briese. Any additional questions? Senator Blood. [LB644]

SENATOR BLOOD: So again, as Senator Hilgers who's an attorney, makes things harder for me to understand, not easier for me to understand. So I...for me as not being an attorney, I like to reduce it down kind like Senator Brewer does to something that's more simple. With all these other committees, we're either eliminating it or keeping them. But for some reason we've picked out this commission and we're changing it. And that's the part that confuses me the most is that, were there are a long list of complaints, were there things that had happened that said here's a red flag, we better fix this and from what I'm hearing from our initial presentation, I'm not hearing that. I'm hearing there's potential to be an issue. And I believe in planning things out so if there's potential that it doesn't become a problem down the road. But I'm just not hearing that. [LB644]

SENATOR MURANTE: I think Mr. La Grone answered that question directly on point which is to say the statute explicitly authorizes this committee not just to determine whether or not an entire commission should be retained in its entirety, but whether modifications, the word "modify" is explicitly granted in the statute. And we could not put a provision to eliminate the Judicial Nominating Commission in this bill because the Judicial Nominating Commission is contained in the constitution. That would require a constitutional amendment. So there was no choice but to create modifications while adhering to the legislative tradition of the Government, Military and Veterans Affairs Committee. [LB644]

SENATOR BLOOD: And I don't question that. I do not question our ability to make changes. I question the reasoning behind making changes. And maybe I'm more thinking out loud than asking a question. [LB644]

SENATOR MURANTE: Senator Wayne. [LB644]

SENATOR WAYNE: You would agree that this Legislature has the ability to eliminate the committee through a constitutional amendment, right? [LB644]

TERRY WITTLER: It has the ability to initiate that process, yes, sir. [LB644]

SENATOR WAYNE: Correct, and it would go to the voters. [LB644]

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TERRY WITTLER: Yes, sir. [LB644]

SENATOR WAYNE: So there's only two ways to put things on the constitution: through the Legislature or through a petition, correct? [LB644]

TERRY WITTLER: Correct. [LB644]

SENATOR WAYNE: So it's inherently upon us when looking at constitutional commissions that they are still viable because we are one of the options to start the process to eliminate it, correct? [LB644]

TERRY WITTLER: If we were here on a legislative resolution for a constitutional amendment, then yes, that would be true. [LB644]

SENATOR WAYNE: So rather than propose a legislative resolution, I think...which has been stated multiple times, the purpose was to elicit a response to make sure that we continue with what we've always done. This is one of the alternatives. Or next time if somebody doesn't respond in a constitutional commission, should we go ahead and propose a constitutional amendment to remove it? I think the answer would be no. I think we're better with having this conversation so we can keep the tradition of not disrupting the commission. But making sure that people understand and institutions understand that we have to at least respond back and have a dialogue per the statutes. So that wasn't really a question. There was a couple questions in there, but that was more of a statement, so I'm done. [LB644]

SENATOR MURANTE: Thank you, Senator Wayne. Any additional questions? Seeing... [LB644]

SENATOR WAYNE: Oh, I do have one. [LB644]

SENATOR MURANTE: Senator Wayne. [LB644]

SENATOR WAYNE: So you mentioned that it's difficult for laypeople to often meet six times a year. How many times do we make recommendations or advance judicial nominations to the Governor without laypeople's input in your experience on...without their vote? [LB644]

TERRY WITTLER: I'm on the Judicial Qualifications Commission. So we are dealing with disciplining judges. And so I can't answer that question. [LB644]

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SENATOR WAYNE: Yeah, that's a whole nother ball of wax. All right. I misunderstood. Thank you. [LB644]

SENATOR MURANTE: Additional questions? Senator Lowe. [LB644]

SENATOR LOWE: Maybe you can clarify this, maybe I'm just thinking odd here. Thank you and thank you for being here today. It says that the Governor will appoint four citizen members with which he is affiliated politically, correct? [LB644]

TERRY WITTLER: Not on the Judicial Qualifications Commission on which I sit. [LB644]

SENATOR LOWE: Oh, okay. [LB644]

TERRY WITTLER: On the one I sit on, he appoints three lay members. And there's no reference to party. [LB644]

SENATOR LOWE: Okay. All right. I was just going by this statute in Section 9... [LB644]

SENATOR MURANTE: I believe you're referencing the Judicial Nominations Commission changes. [LB644]

SENATOR LOWE: Yeah, judicial nominations. And then the Bar Association would then pick four from the other party, is that what I heard before, just so they'd be balanced? It would seem the way that it goes in here that the attorneys talk a lot more and are a little more knowledgeable. It would be a detriment to the Governor to do it that way. So I'm...what would your opinion be on that, I guess, being an attorney? [LB644]

TERRY WITTLER: My opinion is the fact that attorneys talk more does not mean they are more knowledgeable. (Laughter) [LB644]

SENATOR BREWER: I got to write that one down. (Laughter) [LB644]

TERRY WITTLER: I'm not under oath here, am I? (Laughter) [LB644]

SENATOR MURANTE: I think the Chief is watching somewhere. You should be aware of that. But would you say at least if we're having a conversation, a legal conversation about the judiciary, would you at least acknowledge that lawyers, people who have spent a lifetime trained

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in the law, have an upper hand in the discussion versus people who have no back...or that a humble pizza maker is not going to know as much about the judiciary as an attorney who's been practicing for 30 years? [LB644]

TERRY WITTLER: It depends entirely on the nature of the complaint. If the complaint before the commission is that the judge didn't follow the law, then...and that that rose to the level of an ethical conduct, then my experience is laypeople defer. If the complaint is this judge is simply rude and intolerant of witnesses, he doesn't show the proper courtesy to people in his court room, laypeople are equally comfortable weighing in on that. [LB644]

SENATOR MURANTE: All right. Thank you. Seeing no additional questions, thank you very much for your testimony. Welcome. [LB644]

MARK SIPPLE: Good afternoon, Chairman and members of the committee. My name is Mark Sipple, M-a-r-k S-i-p-p-l-e, testifying today on behalf of the State Bar Association in opposition to LB644, specifically I'll address Section 12 of the bill as it relates to the Judicial Resources Commission. I'm not here to talk about the Judicial Qualifications Commission or what we've heard so far. This relates to the Judicial Resources Commission. I've been a member of the commission for 25 years. I've been in practice in Columbus, Nebraska, for 47 years, a member of the commission for 25. We're an active working commission. Within the last three weeks or so we met across the hall in 1510 to deal with five, and that's the most we've ever dealt with at one time, five judicial vacancies in both the county and the district court. We meet annually and we meet when a judge, dies, retires, resigns, is removed, or is not retained, we meet. And by meet I mean that we have a public hearing much like this one. We meet in this room many times. Many times across the hall in 1510 and we have a hearing. With respect to that, exhibits are marked and offered and received and considered by the commission, and we hear testimony from witnesses. Occasionally the testimony we hear is from one witness and sometimes it's many, many witnesses depending on what we're doing. Our commission is charged with making recommendations to the Legislature regarding allocation of judicial resources. That's normally done by a recommendation to add a judge. In fiscally good times, that's a good recommendation; in these kinds of times, not so good. We relocate judges from one district to another. We recommend the relocation from one district to another. We can recommend and have recommended changing judicial boundaries. And many times because things are working out well we recommend keeping the status quo and replacing the judge in the district that has a vacancy. The problem that I have with LB644 and Section 12, aside from abolishing the Judicial Resources Commission and moving our job to the Supreme Court, is there's no language in the bill that relates to a public hearing. The public hearings are important to us as I'm sure they are to you in this context. We become more informed and we understand more by having a public hearing and hearing testimony from witnesses. Make no mistake that when a judge is removed from a locality, from a district, particularly in those districts in the central-western part of the

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state, there is an impact on that community. There's an impact on law enforcement and it affects people. And it's important I think for somebody who's going to make a recommendation to the Legislature to hear what that impact is. And conversely, many times a district will need another judge and they're not going to get one added by the Legislature because of fiscal constraints and so it's important for the commission to hear what they have to say, why they need a judge and the impact on availability to the judiciary by the people in that district if they don't get another judge. The fact...I'm not so concerned about abolishing the Judicial Resources Commission and assigning those duties to the Supreme Court, although we got pretty...we get pretty good at it over a period of time. Our terms are for six years and we have a lot of hearings in six years, hear a lot of testimony and understand the different concerns in the different parts of the state. So the lack of public hearing is of great concern to me. The commission has done good work while I've been on it. I'm one of 17 members and so it...there are laypeople, judges, and lawyers. And it's been effective. Now Senator Hilgers may ask me the question about I think about why we didn't respond. I didn't know until today that that was an issue. I assume the inquiry would have been directed to the chairman who is a Justice of the Supreme Court, Judge Stacey. I didn't...we had a discussion about this very bill at our last meeting. I...that didn't come up and I have to say I don't have the answer. My time is up. I appreciate being here. I would not like to see a commission that's been active and effective for 25 years, a quarter of a century, abolished. I don't know that our recommendation has ever been turned down by the Legislature, so I think that the Legislature has paid attention to what we say and certainly we appreciate that. Again, my time is up. Thank you for allowing me to be here and I would answer any questions. [LB644]

SENATOR MURANTE: And I do have one. In terms of process, does the Supreme Court make recommendations to the Judicial Resources Commission first or do they just do their thing? [LB644]

MARK SIPPLE: They do their thing. They don't make recommendations. There is a member of the Supreme Court on the commission and, of course, we make motions and vote and that. The member of the Supreme Court is always the chairman of the commission and they vote, but they don't take a position,... [LB644]

SENATOR MURANTE: Okay. [LB644]

MARK SIPPLE: ...except by the vote, and discussion on any motion certainly could take a position. [LB644]

SENATOR MURANTE: Sure. [LB644]

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SENATOR HILGERS: Thank you, Mr. Chairman. Thank you very much for being here and for your testimony. [LB644]

MARK SIPPLE: Thank you. Thank you. [LB644]

SENATOR HILGERS: I really found it valuable. I was going to ask you that question. I do have a slightly different question,... [LB644]

MARK SIPPLE: All right. [LB644]

SENATOR HILGERS: ...which you may have only...I'm going to ask you to respond to one of the things that Mr. La Grone said, and I understand, to be fair, you might have just heard it for the first time here. And I wouldn't be asking except that I respect your deep knowledge and experience of this commission and want to see your response. As I understand Mr. La Grone's...what he said earlier is that the reason why, in his view, this commission should respond falls within the commissions that need to respond to this statutory requirement is because if you read it differently, if you read it...if you held that the commission was actually part of the judicial branch it would be unconstitutional. Do you have any particular response to that argument? [LB644]

MARK SIPPLE: Well, I respond this way. Before, more than 25 years ago, I was part of a lawsuit representing State Senator Robak in which we filed a direct action in the Supreme Court asking that the prior Judicial Resources Commission be held unconstitutional on a separations of powers argument. And the reason that we made that argument and a temporary restraining order was granted, which was a signal by the Supreme Court that we likely would be successful, is because the old Judicial Resources Commission didn't make recommendations. They had the final decision. They had the final say-so and we felt that was a violation of separation of powers. We had an issue in the district...the old 21st Judicial District where Columbus is, now the 5th Judicial District where we lost a judge by the actions of the old Judicial Resources Commission. The constitutionality of the present commission seems clear by the fact that we merely make recommendations to the Legislature. We do not have final decision-making power, only recommending power. [LB644]

SENATOR HILGERS: I had no idea that you're part of that lawsuit that directly bore on my question. [LB644]

MARK SIPPLE: Yeah, it's been a long time. [LB644]

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SENATOR HILGERS: And the argument at the time was that it aggrandized the power of the legislative branch and (inaudible). [LB644]

MARK SIPPLE: You're right. [LB644]

SENATOR HILGERS: Thank you very much. [LB644]

MARK SIPPLE: Yeah, that was the argument. [LB644]

SENATOR MURANTE: Thank you. Any final questions? Seeing none,... [LB644]

MARK SIPPLE: Thank you. [LB644]

SENATOR MURANTE: ...thank you for your testimony. [LB644]

MARK SIPPLE: Thank you. [LB644]

SENATOR MURANTE: Welcome. [LB644]

TIM ENGLER: (Exhibit 7) Good afternoon, Chairman, members of the committee. My name is Tim Engler, T-i-m E-n-g-l-e-r. I'm here today testifying on behalf of the Nebraska State Bar Association. Also going to be addressing my comments to Section 12 of the bill which deals with the Judicial Resources Commission. In light of Mr. Sipple's testimony, I'm going to alter mine and shorten it up a little bit because I think he gave you some excellent background. We, of course, oppose the elimination of the Judicial Resources Commission because it provides such a valuable resource to the state of Nebraska and the citizens of the state of Nebraska. In a nutshell, our mission is to strive to ensure equal access to justice for all Nebraskans, and that's a difficult challenge in this state because of our urban rural makeup. Access to justice in Omaha or Lincoln is a lot different than it is in Chadron, O'Neill, Boyd County. Whereas in maybe Lincoln and Omaha you're looking at maybe three or four hours to see if you can get to see a judge because of a crowded docket, in other parts of the state you're looking to have to drive three or four hours to see a judge or only be able to see a judge once every three, four weeks. Those are access to justice issues that this Resources Commission looks at very carefully every time it meets. It views weighted caseload studies, not just the number of cases a judge handles but we weight those studies to determine do they have to travel. A criminal case, a murder case is more intense timewise than some other cases. And so we want to compare apples to apples so that we make sure our limited judicial resources are spread out through the state in a way that gives everyone equal access to that justice. Really, this is a commission who does a wonderful service and it

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costs the state nothing. They're all volunteers. There is no extra added expense. So why would you want to eliminate a commission that is working very hard to ensure equal access to justice? I'm more than happy to answer any questions. [LB644]

SENATOR MURANTE: Thank you very much. Senator Hilgers. [LB644]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you very much, Attorney Engler, for your testimony. I appreciate everything you said. Do you have any thoughts as to my question regarding the failure to respond to the committee's inquiry? [LB644]

TIM ENGLER: It's an excellent question. The Bar Association or the president-elect of the Bar Association did not weigh in on that issue. In fact, I wasn't really aware of this process and this committee's jurisdiction until today and seeing what you do. And I can tell that there is frustration among the committee members that you have an assignment, you have a task that you need to fill and it is a very difficult task when you're not getting the information that you need to make your decision. I'm not sure I can weigh in on that because we didn't, but I would really want to make sure you didn't throw the baby out with the bathwater, and that's what I somewhat see is the process is getting in the way of doing something...of not doing something that would be a mistake for the state of Nebraska. [LB644]

SENATOR HILGERS: I appreciate that. Thank you. [LB644]

TIM ENGLER: Yeah. [LB644]

SENATOR MURANTE: Any final questions? [LB644]

TIM ENGLER: Thank you for your time. [LB644]

SENATOR MURANTE: Seeing none, thank you for your testimony, much appreciated. Senator Wickersham of the "Fighting" 49th, welcome back to the Government Committee. [LB644]

BOB WICKERSHAM: Well, excuse me, Senator, the 49th, as it was constituted when I served, is not exactly the 49th as it's presently... [LB644]

SENATOR MURANTE: (Laugh) It's the same number. [LB644]

BOB WICKERSHAM: ...presently constituted, but I'm... [LB644]

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SENATOR MURANTE: I'm a humble successor to yours, Senator Wickersham. [LB644]

BOB WICKERSHAM: ...I'm happy to share the number with you. And, Senator, I would note that when I served it was the "Big Sky" district. I don't know if you can claim that appellation. [LB644]

SENATOR MURANTE: Senator Landis is no longer in the Legislature and he stopped naming districts, so I don't know. [LB644]

BOB WICKERSHAM: He had the "Garden" district. [LB644]

SENATOR MURANTE: He had the "Garden" district, absolutely. [LB644]

BOB WICKERSHAM: Yeah. Well, that was then; this is now. For now, my name is Bob Wickersham, B-o-b W-i-c-k-e-r-s-h-a-m. I'm appearing on my own behalf. The bill came to my attention, frankly, in the newspaper and I read that there was a proposal to abolish the Judicial Resources Commission. I didn't know what rationale the committee might have for proposing that, but I was hoping that you'd be interested in my rationale as one of the authors for the amendment that created the Judicial Resources Commission, as Mr. Sipple noted, 25 years ago. Now Mr. Sipple was correct in advising you that prior to that there was another Judicial Resources Commission. That one was...the constitutionality of that commission was called into question by the Supreme Court and the Legislature responded. So why those 25...more than 25 years ago did two Legislatures decide that there was a need for a Judicial Resources Commission? I think you've heard hints of that from Mr. Engler and again from Mr. Sipple, Mr. Engler citing the need to provide access to the courts throughout the state and that the needs of various parts of the state vary substantially because of population, because of distance, because of types of cases, etcetera. Those kinds of considerations were explicitly a part of the legislation that created the current Judicial Resources Commission. Those were modified slightly in 1995, but it appears that the commission has kept those, even though they're not explicitly statutory considerations, has kept them as a part of their considerations, and I'm more than happy to hear that. The other reason but the more political, I mean characterize it in this fashion, the more political reason for creating the Judicial Resources Commission was something that in the halls we would characterize as stealing judges. Let's say Lancaster County needed a judge, and that was true in 1992. Nobody disagreed that Lancaster County, in 1992, needed a district judge. But fiscal constraints overrode other considerations and nobody was going to fund a new district judge for Lancaster County. So one of the resolution...one of the ways to get a new judge for Lancaster County was to change the boundaries of districts, other districts in the state, and move a judge. You steal a judge. Now there were a variety of us who thought that probably wasn't the way to do business because they were going to steal a judge from western Nebraska. And

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luckily, we were able to have allies who also thought not only was it inappropriate to get a judge from western Nebraska but that wasn't the way to do business. We didn't know what we were doing. We didn't know much about caseloads. We didn't want to argue in committee about caseloads. I was on the Judiciary Committee, by the way, at that time. We knew nothing about an appropriate basis for assigning a judge to Lancaster County or taking one from western Nebraska, nothing objective. It was all subjective. It was to solve our problem, not to solve the problems for our citizens, how do we solve our problem. That's not the right basis. So the Judicial Resources Commission came into being again, this time as an advisory body, and from what I'm hearing today has served the functions that I and the others who enacted the amendment and eventually passed the bill intended. And I hope that for whatever probably, I would characterize them as, extraneous reasons that the commission is not abolished. [LB644]

SENATOR MURANTE: All right. Thank you for your testimony. Are there any questions? Senator Wayne. [LB644]

SENATOR WAYNE: Can you explain why your 49 was better than Senator... (Laughter) [LB644]

BOB WICKERSHAM: I, you know, to say whether something is better or not is difficult. It is different. (Laughter) [LB644]

SENATOR MURANTE: I have a few comments but we'll share them off the microphone. Any additional questions? Seeing none, thank you for your testimony. Welcome. [LB644]

JASON AUSMAN: Thank you. Good afternoon, Senator Murante, members of the committee. My name is Jason Ausman. I'm here this afternoon on behalf of the Nebraska Association of Trial Lawyers in opposition to LB644. I have nothing else to add here other than that we are here in support of a more independent judiciary. We think LB644 has the potential to move us away from that. I don't have an answer to your question, Senator, as to whether there is a duty to respond. I do want to tell you that I heard about this issue for the first time last week. And if we are truly here today over a lack of communication on that issue, I would join in the frustration of the committee on that, so. [LB644]

SENATOR MURANTE: Okay. Any final questions? Seeing none, thank you for your testimony. [LB644]

JASON AUSMAN: Thank you. [LB644]

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SENATOR MURANTE: Welcome. [LB644]

JOHN AMAN: Thank you. Senator Murante and other members, my name is John Aman, J-o-h-n A-m-a-n. I came to Nebraska in 1983 really to go to law school here and I planned to stay here, and it looks like it's worked out. I have been a practicing defense attorney, criminal defense attorney since 1987 and I serve on the Judicial Nominating Committee for the 2nd District. I've heard some testimony here and I'm not going to try to counter them, but I want to give some more details, especially in answer to Senator Wayne's questions. The way the Bar Association works in selecting the members who will be on the Judicial Nominating Committee is this, that there are four appointed by the Governor. We've been over that. And traditionally, the Governor has kept that two and two, and there is no Independent on that although I think there could be. The Bar Association takes applications or you can just write in to the bar and say, I want to be considered for the Judicial Nominating Committee. That's before you know how much time it takes. (Laughter) And then they'll put your name on a ballot. There is...you can write them a note, you can call them, and your name goes on a ballot. That ballot comes out (inaudible) different colors, but usually it comes out just with one on the Judicial Nominating Committee, and all of the people who are requesting to be on that committee are listed and they're listed in the three groups: the Democrats, the Independents, and then the Republicans. And you may vote for four. No more than two of any can be from one party. So if there's five Democrats running and there's three Republicans, you can vote for two of the Democrats but you can't vote for...you know, it may eliminate you voting for more Republicans. So that's the way it works. Those ballots are sent in. They're anonymous. They're counted. And then you get a phone call from the Bar Association saying you've been elected. I was elected four years ago and I've just been reelected. And I didn't know what I was getting into but I'm so glad I did. My first, and I've been through...I've been involved in the selection of four county judges. We replaced six or we've had seven and we've replaced four in the last. We only have the oldest remaining judge, not in age but in service, is Laurie Yardley, and we have five others that have just been wonderful. Those...I want to tell you what happens. I can't tell you the...I can't give you the footnotes on these, but I want to tell you how it works when we meet. First of all, we get a packet on each and every person who is putting in for the judgeship. That packet is thick. For some it's very thin. But it has all your education. Imagine everything you've ever done from the time you graduated from 6th grade on is in a packet, including medical, sometimes medical histories, their financials are all in there. And it's quite confidential. We turn that packet in at the end and it is completely destroyed. We are not allowed to keep it. We have to wipe it off our computer. So that is the confidentiality part. It is gone. And to make that public, I've read some incredible things and you're the keeper of secrets at that point. You can't ever talk to anybody about what you hear in the committee. We can't talk about what...how the commission...how the committee worked in terms of the decision making. We can't talk about any individual. If you know something about somebody, you have to just act like you don't know it. So it's a tremendous responsibility, not so much for the four lay members who may never see these people again. But for an attorney who practices with all the

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other attorneys it becomes a happy burden. Second of all, we have...the way it's set up we can have no more than two from one party and then one from the other two, and I'm lucky to be the Independent. Thirdly, when the commission actually meets, I have been through four of these now and I'm getting ready to do the fifth one this March, I have never heard a political party statement. I've never heard somebody say, well, we need to send some Republicans up, or shouldn't we throw in some Democrats. It never comes up and nobody ever talks about it in the public forum. You kind of know sometimes but you never talk about it. Somebody said something about the laypeople that the Governor nominates or actually puts on the committee and they said, well, you know, what's the chance of having just a common laborer on there? Well, one of our laypeople is a retired locksmith with Lincoln Public Schools for 40 years, and he shows up in just a little better than bib overalls and we love him. He makes his comments and it's educative and it's eye-opening. The person that sits next to me usually is Kathleen Thuman, and if you know anything about banks around here, Kathleen Thuman has been on that committee now, I think she said, for 12 years. She's starting her last time. We can't be on any more than eight years...or four years...eight years, two four-year terms. And that keeps the Judicial Nominating Committee fresh. And in answer to your question, not...Senator Wayne, I'm not sure where those incidents occur but they don't occur in the 2nd District. We have had people who came up...well, Rod Reuter, who was a prosecutor with the Lancaster County office, Lancaster County Attorney's Office, applied five times and he got out five times. He's now Judge Reuter. You know, you can just keep knocking on the door till you get in. But that's the way the thing works. That's just the mechanics of it. I oppose this bill because it would interrupt with what I think is a perfect system in the Judicial Nominating Committee, at least in District 2. [LB644]

SENATOR MURANTE: Okay. Thank you very much for your testimony. Senator Hilgers. [LB644]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Attorney Aman, for being here, for your service on the commission. Ask you the same question: Any additional response to the commission's failure (inaudible)? [LB644]

JOHN AMAN: Yes, and I'll answer your question with an analogy: I've never had a district judge, who had the power over me, ask me to write a brief that I didn't write. (Laughter) If you know where the power is, if you know where the power is and you know who's got the strings, you do what you're told to do, even if you want to start it off with, I really don't know why I'm writing this brief, but the law is clear on...but, you know, you can hang yourself or you can other people hanging. So that's my view on that. [LB644]

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SENATOR HILGERS: My second question: Is that locksmith named Paul Claus by chance?
[LB644]

JOHN AMAN: I think it is. [LB644]

SENATOR HILGERS: He lives in the "Fighting" 21st and I met him going door to door. I didn't know he served on the commission. [LB644]

JOHN AMAN: Yes, and he's a wonderful guy. [LB644]

SENATOR HILGERS: He is. [LB644]

JOHN AMAN: We love him. And I want to address one other thing. That commission--and I know I'm going over my time--that commission, when we're in session, is a free-for-all. There's no difference between the laymen and Kathleen Thuman, who's a brilliant, smart person, and we have...and we don't argue. We discuss. Judge Cassel who is our leader, something was said about we can only...we narrow it down to two or three, and that's not true, not in our case. We have sent five to the Governor. I think he'd like us to narrow it down to three, but we have sent as many as five over to the Governor. I believe that was the most we ever sent, maybe six. But at one point we had ten applicants. And things that will eliminate an applicant is if he had...he got arrested for or he got cited for an assault at a country club. That's pretty much going to throw you out. We had one person who said, well, my law career is not working out so I thought I'd be a judge. (Laughter) So we have our humor. So that's all I have. Have any questions? [LB644]

SENATOR MURANTE: So I do have, relative to the process. And you may not know these questions on a statewide basis. If you don't, I'll seek the information elsewhere. On Judicial Nominating Commissions for the...especially for the attorney side, how many vacancies exist statewide? [LB644]

JOHN AMAN: I don't know statewide. I know that when like my term is going to be up in 2021 and they will meet. They immediately try to fill those because we never know. For instance, filling four vacancies in the last two years is unusual and the first time I did my first homework with the ten people took me 52 hours to go through it, analyze it, and put it in some kind of form. The last time when we had six, it only took me 32 hours. I spent, I totaled up, just thinking about testifying here today, I've put in over 160 and close to 200 hours of going through people's personal lives and making decisions. And then we have an open forum where they give an eight-minute speech. We, I think in the 2nd District, they fill them immediately. Because we thought we were done last year and then, you know, Judge Fox resigned. And so we all looked at each

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other and went, well, we're back in the saddle again. So we've got all...six are new and when Judge Yardley goes, if she goes in the next four years--I don't think she will--we'll have a... [LB644]

SENATOR MURANTE: But to be...I want to make sure I was clear on the question. I was not asking how many judicial vacancies exist. I mean how many vacancies on the Judicial Nominating Commissions themselves exist? [LB644]

JOHN AMAN: No, I don't think any. [LB644]

SENATOR MURANTE: Okay. [LB644]

JOHN AMAN: Because the way...and that's how I was moved up, I was the alternate. [LB644]

SENATOR MURANTE: Okay. [LB644]

JOHN AMAN: So everybody has an alternate and that alternate. If...and my...the person who was actually elected four years ago as the Independent, moved out of jurisdiction and that's one of the requirements. [LB644]

SENATOR MURANTE: Let me ask another question that maybe is obsolete. The statute states, as I understand it, that in the event that nobody runs for one of these judicial nominating commission posts on the lawyer end, that the executive board of the bar association gets to nominate lawyers to fill those spots. How often do they exercise that authority? [LB644]

JOHN AMAN: I've never heard it done in 30 years of practicing law. [LB644]

SENATOR MURANTE: Okay. [LB644]

JOHN AMAN: In fact, the kind of the undertow is that you really don't want to get on this committee until you've practiced about 15 or 20 years (inaudible). [LB644]

SENATOR MURANTE: Why is that? [LB644]

JOHN AMAN: You don't know your judges. Just because you get mad at a judge, you want them replaced. And when they go you think, oh, I ought to be on that committee. No, it's not the way it is because you...even judges that beat you up, you learn something. So that's just not the way.

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And you kind of get the older judges, well, if you're an attorney. I'm trying to make you a (inaudible). [LB644]

SENATOR MURANTE: (Laugh) The practicing attorneys don't agree with that assessment. (Laughter) [LB644]

JOHN AMAN: If you take it in the right vein. I think that it's...you want to get that kind of sagacity and wisdom as you get into it, because what you would gripe about at 7 years you don't gripe about at 15 because you learn more. [LB644]

SENATOR MURANTE: Got it. [LB644]

JOHN AMAN: And then when you really get to know it, you retire. (Laughter) [LB644]

SENATOR MURANTE: Okay. Thank you very much for your testimony. [LB644]

JOHN AMAN: Thank you. [LB644]

SENATOR MURANTE: We appreciate it. Welcome. [LB644]

MELANIE WHITTAMORE-MANTZIOS: (Exhibit 8) Good afternoon. Are you ready for me? [LB644]

SENATOR MURANTE: I am. Go ahead. Thank you. [LB644]

MELANIE WHITTAMORE-MANTZIOS: Melanie Whittamore-Mantzios, and it's M-e-l-a-n-i-e W-h-i-t-t-a-m-o-r-e-hyphen-M-a-n-t-z-i-o-s. I still have time. (Laughter) I am the current president of the Nebraska Chapter of the American Board of Trial Attorneys...or Advocates, and this organization's purpose is to foster saving the jury system and the independence of the judiciary. We are testifying in opposition to LB644 for the reasons you've already heard. We want to preserve the independence, the bipartisan nature of the Judicial Nominating Commission. I really have nothing else to say unless you have questions. [LB644]

SENATOR MURANTE: Are there any questions? Seeing none, thank you for your testimony. [LB644]

MELANIE WHITTAMORE-MANTZIOS: Okay, great. Thank you. [LB644]

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SENATOR MURANTE: Mr. Mueller. [LB644]

WILLIAM MUELLER: (Exhibits 9 and 10) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association. I want to make three very quick points. You had lots of witnesses. On page 15, lines 7 through 11 of the bill, you are striking language that is very important. Our constitution, Article V, Section 21, says that you can't be a candidate for a judicial vacancy if you've served on the commission. Well, that just makes sense. If you are the jury, you can't be a lawyer and go back into the jury box. The difficulty is you can be elected to a nominating commission and have no interest in serving as a judge and you have never met with the commission. The commission has never met. Then three years, four years later there's a vacancy and you think, you know, my professional situation has changed; I'd like to put my name in. This is a way that we have defined serving on the commission to be that you were a member of the commission at the time there was a vacancy. That's important to keep that language in here. Secondly, I've handed out to you two documents. Number one is the Web page showing the last ten years of minutes of the Judicial Qualifications...of the Judicial Resources Commission. It is confusing, all these commissions, Senator Lowe. And just to point out to you minutes of the Qualifications Commission as well as the Resources Commission are on the Supreme Court's Web site so it's not a secret that they're meeting. The members are on the Web site. More importantly, I've handed out to you a three-page document that I put together that gives you a history of Nebraska's Judicial Resources. Great timing, this morning you talked about creating two juvenile court judges in Douglas County. You will see that the Legislature has been about this work since we've become a state. And you have on that time line when the first Judicial Resources Commission was created, when the second one was created. You've seen that we have in fact moved judges from western Nebraska to eastern Nebraska. We have created judgeships where you would guess we would create them, in the juvenile court judgeships in Lancaster, Douglas, and Sarpy County. We've created district court and county court judgeships in Sarpy, Douglas, Lancaster County. We've created a judgeship in Kearney. We have moved counties to better use judicial resources. That's also in statute. You decide which counties are going to be in which judicial district. My light I think is on. I'm colorblind; I don't know. (Laughter) I'd be happy to answer any questions that the committee may have. I think I've talked long enough. [LB644]

SENATOR MURANTE: Thank you, Mr. Mueller. Are there any questions? Seeing none, thank you very much. [LB644]

WILLIAM MUELLER: Thank you. [LB644]

SENATOR MURANTE: Additional opposition testimony to the judiciary portions of LB644. Okay, before we...is there any neutral testimony on this provision? Before we proceed to the last

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item on the agenda, I'd like to make at least one note. I think it is important for the record. There are six members of this committee who are freshmen. There's one sophomore, and I am the junior who will not be here the next time this committee has to do another boards and commissions report. If history is a judge, the next chairman of this committee is probably serving on this committee right now. At that time, this committee is going to have to make another determination four years from now: How are you going to respond to boards and commissions who do not respond to this committee's request for information? I have been convinced that the judiciary is legally obligated, that we are required to ask the judiciary for this information. And they refused to respond and we are here today because of that purpose. Four years from now you will all have to make that determination again. How you choose to...how that process plays itself out will be up to you, but I would like you all to make a mental note of this decision and this process on this day because this question is going to represent itself to this committee. And hopefully at that time everybody responds and we don't have any issues, but we'll go from there. And with that said, we will proceed to the Potato Board, which... [LB644]

ANDREW LA GRONE: So the final entity dealt with in LB644 is the Potato Development Committee. That committee advises the Department of Agriculture on promotion of the potato industry in the state of Nebraska. It was included in the bill because, while there are seven spots on the committee, there are 13 potato producers, suppliers, etcetera, in the state of Nebraska. So as there are almost as many spots on the committee as there are individuals in that industry in the state, there was a question of whether the committee was necessary in order to facilitate its purposes. [LB644]

SENATOR MURANTE: Senator Blood. [LB644]

SENATOR BLOOD: Thank you, Chairman Murante. Poor potato people in Nebraska, I'm hoping Senator Lowe helps me with this one too. So what's the difference between Potato Board and Potato Development Committee? [LB644]

ANDREW LA GRONE: So the Potato Development Committee advises Department of Ag, based on the survey that they provided, they advise the Department of Agriculture on the promoting the potato industry within the state of Nebraska. And that's what their purpose. The Potato Board...so I can only speak to the entities that we're dealing with in the bill, and the Potato Development Committee is the one detailed in there. [LB644]

SENATOR BLOOD: So if I remember correctly, reading through the notes you've got opposition to elimination. [LB644]

ANDREW LA GRONE: Correct. [LB644]

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SENATOR BLOOD: And then the concern that you're expressing is not that the Potato Committee doesn't exist, but that it's just not as many people as they potentially could have on the committee? [LB644]

ANDREW LA GRONE: So, Senator Blood,... [LB644]

SENATOR MURANTE: Can I stop you right there? [LB644]

ANDREW LA GRONE: Yeah. Uh-huh. [LB644]

SENATOR MURANTE: To be clear, Mr. La Grone didn't make any decisions. He's here to answer technical questions relative to the bill... [LB644]

SENATOR BLOOD: Okay. [LB644]

SENATOR MURANTE: ...how we got to this point. His opinion about the propriety of what is in the bill, that was my decision that was made. So it's...I don't want to put him in a situation where he is forced to answer opinion questions that are based on my opinion. So I just wanted to make that clear. [LB644]

SENATOR BLOOD: So how do we get those answers? [LB644]

SENATOR MURANTE: You are free to certainly ask me in Executive Session. And in light of the fact that there are... [LB644]

SENATOR BLOOD: Okay. [LB644]

SENATOR MURANTE: ...two people here, you could ask me now if you'd like. [LB644]

SENATOR BLOOD: So I went based on my notes and I thought that they were prepared from you, so I apologize if I put you in an awkward position because that was not my intent. My intent was only to get clarification. So I can ask you? [LB644]

SENATOR MURANTE: Sure. [LB644]

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SENATOR BLOOD: All right. So I'm looking in my notes that were provided that came from you--is my understanding they came from you so I apologize--so it says it's not clear whether the committee is necessary as there are only 13 potato growers and shippers in Nebraska and the committee has seven members. Being from the Ag Department...or Ag Committee--and hopefully Senator Lowe can help me on this--it was made clear that although they are small in numbers they are unified when it comes to potatoes, potato promotion. [LB644]

SENATOR LOWE: They shredded us. [LB644]

SENATOR BLOOD: Pardon? [LB644]

SENATOR LOWE: They shredded us. [LB644]

SENATOR BLOOD: You know, I was going to make some punny jokes as well, but I thought it was too late in the day, so. [LB644]

SENATOR LOWE: Yeah. Okay. It's never too late. [LB644]

SENATOR BLOOD: As I've learned being next to you at Ag. So is that a reason to eliminate? [LB644]

SENATOR MURANTE: I think the number of people impacted by a board and commission in the state of Nebraska is...if the number is exceedingly small, it would certainly be at least part of justification for abolishing that board or commission, which is why we asked the question, how many people are impacted. [LB644]

SENATOR BLOOD: Okay. So it's a... [LB644]

SENATOR MURANTE: Do you need an entire board to help regulate an industry that consists of 14 people? That's a legitimate policy question. (Inaudible). [LB644]

SENATOR BLOOD: So you're telling me, if I hear you correctly, that it's a deciding factor, it can be. [LB644]

SENATOR MURANTE: It's a variable. I don't know if there's any one single determining variable aside from something is obsolete or is sunset (inaudible). [LB644]

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SENATOR BLOOD: Okay. Thank you. [LB644]

SENATOR MURANTE: All right. Seeing no additional questions, thank you. We'll see if anyone from the Potato Development Committee wore out their energy in that Agriculture Committee. Is there anyone here in support of the abolition of the Potato Development Committee? Are there any opponents to the abolition of the Potato Development Committee? Any neutral? The League of Women Voters has no position on this particular...? [LB644]

_____ : (Inaudible). [LB644]

SENATOR MURANTE: Okay. (Laughter) [LB644]

_____ : I think you got my testimony. [LB644]

SENATOR MURANTE: I did indeed. All right, that closes the hearing on the Potato Development Committee and ends our public hearing for the day. Thank you. [LB644]