

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee January 24, 2020

BREWER: Good afternoon, ladies and gentlemen. Welcome to the Government, Military and Veterans Affairs Committee. I am Tom Brewer. I represent the 43rd District, 13 counties of western Nebraska, and I am the Chair of this committee. We have a number of our committee members here today. There are some that are presenting in other committees, so we'll just go ahead and do a quick introduction of the ones we have here, starting on my right with Senator Blood.

BLOOD: Senator Carol Blood, representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

LOWE: John Lowe, District 37.

La GRONE: Andrew La Grone, District 49, Gretna and northwest Sarpy County.

KOLOWSKI: Senator Rick Kolowski, District 31, southwest Omaha.

BREWER: All right. Senator La Grone is Vice Chair. To my right is our legal counsel, Dick Clark, and to my left, the committee clerk, Julie Condon. Today we have two pages, Michaela and Taylor, until 2:00 p.m. I don't think we'll be here past two, but if that-- if we should, then Katie is supposed to come in and fill in. Today we're going to have public hearings on two bills. Today is what we'll call "Secretary of State Day." Both bills are Secretary of State related bills, LB820 and LB822. At this time, I'd like to ask you to please mute any of your cell phones or electronic devices. Please keep in mind that committee members may be using electronic devices either to look up information or to be contacted if they need to go somewhere for another hearing. If you wish to record your attendance, there will be white sheets in the back, on the table, you can record on. If you want to testify, please fill out a green sheet and give it to the committee clerk when you come up to testify. If you are passing out materials, please include 12 copies. If you don't have 12 copies, get your materials to the page and they can make copies. If you're submitting letters, be sure it's done by 5:00 p.m. the day prior to the hearing. Each letter must include your name, address, bill number, and your position on the bill for, against, or neutral. Let's see, no mass emailings will be included. Please be seated in the front of the room if you're planning to testify or-- well, relatively close to the front of the room. When you come up to testify, please state then spell your name for the record. Please speak clearly into the microphone. We will begin bill testimony with the introduction by the senator, with his opening or

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her opening statements, and then followed by proponents, opponents, and those speaking in a neutral position. And lastly, the introducing senator will have a closing. Today we'll use the five-minute light system and again, so everyone knows; green light will be on for the first four minutes, the amber light for the last minute, then the red light. And as a back up, my trusty legal counsel has got a audible alarm set in his computer, which will tell you you've gone too long. With that said, I am going to pass the gavel off to the Vice Chair and go introduce some bills.

La GRONE: And we'll now open our hearing on LB820. Senator Brewer, welcome to your Government, Military and Veterans Affairs Committee.

BREWER: Thank you. Let's make sure I get to the right opening here. Thank you, Mr. Vice Chair La Grone. Good afternoon, fellow senators of the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer. For the record, that's T-o-m B-r-e-w-e-r. I represent 13 counties of the 43rd Legislative District in western Nebraska. I'm here to introduce LB820. I'm introducing this bill on behalf of the Secretary of State, who will follow me after this brief introduction. LB820 is a cleanup bill that makes one very major change to the law that governs voter registration. The bill is only five pages long. I will call your attention the top of page 3, which contains the minor change. As you can see, the language removes the requirement for someone registering to vote to provide home and work phone numbers. This bill also continues to practice the letting of citizens indicate whether they do or do not want to have their phone number published on a list of registered voters. I would be happy to answer any questions and I will be followed by the Secretary of State if you need details. Thank you.

La GRONE: Thank you, Senator Brewer. Are there any questions? Seeing none, thanks for your opening. We'll now move to proponent testimony. Mr. Bena, welcome back to your Government, Military and Veterans Affairs Committee.

WAYNE BENA: Thank you. Thank you, Mr. Vice Chairman and members of the Government, Military and Veterans Affairs Committee. My name is Wayne Bena, W-a-y-n-e B-e-n-a, and I serve as deputy Secretary of State for elections, here on behalf of Nebraska's Secretary of State, Robert Evnen, in support of LB820. The two bills being heard today are the only submissions of the Secretary of State's Office regarding election law this year-- you're welcome-- and the first time in six years that a bill that I have proposed has been less than 30 pages long. So

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again, a little less to read. And given their length, I should not have to ask for additional time today. So this bill is a result of ongoing discussions we have with our county election officials regarding the statewide voter registration system. Our counties have asked for the ability for the use of different phone numbers within the system, given what phones people typically use now. Since our voter registration database needs to mirror the language in state statute of what can be listed, I'm here asking, today, for a minor change. Instead of requiring a specific home and work as the only thing listed on the voter registration form, we worked with bill drafters to change the statute to require just generic telephone numbers, allowing the ability to customize the form and what we list on the form and ultimately the voter registration system. Nothing will change right away if this statute is approved. However, when we make the next upgrades to the voter registration system, we'll be able to have better flexibility in what we use going forward. My hope is that this could be a consent calendar item or packaged with other election bills that the committee so chooses. Thank you for your attention and I can answer any questions that you may have.

La GRONE: Thank you, Mr. Bena. Are there any questions? Senator Kolowski.

KOLOWSKI: Would you elaborate, please, sir, on the extension of those two numbers, why that compared to an address?

WAYNE BENA: So address is still required. However, in the phone numbers, what we're finding is, is that to make it more clear-- because some people don't have landlines anymore and they would rather have a cell. So we might want to use "cell and other" or "home or other" instead of the two specific words that we have to use right now because what's in the statute, home and, and work. If we find that we're using more cell phones or people's work numbers are changing more often, we're able to use the numbers that are most widely used by the registered voter to contact them. And again, the same capability of making them unregistered numbers within the voter registration system exists, so.

KOLOWSKI: What would you need to contact them about?

WAYNE BENA: If, if there was something wrong with their registration. There was-- or in the midst of them sending an early ballot application, there was something wrong that we needed to contact the

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voter, having that information to, to get a hold of the voter is important. That's one method of getting ahold of them.

KOLOWSKI: I don't sign up by being-- having a phone, I sign up with an address, do I not?

WAYNE BENA: Correct, um-hum.

KOLOWSKI: Then why is the phone this important?

WAYNE BENA: The phone number is, is what's always been required on the application or what-- you don't have to list the phone number and it can be unlisted. It's just with-- this is specific to numbers that can be listed. We have no-- I cannot change the voter registration form to, say, "cell phone" without going into the statute specifically.

KOLOWSKI: OK, thank you.

WAYNE BENA: Um-hum.

La GRONE: Thank you, Senator Kolowski. Are there any additional questions? Seeing none, thanks for coming down.

WAYNE BENA: Thank you.

La GRONE: Are there any additional proponents? Commissioner Shively, welcome back to your Government, Military and Veterans Affairs Committee.

DAVID SHIVELY: Afternoon, Senators. My name is David Shively, D-a-v-i-d S-h-i-v-e-l-y. I'm the Lancaster County Election Commissioner. I also serve as president of the Nebraska Association of County Clerks, Election Commissioners, and Register of Deeds. We're just here today to say we support this change. We do find more people without landlines don't-- have cell phones and not landlines. And it's very specific on the, on the current registration form, so we would like to see that change. That gives us some other options in our statewide voter registration system to do that.

La GRONE: Thank you, Commissioner Shively. Are there any questions? Seeing none, thanks for coming down. Are there any additional proponents? Seeing none, is there any opposition testimony? Seeing none, is there any neutral testimony? Seeing none, Senator Brewer, you're welcome to close. Senator Brewer waives closing. That will

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close our hearing on LB820. We'll now move to our hearing on LB822.
Senator Brewer, welcome back.

BREWER: Thank you, Mr. Vice Chair. And again, good afternoon, fellow senators of the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer, T-o-m B-r-e-w-e-r, and I'm representing the 13 counties of western Nebraska-- and I should have done that for you, thank you. I'm here to introduce LB822. Again, I'm introducing this on behalf of the Secretary of State, who will be available to follow me afterwards. This is also a cleanup bill that makes two small changes to our election laws. In this case, the bill is dealing with recall elections. I call your attention to, again, page 3 of the bill. First, it clarifies that the 15 days afforded to the filing clerk after the filing of the petition are business days. Second, it changes the timeline for ordering and holding a special recall election. Currently, there must-- this must occur between 50 and 80 days of notice being received by the official to be removed. This bill would instead initiate the timeline for holding the election upon receipt of the notification by the filing clerk. The election would be held no sooner than 50 days after certification to the election commissioner or the county clerk. Again, this is a follow up from LB246 from last year. With that, I'll be happy to answer any questions. And again, I'll be followed by the Secretary of State if you have more details.

La GRONE: Thank you, Senator Brewer, for your opening. Are there any questions? Seeing none, thank you for that. We'll move to proponents.
Mr. Bena.

WAYNE BENA: Good afternoon, Mr. Vice Chairman and members of the Government, Military and Veterans Affairs Committee. Again, my name is Wayne Bena, W-a-y-n-e B-e-n-a, and I serve as deputy Secretary of State for elections here on behalf of Nebraska's Secretary of State, Bob Evnen, in support of LB822. Last year in the Secretary of State's election omnibus bill, LB246, which was ultimately rolled into LB411, the committee's priority bill, we made some good faith changes to the recall process to align the notice requirement of holding a recall election from 30 to 75 days to 50 to 80 days in order to give the same minimum 50-days notice as any other special election in state statute. Unfortunately, due to the fact that in these elections the clock starts when the official being recalled is notified and not the political subdivision itself, it led to a few scenarios in which that an election day could not be properly set within the time frame that also met the requirements that special elections are to be held on the

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first Tuesday after the second Tuesday in an allowable month. In addition, we had a number of unique situations in the administration of recall processes this past year that required some adjustments within this statute. This bill incorporates those changes as follows: (1) allows county election officials 15 business days to process petition signatures, rather than calendar days. In some counties that had the possibility of a countywide and/or a large metropolitan city, it would have taken quite a number of days to do that, as well as some counties had multiple ones coming in at the same time. This will just allow them to not have to work holidays or weekends to possibly get that job done. The second part would move the actual notice, or the clock starting from setting the election date, from the notification of the official being recalled to the actual notification of the political subdivision. What had happened-- in one instance, the official being notified about election-- recall election being called happened the day after a normally-scheduled meeting. That board wasn't scheduled to meet for another two weeks. And at that meeting in two weeks, both the 40-day-- 50-day and 80-day would have been out of the question. So an emergency meeting had to be held in order to maintain the statute. It wasn't the intent for someone to have an emergency meeting. It was really just the intent to give the 50-days notice in order to hold a special election like any other election. The next was to give the political subdivision 21 days to set the election now that we've made the notice requirement when they're notified, which would be at the first meeting that they held after being notified. They may not be ready right away to actually get all the paperwork done to have it ready. So since most boards meeting-- they're on a weekly or biweekly basis, this would allow enough time for that paperwork to be able to be submitted to the election commissioner to get that election stated-- started. Also, it also sets a time in which a political subdivision does not set the election and the person who was interested or the sponsor of the petition could go to district court and have that election set. And there have been some instances in this state in which the political subdivision has not set the election and this will set a specific date by which they could go to court versus waiting a few months for the first 50 days of the election or 80 days to pass. Next, require when setting the election, it would be in the first available month that at least gives 50-days notice to the election commissioner and is set on the appropriate Tuesday of that month. The 50 to 80-days wall was intended to have two months out of the specific timeframe to set that election based upon the notice and also having to have those elections on the second Tuesday after the first Monday or first Monday after-- or first Tuesday after the second

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Monday, whichever you prefer. But we ran into some problems getting into that 50 to 80-day range. Now what we're saying is, is that the political subdivision must set it the first opportune month that's on the appropriate day that allows 50-days notice so we can put some finality to this. Recalls are-- can tear a community apart and, and we want to get the-- many people just want to get this thing done, one way or the other. This sets the exact time versus a range. As with LB820, our hope is this can be a consent calendar or packaged with other election bills that the committee so chooses. Thank you for your attention and I can answer any questions that you may have.

La GRONE: Thank you, Mr. Bena. Are there any questions? Senator Hansen.

M. HANSEN: Thank you, Vice Chair La Grone. Thank you, Mr. Bena, for coming. Just how common are recall elections in Nebraska?

WAYNE BENA: You know, I had thought that question would come up so I was having my team give me those numbers and I forgot to ask for them before I came over here. But I will say this past year was robust--

M. HANSEN: OK.

WAYNE BENA: --more than I've seen, you know. I didn't see many in 2018 because it was a normal election year. This-- and prior to me being in this, you know, I only had one, ever, in my eight years in Sarpy County. However, I-- there was, there was, there was a kind of running joke. I took at least one call a day from a county regarding questions regarding some part of a, a recall process. So I will say is-- while we had good intentions of what we did in that bill last year, last year, it's always good to see what these do in practice. And we're trying to right those wrongs that we saw that-- and trying to make it a little bit better. But it was a larger year for recalls, this past year, than I'm used to.

M. HANSEN: OK, thank you.

La GRONE: Thank you, Senator Hansen. Are there any additional questions?

KOLOWSKI: Yes, please.

La GRONE: Senator Kolowski.

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KOLOWSKI: Thank you, Mr. Chairman. Could you categorize the, the areas of recall? What were the three most prevalent reasons why the public wants to do this?

WAYNE BENA: You know, we don't get, necessarily, reasons. You know, we-- that doesn't filter down to us. I would say is-- what [SIC] we saw them the most were county commissioners, mayors, and city council and school boards, where the-- if, if the top--

KOLOWSKI: Categories.

WAYNE BENA: Yeah, the categories. But in regards to reasons that-- I, I hear a rumor and-- but nothing specific that I could, I could tell you. So to the specific--

KOLOWSKI: Hides taxes, is it usually?

WAYNE BENA: Votes on certain issues or you know, ambulance contracts, the retirement of, I think, a retirement police dog, for example. So, you know-- yeah, of whether or not--

KOLOWSKI: OK.

WAYNE BENA: --the handler could take it or not, from what I have-- if memory serves me, so.

KOLOWSKI: Thank you.

La GRONE: Thank you, Senator Kolowski. Are there any additional questions? Seeing none, thanks for coming down. Are there any additional proponents? Commissioner Shively, welcome back to the Government Committee.

DAVID SHIVELY: Thank you. My name is David Shively, D-a-v-i-d S-h-i-v-e-l-y. I'm the Lancaster County Election Commissioner and also representing the Nebraska Association of County Clerks, Election Commissioners, and Register of Deeds. We were-- just wanted to make sure that you are aware that we are supportive of this, particularly the increase in the number of business-- going from calendar days to business days on verifying signatures. That does give us a little bit more opportunity, especially if you have a large jurisdiction, that you have a large number of signatures to verify and also harmonizing the-- a special election for this to be on the same day that all other special elections would be held. We think that, that those are both

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important parts of this, this bill. And we just want to make sure that you are aware that we're supportive of it.

La GRONE: Well, thank you for that testimony. Are there any questions? Seeing none, thanks for coming down. Any additional proponents? Ms. Abraham, welcome back to your Government, Military and Veterans Affairs Committee.

CHRISTY ABRAHAM: Thank you, Mr. La Grone and members of the Government Committee. It's so nice to be here. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities. And I-- we first just want to thank Senator Brewer and the Secretary of State for making this change. We actually, just a couple of weeks ago, received a call from a village attorney and the [INAUDIBLE] villages only meet once a month. They meet once a month. And she called and said, I cannot set this recall in the timeframe that's allowed in statute. As you heard from Mr. Bena, the timeframe was shrunk last year and they just could not do it based on when they met and when they could get village board members to come. It's trickier than you might think, sometimes, to get a quorum of village board members, particularly when one of them is the subject of the recall and they don't think they should be there. It gets complicated. She couldn't set the date and then was asking questions of us; if it goes to district court and the district court has to sign it, are we going to be responsible for attorneys fees? What's our liability? So we had some concerns about this. And then we're so happy, of course, to see that this bill was introduced. We are very much in support of this bill. We think this is going to take care of the problems that our municipalities [SIC]-- excuse me, municipalities have seen. I want to also just say that the league, and maybe Mr. Bena would agree with me, we would call 2019 the year of the recall. We could not believe how many recalls we saw last year. Some of these recalls, very legit. Senator Kolowski asked about the reasons; we had a recall of a mayor who got into a bar fight and then when the police officers came, threatened their jobs if they arrested him. OK, maybe that's a good reason for a recall. We have another mayor, an outstanding mayor, who was the subject of the recall because he cleaned up the cemetery. Probably not a good reason to recall someone. And as you know, Nebraska doesn't have any reasons for recall. It's wide open. You can recall someone for any reason and so the league would really appreciate if this committee could do a bit of a deep dive on recalls. We are happy to provide any support you might need, but we would like to look at some other states and what they're doing

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on recall. Do they have a more narrow base by which you can be recalled? Because certainly there are some elected officials that maybe need to be removed from offices. Others-- our mayors are saying I'm just being harassed by recall. It feels like a harassment. So we're hoping with this committee's help, we could maybe thread that needle, which I know is very, very difficult to maybe find out could we write into statute some reasons why people can be recalled and not have these, what we would call, just very frivolous recalls that are really dividing our communities out there? So thank you so much for your time. And I'm happy to answer any questions you might have.

La GRONE: Thank you, Ms. Abraham. Are there any questions? I do have one quick one.

CHRISTY ABRAHAM: Sure.

La GRONE: So on the recall topic, do you think it's a, it's a function of lack of reason or-- and my other question-- another thing that I have seen and tell me if you disagree--

CHRISTY ABRAHAM: Yeah.

La GRONE: --on the subject, I'm curious to-- from your perspective, is, is there-- are they more prevalent in smaller communities where the 35 percent threshold is easier to meet?

CHRISTY ABRAHAM: Yes, and I understand this committee recently looked at an amendment that might increase the number of signatures that, that are required for a recall. And again, we got on the phone with our members to sort of talk about it. And again, you have those mayors who feel like they were subject of a recall for very frivolous reasons, saying, yes, yes, please help increase those--

La GRONE: Um-hum.

CHRISTY ABRAHAM: --increase those numbers. And then you have those communities who had a very problematic member saying, no, no, the signatures where you're at are just fine. And, and that's what makes it really hard for the league, sometimes, to take a position on recalls because it's so all over the spectrum. And so I guess we were just hoping maybe there would be a way to craft some sort of language that said, here are some reasons that you can recall someone, but maybe just harassing someone is not a good reason. But as Mr. Bena said, the reasons are all over the board to recall people, you know?

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And it always feels personal, you know, that the person who is going after the elected official, it's personal for whatever reason, so.

La GRONE: OK. Well, thanks for coming down.

CHRISTY ABRAHAM: Oh, no, thank you. No other questions? OK.

La GRONE: Are there any additional proponents? Seeing none, is there any opposition testimony? Seeing none, is there any neutral testimony? Seeing none, Senator Brewer has waived closing and we do have three proponent letters from the Knox County Election Commissioner and the Sarpy County Election Commissioner and NACO. And then I forgot to read in letters on LB820. They were, again, the Knox County Election Commissioner, Sarpy County Election Commissioner, NACO, and Douglas County Election Commissioner. So that closes our hearing on LB822 and closes our hearings for the day. Thank you.