

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

Government, Military and Veterans Affairs Committee
January 31, 2007

[LB61 LB198 LB361 LB434 LB527]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 31, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB198, LB361, LB61, LB434, and LB527. Senators present: Ray Aguilar, Chairperson; Mick Mines, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Rich Pahls; and Kent Rogert. Senators absent: None.

SENATOR AGUILAR: Good afternoon and welcome to the Government, Military and Veterans Affairs Committee. My name is Ray Aguilar. I'm the senator from District 35, Grand Island, and I'll introduce the other members of the committee. On my far right is Senator Kent Rogert from Tekamah; next to him Senator Russ Karpisek from Wilber; then Senator Mick Mines from Blair; soon to join me on my right will be committee counsel, Christy Abraham; on my left is Sherry Shaffer, the committee clerk; sitting down is Senator Mike Friend from Omaha; followed by Senator Rich Pahls from Omaha; Senator Greg Adams from York; and Senator Bill Avery from Lincoln. Also, I want to take a minute to introduce that we have a young student with us from Southeast High School, John Borstelman, who is in the audience and he's shadowing Senator Avery today. Welcome, John. Bills will be taken up in the following order: LB198, LB361, LB61, LB434, and LB527. Sign-in sheets are at both entrances. Sign in only if you're going to testify and then put the sheet in the box, up here, on this table. If you're not going to testify but would like to be on the record either as a proponent or an opponent on the bill, there's another sheet you can fill out, and those are also on the table by the entrances. Print your name and indicate who you're representing. Before testifying, please spell your name for the record, even if it's a simple name. Introducers will make the initial statement, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. Listen carefully and try not to be repetitive. If you have a prepared statement or an exhibit, give it to the page and he will distribute it to the senators. Turn off your cell phones and pagers. And our pages for today are Adam Morfeld of Sioux Falls, South Dakota; and Bri McLarty from San Antonio, Texas. And we're ready to go on LB198, Senator Schimek, please.

SENATOR SCHIMEK: (Exhibit 1) Thank you, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. For the record, my name is DiAnna Schimek, and I represent the 27th Legislative District, the "Historic District." LB198 is a response to some of the concerns that were raised in the 2006 election regarding something that's called a robocall. And I think you know what they are, but there were several stories that were reported in the press. And it was thought there might be some way of reigning them in just a little bit because some of the robocalls actually almost bordered on harassment. Currently, automatic dialing devices must be registered with the Public Service Commission and permit holders must notify the commission of their intent to deliver political messages. The message delivered by an

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

Government, Military and Veterans Affairs Committee
January 31, 2007

automatic dialer also must be submitted with the application. LB198 does three basic things with regard to political campaigns using robocalls. First, these types of communications can only be made between 8:00 a.m. and 9:00 p.m. in the evening. Second, the identity on behalf of the person the call is being made has to be identified at the very beginning of the call. And third, a campaign can only make one robocall per day to a household, can't be multiple calls. And I don't know if you remember the stories about some of the robocalls, but apparently there were some people who were inundated with great numbers of robocalls from the same candidate or somebody pretending to be that candidate. And I don't want to go into all of that. Originally, as the bill is written, it does not apply to federal races. And the particular instance that I'm thinking about was a federal race. But what we've done and what I would like to have passed out is we have crafted an amendment that would help regulate also the federal races. In order to do this, we have to amend the Automatic Dialing-Announcing Devices Act, the ADAD Act. And what this AM169 does is basically duplicates and puts into those Public Service Commission regulatory statutes what the bill also adds to the accountability statutes. And that's what the accountability...or that's what the original green copy does, amends 49-1474, and the amendment amends 86-236. The Automatic Dialing-Announcing Devices Act addresses solicitation calls in which...or calls in which the caller wishes to sell you something. There are many restrictions on these solicitation calls, including time restraints and identification of the caller at the beginning of the message, both of which are provisions for political calls under the bill as introduced. For this reason, we think that because of a ruling in the U.S. Court of Appeals, Eighth Circuit, that the bill doesn't restrict free speech with this kind of an amendment. So I wanted to bring that to your attention. That's a question that's often raised. It does not treat these robocalls any differently than calls currently being regulated by the ADAD. In addition, the U.S. District Court, for the Western District of Oklahoma recently ruled in favor of that state statute, too. Now you probably all know that the Eighth District is the district in which we reside. There may be some suggestions that we broaden the bill even further and include nonprofits, and charities and so forth. But I think that might be casting too wide of a net. That's really not my purpose here. My purpose here is to have some regulation over political calls so that people don't feel harassed. One of the complications of getting into some of the other arenas and talking about the nonprofits and charities, then you fall under the regulations where political campaigns might have to keep "Do not call" lists. Well, that would be, I think, very difficult for any campaign to do, because there is such a short duration. So anyway, that's why I chose to offer the green bill as is, and suggest that you might want to consider bringing the federal regs into this as well. It's your option, certainly. With that, Mr. Chair, I'd be happy to try to answer any questions. [LB198]

SENATOR AGUILAR: Thank you. Questions for Senator Schimek? Senator Adams.
[LB198]

SENATOR ADAMS: Senator, I know you already addressed it. But the question about

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

Government, Military and Veterans Affairs Committee
January 31, 2007

the constitutionality was the thing that I had first in my mind. And obviously, we cannot necessarily control the message. But what you're saying, according to the Eighth Circuit Court of Appeals, we can control the way in which the message is delivered? [LB198]

SENATOR SCHIMEK: Have some reasonable parameters for delivering the message. You know, there's no reason why a campaign wouldn't be able to deliver a message a day, if they wanted to, under the green copy. But we're saying they shouldn't be able to do it 20 times a day or 5 times a day. That's not to say that an individual might not get five political calls,... [LB198]

SENATOR ADAMS: Right. [LB198]

SENATOR SCHIMEK: ...because they might all be coming from different campaigns on that given day, but to have some way of sort of limiting the amount of calls. [LB198]

SENATOR ADAMS: So could the same candidate send five different messages during the day? [LB198]

SENATOR SCHIMEK: Not to that one individual household. [LB198]

SENATOR ADAMS: Okay. [LB198]

SENATOR AGUILAR: Senator Avery. [LB198]

SENATOR AVERY: Senator Schimek, why do you want to limit the number of calls that can be made by the same candidate to the same residential telephone? Suppose you have different messages you want to deliver. Suppose you are the target of a vicious attack, believe me, I've got some experience with this. And suppose the attack is a lie and you need to correct it, you can get a robocall out in 30 minutes, in 30 minutes you can be ready with one. And I had occasion in my campaign where we had to do two in a day, different messages. [LB198]

SENATOR SCHIMEK: Well, that's something to think about certainly, Senator Avery. [LB198]

SENATOR AVERY: It certainly is. [LB198]

SENATOR SCHIMEK: It couldn't have been done...the second call couldn't have been made the next day? [LB198]

SENATOR AVERY: Well, everything I know about politics says when you've been hit negatively you strike back as soon as possible, and the sooner the better, and in the same medium, if you can. [LB198]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR SCHIMEK: Um-hum. [LB198]

SENATOR AVERY: So I am a little bit concerned about that. [LB198]

SENATOR SCHIMEK: Well, that's a legitimate concern to think about. I don't disagree. [LB198]

SENATOR AVERY: I agree with you that this repetitive message, same message over and over and over, going to the same telephone numbers is annoying. In fact, most people are annoyed by any kind of robocall, as we call them. [LB198]

SENATOR SCHIMEK: True. This...there may be something that you might want to consider in the language that might address your question. But also ask yourself if this...if the green copy were law, would that have prevented you from still getting your message out? If...say that your one message might have gone out at six o'clock in the evening or eight o'clock in the evening, and you could then turn around the next day and do the second message. I mean, you be the judge of that. But I'm not sure it's that restrictive. One of the things that was alleged to have happened, and I don't...I think there's an investigation of some kind going on about it, but that one candidate made these multiple phone calls and said that they were coming from the other candidate. It was a kind of harassment kind of thing. And it may not turn out to be true at all. But... [LB198]

SENATOR AVERY: Well, we could... [LB198]

SENATOR SCHIMEK: But how do you keep that from happening again is the question here. Most candidates probably aren't going to try to irritate their constituents by having two or three calls in one day, I would guess. [LB198]

SENATOR AVERY: That was a dirty trick, that was a dirty trick, if it was done the way that we hear. [LB198]

SENATOR SCHIMEK: Well, I'm not going to make a judgment on it, but I'm just saying that was the problem. [LB198]

SENATOR AVERY: Well, I will. (Laugh) But, no, I don't know if that...what actually transpired there. I know what I read in the paper and what I heard. But if it happened the way I have heard it, it was a dirty trick, inappropriate. [LB198]

SENATOR SCHIMEK: Well, as I say, it's still being investigated. [LB198]

SENATOR AVERY: It may be. [LB198]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR SCHIMEK: And so I think it's premature to make that kind of judgment.
[LB198]

SENATOR AVERY: But this is a very low cost way to respond very quickly to an attack. And I'm not sure that we want to make it so restrictive that people who don't use it inappropriately are restricted to the point where they can't answer quickly in order to counter a negative attack. [LB198]

SENATOR SCHIMEK: Thank you. [LB198]

SENATOR AGUILAR: Further questions? Senator Mines. [LB198]

SENATOR MINES: Thank you, Mr. Chairman. Senator Schimek, who do we charge with enforcing this and what penalties are there for violation? Do you happen to know?
[LB198]

SENATOR SCHIMEK: That...well, for one thing, it would be, in this case probably both the Accountability Commission and the Public Service Commission. [LB198]

SENATOR MINES: So a complainant would call the Public Service Commission?
[LB198]

SENATOR SCHIMEK: Either one. [LB198]

SENATOR MINES: Either one. [LB198]

SENATOR SCHIMEK: Um-hum. [LB198]

SENATOR MINES: Okay. And do you know if there are...what penalties might be?
[LB198]

SENATOR SCHIMEK: You know, I was afraid you would pursue that second question and I can't answer that. [LB198]

SENATOR MINES: Okay, that's fine... [LB198]

SENATOR SCHIMEK: I should be able to, but I can't. [LB198]

SENATOR MINES: That's fine. Thanks. [LB198]

SENATOR AGUILAR: Further questions? Senator Avery. [LB198]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR SCHIMEK: And if I could, the Public Service Commission is here, and I think they are going to testify. I also saw Frank Daley here, and you might ask both of them. [LB198]

SENATOR MINES: Yeah, thank you. I'll put them on the hot seat. [LB198]

SENATOR AGUILAR: Senator Avery. [LB198]

SENATOR AVERY: I do have a comment, and it has to do with the enforcement question that Senator Mines asked. We have a law already on the books, it does relate to robocalling, but it has to do with the requirement that someone who is doing a telephone interview is required to, if asked, to tell you who they're doing...who is paying for it, who they work for, where they're located. And I can tell you that that's not enforced, because I have had a number of times when I have had people on the phone asking me questions. And I always participate in the questionnaires and surveys, because I think they're important. But then when I try to find out, who are you working for? They don't want to tell you. Well, let me speak to your supervisor. And many times as not they hang up on you. They've gotten the interview completed by then. And if you do get the supervisor they'll tell you some bogus name in Tampa, Florida. I looked it up, the firm didn't exist, they had no web site, they had no address, no phone number. Now how do you...we can't enforce that. So the enforcement mechanism is important, it's an important part. [LB198]

SENATOR SCHIMEK: Oh, I know how to respond to that, Senator Avery, is that I recently received such a phone call, it was a survey. And unbeknownst to me, it was on behalf of a certain political candidate, whom I happen to know. So I...when they started into the survey, I said, who is this...who are you calling for? And she said, I can't tell you now, but I will tell you at the end of the survey. And I said, okay. [LB198]

SENATOR AVERY: And that's appropriate? [LB198]

SENATOR SCHIMEK: And that is appropriate, because she didn't want to bias the survey. Well, I told her, as we got to the end of the survey, it may have been biased anyway because I happen to know this person personally. And she said, we want to talk to a broad cross-section of people. And then she told me which candidate it was on behalf of. And so if they're legitimate, if they know the rules of the game, they're going to tell you, if you ask, and they should. That's a little different from a robocall. [LB198]

SENATOR AVERY: But the concern that Senator Mines has and so do I is that, if they're not legitimate and they're up to no good or if they're trying to pull a dirty trick, and they don't want to comply, what can we do to make them? [LB198]

SENATOR SCHIMEK: Please ask Frank Daley and Andy Pollock or maybe Jerry Vap,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2007

who's here from the Public Service Commission. [LB198]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Schimek. [LB198]

SENATOR SCHIMEK: Thank you very much. It's a pleasure to be here. See you tomorrow. [LB198]

SENATOR AGUILAR: First proponent of the bill. May I see how many are here to testify on this? I see two. Good afternoon. [LB198]

FRANK DALEY: Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission, and I appear today to express the commission's support of LB198. We do sincerely like the requirement that, with automated calls, that the disclaimer occur up front rather than somewhere at the end of the message. That gives the recipient of the call the opportunity to deal with the call as he or she would like. Other than that, I guess I'm available for questions. [LB198]

SENATOR AGUILAR: Questions for Mr. Daley? [LB198]

FRANK DALEY: And I suppose Senator Mines had a question about enforcement, what would the penalty be? [LB198]

SENATOR MINES: Yeah, do you happen to know, Frank? [LB198]

FRANK DALEY: Certainly. Anything under the Accountability and Disclosure Act, which is a violation, can be punished by a civil penalty of up to \$2,000 per violation. [LB198]

SENATOR MINES: Great. Per occurrence? [LB198]

FRANK DALEY: Per occurrence, correct. [LB198]

SENATOR AGUILAR: Further questions? Seeing none, thank you, sir. [LB198]

FRANK DALEY: Thank you very much. [LB198]

SENATOR AGUILAR: Next proponent. [LB198]

JERRY VAP: Good afternoon, Senator Aguilar, members of the committee. My name is Jerry Vap. I represent the 5th District of the Public Service Commission, which is comprised of 51 counties west of Grand Island. The Public Service Commission is both

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

Government, Military and Veterans Affairs Committee
January 31, 2007

in favor of the bill, LB198, and we are also in favor of the amendment. And that's basically my testimony. I would be happy to answer any questions. [LB198]

SENATOR AGUILAR: Questions for Mr. Vap? Senator Mines. [LB198]

SENATOR MINES: Just one. Commissioner, can you tell me, during a campaign season does the commission get many complaints from consumers saying that, they're just killing me out here with robocalls? [LB198]

JERRY VAP: We got complaints this past year, basically on this subject that brought this bill forward. And we are currently conducting an investigation into that as a commission. We don't get a lot of them. What we have discovered is that many campaigns that decide to use an auto-dialer don't comply with the law that says they have to register with the commission. And a political campaign simply has to register, they don't have to pay the \$500 fee to get the permission to put an auto-dialer into use. But we discovered several political campaigns that were using them this particular year but had not registered with the commission. [LB198]

SENATOR MINES: Thanks. [LB198]

SENATOR AGUILAR: Further questions? Senator Friend. [LB198]

SENATOR FRIEND: Thank you, Chairman Aguilar. Hi, Jerry. [LB198]

JERRY VAP: Senator. [LB198]

SENATOR FRIEND: I wanted to follow up a little bit on what Senator Avery and Senator Mines said, the line of questioning they were going at and get your point of view on this. The language that Senator Schimek has provided, like Frank Daley had pointed out, the proclamation up front or the disclaimer up front. That is appealing to me, 8:00 a.m. to 9:00 p.m., that seems palatable to me. I don't, we used to have call banks, and if I had anybody calling after 8:45, I got nervous, I didn't like that. Now automated message, which you have even less control over, except from the outset, you know, I'd like...that provides some controlling mechanism as well. I wanted your viewpoint, though, on the one per day. I mean that to me is a, let me just throw it out, it's a freedom of speech issue. [LB198]

JERRY VAP: One per day may be a pretty tight requirement. [LB198]

SENATOR FRIEND: I guess, Jerry, well, yeah, thanks. And I guess what I'm throwing out is if this were amended in committee to remove some of that language, still some key points available to us in the language, even if we remove something like that? [LB198]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

JERRY VAP: Well, I think so. Our basic support for this, I don't like any of these calls, personally, myself. [LB198]

SENATOR FRIEND: Right. [LB198]

JERRY VAP: But our basic support is the fact that we want the language in that if it's going to be placed in with Accountability and Disclosure, we wanted also the auto-dialer language that we are charged with by the Legislature to administer, so that there is consistency all the way through here. Personally, I...my calls at my home phone in McCook, because I spend the better part of the week here, go into a recorder; most of them hang up before they ever get to that. But an auto-dialer goes ahead, and I just simply delete the whole bunch because I don't want to listen to all that stuff. But...and I suspect a lot of people feel that way about these calls. I don't know how many people listen to those. Some of them probably do, I'm sure. But when I know it's either an auto-dialer or somebody that I don't care to hear their message, I either hang up or just delete it. [LB198]

SENATOR FRIEND: Thanks, Commissioner. [LB198]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Vap. [LB198]

JERRY VAP: Thank you. [LB198]

SENATOR AGUILAR: Next proponent. Seeing none, do we have any opponents? Seeing none, neutral testimony? Senator Schimek evidently waives closing. And that end of the hearing on LB198. We're ready to open on LB361. Senator Raikes. [LB198 LB361]

SENATOR RAIKES: Thank you, Chairman Aguilar, members of the Government Committee. Ron Raikes, District 25, here to introduce... [LB361]

SENATOR AGUILAR: LB361. [LB361]

SENATOR RAIKES: Thank you. LB361 limits the use of revenue derived from public sources for purposes of campaigning on valid measures. Before I go any further, it's probably best that I try to provide you with some background on why these changes, in my opinion, are desirable. Perhaps the best place to begin is with the current statute, which is 49-14,101.02. That lays out specifically what is and is not allowed with regard to the use of public resources in campaigning on ballot measures. If you focus your attention on subsection 2 of that section, you'll see that the current law specifically prohibits public officials and employees from authorizing the use of public funds for ballot campaigns. Thus it is the clear intent of the current law to restrict the use of public

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

Government, Military and Veterans Affairs Committee
January 31, 2007

dollars for campaign purposes. What isn't accounted for, and hence the reason for the bill, are situations in which the intent of the public official or employee is not to use public resources for campaign purposes, but such use does in fact occur through the actions of a third party organization to which the funds were paid. I'll try to explain a little more. There are two standing legal tenets to keep in mind when public funds flow through an organization. The first is that a public entity cannot do through a third party that which it cannot do itself. Applied to this situation this tenet means that if public officials do not have the authority to use public resources for ballot campaigns, which they clearly do not under current statute, then they cannot gain that authority by acting through a third party. Thus current statute is adequate to count for the scenario in which the intent of the public official or employee is to use public funds for campaign purposes and does so by acting through an organization. What it doesn't address are scenarios in which such intent is absent. It is important to keep in mind that the public entities can properly expend funds for reasons in keeping with their public purpose. The payment of dues and membership fees to an organization that advocates for the collective interests of a particular public entity is a common example. It is here where a second but very important legal tenet comes into play, and that is that public funds lose their characterization as public money upon being paid to an organization. Because of this tenet, public funds paid to an organization in accordance with legitimate public purpose are deemed to belong to the organization which, of course, is not subject to the restrictions against using such funds for campaign purposes. As a result, money that flows directly from public entities via organizational dues and membership fees can, and I believe often is, legally used by the organization to campaign for or against ballot measures. While these may no longer be considered public funds from a legal standpoint, the practical effect is no different than if a public entity had simply given the funds to the organization to use for campaign purposes. The only difference lies in the intent for which the funds were paid. Nonetheless, these two situations are considered totally different under the context of Section 49-14,101.02. This bill is intended to address the situation and uphold what I believe is the intent of the current statute. LB361 would add a new subsection to 49-14,101.02 to prohibit public officials and employees from authorizing the use of public funds for the purpose of paying dues or membership fees to an organization if he or she knows or should have known that the revenue derived from such funds would be used by the organization for a ballot campaign. This essentially makes the official or employee liable for upholding the spirit of the law to the extent that they had knowledge that the funds would be used for campaign purposes. To add teeth, the bill makes violation of the section, all provisions of the section, not just this one, a Class III misdemeanor. It's not enough, however, to place accountability for the use of public funds only on the public official or employee. After all, it's the ultimate use of those funds by the organization that gives rise to this issue. To hold organizations accountable for their use of funds, a new section is added to the Nebraska Budget Act that prohibits local governing bodies from authorizing public funds for the purpose of paying dues or membership fees to an organization, unless the organization provides written assurance that revenue derived from such dues or fees

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

Government, Military and Veterans Affairs Committee
January 31, 2007

will not be used on a ballot measure. It's my understanding that some have concerns over the formality of a written contract, however a written contract is necessary to provide a legal mechanism by which the organization can be held accountable for using revenue that flows directly from local political subdivisions in a manner that is consistent with state policy. Without it, the accountability would be solely on the public official, and the only way to address this situation under that scenario would be to deny the payment of public funds to organizations entirely. I don't think that amount of restriction is necessary or prudent. That point being made, I think it's important that I correct what appears to be a misunderstanding in the fiscal note. And I'm not arguing about the amount of money, which is normally my attack on the fiscal note. This bill, as you've heard, does not and certainly does not intend to eliminate the use of public funds for dues and membership fees. Instead it simply adds the qualification that before such payment can occur the organization must provide assurance that the funds won't be used for campaign purposes. Provided that such assurance is given, a governing body is free to utilize public funds for dues and membership fees as it currently does now. It is also important to mention that it's my understanding that some organizations that receive public funds already maintain a practice of keeping their dues and fees, revenues separate from other revenues, due precisely to this issue. To me this is a clear recognition on the part of these organizations that the potential for legal challenges related to this issue does in fact exist. Furthermore, if many organizations are already making decisions not to spend dues and fees revenue on ballot issues, then it would seem that this bill would pose little additional burden. The only additional duty would be to agree to that practice in a contract. Although this bill is somewhat complicated in its approach, the principle it seeks to uphold is simple, public funds should not be used for the purpose of supporting or opposing a ballot issue. Public funds generally are not voluntary contributions, they are tax funds, people are required to pay them. This is an approach that we already recognize in current policy but is unable to be fully accomplished due to what I consider to be these legal technicalities. Do note that this bill only restricts the use of public funds for campaigning on ballot issues. It is not intended to restrict the use of funds for other activities currently considered to be in line with the political subdivision's public purpose, most notably lobbying. That activity is legal under current statute and would remain legal if this bill is adopted. LB361 seeks only to uphold the intent of current law, which says that use of public resources for the purposes of influencing ballot issues is inappropriate. Accomplishing this requires that we hold both public officials and organizations accountable for how they use these funds. With that, I'll stop, after a lengthy...I apologize. [LB361]

SENATOR AGUILAR: Questions for Senator Raikes? Senator Rogert. [LB361]

SENATOR ROBERT: I just have one. Senator Raikes, so currently the statutes don't prohibit this activity, but they don't necessarily grant it either? [LB361]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR RAIKES: The intent of the statutes, in my view, is clear, that public funds are not to be used for campaign, to support ballot issues. What I am suggesting with this bill is that the provisions we need or the provisions in place need to be supplemented to include, number one, teeth on the part of public officials and employees that, look, if you knowingly use funds out of the treasury to give to an organization that is going to campaign with it, then you are liable, and you will be charged with a misdemeanor. On the other hand, so that you know as a public official that this is the intent or can be assured that this is not going to happen, that organization to which you are paying dues, must provide you a written agreement that the money you provide out of public funds will not be used by them. [LB361]

SENATOR ROBERT: What was the finding of the...the final finding of the investigation, what happened last year? Were they found in violation of the law, the organizations that did this? [LB361]

SENATOR RAIKES: That's a very good question. [LB361]

SENATOR ROBERT: I remember it, but I don't remember it. It sounds like it was fuzzy. [LB361]

SENATOR RAIKES: That's a very good question. And I think, I mean part of the frustration, if it can be described that way, is that I got the opinion from some who certainly know a lot more about it than I do that, yeah, this was a violation of the law. But in terms of proceeding or taking action, you had to find somebody that had standing, and have them pursue it. And generally speaking, they were not willing to pursue it. [LB361]

SENATOR ROBERT: Okay. [LB361]

SENATOR RAIKES: And for, you know, to require a subdivision, a school district or whatever, in statute to file a lawsuit if something happens, I think, is out of whack. [LB361]

SENATOR ROBERT: Okay. There was a huge amount of money involved, if I'm not mistaken. [LB361]

SENATOR RAIKES: Well, the one that I'm very sincerely trying to avoid mentioning, involving the referendum on 422, I don't know the full amount, but there was...there were two organizations that I know of, Class I's United and then also, I think, Nebraskans For Local Schools. The campaign statements that I looked at indicated that Nebraskans For Local Schools got a lot of their funding for their efforts in the campaign from Class I's United. And then the Auditor did some work about how many dollars were contributed by Class I schools, which means taxpayer money, through Class I's United,

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

Government, Military and Veterans Affairs Committee
January 31, 2007

in particular funds that were contributed above and beyond dues requirements and other such things. So that's one example. I'm not here to tell you that's the only example or maybe even the most important example. What I'm telling you is that if public funds, again taxpayer money, not voluntary contributions, can be used indirectly to support a campaign issue, which the taxpayer may not support, that's a problem. And this is an effort to address that. [LB361]

SENATOR ROBERT Thank you. [LB361]

SENATOR AGUILAR: Further questions? Senator Adams. [LB361]

SENATOR ADAMS: Help me to make sure I understand this right. So I'll pull out a hypothetical. A school board member, and my school board also affiliates with the Nebraska School Boards Association. [LB361]

SENATOR RAIKES: Okay. [LB361]

SENATOR ADAMS: And the school board has voted to pay their dues to the School Board Association. We do it annually. We do so because we know that our dues money is going to pay for conferences to enlighten us on a variety of different issues that we deal with every day and, where we don't have our heads buried in the sand, we also know that we're paying for a lobbyist to be here in the Rotunda to work for us on issues related to schools that are important to us. And then an initiative, a ballot issue like 423 comes up. This would then prohibit some of that dues money from going into that ballot issue. Am I correct in... [LB361]

SENATOR RAIKES: Senator, it would prohibit, in my view, all of the dues money from going into the ballot issue. [LB361]

SENATOR ADAMS: Right, right. [LB361]

SENATOR RAIKES: So let's just say that the School Board Association or whatever group that the school board legitimately decides to support with membership dues because it is in their interest of...in the interest of their public purpose, and I think there are a great many such organizations. But let's suppose that organization receives annually \$100,000, \$30,000 of it comes from dues from subdivisions, school districts in particular, \$70,000 comes from other sources. The limit on that organization's contribution to a ballot issue would be \$70,000. They can't use the \$30,000. [LB361]

SENATOR ADAMS: So under this bill then if the School Board Association, when they collect their dues, the idea is that everybody knows going in these are, in effect, tax dollars that are paying these dues, they're not going to be used for ballot issues? [LB361]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR RAIKES: Right. [LB361]

SENATOR ADAMS: So if the School Board Association now does have a ballot issue that they want to take on, they would in effect have to go back to their membership, but the membership couldn't use public dollars. But if school board member, Greg Adams, wanted to write a check for 50 bucks, that's my personal right to do that. [LB361]

SENATOR RAIKES: That's right, that's right. [LB361]

SENATOR ADAMS: Okay. [LB361]

SENATOR RAIKES: And you have some organizations, too, for example the NSEA, dues are by member teachers. Those dues are not public dollars; those are...those funds are the teachers' monies, so there is no prohibition at all on the use of those funds by the organization in ballot issues. [LB361]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Raikes. [LB361]

SENATOR RAIKES: Thank you. [LB361]

SENATOR AGUILAR: May I have the first proponent, and a show of hands, who wants to testify on this bill? I see three. First one, come on up. Oh. I see no proponents then. Do we have an opponent? Thank you. [LB361]

LARRY DIX: Senator Aguilar, members of the committee, for the record, my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials. And I appear today in front of you in a position of opposition to LB361. And I want to make it very, very clear why I'm in opposition to it. One specific section...I would tell you today that NACO certainly collects dues from counties. I would tell you we've been involved in a number of petitions, ballot issues, and we clearly define and keep separate the dues money from other revenue, as Senator Raikes had described. And, of course, we would always say our books are open for anybody to examine that. But we have always historically kept those dues very, very separately because we believe, like Senator Raikes, that the intent has been very, very clear. And so we have purposely kept that money separate. The one portion of the bill that we do have some issue with is on line 2 or, I'm sorry, on page 2, line 8. It talks about the form of a written contract. Now, Senator Raikes had mentioned that certainly we need a contract to be in place to meet the letter of the law. I would contend that it may be a better option if we would give a written assurance to our members whenever we hand out or whenever we assess the dues. And the reason I say that is as I read this bill today I could form a written contract with 93 counties, I could do that. That would go on file. Over the years that contract

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

Government, Military and Veterans Affairs Committee
January 31, 2007

would be filed, before long board members will have changed, they will have turned over year after year after year, as opposed to what I would say if we want a written assurance is that we would provide a...our board would adopt a policy with that written assurance, that would go out with our dues each and every year, so that each subsequent board, each year that they made the decision to pay the dues, they would see that it is our policy that we do not spend any of the dues money for any ballot issues. And that's why I say that, because I think we all know that over a period of time board members, there is going to be turnover, and there are many contracts, I think we all know, that are on file somewhere. But from time to time, people may tend to forget about that. One other issue that I want to make sure that we're clear on, the example I believe Senator Adams gave and Senator Raikes expanded on, was if we have \$100,000 of money coming into an association, \$30,000 of it is from dues, that leaves \$70,000 that come in from other sources that can be used. Certainly I don't believe that that \$70,000 would be a limit per year, because there are some situations that, if there were no ballot issues, that money could be carried over from year to year in the form of a reserve. And so that's at least how I view that. Certainly would like to know if anybody else views that any differently. But with that, that really is our opposition. It is in that contract, because I truly do believe it would be a better policy to have that in front of those boards each and every year when they pay their dues. Be happy to answer any questions. [LB361]

SENATOR AGUILAR: Questions? Senator Rogert. [LB361]

SENATOR ROBERT: Just one. So in your clarificational language, if you took out what's in between those two commas and just put the word "written" before "assurance" that would be satisfying to you? [LB361]

LARRY DIX: Yes. [LB361]

SENATOR ROBERT: Okay. [LB361]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Dix. [LB361]

LARRY DIX: Thank you. [LB361]

SENATOR AGUILAR: Next opponent. [LB361]

GARY KRUMLAND: Senator Aguilar, members of the committee, my name is Gary Krumland, it's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities and appearing in opposition to LB361. And for the most part, my comments are very similar to what Mr. Dix said. The League has approximately 390 members, cities and villages across the state. We collect dues from them. But we're not here to oppose the idea that dues can't be used for ballot issues. We agree...we think

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

Government, Military and Veterans Affairs Committee
January 31, 2007

that's the law right now based on statutes that were quoted and Accountability and Disclosure opinion and information we've gotten from the Accountability and Disclosure Commission, we do not use dues to oppose ballot issues. We spent a lot of time and money this past year fighting Initiative 423, but no dues money was done...it was other income and other income that had been built up over the years in reserves. So we did not use dues income. We do, however, have a concern with LB361 because of the concern that it be a written contract. We're concerned that instead of a city council approving the dues and we send in the money, if we have to have written contracts, which implies signatures on both sides and sending back and forth, that will create just a huge paperwork burden for something that we already are doing. And for that reason the League opposes it, just from the League point of view. We've also gotten some calls from some city officials and city employees whose professional dues are paid for by the city. And their concern is that, for example, if the city pays the engineering licensing fees or the attorneys' bar fees, does the city council then have to enter in a written contract with the organization and association for every employee who enters into this sort of an agreement? And the concern that that would just be a great burden for something that, you know, may not be a problem. Especially relevant for a situation like the Bar Association where it's mandatory that you be a member, and the city often pays the dues for these people because they want them to keep up, want them to maintain their professional status, they get information and keep up to date on that. It's also true of national organizations that a lot of employees are members of national organizations. And to have a written contract naming the national organization may just not be willing to do it. So we do have concern about the use of the term "written contract." We disagree about the dues, we think dues cannot be used for ballot issues, and we don't do that. But we're afraid the language of this bill would require a huge burden on the League and on city councils and village boards. [LB361]

SENATOR AGUILAR: Questions for Mr. Krumland? Seeing none, thank you. Next opponent. [LB361]

BRIAN HALE: Senator Aguilar and members of the committee, my name is Brian Hale and I represent the Nebraska Association of School Boards. So since we were mentioned, even before you mentioned us, we were coming up here anyway. We are entering our 90th year of business representing school board members around the state. In that 90 years, we've participated in some campaigns, and I think done it in a manner that certainly lies within the spirit of this law. We haven't used our dues revenue per se. But the questions can arise here as you have well-heeled people with idle attorneys questioning just exactly how far can they track this before it's dues money? Some of our dues money is generated from programs that are administered by staff members that, at least in some respects, they could say are paid by dues money. And so is the revenue generated there considered off limits? And just exactly where those definitions lie create a great concern for us. About half of our revenue, in the course of a year, is generated, what you'd call nondues money. And so at minimum this certainly

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

Government, Military and Veterans Affairs Committee
January 31, 2007

requires a careful examination and possibly an alteration of the accounting systems of advocacy groups that work on behalf of public officials throughout the state. And at worst, I think it opens up an opportunity for some amount of mischief and perhaps additional fees for attorneys throughout the state as we try to determine just exactly when this money stops becoming public money. We are already governed, I think, by the rules of the IRS in terms of 501(c)(3)'s or (c)(6)'s, we're a (c)(6). And then of course the Accountability and Disclosure Commission has a role to play in determining whether our activities are legal or not. And so along those lines, we believe that this bill is not necessary in terms of the...I understand and I appreciate some of his concerns about the activities that happened. I think the investigation shows that there are issues there. But for organizations like those who are appearing here, who have been representing people in this state for many years on an above-board basis, this does create some real concerns, and we think that this bill is a little bit too oppressive. [LB361]

SENATOR MINES: Chairman is gone. Any questions? Thanks for your testimony. Any other opponents? Welcome, welcome. [LB361]

KRISTEN GOTTSCHALK: Senator Mines, members of the Government Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. And since the people who testified before me said everything, that will probably be the longest part of my testimony. I am the registered lobbyist and government relations director for the Nebraska Rural Electric Association. And somewhat different than the other organizations that come up here, our members...we are almost completely dues funded. Our members, however, do not collect tax funds, they collect revenues off of the sale of electricity in a nonprofit situation. So that is where our revenues come from. We do have additional monies that come into our organization, say from the sale of advertising revenues for a magazine, which then goes to offset the cost for the magazine, which is another service to our members. And we also have fees and other associated funds that come in for specific training. So those are the sources of our money. So at risk of repeating, we do share the same concerns with respect to the written contract, and we do understand that the lobbying efforts on behalf of our members, with respect to public purpose, are not considered in jeopardy. But we do feel that this bill does...is a little broad reaching, and in fact there are situations in...or that have come to pass. We've had an issue, this issue has come before the Legislature several times, you know the sale of public power. Obviously, we can lobby against that. It's not in the public benefit, at least our members believe that that's not in the public benefit, and so we have the ability to do that. Now what is the situation when that becomes a petition initiative? Where are we limited in our ability to advocate on behalf of our constituents with respect to the sale of public power? And that's...I realize that's kind of an out there situation. I don't think that that would happen, but it is a concern as we look at the application of Senator Raikes' bill. With that, I'll end my testimony. If anybody has questions. [LB361]

SENATOR MINES: Thanks, Kristen. Any questions? Nice testimony. Thank you.

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

Government, Military and Veterans Affairs Committee
January 31, 2007

[LB361]

KRISTEN GOTTSCHALK: Thank you. [LB361]

SENATOR MINES: Any other opponents? Any neutral testimony? Last chance. Hearing none, I'll close the public hearing on...or, excuse me. I assume Senator Raikes is not going to close, so that will close the public hearing on LB361. And we'll open the public hearing on LB61. Senator Avery. Good afternoon, Senator Avery. [LB361 LB61]

SENATOR AVERY: (Exhibit 1) Thank you, Mr. Chair, and members of the committee. For the record, my name is Bill Avery, A-v-e-r-y, I represent District 28. I'm here to try to convince you to support LB61. This bill proposes to put an end to a practice that I think has gone on far too long in this state and needs to stop. I refer to the Public Service Commission's cozy relationship with the industries they regulate, when they accept the vast majority of their campaign funds from those very same industries. Let me elaborate a bit. The commission consists of five elected commissioners responsible for regulating a number of industries: telecommunications, taxis and limousines, grain warehouse storage, railroad safety, private water companies, they also have regulatory authority over the placement of certain electrical transmission lines and gas pipelines, wireless emergency 911 services, and the making and selling of manufactured homes, modular homes, and recreational vehicles. LB61 would prohibit gifts or contributions to candidates for the Public Service Commission and members of the Public Service Commission by businesses that are regulated by the commission, and those individuals who are either an officer, director or partner of such a business or a member of a limited liability company regulated by the commission. Nebraska is 1 of only 12 states that elect their public utility commissioners by popular vote. One state's commissioners are elected by the State Assembly, the remaining 37 are appointed by, I believe, their Governors. As elected commissioners it is, I think, important that they and we, in the Legislature, pay attention to the relationship that they have with the industries they oversee. Campaign contributions to commissioners should be, I would even say must be completely free of perceptions of conflicts of interest. I want to be clear that this bill is not directed at any particular current member of the commission, nor is it directed at any former member or future member or any candidates. And I am also not alleging that there has been any particular wrongdoing. What I seek to do is to remove the appearance of impropriety and thereby ensure public trust that the commission is serving the public and the public's interest, and not the interests of the industries. I think it's hard to do under the current circumstances. Now I read the comments that legal counsel added to your files. And I expected that the issue might be raised about First Amendment concerns, that by prohibiting such contributions we would in some way be prohibiting freedom of speech. Let me demonstrate why this is not so. And I don't want to get too legal here, I'm not a lawyer. But we have done some legal case work on this issue. Let me refer you to a 2003 Louisiana court case which touches on a number of aspects relating to this issue. I'm going to briefly mention some of these cases that are

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

Government, Military and Veterans Affairs Committee
January 31, 2007

referenced in the 2003 Louisiana case. And I may have to read from the legal descriptions here. In view of the fundamental nature of the right to associate governmental action, excuse me, I'm going to reread that. In view of the fundamental nature of the right to associate, governmental action which may have effect of curtailing the freedom to associate is subject to the closest scrutiny. That was a 1958 case involving the NAACP v. Alabama. Yet it is clear that neither the right to associate nor the right to participate in political activities is absolute. Even a significant interference with protected rights of a political association may be sustained if the state demonstrates a sufficiently important interest in employees means closely drawn to avoid unnecessary abridgment of associational freedoms. Closely drawn, I think, are the key words there. It is important to note that the court defines the word "corruption" as being understood not merely a quid pro quo, that is you do something for me, I do something for you. So corruption, according to the courts, is not merely or not only quid pro quo agreements, but also an undue influence on an officeholder's judgment and the appearance of such influence. Let me repeat that, the appearance of such influence. That's Nixon v. Shrink Missouri Government PAC. It's referred to in the literature, it's Shrink Missouri, not a bad idea, right? (Laugh) In Buckley v. Valeo, the U.S. Supreme Court held that Congress could legitimately conclude that the avoidance of the appearance of improper influence, again the appearance of improper influence, is also critical if confidence in the system of representative government is not to be eroded to a disastrous extent. That, I believe, was 1974. Alaska has upheld a complete ban on campaign contributions by out-of-district lobbyists. If I may refer to the comments by legal counsel in your notes, there are cases where certain classes of contributors have been restricted. In another case in New Jersey, the court upheld New Jersey's complete ban on campaign contributions by gaming interests. I think we could all agree that gaming interests may not necessarily want to contribute to the authority that regulates gaming. I think that we're talking about something very similar here. In another case, courts upheld a complete ban on contributions by liquor licensees or their representatives. These cases demonstrate ample legal precedent that prohibiting contributions in certain circumstances does not render such prohibitions unconstitutional. Again, I'm not a lawyer, but I think with these cases, without legal training, I could go to court and probably not make a fool of myself because the precedents are there, the case law is pretty extensive. As stated in Shrink Missouri, the court found that the prevention of corruption and the appearance of corruption to be a constitutionally sufficient justification for campaign contribution restrictions. I think most reasonable people would agree that when you have an elected body responsible for regulating particular industries and businesses that attention should be paid to the relationships between the regulated and those doing the regulating. I am fairly certain that when Nebraska citizens are made aware of what the Public Service Commission does and that those commissioners, as sitting members and as candidates, receive contributions, and in many cases the vast majority of their contributions fund the same people they regulate, that will raise eyebrows. Every time I have mentioned it to people who were not aware of this, they usually react with some shock. I am also aware that

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

Government, Military and Veterans Affairs Committee
January 31, 2007

some people who will oppose this legislation will argue that there is no difference between the campaign contributions received by Public Service Commissioners and those received by us who serve in this body. My response to that charge is that the Public Service Commission has narrow and direct regulatory authority, the Legislature does not. Our connection to the interests that we influence is more indirect, and it is broader. If someone's job is to regulate widgets, and the person is taking money from the widget makers, then I believe that creates a legitimate public concern and at least the appearance of a conflict of interest. As I said at the beginning of this testimony, I am not alleging any specific wrongdoing. My concern is that the public's trust in the fairness and impartiality of the commission is worth being preserved. This legislation is, in a sense, preventive. You don't get a flu shot after you're running a fever. You get the flu shot so you don't get a fever, so you don't get sick. Let's do that. Let's do something now before we have a problem. That's why I feel this legislation is important. I think we need to act now, not because we know of any particular wrongdoing, but to avoid any future problems, and more importantly to promote public trust in our institutions. We have a hard enough time, I think, as officeholders dealing with the public perception that somehow we're in a dirty business. I think Russ made an interesting point the other day. We were walking to the Cornhusker for the 100th time, and a bus came by there, and somebody said, quick, watch out, don't step out there. He said, they'd probably run over us anyway because they don't like us, I mean that's the general feeling. They like institutions, and they might like some individuals, but I think we have to be very careful about how we present ourselves and the image that is created in the minds of the public. Promoting the public trust in our institutions is essential. If we are going to have legitimacy, that is if people are going to look at our institutions as most appropriate, as reflecting their values and therefore institutions they want to be proud of, then we have to make sure that the appearance of impropriety is removed. With your indulgence, Mr. Chair, I would offer one amendment. On your green copy, on page 2, line 10, I want to clarify what we mean by member. So if the pages will pass this out, I'm simply going to add the words "limited liability company," because that's what it really refers to. And with that, sir, I will end my testimony. [LB61]

SENATOR AGUILAR: Thank you, Senator Avery. Just one follow up. I was intrigued by your analogy or comparison between us and the PSC. And you ended that with a statement that they are a direct regulatory authority. By the same token, we have the ability to tell the PSC what they can and cannot regulate. [LB61]

SENATOR AVERY: And we have the ability to tell them where they can get their money and where they can't, that's why I'm here. (Laugh) I don't mean to be flip. I know what you're saying. [LB61]

SENATOR AGUILAR: My point is... [LB61]

SENATOR AVERY: But that's more indirect. We don't have a direct connection between

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

Government, Military and Veterans Affairs Committee
January 31, 2007

what we do and... [LB61]

SENATOR AGUILAR: You and I will agree to disagree on that one. Further questions? [LB61]

SENATOR AVERY: No, I'd be happy to debate that. [LB61]

SENATOR AGUILAR: Senator Adams. [LB61]

SENATOR ADAMS: All the way through your testimony I continue to highlight in my mind absolutely we ought to do this. But it was constantly underscored by, are those of us sitting here any different? Now the remedy is that we have Accountability and Disclosure and the voters or anyone else can go see where our campaign money came from. I understand your, well I think I understand your logic, that you're trying to make a narrower, take a narrower look at Public Service Commission versus us. Intellectually, I have not jumped that hurdle. [LB61]

SENATOR AVERY: Well,... [LB61]

SENATOR ADAMS: I see us in the same spot. [LB61]

SENATOR AVERY: No, I think what you have to be able to understand that what they do is fairly narrow. They have direct and narrow...they have direct regulatory authority over a fairly narrow group of industries. I think everything they do is regulatory. [LB61]

SENATOR ADAMS: So if the NSEA endorses Greg Adams for the Legislature, and given the size of the budget that public education takes up, and we have a whole committee devoted to educational issues, then I don't have a direct impact on education? [LB61]

SENATOR AVERY: It's not a regulatory role. You can have an impact, yes. But it's more indirect. You're 1 of 49 votes, one of 8 votes on the committee. The connection between what you do and your obligation as a senator to take into account a multiplicity of interests and arguments and the interests of the state at large is different, I think, than what the Public Service Commission does. [LB61]

SENATOR AGUILAR: Further questions? [LB61]

SENATOR AVERY: It's not a clean argument, Senator Adams, it's not a clean argument. And I tried to anticipate this objection. I'm surprised it didn't come from Mike Friend. (Laugh) [LB61]

SENATOR FRIEND: You'll get questions on these later. [LB61]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR AVERY: It's coming. [LB61]

SENATOR AGUILAR: Seeing no further questions, first proponent. [LB61]

SENATOR AVERY: Thank you. [LB61]

JACK GOULD: (Exhibit 2) Senator Aguilar, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I represent Common Cause Nebraska. I would like to just try to answer part of your question, which I think is a good one. One of the things to look at is the percentage of money that comes from one source. In the case of most of the senators, there's a pretty broad spectrum of contributions that have come in; it's not one or two organizations in one specific area that provide all of your campaign money. In the case of the Public Service Commission, we're looking at a very narrow funneling of funds from a very restricted group. It's not as if the large number of the public are out there and are contributing or that there are other interested groups contributing. This is a very defined interest group that is making the contributions. And I think Senator Avery's point is well taken in the fact that this is a regulatory agency, directly involved with these people on a regular basis. And you are dealing with such a broad spectrum of issues that I don't think you can be accused of being, you know, favoring one way or another. But in this case it's a very narrow perspective. I'm going to give you a handout here. I think I have enough that everyone...and it will take a little bit of explanation. So I'll wait until maybe you get it given out, and then I'll try to explain my statistics here. I think it's important to note that the cycle, the election cycle for the commissioners is 18 months, which is unlike most other elected officials, plus it's a 6-year term. So when you go back and one of the things I tried to do was to take a look at the amounts of money coming from specific utilities that are regulated by the commission. And I just went back three years, which would be the 18 months of the election cycle, and 18 months prior to that, because that seemed to be when the majority of the contributions were made. If we went back further, it would probably inflate my figures. But I thought that was adequate to give you an idea of the money and the amounts that it comes in. So the first sheet just shows some of the utilities and how much money they contributed. This reflects all five commissioners during their election cycle. So as you go back to the second, third, and fourth pages, you'll begin to see that we're talking about the end of the year reports for each of the commissioners during their last election cycle. Okay? So it's not like three years from now, it would be during their election cycle. So when you go back and look through this, we're itemizing the contributions per commissioner by the utilities, and the front sheet is a summary of that amount. Does that make sense? Okay. I want to just point out the fact that these figures may...are certainly important. But it's also interesting to look at the fact that we tried to get a percentage of what does this represent, the total amount, a percentage amount of contributions, and it became extremely difficult. And one of the reasons it became difficult is because commissioners, like other candidates, hold fund-raisers. And in the case of one commissioner, most of

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

Government, Military and Veterans Affairs Committee
January 31, 2007

the money was raised at a fund-raiser--\$19,000, over \$19,000 in one night at one restaurant, and all of the contributions were under \$250. Now the question is...we're pointing out the major contributors, contributions over \$250. That means that in one night they were able to raise \$19,000 in denominations under \$250. We have to believe that much of that money is coming from the same sources, but it's not trackable. So the percentages would not be meaningful to you. So what we're saying simply is that the fund-raisers of that type...there's also a golf tournament which raises money, one of the commissioners held a golf tournament. Nothing illegal about that. But it does become difficult when the contributions are all under \$250, and you try to, you know, get some kind of a percentage, how much money is coming from the utilities. We assume that there are lobbyists, there may be executives from these companies making contributions that are not visible. One of the things that Senator Avery's bill does, which I think is important, is the fact that it addresses that problem of the contributions under \$250. It simply says that executives, lobbyists cannot make those kind of contributions. Obviously, it also limits the large contributions that would come in. I would also like to reiterate what's been said. We're not attacking any individuals on the commission. We're not saying that there's been a problem. All we're saying is that it is not a healthy situation for the public. And as citizens that pay their bills, we look at these things and we say, gosh, these guys are elected, but they're elected by the money coming in from the utilities that they're supposed to regulate. And this is our concern is that this should be separated. Now another thing that Senator Avery mentioned, which I think is important, is that many states, I think he mentioned that there are only 12 states now that still elect their commissioners. One of the alternatives that states seem to be moving toward is the idea of having appointed commissioners that are approved by the Legislature. This is another way of separating the controllers from the controlees. It simply says that the utilities themselves would not be involved in fund-raising, and would not be involved in trying to perhaps influence the commissioners. And I think, with that, I will just conclude. [LB61]

SENATOR AGUILAR: Thank you. Senator Friend. [LB61]

SENATOR FRIEND: Thank you, Chairman Aguilar. Mr. Gould, good afternoon. The discussion that's been going around, I think, is valuable. And I'm glad that Senator Avery brought the bill. I don't think anybody disputes, like Senator Adams brought up, the idea that this is something that would be palatable and good, in the long run, to address. I guess, what I see is what Senator Avery promoted in his opening, is a potential for inconsistency in dealing with elected officials. Let's set aside the constitutional argument, let's say that it is. Let's set aside the idea that somebody is being regulated directly and somebody might be regulated indirectly or that the tentacles reach just too far out to be able to identify, without a shadow of a doubt. How much does a Board of Regent at the University of Nebraska make a year? What's their salary for that job? [LB61]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

JACK GOULD: Zero. [LB61]

SENATOR FRIEND: Hmm. And I know as a legislator I make \$12,000 a year and some per diem money that goes into that. And the point of that is this, just about everybody that I know or I've ever talked to in regard...or shown interest in the Board of Regents, that's a pretty prestigious job, that's a job that a lot of people would like to have. It's a job that a lot of people pay a lot of money to try to get. When a bill like this comes out to the floor, Jack, those type of issues are going to come up, those type of points that I just tried to toss out there in the wind are going to come up. And the reason they're going to come up is because this isn't the only potential problem. And regulation aside, I don't think that's the point here. If I took \$20,000 in tobacco money to get elected, are you...are we actually prepared to say that we don't regulate the tobacco industry in the state? We do, Jack, right? We do. And if I decided to vote no on a statewide ban on smoking, you think somebody is going to raise the idea that I just took \$20,000 in tobacco money in the last election and I voted no. Somebody is going to raise that point. [LB61]

JACK GOULD: Well, I think they would raise it if, for instance, 75 percent of your money came from the tobacco industry. I think people would raise a question. [LB61]

SENATOR FRIEND: I beg to differ, I beg to differ, Mr. Gould. I think that there are going to be folks, and it doesn't have to be a watch dog, media, other senators, people outside in my district, they're going to raise that point. They're going to say, where is it, where is the money coming from? How did this person get elected? And why did that person want a job so badly at \$12,000 a year? I stand down. I guess my point is, I see, when things like this get moved out to the floor, potential problems. And we can divide, we can divide the idea that we're regulating somebody directly as a PSC, you know, board member, as a commissioner, and regulating with this huge umbrella. I just don't see how that's relevant when things like this get out to the floor. What's going to happen is they're going to say, doctor, heal thy self; you've got some problems here. And you bring a green copy like this out there, you better be prepared for about 12 amendments. And that is we're going to take care of Adams, we're going to take care of Pahls, we're going to take care of Friend, and Rogert, and everybody, we're going to take care of all of you with one fell swoop, and the Board of Regents, and everybody else. Your comments. I mean, I just leave you at that. [LB61]

JACK GOULD: You've left me a lot to comment on. [LB61]

SENATOR FRIEND: Jack, here's my point, I'd like you to comment on the idea that this is awful narrow. Okay? [LB61]

JACK GOULD: I think it was meant to be narrow, because the only institution that it really is addressing is the Public Service Commission. Now, let me... [LB61]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR FRIEND: But should we be? [LB61]

JACK GOULD: Well, I think this is something that has gone on for a long time. I mean I'm not...I've had many people comment to me that this is something that...even some of the lobbyists on the floor that are indirectly involved have said, you know, it's not a good situation. But, you know, we are raising a question of a lot of issues here. You know, when you raised the question of the regents, you know, that's a serious situation because we have campaign finance laws that have been, in one case, violated, and there was a large, serious punishment that came from that. But there are also cases of finding ways around the campaign finance laws or trying to use huge amounts of money that are brought forward. And I think the public looks at that now and says, well, you know, a man has a right to spend his money if he's going to buy it. But then the public knows, through Accountability and Disclosure, that that's what has happened. In this case,... [LB61]

SENATOR FRIEND: May I, Jack, sorry, I didn't mean to cut you off. [LB61]

JACK GOULD: Go ahead. [LB61]

SENATOR FRIEND: Thank you for those comments. And I wanted to move this along. But the point is when bills like this come out and we're incrementally, we're narrowing our focus, when we get out there and we talk to 49 other people about it, the focus suddenly widens. So bills like this are difficult. You can't be this...now, you're right, we're dealing with a narrow subject matter here. But the subject matter suddenly widens when we get out there, Jack. And I don't know that this stands a very good chance of success once that happens. [LB61]

JACK GOULD: Well, I have to believe that, you know, the senators themselves recognize the fact that this is a narrow issue and that it's in the best interests of the public to control it. I mean I don't think that it would be a violation really of the purpose of this bill if people used it for their own personal, you know, agendas or whatever. [LB61]

SENATOR FRIEND: (Inaudible.) [LB61]

JACK GOULD: I mean, I think Senator Avery's goal in this bill is pretty well defined. And I think that I guess I have more trust than others of you. But I mean, I believe the senators would see it for what it is and address it as something that needs to be done and that, you know, the public particularly is going to be concerned about. [LB61]

SENATOR FRIEND: Well, thanks for bearing with me on that, appreciate it. [LB61]

JACK GOULD: No problem, any time. [LB61]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR AGUILAR: I have one, Jack. I'm not going to defend anybody on the PSC or anything like that. But you brought up the one member that received \$19,000 in contributions in one night's event. [LB61]

JACK GOULD: Right, right. [LB61]

SENATOR AGUILAR: I don't think you did make clear, and I don't know if it was intentional or not, but there's an opportunity for a lot of those \$250 to have been other members of the lobby not necessarily associated with utilities. [LB61]

JACK GOULD: Well, the truth of the matter is any contributions under \$250 are not visible. So I mean we could... [LB61]

SENATOR AGUILAR: Exactly. And it sounded to me like, from your conversation, that you were making the assumption that all of those \$250 contributions came from utilities. Now, if I misread that, I... [LB61]

JACK GOULD: Well, I would say that the people who go to the fund-raisers have an interest in the Public Service Commission. And most of the lobbyists that represent the utilities involved are probably, and I could be wrong, but I'm going to say probably involved in the fund-raisers. So my...I don't know who all else would be there. I mean I can't testify to that one way or another. And you have a valid point. But I think my, you know, my observation of fund-raisers at Billy's or even golf tournaments of this type usually involve most of the people who are directly, you know, involved with those people trying to raise the money, in the case of the Public Service Commission, it's...again, it's a pretty narrow field of interest. I can't say where the money came from. [LB61]

SENATOR AGUILAR: And I would submit to you that there's probably a lot indirectly involved. But I think you need to make that distinction... [LB61]

JACK GOULD: Sure, you bet. [LB61]

SENATOR AGUILAR: ...instead of assuming the worst in all case scenarios. Further questions? Senator Karpisek. [LB61]

SENATOR KARPISEK: Thank you, Mr. Chair. Mr. Gould, you said that is it 12 states appoint people or only 12 don't? [LB61]

JACK GOULD: Senator Avery mentioned that there were 12 states. And I believe his point was that they are appointed by, and he will clarify that probably in closing, but that actually continue to elect their commissioners. I think there were 5 that do it exactly the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2007

way that we do, the last time that I looked, but there are 12 that elect, the rest of them appoint. And I think one of the reasons that they've gone to this idea of appointing is to keep the election process from, you know, becoming polluted. I mean when it's appointed, the Governor appoints, and you people have the opportunity to, you know, decide whether you want that person or not. I mean it's an open debate after that. That does keep the money away, that's my point. I'm not advocating that as being the solution. I'm just saying that is a way of keeping the interested money away from the commissioners. [LB61]

SENATOR KARPISEK: I'm just looking at it as I've heard one board here in the state is...the new person is the guy that gave the most money to the Governor's race. Hmm. So he's appointed. I wonder...so that didn't affect that. [LB61]

JACK GOULD: You know I'm looking at one problem and you're opening up another one. (Laugh) I don't deny that that's possible. [LB61]

SENATOR KARPISEK: Well, if the Legislature or the Governor chose, you know, so then, okay, they can't, but whoever gives the most to me then they're going to say, okay, but we want you to help on this guy. I don't think that... [LB61]

JACK GOULD: I think there is a checks and balance there. I mean the Legislature, with its power to say, no, can really regulate any appointment. I mean I would hope that the question would be raised if this is a person that is not qualified and has no experience in the area. [LB61]

SENATOR KARPISEK: Well, of course they are going to be qualified when they come through. You're not going to just get a few of my buddies out of the bar and drag them up here. If they did that with me, that's enough. But I don't think that... [LB61]

JACK GOULD: I know what you're saying. [LB61]

SENATOR KARPISEK: I mean we're just going around and around. I think what the bottom line has to be is that there are some ethics involved. And to counter what Senator Friend said, maybe we should make a lot more money, and then nobody would wonder why we want this job for such a pittance. [LB61]

JACK GOULD: Well, we testified in support of all of the salary increases for the Legislature, just wanted you to know that. [LB61]

SENATOR KARPISEK: Well, good, we appreciate that. But my point is however you want to look at it and break it down, if somebody is going to be that way, it's going to show up and I think it's going to stand out. I don't think that there are any of us here or on that if there is "inappropriability", probably not the right word, that it's going to show

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

Government, Military and Veterans Affairs Committee
January 31, 2007

and it's going to stick out like a sore thumb. So that's my two cents. [LB61]

JACK GOULD: Well, I want to make it clear that I'm not necessarily advocating us going to having the commissioners appointed. I'm saying I think the reason a lot of states have done that is because of their concern for the funding. And in this case, you know, I think Senator Avery's bill would correct the problem. I mean I don't know that we would have to go to appointing...the Governor appointing the commissioners. But this would certainly separate the money from the Public Service... [LB61]

SENATOR KARPISEK: I guess to me, along with Chair Aguilar said, if anything under \$250 isn't written out, then there's always going to be, well, who are those people? I raised \$5,000 in the primary with no help from any of the lobby. So it's possible, but then it's always, well, who was that? [LB61]

JACK GOULD: Well, I hate to bring this subject up, but the final solution would probably be public funding of elections. I mean that may be the direction we're all going in eventually. Some day down the road it will just say, look, that's the purest way to make sure that everyone is elected in a fair manner. [LB61]

SENATOR KARPISEK: And that's the point that I was trying to get to is I think that's the point that we're trying to get to with this bill. So although we're talking broader, I think there's a broader brush there, too. [LB61]

JACK GOULD: Fair enough. [LB61]

SENATOR KARPISEK: Thank you, Mr. Gould. [LB61]

JACK GOULD: Um-hum. [LB61]

SENATOR AGUILAR: Just one final, Jack. [LB61]

JACK GOULD: Yeah. [LB61]

SENATOR AGUILAR: In the case of the Governors appointing the members, following your line of thinking then and Senator Avery's line of thinking, if we were to have Governor appointed PSC members, wouldn't we want to stop the utilities from contributing to the Governor's campaign then, since he would have direct regulation over who those members are? [LB61]

JACK GOULD: Well, again, it's a question of percentages of dollars, I think. I mean I would look at it that way. If the utilities were providing 75 percent of the Governor's money, then I would be very worried. And the fact that if it's a very small percentage of the total amount, we're dealing with millions when we're talking about the Governor's

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

Government, Military and Veterans Affairs Committee
January 31, 2007

race, then I don't know how much influence it buys, I mean I really don't. That would be up to the Governor to figure out. But I do think it's important that you have the final word on any appointment that he would come up with. And hopefully, you folks would be the check. If this is somebody that isn't appropriate or would not be in the best interests of the public you would take action. [LB61]

SENATOR AGUILAR: Very good. Thank you for that and thank you for supporting all our pay raises we haven't got. (Laughter) [LB61]

JACK GOULD: Well, thank you. [LB61]

SENATOR AGUILAR: Further testimony? Welcome. [LB61]

ROGER HOLMES: Mr. Chairman, members of the committee, my name is Roger Holmes, H-o-l-m-e-s. I am a board member of Common Cause Nebraska, but I am here actually to testify just as an ordinary person. And Jack has said pretty much what our organization thinks. I would like to second Senator Avery's summary of the bill and the reasons why it is brought. I don't have anything in particular to add to that. But I would like to comment on the subsequent discussion and ask you to reel back in a little bit to the specifics of this bill. I don't think it's necessary to solve all of the problems with campaign finance in every measure that one attempts to deal with campaign finance. I think that...I would hope that this bill will be judged on its merits, which I feel are very straightforward. We have a body that its only responsibilities are to regulate a certain group of industries within the state. And we wish to say that the commissioners who are elected to this body should not accept campaign finance monies from the industries or the officials of the industries that they regulate. I don't think it is germane, necessarily, to this particular point to bring in whether or not the Legislature would be involved in the same way. And so I would like you, really that's my request would be to look at this on its merits. And I would say, I suppose to Senator Friend and Senator Adams, my response as an individual is, as I hear you saying, on its face this sounds like a "no-brainer", you know, why wouldn't we do this? And I would encourage you to act on that. Merely because something is difficult to do is no reason for not doing it, if it's the right thing. If there are difficulties posed by this in terms of its potential relationship to something that may happen some other time, I would hope that you would act on this, on its own merits, and then deal with those other issues as they arise. So thank you. [LB61]

SENATOR AGUILAR: Questions for Mr. Holmes? Seeing none, thank you. [LB61]

ROGER HOLMES: Thank you. [LB61]

SENATOR AGUILAR: Further proponents? Seeing none, do we have any opponents to the bill? [LB61]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

RAY LINEWEBER: Good afternoon, Mr. Chairman and members of the committee. My name is Ray Lineweber, L-i-n-e-w-e-b-e-r. I represent the United Transportation Union. I'm here today in opposition to LB61 and the reason being, I've sat through a half hour of testimony thus far, and I'm very proud Senator Avery and the other people who testified that they don't recognize a problem with the Public Service Commission. I've worked with the Public Service Commission for 26 years now. They don't look at things, whether they're a friend of somebody, they look at what the law provides, and honorably so. I'm very proud of that. And clearly the public gets their due when they bring their concerns to the Public Service Commission. We have Frank Daley here, who runs a tight ship at Accountability and Disclosure, so if indeed there would appear to be some impropriety on behalf of any commissioner, I know that they'd be quick to raise the issue. We have conflict of interest provisions of statute which, if indeed somebody believes there is one, they are responsible to file those. Clearly, this is a system that's not broken. It works very well. And I'm very proud of that. And I'm pleased that the proponents of the bill didn't denigrate that in any way. So it's something that's not broke, so there's nothing to fix. And I'm hopeful that you would just kill this bill. [LB61]

SENATOR AGUILAR: Questions for Mr. Lineweber? Seeing none, thank you for coming down today. [LB61]

RAY LINEWEBER: Thank you. [LB61]

SENATOR AGUILAR: Further opponents? Seeing none, is there any neutral testimony? Seeing none, Senator Avery, to close. [LB61]

SENATOR AVERY: I want to address a couple of things. First of all, I'm not trying to take money out of politics. I'm not naive, can't do that. I do think though that when we see glaring potential conflicts of interest and we have the opportunity to do something about it, we have an obligation to do that. There is a reason why 37 states appoint their utility regulators, because they see the potential conflicts that can occur where these are elected positions. I'm not advocating that we change the Constitution in Nebraska. Probably have too many bills before this body already trying to change the Constitution. But certainly we do have a potential problem. I think that reference was made to a particular commissioner who raised over \$19,000 in two separate fund-raisers and never reported a single individual contributor. Now my question is, why? One of the...either the candidate did not want the public to know who was giving him the money and in what amounts or the contributors did not want to be reported as giving that money in the amounts they did or both of them together got together and said, we're just not going to report any of this, so let's write those checks for \$249 or something under that. That's a deliberate attempt to get around the intent of the law. So if there is nothing wrong with the industry contributing most of the money to these campaigns, then why would a situation like that be a setup? Again, if we are concerned about what the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2007

commission has been doing over the years, I have a table here that shows the contributions from the industry before we raised the limit on individual contributions to \$250, and it's no different when it was \$100. They are the big players, they are the people who are making most of the contributions. And I think Senator Friend has a good point, that once this...should this get to the floor, we would have a lively debate. And I am sure that we will have to confront that issue of what's different about our institution and that one we're trying to regulate. There is, however, a difference between a regulatory institution and a legislative institution. And I think we could probably argue that all evening, I'm not going to do that now. But I will take any more questions, if you have any, if not, we'll put this to bed. [LB61]

SENATOR AGUILAR: Just one more. Do you think anybody could buy your vote for \$250? [LB61]

SENATOR AVERY: No, I don't. But ask yourself this, Senator Aguilar, ask yourself, if you have raised \$20,000, and 95 percent of that money came from the industries that you have the authority and the obligation to regulate, don't you think that would influence you? [LB61]

SENATOR AGUILAR: When you're on this side of the table, you get to ask the questions. (Laughter) Senator Friend. [LB61]

SENATOR FRIEND: Thank you, Chairman Aguilar. Senator Avery, like we had...I wanted to clarify a couple of things. Like we had mentioned, I think this is valuable subject matter. And I'm not placating you. I do believe it is. My point is, and I'm going to let you comment on it or I want you to comment on this. My point to this whole thing is there is reality in dealing with legislation, and then there's, boy, we wish it could be this way. Right now I'm looking at a green copy and I'm thinking, boy, we wish it could be this way. Let me give you an example. Senator Mines had a bill out on the floor, believe we kicked it out, and it related to natural resources district board members being able to serve in different elected capacities. Now that was very narrow, it was very specific as to what it was trying to accomplish in the green copy. My point is to anybody that's willing to listen, that when something like this gets out to the floor, it isn't narrow anymore. The discussion becomes wide, it becomes wide-ranging because you can't take subject matter like this and keep it narrow just because the green copy directs you to do so. You can try to your heart's delight, and I've done it and I've seen it, and Senator Mines has done it and seen it. My only point is this, there's reality and then there's hope. And the reality is when you start dealing with campaign finance and you start dealing with what people think the world should look like, this discussion matter, as ungermane as somebody might think it would be, it turns germane on the floor. All you need is five people or one person to say, you know what, let's bring this into the discussion because it's appropriate and it's equitable to do so. So, Senator, I'd like you to comment on the idea that we're... [LB61]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR AVERY: I've been in those wars. [LB61]

SENATOR FRIEND: Yeah, we're in for... [LB61]

SENATOR AVERY: But, yeah, I've... [LB61]

SENATOR FRIEND: ...we're in for something that is going to be germane out on the floor. [LB61]

SENATOR AVERY: I remember back in the nineties when I was working to get campaign finance reform passed, and we tried five years. It took five years to get that done. And the reason it did is that we always ran into the argument, well, you're not going to buy my vote with, you know, coffee and a biscuit or you know, \$100 here, \$500 there. And that's not the point, that is not the point at all. And the argument was also made that, well, why only regulate what we can do and not what can be done in the other races? We were trying to make it broad, but it got narrowed down. And the point is that you cannot, you cannot have respect for institutions of government if there is the impression or the perception in the public of potential for impropriety. I am an absolute firm believer that we have to do everything we can in government to shore up, to protect and guard, and jealously protect the institutions that we serve, because it is so essential that people believe that what we are doing is above board, and that we are serving their interests, and not the interests of somebody else. And one other thing about the Public Service Commission, it is a low profile institution. Not very many people know about it, they don't know what it does, and can't name one member of it...of the commission. Unlike us, where we are highly visible, we are out in the newspapers and people know who we are, and they can see what we are doing. And there is an opportunity for subtle influences of money to come into play and influences the behavior of commissioners in ways that the public will never see, less so for us. [LB61]

SENATOR FRIEND: Thanks, Senator. [LB61]

SENATOR AGUILAR: Further questions? That closes the hearing. Senator Avery, on LB434. [LB61 LB434]

SENATOR AVERY: Thank you, Mr. Chair. My name, for the record, is Bill Avery, A-v-e-r-y. I represent District 28. I promise that this will not be as contentious, nor will it be as lengthy as the previous proposal. I am bringing before you today LB434, which is a technical piece of legislation. I always get nervous when people tell me that. You know, I've got a real easy thing here. It's very technical and not controversial, and that's when my red flags go up. I am bringing this to you on behalf of the Accountability and Disclosure Commission. It does not involve major policy changes. Mr. Daley is here to provide expert testimony on this. I am not the expert, but let me just briefly tell you what

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

Government, Military and Veterans Affairs Committee
January 31, 2007

we are trying to do. Two things, first, it seeks to clarify several late filing fee provisions in the Accountability and Disclosure Act. One of those provisions has been the subject of litigation and is still unresolved. The second thing it tries to do is to avoid certain harsh results that can occur under the current law. A little clarification, the late filing fees in question are those assessed for the late filing of reports of late contributions, reports of late independent expenditures, reports of major out-of-state contributors, and special lobbyist reports. The late filing fee provisions for each of these reports assesses a late fee of \$100 per day, not to exceed \$3,000 or 10 percent of the amount of receipts or expenditures that should have been reported, whichever is greater. Traditionally, the commission has applied the late fee as follows: first calculate the number of days late, multiply by 100, if it is more than \$3,000, reduce it to \$3,000. Number two, calculate 10 percent of the amount to be reported, whichever is greater is the amount of the late fee. An example would be a major out-of-state contributor report shows expenditures of \$100,000. It was filed 35 days late. Calculation A results in a \$3,000 late fee. Calculation B, however, results in a \$10,000 late fee. Then the \$10,000 late fee is greater, and therefore it is applied according to current practice. An alternate interpretation which is currently the subject of litigation is that the late fee runs at the rate of \$100 per day, and that the 10 percent is a cap. An example of this would be a major out-of-state contributor report shows expenditures of \$100,000. It was filed 35 days late. Late fees are \$3,500, that's \$100 per day. After 100 days, the late fees max out at \$10,000. LB434 provides a more clearly drafted process for calculating late filing fees. It may not sound like it, but Frank will explain it to you. The...it also wants to...seeks to change some of the harsh results. Currently, if one uses the traditional calculation method, a report which is one day late and discloses significant receipts or expenditures, can result in a significant late fee. Recently, the commission wrestled with a situation in which a major out-of-state contributor report was one day late, it showed a \$1.4 million in receipts and expenditures, so the late fee was \$140,000, that's for one day. LB434 would make the new late filing fee \$100 per day for the first ten days. After ten days, an additional late fee of 1 percent per day is added, not to exceed 10 percent of the receipts or expenditures disclosed. This provides a continuing incentive to get the filing in. With that, I will close. [LB434]

SENATOR AGUILAR: Questions for Senator Avery? Seeing none, thank you. [LB434]

SENATOR AVERY: Thank you. [LB434]

SENATOR AGUILAR: I think we're ready for expert testimony now. Proponents? Welcome. [LB434]

ANDY BARRY: (Exhibit 1) Good afternoon, Senator Aguilar. Members of the commission, my name is Andy Barry, I'm sorry, members of the committee. My name is Andy Barry. I'm a member of the Nebraska Accountability and Disclosure Commission and I'm here today to testify on behalf of the commission in support of LB434. The

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

Government, Military and Veterans Affairs Committee
January 31, 2007

testimony I've prepared is a little bit repetitive of what Senator Avery discussed, but I think since the language is new, it might bear repeating, just to help you understand what we're trying to do here. LB434 is, in part, the result of late filing fees that were assessed by the commission to two political groups. Group A was involved in the financing of a ballot question in 2004. It was required to file a major out-of-state contributor report on November 10, 2004. The report was filed on April 1, 2005. That particular report disclosed \$970,000 in expenditures, and the group was assessed a late fee of \$97,000. That is 10 percent of the reportable amount. That's Group A. Group B supported a ballot question in 2006. Group B was required to file a report on June 12, 2006. The report was filed June 13, 2006 or one day late, and the late fee, under the current statute was 10 percent of the reportable amount, or...of \$1.4 million, which was \$140,000 for being one day late. So LB434 is intended to do two things. First, it is intended to clarify the late filing fee provisions as they apply to reports of late contributions, reports of late independent expenditures, major out-of-state contributor reports, and special lobbyist reports, those four types of late reports under the Nebraska Political Accountability and Disclosure Act. The clarification is important to the commission because the current language has resulted in a difference of interpretations and an ongoing litigation, and that involves the Group A situation that I discussed a minute ago. Second, this language is intended to change the working of the late filing fee statutes in these areas so as to avoid potentially harsh results when a report is late, but not very late. Under this bill a person or entity which does not have one of these reports on file on a timely basis would be accruing fees at the rate of \$100 per day for the first 10 days. Thereafter, in addition to \$1,000 in accrued late fees, which is \$100 a day for 10 days, late fees would continue to accrue at the rate of 1 percent of the amount, which was required to be reported, per day. So there's an additional 1 percent per day, up to a maximum of 10 percent. So ultimately the maximum late fee would be 10 percent of the amount to be disclosed on the report, plus the first \$1,000 that could be assessed on \$100 a day basis for the first 10 days. I think maybe this general explanation might be a little bit to grasp in the abstract, and so Frank Daley, the executive director of the Accountability and Disclosure Commission, has prepared a handout describing some scenarios, which should illustrate how the amended language would work in practice. I've provided that handout to you and would be happy to answer any questions you might have. [LB434]

SENATOR AGUILAR: Questions? Seeing none... [LB434]

ANDY BARRY: On behalf of the commission and its staff, I'd like to express our appreciation to Senator Avery for bringing LB434 and to his legislative assistant, Josh Eickmeier, for his assistance in the drafting process. Thank you very much. [LB434]

SENATOR AGUILAR: Thank you. Further testimony? Are there any opponents? Neutral testimony? Seeing none, Senator Avery, to close. Senator Avery waives closing. That closes the hearing on LB434. Now we'll open on LB527. [LB434 LB527]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

SENATOR FRIEND: Who's in charge? [LB527]

SENATOR AGUILAR: Good afternoon. My name is Senator Ray Aguilar, representing District 35. I'm here to introduce LB527 at the request of the Nebraska Accountability and Disclosure Commission. LB527 addresses two issues in the Nebraska Political Accountability and Disclosure Act. The first issue requires committees to pay a registration fee of \$100 when filing a statement of organization with the Nebraska Accountability and Disclosure Commission. This concept is not new to the Government Committee. Senator Beutler introduced a similar bill in 2005. One of the purposes of requiring a committee to pay a registration fee is to allow the commission to have additional cash funds and rely less on General Funds, something near and dear to all our hearts. The second issue in this bill allows the commission to waive the payment of accrued interest from late filing fees and civil penalties in the amount of \$25 or less. Frank Daley, from the commission, is here to testify and provide additional details on the bill. In the meantime, I am happy to try and answer any questions you may have. [LB527]

SENATOR FRIEND: Thank you, Senator Aguilar. Are there any questions from the committee of Senator Aguilar? Seeing none, first proponent of LB527. [LB527]

FRANK DALEY: Good afternoon, Senator Friend, and members of the committee. My name is Frank Daley, D-a-l-e-y. I'm the executive director of the Nebraska Accountability and Disclosure Commission, and I'm appearing in support of LB527. As Senator Aguilar mentioned, the purpose of this bill is twofold. One, is that it would initiate a new initial and annual registration fee on political committees. That is when a political committee filed its initial statement of organization, it would pay a fee of \$100. Annually, in order to continue operation, the committee would pay a fee of \$100. And as Senator Aguilar mentioned, the purpose of this is not to generate new revenue for the Nebraska Accountability and Disclosure Commission, because we presume that any revenue that comes in would be offset by a decrease in our General Fund appropriation. What it is, it's part of a continuing process that many agencies are involved in to move as much away from the General Fund appropriation as it can. It would also have the additional effect of encouraging committees that are no longer engaged in any real activity and really don't have much in the way of a balance in their committee accounts to dissolve. It's kind of like what happens when you have a bank account that's inactive and has a very low balance in, at some point the bank starts charging a monthly fee to essentially eliminate the account. And, I guess, we're trying to get rid of some of these inactive committees that do nothing but require some sort of paperwork and maintenance. The second part of the bill deals with the concept of interest. By law, late filing fees and civil penalties, which are assessed by the Accountability and Disclosure Commission, are assessed interest on a daily basis after a certain number of days. And what we often find is that people do their best to pay the late filing fees, and ultimately

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

Government, Military and Veterans Affairs Committee
January 31, 2007

get the interest right. But because the interest accrues on a daily rate, despite everyone's best efforts, we end up with checks for \$700, \$800, \$1,500 with the interest added, but the interest isn't correct. And so then we're faced with the prospect of wondering whether we should spend the money to collect \$1.35 in interest or \$5.62 in interest, and it's not worth it, obviously. On the other hand, it's still on our books and we have to do something with it. And so LB527 would simply give the commission the authority to waive interest in amounts of less than \$25. So when we get that \$700 check with \$10 in interest, but it actually owes \$16.75 in interest, we can waive the part that hasn't been paid at that stage. That's what LB527 does. I do want to thank Senator Avery...excuse me, Senator Aguilar for bringing this bill; we're very grateful. [LB527]

SENATOR FRIEND: Thank you. Thank you, Mr. Daley. Are there any questions from the committee for Mr. Daley? Seeing none, thanks for the testimony. [LB527]

FRANK DALEY: Thank you. [LB527]

SENATOR FRIEND: No more proponents, I take it? Any opponents? No neutral testimony? Senator Aguilar waives. That will close the hearing on LB527 and it appears the hearings for the day. [LB527]

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

Government, Military and Veterans Affairs Committee
January 31, 2007

Disposition of Bills:

LB61 - Indefinitely postponed.
LB198 - Advanced to General File, as amended.
LB361 - Held in committee.
LB434 - Advanced to General File.
LB527 - Advanced to General File.

Chairperson

Committee Clerk