

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

Government, Military and Veterans Affairs Committee  
February 01, 2007

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[LB199 LB389 LB391 LB622]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 1, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB622, LB199, LB389, and LB391. 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: My name is Ray Aguilar from...Senator Ray Aguilar, from District 35, representing Grand Island. I'll start by introducing the committee. On my far right is Senator Kent Rogert from Tekamah, Nebraska; skipping a chair, next to him Senator Mick Mines from Blair; on my exact right is Christy Abraham our legal counsel; my left is Sherry Shaffer, committee clerk; next to her, Senator Mike Friend of Omaha; Senator Rich Pahls from Omaha; Senator Greg Adams from York; and Senator Bill Avery from Lincoln. The bills will be taken up in the following order: LB622, LB199, LB389, and LB391. Sign-in sheets are at both entrances. Sign in only if you are going to testify, and put it in the box up on this table in front of me. 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 that you can fill out. Those are also on the table by the entrances. Print your name and indicate who you are representing. Before testifying please spell your name for the record. Introducers will make the initial statement, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you have a prepared statement or an exhibit, give it to the page and he will distribute it. You will need 12 copies. Please turn off all cell phones and pagers. The pages for today are Adam Morfeld of Sioux Falls, South Dakota; and Kristin Kallsen from Big Springs, Nebraska. We're now ready to open LB622. Senator Pirsch, welcome. [LB622]

SENATOR PIRSCH: (Exhibit 1) Welcome right back. Good afternoon, Chairman Aguilar and members of the Government Committee. My name is Pete Pirsch. I'm the state senator from Legislative District 4 in west Omaha. And for the record, Pirsch is spelled P-i-r-s-c-h. I come before you today as the sponsor of LB622. LB622 is designed to help public officials in their desire to serve the public by providing them with the education needed to better understand and comply with Nebraska's open meetings and public record statutes. Violations of these statutes are rarely intentional, rather it is generally a lack of resources or a public bodies reliance on insufficient or inaccurate legal advice that results in offenses. LB622 is designed to help our public servants avoid the confusion associated with these statutes. The bill would require public officials to take a training course with instruction on the legal requirements relative to public records requests and open meeting laws. The Department of Justice is charged with offering a free course and approving any other course offered. Those completing the training will receive a certificate of completion which satisfies their responsibility for any public body.

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There is no direct penalty for not completing the course. The objective here is to educate public officials of their duties and responsibilities. A public officer may designate a public records coordinator to complete the public records component of the training on his or her behalf, but a public officer must still complete the open meetings training. The Attorney General may adopt and promulgate rules and regulations to carry out the provisions of the bill. The effective date of the bill is January 1, 2008. Good to see you, Senator Karpisek. Before we began, in looking at the bill, we have noticed that there is a drafting error. And so I would ask, and I'll have this, if I could, handed out, that an amendment be made to the bill as offered, that would clear up the very insignificant and minor drafting error. With that, I would be happy to field any questions, if you have any. [LB622]

SENATOR AGUILAR: Questions from the committee? Senator Pahls. [LB622]

SENATOR PAHLS: Senator Pirsch, at most of these meetings are there attorneys there? [LB622]

SENATOR PIRSCH: Well, you know, I think my understanding is it varies due to the size and the magnitude of the board. You have boards represented, public bodies that are...represent large, well-funded types of entities, like the city of Omaha and Lancaster County. And in those cases, those entities tend to have the resources to afford legal counsel. And really, that isn't where this...that's not really where we find the problem lies with the well-funded type of public entities that have the ability, and the resources, the wherewithal to have the legal counsel and the advice then to comply with these two acts. Where we do find the noncompliance? And as I mentioned earlier, it's not usually willful, it's an unintentional type of noncompliance, and that tends to occur among the smaller boards, that being fire districts, SID boards, you name it. And that's, from my understanding, where the majority of the calls that are fielded by the Attorney General's Office and complaints regarding those...violations regarding those two statutes have emanated from those smaller boards that do not have the resources to have the legal counsel on hand at all times. But it does affect somewhere in the magnitude, in the state of Nebraska, some 25,000 individuals who sit on these public boards and... [LB622]

SENATOR PAHLS: Right. And I agree, there are probably a number of boards, because I've sat on SID boards, and I know that we probably are doing things not intentionally but we were...but, see, I even question if the larger boards...because my major concern last year, and I'm going to keep going on this until people understand the open meetings law, was Omaha, with an attorney, powerful attorneys, did not understand some of the issues when we were talking about an open meetings law. [LB622]

SENATOR PIRSCH: Um-hum. [LB622]

SENATOR PAHLS: I mean, they came out and said they were not doing that. I think...I

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don't think people, whether they have attorneys there sometimes, are paying attention. I think there's outright, we'll do it our way or no way. [LB622]

SENATOR PIRSCH: Sure. And that may well be. That's not to say by any means that... [LB622]

SENATOR PAHLS: Yeah. [LB622]

SENATOR PIRSCH: ...any public body can't stand to benefit from having a better understanding... [LB622]

SENATOR PAHLS: Yeah, so you're saying this is okay? [LB622]

SENATOR PIRSCH: This is directed at all public bodies to create,... [LB622]

SENATOR PAHLS: Okay. Thank you. [LB622]

SENATOR PIRSCH: ...you know, better, more transparent government throughout...through all boards. [LB622]

SENATOR PAHLS: Okay, appreciate it. Thank you, Senator. [LB622]

SENATOR PIRSCH: Yes, you bet. [LB622]

SENATOR AGUILAR: Further questions? Senator Avery. [LB622]

SENATOR AVERY: Thank you, Mr. Chair. Senator Pirsch, I am reading Section 1 here. And it talks about requiring a training course be taken no later than one year after the day the member (a) takes the oath of office or (b) assumes his or her duties as a member of the public body, if the member is not required to take an oath of office. This doesn't seem to cover people who are already in office. Was that intentionally left out? [LB622]

SENATOR PIRSCH: Well, it's...and thank you very much for that question. It is based off of...we've borrowed, largely, the statute from Texas. My understanding of the way the courts have been interpreting that is assuming duties, that that would not be hamstrung by some pre-existing...the fact that you haven't been sworn into office. If you're assuming duties on a daily basis, that would cover you at that point in time. [LB622]

SENATOR AVERY: But there is a clause that says, if the member is not required to take an oath of office, it would seem to suggest that you're covering those who are required to take an office, and those who assume office but are not required to take an oath. And

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that would seem to me...it's a very minor amendment, but in committee I would probably ask my colleagues to add language to require existing officeholders to take this training, because I think it's a good idea, by the way. [LB622]

SENATOR PIRSCH: Sure. And I would certainly welcome attention to that, because we're all on the same wavelength there, that we want to make sure it applies to existing...I can only tell you from my understanding the way it's been applied, that verbiage in Texas, is there hasn't been any question that's arisen or any successful challenge of the fact that that would cover existing officeholders. [LB622]

SENATOR AVERY: Thank you. [LB622]

SENATOR PIRSCH: Yes. [LB622]

SENATOR AGUILAR: Senator Mines. [LB622]

SENATOR MINES: (Laughter) You missed it, it was great. I haven't seen Ron Withem move that fast in...(laughter) [LB622]

SENATOR PIRSCH: I was facing frontwards there. [LB622]

SENATOR MINES: A couple of thoughts on the bill, Pete. Very well-intentioned. And I also see that organizations like NACO or the league, that they can provide this to their membership as part of what they do, and I think they do now. [LB622]

SENATOR PIRSCH: Um-hum. [LB622]

SENATOR MINES: But it also says that only one course need be provided by the Attorney General's Office, annually. Is that the way I read that? Only one? [LB622]

SENATOR PIRSCH: Yeah, let me...the way it was...my understanding of the way it reads that the Attorney General's Office can offer one course. [LB622]

SENATOR MINES: Um-hum. [LB622]

SENATOR PIRSCH: So at least there's one course out there on the table, so that, you know, the boards can't say that, well, none are in existence. So the Attorney General, by default, will always have one course available and they will provide that in different formats, whatever format is most easily processed by any of the boards. [LB622]

SENATOR MINES: Okay. [LB622]

SENATOR PIRSCH: If they want that in paper format it's my understanding... [LB622]

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SENATOR MINES: But I would imagine that we're going to rely on other organizations who have memberships to provide this information. [LB622]

SENATOR PIRSCH: You bet. And so what it allows for is other organizations or entities, public bodies included who say, we really...you know, we want to draft our own type of training course. And there are specific types of issues that are specified in the statute that must be addressed within that training course. And if those are, in fact, addressed and the Attorney General does have the ability to check over those and make sure that those are covered, and if they approve that then there are an unlimited number of ways...training courses then that are, you know, theoretically possible. And each board can tailor it to their request. [LB622]

SENATOR MINES: I think that's practical, I think that makes great sense. [LB622]

SENATOR PIRSCH: Sure. [LB622]

SENATOR MINES: But the bill has the "so what" factor. You don't have to take the course. If you don't take the course, "so what?" [LB622]

SENATOR PIRSCH: Um-hum. [LB622]

SENATOR MINES: And I mean it doesn't have any real teeth in it, other than the Attorney General will have at least one a year and they can certify all the other organizations. But if a rural fire board member doesn't go, so what? [LB622]

SENATOR PIRSCH: Well, I'll tell you it's...it is, I think, helped by...and thank you very much for that question. There is indeed no criminal or fine, criminal penalty or fine, civil fine attached to this. That's quite true. And as I mentioned, the objective here is to educate the public officials of their duties and responsibilities. In my estimation, it's taking the next step towards, you know, we now have a requirement that the copy of the Open Meetings Act be present at every meeting. The number of complaints that the Attorney General has been receiving suggests that, while present, is not enough to get people to crack open that...a copy of that and actually look at the legal laws that they should be following and are bound by. And so this is the next least intrusive step to make sure in that balance where we want to encourage people to continue to volunteer on boards, SID boards and the smaller boards, which you know...and that is indeed a problem sometimes. In many areas, when you're talking SID, you don't want to create such a high level of government regulation that we discourage people who would otherwise volunteer to do so. And yet it also takes the next step towards having them comply, which is a very important thing for the people of the state of Nebraska, making sure that there is transparency in government. [LB622]

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SENATOR MINES: Correct. [LB622]

SENATOR PIRSCH: So I think it is within that tension we find the right balance. And so what it does allow for is when if, in fact, there are, as you say, people who don't follow that and the Attorney General has been receiving complaints about that, it allows the Attorney General to then further investigate a complaint, point out, contact the board, indicate that by law, not by just preference, but by law they are required to have those certificates and then apply pressure in that means. And so I think that that is the next least intrusive way of going about it, making sure...because, as I mentioned, the problem here isn't willful disobedience. We know that. The problem is largely borne of ignorance. We didn't know that or we didn't know it was that important that we were going to get a call from the Attorney General's Office saying, yeah, it is that important. So I think it does strike the right balance. [LB622]

SENATOR MINES: Good answer. [LB622]

SENATOR AGUILAR: Senator Rogert. [LB622]

SENATOR ROBERT: Mr. Chair. Mr. Pirsch, in regards to that question, on page 3, subsection (7) of Section 1, it mentions that the Attorney General may adopt and promulgate rules and regulations to carry out this section. How broad of a power does that give him? Does he have the ability at that point to prohibit a board member from attending or becoming part of a meeting or does he have the power to say we're going to say it's a misdemeanor or some type of deal? How far does that go? [LB622]

SENATOR PIRSCH: Well, that's an excellent question. And, no, there is...it would not permit that broad of a discretion in the Attorney General. He is bound by the statutes, and it clearly states that there is no such penalty as I went over before. And so he does not possess that power. It is only within those strictures that are set up in the statute here that the Attorney General can operate in an administrative capacity. And there are established, just as with every entity, be that, you know, the State Treasurer or what not, who are governed and have to take into account certain rules, there's a certain established sort kind of confines in which those type of officeholders will have to confine their conduct. So administrative law, essentially, would govern their ability to act. [LB622]

SENATOR ROBERT: Would this training have anything to do with cell phone use in hearing rooms? Oh, I'm sorry, Ron. (Laughter) No further questions? [LB622]

SENATOR AGUILAR: Further questions? [LB622]

SENATOR PIRSCH: That might be next session. [LB622]

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SENATOR AGUILAR: Seeing none, thank you. [LB622]

SENATOR PIRSCH: Yes, thank you. [LB622]

SENATOR AGUILAR: First proponent to LB622. [LB622]

DALE COMER: Senator Aguilar, members of the committee, my name is Dale Comer. Last name is spelled C-o-m-e-r, and I'm an assistant Attorney General with the Nebraska Department of Justice. I'm here to testify in favor of LB622. I'm one of the attorneys in our office that's assigned to enforcement of open meetings, public records issues. And I can tell you that we receive pretty much a constant stream of complaints and inquiries from citizens and public officials at all levels of government around the state concerning these particular statutes. In 2006, this last calendar year, we received 237 complaints and inquiries involving public bodies in 47 Nebraska counties. And so, as I said, it's sort of a constant stream of complaints, inquiries. They come from local officials, they come from attorneys that are asking what to do with these statutes that represent governmental agencies, they come from citizens. In light of all of those contacts with our office, there are a couple of things that are apparent. One, this was something that was mentioned by Senator Pirsch, the bulk of the complaints and inquiries that we get are from local government units. And in many cases those entities aren't represented by lawyers on a regular basis. And so they're primarily from local governmental units. They may or may not have attorneys advising them, quite often they do not. For example, we may have something from a weed board or an SID where they talk to attorneys once every two or three years in the course of what they do, and so frequently it's local government. And then the other thing that becomes apparent from the contacts that our office receives is that violations of these statutes are rarely intentional. In most cases, what we're dealing with are individuals and public officials who simply aren't familiar with these statutes and don't realize what they're required to do in a given set of circumstances. So our goal with LB622 is not to punish governmental officials. What we're trying to do with this particular bill is help to educate them so that they are more aware of what these statutes require, and then hopefully we'll have less complaints and I'll have less to do with these sorts of things over time. I will point out that there are penalties that do attach to violations of the Open Meetings Act and the public records statutes. There are no penalties under this particular bill, but there are penalties that attach otherwise for violations of those acts. And what we intend to do here is to try to make the training process as painless as we can. We plan to have training materials available in a variety of different, easy to use formats, including the Internet or if there are individuals out there that aren't great on computers, like me, we'll have materials available to them in paper format, whatever we can do to get these things out. And then what we contemplate here is that individuals will get copies of these materials, have a chance to read them and study them, and then take sort of a simple open-book test, either by paper or online in order to qualify for their certificate that shows that they've completed this training. So that's what we contemplate the

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process to be out of our office. At this point in time, we have outlines available now on the NET and on our web site, and then in other formats that we distribute to people around the state. We go out frequently and speak to public officials about these. I'm speaking to attorneys in the city of Lincoln tonight about these statutes. I've talked to two different governmental groups over the last week about the Open Meetings Act and the public records statutes. So we intend to keep those materials available and use those to help us prepare other materials that we need to use for this particular bill. And obviously, we plan to take whatever other steps are appropriate to help let public officials in Nebraska know that these requirements are out there. And then the final thing that I would point out to the members of the committee is that there is no A bill with this. For the Attorney General's Office, we plan to be able to do this for our office with existing resources. And with those comments, I will do my best to answer any questions that members of the committee may have, Senator. [LB622]

SENATOR AGUILAR: Thank you. So you're not concerned you might educate yourself out of a job? [LB622]

DALE COMER: I'm sorry? [LB622]

SENATOR AGUILAR: You're not concerned you might educate yourself out of a job? [LB622]

DALE COMER: No. We have plenty to do. (Laughter) I think I can always write opinions for the Legislature. [LB622]

SENATOR AGUILAR: Questions? Senator Mines. [LB622]

SENATOR MINES: Thank you, Senator. I assume that this is not a pass-fail exam, open book or online? And if one fails, do they get certified? [LB622]

DALE COMER: I would assume that they would not. No. [LB622]

SENATOR MINES: Since there's no penalty if you don't take the course anyway. [LB622]

DALE COMER: Oh, no, no. If you just do the work, no, we're not teaching that kind of a course. I would assume that there will be some sort of a passing grade required to be able to get the certificate, yes. [LB622]

SENATOR MINES: Okay. But if they fail, it's the "so what" factor? [LB622]

DALE COMER: Right, if they fail, they do not get a certificate. [LB622]

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SENATOR MINES: If they fail, they're not certified and...okay. [LB622]

DALE COMER: Right, right. [LB622]

SENATOR MINES: Okay. Okay, thanks. [LB622]

SENATOR AGUILAR: Senator Pahls. [LB622]

SENATOR PAHLS: I have a question. It does seem like you've had a number of contacts in the public. Have you ever, in any of your dealings with I'm going to use the word mistakes, have you ever had to reprimand somebody, other than by letter? I mean, what's...has anybody, quote, ever gotten into trouble? [LB622]

DALE COMER: Yes, but let me kind of...that takes a little bit of explanation. I don't think that our office, well first of all let me review what the sanctions are. Under the Open Meetings Act people can be prosecuted for misdemeanors if we can prove beyond a reasonable doubt, in the context of criminal proceedings, that they've knowingly violated the statutes. So that's essentially the criminal sanction. We can sue to void something that they've done. However, there's case law from our Supreme Court that says that if they've done something in contravention to these statutes, they can cure it by doing it correctly. And then kind of the third alternative is the thing that we've used most often, and that is basically us writing a letter to folks saying, we think you've violated the law, don't do this again. And sort of inherent in that is the notion of, if you do this again then it's going to be much more difficult for you to prove next time that you didn't knowingly violate these statutes. That's the Open Meetings Act. Under the public records statutes, there are slightly different sanctions. Again, there are criminal sanctions for violations of the public records statutes. Then there is impeachment and removal from office, so those are available as well. And we can sue to obtain access to particular records in given circumstances. To the best of our knowledge, to the best of my knowledge, excuse me, our office has not brought any criminal prosecutions under these statutes. But county attorneys in Nebraska have concurrent authority with us, and there have been several prosecutions over the years, criminal prosecutions, under these statutes, and civil actions as well. I believe we have brought some actions to void, although frankly part of the problem is if you bring a lawsuit to void what they've done, first of all, if they didn't do anything at the meeting where they violated the law, it's difficult to sue to void something. If you bring the lawsuit and they cure it, then that moots the lawsuit, and we've had that happen. In the public records area, we have brought lawsuits for access to public records on behalf of citizens. So, yes, probably in all honesty, probably the most frequent thing that happens when there is a violation is a letter from us saying don't do this again, this violates the law, don't do it again. And as I say, my view has always been, and I've been doing this for almost 20 years, that somebody came into me and gave us direct evidence that showed that public officials purposely violated this law, knew they were violating it on purpose and went ahead and did so, then I would

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recommend to the Attorney General that they be prosecuted criminally. [LB622]

SENATOR PAHLS: Thank you. [LB622]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB622]

DALE COMER: Thank you. [LB622]

SENATOR AGUILAR: Next proponent. [LB622]

JOHN BONAIUTO: Chairman Aguilar, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director of Nebraska Association of School Boards. We're here to support LB622. Appreciate the discussion and the approach that this takes in heightening awareness and helping us to do a better job in educating publicly elected officials. And we've worked with our school boards across the state on this issue. And I think we have done a pretty good job, but that doesn't mean we can't do a better job. And so we will partner with the Attorney General's Office in getting a course certified and make that course available to all of our members. And then we typically open up our trainings, on this kind of issue, to other elected board members. So it's not unusual for us to have library boards, and an SID, and whatever other officials that might be in the area that would like to take this type of training, because the information is going to be the same. And I think this will...this is a quality control issue. The statewide organizations will be able to get together and have this certified information that we can provide to our members. So with that, I'll end my testimony and get out of your way. [LB622]

SENATOR AGUILAR: Any questions from the committee? Seeing none, thank you, John. [LB622]

JOHN BONAIUTO: Thank you very much. [LB622]

SENATOR AGUILAR: Next proponent. [LB622]

LAURA KREBSBACH: Good afternoon. [LB622]

SENATOR AGUILAR: Welcome. [LB622]

LAURA KREBSBACH: My name is Laura Krebsbach, L-a-u-r-a K-r-e-b-s-b-a-c-h, and I'm here today on behalf of the Great Plains Environmental Law Center. And first of all, we want to register our support for LB622. One thing I noticed, and I hadn't thought about going through this bill, is although there aren't teeth, as Senator Mines says, to the bill, there is a section that requires that those that take the course or don't take the course is part of public record. And I think that holding people accountable in our own

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local communities is a very powerful thing. So if local citizens can look at the list and see which one of their elected officials has taken the course, not taken the course, there's public hearings where they can raise that issue. So I think that's a helpful part of the bill. The other thing is that as a not-for-profit law center that works with citizens across the state, we have done some civil suits on violations of open public meeting laws. And it is unfortunate that these mistakes occur, but they do, otherwise we wouldn't be in existence and we wouldn't be litigating. It's very important for people to feel that the process is being respected in the first place than for us to have to come and do a suit if there's a violation. So I wholeheartedly think this is great. Another thing we've done is created a public participation, your rights and responsibilities manual that I use to give to citizens so they know what their rights are, and that helps them to have the process be more accountable. But, you know, both sides of that coin need to be served along with the elected officials. So we think this is a great bill. [LB622]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB622]

LAURA KREBSBACH: Thank you. [LB622]

SENATOR AGUILAR: Next proponent. [LB622]

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, here today in support of LB622. And I just want to point out, one, I believe it is the right step. And I believe, even though there is no penalty necessarily, education really, really is a good thing. We see this from time to time. I would tell you that one of the things that really got us, one of the many things that got us on board with this is that it's something that we can provide as an organization, get a certified course together, provide it to our members. We have the opportunity to probably...we have three or four annual workshops where we call all elected officials together. That gives them many, many opportunities to attend and obtain the certification. Another provision that you'll see in here, on page 4, line 12, which I would strongly suggest, and it says that the Attorney General may provide Internet training. And I would hopefully think that we could make that happen. Because even though we can provide that training at our annual workshops and things like that, by having that up on the Internet, I believe it will provide a tool or a constant reminder for somebody to sort of take that refresher course, if they want to, at any point in time. And the nice part about it is they don't have to wait until our next meeting or until somebody provides it. So I think the Internet is a great tool. NACO, when the open meetings law changed last year, we provided posters so that we would post them in every county board. We know that those are out there in 93 counties. But to show you the interest in that, we actually printed up 500 posters, and I just checked before I came over, and we're down to probably about 80 of those left. So what happened to those are a number of the other political entities, such as the smaller ones, the fire districts, and health districts, and things like that certainly want to make

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sure they are meeting the letter of the law by posting that. So there is a definite interest out there. And then lastly, NACO is currently undertaking a project in cooperation with the University of Nebraska Lincoln Extension Cooperative to put together other courses for county officials as far as a certified training. And this would tie very nicely into that program that we're developing. With that, I'd be happy to answer any questions anyone may have. [LB622]

SENATOR AGUILAR: Questions for Mr. Dix? Seeing none, thank you. Next proponent. [LB622]

LYNN MOORER: Good afternoon, Senator Aguilar and members of the committee. My name is Lynn Moorer, L-y-n-n M-o-o-r-e-r, a Lincoln attorney who works on public interest cases, representing citizen groups and individuals who deal with all levels of government in Nebraska. Today I'm speaking on behalf of Eastern Nebraskans Against Chemical Trespass, also known as ENACT. We support LB622 and thank Senator Pirsch for introducing it. Assuring that affected members of public bodies and governmental agencies receive training can help improve understanding of and compliance with the Open Meetings Act and the public records statutes. And this is clearly needed. We anticipate that improved compliance in the statutes will also, in turn, lead to improved government openness and accountability in Nebraska. And it's also likely to enhance citizen participation and trust in government, two additional healthy benefits. In my experience working with many different governmental bodies across Nebraska, I have found that knowledge and understanding regarding the requirements of the Open Meetings Act and the public records statutes is generally lacking, similar to the testimony you've heard so far. In my experience, lack of understanding can range on a continuum from being completely unaware of the requirements on one end, to misconstruing the requirements in an effort to circumvent the law on the other end. There's a broad continuum here. Requiring training will not solve the problem of the hard-core offenders who intentionally thumb their noses at the provisions or attempt to circumvent them, many of them, unfortunately with the assistance or tacit approval of staff attorneys who should know better. However, training is likely to assist the vast majority of Nebraska public officials so that they can better understand the requirements and achieve compliance with them. This in turn will help bring about more open government and improved accountability to the citizens of Nebraska. Something also that I think is important and it hasn't been mentioned so far, it may also make much less frequent the occasions when citizens encounter resistance or hostility when they seek to exercise their democratic privilege to attend and speak at public meetings or obtain timely information about the operations of their government, as current state law says they may do. If given the choice, I think training is certainly preferable than having to defend a lawsuit for noncompliance with the statutes. I think most public officials would rather participate in training than have their deposition taken and/or having to testify in court for a lawsuit that alleges they violated the Open Meetings Act or the public records statutes. So we expect that training will help prevent violations of the statutes, and

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thereby decrease the occasions when filing a lawsuit becomes necessary. We also trust that, in providing the training course and improving any training course offered by any other entity that, the Department of Justice will carry out sufficient quality control to assure that the statutory requirements are conveyed accurately and dispassionately. We do have a couple of suggestions for improving this very meritorious legislative bill, one of them has been touched on already. LB622 does not appear to address training for those already in office and existing government employees at the time that the new act becomes operative. It seems to us to make sense to make sure that the law is clear up front, so that there doesn't need to have any sort of special interpretation applied to it based upon case law from other states. We think that the large host of current officeholders and government employees who must comply with the Open Meetings Act and the public records statutes should also receive training. And from our experience, someone having held the position for a long time does not necessarily mean that government official is familiar with all the applicable requirements or carries them out properly. The second thing that we noted is that we suggest that in addition to the required completion of a training course, that LB622 also address the need for those trained to stay abreast of any future changes to the act and applicable statutes. Most of us understand how fluid the law can be, therefore we need a mechanism for helping these officials who have received training to stay current with the changes in law. So we recommend that the committee consider a committee amendment to add these two features to LB622, both of which are consistent with the intent of the bill. With these suggestions, we urge you to support LB622 and advance it to the floor for full consideration by the body. Thank you for this opportunity to speak. I'll be happy to answer any questions. [LB622]

SENATOR AGUILAR: Senator Pahls. [LB622]

SENATOR PAHLS: Lynn, in your testimony you indicated that at times you had dealt with organizations. And you believe...I'm not asking for the particular ones, and the attorneys actually knew what was going on, but they intentionally violated that? Would that be a fair assessment of what you told us? [LB622]

LYNN MOORER: That is correct. I should clarify that that has happened in some circumstances. The far more frequent circumstance that I encounter is that the staff attorneys have not briefed their members, whoever they may be, whatever body that they are counsel for. They haven't actually briefed the members. And so then a member gets into a public meeting and gets himself in a pinch, because he's just not up to speed on what the requirements are. But then a mistake is made at a public meeting, and then the staff attorney is loathed to admit any wrongdoing or to admit that there are any problems or deficiencies with the behavior. And that tends to perpetuate that particular body continuing to carry out their meetings the same way, and that mistake continuing to be done over and over and over. Like for example, there's one public body, the Open Meetings Act requires that at every public meeting there needs to be at least one copy

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available for the public of all reproducible, written material at the meeting. There's one public body that I deal with regularly that somehow or another they've got this erroneous idea, and this is what their county attorney or deputy county attorney stands up and says at every meeting, you have to go to the county clerk's office to go look at that material. So you have to leave the meeting. Their interpretation, incorrectly, is that you have to leave the meeting in order to go look at the materials that the board is considering right then. And that's an example of no matter...and there are lawsuits that have been brought on this. I'll tell you there's one in existence right now on this point. Even though this has been brought to their attention, it's been brought to their attention even informally before the lawsuit was filed, to see if it could get resolved. No, they're adamant, they're going to hang onto that position. Somehow or other they have this sort of erroneous legal assessment in their head and legal conclusion, and they continue to act that way. And unfortunately, that's the way most public bodies tend to get advice from their attorneys, rather than, in my experience, I'm not saying...there's plenty of them I don't know about. But I'm saying from the ones that I've observed and participated with, frequently they tend to dig themselves into the hole that they've created and are unwilling to take a fresh look and say, hang on, maybe we need to change the way we do things. And that usually...and it's more a matter of the attorneys have not actually read the act thoroughly, haven't actually taken the trouble to assure that they're familiar with what all the requirements are, and maybe read a few of the important Nebraska appellate court cases that help interpret what this act means and how it is to be complied with. So they continue this very unfortunate practice of having bad legal advice that somehow or other it takes a lawsuit to get it turned around. And that's very frustrating for the citizens I represent. [LB622]

SENATOR PAHLS: Okay. Well, would you...could this be one of the answers? Let's say that the name does get sent to the Attorney General, that one of the requirements would be that you must attend this type of training? I mean maybe that would force people to... [LB622]

LYNN MOORER: Well, I tend to...I understand your point entirely. And it's one of the first things I noted about this act that...where are the teeth? Where is the hammer that comes down, if they don't attend the training? By the same token, I understand and respect what Senator Pirsch explained, that this is the next logical step. And it seems to me that once this statute...once this becomes enacted and is on the books for a year or two, I think we'll have a lot better information as to what this has done with respect to compliance and how many members of public bodies aren't taking the training or aren't doing it. Now you... [LB622]

SENATOR PAHLS: But if they aren't, I'm saying though that this could be the thing that you must do then, if your name has been turned in or something. [LB622]

LYNN MOORER: Right. Of course, we all recognize too that no matter how spectacular

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and scintillating any training course is, if you have somebody who has a basically hostile attitude toward the public or a low idea of the accountability that they are to be held to, a great training course that they've taken and they've got a wonderful certificate on the wall, is not necessarily going to change that attitude. I am sorry to say that there are, in the smaller bodies, particularly in the less populated counties, that sort of attitude, the attitude tends to prevail, well, I'm volunteering my time to be on this board, and I don't care what any law tells me, I'm going to run this meeting the way I want to do it, period. You know? And so that is an attitude that I'm not sure any training course can fix. So I...legislating to get better compliance, I think, is a mixed bag of...it's going to...I do think that having a lawsuit brought, where then that public body loses, ultimately can do a lot for them to get religion about what the Open Meetings Act really means. But unfortunately that's a very difficult and rare process for you to be able to prevail in that fashion. But this is a meritorious bill. I would say it may go a long ways for the particularly unintentional violators, the people who truly want to comply, but they are just not real clear on how to do it. [LB622]

SENATOR PAHLS: Thank you. [LB622]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB622]

LYNN MOORER: Thank you. [LB622]

ALLEN BEERMANN: (Exhibits 2 and 3) Mr. Chairman, Senator Aguilar and members of the committee, I am Allen Beermann. And I have the privilege of representing the Nebraska Press Association. And I appreciate the courtesy of the hearing on this bill. The Nebraska Press Association would support this legislation for many obvious reasons, but more importantly we want you to know that we have subscribed ourselves to making this kind of education work. We have partnered with the Nebraska Broadcasters, as well as the Nebraska Bar Association to develop materials that we have made available by the thousands to every known public official in this state, from library boards, to the Board of Regents. And I'm going to pass them around for you to have as an exhibit. But these are made available and are required to be present for every public meeting ever held in Nebraska. And we've made these available at no cost to the public officials. We would hope to work with the Attorney General's Office and continue to publish these materials so that they are available to citizens as well as public officials. And then we also have the same guide book that has, in addition to the Open Meetings Act, it has the open records laws. And so I would leave these also with your committee. And we will continue to make these kind of materials available as long as they are useful. We also want you to know to that end we have made available the Hot Line Attorneys for the state of Nebraska's public...Nebraska Press Association to be a resource. And they have put on seminars at all of the various conferences of the League of Municipalities, NACO, the County Officials, the school boards, school administrators. And we would continue to help in that arena, to make sure that people

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learn about open meetings and open records, because we think the best government is that which is open government and where the citizens have the opportunity to rightfully participate and to lend themselves to better government. That would be my statement. I would yield myself to questions. [LB622]

SENATOR AGUILAR: Thank you, Mr. Beermann. Questions for Allen? Seeing none, thank you. [LB622]

ALLEN BEERMANN: Thank you for your courtesy. Welcome. [LB622]

LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. And we, too, strongly support this measure. We think that it's not possible to have enough training on the Open Meetings Act or the public records law or a number of laws, actually. So we think this is very important. I do think it's important. I have talked to the Attorney General's Office about this, that in addition to having something online, that for the smaller communities if there's some way to do this through a video tape or something, a paper, some kind of a paper transaction where they could do it. Because most of our villages, of which there are hundreds, are not online. And I can envision that with most of our municipalities we'll be recommending that they actually do this as part of a city council meeting or part of a village board meeting. And for the larger ones, they can access it online, and they can do it in that way. I just can't speak well enough of the Attorney General's Office. They've just done a phenomenal job, not just on this, but on the public records law, too. They have provided invaluable information. And as much as many of us have been involved in assisting in legislation just from one side of the perspective at least, on these issues for years and years, there still are questions that come up. And they always make themselves available to assist us. Whether it's trying to figure out how to address the myriad of public records requests that we had on LB423 or compliance with the public...the Open Meetings Act and public records law and any number of issues. So they have just been extremely helpful. And I think it's a very positive thing that they've been contacted over and over again by elected officials, city attorneys and others of people trying to comply. Because this is about compliance. So first of all, I commend them for putting this bill, and certainly appreciate Senator Pirsch putting this bill in. There are just a couple of suggestions. One of which I've already suggested, which is to have something so it's not just an Internet, but there's some other way to do it. The league also, at all of our training workshops we include sessions on the Open Meetings Act. We'll be doing that next week, as a matter of fact. But I don't think that that's enough. I think that having the Attorney General's Office do it and having access to that is extremely valuable. In terms of providing some teeth to this, I think it's important to have an express provision, just so that there is no one that has the misunderstanding that they can't take it again and again until they pass it. And to bring this home to especially the newer senators sitting here today, imagine if you have to take a test on the legislative rules, and you're taking that tomorrow or next week. I'm just suggesting to

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you as long as I've been around, and unfortunately it's been decades, I don't know that I could pass a test on the legislative rules without having some time to study it and get prepared for that. So in the same light, when you get newly elected officials who have never served on anything but maybe a nonprofit board, it is news to them to find out all the rules and regulations that apply to governance because it is different. It's not like being involved in a chamber of commerce, it's not like anything else, it is governance. And so again, I think there needs to be an expressed statement in here that individuals can take it as many times as they need to pass it. And I think that is the hammer, they pass it. I think it's important that elected officials in particular be able to take this as many times to pass it. Because I don't think, by the same token, you don't want somebody standing up at a public meeting saying, well, Harry or Sally, they just couldn't pass the test, and trying to demean them for that. I think people need to have the option to do it as many times as necessary. I guess the other thing that I would just suggest is that I also agree that this needs to apply to current officials. And I would respectfully suggest the way to do that is to say that they, too, would have to take this training within one year of the date of the effective date of the bill, because that way it gives them also some time to get advice in terms of how to progress with this. So again, thanks to the AG's Office, special thanks to Senator Pirsch. And I'd be happy to respond to any questions. [LB622]

SENATOR AGUILAR: Questions for Ms. Rex? Senator Adams. [LB622]

SENATOR ADAMS: Lynn, I was going to...originally I was going to address this to Senator Pirsch on closing, but I'll ask you now. Do you think it would be advantageous to include in this language clerks? You know we all know that there are school boards, village boards that simply cannot afford to have an attorney present, but they all have a village clerk that's present or the county clerk is present. And I'm wondering if those folks who tend to be more consistently available and they're there, they have to comply with public records laws already, that's inherently their responsibility, if they, too, shouldn't be part of this education process? [LB622]

LYNN REX: I think that's a great idea. I think there is even one group of suspects that are even more important, and that would be the county attorney, city attorneys, school board attorneys, the folks that are responsible for advising public bodies, they are on the front line and they ought to be there. But, Senator Adams, your point is very well taken. Most of our cities in this state, other than cities of the first class, Omaha and Lincoln, really don't have an attorney sitting there during all their meetings. They just can't afford that. And so you're exactly right, they do rely on staff to deal with this. And I would put money on the fact that our county...our city clerks could pass right now. They work with it all the time, they've got the institutional memory and they deal with it. So I think that would be a great suggestion. But please don't put them in without putting in the city attorneys, school attorneys, every attorney that advises a public body. And I mean that...I don't mean that in a negative...well, it sounds negative. I just think it's

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really important that they also be brought up to speed on this, if they are not already.  
[LB622]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB622]

LYNN REX: Thank you very much. [LB622]

SENATOR AGUILAR: Welcome. [LB622]

TAMI SCHENDT: Good afternoon. My name is Tami Schendt, S-c-h-e-n-d-t. I am currently the Custer County attorney, and I'm here representing the Nebraska County Attorneys Association, as I am currently their president. We are supporting this bill, LB622. I am from Broken Bow, which is...Custer County is the second largest county in area. And, I guess, I'm blessed with townships. Speaking from experience, I believe the question earlier was, is there legal counsel at these meetings? I have townships where nobody wants to run for office. And we literally have chairmen that are elected chairmen of their township because their neighbor wrote their name in as a joke. They are now chairmen of the township board. Usually that's not a problem, they will take it until controversy hits. And when controversy hits, there is panic. There is no legal counsel at those meetings. A lot of times there are three people on the township board--chairman, clerk, and treasurer; they're lucky if they have two people at that meeting. And they cannot afford legal counsel, they have no money. Once the controversy hits or if there is a problem and constituents complain, that's where we run into the problem. I, like everyone else, believe that a lot of times it's not intentional. I have had two pretty blatant violations of the open meeting laws within the last six months. And I think it's just ignorance. I believe that this is a good bill. Training, looking at the bill I don't believe it's very intrusive on people that would be elected to office, if you could take it over the Internet. And I believe it could help avoid controversy and avoid problems with people in the future. You know we have townships, fire boards, I've gotten fire boards, rural fire boards that have been in trouble. A lot of times when you find out there is this violation of the open meeting law or a question, they've been doing it for a long time, it's just how they've always done it. And so again it's just total lack of knowing what the law is. I have also seen abusive Executive Sessions when you don't want to deal with the controversy. A lot of those boards are smart enough to know if you talk personnel or litigation, you can go into Executive Session. So I've seen abuse of it that way, too. So again, we would like to support this bill. [LB622]

SENATOR AGUILAR: Questions for Ms. Schendt? I have one. On the blatant ones you referred to, did you prosecute? [LB622]

TAMI SCHENDT: I referred them to the Attorney General's Office. One is currently under investigation, and that...or I had referred it there. Both of those, my feeling...and what happened on the first one was an investigation was done by the State Patrol. It

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was a situation with the rural fire board where they inherited their positions. They were put on the fire board and when dad got sick or was unable, then son took over into the position. At that meeting, under statute you elect members to your fire board by a quorum of the people that attend that meeting. They told the public they couldn't vote, we appoint who's on our board, and we're appointing him, and that's who's on our board. So...and a lot of times I like how they handle it. They do the investigation, here's the copy of the law, here's how you violated, any future incident you're going to be deemed to have known you violated it. And that's how a lot of those things need to be handled. I really believe everything I've dealt with is not intentional, trying to circumvent, they just don't know. [LB622]

SENATOR AGUILAR: Yeah. Thank you. Next proponent. [LB622]

ALAN PETERSON: Mr. Chairman, members of the committee, I'm Alan Peterson. I represent Media of Nebraska, which is the umbrella group for all the news media, commercial news media, at any rate, in Nebraska. We're in favor of this bill. We think it's a good bill, no down side. Open meetings, open records really help make good government in this state and have for a long time. The instructor who you heard from earlier, from the Attorney General's Office, Mr. Comer, is an excellent lawyer and a square shooter. And I think all the attorneys in Nebraska who deal with this area, including me, often look to him for advice, too. And so I compliment the introducer of the bill. I believe we submitted a letter of support earlier, but I wanted to be sure that Media Nebraska is on the record as supporting this excellent bill. [LB622]

SENATOR AGUILAR: Thank you, Mr. Peterson. Questions? Seeing none, thank you. [LB622]

JACK GOULD: Senator Aguilar, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I represent Common Cause. And I'm not going to take any time at all. We support the bill and we appreciate the fact that the Attorney General's Office has taken a lead in this area. [LB622]

SENATOR AGUILAR: (Exhibits 4, 5, and 6) Questions? Thank you. Anymore proponents? If not, I'd like to read into the record letters of support from Shawn Renner of Media Nebraska; Dennis and Ruth McCormick of Blair, Nebraska; Ted Thieman of Petersburg, Nebraska. We will now take any opponents of the bill. Any neutral testimony? Seeing none, Senator Pirsch, to close. [LB622]

SENATOR PIRSCH: Chairman Aguilar and members of the Government Committee, I appreciate your time here today in listening. And I also want to say thank you to the Attorney General's Office and the members...individuals who have testified here today and the groups they represent. I think this bill clearly strikes the right balance to ensure open and transparent government, yet not be so overburdensome, so regulatory that it

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drives away members of the community who would otherwise volunteer, because I think that tension is very important to strike the right balance. And so it does, I feel, balance those competing interests. It's the next step that I think is required, the next least intrusive step. And so I would urge you to send this onto the floor as a whole. Thanks so much for your time. [LB622]

SENATOR AGUILAR: Any follow-up questions for the Senator? Seeing none, thank you. That closes the hearing on LB622. We're now ready to open on LB199. LB199, I see three. Welcome, Senator Schimek. Fire away. [LB622 LB199]

SENATOR SCHIMEK: Good afternoon, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. For the record, my name is DiAnna Schimek. I represent the 27th Legislative District, and you're all making me nervous already. (Laughter) I'm here to introduce LB199, which my notes say is a noncontroversial bill. And I'm not going to tell you that. I think it's a...I do think it's a simple bill that shouldn't have controversy. But it was brought to me by Chris Dibbern, who represents the Municipal Energy Agency of Nebraska or MEAN, which is a joint action agency comprised of 66 members in 7 states, including Iowa, Kansas, Wyoming, South Dakota, Nebraska, Colorado, and Wisconsin. The group has encountered a problem with statutes that regulate membership requirements. Very simply, a municipal utility out of Iowa wishes to be part of the group. Current statute requires members to be entities that...no, I'm sorry. Current statute requires members to be entities that can pass ordinance. However, this particular group is not a city, therefore they cannot pass ordinances, they can only pass resolutions. Allowing municipal utilities who can pass only resolutions into the group would be beneficial because, of course, it would lower the cost and spread the risk for Nebraska members. And Chris Dibbern will be explaining this more in detail. The second thing LB199 addresses is that it allows a telephone conference option for agencies under the Municipal Cooperative Financing Act. MEAN feels that having the option for a conference call would be good for their committee meetings, but not necessarily for board meetings because they have over 60 members. This telephone conference option is under the Municipal Cooperative Financing Act, and these are the same rules that apply to interlocals today. In other words, we're not changing the Open Meetings Act, except to allow these municipalities and these utilities to come in, by resolution, and to insert, on page 8, the Municipal Cooperative Financing Act, to have the same abilities that interlocals do under the Interlocal Cooperation Act or joint public agencies have under this act. We're not changing the rules of the game at all is what I really meant to say, just changing who can participate in the rules (sic). Here we have somebody that's actually asking to come in under the Open Meetings Act. And you don't always have entities wanting to come in. Some would rather get out, I think. So that is the bill as I understand it. I'd be happy to answer questions, but I think MEAN is here. And I don't know if you get who MEAN is, Municipal Electrical...Municipal Energy Agency of Nebraska. [LB199]

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SENATOR AGUILAR: Any questions? Seeing none, thank you. [LB199]

SENATOR SCHIMEK: See none? Thank you. [LB199]

SENATOR AGUILAR: First proponent. [LB199]

MONTE MOSS: (Exhibits 1 and 2) Good afternoon, Chairman Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Monte Moss, it's spelled M-o-n-t-e M-o-s-s. I am the chairperson of the Municipal Energy Agency of Nebraska, and I am also the representative from the city of Wood River where I am the utility director at the city. Many exciting utility issues are happening for Wood River and for the Municipal Energy Agency of Nebraska, who I will refer to as MEAN, which is our acronym. I have a map listing the member communities of MEAN, and a brochure explaining our agency, which Chris Dibbern has, and if the committee would like to have a copy of each of this. The Municipal Energy Agency of Nebraska provides power supply, transmission, and related services to over 60 communities, one public power district, and one joint action agency in Nebraska, Colorado, Iowa, Kansas, and Wyoming. With such a large membership spanning such a broad territory, it is sometimes difficult and expensive for members to travel to a central location to meet for regular board meetings. In addition to regular board meetings, the Municipal Agency of Nebraska has approximately six committee meetings per year. Currently, some cities and villages have municipal utilities separate from the city or village that provides services to their municipality which seek membership in our agency, for example, the municipal utilities of Indianola, Iowa. However, they are unable to become a member due to the current language of the state statute requiring the passage of an ordinance as these utilities do not have the authority to pass ordinances. LB199 will allow these municipal utilities access to membership in our agency, which will allow them a voice in the decisions of the agency and generally lower all member power costs. LB199 is not intended to extend membership to organizations like power districts servicing more than one community. In addition to allowing municipal utilities access to our agency, LB199 would make it more feasible for communities to have their board members serve on committees by allowing the agency to conduct meetings via teleconferencing. Teleconferencing will improve the ability to achieve quorum, and will enhance the decision-making process by making it more likely that members from distant communities will have a chance to provide their input in the decision-making. MEAN intends to use teleconferencing predominantly for committee meetings. LB199 will not change any procedural aspect of the open meetings law. I request your support of LB199 and ask for any questions at this time. [LB199]

SENATOR AGUILAR: Questions? Senator Pahls. [LB199]

SENATOR PAHLS: I just have a question. When was the last time you were in Beloit?  
[LB199]

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MONTE MOSS: When we were at Beloit? [LB199]

SENATOR PAHLS: Yeah. Have you ever visited Beloit, Kansas? [LB199]

MONTE MOSS: I never have myself, but I think our staff members have. I basically, just chair the meetings and look over the agency. But we have the staff members here in Lincoln, at Energy Square. [LB199]

SENATOR PAHLS: I just...I spent a couple days as a kid there. (Laughter) [LB199]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB199]

MONTE MOSS: Thank you. [LB199]

SENATOR AGUILAR: Next proponent. [LB199]

LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities, and we are on record in support of LB199 for reasons already stated. I'm happy to respond to any questions that you may have. [LB199]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB199]

LYNN REX: Thank you. [LB199]

SENATOR AGUILAR: Any other proponents? Do we have any opponents? Neutral testimony? [LB199]

ALAN PETERSON: Chairman Aguilar and members of the committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, and I represent Media of Nebraska. The proponents of this bill are asking for a rather modest exception to allow their particular body, and really their committees, I understand, to use the phone for open meetings. The news media and other advocates of open government have generally frowned on this because of the belief that for most meetings the eye contact and for the public to be able to see the actual physical and intellectual interaction between members of any public body is important. Nevertheless, this is a very broad body across several states, with the request that at no more than one-half of their meetings they be able to set up an open meeting with an open line so that members of the public or press can attend in the same way they do and participate, if they are allowed to with questions or whatever. It's a modest exception. That organization or rather its related entities have been using this telephone exception for a few years now, and no abuses have been noted by my clients, the news media. We think they're a good faith outfit, and that this is a legitimate

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exception that they are requesting so that they can occasionally use the phone and get their business done. We could be absolutists on open meetings and open records, and I think get them shoved down our throats because there needs to be some flexibility for exceptional circumstances. I think this is a legitimate bill. We're neutral because it's a public policy issue, I think not something the news media is very directly involved with. But we have no objection to it whatever. I'll answer any questions. [LB199]

SENATOR AGUILAR: Questions for Mr. Peterson? Seeing none, thank you. Senator Schimek waives closing. We're now ready to open on LB389. Senator Mines, would you take the chair? [LB199 LB389]

SENATOR MINES: I will, Senator Aguilar. Could I see a show of hands, those that will be testifying on LB389? I see one, two, three. Thank you. Thank you, thank you. Senator Aguilar, to open. [LB199 LB389]

SENATOR AGUILAR: (Exhibit 1) Thank you, Senator Mines. My name is Ray Aguilar, A-g-u-i-l-a-r, representing District 35. I'm here today to introduce LB389 at the request of the University of Nebraska. In 1999, the Legislature passed the bill establishing the current language regarding when job application materials from people who have applied for employment with a public agency can be withheld from the public. The current law allows job application materials submitted by applicants, other than the finalist, to be withheld from the public by the lawful custodian of the records. In other words, job application materials submitted by finalists may be made public. Since this law went into effect, concerns have been raised, particularly by the University of Nebraska, that the current language will prevent quality applicants from applying for high level positions in the university knowing their name and other information will become public before they are hired. LB389 changes the definition of "finalist" to ensure that only applicants which receive an interview with the person or group having authority to hire them will have their information made available to the public. I am also introducing an amendment to the bill which further defines "finalist" with the amendment. A finalist includes someone whose candidacy survives all preliminary cuts and reaches the final pool of applicants numbering four or more from which the applicant is to be selected. When there are only four or fewer original applicants, and when the final pool of applicants is less than four, then every applicant for the position will be considered a finalist. I understand this amendment has been agreed upon by both the university and Media of Nebraska. I want to thank Alan Peterson and the university for their work on this issue. I'm happy to try and answer any questions you may have. [LB389]

SENATOR MINES: Any questions from the committee? Senator Avery. [LB389]

SENATOR AVERY: Thank you, Mr. Cochair, Vice Chair. Senator Aguilar, is there any evidence that the university or any other agency that would be covered by this law has

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lost a well-qualified, high profile, first eminent, that type candidate for a position because of their requirements under existing law? [LB389]

SENATOR AGUILAR: I'm hoping there would be someone here from the university that can answer that a lot more accurately than I could. [LB389]

SENATOR AVERY: Okay, I'll wait until they come up. [LB389]

SENATOR AGUILAR: Thank you. [LB389]

SENATOR MINES: Further questions from the committee? I see none. Thank you, Senator Aguilar. May the proponents, please come forward, make sure that you spell your name for the record. Good afternoon. [LB389]

RICHARD WOOD: Good afternoon. Members of the committee, my name is Richard Wood. I'm general counsel for the University of Nebraska. Last name is spelled W-o-o-d. I'm appearing in favor of LB389 as it is proposed to be amended by Senator Aguilar. This will address a problem that we have found that we've had with the current law in that any time an individual agrees to an interview, at any point during the hiring process, then that individual's job application materials become a public record under the Public Records Act. With the proposed amendment it would allow the hiring process to proceed with preliminary interviews, which, at least within the university very often happen with search committees and then to the point where there are four finalists for the position. At that point their job application materials would become public. We've worked with Alan Peterson, representing Media of Nebraska, on this amendment. And we find it very agreeable and urge you to move this bill, as amended, forward to the floor of the Legislature. Be happy to answer any questions that any of you may have. [LB389]

SENATOR MINES: Thank you, Mr. Wood, thank you. Senator Avery, I believe you have a question. [LB389]

SENATOR AVERY: I do. It's good to see you, Dick. [LB389]

RICHARD WOOD: Nice to see you, Senator. [LB389]

SENATOR AVERY: Mr. Wood, excuse me. The question I have, of course, is, have we missed out or has the...I keep saying "we" when I refer to the university, I got to quit doing that. Has the university missed out on some high-qualified, first magnitude people that perhaps dropped out in the early stages because they didn't want their candidacy known? [LB389]

RICHARD WOOD: I can't cite any individual circumstance to you that I am aware of.

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The only thing that I can tell you, Senator Avery, that almost every university, senior level university administrator that I've talked with on this subject have told me that it's very difficult for an individual who is in a responsible job at another university to make application or have his or her name submitted in nomination for a position, for example at the University of Nebraska, and then as we go through the hiring process, which I think you're aware, involves a search committee that does preliminary screening, under our public records law as it now exists, if that individual submits to an interview, agrees to be interviewed by a search committee, then his or her job application materials become public at a very preliminary stage. And I have been told that many people will not apply or agree to go through the process if early in the stage, the hiring stage, their name becomes public because of the adverse effect it will have on their current position of employment. Dean B.J. Reed is here, and will testify in support of this as well, and he, I think, will be able to even address this in more detail than I have. [LB389]

SENATOR AVERY: Okay, thank you. [LB389]

SENATOR MINES: Other questions for Mr. Wood? Seeing none, thank you for your testimony. [LB389]

RICHARD WOOD: Thank you. [LB389]

SENATOR MINES: Other proponents? Good afternoon. [LB389]

B.J. REED: Good afternoon. Vice Chair and committee members, thank you very much for hearing my testimony this morning. I'm B.J. Reed, it's R-e-e-d, and it's B.J. Reed. I'm dean of the College of Public Affairs and Community Service at the University of Nebraska at Omaha and executive associate to the chancellor at UNO. And I think I was asked to testify because I've been on more search committees than anybody else would normally think would be rational to do. I was on the search committee, in 1991, for the president of the University of Nebraska System. I chaired the search committee for the search for the chancellor at UNO in 1997, and most recently, in 2004, I was on the search committee for the president that resulted in hiring J.B. Milliken. So I have a little bit of perspective on this. Interestingly, the law, in 1999, did not apply in 1991 and 1997. And we later found what it would or wouldn't apply to in the 2004 search. And I will tell you that my experience with searches, and this was very interesting to me, is how much the issue of how public those names are is critical to which candidates are willing to go forward. In the process that works at that chancellor and president level, a lot of individuals are nominated and don't necessarily apply directly themselves until later in the process. In each of those cases we worked with executive search firms. Those executive search firms were hired because they were able to build a pool of candidates much more quickly and readily than we could do on our own. And at the levels that we're talking about, which primarily are either sitting chancellors, presidents or people of very high stature, such as Admiral Ellis, that was in the latest, the 2004

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pool for the presidency of the University of Nebraska, they are frankly very nervous about having their name released in a public venue, unless they have a pretty good sense of probability of success in getting the position. And if you're taking 10 names forward or 15 names forward, that probability goes down significantly. And so at least what the executive search firms have told us, and I have nothing to believe that it isn't true, a number of these individuals, even if nominated, would not have their name go forward if they were going to be in a large pool of names that were made public. And I think in most of the cases that I've worked in the number of names that we forwarded, either to the president or to the Board of Regents, were in that three to five range. And the reason that...and even with that number, not everyone is very comfortable having their name go forward in public. And what we found is that, though the odds, if there is a 33 percent chance or a 25 percent chance that they might get the position, at least if their name goes public, they can go back to the organization that they are currently employed with and indicate that they are very highly thought of and that this is a very narrow pool, and that it does not in any way displace their role with their current institution or organization that they're with. That's certainly been my experience in working through these searches. And it's been true, even though the executive search firms that we've worked with, I've worked with three different executive search firms in all three of those searches, they've been very consistent about their attitudes about how to build that pool, how to keep people interested in the position, it's almost like a courtship. It's very hard for me in my normal hiring position to get a sense of how much of this relationship is a give and take between the institution like the University of Nebraska and those potential candidates. So I really feel this bill would go a long way in addressing those concerns that we had certainly in the 2004 search. And I'd be happy to answer any questions I can answer. [LB389]

SENATOR MINES: Thank you, Mr. Reed. Questions? Senator Avery. [LB389]

SENATOR AVERY: If your argument is true, and I'm not saying it isn't, why don't we just eliminate altogether the publication of these names, even the finalists? [LB389]

B.J. REED: Because I think there's a balance between the public's right to know and getting the best qualified candidates for the position. And I don't think any of us who have gone through these searches believe that the public doesn't have a right to know who are finalists for these positions; I think it's important. And I've had give and take with the media on this issue, really, since 1991. And I respect the opinion of the media that feel that this should not be a secret process, that it should not be a process that isn't open to see who those best qualified candidates are and to be able to have public view of those finalists as well. I think this is a really good compromise between, again, the public's right to know who those candidates are and to have them come forward in an open interview process, and the ability to keep that pool as strong as it can to the point that you've made those final selections. [LB389]

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SENATOR AVERY: But you said this should be a public process, but you're asking for a portion of it not to be public? [LB389]

B.J. REED: That's right. And I think...and that's what I meant by the balance between the public's right to know and the ability to get highly qualified candidates to remain in the pool. Because if we...if the search committee gets to a point where all they can do is look at the paper, and all they can do is look at recommendations that are often recommendations that are already, you know, predetermined to be supportive of the candidates and you don't have a chance to interact with those individuals and get a feel for their ability to do the job, then we're not doing a very good job in making those recommendations back up to the hiring authority, be it the Board of Regents or the president. This allows us to do a winnowing process and protect, frankly to protect the interests of all of these individuals who were willing to be considered for the position. And I...we've got to respect...these individuals are coming forward, and they are again in sitting president positions, sitting chancellor positions. And they are taking a risk when they go into our pool. They take a risk when they are in a position to say, well, I'm willing to say that I'm willing to go forward and have you at least consider me for this job. And so that's what I meant by this balancing act. We want them to feel comfortable that they can be considered, that we will review their files, and that we can talk to them and not put them in a difficult position where their name comes forward, one of 40 names or one of 20 names. That I don't think serves anybody's interest. [LB389]

SENATOR AVERY: Isn't it also true that some of these candidates want their people back home to know, so that they can use it as bargaining leverage? [LB389]

B.J. REED: Oh sure. [LB389]

SENATOR AVERY: For better contracts? [LB389]

B.J. REED: I can't...sure, I'm sure an individual...there are cases, you know, this is not an issue if somebody has retired, it's not an issue if somebody has already left the position and is looking for a position. Those individuals, they're not going to have a problem with their name being out, nor are some individuals who see this as a bargaining chip. But I will tell you, if you're 1 of 20 people whose name goes forward, and it's a public...it's public information, you haven't got much bargaining chip in that process. If I'm 1 of 3 or 4, maybe you have, but not 1 of 20. And my experience again, in these three searches, is that's not very common. Maybe one or two cases out of all those three that I feel that that candidate might have been doing this as a bargaining chip, but it can happen. [LB389]

SENATOR MINES: Other questions for Mr. Reed? Seeing none, thank you for your testimony. [LB389]

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B.J. REED: Thank you. [LB389]

SENATOR MINES: Next testifier in support of the bill. Lynn, welcome back. [LB389]

LYNN REX: Yes, thank you. Sorry about that. Senator Mines, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We do support this bill. And it doesn't just apply to the university, of course, it applies to municipalities as well. And, Senator Avery, I can give you an example. And it was kind of a sad example, because there was an individual city manager from a city in western Nebraska, city of the first class, highly regarded, probably one of our best administrators in the state. He applied for a position when the city of Kearney position opened up several years ago. And what happened is he lost his job as a result of applying. When it got known back home that he put his name in, there were members of the council and citizens that came forward and said, Harry, obviously, doesn't have a commitment to our city anymore, and you need to consider yourself short-term. And his contract was up the next year and that was it. And so...and he then went and became a city manager in Kansas, but we lost a great city manager that should have been in Nebraska. So I do think it is a balancing test, I think everything is. And this certainly is a balancing test of saying, look, there are obviously names that need to be public and those are the finalists. And I would hope that the committee would advance this bill. And we've had more than one experience with that, but it really has inhibited people from even applying. I can tell you that I get calls from city manager administrators from across the country when we have openings. And we have openings in several of the first class cities that will be coming up in the next couple of months. And clearly they want to know, is it public or not? Because they're prepared to have it public, they're prepared to put their job on the line, if in fact it means that they're going to be a finalist, because then they think, they're pretty confident in any event, that they're going to get that job. We have four or five very confident people that they're going to get the job when they make the cut. But to be 1 of 20, 1 of 30 or in the case of most of our cities 1 out of 250, and many of those folks have interviewing processes where they're all interviewed just as a matter of courtesy. I'm happy to answer any questions that you may have. [LB389]

SENATOR MINES: Thank you, Lynn. Any questions? Thanks for your testimony. [LB389]

LYNN REX: Thank you. [LB389]

SENATOR MINES: Next testifier. John, welcome back. [LB389]

JOHN BONAIUTO: Thank you. Senator Mines, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director of the Nebraska Association of School Boards. And we support LB389 and the amendment to the bill. Our organization

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does superintendent searches for our member districts. And this is about education, helping our boards understand what their responsibility is in providing information, and helping candidates understand what information may be made public at a particular time. So I think that having the clarification just up front, there's no surprises. People understand what they're signing up for and how it works. So with that, I'll end my testimony. [LB389]

SENATOR MINES: Thank you. Any questions for Mr. Bonaiuto? Thank you for your testimony. Next testifier in support? Mr. Peterson. [LB389]

ALAN PETERSON: Senator Mines, members of the committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, Media of Nebraska's representative. Let me take just a minute to talk about how the Public Records Act is structured, I think you need to know that to understand the language of the bill. The Public Records Act of Nebraska, since 1979 I think, has basically said, all the government papers and documents are public, unless there's a specific exception. And one of the exceptions has been the application papers and documents of people who apply for public office, except those who are the finalists. And the previous definition, as Senator Aguilar explained, said that you become a finalist if you get an interview. That definition has caused the problem that the university and others who have large numbers of applicants may not get to interview as good and as large a body of applicants because some don't want their name disclosed. And it's understandable. So we've worked, frankly, over a number of years to try to find some sort of compromise, and this year came up with something that seems to not quite satisfy everybody, but is livable for everybody, and that is to have, well, let's see who the top four finalists were. Let's let the public know who was really considered at the end. The hammer that's created is if somebody plays games and has 20 applicants, but only discloses or only names 2 finalists, well that is a hammer, trigger that would say, okay then show us all of them. That makes everybody a finalist. But if they name four, then that's all the public gets to see. I thought the key question from Senator Avery a moment ago was, well, why not make them all confidential? Good question. There's two reasons. I think number one is when government makes significant decisions for the public and the constituents of its particular jurisdiction, that's the public's business and they want to be able to see it done, not in the dark, but with the windows open, with fresh air, with light, even my clients present to help spread... [LB389]

(RECORDER MALFUNCTION - NO OVERLAP)

ALAN PETERSON: But the second reason may be more important in regard to some jobs, and that is to give the public some chance at input. Particularly in the educational community, nationwide we have seen cases where a choice was made, let me say sort of semicritically, a choice was made bureaucratically or by the old guard and the students or the faculty or other administrators raised cain because they weren't consulted; they thought this particular choice was especially bad. And the input came in

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and some of those choices were changed. I think maybe Wesleyan had something along that line with its student body a little while back in regard to their selection of a new leader. So, number one, disclosure, the open air, number two, the chance of input. This still is a democracy, even in these small public bodies, that's the chance for the public to have a little bit of a say. And it's a compromise. I think it's fair. I think it will work better than the old language. I'm technically against this bill in its original version, but a proponent of the bill with Senator Aguilar's amendment. And I'd be happy to answer any questions. [LB389]

SENATOR MINES: Thank you, Mr. Peterson. Questions? Senator Avery. [LB389]

SENATOR AVERY: Just a comment. You have a great reputation around this place... [LB389]

ALAN PETERSON: Thank you, sir. [LB389]

SENATOR AVERY: ...for defending openness and accountability in government. I appreciate it. [LB389]

ALAN PETERSON: That's very nice of you. [LB389]

SENATOR AVERY: And you have very, very persuasive testimony. Thank you. [LB389]

ALAN PETERSON: Thank you, sir. [LB389]

SENATOR MINES: Other questions or comments? Thank you, Mr. Peterson. [LB389]

ALAN PETERSON: Yes. [LB389]

SENATOR MINES: Mr. Beermann. Congratulations, by the way, man of the year, Lincoln Rotary Club. [LB389]

ALLEN BEERMANN: Thank you, thank you. You're very kind. Senator Mines and members of the committee, I'm Allen Beermann, A-l-l-e-n B-e-e-r-m-a-n-n. I have the privilege of representing the Nebraska Press Association. We would go on record being in favor of LB389 with the Aguilar amendment, we think that's very important. We think the process would work very well if the public, at least as the finalists, has the opportunity to know who they are, to ask questions, to observe the candidates, to see them walking around the campus to interact with people, and that they're known that they are finalists, and any one of those three or four people could become a university president. To the university's credit, in the last selection, when President Milliken was selected I participated in those activities just as an observer, and I watched citizens come forward who had the opportunity to ask questions of the candidates, to listen to

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answers, to be a part of it, to meet and greet them in a social setting, and to observe how they reacted to interaction with the public. It was very healthy, it was very encouraging to me. So I would support this bill as amended, and I think it can be made to work. And we, as a media, are not interested in the other 30, 40 or 500 applicants because the public is not. They want to know who are the real finalists, who has the possibility of becoming the leader of this organization, that's what the public is interested in. Then it becomes our obligation to tell the public who they are, it's that simple and it's also healthy for good government. That would be my testimony, and I would yield myself to questions. [LB389]

SENATOR MINES: Thank you, Mr. Beermann. Questions, comments? Thanks for your testimony then. [LB389]

ALLEN BEERMANN: Thank you for your courtesy. [LB389]

SENATOR MINES: Other proponents? I see none. Opponents? Jack, welcome back. [LB389]

JACK GOULD: Thank you. Senator Mines, members of the committee, my name is Jack Gould and I'm here representing Common Cause. My name is spelled G-o-u-l-d. Common Cause voted on the bill as it is written, and our board rejected the bill, and that's why I'm here. I was not privileged to the discussions about the amendment. And I don't know how much of the public is aware of the amendment, actually. And that is a concern. At the same time, I think this bill has a history. It's been here many times. And it's taken different forms. And in each case it sort of narrowed the public view. It continues to restrict public view of what's going on. And that is a concern to us. As a citizens group that is worried about openness in government, we're concerned about the possibility that the door will be closed even more. If it's four candidates this year, will it be two next year or just one? Another concern is the fact that this deals with school boards, this is not just a University of Nebraska issue. And so any kind of discussion about amendments and changes shouldn't be directed just at the University of Nebraska, it should also look at the school boards across the state of Nebraska. The hiring process there is a lot closer to the people. And if we're in a situation where we're going to start narrowing the number of candidates, we're also going to be narrowing the number of possibilities. And so I reluctantly oppose the bill. I think what Alan Peterson is doing and what the university is trying to do is on the right track, but at the same time I want to remind you of your responsibility to the public, and that closing the door is something that is not always well received. Thank you. [LB389]

SENATOR MINES: Thank you. Do we have questions for Mr. Gould? I see one. Senator. [LB389]

SENATOR ADAMS: If I might. Hypothetical, so I'm school board president, mayor of a

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city, I need to hire a new city administrator. Send the word out and whatever the number is, I get 20 applicants. And you read through the resumes, you read through the paperwork, and based on this language I get it narrowed down to the four that I want to interview. I don't have one bit of a problem with letting the press, and the guys at the coffee shop, and everybody else know who it is that I'm interviewing. And I don't know that four is the magic number. But as a matter of discourse here I have to ask this, where is the public benefit, and I'm a great advocate of open government and public benefit. Where is the public benefit in them knowing who candidate number 5, and candidate number 10, and candidate number 20, who they were? That's what I wrestle with. [LB389]

JACK GOULD: Well, you raise a good question. I mean, what is the magic number? I mean, I went through a local school board search for a superintendent, and they came down with six, and they were good candidates. I have a...one of my fears is, one of our fears is that if we say four is the magic number, it will become the magic number. And perhaps of the six that were presented, there were six good candidates, and one was rejected because maybe a very small number of people decided that that person should be eliminated. I talked with the Chronicle of Education this morning, Chronicle of Higher Education this morning, and I really am aware of the university's predicament. I mean there are four states now that are going through searches for state university people, and struggling because of this very issue. They don't want the candidates to be known. And there is a problem with that. And there is also a restricted pool of people qualified for these jobs and I sympathize with them. I am raising the question because I feel the public needs to raise the question and has to be aware...you know the history, too, of this search effort is not good. I mean we had at the last search of the university's president we were in Kansas City trying to skirt the law. And that, you know, does not rub well with the public. And so I bring up the history so that you're thinking about the whole story and that you also think about what the entire situation is for all public officials that are in the hiring process. I'm not avidly against the university's predicament, I understand it, I think it's a real problem. But I also want to look at the big picture and be sure that you are looking at the big picture and not just one small part of it. [LB389]

SENATOR ADAMS: And I appreciate that. And certainly the university has brought this to our attention. But in addition to that, sometimes you get into small communities and the frenzy to know who you're going to hire is even greater than it is to hire a university president. [LB389]

JACK GOULD: And it's not easy for us to be testifying here today against some very good people that we have great respect for. [LB389]

SENATOR ADAMS: I appreciate your answer. [LB389]

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SENATOR MINES: Senator Avery. [LB389]

SENATOR AVERY: Mr. Gould, I have never seen you so reticent when you testified. (Laughter) You almost always have a certainty in your position, so I'm a little surprised and... [LB389]

JACK GOULD: When you speak out against Alan Peterson, and Dick Wood, and these people (laughter), you become a little bit reticent. You know what I'm saying? [LB389]

SENATOR AVERY: I know, I know, it's tough to do, isn't it. [LB389]

JACK GOULD: Yeah. [LB389]

SENATOR AVERY: Could it also be that you're not all that concerned about this or that you could live with it even? [LB389]

JACK GOULD: Our board voted to oppose this bill, and I am here because of that. [LB389]

SENATOR AVERY: Okay, I get it. [LB389]

JACK GOULD: Okay. [LB389]

SENATOR MINES: All right. Other questions for Mr. Gould? I see none, Jack, thanks a lot. Anyone else in opposition wishing to speak? How about those in neutral capacity? I see nobody. Senator Aguilar, to close. [LB389]

SENATOR AGUILAR: I'll be very brief. I just want to say that this bill, with this amendment, has the possibility of resolving a conflict that's gone on between the university and other entities and the media for a number of years. And to have these people come in and agree on a certain situation, like this, I think says a lot, speaks volumes about what this can actually do, and that it will pass muster with anybody else, if it will pass muster with the Nebraska media. Mr. Gould said something about restricting the pool of people. I submit to you without this bill we restrict that pool even further. And I ask for your support. Thank you. [LB389]

SENATOR MINES: Thank you, Senator. Questions for Senator Aguilar? You're off the hook, and that will close the public hearing on LB389. I will pass the chair back to the Chairman. [LB389]

SENATOR AGUILAR: Senator Mines, to open on LB391. [LB391]

SENATOR MINES: Thank you, Chairman Aguilar, members of the committee. My name

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is Mick Mines, M-i-n-e-s, and I represent the 18th Legislative District. I'm the principle introducer of LB391 and it would change provisions relating to public records and meetings. But I don't want to talk about that. This is a public forum. I can talk about whatever I want. I'm entitled. So I want to talk about taxes. (Laughter) My taxes are too high, lady and gentlemen. (Laughter) And by the way, the snow on the Capitol's steps needs to be scooped. You'll get that tomorrow? [LB391]

SENATOR PAHLS: I have a right to leave. (Laughter) [LB391]

SENATOR MINES: You just stole my thunder. (Laughter) You get my point, you get my point. LB391 is about governance and about public meetings and it is about all levels of government and the ability of some elected and appointed officials to conduct meetings in a proper fashion and some that can't. Very seldom...I would submit that very seldom is the public denied the right to speak on subjects at meetings. However, I would also submit that if we don't enact LB391, we just as well eliminate the agenda because when the public has the right to say anything they want in a public forum, why publish an agenda? Why not just open it up and we'll chat about whatever in the world we or constituents want to talk about. LB391 amends the public records law under Section 84-712. And it provides that this section would not be construed to require a public body or a custodian of a public record to copy, produce, and generate all public records created within a certain time frame without requesting a specific subject matter. Now this has to do with the request for public information. And I'm going to let people behind me discuss this part because it changes the law that would prevent abuses. It still allows citizens to request public records relating to specific subject matter. Specifically, LB391 would also clarify the public rules law to expressly provide that citizens may request access to copies of public record or both access and copies relating to a specific subject matter. And specific subject matter is in quotations. The bill clarifies current law by providing that the custodian of public records shall provide access to such public records, if requested, and copies of the public record, if requested, and copying equipment is reasonably available. LB391 would avoid confusion regarding the interpretation of this section of law. LB391 would also amend the Open Meetings Act of Chapter 84, Article XIV. And it just expressly provides that the public has the right to speak at meetings of public bodies if it's on the agenda items as allowed by the individual presiding at the meeting. In other words, the presiding officer in this meeting--for instance, Senator Aguilar--if I were to go off on a tirade about taxes, would be allowed to stop the comment and bring it back to the topic at hand. And that's in a local setting as opposed to our setting. This amendment would make it clear to citizens and members of public bodies when individuals may speak on agenda items. It's not...several of us have run public meetings at the local level. It's not like this at all. It is true local government. I think it's great local government. But I have been involved in meetings where it gets completely out of hand. And I believe that LB391 would help a public body to bring those back into line that wish to chat about whatever bothers them. It relates to current law, which provides that any public body may make and enforce

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reasonable rules and regulations regarding the conduct of persons attending, speaking on agenda items, and video taping, televising, photographing, broadcasting or recording other meetings. Fortunately or unfortunately, when I was mayor of Blair we didn't have our meetings broadcast. Kind of wish we had. But I understand that those cities that do have their meetings televised, it's the best free entertainment in town because people enjoy seeing themselves and their neighbors on television, they enjoy the action, sometimes it's heated. And during an open mike session, I understand it's just wild open "yippee-ki-yay." That's not governance. Governance is about conducting the public's work in a public forum in a reasonable and proper manner. LB391 would also amend the Open Meetings Act to provide that every public body--and I'm reading from the copy now--every public body shall have a form on which citizens may recommend subjects for discussion, possible agenda items at a future meeting. Copies of these forms shall be made available at every meeting and at the principle office of the public body during normal business hours. Within 10 business days after receiving these forms, the secretary or a designee of the public body shall, by first-class mail, send the citizen a written statement regarding the status of the request. This isn't the only way that public bodies would evaluate agenda items. Frankly, if I ever wanted something on an agenda, I'd talk to my representative. I think that's the best way and the most efficient way of getting things on the agenda. It isn't about filling out forms. Some people, this is a formal process in which some people may wish to use and get their ideas into a public forum. And I think you'll hear from testimony behind us that many of the open mike issues or open discussion, these are things that aren't necessarily required on an agenda. In fact, they're most often cleared up simply by a one-on-one conversation and it's a matter of process or regulation, not a process of a public meeting. By the way, the amendment I just read codifies how the city of Grand Island and some other public bodies provide a process by which citizens may recommend subjects or agenda items for future meetings. The proposed amendments, and I do have amendments, but I...Lynn, will you be passing that out? [LB391]

LYNN REX: Yes. [LB391]

SENATOR MINES: I'll let Lynn review the amendments. They're going to underscore the importance of providing reasonable advanced publicized notice of agenda items which will be considered by the public body as currently required by law. I thank you for your consideration and will entertain any questions. [LB391]

SENATOR AGUILAR: Questions for Senator Mines? Senator Avery. [LB391]

SENATOR AVERY: Thank you, Mr. Chair. Senator Mines, isn't it true that the public already have the right to speak on agenda items? [LB391]

SENATOR MINES: Absolutely have the right to speak on agenda items. [LB391]

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SENATOR AVERY: So part of this legislation would clarify that right or reinforce it?  
[LB391]

SENATOR MINES: Reinforce their ability to speak on items published in the agenda.  
[LB391]

SENATOR AVERY: Let me tell you, I understand what you're talking about. I have watched various televised meetings of the Lincoln City Council. Some people show up, some people have the same gripes in the open mike session, and I find myself sometimes feeling like, you know, why don't they just sit down? (Laughter) But on the other hand, I have this deep commitment to making it possible for people to express their views. Sometimes that's a very cathartic exercise. It can be an important escape valve to release pressure so that people don't get so frustrated with government. You know, we have a hard enough time, I think, maintaining our image and our reputation for openness and accountability. So I'm waiting for you to convince me that this is something we need to do. [LB391]

SENATOR MINES: May I respond? [LB391]

SENATOR AVERY: Yes, sir. [LB391]

SENATOR MINES: I would contend, Senator, that many of the people you talk about are seeking to be in a public forum on a broadcast of some kind. I would also submit, having been through this myself, many, many times those that are off-subject are merely there to stir the pot, if you will. They're there to get their name in the paper. They bring up issues that have nothing to do with what you're talking about. I fully agree with you that the public should have the right to be heard in a public forum. They should have a right to be heard by their representatives. But I would submit that they have the right also to offer their opinions on issues that have been published in advance so that others that have an interest in the agenda items have an opportunity to be there to respond. Let's take an example. I understand that you don't mow your yard as much as you should. I don't, but let's say that that's the case. And I show up on open mike and you're watching some night and I begin to rail on Senator Avery because he isn't very neat in his yard and I believe he's violating some city ordinance. You don't have the right to be there because you didn't know about it. Or maybe you weren't even watching television and you read about it in the paper the next day. That's not good governance. Good governance is a process by which all citizens have a right to be fairly heard on the topics in a public meeting. That's what I contend. [LB391]

SENATOR AVERY: But a counterargument might be that good government is served by making every effort we can to give the public the opportunity to speak their mind, no matter how obnoxious they may be, and believe me, I've seen some, no matter how off the wall they may be. You know, it's protecting that precious right to speak and speak

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publicly, to openly dissent with the actions of your government, that's so important to maintain democracy. [LB391]

SENATOR MINES: Well, the question might be asked, why have an agenda? If we're going to have a public hearing or public meeting, why publish an agenda if we can talk about anything we want to talk about? [LB391]

SENATOR AVERY: But I think that is part of the agenda, the part that says open mike, that's an agenda item. That means open. You come and talk about whatever you want. Now I don't have any problems with putting perhaps some time limitations on how long you can talk. [LB391]

SENATOR MINES: That's not in statute, that's not proposed in statute. [LB391]

SENATOR AVERY: No, but I wouldn't have any difficulty with that. You know, some of the topics that people bring up probably don't deserve more than 3 seconds and they want to speak for 30 minutes. But I believe some bodies do put some time limitations on how long people can speak. But I'm a little bit worried about, say, if you don't have your item on the agenda. Sometimes good ideas come in open mike. Sometimes some real grievances come during open mike. [LB391]

SENATOR MINES: And I'm not saying, Senator, that those who wish to speak have to have something on the agenda. I think that's wrong. If I happen to be there and wish to address whatever the topic is at hand, I ought to be able to talk as long as the chair would allow. But for me to stand up and talk off-subject isn't good, I don't believe it's good public policy. I don't believe it's policy that one should be allowed to talk about whatever they want, to say anything about anyone else, let's say in the community, in the school, wherever, without those people knowing in advance so they can prepare themselves and be there, if they choose. You're not treating everyone fairly with an open mike forum, is my suggestion. [LB391]

SENATOR AVERY: Thank you. [LB391]

SENATOR MINES: Thank you. [LB391]

SENATOR ADAMS: Are there other questions for Senator Mines? [LB391]

SENATOR ROBERT: May I ask one? And forgive me for being gone for a minute. But if this has been asked, just tell me. Doesn't the chair of the committee or the body in question have the ability to say yes or no on open mike and control the agenda, per se, or the speaker? [LB391]

SENATOR MINES: The chair may not have that physical ability. The chair may not be

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able to run a meeting. Now we're talking down to township boards. [LB391]

SENATOR ROBERT: Right. [LB391]

SENATOR MINES: We're talking all public bodies. And unfortunately I've attended a lot of public meetings, as we all have, and I've seen some that just weren't necessarily very good. [LB391]

SENATOR ROBERT: The inability, them not having the ability to, the physical ability to do that, is that because they just are not very good at their job or they're prohibited from it in the... [LB391]

SENATOR MINES: Well, I think there's some of that, sure. I mean, we're local...a lot of them are just local folks doing the best they can. On the other hand, there isn't, I mean, you get someone that's talking off-subject, that's aggressive, and you have a crowd behind them. You've seen that as well. You may have someone that's not able to control that crowd situation. We've all seen yelling, screaming, clapping, and jumping up and down. I've seen people drag in horse manure into...excuse me, hog manure, into a public meeting. And the chair of that committee just didn't have the ability to control things. I'm just saying, if you're going to talk in public, please do, except keep it on subject. And that way no one is surprised the next day in the newspaper when they read about themselves being talked about in an open mike situation. [LB391]

SENATOR ROBERT: So what about this enforces it any more than the chair? [LB391]

SENATOR MINES: The chair certainly can, but this gives them the authority to restrict conversation to agenda items and only agenda items. [LB391]

SENATOR ROBERT: What if they are physically not able to do that still at that point? [LB391]

SENATOR MINES: Well, you can't give someone ability. You can give them the tools to use in place of the ability sometimes. [LB391]

SENATOR ROBERT: Okay. [LB391]

SENATOR MINES: Thanks. [LB391]

SENATOR ADAMS: Committee members, do you have other questions for Senator Mines? Hearing none, proponents? [LB391]

LYNN REX: (Exhibits 1, 2, 3, and 4) Senator Adams, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. First of all, we

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thank Senator Mines for introducing this measure. This is a very important bill and we think this bill underscores the whole concept of what reasonable advanced publicized notice is supposed to be about. We had some conversations, preliminary conversations about this with respect to LB7, which was a bill introduced by Senator Preister a couple of weeks ago. That bill basically would place on the agenda "new business," new business meaning any nonagenda item. And I would like to talk to you and I'll wait until everyone gets a copy of this. For those of you in the audience, I do have copies of the proposed amendment on the chair. If Bruce Cutshall is still there, it's by Bruce Cutshall, sitting by Bruce Cutshall. So basically if you want copies of the amendments I'm going to talk about, please feel free to do this. I think it strengthens the bill in response to some of the questions that we have. First of all, if everyone gets a copy we'll get started in terms of what the context is. This is a bill that amends the Public Records Act. It's also a bill that would amend the Open Meetings Act. And we think that it addresses a number of issues that have occurred over a period of years and that do need to be addressed. And frankly, after the hearings on LB7 a couple weeks ago, I really thought it was important to strengthen this bill in terms of how to place issues on the agenda and ensure that that can be done. I think everyone now has a copy of this. I would ask the senators to please turn to page 3 and also staff, page 3 of LB391. This is the first major change and this is the issue that would amend Chapter 84, Article VII relating to the Public Records Act. This addresses the issue, if you look at page 3 of the green copy of the bill, page 3, if you look on lines 22 to 25, this talks about what basically can and can't be done. "This section shall not be construed to require a public body or custodian of a public record," we would insert the words "copy, produce or generate," current law already says, "any public record in a new or different form or format modified from that of the original public record." The new language that would be inserted under this would be the following: "or all public records created within a certain time frame, without requesting a specific subject matter." This is extremely important because it would seem that it makes a lot more sense if people have...if they want to know about the wastewater treatment plant, if they want to know about the school bond issue, if they want to know about that, certainly saying we want any and all documentation and public records relating to that, very appropriate, and they should get them, as provided by law. The difference is, this would preclude the request which many cities have had and mainly during the last effort on LB423, which basically is send any and all correspondence between the dates of April 1, 2006, and October 18, 2006. Now I would submit to you that the public time and effort just to respond to that is absolutely incredible. And I don't think that this is what the public records law was intended to address. So we're preserving the part, basically saying tell us the subject matter within any time frame you want and we'll give you any and all information as allowed by law, but not just everything that's ever happened in terms of any correspondence or any public record during that time period. We think that's unreasonable. The second major change is on page 4 of this bill. And this also would amend the public records law. And this is a clarification. This really codifies Dale Comer's interpretation, Dale Comer from the Attorney General's office, of whether or not you can request, one, the copy, two,

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access, or you only get one, or do you get both. And of course, Dale's suggestion is, his interpretation, which is what mattered during a number of different ballot questions, was both. But the law isn't really clear. If you read this law, and I think that there was a lot of confusion about this, the law currently says, "upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practical and without delay but not more than four business days after actual receipt of the request either a access or copies." And so this clarifies it. This says, basically, access, if such public record is requested, and copies, if you're requesting, and copying equipment is of course available. So basically if you want access and copies, you get both. You don't get one or the other. But it makes the law very clear about what is allowed and what is not. And this is the most liberal interpretation of how to do this. And we think it codifies the Attorney General's position, which is basically you get what you want, essentially, but also that assumes certain things that are already in the law to protect others. Going onto amendments to the Open Meetings Act. The one thing that we're not changing in this bill, but I want to reference to you because I think this is the underpinning of the Open Meetings Act. If you look on page 5, lines 3 and 4, this is what it's all about. "Each public body shall give reasonable advance publicized notice of the time and place of each meeting," what the agendas are. You'll note that on lines 12 and 13, I'm on page 5, lines 12 and 13, this was added in legislation last year by Senator Preister, which we supported. We don't think it made any substantive change because you always should have been able to read the agenda and determine what was basically going to be discussed. But I think he underscored that last year with passage of his bill, which said, "agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting." Why? Because I want to be able to go to the meeting, Senator Avery, if it's something that impacts my property, if it's something that impacts my business, if it's something that impacts my family, if it's something that impacts a policy choice that I care about. But I want to know what the agenda items are. And that was the discussion which resulted in introduction of a bill last year and passage which included this language. And we think that that's what it's about. People need to know. It isn't just...that's why we oppose LB7, which would provide that you could also have on the agenda "new business," which are not agenda items. And we just can't underscore enough what Senator Mines said. Why have an agenda? If it is going to be a free-for-all at the end, why have an agenda? And Senator, it's not just about whether or not the chair or the presiding officer can control that. Certainly right now, there are rules and regulations that the presiding officer has, that governing bodies have, in terms of...and you can regulate the conduct of people speaking and how they speak and that sort of thing. That can be done. But when you say open mike, not agenda items, if I want to talk about, for example--and I've seen some of these examples over the years as I've attended numerous, hundreds I would submit, of city councils and village board meetings across the state--when someone gets up and talks about their business and then they start marketing their product. If it is an open mike, it's an open mike. You can't say, well, you've got to stop that because this is not about marketing and promotion,

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because it's an open mike under LB7. Basically, we would also submit to you that the League's position, based on legal counsel of city attorneys across the state and others, has long-standing been there is no such thing as an open mike. It is all about reasonable advance publicized notice. And if you want to have an open mike at the end, it is limited to those agenda items that were on the agenda that evening so people understand what's being discussed. And I think that is just absolutely fundamental. So with that, let's look at the next major change. And that major change would occur on page 9 of this proposal, of LB391. And this provides...and again, it does underscore, Senator Avery, what you said, which is that basically yes, the public could always speak on agenda items as allowed by the presiding officer or by the rules, but this underscores that throughout. Because one of the things that also happened with passage of the bill last year--and the League, as did county officials, the school boards, and many others--we all provided copies to our members of the Open Meetings Act to place in the meeting room as required by law. Well, citizens read that and they take some sentences out of context. And that's another concern we have with LB7, which basically says you can speak on nonagenda items and people think that they can just get up and do that. And yes, you can regulate it if you're the presiding officer, but it's very difficult to explain to someone when they're reading something out of context. We think it's far better to basically underscore the importance of reasonable advance publicized notice. So what we're saying then on lines 14 and 15, and this is on page 9, it's an amendment to 84-1412, page 9, lines 12 through 15, "subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies," and then we're inserting language, "on agenda items either as identified as items for public comment or as allowed by the individual presiding over the meeting." And that is one of the amendments that you have, the third amendment on the proposed amendments that we handed out. So it's clear that if in fact it was not so identified--most public bodies actually in the state, on their agendas put asterisks or something, saying these are the items on which we'll be receiving public comment. Many times it is the mayor or the presiding officer that says we're going to receive public comment on items 2, 4, 6, and 8 this evening. If anyone wants to come forward during those times, feel free to do that. But in any event, this makes it clear. It's either identified on the agenda or the presiding officer so indicates that they can do that. Going on to page 10, and I think this is where the real substantive part of this provision relating to the Open Meetings Act comes into play. The city of Grand Island has used a form and a process by which people can request items on the agenda. And I want to indicate that I agree with Senator Mines, that in most of our cities and probably some of the cities in which some of you were mayors, that someone would ask that you get an item on the agenda, we'd really like to talk about the wastewater treatment plant or we really want to talk about issue X, Y or Z, and after a request, that somehow that did end up on the agenda. And that's a very informal process. There are...obviously municipalities have procedural rules which indicate how members of the public body can get an item on the agenda. And certainly a member of the public body is able to do that now. But this codifies a process that Grand Island has used. And since talking to the Attorney General's Office, Alan

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Peterson, and many, many others over a period of months, we did ask other cities to basically use this process as well and see how it worked for them. And it has worked quite well. And so let me read you this. This is the new language, starting on page 10, lines 3 to 10. And again, I cannot emphasize enough the whole essence of this bill is that this is about reasonable advance publicized notice. "Each public body shall have a form on which citizens may recommend subjects for discussion as possible agenda items at a future meeting. Copies of such form shall be made available at every meeting and at the principal office of the public body during normal business hours. Within ten business days after receiving such form, the secretary or other designee of the public body shall, by first-class mail, send the citizen a written statement regarding the status of the request." Frankly, I thought that was sufficient because that codifies what Grand Island did. After hearing testimony on LB7, and I do think this is an extraordinary situation when this happens, but apparently there are a few, and I hope there are only a few, public bodies that for some reason do not seem too respectful of citizens. And so we thought we needed to go one step further, and I'm going to reference you to the fourth item on the proposed handout of amendments and if I may read this to you. "After receiving such written statement," which would be from the citizen, "if the citizen still requests that the subject be an agenda item at a future meeting, the citizen shall so notify the secretary or designee of the public body in writing. Within five business days after receiving such written notification, the secretary or other designee of the public body shall, by first-class mail, send the citizen notice of the time, place, and date of the meeting which shall include the agenda item as requested. Subsequent requests from one or more citizens for an agenda item relating to the same or similar subject matter are not required to be scheduled as an agenda item more than once annually." Let me tell you why that is in there. There are issues as controversial as fluoridation, as controversial as deciding a landfill, where there are folks that would want to talk about the same thing over and over and over again, sometimes even after the decision has been made. So basically this says, look, the same subject matter, we're providing a process here so that you can formally request that. Hopefully, one would think that in fact, not only would folks have these forms available, and if this law passes they would be required to do that, but notwithstanding they could still do the informal process, which is I call up my city council member--as I personally have done in Lincoln--and asked for an agenda item to be placed on the Lincoln City Council agenda and it's on the agenda. But then my neighbors and others know, whether or not we want to develop a community unit plan or what we want to do in our neighborhood, others have notice of what we're doing. We just don't show up at an open mike and suggest that we're going to do things that impact and affect other people's property values. I want to also emphasize to you some of the things that occur during our open mike sessions which I think, quite frankly, are not appropriate under current law even. And those include the following: when you have someone that comes forward and they decide that, in five minutes or less, I can do a virtual reality walkthrough of a Super Target, a Super Wal-Mart, a super anything and I can tell you that this is where the property is going to be, we're so excited, we just bought farm X. And the next day in the paper, assuming

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the press were there during this discussion, people find out that next to your property, Senator, will be this Super Wal-Mart. Well, you didn't know that. Now maybe you love Super Wal-Marts, maybe you don't. Some places love them, some places don't. But the fact is, wouldn't you have loved to have known that that was going to be discussed or at least presented? Under LB7, not only can they just present it, they can discuss it. So they can discuss it. And I will tell you, the case of first impression does matter. And yes, it is true that, yes, obviously you can contact council members and the mayor individually or any public body. That's true. But why is it then that the whole point of LB7 is to have basically this free-for-all at the end? Why? Because people want to do it at a public meeting. It means something. And that's why that happens. I've seen that happen. I have seen candidates come forward and tout why they ought to be elected during those kinds of processes. I think that's just inappropriate. I have seen very personal, very much personal attacks made. And I'm just suggesting to you, yes, to some extent when you're dealing with agenda items, if you have agenda items one through ten, if I get off subject, Senator, you can call me as if you're the presiding officer and say, we're not talking about blue widgets, this is about yellow widgets. But if it's an open mike and I want to talk about yellow widgets, even though maybe that's under the jurisdiction of the school board and the city council has nothing to do with it, what do you do? You sit there and you listen about yellow widgets for five minutes or whatever time there is. And I'm just suggesting to you, this is an important process and people need to know on the other side of every issue. And I'm sure for those of you that have been senators for a long time, you know this. And for those of you in local government, you already know this. There is not one issue that has two sides. There are typically three, four, maybe more, and people need to have notice. So we think that that codifies it. The second and the final major change in this is on page 10 also, on lines 11 through 13. And this is what we think addresses what Senator Preister told me was his major concern with LB7... [LB391]

SENATOR AGUILAR: Lynn? [LB391]

LYNN REX: Yes? [LB391]

SENATOR AGUILAR: Would you just the read the lines and then we can read the text. And you tell us what you want to say about it. [LB391]

LYNN REX: Okay, I will do that, sir. [LB391]

SENATOR AGUILAR: Thank you. [LB391]

LYNN REX: Thank you. This addresses, this final change on lines 11 through 14, addresses the issue that Senator Preister I think was trying to raise with you, and I think did effectively raise with you, with LB7, but we're tying it into agenda items. And what we're suggesting is on the last language that we have here proposed, that what we're

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suggesting is not only when they are...if you are identifying agenda items, this addresses the issue that you do not have to give prior notice, you do not have to register a week in advance, you don't have to register that night. If it's an agenda item on which public comment will be received or has been so identified by the presiding officer, then in fact you testify that night. And I do reference you to look at the proposed amendments because after the LB7 hearing we incorporated that into this bill. So in essence, what is this bill about? This bill is about underscoring the whole purpose of what we think the public meetings law is about and it is giving folks notice. That's why you have in here, in the Open Meetings Act, a provision saying that you provide the media list notification of what's going to be there. That's why the public body itself cannot change the agenda, unless it's an emergency, after 24 hours or before 24 hours of a meeting. And I would also suggest to you, respectfully, that if you would advance LB7 and not this bill out of committee, what you would be doing is essentially saying that, you know, city council members, school board members, they don't lose their First Amendment rights either. There is nothing to say they can't leave the dais as a city council member and come down and also do an item because they may want to trump their other council members or do something differently. I just think it's very, very important to put some meat into this act and make it very clear that the public deserves to know what their public body is discussing. I'd be happy to respond to any questions that you might have. [LB391]

SENATOR AGUILAR: Questions? Senator Avery. [LB391]

SENATOR AVERY: The question came up twice. Why have an agenda at all? Let me suggest to you this. You need an agenda because it contains topics that governing bodies need to discuss, wish to discuss, may need to take action on. Open mike is an agenda item that allows the public--let's not lose sight of the public--the public the right to speak on things that matter to them. I don't want to see that restricted. [LB391]

LYNN REX: And Senator, I don't either. And I think the way to do that is to do it lawfully and still make sure that folks on the other side of that issue are also aware of it. And therefore, this bill provides that you can...number one, if you want to speak on an agenda item that's open for public comment, you can do that without registering, without giving anybody advance notice. That was part of LB7 that's incorporated by amendment into this bill. Secondly, that if I want to talk about an item and it's important to me, then I can go through the process of filling out a form and getting it on the agenda so that others know the other side of it. I don't think that this is about...I do not think, Senator, that public meetings are about just simply coffee shop talk. I don't think it's about that. This is about governance. [LB391]

SENATOR AVERY: Is it fair to say that you really just want to shut down open mike sessions? [LB391]

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LYNN REX: Senator, I don't think open mike sessions right now are allowed by law. I think it's so important to understand... [LB391]

SENATOR AVERY: So we're breaking the law every time we have one? [LB391]

LYNN REX: I believe that reasonable advance publicized notice...we've got city attorneys that have worked with us for years that will tell you that, in fact, right now what does the law require? Reasonable advance publicized notice. If you look at what constitutes a meeting and the definition of meeting, it's any meeting regular, called or special. It's on anything that's informal, any discussion, any policy consideration, any presentation. That all constitutes a meeting right now. So I would submit to you that's what Senator Preister's bill would do, what LB7 would do, is basically authorize open mikes. Our position has been, because of a working group of city attorneys and others, there's never been the authority to have just simply the free-for-all and a discussion or presentation or simply a presentation of nonagenda items. And quite frankly, when you look at what the restrictions are on the back end of the Open Meetings Act for violating these, most cities follow pretty carefully. Because if, in fact, you end up in a situation where you have those kinds of things happening or a city council meeting or a village board meeting, somebody could, if they're a good attorney, they can certainly negate what you're doing. [LB391]

SENATOR AVERY: I may have missed it, but I received a number of communications from constituents all over the state, all in opposition to this bill, none in support of it. So you must be trying to do something here the public doesn't want you to do. [LB391]

LYNN REX: I don't believe that. I believe that... [LB391]

SENATOR AVERY: Wait, wait, wait. You don't believe what? That I'm telling you the truth? [LB391]

LYNN REX: Oh, no, of course I believe you. (Laughter) [LB391]

SENATOR AVERY: Okay, thank you. [LB391]

LYNN REX: No, of course I believe you. But what I was saying is I don't believe that, in fact, that this is not supported by Nebraskans. I think that there are a number of organizations and others that are in support of this. And no one is trying to basically put people in a position where they can't speak. We think this is a bill that underscores the fact the public absolutely has the right to speak and should have the right to speak on agenda items. We're just saying, notice ought to mean something. It ought to mean something. And I guess my question again, the kinds of examples that we've seen, whether you have someone come in marketing, saying...and these are things that have happened. I'm not saying there are not entities out there that have them. I'm saying that

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they are suspect and I'm saying that you have some issues if someone wants to challenge what they've already done in the public meeting. Because if you bring basically some type of process forward and you want to allege that there was a violation that occurred within 120 days of the date of the meeting. Quite frankly, a judge has no choice but to declare a void if he finds that that violation occurred. If it's after 120 days, then it's voidable. But the point being that LB7 clearly allows open mikes and I think the reason why he's doing that, Senator, is because open mikes are not allowed now. Unless what you're doing, and some cities are doing this--I can't speak for school boards or others--some cities have what they call an open forum at the end that's limited to the agenda items. I think that's very appropriate. But I think it makes a lot more sense to have somebody talk about the agenda item as the body is discussing it. [LB391]

SENATOR AVERY: Have you ever read Voltaire? [LB391]

LYNN REX: Yes, I have. [LB391]

SENATOR AVERY: I may disagree with what you say, but will defend until death your right to say it. Let's be careful we don't violate the important right that citizens have to speak their mind, to dissent from government. [LB391]

LYNN REX: I agree. I'm just saying, do it on agenda items. [LB391]

SENATOR AGUILAR: Further questions? Seeing none... [LB391]

LYNN REX: Thank you very much. [LB391]

SENATOR AGUILAR: Thank you. [LB391]

LYNN REX: Thank you all. [LB391]

SENATOR AGUILAR: Welcome. [LB391]

RaNAE EDWARDS: Thank you, thank you. It's been quite an afternoon so I'm going to keep my comments short and hopefully can answer some questions for you and maybe clarify some things. Thank you and good afternoon, Chairman and committee... [LB391]

SENATOR AGUILAR: Your name is? (Laugh) [LB391]

RaNAE EDWARDS: My name is RaNae Edwards, and that first name is spelled R-a-N-a-e, Edwards is E-d-w-a-r-d-s. And I'm from Grand Island, I am the city clerk for the city of Grand Island and have served in that capacity for six and a half years. Before moving to Grand Island, I served 16 years as an elected Howard County clerk from St. Paul. I'm here to speak in support of LB391. Through my experience of working with city

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councils and county commissioners over 25 years, I find that this legislation will be helpful in the process of conducting meetings. Currently in Grand Island, we are using the exact process which has been very efficient and effective, not only for the council but for the people attending the meetings. And I believe you have in your handouts some of the processes that we use. (Refers to Lynn Rex's Exhibit 2.) There are never any surprises at the meeting. The council knows what is going to be discussed and can come prepared for the meetings. Our meetings are run very professionally, which allows for the best use of everybody's time. The items on the agenda are handled in a way that those people present have an opportunity to speak on any item. Our meetings usually run between one to one and a half hours and we have anywhere from 25 to maybe 50 items on our agenda. Of course, that depends on the items on the agenda. If we have any controversial items, naturally the meeting will go longer. Or if we have several people that want to speak on an item, they'll go longer than that. But on an average, our meetings are an hour to an hour and a half. By using the form request for future agenda, which I believe is in your packet, we can prepare for the topic to be discussed at the council meeting. I found that a majority of the items requested can be handled by the department director and doesn't need to go to council. Thereby it saves the council time, it answers the person's questions. If they have that opportunity to come to the council and ask these questions, it may make them look like a complete fool because it's so obvious to everybody else and they just needed their questions answered. Open forums on the agenda can be frustrating for the people in attendance as well as the council or the board. No decision can be made as an item not on the agenda cannot be voted on. This usually ends up being a time for people to vent and then become angry when nothing can be done by the council or the board. And it's frustrating for the councils and the boards also because they hear all the concerns and they want to help, but they can't do anything unless it's on the agenda. Small cities have a particular problem with this. The other city clerks that I visited with, particularly the villages that are in small areas, their meetings just go on and on and on, and it's because of the open forum. It's more of a social gathering and they're not conducting business, they're not doing the business that they need to be doing at an open meeting. There's lots of ways that the constituents can contact their council members. They can write, they can call, and they do these. They visit in the coffee shop. But this is a way that the councils, they know what's on the agenda, they can prepare for it. And I believe, my understanding is every city clerk sends out a packet to their council so they know what the council is going to be voting on and deciding on. We have found in Grand Island that this request for future agenda form has been very beneficial. They fill it out, they bring it in. Probably nine times out of ten, we can handle these in-house and we don't have to take it to council. But if there's an item that needs to go to council, we will take it to council. So they have that opportunity. You also have a copy of our agenda. This is our last regular meeting that we had. And like I said, there was probably close to 50 items on there, and one happened to be very controversial. We had 23 people request to speak at our meeting and all of those people got to speak that wanted to speak. There was three that decided, after all the testimony had been given, they didn't need to speak

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on the item. So they are allowed that opportunity to speak. But it's on the agenda, everybody knows what it is that they're going to talk about. And then the last item is just a form that I come up with closed executive sessions. It helps our board. What I do is I laminate that wording for our council members and they have it at their desks. So they know that if they need to go into executive session, this is the proper way that they need to do it. And I worked with the League on getting the wording on that so that we're doing things right. And I think, as Senator Mines said before, most everybody wants to do the right thing. And we just...I've come up with these and found it's worked well for the city of Grand Island and would like to share that with any other city that would want to use it. And I thank you for your time. And I would appreciate your support on this bill. I think it's important for the people like me that have to work with it. [LB391]

SENATOR AGUILAR: Questions for Ms. Edwards? Seeing none, thank you for making the trip today. [LB391]

RaNAE EDWARDS: Thank you. [LB391]

SENATOR AGUILAR: Say hello to everyone back in Grand Island. [LB391]

RaNAE EDWARDS: I will. Thank you. [LB391]

SENATOR AGUILAR: Next proponent? Next opponent? Can I get a show of hands how many there are? One, two, three, four...I see six. [LB391]

PAMELA DALY: (Exhibit 5) Good afternoon, Chairman Aguilar. My name is Pamela Daly and it's spelled P-a-m-e-l-a D-a-l-y. Thank you. I strongly oppose LB391. This amendment is an abuse of the democratic rights of the public to participate in government and completely contradicts the intent of the Open Meetings Act. The current Open Meetings Act, as well as the clarifying language of LB7, allows public bodies the option on whether or not to include open mike sessions in their meetings. This is an important freedom for public officials since there are times they may actually want to hear free discourse from the public, even if they traditionally restrict input to agenda items only. LB391 presumes our governing bodies cannot adequately, as stated in the Open Meetings Act, "make and enforce reasonable rules regarding the conduct of persons attending, speaking..." etcetera, at public hearings. This has certainly not been my experience in attending public meetings in Washington County, where the public's participation is very strictly limited and quite effectively restrained by those presiding over meetings. But more important, this bill endangers our First Amendment rights. Since the current language of the Open Meetings Act allows the public body to make and enforce rules regarding public conduct, LB391's extended authority granted to public bodies clearly moves across the line into controlling the content of speech. The grant of authority to the presiding officer is the language that does this. On page 9 of LB391, it states that "the public has the right to speak at meetings of public bodies on

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agenda items as allowed by the individual presiding over the meeting." LB391's proposed process for citizens to get an item placed on a future agenda by first writing it on a form restricts the democratic process by providing a bureaucratic obstacle to input. This is especially so because this bill indicates that someone, although it doesn't say who, would have the authority to decide whether or not the item merits placement on the agenda. It is certain that this discretionary power would be used by some officials to refuse to place topics or individuals on an agenda simply because they oppose their positions. The process of requiring citizens to fill out a form prior to a meeting also places new hardships on the public by forcing them to drive twice to the office where the form is made available; once to write their topic on the form and once to later attend the meeting, if their topic is allowed on the agenda. This usually requires the citizen to take off time from work and in many counties, would demand a considerable drive. The inevitable result would be less public input. The sponsor and lobbyists for LB391 have characterized the right of the public to bring up new items in a governing body as government by surprise. Yet the current amendment, LB7, which does give the public the right to bring up new items, specifically stipulates that no action can be taken on any new item until it is put on the agenda of a future meeting. This clearly ensures that the government body cannot surprise the public with any decision made on a new item raised by a citizen in a hearing. Who does LB391 benefit? Governing officials don't need it. They already have ample authority to control topics and speech in meetings. The public certainly would not benefit. The only people who would benefit are those who don't want to hear from the public. Only public officials who either are threatened by input, can't control it or who are unduly influenced by special interests would benefit from more restrictive rules against public participation. Certainly governing meetings would be "easier and a lot more fun," as one of our county officials put it, if the public wasn't allowed to speak up at meetings. It is disheartening. And I'm surprised that a senator elected and paid by citizens, our own Senator Mines from Washington County, and organizations also funded, to my understanding, by citizen taxes, the Nebraska League of Municipalities and the Nebraska Association of County Officials, are pressing for less public input in our government instead of more. If there is someone who would benefit, I'd like to know. Please explain that to me because I can't see anyone benefiting. The officials would lose out on input that may be very critical. Yes, there are extreme examples, which they've presented us with. But I would tell you those are extreme. In our county, in Sarpy County, in planning commission meetings, in town councils, in county board meetings there's hardly anybody there. (Laugh) And when they are, in our county board meeting, there is no open mike. The planning commission does have a section in their agenda that says new items from the public. It's been used twice in the last five years. Our problem is getting more public input. Our history has shown that the free flow of information between the public and governing bodies leads to a stronger, more informed and accountable government. Please do not weaken our democratic process by approving LB391. And I could please respond to the amendments? I hear Senator Mines and the others saying that perhaps some of our officials are not competent to control the meeting. But they are saying they are

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competent to make judgments about whether or not what someone brings up should be on the agenda. I think that's a far more, that's a greater (laugh) leap of faith. If there is a problem in a meeting with open mikes or whatever, I would venture to say it's probably important to attend to. We have pain for a very important reason. It tells us something is wrong. We need to go to a doctor or whatever. And the same thing is true in these public meetings. If you've got a bunch of people who are misbehaving, there's a problem somewhere. It may just be as simple as the presiding officer not being able to control it. Well, then that needs to be dealt with individually in that particular area. You can't legislate competence. It restricts way too much from the other vast majority of competent leaders in these meetings. I find problems with the amendments because...on the longer amendment in the middle about receiving statements and so on, I was hoping these amendments would actually modify some of the things in LB391. I think they add further bureaucratic process and I'm sure that there are people--the clerks, county clerks, and other people in our county for these meetings--who will not be happy with having to send out letters to people, one more burden for them. Right now, all we have to do is call up and say, can I get this on the agenda? And we're given a date and time. We don't have to drive there. For me, it's only about a ten mile trip, but for some people it's quite a bit longer, especially if they have to take off work. And I also want to respond to this point that has been made that this is about advance public notice. Well, I think the agenda is the advanced public notice. And the problem with this bill is that when sometimes you stand up as a member of the public to speak on an agenda item, it is misinterpreted as not being on the agenda item and you are told to sit down. That has happened to me twice and it's been on the agenda. They have corrected it later and said, I'm sorry, you can come back and speak on that. But those are the kind of problems I think we're going to run into with this. Advanced public notice in our county consists of a little ad in our local paper that goes to one-fifth of the population of Washington County that says there will be a meeting next Tuesday. If you want to see the agenda, come to the county office. So all these people have to drive up there and see the agenda on Monday, taking time off from work, for the meeting that's then held on Tuesday. There the problem with advanced public notice is not getting the agenda out to people so that they know what's going to be on it. That's all I have to say. Thank you very much, Chairman Aguilar. [LB391]

SENATOR AGUILAR: Thank you for coming today. Questions? Senator Adams. [LB391]

SENATOR ADAMS: I don't know that I really have a question, but I'm intrigued by all of your comments. And so I'm going to ask a question. You don't have to respond, if you don't want to. [LB391]

PAMELA DALY: Please. [LB391]

SENATOR ADAMS: You said in your remarks that you want to protect the public.

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[LB391]

PAMELA DALY: Yes. [LB391]

SENATOR ADAMS: And I don't think there's anyone up here that doesn't want to do the same. [LB391]

PAMELA DALY: I'm sure. [LB391]

SENATOR ADAMS: And your concluding remarks here about democracy, and you made mention of the First Amendment also intrigued me. And it caused me, as you were speaking, to think about something. When is the public best protected and when is the First Amendment right to free speech best protected? Is it protected best when there is chaos or when there is structure? [LB391]

PAMELA DALY: Or when there is... [LB391]

SENATOR ADAMS: Structure. That's what I'm wrestling with right now with both sides of this. And you don't need to respond. Thank you. [LB391]

PAMELA DALY: I'd like...can I respond? I'm all for structure and efficiency in meetings. I think chaos...first of all, I'd like to see the data on chaos because, as I said, all the meetings I've been in--Washington County, I've been to a bunch of them in Sarpy County--are anything but chaos. It's trying to get people in there to say things, that is the problem. But okay, let's say there are some places where there are chaos. What I would say about that is that is a sign there's a problem. It's either with the leader or it's with the issue. And maybe that chaos is instrumental in bringing attention to that issue that's important to give attention to. If it's with the leader, then isn't that the right of the local area to deal with? If the public and all the officials on the...presiding officers, if all those presiding officers seem to think everything is okay, then let them deal with it. If they don't, they can deal with it, and I would venture to say they probably do. I would like to see the data on where we have continued chaos. Does it occur once in a while? Sure. But I think there's been a lot of insult in the remarks made here to the people of rural small areas. These leaders take their jobs very seriously. They prepare for those meetings. They are quite competent to run those meetings. And I think trying to legislate how they run a meeting is an insult to them and it can't be done, either. [LB391]

SENATOR AGUILAR: I have a question and a comment. [LB391]

PAMELA DALY: Okay. [LB391]

SENATOR AGUILAR: The question is, you were talking about how you had to find out what's on the agenda. You see something in the paper and you drive down. You drive

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down to the office and find out what's on the agenda? [LB391]

PAMELA DALY: Right. [LB391]

SENATOR AGUILAR: Can't you call? [LB391]

PAMELA DALY: Well, I have called a couple of times and I've been told--and I understand this, they're very busy, they're very nice people, by the way--the agenda is placed in a little thing they attach to the wall. If you'd like to read it, come down and see it. Now it isn't just that. Once you get to that agenda, there is a section for the planning commission and you have to go find their agenda for that. So there's a lot of...(laugh) [LB391]

SENATOR AGUILAR: So you're saying they refuse to read you the agenda that you specifically request when you call on the phone? [LB391]

PAMELA DALY: Yes, they did. [LB391]

SENATOR AGUILAR: Okay. [LB391]

PAMELA DALY: In a nice way. But they said it was available and that is, in fact, what the ad says in the paper on Friday. The agenda is available for public inspection at the county office. [LB391]

SENATOR AGUILAR: Understood. Now I want to comment on something. You heard the clerk from Grand Island testify on how things are done there. [LB391]

PAMELA DALY: Yes. [LB391]

SENATOR AGUILAR: And I would submit to you, and I've seen many, many, and even participated on both sides of the wall in the Grand Island City Council, as a member as well as an audience member. And they have never ever lacked for public participation. I submit to you the reason they don't lack for public participation is because everything is orderly. They know they are going to get their ten minutes to speak on an item. They're going to get their ten minutes of fame. They'll get their say-so because a week before or whenever they submitted it on as an agenda item and they have an opportunity to speak and they will get that opportunity. And the participation, I say, is generated because they know that they have that coming and they will get it when they show up and they know it's on the agenda in advance. [LB391]

PAMELA DALY: Well, I think that is a good process in Grand Island. It sounds like it's working very well. I think one out of ten people, I heard nine out of ten can be handled separately without going to the meeting. And I think again that that may not be fair, that

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some people want their issues brought up. In Grand Island, I'm not saying it doesn't work. [LB391]

SENATOR AGUILAR: Okay, but let me interject into that. Just because they've got their resolution to their problem still doesn't mean they can't show up and speak on that. If they request a time to speak, they can still come to speak. [LB391]

PAMELA DALY: Okay. [LB391]

SENATOR AGUILAR: Whether or not that problem has been resolved or not. [LB391]

PAMELA DALY: Okay, well, that's great. This bill does not say this. This bill says it's up to somebody to approve that item for the agenda. [LB391]

SENATOR AGUILAR: We'll let the introducer speak to that in his close. Thank you. [LB391]

PAMELA DALY: Thank you. [LB391]

SENATOR AGUILAR: Any more questions? Thank you so much for coming down today. [LB391]

PAMELA DALY: Thank you. [LB391]

LAURA KREBSBACH: I'm back. [LB391]

SENATOR AGUILAR: Welcome. [LB391]

LAURA KREBSBACH: (Exhibits 6 and 7) Thank you. My name is Laura Krebsbach, L-a-u-r-a K-r-e-b-s-b-a-c-h, with the Great Plains Environmental Law Center and I have some handouts. But in all honesty, I'm finding testifying on bills a little bit problematic when, for instance, Lynn Rex comes with amendments that you don't get to see previously. Your written testimony may not always be as pertinent as it should. I'm not going to read my testimony. There's been a lot said that I already agree with. But there's a couple of things that I do want to hit really quickly. First of all, agenda items are action items. They're on that agenda so the public knows an action is going to be taken. The ability to bring something up during a public meeting that's not on the agenda will not be an action item. So it does mean possibly it could be a future agenda item. But it's important for the public to have that access during an open meeting. That's what an open meeting is for, to bring issues up. And I know that's very important to a lot of the folks I work with out in rural Nebraska. The other thing that I am concerned with when I look at these amendments is the last sentence that changes page 10, line 10, that says "subsequent requests from one or more citizens for an agenda item relating to the same

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or similar subject matter are not required to be scheduled as an agenda item more than once annually" is very prohibitive and very, very scary. You've had your one shot, you can't come back even if other people raise this issue. This is not good government. This does not serve the people. That's absolutely unacceptable. The bottom line is, I do just want to reiterate that if you look at Section 84-1411 in the public meeting laws, "each public body shall give reasonable advance public notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice," then later on...the other thing that's really important is that whoever is in charge of that public body has the right to govern speech, whoever is video recording, video taping. They have the ability to run that meeting and limit, speech is also a limited item. So everything that's needed is there. It doesn't need to be tinkered with. And I would be very surprised if the public opinion that you get would be any more than eight or nine that want to leave the laws alone to one or two that might want them changed. And I guess I want to leave you with this. If you don't want to listen to the public, don't serve on a public board. It's public service, that's the key. So I'll end there and if there's any comments... [LB391]

SENATOR AGUILAR: Questions or comments? Seeing none, thank you for coming today. [LB391]

LAURA KREBSBACH: Was it short enough? [LB391]

JACK GOULD: Senator Aguilar, members of the committee, my name is Jack Gould, that's G-o-u-l-d. I'm here representing Common Cause and I will try to be very brief. I would not oppose this bill if somewhere in this process it was guaranteed that the public had a right to speak, whether you call it an open mike or an open forum. As it stands now, these bodies cannot have those events. And so the only items that are going to be discussed are those that are on the agenda or requested. And you can say, well, the public has the right to request a week in advance in writing and then the body has the opportunity to decide if they're going to hear it this week or next week or five weeks down the road. The point is, you're putting up a hurdle to the public and you want the people to speak. This is the heart of democracy. It's the New England town meeting. That has a place in Nebraska as well. And if we don't find a way to give the public the opportunity to speak and begin to find ways to silence them, then we're not doing our job. [LB391]

SENATOR AGUILAR: Thank you, Jack. One thing, Jack. [LB391]

JACK GOULD: Oh, I'm sorry. [LB391]

SENATOR AGUILAR: I'm going to agree with what you said. We do want the public to

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... speak, but we want the public from both sides of every issue to speak. So that's why I believe advance notification is better. Thank you. [LB391]

JACK GOULD: Well, I think that applies to agenda items. I mean, I don't have a problem with that. That can be done. What I'm saying is, where does the public have a right to bring up the new idea, the difference of opinion if it's not consistent with the agenda? And you're painting a picture of the open mike or the open meeting as if it's some kind of a hack session. I don't see that. But even if it is, our constitution guarantees the public the right to speak. And we should be... [LB391]

SENATOR AGUILAR: And I think you heard previous discussion that absolutely said there's an opportunity to place things on the agenda, everybody has that opportunity. [LB391]

JACK GOULD: If you go through all the hurdles that you set up. You know, it takes, when you come to these meetings... [LB391]

SENATOR AGUILAR: You call it hurdles, I call it structured process. [LB391]

JACK GOULD: When you come here to speak, I know a lot of people feel that, you know, everybody has a right to speak. But even here, you have paid lobbyists that are here on a daily basis ready to speak. The public has to go out of its way to come here to speak. And it's the same thing in these meetings. You have to make it easier for the public to get their point across. And this kind of a bill is just setting up the hurdles. [LB391]

SENATOR AGUILAR: Thank you, Jack. [LB391]

JACK GOULD: You bet. [LB391]

SENATOR AGUILAR: Questions? Next. [LB391]

BOB TWISS: Good afternoon. My name is Bob Twiss, T-w-i-s-s... [LB391]

SENATOR AGUILAR: Welcome. [LB391]

BOB TWISS: ...433 Sherwood Drive, Gretna, Nebraska. And I'm here to oppose LB391 and a lot of that is out of experience over many, many years. Some of the opponents to the bill have spoken very eloquently before me and I'll try to be brief and cut some of the comments short as my stature is. The open meetings are basically a forum for public input and to conduct the public business, obviously. And the pictures that have been painted--the bad, bad pictures that have been painted today--could occur whether it's an agenda item or it's not an agenda item, either way. But there's enough authority in

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current statute that the presiding officer can have efficiency and control of that meeting. I've had it happen that I was not able to speak on an agenda item. And that just happened less than a year ago. After nearly three decades--plus, as a matter of fact--attending public meetings, I had it happen where I was not able to address an agenda item. And this is a matter of record. It was at the Nebraska Innovation Zone Commission meeting on May 4 of 2006. And I want it on the record here as well because you can go back and check their minutes, you can pull them out by the Internet, etcetera. I had two meetings that night. I drove 25 miles from one meeting to another meeting. And I knew that my agenda item that I was most interested in at this meeting would not occur until later. And so I was pushing it, I think I can get there on time, etcetera. Meeting started at 7:00, roll call 7:02 p.m., public comment period, 7:10 p.m. is when public comments started, before any real business was conducted. Public comment period closed, 7:15 p.m. Then the city of Lincoln presentation, executive director report, agenda item, Nebraska Innovation Zone Commission, addition of nonvoting commissioners. I was interested in that item, the representation on that governmental body. Reading: at this time, 8:10 p.m., a member of the audience, Bob Twiss, became outspoken. And actually, I spoke out; somebody editorialized. I was very polite, but I was adamant. Outspoken, and I'm going to say spoke out about the topic. Mr. Twiss wanted to speak about this agenda item as a public member. The request was denied, seeing that the public comment period had already closed. Mr. Twiss instead insisted that for the public record it stated that he was denied an opportunity to speak during this portion of the meeting. At least I got that accomplished. But this bill in reference, especially on page 9, and I'm not going to deal with the amendments at the moment, but line 14, on agenda items "as allowed by the individual presiding over the meeting," this is not good legislation. It does not necessarily allow anybody to speak, even on an agenda item. And that can also get at content as well and First Amendment rights. We should have the right to speak on an agenda item. The First Amendment is impinged. This legislation is very broad, very, very broad authority, no guidelines, no criteria. Does that get at the speaker's content? Page 10, how to get on the agenda--and I know there's some modifications to it--lines 3 through 10, there's no assurance to get on the agenda. What happened to the citizen's right to petition our government? This is very, very important. Captain, may I? Sounds little frivolous, doesn't it, but it's not. Mr. Chair and members of the committee, this is not a game. This goes to the fundamental First Amendment rights of each and every one of us. Please give LB391 a quick and gentle demise and move LB7 to the floor. [LB391]

SENATOR AGUILAR: Thank you. [LB391]

BOB TWISS: Be happy to answer any questions. [LB391]

SENATOR AGUILAR: Questions? Seeing none, thanks for coming today. [LB391]

BOB TWISS: Okay, thank you. [LB391]

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A.J. BOHAC: Hello, my name is A.J. Bohac, A-period J-period B-o-h-a-c. I live here in Lincoln and I'm not representing anyone except for myself. And I just wanted to come as an example of when I think citizens' rights at public meetings have been violated. I know Senator Mines said in his opening about it being a free-for-all at public meetings and wanting to be on T.V. and so on and so forth, but he didn't feel that often citizens' rights were actually violated. So I come as a representative of that. I, two years ago I was a student at the university, was a cofounder of the student group Huskers Against Hergert. All we did was advocate for either the resignation or impeachment of Regent Hergert. In doing so, we spoke at two Board of Regents meetings of the university, both of which...I am not going to go into the details or anything because it's a long and drawn-out story that's already been concluded, but both of which open meetings laws were violated that benefited them and hurt us. So that's where my interest piqued with the open meetings law. It's when I first read it. So now when I heard about this bill and I read it, it seems to put into law what exactly happened to us that, at the time, was against the law. There are a number of issues that I think are mistaken in here, are wrong with this, but they've mostly been mentioned, so I'm just going to focus on one thing, in the interest of time. And that is the part that Mr. Gould referred to it as a hurdle. Senator Aguilar referred to it as structure. And with the utmost respect, I'm going to refer to it in this regard, to this bill, as just more bureaucracy and bureaucratic mess. And I know the current statutes now. And if LB7 I believe was enacted into law, it would still allow for public bodies to choose not to have open mike sessions. They would have the option, yes or no. If LB391 became law, it would not allow them even the option to do it. It would disallow any of them. So right now a body, if they thought this was a mess, if it was causing problems, it seems to me from reading the law that they could choose not to do so. So if they choose not to do it and they do this new language that's in LB391 about filing the form to be put on the agenda, and the argument that Ms. Rex makes about the prior notice is an interesting one, but I think to fix that problem, they're creating some other problems here. So I show up to a public meeting, maybe like this or a local meeting and I wish to air my concerns to the public and to the board and they can already place structures on what I'm going to say. They can say how long I'm going to be able to talk, so on and so forth. So in my instances with the Board of Regents, it was they had a 30 minute open mike session total, five minutes per individual. So I could only air my concerns for five minutes and all of the people who came with me, we had to be done in 30 minutes. Instead, under this, what would be law, I would come and I could be this near, I could be at the meeting, we could be talking about whatever. And instead of me having my five minutes to air my concern, I would have to fill out a form, submit it, and it would have to go under a review process that isn't detailed. Like why that decision would be made, that's not mentioned in the law. What process that presiding officer would have to make that decision, that's not mentioned in the law. That decision would be made and then it would have to be mailed to me, a letter written and then mailed by first class by a staff member of the presiding officer himself to me to tell me yes or no. Then if the answer is no, I could resubmit that form--and this is now

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moving on to the proposed amendment--I could resubmit that form and, from the way I read it just in the audience today, it seems to say that if I submit that form a second time, then it would have to be an agenda item. And if that's the case, then it's now on the agenda and another letter is sent to me by a staff member, mailed to me saying it's on the agenda. All that is done. And then if that's the case, I still get my five minutes to speak. I still get to air my concern. Great. But in doing that, two forms I had to fill out and file, two review processes had to take place that aren't talked about in the law or how those processes take place, two letters had to be written and then mailed to me, and the exact same thing happens. I get my five minutes to air my concern. So it seems to me, if you think what my testimony is going to be is legitimate, I get my five minutes, I air my concerns. If it's not going to be legitimate, this law doesn't stop me from doing it. I can still market my...if I'm reading this correctly, I can still market my business, if I so wish. I can still do it just to get on local T.V. that no one watches, I can still do any of these things for any of the same reasons I want. I just now have to do a bunch of paper work to do it. This, to me, if there's ever a definition of bureaucratic mess, this seems to me what it is. You allow the exact same thing to happen, but you make it a lot more difficult to have that happen. The saying comes to mind of, ten minute solution to a five minute problem, that it would take more than the five minutes than it would take the board to hear me than to actually come to a conclusion on this. And also, so there's that, which I think would be bad for local government and bad for democracy as a whole. If the intention of this is not to silence the public, if the intention is to the prior notice thing, to allow the other interested parties to be there for when these things are discussed, if you have a nonagenda item like an open mike session, it would be a nonagenda item. So a person could bring it up and I could talk about my neighbor. But if it's a nonagenda item, action can't be taken on that agenda item, as far as I understand. So it would have to be, for any of those actions to take place, it would have to be placed on a future agenda, at the next meeting, per se or three meetings down the line as an agenda item, which would then be publicly notified in the paper, so on and so forth; that process, that's already in place. And then my neighbor or whoever the interested party maybe would have prior notice of that when it's an agenda item and they would be able to then know about it, attend the meeting. And so you would have again the same situation, both interested parties would know about it. It was just the public that brought you to that, brought it up to you the first time. All this is fine. It's just a more difficult way to do the exact same thing. Even that, being said, is fine if you want to create that, that's fine. However, it also adds, to fix that problem of prior notice, I think it adds one more problem--and I'll do this really quickly--that it allows the presiding officer prior control over what you're going to say as opposed to control during you saying it or after you say it, that if you submit this...instead of showing up at a meeting and speaking, and this is what happened to us, they kind of had an idea of what we were going to say at this meeting and they didn't want us to say it. Fine. This would allow that to happen. I would submit the paperwork to the presiding officer and the presiding officer would say, no, it can't be on the agenda, please file some more paperwork. It would give them...I believe Senator Mines said something to the effect that if the public wants to speak, that's great,

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let the public speak. And then he went on to say something about let them do so in a dignified fashion and so on and so forth. But this would allow, let them do so in a fact that we preapprove. You know, let the public speak but let us preapprove what they're going to say through paperwork. So the amendment makes it a little better because then at least you can get it on the agenda. But then you could have spoken about it just at the open meeting and saved two letters and two processes and a whole bunch of mess. So I'm sure I've forgot things but, with that, I will close and be happy to answer questions. [LB391]

SENATOR AGUILAR: Questions? Seeing none, thanks for coming today. [LB391]

A.J. BOHAC: Thank you. [LB391]

JOHN KNAPP: My name is John Knapp, J-o-h-n K-n-a-p-p, from Springfield, Nebraska. Thank you, senators, for the opportunity to comment here today. My comments are going to be...I'm going to give you some experience that I've had in Sarpy County with the Sarpy County government. We're the third largest county, the fastest growing county in the state, and this is the way the county board and the county planning commission treats the public. I was commenting on some planning, my views on some planning issues, an agenda item. And I was supporting my comments with quoting facts from the comprehensive plan, which is a 114-page document. I was giving pages and paragraphs where my support was coming from. And I made a mistake of submitting my written comments when I walked up to the podium. And there was three separate agenda items on that particular meeting. And our county gives you, the public comments, two minutes. So you can't say a lot in two minutes. So I read my two minutes, I sat down. The board voted on that agenda item. And when the next agenda item came up, I thought I'd have two minutes more to support my comments further. But the chairman of the county board says, you've already submitted your comments, you can't comment anymore. So I was required to sit down. The representative from the county attorney's office is there. And so basically I could not comment on what was being talked about that day because I put a piece of paper in. The board is voting on it but nobody was seeing or hearing any of my comments outside of the first two minutes. I think that's bad government and I don't see how people can support that. The Attorney General's Office, the county attorney's office says the open meeting laws give the chairman broad powers to control the meetings. And unless they are very egregious, they will prevail. The Attorney General's Office said, we do not like to get involved in county politics unless it's really bad. I guess they don't think that's really bad. And another item, we were trying to give other documents from other federal studies and supported our comments. And the chairman, this is the planning commission chairman, would not allow us to submit these documents saying that they...we are talking about the agenda item. The agenda item is a zoning change today and the concerns...this other stuff that we were talking about, the comprehensive plan, problems with the comprehensive plan, they said we talked about the comprehensive plan and discussed

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that. The study was a federal study, that's been discussed elsewhere, we don't want to hear it. They would not accept that. And they told us if we didn't stick to just the zoning item, we were out the door. And so they read the rules of time. I appreciate...I've been down here to comment at various legislative hearings and I've felt I've been treated fairly and given time to comment. But our board, a lot of times at these meetings there's seven or eight people there, they'll give us two minutes. They'll give the proponents five minutes, one person can speak for five minutes as a proponent. And then individually you can speak two minutes. And I think that's really wrong. If there was 50 people in the room, I would understand, you know, more restrictions. But when these public documents, if you come down, check any of our public documents like our planning commission meeting or our zoning, the comp plan is supposed to be a public document developed by the public. I asked to be on one of the committees that was working on zoning regulations. They said, no, if we let you on, we have to let everybody on. I said, fine, I don't have a problem with everybody on. And they said, you'll have plenty of opportunity to comment at the public hearings before the planning commission and the county board. Two minutes, that's what you get, two minutes. And I don't think that's very good public participation. The planning commission gives you, they're a little more lenient, they give you ten minutes and they'll give five minutes per person. But they also have a rule...excuse me, the ten minutes is if you're speaking for a group. So if we had two groups, each group would get ten minutes plus the people would get five minutes. But we tried to talk. I've got two cousins that own land in Sarpy County that live in Colorado. I said, I'm speaking for those two cousins, my sister who lives here in Lincoln, and a couple of other cousins who own land in the county. You're speaking for yourself. Another individual tried to talk to represent his family for the extra time, they would not allow him extra time. His family was there and his family tried to allocate their five minutes of time to him so he could give a complete, coherent presentation. No, that doesn't, you can't do that. You get five minutes. And they turn around and they read the rules at the beginning, what the rules say. You say I'm doing this and then they had the secretary read the rules again, said, no, you can't do it. So that's the way governments run. I went to an, after a county board meeting--which did last a little longer--I went to an NRD meeting, the Papio NRD meeting one night. And as I was sitting there, they had a change in directors recently and it had to do with, I think it was they were announcing the new general manager or at least going to talk about it, what I thought. And then I went down there and another issue was on the agenda item. And I hadn't noticed it before and just the comments made by the proponents kind of tweaked my thoughts and I was going to comment. And I didn't push it, so I was told by another member in the audience that I could not comment because I hadn't signed up at the start of the meeting that I wanted to comment. Now when you go to a meeting and you hear things being said, sometimes, you know, something happens that triggers something in your mind. Why shouldn't the public be able to comment on the agenda item when it's being talked about and not have to preregister to talk when, you know, you may think that it's just an innocuous...it may seem to be innocuous until you hear some of the comments that are being spoken. And so again, I have grave concern about the ramifications and I

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think with our county is able to really put the screws on the public comment and I have great concern if this would give them a lot more power. So thank you for your time. [LB391]

SENATOR AGUILAR: Thank you. I'm going to make a quick comment. Just to let you know, like in Grand Island, in their situation, at the beginning of the meeting, everybody has a copy of the agenda and the clerk asks the body, anyone wants to speak on an agenda item, all you have to do is come up right now and state your name and state the agenda item. So in that case, I don't know how they do it in your county, but that's how they would do it there. And you would be allowed an opportunity to speak on an agenda item. [LB391]

JOHN KNAPP: Well, on the...I mean, when the agenda item comes up, our county reads the rules of how much time you get. And they won't allow, say four of my friends come in with me and they were uncomfortable with speaking, they can't allow their two minutes, you know, to me. And so anyway, I only get two minutes on important issues like comp plans and zoning ordinances. I think the public should have more time to comment than two minutes. But you come up and they have a sheet. You sign in when you come up, you know, on each agenda item you sign in your name and address. But the rules are laid down before any, you know, any idea of who is going to talk or how many people plan on speaking on this item or that item. [LB391]

SENATOR AGUILAR: One question. You talked about your family members weren't allowed to be there so they didn't have time to speak. Would they have been allowed to submit a letter with their comments? [LB391]

JOHN KNAPP: Yeah, you can submit a letter. I mean, I'm sure. I've never had a letter rejected. (Inaudible) I see no problem in representing a group. And again, if there's a lot of people testifying, I understand you don't want to run meetings to 3:00 in the morning. But when you got five or six people testifying, give them five or ten minutes. And most of the time, these agendas aren't that long. [LB391]

SENATOR AGUILAR: Sure. That was going to be my next comment is that we have committees here in the Legislature that have an exact three-minute time limit depending on what's being debated and how many people are in the audience. You know, we reserve the right to restrict the length of comments at the same time. We choose not to if there's, you know, we think we can handle and get everybody an opportunity to speak before 3:00 in the morning, then we'll do that. [LB391]

JOHN KNAPP: Well, I mean, I feel...I don't think--well, you know, everybody has their own opinion. But I don't feel it's unreasonable to limit time, you know, if you've got a lot of people that want to talk to, you know, you have to put some limitations on it. But I think on important issues, maybe you need to table it and have a...like on a

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comprehensive plan or a zoning ordinance, maybe you need more than three minutes to get this solved. And that's the only time the public gets the chance to really participate. They're pretty much out of the...and on this one committee that was formed, three planning commission members, a real estate agent, and a developer, an attorney for a developer, that was the committee. And when we said, where's the public representation on this committee, they said, we all live in Sarpy County, we are the public. So these people were representing special interest groups and also they are the public representative. [LB391]

SENATOR AGUILAR: Thank you. [LB391]

LYNN MOORER: (Exhibits 8 and 9) Good afternoon, Senator Aguilar, members of the committee. My name is Lynn Moorer, L-y-n-n M-o-o-r-e-r, a Lincoln attorney who today is speaking on behalf of Eastern Nebraskans Against Chemical Trespass, also known as ENACT. We oppose LB391 because it is not needed and, in fact, works against the public interest. Many of the points that have been raised previously in the meeting with respect to some of the legal issues have been sort of touched upon. I assure you that my comments will not last until 3:00 in the morning. (Laugh) However, I do think this might be an appropriate occasion to give you perhaps a little bit more detail and I do have some legal citations for you. So I have, this time I have testimony for you to look at and it provides some of this, and then this is the second thing. And this may help your consideration and put some detail to some of these issues that have been touched upon, as well as some legal facts. I have conducted legal research and analysis and have concluded that LB391 cannot withstand constitutional scrutiny. LB391 violates constitutional free speech rights and is constitutionally suspect because of vagueness. And I don't believe the amendments that have been put before you today solve these problems in any way. First, I'll explain why this bill is not needed. The Statement of Intent says that the proposed changes that this bill would bring to the Open Meetings Act underscore the importance of providing reasonable advance publicized notice of agenda items, which will be considered by the public body as currently required by law. And it's been asserted to you by at least one of the proponents that open mike sessions are not currently allowed under the law. I believe that is not an accurate or competent legal assessment. In fact, open mike sessions which include comments on a whole variety of topics that have not been publicly noticed do not violate the Open Meetings Act, nor do they raise any inherent government by surprise problems. This is because any new, not publicly noticed subject discussed in an open mike session cannot be acted upon by the public body at that meeting. If you look at LB391 at page 5, beginning at line 7, you can follow some important language currently in the act that I'm going to explain next. Section 84-1411(1) of the Open Meetings Act requires that the notice for the public meeting must contain an agenda of subjects known at the time of the publicized notice. That's important. And at line 12, it says that "agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting." Now according to a couple of major Nebraska appellate

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court decisions on this issue, talking about matters to be considered--and these cases are the Hansmeyer case, which is 1998 case, and the Pokorny case, which is a 1979 case--matters to be considered, according to the court, means items on which the body contemplates taking action. That's the key thing, taking action. This means, given what the law already now says and given what the court cases have been saying, interpreting what reasonable advance publicized notice is, this means that the public does not risk violation of the act through lack of proper notice with respect to subjects raised in an open mike session unless the public body knew when the public notice was sent out that certain subjects would be raised during the open mike session, which might be acted upon during that meeting. In that case, if that would be the case, then it is likely those subjects would be incorporated within the specific agenda items that are already being publicized. And that would provide the adequate notice. So again, the body is not allowed to take action on something that comes up new in an open mike session. Next, it's important to take a careful look at what the enforcement section of the Open Meetings Act actually provides. And this is in the handout that was provided to you. Section 84-1414 provides that it's only if formal action is taken by a public body in violation of the act can that action be declared void. So if the body doesn't take action, there isn't anything to void. Furthermore, in order to get an action voided, it's not a simple process. A lawsuit would have to be filed in district court within 120 days, a violation would have to be proved through evidence presented at trial, and the court would have to then declare that because of a violation an action should be voided. That's how the process already works under current law. It's an involved and expensive process to get to the point that a court might actually declare an action taken by a public body void. Any allegations of violation of the act would have to be proved first. So it is not true, as you were told a couple of weeks ago during the hearing on LB7 and previously in this hearing today, that when a mere allegation of a violation is made within 120 days or a process started the court has no choice but to declare it void. That is an inaccurate characterization which paints a distorted picture of what the law actually provides and gives the erroneous impression that public bodies are on the brink of having their actions voided far more frequently than they actually are. In reality, a violation would have to be proved in a lawsuit before an action could be voided by the court. So there isn't a problem regarding open mike sessions with respect to reasonable advanced publicized notice that LB391 is needed to solve, which apparently is supposed to be the basic linchpin that is where the rationale for this bill in general. As long as the public body doesn't take action at that meeting on any new item raised in the open mike session, there's no problem regarding public notice that could get them into legal jeopardy. And I submit to you, if they don't take action then it's not governance. They take, they carry out governance when they take action. If they're just listening or perhaps asking questions of the citizens during the open mike session, that is far different from taking a formal action. And so they're not governing during that portion, they are listening to their constituents, they're listening to the public, and they're allowing the public to have a right to petition their government. But they're not taking action. Another reason that LB391 should not be supported is that it works against the

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public interest. The first way the bill does this is that it effectively prohibits the open mike sessions. Instead of having the opportunity to bring new issues to the attention of their elected or appointed officials in a public meeting, it limits public speech to agenda items only. And I understand that in the case of many school board members, school board members across the state, this cuts off, particularly for them, an important avenue for them to hear from their constituency. Because it's my understanding that many of them have been counseled by their attorneys not to have any contact, not to have any one-to-one conversations with any of their constituents because it might place them in the possibility of having some legal action. They have to channel all of their comments through the superintendent. All right, so for example, that means...I've heard from county board members who highly value these open mike sessions because this gives them the one opportunity they have to hear directly from their citizenry, particularly the citizenry that they may need to come to in the next three or six months and ask to approve some sort of a school bond issue. This would erect another barrier for citizen participation and represent a chilling restriction on citizens' constitutional free speech rights and right to petition their government. In addition, the process proposed for placing requested items on the agenda lacks criteria to apply regarding citizen requests. It is not clear to me that the amendment that is suggested would solve this problem. It does not indicate that there is a guide to whether or not...there's no assurance that someone's request to get on the agenda will actually be approved or when it would be approved. I submit to you that this vagueness makes it constitutionally suspect. But the most egregious problem with LB391 is that it opens the door to public bodies using the agenda to control what a citizen might say or to prevent citizens from saying things the officials do not want to hear, both of which are unconstitutional controls by a governmental body. The portion that has been cited for you a couple of times, I'll refer you to it specifically. This is LB391, page 9, lines 14 and 15, provides that the right of the public to speak at meetings can be controlled "as allowed by the individual presiding over the meeting." And the suggested amendment would control the right of the public to speak on agenda items either identified as items for public comment or as allowed by the individual presiding over the meeting. The problematic part is the "or as allowed by the individual presiding over the meeting." This is extremely problematic and insupportable. This provision gives very wide discretion to the presiding officer without any guidelines to apply when deciding who can speak and what can be spoken. And this is overly broad. My legal analysis yields my conclusion that this is overly broad and vague legislative language that can be interpreted to allow a presiding officer to limit content of speech based upon viewpoint, which violates free speech rights in the U.S. and Nebraska Constitutions. With respect, Senator Aguilar, because it works well in Grand Island with the Grand Island City Council does not mean that it cannot be or will not be abused in other locations. And frankly, the experience that I have with many different governmental bodies and the citizens that I represent across the state shows it is far more common than perhaps your experience in one location is. There is already lots of abuse with respect to the controls that the act now provides. Let me remind you that the act already provides that presiding officers or the public body can impose

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reasonable rules regarding conduct. It doesn't say they can impose rules regarding content. Now I would like to summarize for you briefly what the basic constitutional rules are regarding free speech rights at public meetings of governmental bodies. Okay, this is focused upon public meetings. First of all, the government may impose content-neutral conditions for time, place, and manner of access to public forums, like public meetings, all of which must be narrowly tailored to serve a significant government interest. So for example, the body can limit the amount of time you can speak. You can limit it to two minutes, three minutes, four minutes, so long as those are reasonable restrictions. The next basic rule, content-based restrictions on speech in a public forum are subject to strict scrutiny, but viewpoint-based restrictions violate the First Amendment regardless of whether they also serve some valid time, place, and manner of interest. So that means some presiding officer controlling or limiting speech based upon someone's viewpoint is never allowed, under the cases that interpret the U.S. Constitution, which is basically considered to be equivalent to the interpretation of the free speech rights in the Nebraska Constitution. Now the case law does...and let me also say that the third basic rule here from the courts is a restriction which vests unlimited discretion in a government actor opens the way to arbitrary suppression of particular points of view. That means unlimited discretion tends to lead to arbitrariness which can lead to suppressing a particular point of view. Such arbitrariness is inherently inconsistent with a valid time, place, and manner of regulation. So the public body can limit a subject matter to things that that body has jurisdiction over. All right, there's nothing about the Nebraska Open Meetings Act currently that says the Grand Island City Council has to listen to somebody talk about how the NRD there that covers that particular area is inappropriately trying to restrict their ability to drill a new well, for example. That would be obviously not within the jurisdiction of the Grand Island City Council. And so that's an appropriate content, narrowly drawn content-oriented limitation that a public body can make. Already they can do that under the Nebraska Open Meetings Act. Nobody is suggesting that somebody be allowed to stand up and rail about something that that particular body has absolutely no jurisdiction over. But any content-oriented limitation must be narrowly drawn. And clearly, LB391 is in no way narrowly drawn. (Laugh) Gives all kinds of discretion. It just says, "as allowed by the individual presiding over the meeting." That's totally wide open. And so according to the legal rules as they've been developed over the years, that arbitrariness in itself inherently is inconsistent with appropriate rules which can pass constitutional muster. I'll tell you, I've witnessed some presiding officers at governmental meetings in Nebraska cut off citizen comment simply because the public body is being criticized. Criticism that is not irrelevant to an agenda item, is not abusive, is not profane. I've witnessed presiding officers not allow a citizen to speak on an agenda item because that citizen spoke at a previous meeting on that general subject. I've also witnessed presiding officers of other governmental bodies refuse to allow certain citizens to speak, even though they had filled out the sign-up sheet to speak on an item on the agenda and no problems existed at that time regarding the comment period running too long. These are wide...there's already, shall we say, a wide array of abuses that already occur with

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respect to content being controlled by presiding officers based upon viewpoint, which is simply unconstitutional. I guarantee you that if LB391 is enacted with these provisions, countless--and even including the provisions that are in the amendment--countless presiding officers at meetings all across the state will silence citizens because of the content of their speech based upon viewpoint, concluding that this new statutory language gives them permission to do so. I guarantee you that's what will happen. Clearly, such curtailment is neither constitutional nor in the public interest. In conclusion, LB391 serves no useful purpose, works against the public interest, violates constitutional free speech rights, is constitutionally suspect because of vagueness, and we urge you not to advance it out of committee and to lay LB391 to rest forever. We can see no redeeming qualities in the bill that are worth saving. Thank you for this opportunity to speak. I'll be happy to answer any questions you might have. [LB391]

SENATOR AGUILAR: Thank you. Questions from the committee? [LB391]

LYNN MOORER: I also thank you for your patience. [LB391]

SENATOR AGUILAR: Senator Adams. [LB391]

SENATOR ADAMS: Mr. Chairman, for purposes of time, I'm not going to joust with you on First Amendment. You probably know it better than I anyway. But I would say this. You have raised my antenna about the language as allowed by the individual presiding over the meeting. And I will take that into consideration as we deliberate this. However, I'm going to conclude by saying, I don't believe that governance is restricted just to taking action. And with that, I'll say no more. Thank you, Mr. Chair. [LB391]

SENATOR AGUILAR: Further questions or comments? [LB391]

SENATOR AVERY: I have a comment. [LB391]

SENATOR AGUILAR: Senator Avery. [LB391]

SENATOR AVERY: I don't know if you do private legal work, but if you do... [LB391]

LYNN MOORER: Yes. [LB391]

SENATOR AVERY: ...I'd like to hire you sometime. (Laughter) Thank you for coming today. [LB391]

LYNN MOORER: Thank you. [LB391]

SENATOR AGUILAR: Further opponents? [LB391]

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JAREL VINDUSKA: Good afternoon, Senator Aguilar and members of the committee. My name is Jarel Vinduska, J-a-r-e-l, last name spelled V-i-n-d-u-s-k-a. And I'm here in opposition of LB391. I'll try to keep it short, basically because we're heading the wrong direction with this bill. I've been going to public meetings most of my adult life on various issues. And most of the time, every time I've been here at the State Capitol and I've been to Omaha board meetings and Lancaster County board meetings, and all of those, I've had good experience. It appeared that everybody was conscientious and did their job well, listened to people, were polite, wanted to learn what the issues were. And so there's no problem in a situation like that. But we don't make laws for the conscientious people, we make it for the people that aren't willing to do their job right. And when we talk about public meetings, we're making it mainly for biased people that have a different point of view and don't want to hear a different point of view. And that's what laws are about. And in that respect, we should work in every way we can to create as much openness as possible. Now I've very seldom, if ever, seen anybody get so out of line with profanity or just ridiculous talking that they needed to be escorted out of the room. Generally, the public conducts themselves with respect and just tries to get their point of view across. So any time we make any type of legislation that hinders their ability to do that, like I say, we're going in the wrong direction. And in this issue mainly in here about having to be posted on the agenda, that is leaving the door open for a presiding officer to cut people off. And that's just not right. And I'll give you one quick example before I sit down. It was mentioned about Sarpy County before. We've got a couple bad apples in Sarpy County that are just uncontrollably bad. And at our planning commission, we had a planning director that's responsible for making the comprehensive plan but he knew the plan was going to be changed and so he bought a farm in Sarpy County because he saw a quick buck in changing the plan. But he realized he couldn't change the plan so Sarpy County hired a consultant to make a new zoning ordinance. And that zoning ordinance was submitted. Well, four or five months after that was submitted after the public was used to reviewing that ordinance that was put forward, a committee was formed to review that ordinance. And that committee the public wasn't allowed to participate in. And when it comes time to go before the planning commission, instead of looking at the ordinance that was submitted by the consultant, we had this new ordinance that was redone by members of the planning commission and our planning director's own attorney that was the main person, vocal person on the committee. His own attorney was there to make sure that this conservation development we were trying to promote in Sarpy County wouldn't see the light of day. And so when it comes before the planning commission and they're talking about an ordinance different than what the public was used to, and this one was on the agenda, and we said, well, it wasn't right to have a group that was a biased group that squelched what we were expecting. Our presiding officer, our chairman, says that isn't on the agenda. This is the one that's on the agenda. You can't talk about that. So okay, so we can't talk about the one that we're supposed to be talking about. But when this goes before the county board then with the unanimous approval of our planning commission, they don't get to hear our testimony of why we think this is bad because it's not in the minutes because we were squelched to

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be able to talk on what wasn't on the agenda. And so now when they look at the minutes and they review what happened, they just say, oh, unanimous approval by the planning commission. Okay, approved. But the public never got to put their testimony in on it. And that's just one small example. And I'll just say it's going the wrong direction, it should be killed immediately, and don't even think about it. Thank you. [LB391]

SENATOR AGUILAR: Questions? Seeing none, thank you. Further opponents? Neutral testimony? Welcome. [LB391]

ALAN PETERSON: Mr. Chairman, members of the committee, Alan Peterson, Media of Nebraska. I am going to be very brief. We're neutral because less than a handful of the Nebraska daily newspapers and their towns believe that the totally open mike is the best way to go. It appears that the balance of the news media in Nebraska believe that it is nice to have the open mike and the total freedom of subject matter, but they need notice of what's going to be talked about so they know whether or not to cover it, how long to cover it, and sometimes even whether to send a photographer. So the notice thing is important to them. They're split. So that's why I'm sitting neutral. But I want to say, as a constitutional attorney who's worked for almost 40 years in the area of open meetings, public records, and First Amendment law for the papers and others, and as a trial lawyer, I do tend to agree that the language allowing the chairperson alone without any standards to govern what is said and when and so forth. If it really means that absolute of control, that's questionable and I agree with Ms. Moorner on that. However, I want to comment just very briefly, and then I'm going to be done, on the constitutional analysis, the First Amendment analysis that I think would be applied to this bill, if it passed, and my opinion the bill is constitutional. It wouldn't create an unconstitutional amount of control except for that one point. As Ms. Moorner said, first of all you find out that something...that the government is restricting speech, and this would be a restriction on speech, limiting people to talk about agenda items at that particular meeting. But then they could try to get another item on the agenda for a later meeting. That's what it does. The governmental interest has to be proved if there is a restriction on speech. And sometimes if it's particularly important speech, the freedom of speech, First Amendment law says the government might even have to have a compelling reason to restrict. Let's assume that's the case. The governmental reason for restricting nonagenda items here, in my opinion, would be so that the public gets notice of what their public body is going to talk about. And so that the public has an opportunity to confront at the time it's given the new arguments that may come in, at least to hear them. It might sound familiar but the term due process--we learned clear back in law school, as your counsel knows and many of you know--due process fundamentally means notice and an opportunity to be heard. It also means some other things, such as the opportunity to confront and so forth. But the main, the fundamentals are notice and an opportunity to be heard on an issue that affects your important rights. The governmental interest, I submit, I think here, is the same as due process; notice and an opportunity, because you had notice, to prepare or send a representative and be heard

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on an issue when the public body that's going to take it up is even going to discuss it. And that's the problem I have with LB7 is, it seems to me that it doesn't provide that kind of notice. LB7 is the, I'd say, companion or competing bill, as you know. The other First Amendment principle that is always looked at, as Ms. Moorer said, is, is the bill narrowly, is the law narrowly tailored so that the government doesn't cut out more speech than is necessary to satisfy that interest? You know, as I see what's been presented here by this bill, all it's saying is let's limit the talk to the agenda. Now it also provides, with the amendments anyway, a way to add something to the agenda that a citizen who doesn't get their problem solved can use. And yeah, you have to fill out two forms and go through a process. Hey, that's tough. I had to fill this out. It wasn't that much of a bother. (Laughter) You know, I think you have to not exaggerate the effect of the bill on what restriction it puts on people's speech. The final principle, which is also a First Amendment principle that wasn't mentioned or not dealt with very much, is the courts when they handle a First Amendment government restriction on speech, they look to see, well, what alternatives are left unrestricted for the person or people to get their speech heard? And in this regard, the alternative is created by this bill and the amendments, which is the Grand Island system basically of allowing a citizen who wants a nonagenda item heard and discussed and wants to be heard on it can get it on the agenda in the future. They have to persist, yes. But a lot of their problems are handled apparently without actually being on the agenda. Nevertheless, with the new amendment that Ms. Rex presented, it appears to me to be an absolute right if you jump through the two or three hoops, you get on the agenda at a future meeting. That's how I read it and that would be an alternative, which the courts would say, well, that makes the restriction on speech at this meeting far less offensive to the First Amendment. And it's for those reasons that I, as a First Amendment attorney--I mean, I'm not always right, I'm not a judge, I'm an attorney--but I'm trying to be neutral on it. I think this basically would pass First Amendment tests. And most of my clients think that it would be better policy to give everybody notice of what's coming up. So that's my offer. I hope it's helpful as sort of a structure to look at some of the issues here. [LB391]

SENATOR AGUILAR: Thank you, Alan. We certainly value your opinion. I'm coming to the conclusion there are definitely some bad players out there, especially in Washington and Sarpy County. And there are bad players now without this legislation. [LB391]

ALAN PETERSON: Yes. [LB391]

SENATOR AGUILAR: I don't see this legislation preventing them from being bad players. Sounds like they're doing whatever the heck they want and whatever the heck they can get away with. And I don't know if we can create legislation to stop bad players. [LB391]

ALAN PETERSON: I heard all the anecdotal testimony and it's important that you hear it. This is the right place to hear that, of course. And if by law you can stop a lot of it,

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that's good. I guess what I see here is a very specific remedy created for any public body that says, well, you can't talk on that, we don't want to, it's not on the agenda so you can't ever talk about it. This remedy that's created seems to give a route to get it on the agenda for the future so it helps some. Bad actors, good lawyers like Ms. Moorer, sue them once in a while. And so do I, sometimes on behalf of the papers or other clients and not very often. But the AG is available. I suspect that Senator Mines might possibly even want to have this bill taken a look at by the AG's Office. Just a suggestion, because of the constitutional objections that have been raised. So I hope that's helpful to you. [LB391]

SENATOR AGUILAR: Further questions for Mr. Peterson? Seeing none, thanks for being here. [LB391]

ALAN PETERSON: Thank you. [LB391]

SENATOR AGUILAR: (Exhibits 10-16) Any other neutral testimony? Senator Mines to close, please. Oh, before you do, I do want to read into the record letters of opposition on LB391 from Ted Thieman of Petersburg, Nebraska; Mike Ryan of Omaha; James Mckenzie of Hebron, Nebraska; Pamela Daly of Fort Calhoun, Nebraska; Dennis and Ruth McCormick of Blair, Nebraska; Laurel Marsh of the ACLU; Ken Winston, Nebraska Chapter of the Sierra Club. [LB391]

SENATOR MINES: Mr. Chairman, members, first of all I'd like to thank Mr. Peterson for my closing. (Laughter) And I would like to thank you for your patience, it's been a long afternoon. Believe me, this will not be long. I did scribble some notes as some of the opponents were testifying, most particular Mr. Gould from Common Cause. Last year in this committee, I sat right there and Mr. Gould and others were passionate about getting agendas. Everyone had to have an agenda and I believe it was Senator Preister's bill that we squeezed down to something reasonable. But in fact, we provided, ensured that public meetings have agendas and that they are able to be read, that people understand what's on them. And now Mr. Gould is advocating that, well, we can talk at those meetings in addition to these agendas, we can cover whatever subject we may want. I don't believe you can have it both ways. I don't believe you can have agenda items and then also have open discussion about whatever you might want to have. I might also point out, I believe Ms. Daly, Mr. Twiss, and A.J.--I didn't write his last name down--I think they've kind of missed the point on the form that Grand Island uses as an example. The form is also an opportunity for people to get on the agenda. Certainly, as I heard the lady from, I believe it was Washington County, say we just call the clerk and she puts us on the agenda. Or my experience in local government has been someone calls with a thought, they would like to be on the agenda, they get put on the agenda. For the bad actors that won't schedule someone on an agenda, this form is an opportunity for them to bring up a topic, have it heard at the following meeting, and have some kind of resolution. At least they will get heard. This is also an opportunity for them

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to have an item on the agenda. Again, this is about, this whole thing is about reasonable advance public notice. And I believe that if governance is to continue in a fair and reasonable fashion, we cannot have an open discussion without advance notice, as Mr. Peterson had suggested. With that, Mr. Chairman, I do appreciate your patience and would answer any questions. [LB391]

SENATOR AGUILAR: Questions? Seeing none, thank you, Senator Mines. That closes the hearing on LB391 and the hearings for today. [LB391]

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Disposition of Bills:

LB199 - Advanced to General File.  
LB389 - Advanced to General File, as amended.  
LB391 - Advanced to General File, as amended.  
LB622 - Advanced to General File, as amended.

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Chairperson

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Committee Clerk