[LR78 LR80 LR120 LR122 LR146]

SENATOR AGUILAR: Welcome to the Government, Military and Veterans Affairs Committee hearings. The senators with us today: On my left is Senator Adams from York; next to me on my left is our committee clerk, Sherry Shaffer; I'm Senator Ray Aguilar from Grand Island; on my right is the legal counsel, Christy Abraham; and I'll introduce the other senators as they do appear. They'll be popping in and out throughout the afternoon I'm sure. The bills will be taken up in the order as they are posted on the door. Sign-in sheets at both entrances--put sheets in the box on the testifier table in front of me here. Print your name and indicate who you are representing. Before testifying, please spell your name for the record, even if it's a simple spelling. Introducers will make opening statements. There is no proponent, no opponent, or neutral positions so anyone can come up as they wish. Closing remarks are reserved for the introducing senator only. If you have a prepared statement or exhibit, if you'd like to give it to the page, he'll distribute it to the rest of us. You will need ten copies to accommodate everyone. Please turn off your cell phones and pagers. And speaking of pages, our pages for the day or Marcus Papenhausen and Kara Johnson. Okay, we're ready to go ahead and get started on LR120. Senator Wightman, you may come up. And could I get a show of hands of how many people are going to testify on LR120? I see three, four. Thank you. Welcome. [LR120]

SENATOR WIGHTMAN: (Exhibits 1, 2, 3) Good morning. Good afternoon. Chairman Aguilar and members of the Government Committee, of which I guess I don't see so many right now, but as the Chairman indicated, more may be present later, I am John Wightman, represent the 36th Legislative District and also serve on the Appropriations Committee. I have a handout...I have a packet handout and then I've got my statement, some of which I'll read but some of which I will summarize with reference to information in your packet. With the Nebraska taxpayer in mind, I undertook the challenge of studying how we, as policymakers, could contain the high cost of government employee healthcare plans after asking from an appropriations perspective how in the world we

can sustain a rate of increase in health benefit plans far beyond the rate of inflation. If the cost of other healthcare programs continue to grow at current rates, many other worthwhile and innovative programs the state might consider will not be possible without substantial increases in taxes. I have included in the packet provided for you current figures that show the trends in health benefits to the state of Nebraska since 1999 and current statistics regarding the cost of our health benefit plan. It includes statistics showing how the health benefit program has grown at a percentage of the overall budget and what the entire benefit package represents as far as a percentage of base salaries at different salary levels. Suffice it to say that when I saw these figures last year as a first-year member of the Appropriations Committee I found the figures astounding, and my amazement has increased as I received additional information. At the beginning of the session or shortly thereafter, I introduced LB477, which was killed that day in committee. My intention was to raise attention to the fact that we have to begin containing the cost of such programs if we are to restrain healthcare from consuming an ever-increasing percentage of the state budget. I started this undertaking with several assumptions. I assumed that there will be continued growth in the cost of government employee health plans. I assumed that the major way to cut health plan costs is to cut utilization or reduce the number of times an employee uses his health plan coverage. I further assumed that the way to engineer this cut in employee utilization is to increase the cost the employee pays for his or her healthcare plan or at least a share that they pay for family coverage. Finally, I assumed that the more generous government healthcare plans, the more taxpayer funded health coverage will be the plan of choice for private-sector employees who are married to a government employee, thus shifting the cost of healthcare to the taxpayer from corporate America. I might just briefly explain what I'm referring to there. I think as corporate America has cut back in the healthcare provided to its employees that almost every spouse, and that's probably a little too broad, but many spouses more than maybe were five years ago or ten years ago are coming under the public-supported healthcare plan. And so we're not only increasing the cost per employee, but we're expanding the number of people covered as members of families of employees and spouses as well. Although I still believe that all of these

assumptions are correct, my research has led me to some unexpected and different conclusions about other methods of containing the cost of healthcare over a longer period of time. And I will get into that in a minute in some of the information in your packet. I believe that changing how we practice health and employer provided incentives for healthy behavior of its employees are major considerations to long-term cost reduction in healthcare and that good health is really the only insurance against increasing healthcare costs. I convened a healthcare task force comprised of professional representatives from DAS, University of Nebraska, NSEA, cities, counties, NAPE, LPS, Lincoln Public Schools, school administrators, school boards, and other people involved in healthcare administration. We met several times throughout the interim and participated in the Government Committee's three informational sessions as well. By the conclusion of these several meetings, I have concluded that equally if not more important than legislation are incentives that would result in employees and family members taking steps to improve their own health. DAS is undertaking a study still in progress to evaluate what changes might be helpful. I point out that Carlos Castillo, Roger Wilson, and Laura Peterson of DAS have been extremely helpful in their participation on the task force, as have David Lechner and Keith Dietze of the University of Nebraska. Many others who have represented employers or employees have also been extremely helpful in their contributions to the study. It is a fair statement to say there is no easy apparent answer to what will work best as far as trying to contain these costs, rather several approaches, all difficult and unknown for their degree of cost control, may be suggested avenues. Rather than go into some of the rest of it, I'm going to, if you would look in your red packet that was passed out, go into some of the figures contained in that. And one part on the left-hand side of your packet we have a part of that that is labeled Part A and it contains much statistical information with regard to the State of Nebraska's healthcare plan. And if you're looking at the right part, it's three pages that goes down by percentage how much of the total healthcare costs are consumed by a certain percentage of the population. So if you have that, you might take a look as I mention this. It was extremely surprising to me to find that 1 percent, which represents 261 people, of the total people under the plan, now understand these would

not all be employees. Some of them may be dependents, spouses of employees, and the total number that we refer to on the third page as we total the numbers, 26,125, represents the total claimants under the plan. Now you should understand that's not the total people, and I don't have that exact figure because there were many people under the plan, whether they were children, whether they were employees or spouses, who didn't have a single claim during the year. So my best estimate would be that instead of the 26,000 on the bottom there may be about 30,000 people insured under the state's plan, but I don't have that exact figure. But all of these percentages are based on the number of claimants, not on the number of participants or people insured under the plan. So looking down those, I'd like to point out just a few of them. As we go down, take the first item, 1 percent of the people are represented by 261 claimants, 1 percent of the claimants. And they consumed 30.20 percent of the total, of 100 percent of the healthcare cost. Now maybe that's not surprising to you, but it's surprising to me that the top 1 percent use up 30 percent of the cost. We go down to 2 percent, it still remains extremely high. It's at 40.2 percent. By the time we get down to 5 percent, it's at 55.8. And I've highlighted the 10 percent, the 20 percent, 30 percent, 40 percent in columns, and finally at 50 I quit. If you look at the highlighting, you can see that the top or the bottom 50 percent, those who use the healthcare benefits the least, the bottom 50 percent use up 4 percent. I don't show that figure, I show 96 percent at the 50 percent level. So you can begin to see that it's not uniform is how employees and dependents and other people insured under the employees' plans are using the plan. Probably a number of the lower levels are children with relatively low cost. Many of them probably don't see a doctor throughout a year. So that was extremely interesting to me. The fourth page of that Part A, and I'm not sure yours are stapled together, but it's Mutual of Omaha statistics, the state has most of its employees insured under the Blue Cross Blue Shield plan. As you can see, there are only 4,185 claimants if you see that sheet under the Mutual of Omaha figures, and they broke theirs down, it also includes a percentage, but they broke it down primarily by claimant count. So out of 4,185 claimants, 9 of them were over $100,000 and that represented over 13 percent of the total; and, of course, it goes on from there. But it's a little different way of approaching

the statistical issues I think. Third, which I'm not going to dwell on, that's included as part of that same packet is drug prescriptions and various information with regard to drug statistics, prescription drugs. I think these probably will be eye-openers for you as well as for myself as to what the breakdown of that is. I also have a part that I think is labeled as Part B that includes several pages. One that I would call your attention to is the growth of healthcare. You'll see a little page number at the bottom of that Part B and I'm referring to page that says 83 on it. And these pages are from the State Personnel Almanac. And if you'll look at the bottom line of that, the next to the bottom line, you'll see what the growth has been in health insurance cost to the state of Nebraska, percent changed from previous year, and it starts out relatively low. It goes back to '95 and '96. This is in a different section. I think it's the second group. I see some of you are looking for this information with regard to fringe benefits. And these pages come right out of the state employee personnel almanac. At any rate, if you find it at a later date and if you don't see it now, the growth rates from '95-96 start out the first two years at 0 percent. Looked like it actually had a reduction in the year '97-98, and then we start the years of heavy growth: '98-99 is 5 percent; 27 percent the following year; 21 percent; and finally the last year is 17 percent. So we've had about 120 percent and that's not an actual figure, but well over 100 percent growth from '95-96 to the current year. And considering the amount that this consumes of the total budget, it is a major increase and I think something we do have to look at. Again, I don't know whether legislation is the best course to get at this. I am fearful that we are including more and more people and more and more numbers of people per employee as our benefits become more generous in comparison to other benefit packages provided by nontaxpayer-supported programs. I do believe that wellness and perhaps some sort of a package that would include incentives for wellness, for disease control, and possibly even for a reduction on a year-to-year basis as to what the employees' or family members' actual costs are, there could even be an incentive for that. And when I started out, when I introduced LB477, it was aimed at reducing the state support from 79 percent to 75 percent. And that was something that I didn't expect to get out of committee or at least to pass on the floor. At this point, I think probably we might be just as well off to leave at least the employee

contribution rate the same. It even occurred to me that we might want to provide an incentive on top of the current rate. Maybe we look at 80 percent and then provide an additional 5 percent that you could gain through wellness programs, through disease control, and through trying to reduce the cost from your previous year. But maybe we look at reducing over a period of years, and certainly not all in one year the family participation in the family coverage because I do believe that we are ending up insuring more people all the time, as people find that the state and taxpayer-supported healthcare plans is richer than that provided by the employer of the spouse that we continually gain numbers. And we're under increasing pressure, at least the Appropriations Committee and I think the entire Legislature, to control the cost of state government. And if we had something growing at 10 and 12 percent rates, and certainly that's not every year, but we also have 27 and a 21 percent increases in there, it's going to be very difficult to contain the cost of state government and have areas of growth such as we are experiencing in health insurance. So I thank you. I will try to answer any questions you might have and reserve judgment as to whether I want to close. [LR120]

SENATOR AGUILAR: Thank you, Senator Wightman. But before we go to the questions, I would ask the people in the doorways to please have a seat, and then I'll introduce the senators that have joined us. On the far right is Senator Kent Rogert from Tekamah, Nebraska; next to him, Senator Russ Karpisek from Wilber; the first senator on my left, Senator Mike Friend from Omaha; Senator Rich Pahls from Omaha; jumping over Senator Adams we have Bill Avery from Lincoln. Any questions for the senator? Seeing none, thank you. [LR120]

SENATOR WIGHTMAN: Thank you. [LR120]

SENATOR AGUILAR: As the next testifier comes up, I'd ask you to be to the point and try not to repeat anything. We have a lot of things to hear this afternoon. Thank you. Welcome. [LR120]

CRAIG CHRISTIANSEN: (Exhibit 1) Thank you. Senator, members of the committee, my name is Craig Christiansen, C-h-r-i-s-t-i-a-n-s-e-n. I'm from Omaha and I represent the...I'm the chairman of the board of the Educators Health Alliance, which is the health plan for public school teachers in Nebraska. I welcome the opportunity to tell you a little bit about the plan that we have for your understanding of how that segment of public school teachers are covered by health insurance. In 1998, the Nebraska Association of School Boards, Nebraska Council of School Administrators, and the Nebraska State Education Association came together and formed the entity known as the Educators Health Alliance. It was incorporated in the year 2000 as a Nebraska nonprofit corporation. It is a 501(c)(6). We have no profit, no benefit to the associations. We have a 12-member board made up of representatives from those three groups. And what we do is create, design, and contract with administration of a health insurance plan for essentially Nebraska school teachers. The key feature of our plan is that we have virtually every school district in Nebraska participating in a statewide risk pool. So we have a very large risk pool with a statewide rating. There is one premium regardless of the utilization of the individual school district so we don't rate by school districts or by geography. It is statewide. It is totally voluntary participation. But you can see by the number of voluntary participants we believe we offer a very high-value service to our members. There are 330 school systems that are participating. There are 438 total groups. This includes educational service units, community colleges, and other entities. Only the school districts of York, Millard, and Wayne are not in the pool. It is voluntary, but we're very proud of the size and participation in this pool. What it does is it gives us bargaining power. It gives us purchasing power in terms of the benefit of pool purchasing versus buying off the shelf as it were. It also offers portability from one school district to the next so that as a school teacher or administrator moves from one school district in employment to another they are covered with virtually the same plan, the same design plan. It is a benefit certainly to smaller school districts because the...if they were rated individually with their utilization, with their illness or sickness, the premiums could be simply not doable for them. So by being part of our statewide pool, it is a benefit in Nebraska to the large number of smaller districts that we have. I do have

some information that I would like to share with the committee. On the first page of this handout is the labeled group health plan comparison. What I've tried to do here just for your information is to compare features, and this is very preliminary, very rough comparison, but it compares features of four plans that serve public employees. The first one is the Educators Health Alliance, which are public school teachers. That's the plan that I'm talking about. And for comparison purposes, we have the University of Nebraska, the state plan, and then the Nebraska Association of County Officials. I've tried to select deductible amounts, and this certainly does not represent the full range of plans that are offered by each one of these, but it's simply to give a snapshot comparison by comparable deductible amounts in the range of $300. So a deductible at about $300 for the EHA and the University of Nebraska. The state I had to include a $400 deductible and NACO, the Association of County Officials, was a $500 deductible. That's as close as I could get to make it comparable. But as you go down and look at what is just a rough comparison between plans that exist now that serve public employees, I think that you will see in terms of the formulary or prescription benefit features what is comparable; maximum benefit coinsurance. And I guess the bottom line is what does it cost? And so I've included single and family coverage here; the premium rate for the University of Nebraska I'm including only the employee portion because I do not have access to the actual cost for the plan of what that is, but I've included the employee portion here. So you get an idea of the comparability in terms of what health insurance costs for public employees in Nebraska. The second, and by the way, at the bottom of this is our web site. We area very proud of the fact that we attempt to be as transparent as possible and still be competitive with possible other plans or competitors out there that may want, frankly, to take away some of our districts and participants by cherry-picking in a good year. It's one of the features of an insurance plan that on any particular year you can be offered a lower premium rate. The problem is when you get sick and your utilization increases. If you've got a bad year, you can be looking at disaster for that plan. It's one of the benefits of having a statewide risk pool that we offer to our members. So we try to be transparent. We have all of this information and more on our web site. It is publicly...it's a public web site so I urge you

to go there if you have questions that we are not covering today. The next part of that page 2 is a benefit plan summary that says exactly what benefits are in this plan. It is a good plan. We believe that public employees should be covered with good health insurance. We believe that we can also offer this by the design of our plan at a reasonable and competitive premium rate. The next handout, the next page in the handout is trends in terms of where we're at in terms of deductible. I think we've done a very good job in trying to move people towards a higher deductible to participate in their own healthcare and the cost of their own healthcare. Ten years go in 1997 you can see that 20,000 of our participants were at $0 deductible. It was first dollar coverage. Ten years later, we have 23,000 at the $300 deductible. So we have moved a substantial portion, the majority of our membership we have moved to participate in that healthcare cost, and we believe that also helps to keep down total cost to the plan. The next sheet for your information is our premium rates. This is the actual cost. This is not necessarily what an employee pays because this will vary from school district to school district. In some school districts, particularly smaller school districts, the school district may pay 100 percent of the premium. It is generally true in larger school districts that the school district pays a portion of the premium and the employee pays a portion of the premium. But that varies among all of the 330 districts, and so I can't tell you that this is the general or what a specific rule is. But in general, smaller districts tend to offer full coverage; larger ones tend to offer coverage in which the employee participates. The majority of teachers in Nebraska pay a portion of their healthcare premium. So those are the premiums both for health and for dental. And then the next sheet, number 5, addresses an issue that I think a point should be made and that is two questions--comparing $1,000 in salary that the employer would simply give to the employee in salary versus giving $1,000 in health insurance benefits. And the two questions that I have asked here: Is there a difference for the employee between $1,000 in salary and $1,000 in benefits? You can see at the top of the page that if we give that in salary we are going to be paying income taxes, FICA, retirement contribution so that the benefit to the employee of $1,000 in salary comes out to be about $600. So for every dollar of benefits that is paid in salary rather than benefits, it is a significant

reduction to the employee. It's worth 67 percent more to the employee to get it in benefits than it is in salary. So let's turn that around then. The second question: What's the difference to the public employer and to the taxpayer between giving $1,000 in salary and $1,000 in benefits? Well, the employer also has to pay FICA and also has to pay retirement. So the cost to the employer is about 15 percent more to pay it in salary than in benefits. So the question then for the employee, the public employer, and for the taxpayer is that within the scope of allowable health insurance it's far better in the interest of all three of those entities to give that in benefit rather than in salary simply because, as you see, the relative cost to everyone if it's paid in salary rather than benefit. The last sheet that I have is a sheet that summarizes the historical cost increases over the last five years. This is of a concern to us as well. You can see, however, that we are very competitive and very proud of our cost containment. This last year our increase in premium was 7.8 percent. The medical insurer pricing trends, the medical inflation trend was double digit, 11 percent or more as you can see from the second column. The large employer cost increases averaged about 8 so you we believe that we're extremely competitive with what the market is and what...and holding it actually down less than two other indicators. I want to also have my colleague address another feature of what this means for public employers and for taxpayers in terms of providing benefits to our employees. But I would simply close with my section of this with just a summary that we believe...Educators Health Alliance believes that this plan works for the interest of employees, school districts, taxpayers, and the public interest. It's bare-bones. It's nonprofit. We don't have a building, we don't have employees, and we're operating with the mutual agreement of administrators, school boards, and teachers. And it works well in providing reasonable cost and it's considered, I believe, to be best value because, as you can see, of the virtual...I mean we have virtually every school district in Nebraska who are voluntarily participating in this plan. So with that, unless there are questions specifically for me, I would close and I would like my colleague to finish this presentation. [LR120]

SENATOR AGUILAR: Please introduce yourself and proceed. [LR120]

MARK McGUIRE: (Exhibit 5) Yes, Chairman, I will. My name is Mark McGuire, M-c-G-u-i-r-e. I reside here in Lincoln. I'm the general counsel for the Nebraska State Education Association. I've been involved in representing the NSEA for 30-plus years. One of the study committee's topics from this summer was to have someone who practices before the CIR discuss comparability and how health insurance factors into total compensation. I've tried about 140 cases there so hopefully I can convey a clear picture of what the CIR does and how it does it, because you cannot realistically have any discussion of public sector employees' benefits without a discussion as well about the CIR and the CIR process. Misconceptions about the CIR are never ending. It's really not that difficult and the purpose of the CIR and why it's here is because public employees in Nebraska can't strike. As an alternative, the constitutional convention people of 1920 had the foresight to establish a commission to resolve industrial disputes between its public employees. So that's why we have a CIR. What the CIR is empowered to do by Section 48-818 is that the Commission of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. What I want to do for you today is in a very, very abbreviated fashion but to show you precisely what the CIR does and how it does it. I'm providing a handout, the documents of which are actual exhibits in an actual CIR case. I'll wait a second here until everybody gets one. I talked about the statutory definition, including the term "comparable" to what is prevalent. "Prevalency" comes from establishing and determining initially what is the array of compared to employers. This case says at the top "Dodge summary." It involved the school district of Dodge. In determining an array, the CIR has said you pick employers with enrollments no more than twice as large nor half as small and within a close geographical proximity. This document is one of our exhibits that's prepared like we do in every case. You'll see in the upper left-hand corner "Upper Limit: Lower Limit: Enrollment:." The enrollment in Dodge for this year, which was '06-07, was 146--twice that's 292, half that's 73. So the computer is told to search

out Class III school districts that fall within those size parameters. In the upper right-hand side you see the proximity 75. What the computer then does is search out a distance of 75 miles from Dodge to see what schools come within that array. And here at the top shows Dorchester at 75 miles and at the bottom Wynot. In this case we selected for the array of comparative schools those schools that are bracketed starting with Osmond down through Coleridge. Walthill and Winside were not included for different reasons which are footnoted. We're striving now still to find what is comparable to what is prevalent. The first piece of that analysis is we look at the Dodge teachers and the terms and conditions that are applicable to them. If you turn to page 2 of this document in the upper right-hand corner is what's known as an index salary schedule. This is 99.9 percent of the schools in Nebraska have an index salary schedule. It's indexed because if you look on a BA column the first step means a beginning teacher with a BA has a factor of 1.000. This particular schedule has increments then that increase going down of 4 percent. The second factor there is 1.04. Similarly working horizontally, their schedule provides for a BA9 column, BA18 and so forth. And those columns increase incrementally by 5 percent. You apply numbers to that and looking in the middle of the right-hand side of page 2 you see a BA, beneath that $24,150. At the time of this case, that was what their base salary was. If you look at that second-year teacher in that BA column, they're getting paid $25,116 which is 104 percent of $24,150. The process continues to refine; and if we go over to page 3, what we are looking at here is the teachers at Dodge and determining certain information about them individually which results in totals that we work with. If I could look at teacher number 2 there, Bazata, that individual has a master's degree if you can read this--look for teacher 2 and go across the columns--they have 12 years of district experience. Their step on that schedule I just showed you is in the MA column, the 11th step, and they have an index factor of 1.60. And if you flipped back and looked at the schedule, you'd see what I'm talking about in the bottom of that particular column. If we move...and their salary then is 1.6 times the base that was applied here and that equals $38,640. The next piece is dependent and family dental, a figure of $12,329. That's what per the negotiated agreement the school district paid for its teachers who elected family

coverage. You see the teacher above that didn't have any insurance for whatever reason and look at the teacher number 3, Becker, takes single or individual coverage and that premium cost the district $4,321.56. What we do then is we add up the total health and accident costs down here, $156,593. We add up the total salary costs. We add up the total index factors. All of that information then is replicated on the bottom left-hand corner of page 2 where the health and accident costs are shown. In this particular case, there's two other inclusions, deductible reimbursement. This particular school has a policy whereby of the $550 deductible coverage the district self-insures the 100 to $550 and the actual claims paid out of that in this instance at this point in time were $5,446. Some schools do that to try and save money, and sometimes it works and sometimes it doesn't. It shows insurance premiums paid to Battle Creek, what was going on there again shows the school district trying to save money, of one of the Dodge teachers their spouse taught at Battle Creek. Battle Creek, like Dodge, provided full family coverage. Well, they didn't need two family coverage policies so Battle Creek paid all the premium and Dodge paid them back half, if you will, just sort of an agreement about how things would be done. As we continue our search for what's comparable to the prevalent, we then look at how the Dodge teachers would be paid at the comparative school districts, the arrayed schools on page 1. Page 4 reflects the beginning of that process. And here we're taking the Dodge teachers and paying them as if they were employed at Allen. Again on page 4 we see the salary schedule for Allen. It has increments going down those columns of 4 percent. It's a little different, however, than Dodge in that going horizontally you'll see that those increments are 4 percent rather than the 5 as we pointed out in Dodge. Allen at this time had a base of $26,000 and so the middle right-hand side schedule index shows what those salaries would be that correspond to those indexes. We flip then to page 5 and now we're literally taking the Dodge teachers and pretending, if you will, or analyzing, if you will, how the Dodge teachers would get paid if they were at Allen. And we can take our teacher number 2 there, Bazata, once again she obviously still has her MA, 12 years of experience, she's a step 11. Here her index is different. It shows 1.56 in contrast to what we pointed out on the Dodge schedule of 1.60 because that's because their schedules

are somewhat different, the 4 percent and 5 percent piece. Moving across as to benefits, Bazata continues to take dependent full family, we take whatever they're taking, we calculate accordingly. Here the cost to Allen of somebody doing that would have been $10,643, about $2,000 less than Dodge. It's just simply the result of that's what they agreed with their teachers to provide. We wind up then with the same kind of factors of total cost, total staff index. And what we do then is, and the CIR does the same thing in a case it decides, the same process, this is all coming more and more together now. And if you look at page 6, that's a summary of what the situation would be of the Dodge teachers on all of the schedules in this array. You see school district number 3 on page 6, Allen. We have the staff index factor of 25.43, that's what we calculated over there on page 5. When we place all these people on the schedule and add up their indexes, that's what it generates. The base salary of $26,000, that's what we had in Allen. The benefit costs we calculated for the teachers in Allen like we did at each of the schools with health insurance premiums, the reimbursable amounts, if that applies. In this particular case, they had some other benefits they provided such as--I'm looking at page 4--life insurance they provided of $1,470; LTD costs of $1,917 and so forth. So the school district is clearly getting (inaudible) credit for those benefit payments, as they should. With Allen back on page 6, the schedule costs we determine by taking the index generated from our prior page times the base salary of $26,000. That equals schedule costs of $661,180. Adds up the total cost if we pretended the Dodge teachers were on the Allen schedule with Allen benefits, total cost would be $824,197. As I said, we do that exact same process or the CIR would do that exact same process based upon the evidence presented to determine what the gross amount of comparable compensation would be. The CIR decides cases based upon what is comparable to the midpoint. The midpoint on this exhibit is shown at the very bottom right-hand corner on page 6. What we're looking at is those total cost factor numbers just above. The mean or the arithmetic average is, of this array, going through that process I've described, is $817,481. The median is the factor falling in the middle and that's where the black line is up there in the middle of the page of $816,376. The average then is taken of the mean and the median to find the approximate midpoint.

And here that approximate midpoint is $816,929. We then complete the calculation by going back to the top of the page, right-hand side, you see total costs, there's our figure, our midpoint number--$816,929. We had calculated way back at the beginning of this discussion what the benefit costs were to Dodge for its teachers and we came up with $168,205. We take total costs, minus benefit costs, divide by the staff index, and we get a comparable base salary based upon this array, these teachers' placements, we get a comparable salary of $25,449, or a difference, as is shown there in red, of $1,299. Said another way, the order of the CIR or if the parties were negotiating in this style, would be that the prior base they had, the $24,150, would need to be increased by the tune of $1,299 to be comparable to that which is prevalent. So you see we stay in lockstep with the statutory definition, apply the analysis to that, and that's where we wind up as being comparable. So lesson number one is when you hear or read editorials about the CIR went nuts and raised somebody's salaries 10 percent or 5 percent or whatever it is, well, that tells me that they were 10 percent behind the midpoint. It's not 10 percent behind the top, but right in the middle. There is a relationship, and that was one of the topics to be covered between benefit costs and salary, and Mr. Christiansen pointed out to you the example of the $1,000 of benefit versus the $1,000 of salary. What we could do, and I hear people saying this, well, let's not provide family coverage anymore but just provide single. The analysis of the economics of that is very easy. If we look at page 7 and let's do page 8, that's easier. Page 8 is the Dodge faculty on the Dodge schedule. We have Bazata up there again and all of her identifying information obviously remains the same except for her category of benefits now is no longer family but rather individual. The cost to the district there is $4,321 rather than $12,329 which we saw early on. That will be reflected then on our calculation page 9 where we still have the same total compensation in the upper right-hand corner, $816,929, with total and midpoint compensation. The benefits costs here are significantly different. You'll recall as I initially went through this for the Dodge teachers the benefit costs were $169,000 approximately. Here they're slightly in addition to $8,000. That raises, if you will, the money that's in the schedule costs and so when you divide by the index, which is still the same because that's the sum of their placement data, you develop a comparable

salary of $28,879. Or in other words, from where they're at, $24,150 would require an infusion of new money to the schedule on the base alone, on the base of $4,729. So the difference here between the approximate $12,000 of premium they're paying for full family versus the approximate $4,000 they're paying for individual in this hypothetical has an impact--and you can look at this as sort of a teeter-totter--has an impact then on raising the base to the sum of...by about $4,800. And so that is there to demonstrate the interrelationship between the cost of benefits and the cost of salaries. And then you factor into the analysis what we've already alluded to twice now, the value and the cost to the employer and the cost to the employee of $1,000 in benefit versus $1,000 in cash. And you can see here what that does in terms of driving up the cash by $4,800. All that's going to get taxed--FICA at 7.65 retirement amount and so forth. That... [LR120]

SENATOR AGUILAR: I need you to wrap up here a little bit. [LR120]

MARK McGUIRE: I'm within three sentences, long ones. The issue of...it really comes down to the deductibles for families. That's what's driving this whole train. And what strikes me when you cut right down to the heart of it, and let's just flick real fast to that last page, you're looking at a group of employees with starting salaries in the $25,000, $26,000 range. If they had to pay their own health insurance and they had a family, a spouse and a child let's say, as many young couples do, as many young teachers do, obviously there's no way they could provide health insurance. They're getting paid $26,000 and the insurance costs $12,000. Similarly, if they just received individual and had to pay themselves out of their own pocket the difference, we're talking about $4,000 for single; $12,000 for family; there's the $8,000 they'd have to "come up with somewhere." And that isn't going to happen. The CIR--now I'm concluding, Senator--made this statement, and I think you couldn't express it better and they made this statement 20 years ago in 1987 in a school case that we did. And it says: Health insurance coverage for a family is considered a basic need in modern society. To be without such coverage, if it can be obtained, is commonly said to be imprudent. If

dependent coverage is not offered as a fringe benefit, prudent employees with dependents are left with no reasonable alternative but to secure such coverage at their own expense. They made that comment within a case 20 years ago, but that's when individual coverage was $66 a month; family coverage was $180. The expense of the coverage makes it impossible for the individual to be able to go out on a $26,000 salary and buy $12,000 worth of insurance. Hopefully this information is helpful to you in analyzing how all the public sector world is impacted by the cost of insurance and to see the interrelationship with it. Having said that, we're in agreement here, any questions for either Mr. Christiansen or myself we'd be glad to respond to. [LR120]

SENATOR AGUILAR: Questions for either of the testifiers? Seeing none, thank you. [LR120]

MARK McGUIRE: Thank you. [LR120]

CRAIG CHRISTIANSEN: Thank you. [LR120]

SENATOR AGUILAR: Welcome. [LR120]

KEN MASS: (Exhibit 6) Senator Aguilar and members of the committee, my name is Ken Mass, that's M-a-s-s, president of the Nebraska AFL-CIO, and here today to give you some information on the cost of healthcare no doubt (inaudible) the private and the public. I know this hearing basically on the public sector, and what we're dealing with on a nationwide basis on healthcare. As you all know, today America is facing with a healthcare crisis where we have approximately 45 million residents have no healthcare and the numbers keep growing. That 45 million people who face bankruptcy on a daily basis if they get sick or they might avoid seeking treatment altogether. Today's age, you know, you talk about the age of...what's the retirement age of 62. That's the golden rule. We've got people in the labor movement who cannot retire before 65. Why do I say that? Because of the cost of insurance. As a regard as a result of the cost of healthcare,

the cost of employers no longer paying for retirees' healthcare, that's a major concern. And we've got people working not only to 65; we've got retirees that are going back to work to pay for the 20 percent supplementary insurance and on the Medicare. So anyway, who pays the cost of insurance? Working families pay the price of the healthcare system. Families with health insurance premiums are $922 higher each year to cover the healthcare costs of the uninsured. Taxpayers foot the bill at $21 billion...a billion dollars a year when workers are forced to turn to the government for healthcare premiums. We're dealing with a situation just that happened with the SCHIP program that was vetoed, not vetoed but then it wasn't overrode. We've got an enormous amount of children that are not being able to come onto the rolls for that. The medical debt is now the most common cause of bankruptcy. Workers who do not...who have healthcare now pay 60 percent more than they did in the year 2000. More and more employers are choosing not to offer healthcare to their retirees, employees, or to their retirees at all. What I passed out is now the healthcare crisis as there's a national healthcare plan, there's several of them. Pick a day and I think you've got another plan coming out. But, yes, it's coming down to the state activists and the state are trying to find solutions on their own on the healthcare plan. What I passed out is an example of what's happening in Wisconsin. I don't know if any of you are aware of this, but the Wisconsin plan, it covers all of the private- and the public-sector employees and their dependents in the state. Self-employed workers and farmers and early retirees could purchase the same insurance through a separate community rated pool. The plan provides all medical necessary care, including mental health treatment and prescription drugs, with no exclusion from preexisting conditions, where there will be no maximum coverage limits and individuals will have their own choice of providers. Cost will be split between employees and employers in a fair manner that keeps administration costs to a minimum. Employers both in the private and the public sector will pay a flat fee per employee per month, and employees will be responsible for deductibles and copays. So what Wisconsin has done is what Senator Wightman is talking about--is getting a plan together. The Wisconsin plan has been working on for four or five years. It's getting closer and closer and closer together. There's also a plan in Massachusetts that's a little

different, but those are kind of the prima donnas out there that have started this up because of the cost of healthcare and the cost of the shift to the employees, the working families from who's making the profit in this thing. So I offer with you that plan for today. But there are individuals probably testifying behind me that deal at the bargaining table on a daily basis, and a major concern is healthcare. There's no doubt about it in the public sector and the private sector. So not to take any more time, thank you. If there's any questions, I'll feel free to answer. [LR120]

SENATOR AGUILAR: Questions for Mr. Mass? Senator Pahls. [LR120]

SENATOR PAHLS: I have one because I, to be honest, was talking to a number of physicians this morning and their concern about this. Is this plan, because I've not read this before, do they use private insurance or is this government? [LR120]

KEN MASS: It's private and public both. It's both [LR120]

SENATOR PAHLS: Thank you. [LR120]

SENATOR AGUILAR: Senator Avery. [LR120]

SENATOR AVERY: Thank you, Mr. Chair. Is this Wisconsin plan a taking small businesses and large businesses and combining them with state employees, public employees into a larger purchasing pool, driving down the cost? [LR120]

KEN MASS: Um-hum. [LR120]

SENATOR AVERY: How long has it been in effect, do you know? [LR120]

KEN MASS: No. It's about ready to go into effect. They've been working on it four or five years. This is their plan that they've come to. [LR120]

SENATOR AVERY: Do you know how they define a small business? [LR120]

KEN MASS: As far as numbers... [LR120]

SENATOR AVERY: Yes. [LR120]

KEN MASS: ...I assume that's what you're referring to? I cannot tell you exactly. [LR120]

SENATOR AVERY: Yeah, I just had a constituent in my office yesterday who has 28 employees and he used to be able to provide health insurance for them. But now the cost has gone up to $850 per employee, he can't do it anymore. And so he had to end the program so that meant he now couldn't be a part of this purchasing pool so he's paying $18,000 a year with $5,000 deductibles for himself, his wife, and his son. [LR120]

KEN MASS: And where did the 28 employees go to? Did he say? [LR120]

SENATOR AVERY: Well, he still provides them with some assistance. It goes into a savings fund they use for health purposes, but he can't cover them. [LR120]

KEN MASS: I would think they're coming right back on your roll in state government and having to pay for it. That's the Wal-Mart plan. [LR120]

SENATOR AVERY: Yeah. That's the Wal-Mart plan. [LR120]

KEN MASS: That's the Wal-Mart plan. [LR120]

SENATOR AVERY: But it's a growing problem. And I didn't know about the Wisconsin

plan, but I appreciate you bringing it because I will look at it carefully. [LR120]

KEN MASS: I can get more information for you. [LR120]

SENATOR AGUILAR: Thank you. Next testifier. [LR120]

MIKE MARVIN: (Exhibit 7) Boy, is it hot in here. You want to keep this meeting short, don't you? Good afternoon, Senators. Senator Aguilar, members of the Government, Military and Veterans Affairs Committee, my name is Mike Marvin, M-a-r-v-i-n. I appear today on behalf of Nebraska Association of Public Employees, NAPE/AFSCME. We represent the majority of state employees as their representative in collective bargaining. We want to thank the committee for conducting this interim study, and we wish to highlight some information that has come out as a result of your inquiry into the healthcare cost cycle within the public sector in Nebraska. On September 11, 2007, representatives of AON Consulting presented a report called "Shaping the Future" that we found to be particularly enlightening. Now this might surprise many of you because AON Consulting was retained by the Department of Administrative Services and we're not known for finding mutual agreement on a number of items with DAS. However, we hope that you review this document. We believe that several principles put forth in this document provide significant direction to any future policy initiatives you might undertake. On page 4 of the document, the firm sets forth some guiding principles that we wish to repeat. Human capital is the most important asset; improving employee health to maximize asset value; keeping healthy employees healthy is a priority. The consultant demonstrated the impact of poor health on productivity and enunciated strategies that seek to encourage good health outcomes. The conclusion of this study suggests that past practices of denying care and shifting costs do not work to contain costs and, in fact, worsens an already difficult situation. Early access to care and encouragement of healthy lifestyles holds the greatest potential for long-term cost savings in public-sector health plans. Here are a couple of other facts that the committee should weigh before any public policy action. Page 7 of the AON report says:

Benefit design and cost sharing, while essential, addresses comparatively small proportion of growth variables: 90 percent spending is for sicker population spending $1,000+ annually. Employers must address behavior risks and chronic illness to stand a fighting chance against expenditure growth. In summary, it appears that conventional thinking on healthcare cost containment has shifted dramatically over the last decade, and we now recognize the importance of providing employees with the tools to battle chronic disease challenges and that the old approach of punitive cost shifts to employees are not now recognized as an appropriate or an effective means of cost containment. Again, we want to thank the committee for the time it has dedicated to this issue, and we are looking forward to working with you. [LR120]

SENATOR FRIEND: Thank you, Mr. Marvin. Any questions from committee members for Mr. Marvin? I don't see any. Thanks for the testimony. [LR120]

MIKE MARVIN: Thank you. [LR120]

SENATOR FRIEND: Next testifier, please. Could I see a show of hands of how many other individuals would like to testify on this resolution. Thank you. Proceed. [LR120]

ROGER WILSON: Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Roger Wilson, spelled R-o-g-e-r W-i-l-s-o-n. I am controller for central finance for Administrative Services. This afternoon I'd like to briefly discuss with you state's group health plans. As you are aware, the Department of Administrative Services has the responsibility of providing group health coverage for all employees of the state. For years, we have offered our group health plans under a self-insured structure. This means that the state and our employees, not the insurance companies, pay for the cost of healthcare claims. The premiums we contribute through payroll deductions go into a fund to pay for claims incurred by all participants in our plans. Our agreements with Blue Cross Blue Shield, Coventry HealthCare, Walgreens Health Initiative allow us access to their provider networks and

discounts for healthcare. There has been a rising trend in the state healthcare costs. The state's experienced total increases for the last three years is 43.2 percent. Add on that the aggregate increase of 14.1 percent for 2008, you have a four-year total increase from 2005 through 2008 of 63.4 percent. With the continued healthcare costs, the state has previously drawn down on the reserves in our health insurance fund to minimize the impact of these costs. We reach a point at the end of 2006 where we had depleted these reserves. Based on cash flow projections in late 2006, we requested and were given a $12 million transfer from the Legislature to help support our plans for the next four years. By managing cash flow on a daily basis, we have operated our plan so far without drawing on this $12 million. Projections for the remainder of this year suggest that we will be able to continue to operate without drawing on these funds. Our group health plans' cash flow thus far in 2007 have been running at break even. Our daily cost of running the health plans if $596,000 with an average monthly contribution of $12.9 million. During three periods this calendar year, our operating cash balance was under $2 million. The state currently offers four different group health plans for our employees. We offer two PPO plans utilizing Blue Cross Blue Shield network of providers. The PPO plans are open to all state employees. In addition, we provide an HMO and POS plan to all state employees throughout the state utilizing either the Coventry HealthCare network or the Blue Cross Blue Shield network, depending on the zip code of the employees. As of August 31, 2007, total employees covered under our health plan, including retirees and COBRA participants, was 13,983. The number of plan participants, including dependents, is 30,537. Administrative Services is currently starting the open enrollment process for 2008 calendar year. This will be the second of a two-year agreement we have with Blue Cross Blue Shield, Coventry HealthCare, and Walgreens Initiative for our current plans. In looking at the 2008 calendar year numbers, we see a total projected cost of $173.6 million. The employees' share is $36.4 million with the state's share of $137.2 million. This represents 14.1 percent increase from 2007 to 2008. We are looking for ways to stem the rising cost of healthcare and increased claims. To assist us, Administrative Services engaged a new consulting and actuarial firm, AON Consulting. AON will be working with us to complete an in-depth

review of all healthcare options. We appreciate the Legislature's interest in the state's healthcare plans and look forward to working with you on this important issue. Thank you for your time, and I will be happy to answer any questions. [LR120]

SENATOR AGUILAR: Any questions for the testifier? Seeing none, thank you. [LR120]

ROGER WILSON: Thank you. [LR120]

SENATOR AGUILAR: Is that the last testimony on that? Do you want to close? [LR120]

SENATOR WIGHTMAN: I'll waive closing. [LR120]

SENATOR AGUILAR: Senator Wightman waives closing. That closes the hearing on LR120. (See also Exhibit 8) We're now ready to open on LR78. Senator Preister, are you available? Please be available. As Senator Preister makes his way up, could I get a show of hands how many want to testify on this? I see one short one...two, three. Three short ones. Welcome, Senator Preister. [LR120]

SENATOR PREISTER: Thank you, Chairman Aguilar. And which one are we doing first? [LR78]

SENATOR AGUILAR: We are on LR78. [LR78]

SENATOR PREISTER: LR78, I just got to make sure I get...since I have two coming up. My name is Don Preister, P-r-e-i-s-t-e-r. I represent the 5th Legislative District, here as the primary introducer of LR78. Over the past 15 years, I've been contacted by various citizens and groups about obstacles they've encountered when they've tried to participate in the formation of public policy. While it's true that many times these obstacles arise when controversial topics are before the public, it is also true that it is during times of disagreement and strife that the tenets of democracy are most important

to our nation's and state's principles of open, participatory democracy. I truly believe that the majority of public bodies seek to and do comply with the Open Meetings Act. I believe we provided a valuable tool in 2006 when we passed legislation which requires public bodies to post a copy of the act in the meeting and hearing rooms. The result is that both citizens and public servants are made more aware of the act and have access to the actual language. Though we've made strides in the public education process, there are still public bodies that fail to comply, thus stifling public participation. Unfortunately, the calls to my office have increased over the years from citizens who have encountered open meetings violations by a wide array of public bodies. A number of citizens are here today to share their stories and concerns about open meetings obstacles they have encountered. I appreciate their dedication and commitment in taking time away from work and family and paying their own expenses to participate in this process. I believe it is our obligation to continue to fine tune and clarify the act so it accomplishes its original goals. In this way we can best serve the citizens of Nebraska. Final note: One individual who was going to testify today became ill and wasn't able to come in but did give me a couple of notes of some issues that came up for her. The first was a county public body scheduled a public hearing on the evening of a holiday when the courthouse was closed during the day. The public body's stated rationale was that the holiday was only in effect from 8:00 a.m. to 5:00 p.m. My concern is that the public was not able to review documents or to go into the courthouse or see a final agenda on the day of the hearing. The Open Meetings Act does not address this situation and perhaps it needs to have the committee look at that as something to be considered. The second issue she raised was that public notice was given on the same day by the zoning and county boards regarding hearings on that same issue. The zoning board hearing was held Monday night and the county board hearing was held the next morning. Public notice had been complied with, but there was no time for the public applicant to review the zoning board's decision and findings and to prepare any logical responses for presentation to the board at the hearing the next morning. Again, it would appear that some clarification since that's not actually covered in the Open Meetings Law would be appropriate. I had sent to the committee a time line of some things that

we've done. There is a bill that's on General File that I had introduced last year or a component of it that is waiting to be heard. And at this point, I think mostly it's educational for the committee that some fine tuning is still likely needed, and the citizens will express their issues and concerns. And the Attorney General's Office has been good. Dale Comer has been good in working with citizens, but he tells them like he tells me--he has to prioritize his workload and there's only so much time he can devote to this when he has capital murder cases and other issues that just get so much more priority. So enforcement is also an issue. But with that, I would certainly entertain any questions that committee members may have. [LR78]

SENATOR AGUILAR: Questions for Senator Preister. Senator Adams. [LR78]

SENATOR ADAMS: Senator Preister, if you had to summarize the calls that you get over time, the letters that you get from constituents over time, what would you highlight to be the one or two biggest problems that we have with open meetings? [LR78]

SENATOR PREISTER: It's really access, being able to have access and input and to do it in a way where they're informed and have information. In the case where a meeting is held at night on one issue and then the next morning it's advanced to somebody else to act on it on a holiday, that was kind of a new situation, didn't violate the Open Meetings Law, but it's that kind of access we have a pretty open process. We have, I think, a pretty good Open Meetings Law, but some folks out there still don't understand it, still don't perhaps even know that it exists and just aren't really following it. Summarizing it, I would say it's access, make sure that the law is complied with and that it is accessible to the public. Sometimes democracy is messy and you got to listen to people. But isn't that the heart and soul of a democracy? Thank you for your question. [LR78]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Preister. Do you wish to close? [LR78]

SENATOR PREISTER: I have the next one and I will probably not close, but I will take any questions if the committee has it before the next one. [LR78]

SENATOR AGUILAR: We've had many people come in since I first asked the question so let me ask it again: How many people wish to testify on this? I see six, seven, okay. Again, we want to hear you all so please be as brief and concise as possible and don't repeat each other. Come up. Pages. Welcome. [LR78]

PAM DALY: (Exhibit 1) Good afternoon, Chairman Aguilar and members of this committee. Thank you for hearing my testimony today. I think this committee I've spoke to you before and it's a wonderful example of operationalizing the Open Meetings Act. As a citizen who has interest in participating in my government, I have a strong appreciation for the Open Meetings Act. We are indebted to this committee and to Senator Preister. [LR78]

SENATOR AGUILAR: Could I have your name, please. [LR78]

PAM DALY: I'm sorry. Pam Daly, D-a-l-y. [LR78]

SENATOR AGUILAR: Thank you. [LR78]

PAM DALY: We are indebted to this committee and particularly Senator Preister and his staff who've worked tirelessly to ensure that our government is open and transparent to enable citizens oversight and participation. In the spirit of ongoing assessment and improvement of the OMA, I will refer to the Open Meetings Act that way for brevity's sake, I would like to offer some suggestions on ways to strengthen the law. These recommendations are based on the experience of a number of citizens in Washington and Sarpy Counties who have tried to correct OMA violations by our respective boards over the past few years. These two groups are incorporated nonprofit organizations called Save our Hills for Washington County and SAVE, which stands for Schramm

Association for a Viable Environment, for Sarpy County. They include about 400 members on whose behalf I testify today. For brevity's sake, I'll refer to these groups as "the coalition." My points have to do with enforcement of the OMA. Any law is only as effective as the success in enforcing it. While the OMA actions for enforcement, Section 84-1414 appear on paper to provide the public with substantial options for action when they believe the statutes have been violated, in practice we have found that they have serious weaknesses and in some cases render the act virtually unenforceable. Please allow me to briefly summarize our experience in seeking remedy for the OMA violations, and then I will list three of the problems uncovered in that experience. Jarel Vinduska from the coalition will follow and discuss other problems that we noted. For several years members of the coalition have noted these OMA violations by our county boards and planning commissions. At first we reported these perceived violations to the boards hoping they would rectify them. When this failed, we approached our county attorneys, following the guidance stated in the OMA which states: The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act. When we asked the Washington County Attorney if a series of apparent violations were in fact violations, he stated: I can't answer that. Reasons given were (1) the county attorney cannot give out legal advice to citizens; and (2) the county attorney is the legal counsel for the board and, therefore, cannot say something that would harm them. Thus, we proceeded to contact the Attorney General's Office asking for a meeting. It took about a month of phone calls back and forth before we gave up on trying to meet with the AG and we were referred to Dale Comer, the Assistant Attorney General, who we found out at that time handles all OMA complaints. The initial contact in his office told us we had to first go to our county attorney and document attempts to get help from him or her. Once we finally reached Mr. Comer, however, he accepted our verbal statements regarding our previous efforts to meet with our county attorneys. He did state that we would need to write up our complaints and provide evidence, if at all possible, a reasonable request. He also stated that we might want to consider hiring a private attorney to take our case since he might not be able to get to it within the 120-day time limit for voiding a meeting. I explained this was not feasible financially. He

agreed he would read the complaints and then we would discuss the possibility of arranging a meeting with him. Our coalition worked very hard during the month of April putting together this three-ring binder. This is a copy of the various complaints that we had...the various violations we had observed and providing considerable evidence where we were able to find it. I only have one copy. This is not the original. The original actually is much prettier, but it is a copy and I thought I would just pass it around so you can see the extent of the work we put into it. I delivered that three-ring binder to the Attorney General's Office on April 30. It was not until July 31 that we finally had our meeting with Mr. Comer. At that meeting, Mr. Comer explained his process. He would first summarize our charges in a letter to the county attorneys. They would be given five weeks or so to respond. He would then compare their response with our charges and determine if they had violated the Open Meetings Act. If he believed they had violated any statutes, he would send them a warning not to do so anymore, which he felt always took care of the problem. He also stated that we had already missed the time limit for getting most of the meetings voided in which the complaints occurred. To my surprise, the meter on the 120-day limit to void a meeting was ticking throughout the three months that our three-ring binder had set on Mr. Comer's desk. Please know I am not criticizing Mr. Comer for taking so long to get to our case. I fully realize he has many other more pressing duties. On August 20 Mr. Comer sent a letter with our charges to our county attorney in Washington County. He requested a response by September 21. In a conversation with Mr. Comer yesterday, he stated he had received the Washington County Attorney's response on time, but had not had the time to read it. We do not know at this time if the Sarpy County Attorney has responded to his letter from Mr. Comer. Here are my three points: Point 1--conflict of interest for county attorneys. For public bodies that the county attorney represents, which usually include the county board and planning commissions, the conflict of interest for the county attorney makes him or her unlikely to enforce OMA violations at least when reported by citizens. They see their role as defending the county board. And at least in our case, they are the ones that actually recommend procedures that violate the Open Meetings Act. Thus, a suggestion: Since the county attorney is the local authority accountable for ensuring the

OMA statutes, ensuring they are followed, I suggest the county attorney be the primary one who should receive any warnings or sanctions from the Attorney General or courts rather than the members of any public bodies who are counseled by the county attorney. It is unfair to penalize board members when, in fact, it is their legal counsel who approves or even recommends actions that may violate the OMA. This is not to suggest that the offending members of the public body should not also receive consequences, especially when there is evidence of intentional violation of the OMA. Point 2--problems with time limits for making actions void or voidable. Given the time constraints on the AG's Office in attending to OMA complaints and the long process for contacting a county attorney with the charges, waiting for a response, and then assessing whether or not some action from the AG is warranted, the 120-day limit for filing a suit to void a meeting is unreasonable. Even if a plaintiff had the financial resources to go directly to a private attorney, it is very possible that attorney's schedule would prevent filing the case on time. A suggestion: We recommend that the 120-day time limit be applied to the period allowed for filing the complaint to the county attorney or Attorney General's Office, not for filing a suit in the court. This means the petitioner would need to provide a written report of the perceived violations with any available evidence to the office of either a county attorney...of either attorney within 120 days of the date the violation is claimed to have occurred. Once this has occurred, the date for filing the case in court could occur within one year of the initial complaint date. Point 3--criminal sanctions never applied. Mr. Comer informed me that the AG Office has never taken an OMA case to court nor sought the misdemeanor Class IV and Class III sanctions. That's over 26 years of his experience. He believes local county attorneys have taken OMA cases to court two or three times, obviously for public bodies which were not counseled by the county attorney. He also stated that I should be aware that he regards any public official's response as true unless the citizen can present convincing evidence otherwise. When asked what the likelihood was of taking a violator to court, Mr. Comer stated that in his 26 years of service the AG Office has never prosecuted an OMA complaint. He said there are two reasons for this. First, they do not have the resources in terms of manpower to pursue these issues. And second, up until

2002 it was the policy of the AG Office not to pursue misdemeanors. That policy was dropped after 2002 by Mr. Bruning, but they still have never prosecuted misdemeanors. Suggestion: I believe that most public officials do not wish to violate the Open Meetings Act, and when they do, it is due to lack of knowledge of the act. However, there are bad apples who knowingly violate the act with full intent to silence problematic public input. In these cases, no matter how rare, citizens need enforcement of the act, including criminal sanctions, not just to penalize the wrongdoers, but to assure the public that their democratic rights are taken very seriously by the state. Criminal sanctions appropriately used would also serve as a deterrent to other would-be wrongdoers. If we simply warned speeders not to break the speed limit again without ever issuing a fine, we would have disaster on our roads. It was clear to me that the major reason serious OMA complaints do not get to court or even receive adequate investigation is there simply is not the time. Mr. Comer has stated that OMA complaints are far down the list of his many pressing duties. While I understand his office is extremely overburdened, I believe, as I'm sure all will agree, the OMA is crucial to democratic government. If we don't lift it out of the back water of low priority, when we get the time kind of issues, the public trust in all other government actions will continue to fade away. The only way to do that is to provide more resources for enforcing the OMA. When I asked Mr. Comer yesterday what he felt was the most important change that could be made to improve the OMA, he stated he needed at least one other person in his office to deal with enforcement issues. Citizen apathy is a growing cancer in our state and local governments. While there are many reasons for it, it's my experience in Washington County where I've talked to many, many citizens over the last two years and asked them to stand up and come to board meetings and so on, that many people find our public officials do not want their input, do not listen to it, and use violations of the Open Meetings Act as the tool of choice for silencing opposition. As people see the officials get away with this, they become distrustful of all politicians, even when there is no need to, and withdraw from their duties to participate in government. Strengthening the enforcement section of the OMA would signal to Nebraskans that their voice is valuable and perhaps convince some that it is worthwhile to engage in our democratic process.

[LR78]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LR78]

PAM DALY: Thank you. [LR78]

SENATOR AGUILAR: Welcome. [LR78]

JAREL VINDUSKA: Hi there, Senator Aguilar, members of the committee, my name is Jarel Vinduska. It's spelled J-a-r-e-l V-i-n-d-u-s-k-a. I'm chairman of a group in Sarpy County that Pam alluded to, Schramm Association for a Viable Environment. Our group got started...we're a group of local landowners, mainly rural people and farmers in the southern part of Sarpy County. We formed this group because of changes in our comprehensive plan that were taking place that were unfavorable to what we considered the lifestyle that we enjoyed and enjoy. And we didn't like the way these changes were happening without our input, and so that's how the group got formed. And as you know, Sarpy County is the fastest growing county in Nebraska. And the reason we're having problems is because, not necessarily that all of our county officials are what we would consider bad people or not trying to follow the law, but because of their philosophy is development driven, and their philosophy is influenced greatly by developers. And their really...that's an important part of their outlook of how government should be run--nothing should stand in the way of progress. And progress is looked at as development, turning the rural area into city. And so we formed a group because we were...the southern part, around the Schramm Park area is a beautiful part of the state and it's an environmentally sensitive part of the state. And so we saw the handwriting on the wall that development was coming. We were trying to promote conservation-type development. And they...our county board didn't understand conservation development. We were having a hard time explaining it to them that it's a good way to develop property, and it would be advantageous for the area in general. But we were having a hard time doing that because they had already a predetermined notion of how

development should occur--just the way developers always wanted it to be. And because of that predetermined notion of how things should be, our way of thinking and our voice was something they didn't want to hear. And so lots of times violating the Open Meetings Act was the way that they avoided having to listen to us. They just did it repeatedly, over and over again. So I don't want to be redundant in what Pam said. But when it first started happening, I went to our county attorney, because I read the Open Meetings Act, and he quickly informed me that, sorry, Jarel, my job is to protect county employees; I'm not supposed to represent you; I'm supposed to protect the county. And I reminded him, at least I thought I was right, that, yeah, you represent the county and county issues, but the citizens and taxpayers are paying you; your job is also to keep the county employees out of trouble; your job is not to allow them to break the law. So that's one improvement that Pam mentioned that we need to change that. Something in the law needs to refer to that we need to inform the county attorneys that, yes, you represent the county, but you also make sure that county employees don't break the law. And that would be a great improvement right there. But when I didn't get any help from the county attorney, then I went to the state Attorney General's Office. And Pam already explained that problem, that in 20-some years Mr. Comer has never had a violation that he's prosecuted. Well, we all know law has no effective use in society, unless there is a consequence to it. And I know from my experience in the short two and a half years that I've been working on this, I've seen multiple violations. But I can't believe that in 26 years, in the whole state, that there hasn't been multiple, multiple times that needed to be prosecuted. So, Senator Adams, you asked what the main problem was, and it's definitely enforcement. I mean, there is absolutely no way to enforce it. So the next option the citizens has is to prosecute in court, in district court. Well, I found out quickly that this is an impossible situation, too, because the open meeting act allows meetings in which there was violations to be repeated and to correct the violation. And so in our case we filed suit and we had a couple open meeting violations that were cut and dried, I mean, there was no doubt as to the guilt. So the county knows that. So the county attorney just says, okay, let's reschedule a meeting. You reschedule the meeting to correct the problem, and it's over. The teeth that was in

the open meetings law that was supposed to correct that, that if the citizens spent their money to take an issue to court that it allows in the act that the judge has the discretion to return some of your attorney fees. But if the county redoes the meeting and corrects the meeting, you've lost that, because the judge isn't going to give nothing back. Now the meeting is corrected. So there's another thing that needs to be changed in the law. See, because what Sarpy County did, they just told the judge, we are not admitting any guilt; we are rescheduling this meeting to address the alleged violations. Okay, so that's over; you've lost your...you've paid the money for attorney fees out of your own pocket, but now there's nothing to get back. That needs to be addressed. You need to...it needs to be...yeah, you can redo the meeting, but you still have to go through the court proceedings to find if you were guilty or not. And if you guilty, the heck with giving part of your money back. If you're found guilty, you have to reimburse the citizen totally. That would be a great change that would really be helpful, but that doesn't...that isn't available yet to us today. And so you know there are things that can be done to fix it. But without that, you know, it's a useless process. I don't want to keep you too long, because I know you're busy, but let me give you just one example that happened two weeks ago. Because sometimes examples illustrate things a little better. Because Sarpy County is so just overwhelmingly pro-growth, and you probably read in the paper about the Pflug Road interchange and, you know, to be honest with you, it's an unjustified project, but it's politically driven. But anyway, part of the justification of that project is the county is trying to push for a bypass across the county, going from I-29, clear across the county, to tie into I-80. And so, you know, you need some justification to put a multimillion dollar interchange, so that's supposed to be the end point. Well, at the other end, at the Bellevue side, is the old Allied Chemical Plant, where the Platte River hits the Missouri River. And it's a known contaminated site; the extent of the contamination we don't know, but the bridge is going to cross right there. So with the environmental impact statement coming up, there's going to be issues as to what the amount of the contamination is there because the state is going to need to acquire property and other...and extensions for the road there. So Sarpy County has it on a fast track to try to determine what the contamination is right there. And so week before last they hired

Olson (phonetic) and Associated to do...to apply for a grant, a $200,000 federal grant, to assess the extent of the contamination. So they had the meeting. And the lady that wrote the grant comes in with the grant application, and it's all written out, and the county board just quickly says, make a motion to approve, second it, no public comment. Taxpayer money is paying Olson (phonetic) Associates for this grant application. But then the lady that did the grant application informs the county, but part of the federal requirement for this $200,000 is that we take citizen input on this application. And she says, I've scheduled the citizens comment period for next Tuesday, a week later. Well, it's already approved. That's what I'm trying to impress on you, that the decision was already predetermined; the citizen input is just fanfare to try to meet the requirements of the law. But this doesn't even meet the requirements of the law because it's the next week. And the next week, and two days later, after the meeting is when the application had to be in. But it was already approved. And that's what I'm trying to show you is that that kind of stuff, it really is discouraging to citizens, because you can go up and there and talk all you want, but if you know ahead of time the decision was already made, in this case a proper citizen input that I gave there was, this is private land. See they made it...they made the application look really glossy. They said, oh this is...Lewis and Clark camped here; we're going to restore it, we're going to try to restore this to native prairie; we're going to put a bike trail, we're going to make a wetland; we're going to put a boat ramp for the public, and bike trails on the dike, and move the dike, and move the dike back so the river can meander. They wrote the grant the way they knew the federal government would want to hear it to be so that they would have a chance to get this grant money. But in actuality, it's private land; none of that can happen unless the landowner agrees to that. So the proper public comment that I gave was, you need to negotiate with the landowner first; see if he's willing to give a conservation easement on this stuff and make this happen, and then have that part of the grant application, so it's an honest application that the federal government will look at and say, oh, this is honestly going to happen. But what they did was fraud, and the taxpayers are going to have to pay for this fraud. And the public didn't get to comment because the open meetings act was violated. But anyway, that's an example to show

what happens. And I better shut up because there's a lot of people to talk. Thanks a lot. [LR78]

SENATOR AGUILAR: Thank you. Did anybody have any questions? [LR78]

SENATOR ADAMS: I'm sorry, I did have one. [LR78]

JAREL VINDUSKA: Okay. [LR78]

SENATOR ADAMS: At the meeting that you just described in your example, the first meeting, not the designated public hearing that followed,... [LR78]

JAREL VINDUSKA: Um-hum. [LR78]

SENATOR ADAMS: ...were...did the county board not allow you to comment? [LR78]

JAREL VINDUSKA: No comment allowed. [LR78]

SENATOR ADAMS: You were not allowed to comment? [LR78]

JAREL VINDUSKA: No. [LR78]

SENATOR ADAMS: It was an agenda item? [LR78]

JAREL VINDUSKA: Um-hum. [LR78]

SENATOR ADAMS: Okay, thank you. [LR78]

SENATOR AGUILAR: Next testifier, please. [LR78]

THERESA PETERSON: Hello. [LR78]

SENATOR AGUILAR: Welcome. [LR78]

THERESA PETERSON: My name is Theresa Peterson, it's T-h-e-r-e-s-a P-e-t-e-r-s-o-n. Good afternoon and thank you for taking the time to listen to my testimony. I'll be brief. I won't repeat some of the things that you just heard. But my main concern being here today is I want to support, any way I can, the open meeting laws of our state. And by way of background, I feel that it's very necessary that we do support them actively. I believe that there is probably a very big gap in the enforcement of them. And the reason I say this is a couple different situations in which I have been acquainted with or had opportunity to speak before different county boards and planning commissions. A couple that come to mind is one which I was at the Cass County Commissioners meeting, when I was on the agenda, this was a few years ago at this time, but it's a situation which I shared one other time this spring, but I'll just briefly mention it again. It was a situation which I was on the agenda and was reporting what was specifically on the agenda, and I was asked to stop speaking and to sit down. And it was absolutely a violation of open meeting laws at the time. And the reason I mention this is because it's an incident that you don't forget, when someone tells you to do something like that, that is really out of order, I think what it does is it further galvanizes you to realize how precious these rights are and how important it is, as a citizen, to support the open meeting laws. In my contact just day to day with different people and in different groups that I'm involved with, I often times hear the comment, and Pam Daly had alluded to this that, what good would it do if I went and spoke before this board? In fact, I probably hear it I'm going to say nine to one; for every one person that will go and speak, nine people believe it won't do any good. And whether that's the result of cynicism or as a result of, you know, a character flaw or the result of a bad experience, it's something that I hope, through the support and enforcement of open meeting laws, could change. It's so important for citizens to be active and involved in that process, and it's over each one of the Capitol doors here. And whenever I've had the opportunity to come and

testify here before this committee I have always gone away with the feeling that I have been treated with such respect. And it is such a contrast to some of the ways I have felt before other committees. Another example, briefly, I'm not a member of Save the Schramm, all of a sudden my mind has gone blank, but Mr. Vinduska's group, the Save Group. I have followed it closely because I'm a long time fan of the Schramm Park area and an outdoor enthusiast. I'm a former science teacher and I love the outdoors. So I've followed their actions very closely. And in fact, started attending some of the Sarpy County Commissioner's meetings and some of the Planning Commission meetings. And just from a citizen's standpoint, with the Planning Commission, I could see several violations. Without going into those in detail, and I don't have the documentation that they have, I don't think I need it, because you've already got it documented, it's very discouraging to see that sort of violation and to see that it's not addressed. I can also think of some other situations in which I was involved in a small town, the city of Louisville at the time, in some, I can't think what they called it at the time, but the city of Louisville at the town meetings, and what I considered impropriety, situations in which people that had every right to give public testimony and a chance to share their concern were intimidated, not by other members of the community, that would be the least of my concerns, but people that actually were in...that were the board members themselves. And the reason I think this is so important is because, as I've had time to think about this over the months, I see a pattern. And you can take it for what it's worth, but I'm convinced that the less scrutiny that these boards, whether they be planning boards or a town meeting or whether it be a county board, the less scrutiny and the less eyes that are on these boards, the...if I can say this, the more power that they feel they can wield without...and go unchecked, so to speak. And that's really problematic. And it came home even more clearly to me in the last couple of weeks. And the reason I say that is my husband and I had the opportunity to go before...we are actually members or residents of Douglas County, I'll make mention of that, too. We're Douglas County residents, and we had to go before what I believe is called the Zoning Appeals Board for Douglas County. And we had to go before it twice, because we needed to receive a variance for some work that we were doing, for our handicapped daughter, at our home.

As I went before that board I had opportunity...actually, we were the last on the list both times, so we were able to watch the boards actions in full for quite some time. And I was so struck by the professionalism and the way in which the members of that board spoke to and handled every problem there. They were straightforward, the didn't shirk difficult situations. At the times they needed to address situations they did, at times they gave commendations to people who came forward with problems that could have maybe, you know, gone unnoticed. But I guess what I'm saying is I'm seeing a contrast (laugh). And I'm wondering if it isn't related to, if I can say this, isolated areas versus areas that are more heavily populated. And I think in areas that are more heavily populated you have better news coverage, you have more input, you have more eyes on you, so to speak, you have the eyes of the world on you. And it's much more difficult to do those things in the light of day than it is in a quiet little hamlet, if I can say that, where you are an authority unto yourself. And I'm afraid sometimes that's what ends up happening; they believe in their own minds that they don't need to answer to anybody. And I think, from some of the testimony that you just heard, that probably is borne out, that there may not be a lot of people watching. And in fact, it may be very difficult to enforce these regulations through the state Attorney General's Office, through no fault of their own perhaps because of caseload or workload. But I feel so strongly that I've seen both. I've seen meetings...I know the difference between a meeting that's conducted properly and not. And I guess what I'm saying here today is that I think there needs to be some avenue by which maybe a watchdog, I don't know if it would be maybe a government appointed watchdog group that can look into these issues of open meeting violations. But as long as there are problems, they need to be addressed. And it will discourage anyone from coming forward and participating in that process. It's hard enough to do. It's never easy to get up and speak to a group of people. It's something I think that's probably hard for the majority of people. And so if there's anything that could come out of this, I would hope that it would be some type of way to enforce the current laws. And I thank you for your time. [LR78]

SENATOR AGUILAR: Thank you. [LR78]

THERESA PETERSON: You're welcome. [LR78]

SENATOR AGUILAR: Any questions for Ms. Peterson? Seeing none, thank you. [LR78]

THERESA PETERSON: Thank you. [LR78]

SENATOR AGUILAR: Next testifier, please. Welcome. [LR78]

KIMBERLY STUHR: Hi, I'm Kimberly Stuhr. And I'm with the Schramm Association. [LR78]

SENATOR AGUILAR: Spell your name, please. [LR78]

KIMBERLY STUHR: K-i-m-b-e-r-l-y, Stuhr is S-t-u-h-r. And I'm a part of Mr. Vinduska's group, Schramm Association for a Viable Environment. And I never thought that I would be going to county board meetings for two years and planning commission meetings for two years and see what I have seen, but I have. And I really never thought that I would be here today testifying. But I do think that everything that you've heard so far is very important. And, Senator Adams, I wasn't going to speak today, but after you asked Jarel about...if we had the opportunity to speak or not at a particular meeting, I just wanted to kind of follow up and say that, not only have we not had the opportunity to speak, but one time there were five issues, and the chairman gave us 30 seconds to talk on all of those issues. They've also swapped agenda items so that they could specifically pass something that they wanted to pass. And, you know, when you go to a meeting...when you go to these meetings for two years, you catch on to the patterns of what they want to see happen in the county and what they don't. And it's extremely frustrating, as a citizen, in that we can't go to our county attorney. And then you heard the whole situation about going to the Attorney General. And you know, there are limited resources when people are using their own money to try and do, you know, protect the

public good. At least protect our opportunity to have public input to an unbiased...you know, people that are there to listen to the public and serve the public good, not who's ever good, you know, whatever they might have decided beforehand. And so, anyway, I wanted to just kind of follow-up with that and let you know that it really is a problem. And I hope that you all seriously look into strengthening the open meeting law. Thanks [LR78]

SENATOR AGUILAR: Thank you, Kimberly. Any questions? Senator Adams. [LR78]

SENATOR ADAMS: This host of meetings that you've described, aside from the thirty-second issue, which I find...that's another thing, was the county attorney present during all of those meetings? Was he there? [LR78]

KIMBERLY STUHR: Not the county attorney himself, but... [LR78]

_____: Deputy county attorney. [LR78]

KIMBERLY STUHR: ...the deputy county attorney. [LR78]

SENATOR ADAMS: All right. So they were represented then? [LR78]

KIMBERLY STUHR: Yes. [LR78]

SENATOR ADAMS: Okay, thank you. [LR78]

SENATOR AGUILAR: Next testifier, please. Welcome. [LR78]

GORDON ROETHEMEYER: (Exhibit 2) Thank you, committee members, to allow me to give testimony. My name is Gordon Roethemeyer, R-o-e-t-h-e-m-e-y-e-r, and I'm the executive director of the Distance Education Council. Having been recently hired into a

position where I have to set public meetings, I very much try to follow those meeting laws, have become familiar with them and so I appreciate what the prior testimony that was given has to say. And certainly in our organization, we post our meetings publicly in two places, and certainly have a great deal of respect for that. My testimony has a little different focus, which I think needs consideration as you study the matter of open meeting laws. And that has to do with the emerging technology or technology that is here. So as you think about giving more citizens the opportunity to participate in public meetings, I hope you will consider how that can be facilitated through the use of technology, such as two-way interactive video conferencing. And presently, the open meeting laws do allow for video conference meetings to take place, up to half the meetings can have video conferencing, as I'm sure you are aware. What we would like to recommend, as the Distance Education Council, is that any meeting which the primary site of the meeting has a quorum of members, be allowed to also have participation through video conference. And I've provided some figures that compare the cost in travel, the cost in lodging, and time out of the office for meetings held in three locations, which are the primary locations we try to target since we're a statewide organization of ESUs and traveling from Scottsbluff, Ainsworth, Trenton, Omaha, Lincoln, and so on. So a lot of our meetings are central in Kearney, very often Hastings, a lot of meetings in Holdrege or in Lincoln, and a couple times a year usually in Omaha. So I've made a comparison of what it costs to have a meeting without video conferencing, first; and then on the following sheet what...the amount of savings that is realized if video conferencing allowed, and those savings based on what would be saved in mileage and lodging costs and time out of the office. On the average, you'll see that the amount that we save through video conferencing is about $3,000; $2,970 was the average amount of savings by my projections. And every remote site that participates through video conferencing would also be open to the public, I mean that is the requirement of the open meeting laws. And all of the agenda and meeting materials are provided; it's our policy to provide all of that at all of the sites participating. So as you study this issue, I hope that you will consider the use of video conferencing and how that plays a role. And our recommendation would be that, again, for every meeting

that the primary site has a quorum of members, that we can allow our members and citizens to participate from remote locations, and that would save a great deal in travel costs and so on. Also, you know, the Legislature passed LB1208, the Distance Education Act. We're getting a wide bandwidth network built across the entire state. And it's certainly a very good use of that statewide network. So it works great for education. We have continuous presence, so we can see who's on that other end. They're involved just like as though they were in the meeting room. So that concludes my testimony. Thank you. [LR78]

SENATOR AGUILAR: Thank you. Questions for Mr. Roethemeyer? Senator Adams. [LR78]

SENATOR ADAMS: I think the direction you're heading is something we definitely need to look at to save dollars. Has...the specific language may not be there. I've not looked at this particularly in the Open Meetings Act. Has the Attorney General opined in any other point in regard to using video conferencing? Has there been any interpretation that you are aware of? [LR78]

GORDON ROETHEMEYER: The only thing that I am familiar with, and the language is kind of vague, but it speaks to being able to have half your meetings as...with video conferencing. And our question or mine was, in speaking to our administrators, is, does that mean strictly by video conferencing or any part of that meeting as having video conferencing involvement or participation? And we've operated under the assumption that it means no part of the meeting can be through video conference participation. And so half of our meetings are strictly face-to-face. And we try to use video conferencing for those meetings that might be up in Wayne or out in Scottsbluff, which about once or once every other year we will travel to those remote, more remote ends of the state and then allow those that have to travel a great distance to participate through video conference. [LR78]

SENATOR ADAMS: Thank you. [LR78]

SENATOR AGUILAR: Thank you. Next testifier, please. Is this the last one? Oh my. Thank you. [LR78]

BOB ROSE: Senator Aguilar and honorable members, my name is Bob Rose, R-o-s-e. I live in Edgar, Nebraska. And some of what I'm going to say reiterates what was said before, but I think we have to put the point to. My son was told, the first week of May, that he wouldn't be coaching basketball. And that was by the superintendent, and the final decision would be made at a school board meeting the following week. Several parents and kids showed up at that meeting to talk on his behalf. And as we had looked at the agenda, there was nothing on there except an Executive Session. So we were only to assume that he would be discussed in the Executive Session. He asked that, if it was about him, this be in the open, before the meeting started. And when it came time for the Executive Session, the president said, we're going in to talk about Rob. Again, we said, we wanted it in the open, as the open meeting law states you can do. They then changed the motion and said they were going into Executive Session to not damage someone's reputation. We that came out of that meeting, the parents that were there said, what decision have you made? They said, we made a decision to follow what the superintendent said, which no one knew what that was, except that Rob wouldn't coach. They never voted on it, they never discussed it in the open. So whether whatever they told them was true or false, he had no way to know. We also went to Mr. Comer the middle of May and asked that this be looked into. About two weeks later, my son got a letter from the superintendent that said, these parents came to the meeting, and you didn't control them. I don't think that's his job to have to control patrons that come to discuss something. That's the open meeting law; that's the way we live. The end of July we hadn't heard anything from the Attorney General, so I called him again. And he said that he was just starting to look into the matter, that he had been also assigned to work on legislative issues while you were in session, and so he didn't have time to do this. What has happened to that, I don't know today. I've never heard back

from the Attorney General's Office. But I think we have to have somebody enforce these laws, if democracy is going to be. He also told us we could get our own lawyer, we could go to the county attorney. I don't think, as you heard in the last testimony in the session before, a $28,000 to $30,000 school teacher is going to be able to afford an attorney to take care of this matter. I believe that we as citizens are going to have to have something in place. I was part of the group in 2005 or 2006, whatever it was, that was working on putting this open meeting law together. At that time, we discussed having the Ombudsman be the one that enforced it. Since that time, looking into the law, I don't believe that's probably the person. But somehow we have to get somebody that has the time to do it and, as was said before, extend the time so something can be done. And maybe that there is more of a penalty for people that deliberately do this. I thank you. [LR78]

SENATOR AGUILAR: Thank you. Questions? Yes, Senator Friend. [LR78]

SENATOR FRIEND: Thank you. Thank you, Mr. Chairman. Sir, did you, and I might have missed it. Did you say, was your son dismissed just as the...not just as the basketball coach, dismissed as basketball coach and fired from his...removed from his duties as teacher? [LR78]

BOB ROSE: No, just as the coach. [LR78]

SENATOR FRIEND: Okay. I just wanted clarification. Thanks. [LR78]

SENATOR AGUILAR: Further questions? Thank you. Next testifier, please. Welcome. [LR78]

SHIRLEY BENDER: My name is Shirley Bender, S-h-i-r-l-e-y B-e-n-d-e-r. I'm from Fairbury, Nebraska and I'm kind of on the other side of the coin. I'm a city council member and I am in the minority of the city council. And being in the minority, I've

encountered a lot of problems with our meetings law. E-mails are a big issue. In my train of thought, when people can e-mail and discuss situations back and forth with one another and have their mind set before they get to a meeting, they've already...it's just like meeting down at the coffee shop. So I think that's a big problem that we need to figure out something to address on. Another situation is trying to find out what a quorum is considered. You know, when you've got eight people on council, and you've go the mayor, and you've got three of the five Board of Public Works members, and you have four people, a couple public works members and the mayor, and also the city administrator meeting to discuss what they're going to do on a situation, and they make sure that if you're not the one that's going to vote with them, they don't let you know what's going on. Several times that's happened in the last year in our situation. And I keep being told, as long as there's not four of them together, it's all right. And I've had council members come in and turn to the mayor and say, what are we going to do on this issue? Well, we're going to vote no. I mean, to me that's not appropriate behavior. We had a council meeting where we had 200 people come to...we had to change the location. And as each member was...of the community was heard, the council person sitting next to me was going: oh, come on, hurry up, come on, hurry up, let's get this over with so we can vote. She already knew which way they were going to vote. She didn't want to give them a chance to be heard. And I guess, maybe either I'm naive or simplistic in my thought, but I really believe, and that's why I've stayed on it as long as I have, is that this is democracy and we should listen to the people. We are put there to be what the people want us to be, not what we choose to do. I don't always vote the way I'd like to, personally. I'd do a lot of things different. I vote what I think is right for the city and for the people, what they want. Thank you. [LR78]

SENATOR AGUILAR: A quick question. Have you had any discussion with the AG's office in regard to any of those complaints? [LR78]

SHIRLEY BENDER: I've talked to our city, well our third city attorney. (Laugh) We've been through three city attorneys. Our mayor is basically...they just seem to quit a lot.

I've talked to several people and been told that it's just not something I can do. And I don't have the funds, personally, to do anything. And we do have a coalition of people that are trying to recall our mayor. But again, that takes lots of money and lots of time. And doing that is not going to change what's happening with the group of people that are doing this, because you still have council people, you still have Board of Public Works people, you still have issues. [LR78]

SENATOR AGUILAR: Thank you. Further questions? Senator Adams. [LR78]

SENATOR ADAMS: Curiosity, is your city attorney, whichever one of them it may be, do they sit in on your city council meetings? [LR78]

SHIRLEY BENDER: Always, yeah, yeah. [LR78]

SENATOR ADAMS: Thank you. [LR78]

SENATOR AGUILAR: Thank you. Last testifier, second to the last testifier. (Laugh) [LR78]

LYNN REX: Senator Preister (sic), members of the committee, my name is Lynn Rex representing the League of Nebraska Municipalities. Our League legislative committee, which is comprised of all first class cities--Lincoln and Omaha, as well as our smaller cities legislative committee, comprised of 40 representatives of second class cities and villages, met today and they just wanted me to convey to you how much they appreciate the fact that you advanced LB391 as amended, with your Standing Committee amendments, to General File. We strongly support it and are prepared to work with you on any of the issues that you feel need to be addressed from today. I'd be happy to respond to any question that you have. [LR78]

SENATOR AGUILAR: Thank you, Lynn. Any questions for Ms. Rex? Senator Adams.

[LR78]

SENATOR ADAMS: What kind of education does the League of Municipalities do for, whether it's city attorneys or mayors who preside over everything from first class cities to villages, what kind of education do they get on open meetings laws? [LR78]

LYNN REX: Well, for example, in the last year, at a midwinter conference, and we do it every year at our midwinter conference, which is in February, we have a training session for them on the Open Meetings Act. Of course, we can't require them to attend. [LR78]

SENATOR AGUILAR: Voluntary. [LR78]

LYNN REX: But they have a training session on the Open Meetings Act. We had Dale Comer come to our County Finance Conference, which was in June, so at that point, Mayor, I'm sorry, Senator, we are...I'm still calling Mayor Beutler Senator Beutler, so please don't take offense here (laugh) that we try to cover it so that we have all of our major conference, and we have it every time. And we make sure that that way the elected officials who participate, as well as the appointed officials, and mainly it's the appointed officials who come to our County Finance Conference and our Utilities Conference. But it certainly would be our elected officials that predominantly come to our annual conference, as we just had one in Gering. And we've had Dale Comer come. And I've got to tell you, Dale Comer has come any time we've asked him to come and do training workshops for us. I think the answer, quite frankly, is definitely not going with the Ombudsman, but definitely appropriating more funds, if that's what is needed, for enforcement purposes for the Attorney General's Office. I think that is an answer. With respect to one of the individuals who was talking about the coach that was being dismissed, the law is very clear right now. It's not a question of whether or not you need to change the law on that. The law says when you go into closed session, you have only two reasons for doing that--one, to protect the public interest, and one, to protect the

reputation of the individual when that person has something they don't want in open session. So if that person said they wanted an open an session, they're allowed, not only allowed, it's supposed to be an open session, period, end of story. So I can certainly appreciate the frustration of some of the people that testified before you today. I think that it is...I think there is an interesting issue. And I think a couple of the senators on this committee before have addressed the issue, what do you do when you've got legal counsel sitting there that may or may not be allowing some of this to occur, if indeed that's what is happening? Now quorum issues, I will tell you, there are different numbers of what constitutes a quorum based on the city, because we have different numbers of council members in various cities across the state of Nebraska. So we do training workshops throughout. Now I will just underscore something else, too. This committee advanced to the floor, and the number escapes me, I bet Christy knows, advanced to the floor a bill that would have basically required training that the Attorney General was prepared, because Dale Comer and John Bruning felt that this was the best way for them to get the broadest message out and also require training. We supported that, school board associations supported that, everybody supported that. Unfortunately, when it got to the floor, for whatever reason, there were some senators that had concerns and that bill did not advance. But the whole point of that was basically it was...the intent was to have an open book test, if you will, to say that once you've been elected to government on any level that's under the Open Meetings Act, that you would then be required, to be blunt, you read the law, you take an open book test. But first and foremost, you read the law. And as you know, Senator, we can't force people to come to our conferences. But we certainly train them. We have that at every session that we do. [LR78]

SENATOR AGUILAR: Senator Pahls. [LR78]

SENATOR PAHLS: Good question. At most of these meetings are there not at least one attorney there? [LR78]

LYNN REX: Are you talking about our training sessions or are you talking about... [LR78]

SENATOR PAHLS: No, no, no, just at the city council meetings, county board meetings. [LR78]

LYNN REX: Oh, city council meetings? I cannot speak for county board meetings; I don't know. I would imagine since there is a county attorney for every county, I would assume so, but I don't know that. I don't speak for county attorneys or for counties. [LR78]

SENATOR PAHLS: Okay, right. [LR78]

LYNN REX: Secondly, with respect to municipalities, there are 531 municipalities in the state. I would submit to you that when you're dealing with first class cities, virtually all of them have a city attorney present, certainly, Lincoln and Omaha do. When you get into the second class cities, the larger ones may have one present. When you get...probably there's a threshold there between the 800 to 5,000 population, which would constitute cities of the second class, where they simply can't afford to do that. And so they will perhaps say that they would like to have their city attorney present at a particular time. We only have, I believe, eight full-time city attorneys in the state of Nebraska. So it's not like the county attorneys, where we have full-time county attorneys. And then when you get to the villages, I would submit to you that it's a rare day that they would have a city attorney or a village attorney present. [LR78]

SENATOR PAHLS: But they probably have an attorney working for them,... [LR78]

LYNN REX: Oh, certainly. [LR78]

SENATOR PAHLS: ...in some capacity. [LR78]

LYNN REX: Oh, certainly, absolutely. Certainly. [LR78]

SENATOR PAHLS: Okay. Well then the simple question to me is, can the attorneys read the law? Because I would hope that they would advise the individuals just what they need to do. [LR78]

LYNN REX: Well one would...I would...yes, I would certainly hope so. [LR78]

SENATOR PAHLS: I mean, I... [LR78]

LYNN REX: I mean, I would be very disappointed if there were people intentionally...city attorneys, county attorneys, anybody trying to intentionally advise people to violate the law. However, that being said, we have a couple of court cases here and there that basically, I think, resulted in why the Legislature passed LB898, where it was quite clear...I can think of three instances, and three--one city, one county, and one school board. And these were not the small ones, these were the big ones where you'd be hard pressed to believe that in fact somebody did not know that it would be a violation of the law to do certain things. Because certainly in the case of the city, which was the City of Elkhorn case, on the annexation, it was not an open meetings case, per se. But when you read...and that's the only one I know of that it would involve a city directly. But it just defies reason to believe that anyone would consider that what they did was appropriate. I'm not talking about the annexation, I'm not talking about the policy, what they wanted to do with the annexation or not,... [LR78]

SENATOR AGUILAR: Thank you, Lynn. I'm going to ask you to respond directly to the question and don't elaborate. [LR78]

LYNN REX: Okay, okay. In that case, no, they don't all have attorneys present. Sorry. [LR78]

SENATOR AGUILAR: Further questions? Thank you. [LR78]

LYNN REX: Yes, thank you very much. [LR78]

SENATOR AGUILAR: Last testifier. [LR78]

LYNN MOORER: And no doubt the best. Good afternoon, Chairman Aguilar, and members of the committee. My name is Lynn Moorer, 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 in an individual capacity. I do want to convey appreciate to Senator Preister for his unstinting leadership on the Open Meetings Act issues. I want to talk to you today briefly about two issues. First, limitations on the content of speech based upon viewpoint, and secondly, closed sessions. So to talk about the first issue, limitations on the content of your speech, based upon your viewpoint, is an insidious problem that, in my observation, is on the increase with respect to public bodies in Nebraska. Currently, 84-1412, subsection (2), now provides of the act, a public body may make and enforce reasonable rules regarding the conduct of persons attending and speaking at its meetings. Unfortunately, more and more I'm seeing presiding officers who are limiting the content of the speech by the citizens, limitations which appear to be based solely upon the viewpoint expressed. And I think some of the comments you heard earlier this afternoon bear testimony to that. To remind you, the constitutional rule is that a public body that restricts speech based upon someone's viewpoint violates the First Amendment. Now this can be manifested in many ways that I've identified. And these are a whole variety of different bodies. Like, for example, I've seen presiding officers who interrupt a speaker saying: now watch yourself, what you're going to say. And usually that comes on the heels of someone saying something fairly critical about the board. Another way that this can be manifested is refusing to allow people who sign up to speak to actually speak. These are people usually who have criticized the board on previous occasions

on that particular subject. Another way that that is manifested is the presiding officer saying, explicitly: since we let you speak to us about this at the last meeting, we don't have to allow you to speak to us on this...on this meeting, even though it's on the agenda. Many public officials seem to think that if a citizen has spoken on a subject at a previous meeting, then he or she can be cut off from speaking on that general subject again at the subsequent meeting. And in some they rule on point comments, comments that are related to things that are on the agenda, out of order simply because of the viewpoint that's being expressed. And this is clearly impermissible violation of free speech rights under the First Amendment. It also infringes upon the citizen's constitutional right to petition its government. So I have a recommendation for your consideration of one potential way to address this. Perhaps amend the act to include an additional sentence that says something like--a body may not forbid or limit the content of speech by any citizen at any meeting based upon a citizen's viewpoint. The remedies provided in the act, that have been enumerated for you today--filing a complaint with the Attorney General or with the county attorney, or hiring an attorney yourself with your own money to file suit--are not very effective at all in dealing with impermissible limitations on free speech. There's no guarantee this will solve the problem. But from my experience, the more explicit the act is with respect to saying what is proper or what the public body should do or should not do can help move the ball the right direction with respect to compliance. An explicit provision in the act is more likely to make it clear that a presiding officer does not have free rein to limit what a citizen says at a public meeting. And I do agree with the previous comment, that it does seem like many presiding officers, for whatever reason, believe that they are a law unto themselves once they get into the chair. Whether or not they have a gavel (laugh), they just believe they can cut off speech. And the pattern is clear, they cut off the speech that they disagree with or that they find controversial or in some way a problem to deal with. It's not evenhanded cutting off, because someone has spent too much time talking, rather it's very much related to what someone is saying. So that's the first issue. The second issue I want to talk to you about briefly are closed sessions. As many folks know, there's a widespread problem with public bodies discussing matters in closed session that

properly should be discussed in open session. In 2006, the Legislature enacted LB898 which, among several provisions, took a step toward addressing this problem. So the law now says that 84-1410, subsection (2), if the motion to close, meaning close the session, passes, then the presiding officer immediately prior to the closed session should restate on the record the limitation of the subject matter of the closed session. And the idea was to help focus the mind of the public body right before they went into the closed session of the narrow limits of what was permissible for them to talk about. That was the idea behind the amendment. I have attended at least a dozen meetings of a variety of different public bodies, all at different levels, since the amendments in LB898 were enacted. Not a single public body I've observed has complied with this requirement. None of these public bodies took care to restate the limited subject matter of the closed session. In every case it appeared that the body took no notice of this requirement and instead continued its customary practice regarding closed sessions. And frequently, the customary practice, unfortunately, is that controversial and sensitive matters, not...I don't mean sensitive in the sense of will cause harm to someone if it's spoken publicly, rather sensitive in terms of tricky and dicey and difficult for public officials to deal with. These matters are usually only discussed behind closed doors. From my observation the new requirement in LB898 is not working as intended. And also, because you're likely to be interested, all of the public bodies I observed had their legal counsel present at these meetings where these violations occurred. I think it's time to take another step along that road to address this problem. So my second recommendation, this one related to closed sessions is: require that closed sessions be recorded either by audio tape or video tape, reviewable by a court if legal action arises against the public body regarding the violation of the statutes related to closed sessions. This requirement would not be burdensome. I think the cost to audio tape the meetings for a public body that meets weekly, now audio tape, little audio tapes for a board that meets weekly would be less than $75 in equipment and supplies, and that's for a year's worth of tapes. And the space needed to store these tapes is about half a shoebox. I know, I've tried it. I did a little experiment and did a little test. This would not be a burdensome requirement. In my experience, we have to make it more clearly evident to

public bodies of what is required. And when these requirements are not met, then we need to take measures that assure that the actions are being complied with. And I agree with the previous speakers, enforcement is a very difficult problem. Many times it's resources, but it's also a matter of having evidence to show violation of the problem. Taping of closed sessions would be a very good, not perfect, but a very good way to help meet that. So I thank you for your consideration of these recommended clarifications and fine-tunings of the act. If you have any questions, I would be happy to address them. [LR78]

SENATOR AGUILAR: Thank you. I'm intrigued by your suggestion. But I keep falling back to the idea that if they are knowingly violating the Open meetings Act, a lot of that just kind of flies right out the window, even the audio taping; okay, shut the tape off a minute and make your statement, move on. That's the problem. [LR78]

LYNN MOORER: I agree with you. Yes, if they want to violate the act, they will find a way of doing it. And there are, unfortunately, far too many who have every intention of doing whatever they want to do. But I am talking about...obviously, you can't do anything to force those people, unless somebody actually (laugh) is able to prove that they did it knowingly and therefore get criminal conviction. I'm not talking about those folks. But I do believe that particularly where in some cases you have legal counsel there at the meeting but they are just so foggy on what the Open Meetings Act really means. I can't tell you how many times I've heard the legal counsel for whatever body say: well, I'm just not sure; the Open Meetings Act is so hard to figure out what it wants and what it doesn't want. Now I'm not saying that that legal counsel has necessarily done all of the homework that he or she should do. To me it's perhaps a little bit more self-evident. But I do think that my two recommendations are reasonable steps in the direction that can help those who really aren't intentionally intending violate the act and don't really have any plan to shut out the citizens, to help them make it more clear about what is required, and help them keep their considerations and their public meetings open in the spirit that the Open Meetings Act was created for. [LR78]

SENATOR AGUILAR: Thank you. Further questions? Senator Adams. [LR78]

SENATOR ADAMS: I would have to agree with you, for all of the probably obvious reasons, that a presiding officer should not try to attempt to control the content of speech of someone at the microphone. And I assume that you would agree though that a presiding officer does have the obligation to preside over the meeting and maintain a degree of decorum, so not only the speaker can speak, but the listener can hear, and that the meeting is conducted in such a way that the public's business can be done in a reputable way. What I'm wondering about, and I have an answer in my mind, but I'm curious. So I'm the presiding officer over a meeting and someone is at the microphone and I may not like what they have to say, but I understand the First Amendment, I'm going to let them say it. Except now they're using profanities; now it's not conduct, but it's still speech. Now I'm going to ask them to stop doing that. And if they choose not to, I'm going to ask them to sit down. What would your impression of that be? [LR78]

LYNN MOORER: Most legal interpretations, most court decisions would tend to agree that it's proper to halt or attempt to halt profanity or speech which soon, very soon leads to disruptive behavior. So... [LR78]

SENATOR ADAMS: Or maybe speech which is not protected by the First Amendment. [LR78]

LYNN MOORER: That's correct, that's correct, right. [LR78]

SENATOR ADAMS: Okay. [LR78]

LYNN MOORER: Just so you understand clearly the situations that I have observed, none of them have approached...have included any profanity (laugh) whatsoever. As a matter of fact, all of the citizens have been very respectful, assertive, in some cases, not

all cases, but very respectful. We're never talking about a situation in which someone is going over the line in terms of profane or abusive language. That I also think would get little protection in a free speech point of view. [LR78]

SENATOR ADAMS: Okay. Thank you. [LR78]

LYNN MOORER: You're welcome. [LR78]

SENATOR AGUILAR: Further questions? Seeing none, thank you for your testimony today. [LR78]

LYNN MOORER: You're welcome. [LR78]

SENATOR AGUILAR: Senator Preister, do you choose to close? [LR78]

SENATOR PREISTER: I will waive closing. [LR78]

SENATOR AGUILAR: Senator Preister waives closing. That closes the hearing on LR78. Now ready for him to open on LR80. Proceed. [LR78]

SENATOR PREISTER: Thank you, Chairman Aguilar, members of the Government Committee. My name is Don Preister, P-r-e-i-s-t-e-r, here as the primary introducer on LR80. And let me thank you for your sitting here in this hot, stuffy room attentively, and going from one hearing to another. I will certainly attest that you're not paid enough for your diligence and your commitment. (Laughter) And we just approved some language today in the Exec Board, and I will continue to work to increase that salary somewhat. So with that, state expenditures on contracts for service remain one of the fastest growing segments of the state budget. From 1996 to 1998 the state spent over half a billion dollars on contracts for service. In August 2005 these contracts amounts increased to over $2.6 billion, with a B, dollars. A recent listing of service contracts from

the Nebraska Information System, NIS, indicates that the state is still expending over $2 billion on service contracts. As a visual, this is a listing, and it's line-item, so there are at least 15 on every page. And there are close to 300 pages of these contracts. These aren't all of them, these are just the ones that we know about and have been recorded. From past legislation, this was supposed to be accessible online, but the NIS system has problems. And so we have to actually get hard copies of this; we can't just...you can't look at it; the Revenue Committee, if they chose to, can't just pull it up and scrutinize it; the public can't look at it and see where maybe the state could do a better job, which we thought we had in statute already. We've been informed by DAS that agencies are conducting cost-benefit analysis prior to entering into these contracts. However, in 2005, my office surveyed all of the state agencies and asked them to provide copies of all the analysis they had performed prior to entering into contracts for service. We followed up the survey with phone calls, to make sure that we got responses from all agencies. Not one of the agencies could provide one copy of analysis that they had completed on even one contract. Over the past nine years, I've worked with three different administrations to try to craft language which would, at a minimum, provide policymakers with information as to whether or not our service contract decisions are effective. And I guess, it's important to me to be clear that I'm not proposing cost-benefit analysis legislation either for or against these contracts. I just simply want good accountability and to know, is this the best value for the taxpayers dollar? I see it as a fiscally conservative approach to spending taxpayer funds. I introduced LB408 in 2007, and the bill is still in committee. It would simply require state agencies to provide, to the Appropriations Committee, a copy of its written cost-benefit analysis on proposed contracts for service over $50,000. So the analysis is done and it's sent to the committee so that the counsel or the committee have access to it. That's all the bill does, that's all it asks for. Doesn't prevent contracts from being let, doesn't say how it can be done; it just says if you're...we want you to do the analysis so we know it's well spent, and give us that analysis. It does not place any limitations on agencies' authority to enter into contracts regardless of the result of the cost-benefit analysis, nor does it require anyone to approve agencies' decisions to enter into or not

enter into service contracts. Regardless of party affiliation or rural or urban constituencies, I know we all strive to be fiscally responsible and careful in our decisions regarding state expenditures. I'm merely seeking information from our state-funded agencies so we can fulfill our fiscal responsibilities to our constituents. My goal is simple. I'm asking that you advance a nonburdensome measure which will provide all policymakers with a valuable tool which can be used to meet our obligations of accountability, fiscal oversight, and responsible management of state expenditures. I got a call from a reporter, two weeks ago, who was doing a story. She asked me about some contracts that I knew nothing about and that I didn't see listed in here. And there were several contracts over a span of years. And when she asked the agency, this is what the reporter told me, there were no written contracts for the first three years that the contract was issued; that the contracts were for approximately $300,000; there were no performance standards in the contracts, they were just automatically renewed; and that the requirements in the contracts were less than half of what the requirements were for state employees who were doing the same jobs; and doing half, less than half, almost a third of the work is all they were doing, that their performance of less than half of the workload was less than half of that that the state employees were doing. So this isn't a contract issue, it's not a labor issue, it's an accountability issue for me. And when the reporters were questioning...and I haven't seen the story in the paper yet, so I don't know what she uncovered or how much more she got, because I couldn't even give her any additional information because I was in the dark on it. But with no performance standards, I mean, shouldn't these companies have to at least perform to a certain level a degree of standards? And if they aren't, should we be automatically renewing these contracts? All I'm asking for in the legislation is that they do a cost-benefit analysis and they provide it to us, that's all the bill does. Thank you very much. If...and I'll... [LR80]

SENATOR AGUILAR: Questions for Senator Preister? [LR80]

SENATOR PREISTER: ...for your interest, I'll just let this go around while we're talking. But you can see the kind of contracts, and we're just talking...we're not talking about

roads contracts, we're not talking about insurance contracts, that's covered. We've exempted so many contracts out that it's incredible. Some of those things we can't do, but there are other, lots of other service contracts that we're talking about. [LR80]

SENATOR AGUILAR: Were there any questions? [LR80]

SENATOR PREISTER: With that, I'd be happy to entertain any questions. [LR80]

SENATOR AGUILAR: I don't see any questions. Thank you. Could I see how many, a show of hands, how many are going to testify on this? I see two. Thank you. Thank you, Senator. [LR80]

MIKE MARVIN: (Exhibit 1) Good afternoon again, Senators. My name is Mike Marvin, M-a-r-v-i-n. I think it must be a little cooler on that side of the room, because these gentlemen still have their jackets on. I look over here and (laughter). Send some coolness this way, please. [LR80]

SENATOR FRIEND: But we can hear. (Laughter) [LR80]

MIKE MARVIN: I serve as the executive director of NAPE/AFSCME, the union that represents the vast majority of state public servants. I appear here today on their behalf to recommend to this committee that greater oversight of the state's private contracts is warranted. We have worked with the Legislature over the past decade and a half to provide the citizens of the state with an accountable and transparent system to monitor the expenditure of public dollars that according to the state has ballooned over $2.3 billion in public money being spent on private contracts. Former Senator Jerry Warner proposed and the Legislature adopted the initial language that called for the utilization of a cost-benefit analysis whenever state services were going to be contracted out and state workers were going to be displaced. Since that time, many services have displaced state workers and we have yet to see a cost-benefit analysis. Contracting

public services to profit-making entities is a serious matter and the fact that such a large portion of state taxpayers money is now paying for not only public services but the profit of private companies seems to us a matter of great concern. Current law allows for public disclosure of these contracting arrangements, but there seems to be little oversight of that. More importantly, current requirements encouraging any cost-benefit review does not include the very essence of government that is whether the citizens who are entitled to our services are gaining access greater or less access to those services. There are several discussions occurring in state government right now about services to some of our most vulnerable population and their possible realignment that we think with highlighting these concerns. In the weeks ahead your state employee constituents will likely be discussing these issues with you in greater depth. Fundamentally, the accountability of a state employee to provide a tax supported services is greater than service contracted to a profit-making entity. The citizens of this state deserve an accountability...accountability on expenditures of their tax dollars. This Legislature can assure that by setting forth strict accountability mechanisms for the private contracts of public services with public dollars. That concludes my testimony [LR80]

SENATOR AGUILAR: Thank you. Are there any questions for Mr. Marvin? Seeing none, thank you. [LR80]

MIKE MARVIN: Thank you very much. [LR80]

SENATOR AGUILAR: Next testifier, please. Welcome. [LR80]

LAURA PETERSON: Thank you. Good afternoon, Senator Aguilar, and members of the committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the state risk manager and I'm general counsel for the Department of Administrative Services. We're appearing here today on behalf of the administration to discuss the need for a cost-benefit analysis for service contracts. The report the Department of Administrative Services provided

includes all service contracts which are required to be entered into the NIS, Nebraska Information System, whether they are exempt from the competitive bidding requirements or not. That report also shows a decrease in the dollars spent since the 2005 report sited by Senator Preister. The administration opposes the addition of a new cost-benefit mandate for three reasons. The process is already required under state law; further proposed mandates would remove administrative flexibility to respond to changing market conditions; and finally, it's not clear there is a problem that will be solved by including a cost-benefit analysis. First, Nebraska currently has two provisions of law governing this subject. The first is found in Section 73-301 through 73-307. Section 73-301 requires the Department of Administrative Services director to review and approve or disapprove any contract for services when, on the effective date of the contract, the services are performed by a permanent state employee and that employee will be replaced by the services contract. The subsequent sections of that section discuss requirements for the agency to request such approval, including completed cost-benefit analysis and providing a plan for assistance for the displaced state employee or employees. There's no dollar threshold in this first requirement for a cost-benefit analysis. This applies every time an agency contract would replace a current employee with a contractor, regardless of the contract amount. Should a state employee be so displaced due to this kind of contract, in addition to the plan of assistance, the agency is required to provide the state maintains a reemployment process which provides hiring preferences to quickly find another place for these employees. The other current provision is found in Section 73-509. That requirement applies to all contracts for services over $50,000, whether services are currently performed by or have within the last year been performed by a state employee. In those cases, the agency has to complete a preprocess established by the Administrative Services Materiel Division. The preprocess is essentially a cost-benefit analysis. Secondly, under current law, Administrative Services Materiel Division is given discussion to create a process for service contracts. To further define the process statutorily in such detail that there is little flexibility to change the process as times, purchased services, and contracting procedures change limits our ability to perform

necessary job functions without a compelling reason for the change. Under previously introduced bills we would be required to complete this cost-benefit analysis for every service contract. This would include contracts for services for business functions that the state would likely never perform in-house, such as providing telephone service, life insurance benefits or providing express mail delivery. Also, adding a long list of exemptions in statute would be unreasonable because it would limit agencies' ability to enter into contracts on an as needed basis as their purchasing needs change over time, causing us to seek a statutory change each of those times. Currently, the law has in place a procedure through which agencies, the Administrative Services Materiel Division or the Administrative Services director check to ensure necessity for contract and compliance with the law. This strikes a balance of allowing agency directors to manage their agency responsibilities, while requiring compliance with standardized bidding and reporting requirements. There is accountability as agency directors are subject to the scrutiny of the Legislature, the Governor, and the public. Thank you for allowing me to testify. I'd be happy to answer any questions that I can. [LR80]

SENATOR AGUILAR: Questions? Seeing none, thank you. I believe that was the last testifier. Senator Preister, do you choose to close? [LR80]

SENATOR PREISTER: Just briefly to say that the distinguished Chairman looks even more distinguished today. I would just say that in conclusion if there is no problem, there should be no problem with having some scrutiny. I think having more eyes assessing, having someone do a cost-benefit analysis and just making it available really doesn't take that much time, and it's the heart of good government, other than openness, that is openness. And we've got the requirements in statute already. We've tried to make it very easy. And what we're asking for is not what we may have asked for in the past. So I don't want you to confuse some of the testimony that was just given. But it's simply asking for the cost-benefit to be made available and so that we have access to it. That's all it does. Doesn't do any other limitation. With that, I thank you for your attention. And particularly with term limits coming on, I mean, I'm virtually the only one in the

Legislature that seems to think that fiscal accountability is important, and I'm going to be gone after another year. These contracts, we've got some other questions, too, in regards to the reduction in the dollar amount. We've also seen some things that are raising some other questions that at this point I'm wanting to be certain of before I raise those issues. But good fiscal accountability, I think, is essential to our government. [LR80]

SENATOR AGUILAR: Thank you. [LR80]

SENATOR PREISTER: Thank you. [LR80]

SENATOR AGUILAR: Questions on the close? Seeing none, thank you, Senator Preister. [LR80]

SENATOR PREISTER: You're welcome. [LR80]

SENATOR AGUILAR: We're now ready to open on LR146. Senator Friend, would you take over the Chair for me. I'll go ahead and read from here, though. [LR80]

SENATOR FRIEND: Absolutely. [LR80]

SENATOR AGUILAR: My name is Ray Aguilar and I'm here to introduce LR146. LR146 deals with the issue of creating a voluntary registry for interior designers in Nebraska. According to the American Association of Interior Designers, there are currently 26 states with interior design registration laws. In 2006, Senator Howard introduced a bill providing for the registration and regulation of interior designers. In order to use the title "registered interior designer" an applicant was required to meet certain education testing, training requirements. Interior designers argued that this type of title act is important to help consumers determine who is best qualified to design their interior spaces. Several architects opposed the bill, arguing the bill allowed interior designers to

engage in work which should only be done by architects. A group of interior designers continues to work toward passage of the title act. Their latest draft version of legislation was enclosed with your packet of information. With the new legislation they attempt to address concerns raised by the architects. It is my understanding that there are a couple of interior designers and architects here today to speak in more detail to this issue. Thank you for your time. And I'll try to answer any questions you may have. And thank you for that. [LR146]

SENATOR FRIEND: Thank you, Mr. Chairman. First testifier, please. [LR146]

SENATOR KARPISEK: She's trying to move things along. [LR146]

ANITA WIECHMAN: (Exhibits 1 and 2) Chairman Aguilar, and members of the Government Affairs Committee, my name is Anita Wiechman, W-i-e-c-h-m-a-n, and I'm here to testify in favor of LR146. I graduated from Wayne State College in 1979 with a degree in interior design, and I have been practicing full-time ever since. I have noticed that every year that I need to know more about consumer safety and welfare for my clients. Because of that I studied and passed the National Council for Interior Design Qualification Exam in 1989. I have continued education every year, every chance that I can get, and accept and look for design challenges. My typical day requires space planning for general spaces, knowing how much a footprint will need, down to a room that needs just furniture in it. I have to be aware of special needs of my clients, be their respiratory problems, allergies that I have to think of, off-gassing, what kind of glue, what kind of paint I'm using, flammability issues if I have small children that I have to worry about or someone that can't walk out. Being in practice for the last 28 years, my clients have aged, even though I haven't, but they now need grab bars or they want to think about backing out for future grab bars; they're thinking of wider doorways for future use of walkers and wheelchairs, and they're looking for enough lighting to be able to see, that's the one thing I've noticed that I need more. My commercial clients want me to be aware that paint colors can affect blood pressure, can affect sales, acoustic

sounds, materials that I'm using can actually enhance performance of their employees, whether they're making extra sales, that type of thing. Through my education, and my exam passing, and my experience I have been trained to choose products that meet functional needs in fire issues, in air quality issues, ergonomics, how comfortable the desk chair is to be able to sit and work at a computer all day. And being a wise consumer of our national resources I need to know those things. Our coalition, along with 25 other states, including Iowa, the District of Columbia, Puerto Rico, and 8 Canadian provinces, really feel strongly that consumers have a right to know and understand, when they hire an interior designer, what that level of expertise is that they have and match it to their specific project. Under this proposal, the title "registered interior designer" clearly identifies that that designer has a four-year degree, has passed that exam, and has worked a minimum of two years. We believe strongly that it serves the public interest and gives a reliable credential that is backed by the state of Nebraska. We think consumers can then recognize and choose the qualified level of expertise that they want for their specific project. Thank you very much. Do you have any questions? [LR146]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LR146]

ANITA WIECHMAN: Thank you. [LR146]

SENATOR AGUILAR: Next testifier, please. [LR146]

TOM ZUK: Good afternoon, Chairman Aguilar, and members of the committee. My name is Tom Zuk, Z-u-k. I'm an architect and a partner at Holland Basham Architects, in Omaha. I work with interior designers on a daily basis. I can attest to the need for having high-powered individuals to hold the title of a certified registered interior designer. At our firm, for most projects, the designers work on almost every aspect of those projects from design development, schematic design, to design development construction drawings, and contract administration. They're responsible for space

planning and having the knowledge of locating partitions in accordance to local building codes. This includes the understanding of corridor-related items such as dead-end corridors, corridor width requirements, proper exiting, proper lighting, ADA related items, clearances around fixtures, and other items that directly affect the health, safety, and welfare of the building occupants. They are also responsible for writing specifications. They have the knowledge and understanding that certain types of materials may have burning characteristics which may or may not be allowed in a certain type of building occupancy. We do understand that the interior design registration will not take away from the architects role but, when it comes to the safety issues of the interior spaces, we do expect the interior designer to understand the codes and be able to design properly. Our firm has been very supportive of the registration process for interior designers from the very beginning. We believe that through the education, experience, and testing process that we can have interior designers who are competent and can further enhance the interior space in regards to aesthetics and life safety. We do support the need for a certification process for interior designers. That's it. [LR146]

SENATOR AGUILAR: Thank you. Any questions from the committee? Seeing none, thank you. Welcome. [LR146]

WAYNE DRUMMOND: Good afternoon. My name is Wayne Drummond. I've been a registered architect for 37 years. I also serve as the dean of the College of Architecture at UNL. And at the moment, I happen to be the president of the National Architectural Accreditation Board. I want to testify in favor of your proceeding with looking to the act that's proposed before you, the legislation that you have. There is no exclusionary clause that would exclude architects from their full and comprehensive responsibility. And it is important that the people who are assigned the responsibilities to deal with the issues of interior design that there are number of code and other issues that they are properly trained for or educated for. The reality of it is that I think that as an educator who is responsible for the education of both disciplines, it's important to me to be able to look at parents and students when they enter, they are about to make a $50,000

investment at a minimum, and I think it's important that when those young people finish a minimum of a four-year baccalaureate degree that they have the distinction and the understanding that they have indeed been included in a profession. I often use the sort of hand graphic that says, when they do this and they're in this group, then they should receive the distinction of understanding and the protection of the title of interior designed, registered interior designer. There are a lot of other programs in the balance of this triangle that I'm showing you here. And I think that if they and their parents invest $50,000, plus the issues that we do deal with, that they should be distinguished from those who take frankly a limited night course or even a two-year program. And I think the old accreditation standards were FIDER, now CIDA, has really begun to change and raise the bar in the education of interior designers. So the way this bill reads, it says, at the...the intent is to deal with a four-year baccalaureate program, experience that would be documented in the internship period, and then taking and passing the NCIDQ, which is the national exam that focuses on the qualifications for interior designers. Your bill also has a three-year window where the people who are currently practicing, that do not have those qualifications, could in fact, with the conditions that are clearly outlined in the bill, could in fact continue to practice. But they would then, after that three-year window closes, it would raise that bar to the minimum of a baccalaureate degree. It also has reciprocity components that make sense. And as pointed out earlier, there are 26 states that currently have title X. I came here from Florida, and the actual board name at Florida is the Board of Interior Design and Architecture. I think with our profession, our architectural profession we are currently focused very heavily on integrated practice. And what that means is the mutual respect of all of the members of the team that have to put complicated buildings and components together. And I think the respect that a young person...there is a clear difference in terms of the four-year versus the six-year master of architecture degree that are normally required for architecture. But the reality is that we need to have a distinction for these young people who have completed the four-year degree, who have had at least the two-years experience, and have passed the examination and to allow them and encourage them to be distinguished from those who have not, and to be a full integrated member of the team. So with that, I think I'm very

clear in terms of my support. It's a unique position that I find myself, because I'm an advocate for both professions. And I think my testimony is very clear that my intent is to raise the bar for both. Any questions? [LR146]

SENATOR AGUILAR: Thank you very much. Are there any questions? Senator Friend. [LR146]

SENATOR FRIEND: Thank you, Mr. Chairman. Doctor, is it out of the question or is it...I was going to maybe give you an analogy after I ask you this question. Would you object to a committee like this being fairly creative about equivalency based on experience? I mean, I understand the academic, you know, piece of this, and I respect it. But let me give you an analogy and maybe that would help you...I don't know if it will help you answer the question, but at least you'll understand where I'm coming from. I got a journalism degree. And when I graduated, I mean, you know, there were guys at Creighton saying, well yeah, this will, you know, you can make some money, but you might not. They were right on the latter portion, it didn't. But, you know, you roll the dice. I mean, I had a discipline, I understood journalism. But when you take a guy at the New York Times and he's working and following all the rules that his academic discipline gave him, and then you look at Matt Drudge, and Matt is making a mint, but it's because of his ingenuity. And he's not trained like a New York Times journalist. So, I guess, what I'm asking is, based on those type of...on the type of analogy like that, what if you have somebody that...you know, we don't want to drive people out of a business;... [LR146]

WAYNE DRUMMOND: Right, right. [LR146]

SENATOR FRIEND: ...business is making money and stuff like that. Do we have the ability, as far as you're concerned, to be creative about the equivalency of experience based on situations like that? [LR146]

WAYNE DRUMMOND: Yes, sir, I do understand your question. And the way the bill

reads, it gives that judgment to the committee that would be established by the Secretary of State. [LR146]

SENATOR FRIEND: Yeah, and I don't have...I apologize, I don't have it in front of me. But... [LR146]

WAYNE DRUMMOND: But, I think, you know, the whole idea of the definition of professions would be that there is a body of knowledge, primarily transmitted through an educational process, an experience process, and an examination process. And this bill contains all three. Are there exceptions? Are there people who could make it and transition from one to the other? I think that's obviously the case. But I think that would be the judgment of the committee, and they would have to look at what those qualifications are. But I think that that would be a very rare exception. And as I said, I think that the young people that we deal with in terms of the amount of technical material and the way in which we work with them, nationwide, not just here at our one institution, but there's an awful lot of professional information that goes in relative to their professional practice, the ethics, all of those things that come with a defined profession, which really talks about...and if you get into the academic or legal definition of what a profession is, there are certain criteria that have to be met. Among those is the continuing education, which this bill also does contain. [LR146]

SENATOR FRIEND: That's well put. And I would concur. I guess it just...folks like us probably sit there a little bit in fear, because we know that there are community colleges and we know that there are other avenues for students to take that...and these folks are out there looking to make a career in certain areas, and they might be legislatively be being forced into maybe not making any money. And I...that's a constant concern when you're looking towards registering and certain types of regulation. So that was my thought process. I don't know that I... [LR146]

WAYNE DRUMMOND: I understand that. And of course I understand the need for

people who are currently in the field, whether in the products or the sales or wherever they are, and what services are provided, you certainly don't want to exclude them from their current livelihood. At the same time, you want to raise that bar, so that in fact, your professionalism goes up. And, in fact, if there's on weak clause in this, it is the fact that it allows the continued use of the phrase "interior designer" or "design services." It doesn't jeopardize architects any. But I think it, again...I'd like to ask you to look very hard at that...it's back in the last part of the piece, because again, while you can advertise those services, I think it's just the one word in terms of the, you know, of the registered interior designer. I don't think that's enough of a distinction. So as you continue to look at it, I would encourage you to even make it stronger. But no, we really don't want people excluded who really do have the creativity and the expertise to do the job. But again, I wouldn't want surgery done by a 'C' student either, you know. So there are really rational and legal reasons why you do this. [LR146]

SENATOR FRIEND: Okay. Thanks, Doctor. [LR146]

WAYNE DRUMMOND: Okay. [LR146]

SENATOR AGUILAR: Further questions? Seeing none, thank you very much for coming today. [LR146]

WAYNE DRUMMOND: Thank you very much. [LR146]

SENATOR AGUILAR: How many more testifiers following Mary? Thank you. I see one. [LR146]

MARY CAMPBELL: (Exhibit 3, 4) Chairman Aguilar... [LR146]

SENATOR AGUILAR: Welcome. [LR146]

MARY CAMPBELL: ...and members of the Government committee, my name is Mary Campbell, C-a-m-p-b-e-l-l. I'm the registered lobbyist for AIA Nebraska, which is to say, the professional organization for the architects in the state. I'm here to register their opposition to this proposed expansion of government into an area which does not require such government intrusion and the use of such government resources for it. I'll be followed by Dave Johnson, an AIA architect who will be able to speak more technically to some of the distinctions. I think the easiest way for me to express our concerns is to share with you a veto message from one of our sister states, the state being Indiana. Governor Mitchell Daniels vetoed a very similar measure in May of 2007, so it's very current and apropos to this discussion. And without reading his document, I just want to highlight some of the points that he made. In the second paragraph--I think it's to the crux of it--he says, "Government has a legitimate role to play in the regulation of certain business occupations and professions." You're the Government Committee, you know this very, very well. We know that we need to license the medical profession, because bad practitioners can hurt or kill people. We know that we need to license engineers and architects, because bad buildings can collapse. And we, as government, you as government, should do whatever you can to prevent calamities, to protect the public in health, safety, and welfare issues. He goes on in the next paragraph to say, "However, government must be careful to exercise such powers in a restrained and limited way, in order to avoid limiting competition in occupations..." and here's the key word, "...where no significant public health or safety concerns are involved." We regulate professions where the improper practice of that profession substantially, substantially impacts health, safety, and welfare. And then when we do that we need to go the next step, and there must be legal consequences for improper practice. This proposal has no consequences. It would elevate the need for government intervention and then not take the next step. It says, well, the Secretary of State can revoke, refuse, suspend...but so what? Then that interior designer continues to do exactly what he or she had been doing, but simply without the word "registered" next to his or her name. The practice can be the same, but government has intervened in a way with no hammer. If, on the other hand, the purpose of this measure is, as was testified to, to add

some distinction, some approval, some help to the consumer to know who to choose, the profession itself has answered that question and taken care of it. There is a rigorous credentialing process to get the title of ASID. And so you are a designer with a title that implies examination, further education, more experience. It's the gold standard in the profession. We don't need to invent that for them and bring government resources to bear to do it for them. They have carved that out for themselves, much the way a physician, in spite of all the years of preparation and everything, might go on to become board certified. So that we know, as consumers, that they've gone yet another step to validate their practice and their talents. On the last page, the Governor gets into this as an example of government intrusion into the private marketplace, creating "ins". And he says, again, we don't need to do this. In this particular field the marketplace manages it very well. When our 20-plus-year-old house needed some updating, I would never have thought to go to the Secretary of State's office. Rather, I looked at my friends' homes, and asked, you know, who did this lovely work for you? My taste is along these lines. People go to the Parade of Homes and pick up a card of the interior designer who has done work that fits with their sensibilities and their sense of aesthetics. The marketplace weeds out bad design, bad designers, and elevates and rewards those who have talent and should be recognized for it. The hour is late, and so I'll just summarize by saying that this measure, this proposed legislation, would have you expand government where there's really not a government purpose. It would expand government to achieve competitive advantage for some when the marketplace already fulfills that function. I would submit that it presents you with a solution when there's really not a government problem to be solved. With that I'd attempt questions or defer to Mr. Johnson. [LR146]

SENATOR AGUILAR: Thank you, Mary. I don't have a question, just a comment. You talked about one state where the governor vetoed that. What stands out in my mind are the 26 states where the governor didn't veto it. [LR146]

MARY CAMPBELL: Right. And I would say to counter that, that doing my higher math, that means half the other states have not gone in this route. And I do have a number of

specific states where it has been turned back. And I'd be happy to supply that to you too. It is an open question, and so far I would say it's safe to say the country is divided on the question. [LR146]

SENATOR AGUILAR: Any other questions or comments? [LR146]

MARY CAMPBELL: And just one maybe uplifting moment, I don't like to be negative. I think as you got to the hearing room you probably saw the wonderful AIA display in honor of the 150th year of AIA. And people like yourself picked their favorite buildings in America. And if you haven't had a chance to look at it I really invite you to do so. I'm sure you also know that already...already know that Nebraska's Capitol Building, this building is number 67 on this list, and we're very proud of that and share it with you. So I'll leave you some little brochures on that and do take time to enjoy it. [LR146]

SENATOR AGUILAR: Thank you. We appreciate it. Next testifier, please. [LR146]

MARY CAMPBELL: Thank you. [LR146]

DAVE JOHNSON: Senator Aguilar, committee members, I'm Dave Johnson, J-o-h-n-s-o-n, president of Studio 951 Architects, president-elect for AIA, American Institute of Architects, Lincoln, here to read a statement, a prepared statement by AIA National, concerning this. AIA National is in opposition of the interior design title or registration act. Architects, by statute, are particularly charged with protection of public health, safety, and welfare in regard to the design of the built environment occupied by human beings. It is therefore in response to this public interest and responsibility that AIA holds that only architects and engineers, licensed through examination, possess the necessary education, training, and experience to carry out and be responsible for the public trust. Other individuals may possess useful skills in designing within the built environment, but fragmentation of responsibility for the building design process endangers and misleads the public as to the respective areas of competence and

expertise. And I also just touch...I have some bullet points that were delivered to me by AIA National to visit about the 26 states that are currently...have the regard...I have a bullet point here that says that only three states: Kentucky, New Jersey, and Iowa have passed new interior design regulatory programs since 1999. Similar legislation as this has been defeated since 1999 in over a dozen states. So clearly the trend is not to regulate interior designers. [LR146]

SENATOR AGUILAR: Thank you. Questions? [LR146]

DAVE JOHNSON: Thank you. [LR146]

SENATOR AGUILAR: Seeing none, thank you. And I will waive closing. That ends the hearing. Now we're going to open the hearing on LR122. Every year the Government Committee introduces a general jurisdiction resolution to allow people to testify on any issue within the jurisdiction of this committee. This year Senator Avery is planning to present information on the Base Realignment and Closure process and possible responses by the state. Senator Avery introduced LR129 this year to examine the issue. After Senator Avery has completed his presentation, I would invite anyone else interested in testifying on this issue within the jurisdiction of the Government Committee to come forward. Senator Avery, please. [LR122]

SENATOR AVERY: (Exhibit 1) Thank you Mr. Chair. My name is Bill Avery, B-i-l-l A-v-e-r-y. I'm bringing to this committee an issue that is not yet a problem. But by the time it does become a problem it will be too late to do anything about it. And that's why I think we need to start now to think about the Base Realignment and Closure process. I have provided for each of you a six-page memorandum prepared by my legislative aide. So if there are any errors in grammar, he takes credit for that. (Laughter) I think it's fine, I've looked at it. Here's the thing: Nebraska has a number of quite significant military assets, including of course, Offutt Air Force Base, the Naval Guard and Reserve facilities in Lincoln, and other Nebraska cities. We need to start now to think about the

impact that the next round of base closings and realignments, the implications that might have for us. These assets are important to the economy of Nebraska, and if we don't act before one or more of these assets are placed on the list, then we will probably lose, because once on the list, usually the game is over. More than 85 percent of those that make it on the list for realignment or closure eventually are closed and the cities and states really don't have much recourse. I will be introducing legislation next session, I'll probably come before this committee, that would set up a task force to look at this in more detail and to come up with some strategies we might employ to try to preempt the process to keep Nebraska's assets from making it on the list. I do have two people here who would address the details of this. They are experts on the subject, so I would defer to them. [LR122]

SENATOR AGUILAR: Very well. [LR122]

SENATOR AVERY: Thank you [LR122]

SENATOR AGUILAR: Thank you, Senator Avery. Welcome. [LR122]

COLONEL RICHARD EVANS: (Exhibit 2) Thank you, Senator. Good afternoon, Chairman Aguilar and members of the Committee. I am Colonel Rick Evans, Richard Evans, E-v-a-n-s, Commander of the Air National Guard's 155th Refueling Wing, based at the Lincoln Municipal Airport. And today I'm appearing in front of you in my official capacity as a military officer with the permission of the Adjutant General. And I'm pleased to offer testimony today in relation to the subject that Senator Avery just talked to you about and specifically working to help you understand the Defense Base Realignment and Closure process, or effectually known as BRAC. And I look forward to watching the debate here in the committee and certainly will look forward to, as a military commander, working with you to preserve our great military heritage in Nebraska and support the troops and airmen we have here in the state. The Department of Defense and BRAC Commission completed the last BRAC round in

2005. And I was part of that process, having served for four months at the National Guard Bureau in Washington, D.C., working on the Air Force portion of the BRAC process. And from that experience I was able to glean substantial insight into the process and selection criteria used in 2005 and also how some of the military installations in Nebraska were looked at and evaluated in that process. In an effort to educate our civilian leaders on the BRAC process, I have also been invited to make presentations with the Nebraska Congressional delegation, and we've done that with all five of our members and their staffs over the last couple years. I've also appeared in front of the Omaha Chamber of Commerce and the STRATCOM Consultation Committee to discuss the same subject. So I'm pleased to be here today and share some of my insights with you. Attached to my testimony on the back you'll find some detailed information on the BRAC 2005 time line and so I'd like to use that as a lens to kind of guide you through how one of these things would work if it happens again. And I'll focus on hopefully the things that are most important to you. If you look back at BRAC 2005, the legal authorization for that actually occurred in the fiscal year 2002 National Defense Authorization, signed into law by the President in late 2001. That's actually what started the BRAC 2005 process. The last BRAC round prior to that was in 1995, so ten years prior. In November 2002, about a year after the law mandated BRAC 2005, the Secretary of Defense and the Service Chiefs...that's actually when they issued their initial guidance to the services and kicked off the BRAC process. And that process culminated in the Department of Defense some 30 months later in May 2005 with the actual recommendations from the Secretary of Defense to close or realign various installations across the country and actually worldwide. Commanders of our active duty, Guard and Reserve units based in Nebraska participated in that BRAC process by answering questions about and gathering data on their installations. And the data-calls for us began in January of 2004. And once that process began, all military personnel involved in it signed a nondisclosure agreement and cannot share anything related to related to BRAC information they're collecting with anyone outside that data-gathering process. So what that means to you as a committee and to our communities out there, is that once the BRAC process starts, the military leaders

around the state at our bases from Offutt to Lincoln or any place else in the state, cannot actually share any information with you on what's being gathered. The other important thing to note is that BRAC data-calls are a slice in time. So when they ask you a question, the answer is based on what's in effect at that time. And so if something happens later, even before the BRAC list is released, that would not be considered in the process. And so let me give you an example of that that just kind of puts it in perspective for you. If you had an air base that had six parking stalls for large aircraft, and the BRAC criteria came out and said eight aircraft stalls is what the standard is for a given base out there, obviously that base would be at a disadvantage in the grading process, because it only has room for six. And they want to base eight there. Well, if somebody, a community, the state, anybody came in and said, well, I'd like to go ahead and put the pavement down to add those two stalls to your base, to kind of help us position that base for future missions in there, you could do that. But what you need to understand is that would need to be done before the BRAC process, the data-collection process ever started. So on the case of BRAC 2005 that's a year and a half prior to the list ever coming out. So that action is a preemptive action, and that is what Senator Avery referred to as it's not a problem yet, but once it becomes a problem it's too late to act on it. And many states learned that lesson in the BRAC 2005 process. Another concept I'd like to highlight for you today is the opportunities that go along with BRAC, because it's not just threats. Most communities look at if you're going to close their base it affects their jobs, it affects the economy out there, but a lot of communities also looked at it as an opportunity to enhance their base and enhance the missions that are out there in that area. And so many local governments we're seeing out there today are working with their Congressional delegations, their local military leaders to improve their bases, generate extra capacity, and enact military-friendly legislation at the state and local level. And in many cases these efforts have paid off handsomely in the BRAC process and also outside the BRAC process. As you know, the military is always going to looking to bed down new missions and to move existing missions to places where the costs are the least and the greatest chance for success in the mission is there. So having a strong process in place to stay connected to the military bases in the state

provides a good start to that. And beyond that there is also marketing that has to occur, because the military and civilian decision-makers involved in BRAC or other force structure changes out there need to know the advantages to keeping missions in that base or adding new missions there and looking at the capabilities of that particular installation. And we're seeing more of this type of thinking across the military, probably based on the BRAC rounds we've gone through over the last 20 years that date to the late 1980s. And communities around the nation are now offering to buy land to expand bases and even build new buildings on military bases in return for a new mission coming to the base or a promise to keep an existing mission at that base. This environment is what our military bases in Nebraska are competing against and something that this committee and other elected leaders and our community groups around the state need to understand. It is a competition for the limited number of missions that the Department of Defense has. So so far I've talked to you a little bit about the BRAC process, but one thing that you need to remember is the BRAC process does allow communities an opportunity to input into the hearing process. But that's after the recommendations are actually made by the Secretary of Defense. And so if you have a base on the list, as Senator Avery noted, it's an uphill battle to get it removed. What you need to understand is that most negative military changes that have occurred in Nebraska over the last couple decades though are not related to BRAC actions. We've had very few actual BRAC recommendations that have gone into effect for Nebraska and been approved. And as an example of that, and I'll leave a copy of this study with you, a 2005 study by the Northeast-Midwest Institute indicated from 1987 to 2002 the total number of Department of Defense personnel--that's active duty, Guard, Reserve, and DOD civilians--actually dropped by 34 percent, from a little over 30,000 to just under 20,000. And that actually placed Nebraska at number 15 in the nation for largest percentage drop of military and civilian personnel supporting Defense Department missions in the state. Over 10,000 DOD personnel were lost from the state, but few, if any were actually related to BRAC recommendations. These changes were related to mission and force structure changes that occur outside of BRAC and in many cases our elected leaders and communities have no input on those decisions. So this is

another example that helps you understand and demonstrates the need for a proactive approach to evaluating and supporting our military installations in the state. And the bottom line is, if we wait to the next BRAC to start a...to initiate a start your local..."support your local military base campaign," you're probably to late, as Senator Avery mentioned. So let me give you four real quick examples from BRAC 2005 that should interest you and offer some lessons for the future. The only 2005 BRAC action that actually affected Offutt Air Force Base and was approved in the state was the closure of the Defense Finance and Accounting Service at that facility. It resulted in the loss of about 300 white-collar Department of Defense civilian positions from the base in the Omaha area. The community was offered the opportunity to comment on this action at a regional BRAC hearing, and no one appeared to oppose or even comment on the proposed action from the state. And of course that went forward and it was in the final recommendation and it's being implemented now. Other similar proposals though, in the same organization, the Defense Finance and Accounting Service--because they have many operating locations around the country and are looking to consolidate, I think, about 20 down to three--communities did appear and oppose those and offered facts in opposition to those. And several of them were successful in getting their names removed from that and even growing their presence. So the lesson learned for us from that is that if your base comes out on the BRAC list, the fight is not over yet. And communities should exercise the option to make inputs into the BRAC process even if their name comes out on the list. Another example that I would offer to you, and I'll leave this scenario with you, is from 2005 and involves the Nebraska Air National Guard, my unit here at Lincoln. Although there are no actions in the BRAC report or in the Secretary of Defense recommendation affecting the Air Guard, we discovered after the fact that we were very fortunate. In fact, Air Force Scenario S-425 was debated and tentatively approved in early 2005 for inclusion in the Department of Defense's BRAC recommendation. This scenario closed the Air Guard facility at the Lincoln Airport, took all of our nine KC-135 aircraft, gave them to other states, and moved all of the Air National Guard personnel assigned to Lincoln, over 900, to Offutt Air Force Base to share in the active duty 55th Wing's mission there. Had that recommendation made it on

the final list it would have resulted in the Air Guard having no aircraft and over 900 personnel moving from Lincoln to Omaha. Fortunately for us, that decision in that scenario was reversed in 2005, only two months before the BRAC list came up. We don't know why that decision was reversed, but it certainly has raised our awareness on the Air National Guard side. And so what we're doing now on the Air National Guard side is taking a look at our mission situation. And small installations like ours are highly vulnerable in these processes, especially in the Air Force where they like to consolidate in mega-bases. And Offutt is a mega-base, make no mistake about that. So we also recognized the aircraft in question that we have out at the base here in Lincoln are 40 years old already. And so that forces us to look down the road and say, what's next for us? And so we are looking to partner with our state and communities in the state here, side-by-side with us, and seek a long-term vision for the future of the Air National Guard. Now by contrast, the Army Guard in this state offers a positive example from BRAC 2005. BRAC directed the closure of a number of Army Guard and Reserve armories around the state. In most cases, however, the Army proposed to renovate an existing facility or build a completely new facility to consolidate Guard and Reserve units to save infrastructure and reduce costs. BRAC 2005 will ultimately lead to new or updated Guard facilities in Hastings, Kearney, Beatrice, Columbus, and McCook. The Adjutant General was consulted and had inputs on all those moves. And this is an example that shows you when the active-duty military comes to us and works with our state leadership, good things can happen for the military and our communities. The final example I'll offer to you today also goes back to Offutt Air Force Base. And while I already discussed with you the only action that actually affected Offutt finally was the DFAS action, we did discover after the fact that Offutt was involved in a lot of discussions at the BRAC level, and many of them were substantial. And had they been approved, would have resulted in huge gains of new missions and personnel to Offutt Air Force Base and the state. For example, one scenario they evaluated proposed moving U.S. Transportation Command, the Air Force's Air Mobility Command, a active duty Airlift Wing and a Reserve Airlift Wing from Scott Air Force Base, Illinois, to Offutt Air Force Base. This change would have resulted in several thousand new jobs, more

aircraft, and two new headquarters organizations coming to Offutt. Now the Department of Defense did not adopt that scenario, primarily because of the cost of building new facilities there to bed down that type of an operation, despite Offutt ranking well ahead of Scott Air Force Base in terms of hosting a major administrative headquarters. And I believe Offutt is number four on the list out of 300-plus bases worldwide to host those types of missions. Scott Air Force Base is in the eighties. But they did not make that move. Now what these examples should tell you is that Offutt Air Force Base certainly has potential to grow. The only question is, what will it take to lure some of these and important missions to the area? In order to see growth and maybe even stem losses of missions from Offutt and elsewhere around the state, it's going to take bold actions and investment of state and local resources to position our bases and military facilities for future relevance and growth. So what I've tried to offer you today in a fairly short order is a military perspective on some things that I believe the committee may be interested in. One thing for sure, failure to take notice of the changing nature of the military is likely to result in loss of military missions and personnel from our state. As we like to say in the military, "hope is not a good course of action." Offutt Air Force Base, as you know, has an annual economic impact of around $1.6 billion dollars per year to the region. I would suggest to you that it would be unwise to assume Offutt is immune from a BRAC or any other force structure changes. Like the Air Guard in Lincoln, Offutt hosts aircraft that are 40 years old now. How long will those aircraft fly? What missions will replace them? What are we doing today to ensure that Offutt and our other military facilities in the state are still thriving 20 years from now? I believe your active involvement as a legislative body is important to sustaining and potentially even increasing the military presence in Nebraska. And I'd like to offer you just three real quick things to close out my presentation today as we look forward to moving forward in the military issues in the state. First of all, I'd ask that you stay on top of the latest information, while also looking out to the future to identify opportunities for new missions and weaknesses in existing ones. We need to form active partnerships between our elected officials, local communities, and our military bases and their leaders around the state. Finally, we need to be willing to invest local resources and enact legislation to keep our existing military

facilities viable for their current missions and poised to attract new missions to the state. I thank you for the opportunity to appear and testify today and I've provided some documents to Senator Avery's staff via e-mail. I'll leave a few more with you. And I'd certainly stand ready to answer any questions you may have. [LR122]

SENATOR AGUILAR: Thank you, Colonel Evans. Any questions for the Colonel? Seeing none, thank you. Next testifier, please. [LR122]

JOHN WOOD: Good afternoon. My name is John Wood, I'm the executive director for the Lincoln Airport Authority and I'm also the Chairman of the Military Affairs Committee for the Lincoln Chamber of Commerce. It's late, it's hot, and I'll just be very brief, because I think between Senator Avery's memorandum to you and the Colonel's brief, a lot of things I would do would just repeat both the dangers and the opportunities that might exist. I would encourage you to begin to think of the military facilities in Nebraska like you would any other employer, rather than as the military they are. The Colonel said it best, that you can't...there's no guarantee, just because the base has always been there doesn't mean it will always be there. If we look at it as another employer and what can we do perhaps with infrastructure, perhaps with other actions to keep that employer in the state, in the community, I think those are the kinds of things that we need to look at. And obviously there may be opportunities to grow that employment base, just like there would be for a major company: you know, a Kawasaki or a First Data Resources that wants to grow or bring jobs to Nebraska. So I would encourage you to look at it in that respect. Clearly here in Lincoln we're concerned about the Air National Guard facility and would like to see it be here for another 20 or 30 years, and what new missions might come along that could strengthen it, and those other things. Having some resources and some help and some insight at the state level, I think, would be a great help going forward. BRAC does not come at set intervals, it's not like every five years. It could be two years or it could be ten years. Congress and the DOD determine when they're ready for another round of BRAC. If the next round of BRAC is in 2010 then they'll start looking at lists in 2009 and, you know, it's not too early to get started to

think about these things, because the lead times are quite long. I'd be happy to answer any questions also. [LR122]

SENATOR AGUILAR: Any questions? Senator Avery. [LR122]

SENATOR AVERY: I don't want to keep us here any longer, but I just wanted to ask, John, would you comment on the levy issue? [LR122]

JOHN WOOD: Oh, sure, I can go into that. Here's an example: at the Lincoln Airport we inherited a levy when the Lincoln Air Force Base was here that protects the southern portion of the airport runway system from the 100-year flood plain. Recently FEMA, perhaps as a result of Hurricane Katrina, I'm not sure, reevaluated levies nationwide, and in the course of that evaluation the levy that we were left with was found to not meet current standards. Basically it's not high enough. The levy was built to standards in the 1950s, which said if the 100-year flood plain is here the levy needs to be there. And today they want three feet more levy than the flood plain, so it's a little short. So it will be decommissioned or deaccredited, whatever the case is, by FEMA. When that happens a majority of the Air National Guard Base falls into the 100-year flood plain. It seems to us that if we can't get that corrected, that becomes certainly a negative in future base evaluations, and perhaps very low-hanging fruit. Why go through all the other evaluations when you can just say, it's in a 100-year flood plain, let's move those assets somewhere else. We're working locally at the Airport and the city and the NRD and the Guard to see what kind of a project we might be able to put together to restore that flood plain protection and those sorts of things. And we're just getting started in that effort. Right now the hydraulic engineers are looking at all of the feasibilities. So it's a long way from moving any dirt. But there again, that's an example of the kind of thing that can be going on at any base, you know, across the state, where some help, expertise, perhaps resources at the state level might help in order to get that project done. [LR122]

SENATOR AGUILAR: Thank you. [LR122]

JOHN WOOD: Anything else? Thank you very much. [LR122]

SENATOR AGUILAR: Thank you. And I'll just add as a comment that, I'll add as a comment that as someone who has a, you know, military facility in their district, in their community, that I come from, would concur with the economic developmental potential that comes with those bases. And we do need to do all we can do to keep them open. I appreciate it. Thank you. And that closes...are there any other testifiers? Seeing none, that closes the hearing on LR122. Thank you all for being here today. We are adjourned. [LR122]