

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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[LB869 LB884 LB962 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 13, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB884, LB962, LB869, and gubernatorial appointments. Senators present: Ray Aguilar, Chairperson; Kent Rogert, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Scott Lautenbaugh; and Rich Pahls. Senators absent: None. []

SENATOR AGUILAR: Welcome everyone to the Government, Military and Veterans Affairs Committee. I'm going to go ahead and get started here because right off the bat we have a phone interview we have to take care of, so timing is important there. On my far right: Senator Scott Lautenbaugh of Omaha; on my immediate right will be Christy Abraham our legal counsel; I'm Senator Ray Aguilar from Grand Island, the Chair of the committee; my left is Sherry Shaffer, the committee clerk; next to Sherry is Senator Mike Friend of Omaha; Senator Greg Adams of York; and Senator Bill Avery of Lincoln. Our pages today are Ashley McDonald of Rockville, Nebraska, Courtney Ruwe of Herman, Nebraska. Bills will be taken up in the following order: LB884, LB962, and LB869. Sign-in sheets are at both entrances. Sign in only if you're going to testify, and then put the sheet in the box up here on this table. If you're not going to testify but would like to be on the record either as a proponent or an opponent, there's another sheet you can fill out. These are on the tables near the entrances. Print your name and indicate who you are representing. Before testifying, please spell your name for the record. Introducers will make an initial statement, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for introducing senators only. Listen carefully and try not to be repetitive. If you have a prepared statement or exhibit, give it to the page and they will distribute it. Please turn off all cell phones and pagers at this time. We have been joined by Senator Greg Adams of York, Senator Russ Karpisek of Wilber. Okay, we're going to go ahead and get started. First up is a gubernatorial appointment. Our first person is Mark Graf who has been appointed to the State Emergency Response Commission. He is a new appointment and I would ask Mark--I think he's on the phone now--if he would tell us a little bit about himself, give us kind of a brief history and we'll go from there. []

MARK GRAF: (Exhibit 1) Yes, I'd like to thank the committee for allowing me to do this by phone as I am out of state today. I've served emergency services for 18 years as a volunteer fireman, EMS. Currently, I work for public health as emergency response coordinator of southwest Nebraska. I have served as a local public official as a council member for the city of Arapahoe, and then later served a term as mayor of the city of Arapahoe. I think all these give me opportunity to help do planning and education for how can we better prepare ourselves in case disasters, either man-made or natural.  
[CONFIRMATION]

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SENATOR AGUILAR: Thank you, Mark. Would there be any questions from the committee for Mr. Graf? Mark, what would you view as your biggest challenge as moving into this new position? [CONFIRMATION]

MARK GRAF: Being able to relay information from the western part of the state to the committee to help represent that and how local government fits into the State Emergency Response Commission and give those opinions at times. [CONFIRMATION]

SENATOR AGUILAR: Thank you. Are there any further questions from the committee? Senator Avery. [CONFIRMATION]

SENATOR AVERY: This is Senator Avery from Lincoln. Mark, is your agency or this commission, is it similar to FEMA? [CONFIRMATION]

MARK GRAF: No. I work for local public health, Southwest Nebraska Public Health. I was put on as a local governed appointee because I have served as a city government representative on the council and as mayor in my previous. [CONFIRMATION]

SENATOR AVERY: Maybe you've misunderstood me. The commission to which you are being appointed. Is the role and mission of that commission similar to FEMA? [CONFIRMATION]

MARK GRAF: We oversee the local exercise and planning committees across the state. We do planning for hazards out across the state and how responses can be done and planned for that in advance. [CONFIRMATION]

SENATOR AVERY: So there is some similarity to the Federal Emergency Management Agency? [CONFIRMATION]

MARK GRAF: We work with NEMA on at Nebraska Emergency Management Agency, not so much on the federal side of it though. [CONFIRMATION]

SENATOR AVERY: So how does the Emergency Response Commission differ than from NEMA? [CONFIRMATION]

MARK GRAF: NEMA is part of a group but it also takes in State Patrol, Fire Marshal...trying to think, remember who else was on that group...public health is on it. The commission is a representative of all the different players that could be involved in a disaster. Whereas NEMA just represents the emergency management side of it. [CONFIRMATION]

SENATOR AVERY: Thank you, Mark. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature  
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February 13, 2008

---

SENATOR AGUILAR: Further questions from the committee? Seeing none, Mark, I think we're wrapped up with you. Thank you for calling in today, appreciate you taking the time. [CONFIRMATION]

MARK GRAF: Thank you. [CONFIRMATION]

SENATOR AGUILAR: Is there anyone in the audience who would care to testify as a proponent for this appointment? As an opponent? Or a neutral testimony? Seeing none, that closes the hearing on Mark Graf. I would like to have Keith Deiml come up, please. Welcome, Keith. Thank you for being here today. [CONFIRMATION]

KEITH DEIML: (Exhibit 1) Thank you, Senator. [CONFIRMATION]

SENATOR AGUILAR: Would you just want to start off just telling us a little bit about yourself and I see you're being...this is a reappointment in your case, right?  
[CONFIRMATION]

KEITH DEIML: Yes it is. I've taught adult education for 28 years. I'm a certified emergency manager through NEMA. I taught emergency management at the college level. I'm an EMT, an EMT instructor. I have taught hazardous material instruction, education, and I currently serve as a program manager for the eastern Nebraska CERT, Community Emergency Response Team. We have 1,000 members that are trained citizens within the five eastern counties to respond in case of an emergency.  
[CONFIRMATION]

SENATOR AGUILAR: Thank you. Are there questions for Mr. Deiml? Senator Avery.  
[CONFIRMATION]

SENATOR AVERY: Maybe I can ask you the question that I asked Mark. It seems to me that the State Emergency Response Commission might have a different function from NEMA, but I don't know what it would be. [CONFIRMATION]

KEITH DEIML: Senator, it still falls under NEMA. NEMA is our supervisory group. We're interested primarily in hazardous materials, education for responders, the opportunity to train, and we keep an overview of the local emergency planning commissions which are in each of the counties, and those are the folks that actually go out to hazard material locations, manufacturers and in some way keep tabs on what they're doing and making sure that they follow the rules. They have no legislative or legal authority, but they are the depository for things such as tier two reports which are the reports for hazardous materials. So it is similar but more of a specific response or need. [CONFIRMATION]

SENATOR AVERY: I see you have a lot of course work with FEMA, Chicago State

Transcript Prepared By the Clerk of the Legislature  
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Government, Military and Veterans Affairs Committee  
February 13, 2008

---

University. It seems like you've been in this field a long time. [CONFIRMATION]

KEITH DEIML: About 15 years now. [CONFIRMATION]

SENATOR AVERY: I have no more questions. [CONFIRMATION]

SENATOR AGUILAR: Further questions for Mr. Deiml? Senator Adams.  
[CONFIRMATION]

SENATOR ADAMS: In the time that I was mayor in York, one of my biggest concerns was that we would have a HazMat problem out on the interstate. We could not afford--in the city of York--to train and suit and equip a full-time fire department that we had for that purpose, hence I kept my fingers crossed. So what do you see as the role of this commission in assisting communities like ours? [CONFIRMATION]

KEITH DEIML: There has been money, federal money and state money, that has been directed towards what was referred to as MOU cities, memorandum of understanding cities, to increase their training and ability to respond to such incidences. Not only do you have transportation issues today, we also have the issues of the ethanol plants which are gaining in our community often. So there is special moneys out there and there is an attempt to better equip and better train these individuals. The majority of the fire departments in the state are volunteer, so we're trying to as best we can to prepare them and train them if something were to happen. But it does happen unfortunately everywhere through our state. [CONFIRMATION]

SENATOR ADAMS: Thank you. [CONFIRMATION]

KEITH DEIML: We save on hazardous materials they're okay as long as they stay where they're supposed to be and don't get out of their containers. [CONFIRMATION]

SENATOR AGUILAR: Thank you. Further questions for Mr. Deiml? Seeing none, thank you for coming down today, taking the time. [CONFIRMATION]

KEITH DEIML: Thank you for the opportunity. [CONFIRMATION]

SENATOR AGUILAR: Is there anyone who would testify as a proponent for this appointment? Is there anyone who would testify as an opponent? Neutral testimony? Seeing none, that closes the hearing on Keith Deiml's appointment to the State Emergency Response Commission. We are now ready to open on LB884. Senator Gay approach, please. Welcome. [CONFIRMATION]

SENATOR GAY: (Exhibit 1) Thank you, Senator Aguilar and members of the committee. For the record, my name is Tim Gay, senator from District 14, here today to

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

introduce LB884 which would allow the Administrative Services Department to enter into an agreement with the public and private entities to establish an employees health and wellness program for state employees. I believe this bill...wellness programs are becoming more and more prevalent in different private industries and even public industries and I think this is an opportunity where we can kind of look into this issue. There will be opposition of course on some...on most bills there is. But I think this is a little bit forward thinking on how to approach rising insurance cost and what's happening now is without controlling what you're doing in the marketplace, these costs are going to continue to increase due to most of the cost or...because of obviously when you use the part of the insurance, your premiums are going to go up. So by having a wellness program and getting ahead of the curve and helping control some of these costs, you're going to get lower premiums. So studies have been done that show some of the returns on these things are \$3.50 to each \$1 spent on reduced absenteeism and healthcare related cost, and that comes from the Partners for Prevention, a Washington, D.C., firm. But if you take that on the premiums we're paying, we're talking millions of dollars possibly in savings, not just on the cost of the policies, but the cost of having healthier employees, people at work longer, just getting some more productivity. The one thing here that I think...and I'll speak on personal terms, we implemented this just this year, a wellness program where I work in the industry and it's been not very intrusive at all. You volunteer to do this and by doing that, I cut my premiums in half, quite honestly. So there's some very good benefits out there. It was my choice to do this. Others who didn't want to do it, still had a different premium, they're paying a little higher premium but there's choices involved in this. So I've been a believer in it on a personal basis as well. Senator, I do have a handout here. I'll give it to your clerk. This shows some of the rising cost of insurance premiums that we're paying, and this chart probably isn't a whole lot different than a lot of health charts you're going to see when it comes to employee cost of health insurance going up. The state right now pays 79 percent of a premium, the employee pays 21 percent is the way I understand it. By reducing the amount of the overall premiums, not only will the state save money but the employees will save money. So if you have...if you wanted to participate in this program, let's say you said, why, yeah, I want to do that. An overall lowering of health insurance cost is putting more money in the pocket of the employee, plus they choose to get...you know, whatever the case may be. It may be they could be on a wellness program where they're checking your blood pressure, your triglycerides, some of these technical things. When I did it, they took a little blood and they give you your counts of high cholesterol and some of these things, a workout program. But these things can be very involved or not so much involved. What this would do would be...and I don't want to get in too much, but you can create these programs many different ways to suite what you think might best fit your needs. And there's other examples around the country of other states that are doing this around us, and I'm just going to...bear with me one minute. When we look at other states that are doing this--I'm just going to name a few and I can get you details--is Oklahoma I know is doing it, Kansas...let me look, Senator, so I don't misspeak...Colorado, Iowa, Kansas, Missouri, Oklahoma, and South Dakota. So our

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

neighbors around us are implementing these programs and they're all different. What the idea would be, would be the Department of Administrative Services would go out and contract with somebody to provide these services. So you'd go out for an RFP, they would come back and say, well, here's what we could do for you. They then would go negotiate and see if the unions would want to participate in this. So it's not a done deal just because you go out with an RFP, there's still other processes involved along the way. But like I say, we see this everyday what's going on, if you just look in the hallway, how many people at lunch time are taking advantage...they are doing wellness right there in a way just walking around the Capitol and getting their exercise, doing things like that. This would expand that to those people who want to participate. There may be some concern I've heard that, well, what if you're handicap and what if I can't do this because I've already got health concerns? Well, the ADA--and I'm sure this will be covered by another supporter here--but there are certain options that you have to follow, ADA compliance and HIPAA regulations. There are some things out there, of course, you can't just go and do your own thing. There's federal laws that cover discriminatory practices, anything like that. So obviously any RFP that we would look at would be covering our bases there so we're not forcing anyone into doing this. I'll just say right now, a wellness program to encourage state employees to take a more active role and give them the tools necessary to slow the rate of health care usage. A good example of this is Alegent. You're seeing some of...I think...I've watched...followed them through my service in the Health and Human Services Committee and I've been watching what they're doing to create a healthier work environment for their employees and looking at...thinking outside the box a little bit when we look at healthcare. And by doing that, giving their employees a better work environment and more options to participate, they're doing a lot of things to control costs and it's been exciting to watch that. And what I'm saying here, I'm just going to throw something out, though it could happen, would be held the assessment as wellness screenings, telephone coaching which we have, printing on-line you can log on and check your account and see how you're doing, measurement, some of those things. But a lot of these things when they set up are done very well and they're very personalized to the user. So I've just had a lot of success with it personally. Like I say, I'm a believer in these programs. I think if there's anything, we owe it to the taxpayers, but also I think this is a benefit to the employees. When it's all said and done, I think this is a nice benefit to those that want to be involved and I'm interested in hearing--I'm going to stick around and I will close--in hearing the discussion as well. And if there's any concerns, I think this could be worked out. Like I say, this would allow some flexibility here I think. So we will hear what's happening and I'd be happy to answer any questions. Thanks. [LB884]

SENATOR AGUILAR: Thank you, Senator Gay. Senator Friend. [LB884]

SENATOR FRIEND: Thank you, Mr. Chairman. Senator, is there a lot of empirical data out there that shows some benchmarks or results from some of those states where you...and I know you alluded to that a little bit, but I mean, it's not just a whim and it's

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Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

---

not just something that's good for everybody, because we know it would be good. Are there benchmarks and are there results that others will show or that...you know. [LB884]

SENATOR GAY: Senator, I don't have them right here in front of me that I can just spout something off. [LB884]

SENATOR FRIEND: Yeah. [LB884]

SENATOR GAY: Yeah, the data we had...my legislative assistant was helping me gather the data. But it's out there. Yeah, if you go on-line and we can get you some. I'll be more than happy to get you some... [LB884]

SENATOR FRIEND: I was just curious. I don't think it's... [LB884]

SENATOR GAY: ...of these other states and maybe the proponents behind me might have some of that information. [LB884]

SENATOR FRIEND: Good. Thanks. [LB884]

SENATOR GAY: Thank you. [LB884]

SENATOR AGUILAR: Senator Adams. [LB884]

SENATOR ADAMS: Senator Gay, as you were putting this together--and I like the concept--did you give any consideration to how are we going to decide what the wellness program is going to be and who's going to make that choice and what's an acceptable program and what isn't and what fits this person and that person? Can you respond to that in any way? [LB884]

SENATOR GAY: Yeah, Senator, I'll be real up-front with you. I didn't put this together. I was brought this bill. I think the Governor is looking into these issues and it's an opportunity down the road. I have no...now, I did look into it and I've more than willingly wanted to do this because, like I said, the personal experiences. They can be done many different ways of how you do it, but I think what we're trying to do here is to get to the step to say, can we even look into it? Until we get this far, I'm not even sure we can look into this. So by looking into it and going through the RFP and you've been involved in many of those processes, when you put it out you would narrow it down. And I assume that would be done and I would hope that would be done with some input from the unions and those affected, otherwise you wouldn't get a very good program. So you want to talk to your employees and say, well, what can we do here? And then they're going to have to discuss this in negotiations, which none of us have any say in. I think it's a tool. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

SENATOR ADAMS: So it would be DAS that would make the final call? [LB884]

SENATOR GAY: Yeah, the Department of Administrative Services and of course we have no say in any of those contracts or negotiations. I think this is a tool that, quite honestly, would help everyone; it helps the taxpayers; it helps the employee, and on. So if you look at that, I think it's a win-win situation. [LB884]

SENATOR ADAMS: Thank you. [LB884]

SENATOR AGUILAR: Before the next question, I'll announce that we've been joined by Senator Pahls from Omaha on my left, and Senator Lautenbaugh on the far right as well from Omaha. Senator Gay...he has to wait (laughter). [LB884]

SENATOR ROBERT: Oh, I don't count. I just got here. [LB884]

SENATOR AGUILAR: And Senator Rogert from Tekamah. Senator Gay, what about a person with, say for instance, a physical disability unable to participate in the wellness program? Are they going to be penalized or not allowed and discounted, whatever is available to them? [LB884]

SENATOR GAY: No, not at all and there are certain...there's laws in place that you can't do that, and I think that question has been asked before. But right here, HIPAA has nondiscrimination rules which do allow an employer to offer discounts based on health factors, but only if it meets five criteria. And there's criteria out there that says that the ADA prohibits discrimination and employment against any individual with disability. And this does mean the wellness programs, unless you hear something different. That's the information I got. So no, and of course we don't want to...if you're drafting this and like I say, I see this as an inclusionary thing, not an exclusionary. If you're drafting it, we wouldn't want to do that and if we're going to move forward, who would want that. So we don't want to discriminate against anybody. But some of those people...let's say if you have a heart condition and they want to help you out, I assume the employee would want to be...hey, here, eat a little better. You can't shove these down their throat and I don't think that's what this does. But we can give them guidelines to live a better life and help prevent some of the statistics...I think eight out of the nine primary diseases that are out there are preventable by changing actions and doing those things now. Of course to have an incentive program, you have to have some incentive. So there has to be a willingness of the employee to save a little bit of money along the way too and that's why this is...you'll hear some argument, that's where this rub comes. They say, well, we'd like to do it but we don't want to pay. The savings would come later. [LB884]

SENATOR AGUILAR: And by changing actions, you mean like not being around secondhand smoke (laugh)? Next question? Senator Rogert. [LB884]



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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

SENATOR ROBERT: Senator Gay, I have a couple of questions, and I am one of the biggest proponents of health and welfare and exercise and wellness programs. I have a few concerns just in the green copy in the way it's written. Say I've got a guy in my district lives out in the rural area around Lyons, Nebraska, works for the Department of Roads, 60 years old, doesn't own a computer, doesn't live anywhere near a facility that has some sort of...you know, no exercise facility or anything like that. What happens or what will happen...because in here I don't see that there's really an incentive the way it's written. I just see that if they participate in a wellness program, then they get their 79 percent taken care of and they pay 21 percent. If they don't do that, then it almost looks as if they don't get health insurance or we're going to allow for something else. How are we going to address this situation? I think there's...obviously it's not a large percentage of the state workers, but there are quite a few of the folks live out in rural areas that don't have the opportunities to do wellness program except for something at home. [LB884]

SENATOR GAY: Yeah, well, that's a good question. That's one where when you're putting out your request for proposal we'd need to look at. So that's a great question. But on some of these though, like on mine, they call you up. I mean they'll call you up and answer a few questions. My son has asthma, you know, and so we asked about that. They'll call you up. I don't think you need to be logging on the computer so much. But what you do...you're bringing up a great question and that's why I say this has to be an inclusionary thing. I think we need to address those and say, well, what about this? What about that? And then when you're designing your RFP, I think that would address that. That person being penalized now...if I just flat out said I don't want to do anything. Well then, yeah, their premium could change probably. But the incentive comes when I do want to do something and maybe that person, you know, maybe it could be a walking thing, maybe it's a blood test once a year, maybe it's...I don't know exactly. And maybe somebody behind me will answer that. I don't want to be evasive to the question, but I think in my head that's how this thing would work. [LB884]

SENATOR ROBERT: Well and I, you know, don't mean to say that they wouldn't want to try to do something, but obviously they won't have the same opportunities. So yeah, I guess we would have to create a large encompassing, you know, a staircase type of a program I guess in my opinion, where some people could participate in one way and others could participate in other ways. [LB884]

SENATOR GAY: Yeah, and that's a very good point you make with the diversity and the largeness of the state, absolutely. But like I say, we wouldn't be writing this, but that's a great point to look at. [LB884]

SENATOR ROBERT: Thanks. [LB884]

SENATOR AGUILAR: Senator Avery. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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SENATOR AVERY: Thank you, Mr. Chair. Welcome, Senator Gay. Could you envision this program leading to the state building or creating some fitness center activities and facilities for employees at the state house and here, perhaps in the basement? We could use, I think, a facility that would give us access to treadmills, Stairmasters, weights. I mean, I'm not talking about a huge investment, but if you're going to do this and meet the concern that Senator Rogert raised, it seems to me that the state might need to provide some facilities in the state office building at minimum for people who would participate in the program. [LB884]

SENATOR GAY: Well, I suppose. You know, can I envision it? Sure. I'd love to have that too, but there's a certain...Senator Rogert brought up a great point too and this one quite honestly we assume to look into. But let's say I could envision this too that there's gyms popping up all around the state that maybe we negotiate discounts with some of these places and we have a state discount like we do on phone service and other things like that. We have a big purchasing pool there. I assume some gyms would love to say, hey, yeah, we'll take a state employee and give them X amount discount and I'm just throwing things out there too. [LB884]

SENATOR AVERY: No, it's a good idea actually. Yeah. [LB884]

SENATOR GAY: I'm envisioning like you are, but I think it's an open...just great opportunity is out there and maybe there will be some, again, after me there might be some better understanding of exactly how the RFP would be. But I think that would be a great thing to say, hey, get a 15 to 20 percent discount on a gym. You've got to prove you're paying the dues obviously. [LB884]

SENATOR AVERY: I see that Mr. Castillo is here. I presume he's coming up to testify. [LB884]

SENATOR GAY: Yes. [LB884]

SENATOR AVERY: I have some other questions. I'll save them for him. [LB884]

SENATOR GAY: Yes, sir. [LB884]

SENATOR AGUILAR: Senator Karpisek. [LB884]

SENATOR KARPISEK: Thank you, Senator Aguilar. Senator Gay, for the record, I didn't start the smoking thing today...this afternoon but... [LB884]

SENATOR GAY: Neither did I. [LB884]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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SENATOR KARPISEK: And you should stay away from it (laugh). That was a good point, Senator Aguilar, stay away. I was just going to tell Senator Avery, he's got a house pretty close. He could probably put some of the Stairmaster in his house and we could all go over there. My question is I see this as disincentive to the people who do not want to do this, rather than an incentive for those that do because it's still the same amount, 21 percent that we have now. [LB884]

SENATOR GAY: Well, yeah, you know, you could look at it that way, I guess. If you look at this way though, if you have an overall lower premiums because of this for everybody, even if you weren't participating you're still getting...you get a benefit off some of the people that may be because the overall premium dollar would be cheaper. I mean, you're right. Are you going to get 100 percent in these things? No. I think the 70 percent is a pretty good number and that's probably realistic. But overall if you can take that line and start moving it down, everybody...it's a win-win then. I'd love to see them benefit just doing it. But you're right, some people won't. [LB884]

SENATOR KARPISEK: I would like it a lot better if there was an incentive and not a disincentive for those that don't want to, which brings me to my other point and not that I usually maybe agree with fiscal notes, but it says that it would cost the state more money. Is that because they just see health insurance going up or, I mean, why could this cost more? [LB884]

SENATOR GAY: Well, yeah, the fiscal note is what it is now to implement it and that's not taking into even if it is done, what the savings may be. You're not looking at the total premium dollar. That's the cost of implementing it on like, I think, there's 20,000 employees. I think right now we have 14,000 employees that are in one of the health plans. So that's a lot of employees so it will cost a lot. But think of the savings though long term, and we don't have that yet, Senator. Yeah, we don't have that yet. [LB884]

SENATOR KARPISEK: And that's what I just wanted to ask is that's just implementation. All right. [LB884]

SENATOR GAY: Yeah, I saw that too. [LB884]

SENATOR KARPISEK: Thank you, Senator Gay. Thank you Senator Aguilar. [LB884]

SENATOR GAY: Senator Rogert, followed by Senator Pahls. [LB884]

SENATOR ROGERT: I have just a follow up on what your conversation was and I'm going to ask it of you, maybe Dr. Schaefer or Mr. Castillo can answer it, but I may not be here because I have another bill coming up. Are you saying that the way that the statues read today, the state of Nebraska is not able to enter into bargain agreements with local exercise facilities or do you know? [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

SENATOR GAY: I don't know. [LB884]

SENATOR ROBERT: Okay and maybe somebody else can...because if this allows us to do something like that we aren't able to do now, that's a good thing. [LB884]

SENATOR GAY: And, Senator, maybe we can and if we do, I'd like to take advantage of it but so would you, I know. [LB884]

SENATOR ROBERT: Correct. Save me \$20 a month. Thank you. [LB884]

SENATOR AGUILAR: Senator Pahls. [LB884]

SENATOR PAHLS: Senator, and I'll just may not expect you to answer this, but I at least want...with one of the people who will be a proponent, I'm assuming. I am a little bit concerned and maybe it's because I don't understand the fiscal note because you sit on the floor many times and have been very critical of some of our expenditures, so I'm assuming that will be explained so I probably will better understand it. [LB884]

SENATOR GAY: Yeah, you know what. I'm going to take a stab at it and maybe butcher it and be corrected. [LB884]

SENATOR PAHLS: Okay, go ahead. [LB884]

SENATOR GAY: You have to implement it, first of all. The cost of an overall...now the overall cost savings is estimated to be much, much greater than the \$3 million you put into it and I don't want to throw a number out there and maybe they have it, maybe they don't. It's right now to get going to put out the RFPs, \$350,000. Then they're estimating...these are just estimates. It also says this provision will increase cost. The amount of the increase cannot be estimated at this time. We all know how fiscal notes are done and unless you've always had yours working great, but it's somebody's estimate and maybe we can get further. I think, yeah, you've got to put money in to get much larger savings down the road is what's going to happen here. [LB884]

SENATOR PAHLS: Okay. Thank you. [LB884]

SENATOR GAY: Thank you. [LB884]

SENATOR AGUILAR: Further questions? Senator Friend. [LB884]

SENATOR FRIEND: Thank you, Mr. Chairman. One final quick one, I know you're not under oath, but have you ever done HGH or steroids? (Laughter) Wrong hearing, sorry. Don't answer that. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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SENATOR AGUILAR: Further pertinent questions? Seeing none, thank you, Senator Gay. Could we have the first proponent come forward? Welcome, Carlos. [LB884]

CARLOS CASTILLO: (Exhibit 2) Good afternoon, Senator Aguilar, members of the Government, Military and Veterans Affairs Committee. My name is Carlos Castillo, spelled C-a-r-l-o-s C-a-s-t-i-l-l-o. I'm the Director of Administrative Services and I'm here today in support of LB884, which Senator Gay introduced at the department's request. LB884 would grant us the ability to offer an incentive attached to participation in a wellness program offered by the state based on the current health insurance premium split. Administrative Services has the responsibility of providing group health coverage for all employees of the state who wish to participate. The group health plans are self-insured, meaning the state and our employees pay the entire cost of medical claims. This year the total projected cost for employee health care is \$173 million and we have seen double digit increases in our medical costs each year for the last several years. The state and our employees are finding it harder and harder to absorb this financial trend. We need to find a way to impact the root cause of these high costs. Every state employee participating in the plans contributes to these costs in one way or another with their medical claims. Many of these are a result of controllable health risk conditions such as smoking, inactivity, high blood pressure, high cholesterol, and obesity. Between 1990 and 2003, obesity among Nebraska adults more than doubled and we are seeing growing incidences of chronic health conditions such as heart failure, diabetes, asthma, and cancer. All of these conditions are currently having or will have a negative impact on our upward cost trend. The private sector and many other governments have embraced wellness as a way to improve the health of their employees, improve workforce productivity, and reduce health insurance costs. The legislation before you will allow the state to provide financial incentives through state premium contribution rates for employees who participate in the state's wellness program integrated into our group health plans. It is well known that wellness programs result in healthier lifestyles. It is also well known that wellness programs take on many different forms depending on the needs of the workforce in question. There are some of us who currently maintain a basically healthy lifestyle. However, there is even a larger group who could use the help with a little motivation. This motivation can take on different forms. It can be providing information with some form of coaching or it can be making sure an individual is seeing his or her doctor on a regular basis. Based on a survey of state employees conducted by HHS, 70 percent of smokers would like to quit. Wellness may provide those individuals the support they need to quit. For some, the financial incentive proposed in LB884 of maintaining the state's contribution to health insurance at 79 percent is enough to propel them to action. We do not know the exact components that will be included in the state's program at this time. With the assistance of a consultant, we need to continue our analysis as to what works best for the state of Nebraska employees. Passing LB884 this session simply gives us the ability to move forward with a financial incentive through state premium contribution rates, for

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

employees who participate in the wellness program, which cannot be implemented until July 1, 2009, at the earliest. The longer we wait to embrace wellness within our health plans for all employees, the longer it will take to slow the increasing cost trend we have recognized in recent years. We currently have about 14,000 state employees enrolled in our health plans. Focusing these individuals on their health and improving just a few lifestyle characteristics will yield many benefits and reduce future cost increases and more importantly, in employee health and happiness as well as reduced absenteeism and increased productivity. Human capital is our most important resource. We need to provide the opportunity for our employees to live better and to work better. It is important to remember that participation in the wellness program is a choice for state employees. All of our surrounding states have already implemented a wellness program of one form or another. This is a high priority for the administration and for my agency. We are asking for your support of this legislation to allow us to extend this financial incentive for a wellness program. It takes a few years before we start seeing results but we must start now. I appreciate the Legislature's interest in the state's healthcare and employee wellness. Wellness truly is a win-win for the state and state employees. I'd be happy to answer any questions. [LB884]

SENATOR AGUILAR: Thank you. Are there questions for Mr. Castillo? Senator Avery. [LB884]

SENATOR AVERY: Welcome. [LB884]

CARLOS CASTILLO: Thank you. [LB884]

SENATOR AVERY: Thank you, Mr. Chair. What would be the consequences for nonparticipants? Would they be required to pay, for example, a greater portion of their premiums? If so, how much? That's not in the bill, is it? [LB884]

CARLOS CASTILLO: No, it's not, and what we would propose is that there would be a premium differential. If you participate, you get to keep what you currently have, which is 79-21, that 79-21 split, and then if you don't, that would be adjusted. Now a lot of that would depend on...we've had some questions about how much would that adjustment actually be. Well, a lot of that's going to depend on obviously plan design, wellness plan design, which we're not to that point yet, participation in the wellness plan. So a lot of those things will have an impact over how big of an differential that will be between that 79-21 and whatever it ultimately ends up being. [LB884]

SENATOR AVERY: So that would be something your agency would determine? [LB884]

CARLOS CASTILLO: Yes. [LB884]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

---

SENATOR AVERY: I presume you have experts on wellness in your department?  
[LB884]

CARLOS CASTILLO: We've got some great consultants. We have a benefits team that manages our benefits on a daily basis. [LB884]

SENATOR AVERY: Give me some examples of what kind of activity would be involved in a wellness program? [LB884]

CARLOS CASTILLO: I think it's important to say it doesn't mean running a six-minute mile. I would say it's everything from coaching, health coaching, which I think Senator Gay mentioned, which is via phone. I think there are plenty of opportunities through technology and computers to do educational sessions. We've been to some facilities that do lunch and learns where employees simply bring a bag lunch over their lunch, you bring a speaker in, and you're educating folks. Through the mail, a lot of insurance companies have mail programs where they're simply corresponding about certain things through the mail. It would be a lot of those things. I don't think it's...I think it's important, like Senator Rogert said, that it's very broad based. I mean, obviously we have a very diverse employee workforce and there needs to be an opportunity for a lot of people to participate in a lot of different ways. And so I don't think it's just about gyms, I think it's about education, interaction with healthcare professionals, all of those sorts of things. [LB884]

SENATOR AVERY: Would you envision, for example, setting goals for people who are overweight saying you have to lose X amount of pounds before you qualify or do you have to be in the program for a while? If you don't lose ten pounds by the end of six months, then you're going to be penalized with higher premiums? [LB884]

CARLOS CASTILLO: I see it more of...and we've looked at a lot of different models that the private sector is using and one of the things that we like--although I think we're still in the gathering stage--is a lot of companies will go in and do a health risk assessment, they bring somebody on site, they're doing a maybe--like Senator Gay mentioned--they're taking some blood, and you're given a score. And I'll use this just to be simple about it, A, B, C, or D; you have to be at least a C, you're over here to qualify for 79-21. That's just one example. I think there are a million different ways you could structure the program, but that's kind of how we see it. Obviously if you make it too complicated, it's very hard to administer. Do I think it's a balance between those two things? [LB884]

SENATOR AVERY: Well, you could have some pretty restrictive rules here and the bill does not specify what they would be or even how they would be derived. But for example, there are ways to calculate body mass... [LB884]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

---

CARLOS CASTILLO: Um-hum. [LB884]

SENATOR AVERY: ...and the amount of fat versus the amount of lean. You could say you've got to be 25 and under in order to qualify, that's a pretty high standard. [LB884]

CARLOS CASTILLO: Yeah, I mean I think...I don't think any of the conversations that I've had, either internally or with the folks that we've met with, have been one that has wanted to be punitive. I mean, it's about cooperation. I think it's about a balance. I mean, I think we want to have a common sense approach. Like I said, I don't think anyone is expecting people to in three month you're going to run a six-minute mile. I don't think that's what it's really about for us. I mean, I think we want to find a common sense approach to slow the growth of our rising costs. [LB884]

SENATOR AVERY: So people could enroll in the program, attend the lunches and listen to the lectures, go in for periodic checkups and counselling probably on what to do and what not to do. They may not see any real results but they could still be participating. [LB884]

CARLOS CASTILLO: Sure. [LB884]

SENATOR AVERY: And therefore qualify for the 79-21 split. [LB884]

CARLOS CASTILLO: Yeah, you have to participate and you have to make sure that you're meeting certain minimum levels to maintain that 79-21 and what those minimum levels are, I think it's a little too soon for us to say. It's important to mention too that we have to negotiate for all of this too. I mean, you know, during the bargaining process so... [LB884]

SENATOR AVERY: With the union. [LB884]

CARLOS CASTILLO: Exactly, so I mean that's a huge, huge piece of all this. So I'd like for you to keep that in mind. The other thing that you mentioned earlier, I think when you asked Senator Gay, is we've had been approached by some folks who have been interested in maybe putting a health clinic on site or a pharmacy on site. We're looking really for an opportunity to coordinate some of that. Those are things that don't really cost us anything that are a great benefit to employees and actually produce savings if employees don't have to go over their lunch hour to get their medication, they can do it in the basement some place because some pharmacy decides it's wise to have a pharmacy on site. That kind of stuff makes sense to us, and so we're kind of looking for the opportunity to do those kinds of things. [LB884]

SENATOR AVERY: If you decide on a fitness center, make it available to all of us, even if we're not participating in your wellness plan because we may not be covered by the



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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state health policy. [LB884]

CARLOS CASTILLO: Good point. [LB884]

SENATOR AGUILAR: Further questions? Senator Rogert. [LB884]

SENATOR ROBERT: Mr. Castillo, this is kind of a three-part question. [LB884]

CARLOS CASTILLO: Sure. [LB884]

SENATOR ROBERT: I'll state them all and you can answer them...answer as you... [LB884]

CARLOS CASTILLO: Okay. [LB884]

SENATOR ROBERT: And I will say that I'm a proponent of the idea. I really am, but this is toward the green copy. [LB884]

CARLOS CASTILLO: Okay. [LB884]

SENATOR ROBERT: And you mentioned it a second ago, do you think this goes outside of the collective bargaining unit ability to maybe, and do you have concerns or should we have concerns about claims of possible discrimination? Don't know, but also if this goes in, this give the DAS authority to set those nonparticipants--for whatever reason--the contribution rates, without being in statute and that I have a problem with. [LB884]

CARLOS CASTILLO: Well, the first two I'm not quite sure I understand so I may have to ask you to clarify. The last one, we have the ability to set premiums now. I mean, so... [LB884]

SENATOR ROBERT: No, you don't, actually we do. It's 79 percent. It says right here. [LB884]

CARLOS CASTILLO: The split is 79-21, but I mean premium rates... [LB884]

SENATOR ROBERT: Yes. [LB884]

CARLOS CASTILLO: ...of what that rate actually ultimately ends up being. I mean we set that rate. Sure, the state's got to pick up 79 percent, but 79 percent of 100 or 79 percent of 200, I mean we currently do that. [LB884]

SENATOR ROBERT: Right, but if this goes in, those nonparticipants...you, as the DAS

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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can say 100-0. [LB884]

CARLOS CASTILLO: Yeah, I mean, I don't think anyone on our side has ever proposed that. [LB884]

SENATOR ROBERT: Not saying they have, but it allows for that. [LB884]

CARLOS CASTILLO: I mean I think it would be...I mean it needs to be common sense and it needs to be fair to folks. But I mean there should be an incentive to participate in wellness. That's all that we're asking for. [LB884]

SENATOR ROBERT: Okay. [LB884]

CARLOS CASTILLO: And again, we would have to bargain. I mean there's still the bargaining process. The discrimination...you want to clarify? I don't think I understood that. [LB884]

SENATOR ROBERT: Well, I think that some folks may say they--and I don't know--they haven't the opportunity or they haven't the ability according to their physical or mental health, whatever it is at the time, that they just can't physically do it. [LB884]

CARLOS CASTILLO: In every wellness program that we've ever reviewed--and we've seen lots of them, from First National Bank, Union Pacific, we've spent the last 12 months looking at wellness plans--there's always a safety valve built in. And actually I think Senator Gay has it right, I think that's a federal law. I mean you can't discriminate that way. [LB884]

SENATOR ROBERT: I would agree. Okay. Thank you. [LB884]

SENATOR AGUILAR: Senator Pahls. [LB884]

SENATOR PAHLS: Thank you, Chairman. Carlos, and this is just for information for myself. If I happen to be an employee of the state and I smoke, are my rates higher? [LB884]

CARLOS CASTILLO: No, well it just depends on how you look at. Yes, you're contributing...that is contributing to our costs of operating our health plan. But at the beginning of open enrollment, we don't ask someone are you a smoker, you're going to pay X dollars more. We don't do that. But clearly those people are contributing by smoking to higher healthcare costs which we all absorb. [LB884]

SENATOR PAHLS: Okay. Thank you. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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CARLOS CASTILLO: And the other thing I would mention is there was a question about the fiscal note, and I have it here but the \$350,000 startup cost would come out of one of our health funds that we currently operate in DAS. It would be a loan from that fund for startup costs. The rest of this expenditures versus revenue is neutral in that the fact that we would be financing the wellness program through those folks that aren't participating. So it's really not costing the state any money. The folks that end up paying for it are those folks that aren't participating, but it's also important to note that those folks that don't participate get the benefits of when we reduce our healthcare costs slowing the growth rate. So they do see some benefit that way. [LB884]

SENATOR PAHLS: Thank you. [LB884]

CARLOS CASTILLO: You bet. [LB884]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LB884]

SENATOR KARPISEK: Thank you, Senator Aguilar. Carlos, reading in here though it says DAS estimates the cost to be \$350,000 for FY '08-'09 and \$3,619,000 for '09-'10. [LB884]

CARLOS CASTILLO: Um-hum. [LB884]

SENATOR KARPISEK: So that's not startup cost then. [LB884]

CARLOS CASTILLO: No. That would be the first full year of a wellness plan which would be offset by the...we would pay for that \$3.6 million through those folks who are not participating in the wellness plan. And we've been pretty conservative, we think, in our estimate of those folks we think are not going to participate. [LB884]

SENATOR KARPISEK: So the people that don't want to do it are going to pay. [LB884]

CARLOS CASTILLO: Are going to pay. [LB884]

SENATOR KARPISEK: Thank you, Senator. [LB884]

SENATOR AGUILAR: Further questions? Senator Avery. [LB884]

SENATOR AVERY: If I understand you right, this \$2.8 million will be paid for by the nonparticipaters. That means that their rates are going to go up to equal whatever it is you need, right? [LB884]

CARLOS CASTILLO: Two point eight? Three point six, you mean? I'm looking at three points. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

SENATOR AVERY: I'm looking at FY '09 and '10, the 2.8. [LB884]

CARLOS CASTILLO: I have 3.6, but okay. I get the gist. [LB884]

SENATOR AVERY: Yeah, the difference. [LB884]

CARLOS CASTILLO: Okay. [LB884]

SENATOR AVERY: And maybe I'm looking at the wrong table. [LB884]

CARLOS CASTILLO: And so the question... [LB884]

SENATOR AVERY: Yeah, 3.6, I'm sorry. [LB884]

CARLOS CASTILLO: What was your question again? [LB884]

SENATOR AVERY: That amount of money will be paid for by the nonparticipants, meaning that their collective premium contribution will have to go up to make up for that amount of money. [LB884]

CARLOS CASTILLO: Exactly. [LB884]

SENATOR AVERY: That could be a lot. That could be a very, very big number for nonparticipants. [LB884]

CARLOS CASTILLO: I think percentage-wise I think it would somewhere between the differential between 79-21 now and whatever that percentage ends up being. I think it would be somewhere between 4 and 8 percent premium differential to pay for the cost of wellness. The other thing to keep in mind is I think health premiums went up 14 percent this year. I don't remember what they went up last year, but for the last three years, it's been double digit increases. I mean if we don't do something, employees need to be prepared for double digit increases in health premiums from now until the foreseeable future. I mean, one year within the last three or four years, premiums went up by 22 percent. So I mean that's what has kind of forced us to have this discussion so that's kind of where we're coming from. [LB884]

SENATOR AVERY: I like the concept. [LB884]

CARLOS CASTILLO: And we're open to... [LB884]

SENATOR AVERY: But the devil's in the details. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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CARLOS CASTILLO: Yeah, I mean we're open to talking to folks and to doing what we need to do to do this because we think it's important. [LB884]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Carlos. [LB884]

CARLOS CASTILLO: Thank you. [LB884]

SENATOR AGUILAR: Next proponent. [LB884]

JOANN SCHAEFER: (Exhibit 3) Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Joann Schaefer, J-o-a-n-n S-c-h-a-e-f-e-r, M.D., Chief Medical Officer and the Director of the Division of Public Health, Department of Health and Human Services. I'm here this afternoon to express my support of LB884. As noted, this bill will encourage state employees to participate in a wellness program offered by the Department of Administrative Services as a part of their health insurance plan. The various programs that we offer to all citizens through our division of public health are based upon the clear evidence that wellness programs lead to better health and reduce the overall cost of healthcare. Many businesses in our state have shown that the return on investment in wellness programs range from \$1 to \$5 all the way to \$1 and to \$12 returning on investment depending on the scope of the program and the overall health of their employees. Regardless of the actual return, in all cases they have shown an immediate reduction in the cost of health insurance while improving the overall health of their employees. This also has resulted in fewer sick days taken and improved attendance overall. For example, this past year this latest N-Lighten Challenge, nearly 150,000 activity points were earned by our employees and over 1,600 pounds were lost. When the leading causes of death are heart disease, stroke, and cancer, you can see we have much work to do. A recent study confirmed that stopping smoking, increasing fruits and vegetables, increasing exercise, and increasing your sleep can also increase your life expectancy by 14 years. These are all pieces of a wellness program. In my personal experience as a practicing physician, I have seen that patients who make steady progressive changes to their diet, exercise habits, and following doctor's recommendations can lead to better health and longer life. The bottom line is that wellness works. Governor Heineman has been very active in promoting a healthier workforce environment, ranging from lunch hour walks with staff to improving the nutritional snacks in our break rooms, to being 1 of only 13 Governors who received a one-time fund from the National Governors Association to build an employee wellness program. This program has clearly shown that very small investments in wellness programs return significant results for state employees who have participated in the effort so far. Just so you know, we had health risk assessment survey with that grant two years ago and then again this last year, and on our first year in doing that we had over 6,000 employees respond to it. We're still crunching the numbers. There was a tremendous amount of data that was gleaned from that, over 1.2 million data pieces, I believe, we analyzed for the first year. And you know, there was a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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lot of information about the overall health in aggregate that we got from the state employees and what they were interested in learning about, the disease issues that they were interested in addressing, and that allowed us to target it very specifically and our wellness program from that NGA grant over this last year. That was just a small baby step of where we really need to go. This bill will offer significant incentive to encourage greater participation in wellness activities. Thank you and I would be happy to answer any questions that you may have. [LB884]

SENATOR AGUILAR: Thank you. Are there questions for the doctor? Senator Rogert. [LB884]

SENATOR ROBERT: Doctor Schaefer, thanks for coming in today, pleasure. Can you elaborate a little more on the grant that we got from the NGA to build employee wellness program, what this does differently from what we have already done? [LB884]

JOANN SCHAEFER: Sure. That was a one-time grant that was given. It was \$100,000 and allowed us to develop the health first assessment that was used to survey the employees, and maybe some of you had taken it when you did your open enrollment for your insurance. But that asked a lot of very specific questions about your health and your health habits. From there we did a certain number of individuals that had some health coaching. We were limited, obviously, by the amount of dollars that we had. We also had the N-Lighten program where we subsidized part of the participation program. We did that for this past fall and we're doing that again currently. We're in our N-Lighten Challenge. Hopefully some of you are in that. So there was that component, and then we did a biometric where we did some lab testing and we did some cooperation with the University of Nebraska across the state doing some educational fitness programs for personal coaching with students that had at least some exercise degrees in physiology to work with employees specifically and some nutritionists and those were a variety of different options. Obviously we couldn't get every employee that wanted to do...you know, we had waiting lists we had...usually when we put out the information and said the first to respond and it was maybe 100 or 200, it would usually fill up within less than 24 hours with people that wanted to have that done. We had people hand deliver, come to our office and hand deliver the information they wanted to get in the program but they couldn't. And they were afraid that the e-mail wouldn't actually get to us fast enough or get opened quick enough so they would hand deliver it to us. So the interest out there was tremendous. [LB884]

SENATOR ROBERT: Okay. Thank you. [LB884]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Dr. Schaefer. [LB884]

JOANN SCHAEFER: Okay, great. Thank you. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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SENATOR AGUILAR: Next proponent. Let's see a show of hand...welcome. [LB884]

THOMAS HANTHORN: (Exhibit 4) My name is Thomas Hanthorn, that is H-a-n-t-h-o-r-n, and as a insurance professional, I see a lot of benefit to LB884. I'm a specialist who works primarily in the individual market and yet so I see the result of what health plans and health insurers can underwrite and cannot. But currently the employees at the state of Nebraska enjoy a benefit package that's superior to most any in the industry, private or public. And like we said earlier, it was paid 79 percent with a 21 percent split to the employee. And that plan design does tend to cause high utilization which results in a bloating of the rate increases, which last year were 14.9 percent, and generally that proves that the rate of increase is accelerating faster than the cost of living index. The result is it's compromising the ability of the state of Nebraska workers to get the kinds of wage increases that they might otherwise deserve. Past HIPAA rules have forbidden any kind of rate structure change, but in the summer of 2007 there was a new HIPAA ruling that allowed companies and employers to differentiate between the health status and participation in a health plan, and those health plans can be constructed in quite a number of ways and there are a lot of expert opinions out there. At any rate, the new HIPAA rules allow some accountability of the employee to his employer, so that citizens, taxpayers of Nebraska now I think should be allowed to have some accountability from their employees, the state of Nebraska workers who can choose to use a health plan or to choose to ignore it. Most agree that most basic health control effort is necessary to control the costs that are accelerating. Health insurance is one of the biggest ticket items out there and yet it's very misunderstood. Still many employees would believe that the health insurance company pays the claims not the insured, and that is the reality of it is that when the claims experience is too high, the rates go up, so anything we can do to improve that. I agree, however, with Senator Karpisek about do we use the carrot or the stick. The philosophy is is that we can motivate those to improve their health and to provide a benefit to themselves and to the taxpayers in lower costs and to their fellow workers. However, if we were to use the carrot, my point of view is is that the result would be that now the mass of employees who are generally in good health would have a lower cost so we'd end up with a 90-10 split or even a 99-1 split. HIPAA rules will allow--as I understand them--as much as a 20 percent differential from group A to group B, and those can be earned or punished depending on whether we want to use the carrot or the stick. So one of the opponents of the structure of LB884 is Mike Marvin and he is a proponent of the carrot approach. And as a result, my perception is it would raise the rates for the taxpayer for the bulk of employees and not provide incentive for those who are not of great health. So a more practical approach is to provide some incentive to improve the health of the bulk of the employees, as well as charge more for those who refuse to participate. So who might be the people who would not participate? My list would suggest that the tobacco users who refuse to quit, those who have a very high weight index. Generally the insurance industry believes that a body mass index of over 32 or

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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34, depending on which company you talk to, a body mass index of 32 or 34 puts that person in health risk. So anything we can do to help that employee get below that level would be beneficial. By the way, a 32 index on a six foot male puts you at about 242 pounds. Okay, to give you a mind-set. Also another area of very high claims experience, the actuaries will tell you that unmanaged diabetics. Again, an educational process that really needs to be applied to certain groups, but unmanaged diabetics would very likely be another group we need to motivate to get into the wellness program, it would benefit, provide huge benefits. And of course those who most don't want to have participation for fear of discovery are substance abusers, those who abuse alcohol, drugs, and/or both. So perhaps that group needs to be motivated too to participate in a wellness program. So how would we manage such a program? I'd say that first we need to have participants verify that's been some educational opportunity provided by the organization and that class should help emphasize the benefits of participating in a health group and to help them to understand how health insurance really works. I think there is more abuse by the insured for their lack of knowledge. It seems that the chronic problem in our society is is that people spend money fastest when they don't believe that it's their money. And so there's still a philosophy by a lot of folks out there that believe that health insurance is paid by the insurance company and not by the insured themselves in that employer group. I think too as part of the management, the participants must--through an assessment--must verify and acknowledge that there are areas of needed improvement and to establish a strategy to improve that particular health program and their particular health, one-by-one on an employee-by-employee basis. Then the participants must also have some sort of mechanism to identify a method to get to their goals and that's where the rubber meets the road and that participants also might have to verify their compliance with the physician treatment process. So if they aren't willing to admit to compliance, then the program needs to go back through the reassessment. And of course, the wellness coordinator and again, that's the organization would then determine if the participant is compliant or not and then the consequence of that. As I read the bill, a possible amendment and changes that I would suggest or want to see explored would be the possibility of including employees in any entity receiving assistance of substance from the state of Nebraska, such as the Nebraska State Teachers Union and other entities whose dollars originate here with the state of Nebraska. I would also encourage the senators to explore the possibility of removing Section 4 and make LB884 prevail over any labor contract. With the current language, my perception is is that the...makes it a target to neutralize any provision by union negotiations. And another amendment that I would encourage or suggest would be to create language to allow a job review to contain areas of discussion about the success of their participation in the wellness program and potential success methods to return to that success within a two-year window. In summary, health insurance costs has grown so much that it's now interfering with the ability of the state worker to get rate increases and the richness of that plan causes high utilization which causes rate spikes. The New HIPAA rules will allow the state of Nebraska to proceed with a wellness program that might have great benefits in the wellness of the



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

---

employee and as a great savings to the taxpayer, and to transfer that greater cost to those employees who refuse to assist in that process. Are there any questions from the senators? [LB884]

SENATOR AGUILAR: Questions from the committee? Senator Pahls. [LB884]

SENATOR PAHLS: Yes, I have a question. I missed what is your occupation? [LB884]

THOMAS HANTHORN: I'm an insurance agent. I, in the last few years, have placed hundreds of health insurance programs with the self-employed and small groups. [LB884]

SENATOR PAHLS: I'd like some of your suggestions. It seemed like you really want to hold this to the highest degree possible. Is that also in the private industry? Is this the same? [LB884]

THOMAS HANTHORN: In the private...that's where HIPAA rules vary from a group such as the state of Nebraska and the private sector. In the private sector those policies are underwritten somewhat like a life insurance policy or a long-term care policy. You have to verify health and no preexisting conditions can come into play. So in those situations, those that are most punished are the tobacco users, the obese, and those who have unmanaged high cholesterol, unmanaged health conditions that basically might even deny that person the opportunity to have health insurance. [LB884]

SENATOR PAHLS: Okay. You're saying currently right now in the private industry, those are the rules of the game. [LB884]

THOMAS HANTHORN: Right. [LB884]

SENATOR PAHLS: And we should be applying those same rules for state. [LB884]

THOMAS HANTHORN: Not all the same rules. But I would also suggest too that the state move direction, and I see this bill moving us that direction, is to start assessing additional costs to those very people who are causing the highest claims experiences. So again, we go back to the list, tobacco users very often end up with a devastating condition called emphysema. The claims on those are enormous and actuaries will verify that. Obesity, it leads to enormous claims from heart disease, orthopedic injury, and not to mention just plain heart attacks and strokes and diabetes. [LB884]

SENATOR PAHLS: Let me interject. [LB884]

THOMAS HANTHORN: Sure. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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SENATOR PAHLS: Because you almost make me feel guilty because I have a couple of those things (laugh). No, no, no, I'm just...could you name a...not necessarily a company, but somebody you do business with? I'm just curious in my mind because I know a lot of people in the private industry, they don't talk to me like as stringent as you were saying they should be. [LB884]

THOMAS HANTHORN: Well, what I'm saying is that the rules HIPAA provides in the private industry, the individual health policies differ so greatly I'm concerned that we are even bringing into discussion. The point however I'm trying to drive home is that I believe that the state employees by the virtue of their employment should have some accountability to their employer, i.e., me the taxpayer. [LB884]

SENATOR PAHLS: And I'm not disagreeing with that. [LB884]

THOMAS HANTHORN: Okay. [LB884]

SENATOR PAHLS: I'm just trying to see. You want to make a comparison, I'm just trying to find out...name a company for me that you say has these real stringent rules. That's all I'm asking. [LB884]

THOMAS HANTHORN: I don't have such a company in my coffers right now. But when that new HIPAA rule rolled out in July, I did a fair amount of study on it and it allowed a variety of approaches. And again, going back to Senator Karpisek, the carrot or the stick. The more common favored approach is the carrot to encourage that employee to seek better health. [LB884]

SENATOR PAHLS: Okay. Now I'm still going to pursue this. No, no, I'm the one that does that. [LB884]

THOMAS HANTHORN: I'm listening. [LB884]

SENATOR PAHLS: I'm just trying to figure out what...name a company because I understand the carrot approach. You're saying we probably should not use that approach. Just name some company that that's happening. That's all I'm asking. [LB884]

THOMAS HANTHORN: Well, I believe that at this point Novartis has a wellness program and I have reason to believe that Lincoln Action Program also has a wellness program. [LB884]

SENATOR PAHLS: Okay, and the smoking, the obesity, the cholesterol levels, those are taking... [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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THOMAS HANTHORN: Each of those companies can have construction. I have no privy to that information. But in reading the legal opinion of the new HIPAA ruling in July, there is a limit of 20 percent discount or penalty can be applied to those. They can be achieved in a variety of ways. One model I saw showed like a 10 percent bump for smoker, another 10 percent for over a 30-something body mass index, a 20 percent bump for an unmanaged diabetic. But the total max was 20 percent period. [LB884]

SENATOR PAHLS: Okay. What I'm simply...in my mind I'm just trying to...if we want to go that route, I'd like to have something to compare it with so I can see. That's all that I'm doing and that's fine. We can find that information. [LB884]

THOMAS HANTHORN: There are experts in that field that are superior to my skill in that area, but I'm just bringing out those ideas. [LB884]

SENATOR PAHLS: Okay. Thank you. [LB884]

SENATOR KARPISEK: Thank you, Senator Pahls. Senator Lautenbaugh. [LB884]

SENATOR LAUTENBAUGH: Thank you. Thank you, sir. Sir, you're just here as a private individual. Is that correct? [LB884]

THOMAS HANTHORN: Yes. [LB884]

SENATOR LAUTENBAUGH: Not at the best of any union or any governmental agency or department or anything like that? [LB884]

THOMAS HANTHORN: Exactly. [LB884]

SENATOR LAUTENBAUGH: Just here speaking for yourself? [LB884]

THOMAS HANTHORN: Right. As a taxpayer I find it disconcerting that I place hundreds of plans with the self-employed, some of which can barely afford any insurance. More often I am concerned when I see public entities such as the state of Nebraska worker have a plan that is so superior to the private industry, I am just aghast that there aren't more incentives for those employers to find a way to drive down those costs for the taxpayer. [LB884]

SENATOR LAUTENBAUGH: Thank you. [LB884]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Senator Avery. [LB884]

SENATOR AVERY: Thank you, Senator Karpisek. You led right into my line of questioning with that last statement. [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

THOMAS HANTHORN: Uh-oh. [LB884]

SENATOR AVERY: You said that the rate of access to the benefit program for the state is quite high. [LB884]

THOMAS HANTHORN: I'm saying that I see plans placed by many employers that do not reach the scale of benefits that I see for the state of Nebraska worker. [LB884]

SENATOR AVERY: But didn't you also say that because those benefits were so generous, it leads to a greater rate of access to the healthcare program by state employees? [LB884]

THOMAS HANTHORN: Yes. I would say that if you talk with an insurance professional and the actuaries as well, you'll find that excessively rich plans also cause what we call adverse selection. In other words, if the copay is only \$10 or \$20 and there is no incentive for that person to not go to the doctor for even the most innocuous small injury or small sickness, so it raises the amount of utilization, and utilization spells high rate increases. [LB884]

SENATOR AVERY: And you inferred or maybe you stated that the increases in the cost of health insurance to the state of Nebraska is far beyond increases in the CPI, did you use that... [LB884]

THOMAS HANTHORN: According to earlier testimony, that rate increase last year was 14.8 percent and what is the CPI at this point? Somewhere around four? [LB884]

SENATOR AVERY: Yeah. [LB884]

THOMAS HANTHORN: So it has...and if you talk at the industry experts, you'll find that hospital rate increases are driving that rate increase. Hospitals now are raising their rates about 10 percent per year. [LB884]

SENATOR AVERY: So then is it really appropriate to compare the rate increase in healthcare for state employees to the CPI when the CPI is an aggregate measure of all kinds of consumer activity... [LB884]

THOMAS HANTHORN: Um-hum. Right. [LB884]

SENATOR AVERY: ...not just healthcare? Wouldn't it be more appropriate to compare it to the rising cost of healthcare because that's where your escalation has been so great, as you just admitted? [LB884]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

THOMAS HANTHORN: Yeah, and it is true that the rate...some experts are saying that the rate of increase in healthcare hovers around 12 percent a year and it will depend on which expert you talk to. [LB884]

SENATOR AVERY: So the rate of which our healthcare cost is going up is about 14 percent, which is pretty close to what the increase is in healthcare nationally. [LB884]

THOMAS HANTHORN: Right, right. [LB884]

SENATOR AVERY: So I'm suggesting that you're comparing our rate increase to the CPI is inappropriate. [LB884]

THOMAS HANTHORN: All right. [LB884]

SENATOR AVERY: And more appropriately compared to the overall cost of medical care, hospitalization and that kind of stuff. [LB884]

THOMAS HANTHORN: Okay. Can I clarify the point I was trying to create there? [LB884]

SENATOR AVERY: Sure. [LB884]

THOMAS HANTHORN: Since the employee bears 21 percent of the cost of that health insurance plan, it becomes part of his negotiated compensation package. When that cost accelerates and swallows more of his total benefit package, to me it creates the more likely event that the employee is unable to get a rate increase parallel with the CPI. It can impair that. [LB884]

SENATOR AVERY: You mean an increase in salary. [LB884]

THOMAS HANTHORN: Yeah, increase in salary. Let's not confuse salary with total benefit package. So in short, I believe the very construction and the very situation we're in because the rates are increasing so fast that it's interfering with the ability of the employee to get his spendable income at a higher level. [LB884]

SENATOR AVERY: I'd be interested in knowing if there is any information about how much of the healthcare costs of Nebraska employees is driven by factors outside our control, rather than the rate of access to the system that you're suggesting. [LB884]

THOMAS HANTHORN: Well, I would say that's a very slippery set of numbers. [LB884]

SENATOR AVERY: Slippery meaning? [LB884]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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THOMAS HANTHORN: I mean they're very hard to nail down. Perhaps... [LB884]

SENATOR AVERY: You were doing that. [LB884]

THOMAS HANTHORN: I'm saying that is it... [LB884]

SENATOR AVERY: You were drawing a conclusion based upon your assumptions about the relationship. [LB884]

THOMAS HANTHORN: There's no assumption there. If you talk to actuaries, the memos I'm getting are saying highly utilized plans go up faster than less highly utilized plans. [LB884]

SENATOR AVERY: Well, I'd like to see some empirical evidence of...it may be true in general, but I'd like to see what the evidence is for Nebraska. [LB884]

THOMAS HANTHORN: Okay. [LB884]

SENATOR AVERY: And public employees of this state. That's probably not impossible to get, but I'm not asking you to provide that. Thank you. [LB884]

THOMAS HANTHORN: Okay. [LB884]

SENATOR AGUILAR: Further questions? Seeing none, thank you. Next proponent. Are there any opponents? Please come forward. Welcome. [LB884]

ROBERT CORNER: (Exhibits 5-6) Chairman Aguilar and members of the Government, Military and Veterans Affairs Committee, my name is Robert Corner, that's spelled C-o-r-n-e-r. I'm here today representing the state employees union, NAPE/AFSCME. I'm a 30-plus year state employee, and I've been a member of the biennium bargaining team starting with the 1989-1991 contract and I have served as spokesperson for the last eight contracts we've negotiated with the state. I want to make it perfectly clear to the committee that NAPE is not against a wellness program. In fact, the union has advocated wellness and preventive-type healthcare over the years at the bargaining table. However, we are an opponent to LB884 the way it's currently written. NAPE opposes the bill the way it's currently to be implemented, especially under Section 2(2)(b) on page 4 of the bill where it reads that the state's contribution shall not be less than 79 percent of the total cost for the plan, option, coverage chosen by the employee--and here's the key--if the employee enrolls and participates as required in a wellness program offered by the state through DAS. The language in this section states that an employee will pay a higher premium for his/her health insurance coverage if that employee does not enroll and does not participate in the wellness program. There is no incentive to participate, only a disincentive, i.e., higher premium insurances if you don't

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

participate. The union and DAS representatives and the director of DAS met with the consultant that the state hired, AON Consulting, to look at the wellness concept. At that time--and you have the copy, Mr. Chair--they offered suggestions as how a program could work. Some of the pages in that are some guiding principles and some clinically sensitive benefits design and I've outlined in yellow I think the important sections of that. AON concluded that for a successful wellness program the state should provide the financial incentive to patients, i.e., state employees, most likely to benefit from the specific intervention. The union has provided information to the state--I'm talking here to DAS and these meetings--about successful wellness programs in especially in the states of Pennsylvania and Washington. In fact, I think Senator Friend, you asked. Pennsylvania has an outstanding state program of wellness, have been very successful in keeping the health insurance costs down and in lowering premium increases due to the inflation factors. The one thing emphasized though in both the Pennsylvania and Washington state wellness programs is that the program must be an incentive not a disincentive-type program. If you want maximum participation and it is only through maximum participation that the end result will be maximum savings. You understand, yes, with a 79-21 split, every dollar saved, the state saves 79 cents. The disincentive program offered under this bill, i.e., you're penalized if you don't participate, is doomed to failure before it would even start. The wellness program concept is not comparable in an array of states currently in the contract between the state and the union for bargaining comparison purposes. Yes, Oklahoma is starting a program. The other states that are like Nebraska are looking at programs. Right now, they're not comparable. We represent--out of that 14,000 people--11,500. Right now if this bill would go in effect, the only people it would affect are the people outside the contract which would be managers and supervisors, and believe me, that number cannot make up that \$3.8 million that's suggested in that second year. As stated earlier, the union is for a wellness program. However, the union would want a program that the state's own consultant states that has the best chance of success, a program that has proven successful in other states, the wellness program must be an incentive program. The union will offer health insurance, wellness concepts proposals at the bargaining table this fall. Right now we ask that this bill either be amended to be an incentive program or the carrot approach, if you would, rather than a disincentive program. If not we want the program...we would ask that this bill be killed in committee. Thank you for your time and I'll be happy to answer any of your questions. [LB884]

SENATOR AGUILAR: Questions for Mr. Corner? Senator Pahls. [LB884]

SENATOR PAHLS: Robert, I think what I'm hearing is people are concerned about the rising cost of health insurance. [LB884]

ROBERT CORNER: We are very concerned about the rising cost. [LB884]

SENATOR PAHLS: People are looking at always different approaches and you call it

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

---

disincentive or incentive. I mean, do you think, let's say for example if I smoke, should I be penalized for that? I used the word "penalized" by having to pay higher premiums or something such as that. [LB884]

ROBERT CORNER: Well, as I think Senator Avery said, I guess the devil's in the details. It defines on penalty and how much you smoke compared to a heavier smoker, I don't know. Overall the idea of insurance is everybody pays in and those people that get sick, yeah, you're covered. So insurance is paid. Like myself, I don't have any claims. I haven't cost the state any money. Somebody that maybe smokes, maybe has. But I'm paying insurance probably for them, technically, for their coverage but that's what insurance is about. [LB884]

SENATOR PAHLS: And I understand that. But do you see where somebody is saying if somebody is doing something--what I call hazardous things for yourself, should he be held accountable? [LB884]

ROBERT CORNER: Well, I'm saying we're not against wellness. We would like to see some things, but we want it to be an incentive. Lower the premiums if you participate. That way you're going to get maximum participation from state employees. If you have a situation where like I indicated earlier, if you can save 79 cents on every dollar for the state, if you can get 11,500 people participating instead of 2,000, you're going to save a lot more money. [LB884]

SENATOR PAHLS: Okay. So if you're willing to do the wellness, you're saying make me want to do it, lower my premiums. [LB884]

ROBERT CORNER: That's correct. [LB884]

SENATOR PAHLS: So then if I'm not doing it then mine should go up. [LB884]

ROBERT CORNER: Well, right now the law reads 79-21. [LB884]

SENATOR PAHLS: No, but philosophically you're telling me if I'm not willing to participate in some of these and I don't even know what it is I'm supposed to be participating, but that I should probably be paying a higher premium because if I'm going to reward you for lower...I'm just trying to find some way... [LB884]

ROBERT CORNER: Yeah, we're saying that an incentive program would cause more employees to participate than a disincentive program will cause employees to participate. And if the state can save 79 cents on every dollar, it's important to them to get more people involved in the program. And yes, we are going to look at...we have put out on the table several times at bargaining, in fact, I can remember about three contracts ago, we proposed changes to our healthcare plan that we had to physically



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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

fight the state to make these changes. It saved the state \$7 million. Guess who took credit for it? The union sure didn't get the credit, but we were the ones that proposed the program and some of the changes. [LB884]

SENATOR PAHLS: Thank you. [LB884]

SENATOR AGUILAR: Senator Friend. [LB884]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Corner, there's been a distinction drawn here and I read through your testimony as well, a distinction drawn between an incentive program and a disincentive program. Let's assume for a second Washington or Pennsylvania--one of those two--has incentivized employees. Can you give me an example in as brief of terms as I guess you could because of the situation that we're in? What are they doing that would be different than what is being proposed here? What's the difference between an incentive program and a disincentive program because your testimony says that there is a difference? But unless I'm really thick here, I don't see a difference. [LB884]

ROBERT CORNER: The incentive program like Pennsylvania is using, they rewarded the employees who participated in the program. They did not penalize the employees who did not participate in the program. So they got...and of course, Pennsylvania with their population has a lot more state employees than we have, but they got a huge percentage of state employees who participated. That's how you get the savings. [LB884]

SENATOR FRIEND: And the way they can do that is that what they'll do is they'll look for a different revenue source. I mean what ended up happening is Carlos and the others have come up here and say this is how we're going to pay for this. The alternative in an incentive program is you're going to go into General Fund and you're going to say here's the amount it's going to cost, we're going to pay for it, and then it's going to reduce our premiums. Is that fair enough? [LB884]

ROBERT CORNER: Initially there are some costs to the state, up-front costs, but in the long run, after a few years, that's where you get these huge savings. Because if you can stop somebody now from potentially being a lot sicker in the future, i.e., whether it's cholesterol, blood pressure, diabetics, people get looked at early, detect it, if they have a problem they take care of the problem early, down the road you don't have these huge costs when they do have heart attacks or other things that are a result of these earlier screens. [LB884]

SENATOR FRIEND: But the thing that I was trying to get to, the bottom line is you're talking about an up-front cost here in regard to the difference between maybe an incentive...an incentivized program and disincentized program, if you will. So I guess you

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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would understand the rub. I mean, I'm not saying I agree one way or the other with what's going on here but I'm saying there's a reality here. If you're going to implement a wellness program, it's going to cost you some money. What you're more or less saying is we know it would turn out to be a disincentive because of the up-front cost. [LB884]

ROBERT CORNER: No, I'm saying it would be a disincentive because not that many people are going to participate the way the bill is currently written. You want maximum participation. You do that with the carrot, you don't do that with the stick. The stick says if you don't participate and if you have any of these things that we detect, you're going to pay higher insurance premiums to the state. And with the HIPAA rules, it could be that instead of the 79-21 it could be I guess 59-41 that the employee could have to pay if they said I don't want to do any of this stuff. Yes, I'm obese. Yes, I smoke or I have whatever, I'm not going to do any of these things. You could end up paying 41 percent, the employee could. Yes, that would save the state some dollars, but not if that employee gets sicker and sicker and they still have these huge costs and you're not going to have that many people participate. That's what Washington and Pennsylvania found. If you want savings in this program to be huge dollars that would lead to lower premium costs because you'd have smaller utilization, is you need maximum participation. You get that with the carrot and not with the stick. [LB884]

SENATOR FRIEND: And my only point finally is that the thought process, whether it's right or wrong, is that the folks that would take advantage of this wellness program or not take advantage of it are receiving state benefits as state employees. The alternative and the reality is that you can go into appropriations and look at all kinds of different buckets and have other people pay for a wellness program that they're not even using. I mean, I see pluses and minuses here and I'm struggling with how to get there. Again, I'm not making any value judgments about the bill one way or the other, but there's a problem and that's paying for it. That's the only final... [LB884]

ROBERT CORNER: Well, I'm saying in the long run the state would have the savings that any up-front cost would be paid for down the road with lower insurance cost, to the state and to the employees both. [LB884]

SENATOR FRIEND: Thanks. [LB884]

SENATOR AGUILAR: Senator Karpisek. [LB884]

SENATOR KARPISEK: Thank you, Senator Aguilar. Thank you, Mr. Corner. Does the employee have to take the state insurance? [LB884]

ROBERT CORNER: Do they have to? No. [LB884]

SENATOR KARPISEK: So I guess my thought is well, then if I'm going to get

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

---

hammered 40 percent, then I'm going to drop out of the program and I'll take my BMW plan that you obviously have and go buy a Volkswagen plan and I'll be way ahead and then where will this whole system be? Who's going to pay for that difference? Do you have family coverage? [LB884]

ROBERT CORNER: You can take and participate--yes--for family coverage, what we call a 2-4 plan or a family plan, yes. [LB884]

SENATOR KARPISEK: And does the state pick up any of the family plan or is that... [LB884]

ROBERT CORNER: Yes, it's the same percentage, 79-21. [LB884]

SENATOR KARPISEK: And does that go per child or is it family? [LB884]

ROBERT CORNER: Well, if you're in a 2-4 plan, it means children and one spouse. If you're in a family plan, it could be a mom, a dad, and ten children. [LB884]

SENATOR KARPISEK: So there's not much if you had 10 or 9 or 11 kids. Well, and my point on that is then where's the fairness there? If I have...well, Senator Friend has quite a slug of kids and I only have two (laughter). [LB884]

SENATOR FRIEND: Slug is about right (laughter). Slugs, plural. [LB884]

SENATOR KARPISEK: No, he's got four I think, but I have two. So my question is okay, so then that's not fair to me then because we're paying for two more kids. So where's the fairness of that and I just wanted to make that point. Thank you, Senator Aguilar. [LB884]

SENATOR AGUILAR: Any further questions? Senator Avery. [LB884]

SENATOR AVERY: I'm wondering would--and this may have come up when I was out of the room--would dependents be included in this wellness program or just employees? [LB884]

ROBERT CORNER: Well, that's I guess like you said, the devil's in the details. We don't know the details, so I can't answer that question. We've talked about that from the union. What happens if you have a spouse or a child that has severe...some type of a condition? What do you do there? What if they can't participate? We don't know. That's part of the problem with this bill. Whereas you can make it incentive, all those would go away. [LB884]

SENATOR AVERY: Since you made a distinction between incentive and disincentive,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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I'm having a little bit of a hard time seeing how the way it's being proposed that it's a disincentive. It seems to me that it is an incentive to be able to participate in the program at 79-21. That's an incentive to encourage people to enroll in the wellness program. Would you not agree? [LB884]

ROBERT CORNER: We have 79-21 now. So if you have to do something... [LB884]

SENATOR AVERY: So if you want to stay in that, you have an incentive to get into the wellness program. [LB884]

ROBERT CORNER: The way that the bill is proposed, yes, you would have to go into some type of wellness program to keep the 21. That's correct. [LB884]

SENATOR AVERY: Right. I think one could argue that's an incentive, not a disincentive. [LB884]

ROBERT CORNER: Well, that's not the way Pennsylvania and the other states have done it that have successful programs, I'm saying. [LB884]

SENATOR AVERY: I don't care what other states do. I say I don't care what other states do, but often I will compare Nebraska to other states (laughter). [LB884]

SENATOR PAHLS: Yeah, right. You're very good at that. [LB884]

ROBERT CORNER: Yes, we're interested in what Nebraska is doing but I think, you know, you can use them as an example to see how it has been successful, this program that has worked in other states. [LB884]

SENATOR AVERY: I'm much more concerned with the absence of specificity in the bill about how you...what happens to the nonparticipants, what the rates will be there, how you define "wellness", and how you define "participation". Does that mean you've got X number of things you've got to do, you've got to meet these standards or you've got to be able to...I don't think you have to run six miles. But you know, maybe you have to meet certain obesity standards. I'm much more concerned about that, which I think this body ought to be determining rather than an executive agency. But again, I don't think that it's entirely appropriate to say this is all a disincentive plan because one could construe it as an incentive plan because if I were in the system, I'm not but if I were, I would want to remain at 79-21 or even improve on that. That's an incentive for me to participate in the wellness plan. That's all. [LB884]

SENATOR AGUILAR: Further questions? Seeing none, thank you. Next opponent. [LB884]

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 13, 2008

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MIKE MARVIN: (Exhibits 7-9) Good afternoon, Senator Aguilar, members of the committee. My name is Mike Marvin, M-a-r-v-i-n. I'm the executive director of NAPE/AFSCME 61, the state employees union representing about 11,000 of the state employees that we're talking about today. My intention when I came in here was to pretty much read my statement into the record. But I think for the most part I will let you read that statement, and then there's a few things that I have heard today that I kind of want to comment on. One of the things Senator Gay referenced HIPAA, a few other things there, and it is in my written testimony, if LB884 was to go forward, I think there should be some references to those laws and how they are written today and how they would affect this program. Incentives, disincentives, and this is probably my fault that Mr. Corner got a little bit confused there on the states as I presented them to the board. Pennsylvania does do a little bit of a disincentive for you if you don't participate. But if you give us what Pennsylvania has, I'd be thrilled. They pay 100 percent of the employee premium for everybody who participates and 95 percent if you don't. So we'll take that. These things do come with a price and we're talking about startup cost and one of the things that Bob touched on a little bit that really I didn't hear DAS testify to in the startup cost, is you...if you look at a number four on my sheet that I handed out, you look at preventative program. A lot of the startup cost that our international is showing that have come have been in the preventative areas: lowering costs, getting cheaper or little or no copays or deductibles for things like mammograms, prostate cancer screening, prenatal, those types of issues, that if you do the early preventative and those costs up front are high. Based on the information that we had from last contract negotiations that I submitted to the international, they estimated about a \$5 million startup cost, which is, by the time you take their \$3.6 million and their \$680,000, probably about half a million dollars apart from what they're estimating. And most of that the international states is, due to the preventative nature of this. You pay up front, you keep the cost down on the end. That has been very successful. Pennsylvania has 60 percent employee participation right now and they've already paid, after three years, for their start-up costs. So those are the questions that I think you should answer yourself is...is the start-up cost worth it, is it better to incent? I think it is better to incent. People do participate than punish. Nobody likes to be hit over the head with a stick. Everybody else likes to be encouraged and as I said, LB884 is very vague. There are a lot of things in it that probably should be there and I would urge this committee to kill LB884 as written or amend it. And with that, I would answer any questions that you have. I would like to point out that we have a Linda Heller, one of our people who was going to testify and I submit a written testimony from her. She was unable to be here today. [LB884]

SENATOR AGUILAR: Thank you. Questions from the committee? Seeing none, thank you. [LB884]

MIKE MARVIN: Thank you. [LB884]

SENATOR AGUILAR: (Exhibit 10) The next opponent come forward. And while that

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

happens, I'll read into the record a letter of opposition from Frank Daley of the Nebraska Accountability and Disclosure Commission. Are there any neutral testimony? Welcome. [LB884]

JOHN KNAPP: Thank you, Senators, for the opportunity to comment. I wasn't planning on commenting on this bill. I have to fill out a sheet and sign in, but... [LB884]

SENATOR AGUILAR: Can we have your name, please? [LB884]

JOHN KNAPP: Sure. John Knapp, J-o-h-n K-n-a-p-p, and I started working for the state of Nebraska in 1972 and worked until 1980 and when I started...I was talking about I wasn't intending--like I said--testifying on this bill. And so I'm neutral because I don't know all the details, but we were talking about carrots and sticks and incentives. When I started, the state paid for health benefits--and I'm single--so the state paid the benefits of a single employee and if you were married, that was, you know, they covered the family. That portion saved \$100 was my insurance premium for a single person. The state paid \$100 toward the family insurance and then the employee had to pick up the difference, and I thought that was fair, equal compensation. You and I are doing the same job, we get the same pay. Well, somewhere in there between '72 and '80, the state started picking up all. The union said well, that's not fair, you're paying all the single person's insurance and the family person has to make up the difference. And so the state started paying the insurance premiums for a family. I didn't see which senator over here made the comment that, you know, if you've got four kids, it's going to cost the state more money than if you've got six kids or two kids or one kid or none. And so I think when you start dealing with fairness issues...and if they're going to be nitpicking about this, the carrots and sticks, we ought to be nitpicking about the total benefit package. And I think a lot of times in these negotiations over wages...I was paying attention to county negotiations for wages and for instance, the county sheriff at the time--this was about 10-15 years ago--the starting deputy was getting \$24,000 and they said, well, that's too low of a starting pay. But what they didn't say, when I talked to the fiscal administrator later, it was costing the county \$14,000 or \$15,000 for his health insurance program. And I think it's a very generous benefit that a lot of times is kind of...I mean, all you hear about in the papers is about the take-home salary and not the other benefits and that's my comments. I just think it ought to be fair. [LB884]

SENATOR AGUILAR: Thank you. Are there questions for Mr. Knapp? Seeing none, thank you. Any other neutral testimony? Seeing none, Senator Gay to close. [LB884]

SENATOR GAY: Thank you, Senator Aguilar and members of the committee, for your patience. This is an important issue and there's a lot of different opinions on it, as you can see and I do appreciate hearing both sides of the story, of course. But you know, I think the hard thing that we have to look at is the carrot and the stick thing. Which comes first? I think you have to have some incentive there or would it be that...well, that

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 13, 2008

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sure sounds great, we all want lower premiums. As long as that other guy is doing something I'll benefit from the lower premium. There has to be some incentive to get started and to get people to sign up or you won't get any sign-up rates. I don't think people will just flock to say, yeah, I want go do that. But we're talking a little bit here about individual responsibility, taking some initiative. If we incent people with overall lower premiums, even the people that aren't participating, I still feel would get a much lower premium. They're still benefiting off the person who's participating under this thing. So you know, in a way I think it's a win-win situation, in my opinion and of course, there's on anything it's different. If we don't do this though let's say, let's say we don't get anywhere and we continue to butt heads and we don't move on, I think the 79-21 ratio...if you're going to talk on negotiations the 79-21 ratio will be opened up then. How good will that be to the employee if we go back to a bargaining table--and none of us will do this--but you know, we got to control these costs somehow. So the other alternative for the employee--and especially the lower paid employee in the state--is oh, by the way, now maybe your ratio is going to change and you're picking up more of a premium. So in order to keep the premium ratios the same, I think we need to take steps to control the cost. The gentleman said, you know, I hope you kill the bill and kill it with any amendments. Well, I would hope if you have an amendment to fix the bill, we could get an amendment to fix it. I don't know. It's a starting point. Some of the costs are negotiated and we know some of the cost of what they're going to be, but I think at some point you've got to take a small step to get started. Change is difficult. Change is difficult and people don't like change, as we all know. But I think this is a certain step in the right direction. And I would look forward to any amendments, if we put our heads together, that could fix this situation. So thank you very much for your time. [LB884]

SENATOR AGUILAR: Are there questions for Senator Gay? Senator Gay, I just have one. Do you intend to prioritize this? [LB884]

SENATOR GAY: I don't, but there are others looking at it and I may. I don't know. Senator, I'd like to answer that question. I've still got four bills still in committee that have been heard but not released from committee. And I know the deadline is approaching soon so the ball kind of is in your court a little bit too because I don't know if it's going to get out of committee. [LB884]

SENATOR AGUILAR: Okay. Thank you. [LB884]

SENATOR GAY: But it's very important to me though. Thank you, Senator. [LB884]

SENATOR AGUILAR: Thank you very much. And that closes the hearing on LB884. We're now ready to open on LB962. Is Senator Preister here? Welcome, Senator Preister. Senator Preister to open on LB962. [LB884]

SENATOR PREISTER: (Exhibit 1) Thank you, Chairman Aguilar, members of the

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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Government, Military and Veterans Affairs Committee. My name is Don Preister, P-r-e-i-s-t-e-r, and it's a good thing I have the opportunity to do that. I remember how to spell it. I'm here as the primary introducer of LB962 and if I could get the page to hand these out. I'm sure that the committee is very familiar with the interim study hearing that we had last November, but just to refresh your memory: There's an editorial that the World-Herald did following that hearing, and I think they continued to point to the need for some changes. I bring to you a very modest change. It will be the last one I'll be able to bring before this body and my last opportunity to appear before your committee. LB962 ensures citizens a right to speak at public meetings under the Open Meetings Act. It clarifies that a public body could not require a member of the public to make a request prior to the meeting to be placed on the agenda in order to comment on an agenda item. It does not impair a public body's existing statutory authority to adopt and enforce reasonable rules regarding the conduct of persons who wish to testify during public meetings. It merely prohibits a public body from imposing this burdensome requirement on citizens. The basic tenant of our democracy is government by the people. If we erect barriers for citizens involvement, then we frustrate rather than encourage citizens from participating in the formation of policies which effect their lives. As a result, citizens feel disenfranchised and become disillusioned and mistrustful of government. As elected officials I believe it is our duty to invite and encourage the public to share their concerns whether they support or oppose our actions. Without citizens voices we lose a key component of representative government. The handout deals with the number of issues. I'm not proposing all of those changes or attempting to deal with anything. This one, in the discussions as far as I know, has no opposition. I think everybody is okay with doing that. It simply says you can't request somebody to come in in advance, sign up, put their name on a list, and then you grant them permission. If you have an open meeting, they have the right--if it's time within all your regular rules--to come up and speak without having to come in in advance of the meeting to sign up. And in speaking with Ms. Rex, I don't know if anybody is here from the League, but she has certainly told me that she could have no problem with that. So I think there will be a few testifiers. We didn't organize and particularly invite a lot of people like we had at the hearing because I know you've already had one long one. There will be some testifiers who I think will be brief. I was going to mention to Senator Karpisek but he's not here right now, I did get a copy of a letter from several of his constituents from Fairbury who have been having some problems and I'm certainly willing to work and help them with theirs. But you may have received, I believe, a letter from Accountability and Disclosure, Frank Daley, in support of this and I think there will be a couple of other people. With that, Mr. Chairman, I would be happy to entertain any questions and I thank you once again this time and in the past for all the time and attention on open meetings and public records that you've given to me and to the public. [LB962]

SENATOR AGUILAR: Of course. Senator Adams, you have a question. [LB962]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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SENATOR ADAMS: Senator Preister, before I ask the question let me preface it with a comment. I think you're right on the money with this language. I think it is reasonable in a public hearing just like here for folks to submit their name for the record so that you can maintain minutes. But the allegation seems to be that there are public bodies that are requiring that the names be submitted prior to them speaking. [LB962]

SENATOR PREISTER: Prior to the meeting even. [LB962]

SENATOR ADAMS: Prior to the meeting. Okay, and maybe you don't know the answer to this. But I guess as a person who has been a hearing officer in public hearings before and participating in a dozen of them, if not more, why can you imagine would someone want or need the name of those who would participate prior to the meeting? [LB962]

SENATOR PREISTER: My only answer would be to make it more burdensome so they wouldn't actually show up or to intimidate them or to cause them to just give up in frustration and not show up. [LB962]

SENATOR ADAMS: And I would tend to agree and if that would be the case, then this should right that wrong. [LB962]

SENATOR PREISTER: That's my intent. [LB962]

SENATOR ADAMS: Because I can see no other rationale where there's a public benefit to those folks having to sign up 24 hours in advance or an hour in advance. Thank you. [LB962]

SENATOR PREISTER: Thank you, Senator. [LB962]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Preister. Would you be around to close? [LB962]

SENATOR PREISTER: I will stay for the hearing. I don't expect to close. I don't expect opposition, but should you need or have me answer any questions, I will be available. [LB962]

SENATOR AGUILAR: (Exhibits 2&3) Okay. We're ready for the first proponent, and while she's coming up I'll read into the record a letter of support from Pam Daley of Fort Calhoun, Nebraska, and Frank J. Daley of the State of Nebraska Accountability and Disclosure Commission. Welcome. [LB962]

LAUREL MARSH: Hi. Good afternoon. My name is Laurel Marsh. I'm here today on behalf of ACLU Nebraska, and Marsh is M-a-r-s-h, in support of LB962. We feel that the change that LB962 proposes is an improvement to the act, of the existing act, and I am

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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always surprised at--despite my familiarity with the Legislature over time--when you're sitting here, it's pretty darn possible to be intimidated by those of you who are sitting there. And I think that the benefits of the act are threefold. First, I think that it encourages participation in government and it makes that participation less intimidating. Second, I think that it...while I guess the second point was that it makes the participation less intimidating. And third, it would decrease the opportunity or chances for any game playing should they occur at different levels with people needing to sign in at miscellaneous times or perhaps a representative not being able to come for a group and a desire to substitute a person not being able to be made because Mr. Smith cannot be here but Mr. Jones is here but his name is not on the list. So in closing, ACLU Nebraska would support the change to LB962. [LB962]

SENATOR AGUILAR: Questions for Ms. Marsh? When you were talking about being intimidated, you were referring to Christy, right? [LB962]

LAUREL MARSH: Totally, absolutely (laugh). [LB962]

SENATOR AGUILAR: Seeing no questions, thank you, appreciate your being here. Welcome. [LB962]

KORBY GILBERTSON: Good afternoon, Chairman Aguilar, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Media of Nebraska. Media of Nebraska is an organization made up of all print, radio, and television broadcast news in the state that primarily looks at First Amendment issues and at open meetings and public records issues. And we want to take an opportunity to thank Senator Preister in his undying efforts to continue working on these, and we've enjoyed a very good working relationship with him and this committee over the years. And we are very much in support of LB962 and think that it furthers the public's involvement in a very important process. And I would be happy to try to answer any questions. [LB962]

SENATOR AGUILAR: Thank you. Are there questions for Korby? Seeing none. [LB962]

KORBY GILBERTSON: Thank you. [LB962]

SENATOR AGUILAR: Thank you. Next proponent. Welcome. [LB962]

FRANCES MENDENHALL: Thank you, Senator Aguilar. My name is Frances Mendenhall and I'm here to speak in support of Senator Preister's bill, LB962, and I think others will do a real good job... [LB962]

SENATOR AGUILAR: Could you spell your last name, please? [LB962]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

FRANCES MENDENHALL: You betcha. M-e-n-d-e-n-h-a-l-l, Frances is spelled with an "e", the feminine way. I jumped at the chance to come to speak on this bill when Common Cause discussed it a couple of weeks ago and they said I could speak on their behalf. Jack Gould will also be doing it, but I think Jack Gould is going to speak in more in a theoretical way. I'm going to tell you a story that's personal to me and I'll try to make it quick. I worked with a group of citizens for two or three years to try to strengthen public access in Omaha, and when push came to shove, we just couldn't get anywhere in spite of the fact that Cox Cable had promised the city a whole lot more than it had delivered. The barrier that was put in our way came from the city council and what they repeatedly said was that's not our job, we're going to refer it to a committee and you can't lobby us, either privately or speak at a meeting, because there's no proposal on the table. It took us two years to actually get to where there was a proposal. I know I need to be concise here so I will. We were not allowed to speak at any city council meetings nor was any city council member willing to hear what we had to say. Those who answered letters said there's nothing on the agenda, we have nothing to discuss. But during the six months from September 2006 until February 2007, Cox Cable and their corporate leaders and their lobbyists had all the access they wanted to the Omaha City Council. And so when there was finally something on the agenda that we could discuss, we had a mere three weeks to organize our talking points, get the media out, and make our points. And when it came time to speak publicly...you know, most of us couldn't get a private session with our city councilmen at that point because the time was too short and we were only allowed totally 20 minutes to speak the day of the hearing. I was asked privately to organize, you know, the opposition, the citizens groups so that the people who needed to make points could do it in those 20 minutes. This in stark contrast to Cox that had in effect all the access they want. Would this bill rectify that? Well, it's a start because it says that anybody that showed up at city council that day would have a right to speak, and I think it would address the problem of, you know, limiting a whole group of people--there were 50 of us--to only 20 minutes. I'm going to say in closing, I'm in favor of this bill. I wish it was stronger and anybody that has any questions... [LB962]

SENATOR AGUILAR: Are there questions for Ms. Mendenhall? Seeing none, thank you for coming today. Welcome. [LB962]

JACK GOULD: (Exhibit 4) Senator Aguilar, members of the committee, my name is Jack Gould. I'm here representing Common Cause Nebraska. We would first of all like to thank Senator Preister. [LB962]

SENATOR AGUILAR: Spell your name. [LB962]

JACK GOULD: Oh, I'm sorry, I should. It's G-o-u-l-d. We first of all would like to thank Senator Preister for his, I believe, 16 years of service to this body, and also for his scrutiny and protection of the open meetings laws. Our concern is simply this, that the

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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citizen should have the right to speak without having to sign up in advance. Agendas generally are published with the idea of stimulating public interest, getting people involved, and if the public gets interested and gets involved and isn't on the agenda and isn't allowed to speak, is simply a frustrating experience. Democracy was never designed for speed and efficiency. It was designed for public participation. And in this situation if we were to raise hurdles to the public by forcing them to sign up, it just simply defeats the purpose, frustrates the public, and in the end hurts the whole system. That's all I've got. [LB962]

SENATOR AGUILAR: Questions for Mr. Gould? Seeing none, thank you, Jack. Next proponent. [LB962]

GARY KRUMLAND: Senator Aguilar, members of the committee, my name is Gary Krumland. It's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB962. And I'll try not to be repetitive, but the Open Meetings Act requirements on agenda are designed to give notice to the public to get the public involved. I don't think they were ever designed to prevent somebody from speaking or put impediments in the way of someone from speaking, and we think LB962 clarifies that and makes it clear that those things are not allowed and we do support the bill. [LB962]

SENATOR AGUILAR: Questions for Mr. Krumland? Seeing none, thank you. Next proponent. Welcome. [LB962]

JOHN KNAPP: Senators, John Knapp again, J-o-h-n K-n-a-p-p. This is the bill I came down to testify on. I would also like to thank Senator Preister for working on open meetings over the years, regulations. I support this bill and one of the senators asked why it would...the body would try to make somebody sign up in advance. I think it again is strictly intimidation. The Papio NRD requires you to sign in before the meeting takes place. I got there late for a meeting, there were some issues came up that I would have liked to have testified on, but I had not got there in time to sign up before the meeting. And just as...this was earlier today, I hadn't planned on speaking on the other bill. Maybe you don't feel it was worth my comments anyway, but you know, I decided it was worth commenting on and I think the public should have the right to get up and comment, as long as you would adhere to certain regulation. And in Sarpy County where I'm coming from, our planning commission...give you an example of what's happened, they poll the commissioners before a meeting to see if they have a quorum and they have called...if you're on the agenda, you're the person asking for something on the agenda, they will call you and tell you, no, we don't have a quorum. Well, there's a group of us wanting to comment on some issues coming up before the meeting. We got there early and the chairman of the planning commission was there along with the secretary. Nobody said anything to us. They let us sit there until it was time to start the meeting. They said, oh, by the way, the meeting has been canceled because we don't

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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have a quorum, and the secretary who does the polling knew that we would be there to testify on the issues. But they said that we can't contact you because we can't contact the rest of the public. But they at least could have told us in advance, you know, you just as well go home. And I think a lot of this is just intimidation. You try to get your neighbors involved, to come down on an issue and talk, and they let you sit there. And I don't know what your experience is, but I have a lot of trouble getting people to even attend meetings because they say, why even go because these people are going to do what they want to do anyway. And I went to a county board meeting and on the agenda item was they just passed a new comprehensive plan, and you know, it's a new document so there's language that's not very clear and you get words you need to clarify. And so they called it a cleanup, agenda item was to cleanup the wording in the comprehensive plan. And the planning director went through all his stuff. Well, I found a few that I wanted to bring up and it was by pure luck...I had to stand up and a couple of the county board members did not want to let me speak because they told me that I should talk to the planning director and get my ideas on the agenda for a later meeting. And all I wanted to do was ask them why, you know, this wording was such, couldn't it be clarified or what have you. And again, I think it's just intimidation and they don't want to hear anything that is against their grain, and I would urge you...another thing they've done is they've changed the order of the agenda and I would like to see this amended to include that as part of a public notice that the agenda cannot be changed...the order of the agenda cannot be changed by the board. And I attended a meeting where...we've been at meetings where we've had attorneys and had professional people take time out--and our county board gives you two minutes to speak--take time out to come down from Lincoln and Omaha and they'll have us at the very end of the agenda and so you've got these people tied up. Well, they had a company come in, they had an attorney and a lawyer with them, and the chairman moved their agenda to the beginning of the agenda because it was...they have an attorney and a engineer present and these people need to have other important things to do, like if the rest of the citizens out there waiting to speak on their agenda item has nothing to do. And so I would really like to see you clarify that. We've talked to the Dale Comer with the Attorney General's Office about this and they seem to be at a loss as to if that is really a violation of the open meeting order to change the agenda. And anyway, I guess that's my comments.  
[LB962]

SENATOR AGUILAR: Questions for Mr. Knapp? Seeing none, thank you. Further proponents. Seeing none, are there any opponents? Neutral testimony? Welcome.  
[LB962]

JAREL VINDUSKA: Thank you. Senator Aguilar, members of the committee, my name is Jarel Vinduska, J-a-r-e-l V-i-n-d-u-s-k-a. I would normally be a proponent of this...well, in fact I am a proponent, but the reason I came up as a neutral is I had a couple quick comments I would like to make on the open meetings laws in general. I want to thank Senator Preister for all his efforts over the years and I do support this. It is an important

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

---

addition to the law. But the comments I wanted to make was that I hope you'll take home with you, and maybe spread around to your colleagues as we continue this fight to improve the Open Meetings Act is more important in my mind is some mechanism of enforcement of this law because if at the local level like I've experienced in Sarpy County...in fact, Pamela Daley who sent a letter that you read into the record, she asked me to comment about our experience in our two counties. She's from Washington County and we've had a lot of open meetings violations, both counties, because our perspective county boards don't agree with...they're all really prodevelopment and we're trying to promote conservation development. They don't agree with our point of view so they've used violations of the Open Meetings Act as a way to stifle our comments. And so therefore if your county boards are against you, lots of times it's unlikely that the county attorneys are going to help you out when they see violations of the Open Meetings Act because their job is to protect the county employees. And so a citizen can only turn to the state Attorney General, and we've had a lot of problems there with enforcement. In fact, there's been no enforcement and we, Pamela Daley and I, have made up a three-ring binder outlining almost 30 documented violations of the Open Meetings Act and we submitted it April 30 of last year after several months of trying to even get to be heard, you know. And so it's been a long time and as of yet there has been no enforcement whatsoever and I kind of lost faith that there was going to be enforcement. The person that was turned over to do the job was the assistant of the Attorney General's, Dale Comer, and when I had my first meeting with him, I asked if there had ever been any enforcement of the open meetings act in his time, because he had told me that he'd been employed in the Attorney General's Office I believe I'm correct by saying 28 years, and he said there had never been an enforcement of it in all that time. And so how can a citizen have much confidence? You know there's been some violations over a 28-year period and there's been no enforcement. So that's what I hope in the future, you know, that we can get some way of enforcing it because if your Attorney General fails you, then your only option left is spend your own money for a private lawsuit. Well, that's what we did in our county, me and several of our neighbors. We filled suit because we believed according to the Open Meetings Act...we knew we were correct and we knew there was no way we could not prevail because we had the evidence to show that the act was violated. So we filed suit on the belief that we would get our money reimbursed for our attorney fees because that's what the act provides that the judge can reimburse you on your money that you spent for it. Well, so we spent \$13,000, but we failed to notice one way that you get out of that. If the county can without admitting guilt, just redo the meetings where the violation was, and that's what they did because they knew they were guilty. And so we're out \$13,000 and Attorney General didn't help us. We're out that amount of money, and so we're still sitting there holding the bag. And so I wish you'd, you know, tell all your colleagues that and when somebody comes forward to try to improve on the situation, that in my mind enforcement is the big issue because we don't need laws for people that are planning on doing it right to begin with. We wouldn't need an Open Meetings Act if government was totally open, but if there's no enforcement, the ones that don't plan on doing it right

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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know that and they do it anyway. Thanks. [LB962]

SENATOR AGUILAR: Thank you. Questions? Seeing none, thank you. Any other neutral testimony? Senator Preister to close. [LB962]

SENATOR PREISTER: Thank you, Senator Aguilar, thank you committee members for hearing this. Just a reiteration, this does not change or preclude the governing bodies from making any rules and regulations that they want to. They can still set the time limits. They can still do the things that they have authority to do now. This, as Mr. Krumland said, adds some clarity to the language that people don't have to sign up, come in in advance prior to a meeting and sign up. It's pretty simple, pretty straight forward. I've visited many times with Dale Comer in the Attorney General's Office. To my knowledge...and you'll notice the Speaker's name is on this as well. He has assured me that as soon as it's out of committee, he will help me. Since it's been a longstanding issue, I do want to get it done this session. So with that, I thank you. [LB962]

SENATOR AGUILAR: Questions for Senator Preister? Seeing none, thank you. [LB962]

SENATOR PREISTER: Thank you. [LB962]

SENATOR AGUILAR: That closes the hearing on LB962. Senator Nantkes, come and talk to us about LB869. [LB962]

SENATOR NANTKES: Good afternoon. Chairman Aguilar, members of the committee, my name is Danielle Nantkes, that's spelled D-a-n-i-e-l-l-e N-a-n-t-k-e-s, and I represent the "Fighting 46th Legislative District". I'm here today to introduce LB869. LB869 requires a prospective vendor doing business with a state agency to disclose in a statement of work where services will be performed under the proposed contract. The statement of work must disclose if any services of the contract or subcontract will be performed outside of the United States or the state of Nebraska and if so, why. So basically what we're talking about in this legislation is a simple reporting or disclosure of any work performed under contracts that the state puts out in terms of offshoring, is the common phrase at play here. Currently according to a report from the United States GAO office completed in 2005, the majority of offshore contracts involve the food stamp program in about 32 states and the TANF program in about 16 other states. The two countries where most of this work is offshored to are India and Mexico. The Nebraska Health and Human Services system department food stamp program contracts with JP Morgan Company to provide electronic financial services. Part of this contract involves providing call center support for the food stamp program. According HHS, about 97 percent of those calls are handled by a voice activated call system and about 3 percent of those calls are live. Those calls are handled by persons in India for English-speaking clients and in Mexico for Spanish-speaking clients. To be clear, this legislation does not forbid a state agency from contracting with companies who use offshore or

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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non-Nebraska workers for the job, but simply requires that they disclose such information when bidding on a state contract. This has been a hot topic in recent years and states have acted in a variety of different ways to address this issue. About five other states have similar disclosure laws in terms of their state contracts, and two of our fellow states have a straight prohibition in offshoring jobs under state contracts with the primary reason being the public policy principle that state taxpayer dollars should stay in the state when feasible. So with that, this simple disclosure bill does not have a significant fiscal impact to the state of Nebraska. It's prospective in nature and allows us, state policymakers and possibly other qualified Nebraska companies, to simply analyze this information and see if we do have a need for further attention to this issue in Nebraska or not. But I think that we definitely do have a need to engage in a public discussion about keeping taxpayer dollars in Nebraska. Again, according to the most recent GAO report, examining offshore contracts in all of the 50 states, it's from 2005, admittedly it's a bit outdated. I would be happy to provide a copy to the committee or any of its members if it's of interest to you. But in terms of the food stamp contract that has been offshored in Nebraska, we're talking about significant dollars here. The contract equates to about \$2 million in taxpayer funds. And those are being, again, shipped off to places in India and Mexico. And I think that there is a lot of qualified state employees who might be happy to have jobs handling those kinds of issues. So with that, there's some people here I think on both sides to share some information about this issue and I look forward to the dialogue. I'll probably plan to stay and reserve the right to close at this time, Mr. Chair. But I would be happy to entertain any questions. [LB869]

SENATOR AGUILAR: Thank you, Senator Nantkes. I'm going to start with one. I can understand why there's opposition to offshoring, but explain to me how disclosure helps in that arena? [LB869]

SENATOR NANTKES: Well, thank you, Senator Aguilar. And I think that, you know, we wanted to start in some place in this dialogue and instead of coming in with a full prohibition piece of legislation, instead we thought the most recent info we have is really from 2005 in the GAO report, and let's put a mechanism into place to get some updated facts and figures to really analyze what the lay of the land is in terms of what Nebraska is doing with its state contracts to see if there is an issue at play, to see if there's really not. And instead of putting an onerous burden on any private industry about prohibitions or burdensome reporting requirements, just a simple disclosure if they're going to compete for state dollars that they make clearly known if any of those state dollars will be utilized in jobs out of state or overseas. [LB869]

SENATOR AGUILAR: Thank you. Senator Avery. [LB869]

SENATOR AVERY: Thank you, Mr. Chair. Senator Nantkes, I don't see any enforcement mechanisms in here. What would be the consequences for failure to



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Government, Military and Veterans Affairs Committee  
February 13, 2008

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comply? [LB869]

SENATOR NANTKES: I don't think there are any specific penalties provided within the legislation if a company were not to disclose any offshoring activities to be performed underneath their contract. With that being said though, of course, the state is subject with its private vendors to traditional contract law principles and as part of...this basically would become kind of a part of the larger context for state contracts that must be complied with. And so theoretically the state would have traditional remedies provided under contract law to seek any breach of contract and the offer accepted or other component part. [LB869]

SENATOR AVERY: Good answer. [LB869]

SENATOR NANTKES: Thank you UNL law school. [LB869]

SENATOR AGUILAR: Further questions? Seeing none, thank you. Can we have the first proponent? Welcome. [LB869]

KEN MASS: Senator Aguilar and members of the committee, my name is Ken Mass, that's M-a-s-s, in here today representing the Nebraska AFL-CIO in support of LB869. Senator Nantkes did an excellent job of explaining how the legislation would work. I just want to touch on a couple of things that by keeping the jobs in Nebraska first of all, and the United States the next step, it keeps the unemployment and workplace dislocation in Nebraska residents for job opportunities, include industries and jobs that the state has the extended resources to attract. International outsourcing erodes the state and the local revenues by drawing jobs and income away from the state. And international outsourcing, additionally, may provide less privacy protection for state residents whose personal information may, in the course of service delivery, be translated to locations outside of the United States. Basically that's all I wanted to say at this time. As Senator Nantkes talked about, several other states have passed legislation or resolutions dealing with outsourcing within our states. But if there's any questions (inaudible). [LB869]

SENATOR AGUILAR: Questions for Mr. Mass? Seeing none, thank you. [LB869]

KEN MASS: Thank you. [LB869]

SENATOR AGUILAR: Next proponent. [LB869]

MIKE MARVIN: Good afternoon, Senator Aguilar and members of the committee. My name is Mike Marvin, M-a-r-v-i-n. I'm executive director of NAPE/AFSCME, the state employees union, representing approximately 11,000 jobs here in the state. I'm here in support of this bill as both the executive director of NAPE/AFSCME and as a taxpaying

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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citizen of the state of Nebraska. As executive director of NAPE/AFSCME, I feel that we should know that if some of the jobs that we represent are being considered to be moved not only out of the state, but out of the country, those are our jobs and we should have a reasonable expectation that if our jobs are going out that we need to know about them. As a taxpayer of the state of Nebraska and a lifelong resident of the state of Nebraska, I would find it offensive that the state would consider sending my tax dollars overseas without having it disclosed. And with that, I have no other comments. If you have any questions... [LB869]

SENATOR AGUILAR: Questions? None at all. [LB869]

MIKE MARVIN: Thank you. [LB869]

SENATOR AGUILAR: Thank you. Next proponent. Are there any opponents? Yes, there are. Welcome. [LB869]

LARRY RUTH: Thank you, Senator Aguilar. My name is Larry Ruth, R-u-t-h, representing AT&T, a telephone company primarily doing cellular services, formerly known as Cingular. The kind of services that AT&T provide would be such as cellular contracts for the states or long distance carriage, something like that, and we appear in opposition today only as it might relate to a telecommunications company like AT&T. Not familiar with the kind of concerns that Senator Nantkes and the other proponents talked about. Let's relate my conversation just to the kinds of services provided by a telephone company. AT&T is an integrated nationwide network. Very difficult to tell where a telephone call is going to be routed when you get a call from Lincoln to, say, Texas or Scottsbluff or maybe even within the state nearby. In fact, when you get to Internet services, they are known for going all around the world to get to a place relatively nearby because the Internet runs on lines that are typically are of little use or not used very often. We just cannot tell where the facilities are that are going to be used to service a contract and the language that's used here is where the services will be performed in the contract. It's just very difficult with a telecommunications company to understand where that service might be provided. Certainly right here in Lincoln, something coming from the state, we know it's going to be provided to somebody here, but we don't know how it's going to get to some other location or if we do, it could be multiple states. Yes. [LB869]

SENATOR AGUILAR: Thank you. Senator Friend. [LB869]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Ruth, under Section 1 of this bill, the first couple of lines it says, prior to contracting or as a requirement for the solicitation of any contact for services. And then it goes on, there's some other information there pertinent but unimportant but some other information that I'm not going to read. Further down it's saying before any of those things could happen, the contract for services could

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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happen, the contract or the subcontract if it's anticipated to be performed outside of the United States or the state...I guess I'm wondering can you violate this act if somebody in the state ceases to...I mean, if you can't get the type of services that are needed and you don't contract for it previously and then you have to change in the middle of a cycle, if you will, are you in violation of this act? What happens if the services can't be provided in the state? You didn't anticipate it because the services were provided. Then suddenly, boom, you're caught in a Catch 22. Do you just stop working? I mean how... [LB869]

LARRY RUTH: I don't know the answer. I'm assuming that they didn't anticipate that this would be used in a telecommunication situation, but I'm thinking particularly about a situation where you have an emergency and you shut off the switches over here and you send all the traffic over here and it might go through a different state. I don't think that's what the senator is looking at, but I can see your problem in your conversation. [LB869]

SENATOR FRIEND: I guess the point is can this be written in a way that could handle...I wasn't exactly talking about the same thing you were. But I mean, could this be written in a way that can handle unforeseen or the proverbial unintended consequences that I've just brought up? I mean, I guess the only thing I would be concerned about with this is that you can't...the term anticipated is a little...I don't know if it's troubling to me, but there are some things as a businessperson you can't anticipate. [LB869]

LARRY RUTH: It would certainly seem to tie you down to one method of doing business when you might have things arise that would make you want to do it a little bit differently, and that might be for any service. [LB869]

SENATOR FRIEND: Thank you. [LB869]

SENATOR AGUILAR: Further questions? Senator Lautenbaugh. [LB869]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, Mr. Ruth. So at this point there really are no teeth in this bill, so to speak... [LB869]

LARRY RUTH: Well, I think that... [LB869]

SENATOR LAUTENBAUGH: ...just requiring the disclosure? [LB869]

LARRY RUTH: Yes, I think that the point was made over here that there's no enforcement and the question is, I assume, what good does it do then other than just tell the public where their contracts are being performed, and that may have some benefit. But there is no enforcement mechanism that I can see. [LB869]

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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SENATOR LAUTENBAUGH: I'm just thinking out loud and wondering if you wouldn't be in compliance just by always disclosing the nature of your business, the fact that you're a multistate organization and multinational as far as that goes, and say it's anticipated and possible, I mean. [LB869]

LARRY RUTH: And then put every state down that you have facilities and every foreign country where you have any facilities. I suppose that's a possibility. It's not what I think is anticipated by the bill, but we might have to do something like that in order to comply. And I think also, I would like to raise one other point, and that is that when you disclose where certain services are going to be performed, locationwise, especially I would assume, if it involves security of some kind, if you're doing something for the state patrol or emergency preparedness or something like that, if AT&T was doing something like that, then you would wonder would you want to have that disclosed, the location where it was going to be? And maybe it's just having it done out in a foreign state or a foreign country is enough and then maybe that would be it. But I do notice that was one of the things the folks came back to me on is would you want to disclose where something of a sensitive nature was being done which would possibly subject it to some kind of a sabotage or whatever if it was in fact something that was secure in nature. [LB869]

SENATOR AGUILAR: Thank you. Any other questions? Seeing none, thank you, Larry. [LB869]

LARRY RUTH: Thank you. [LB869]

SENATOR AGUILAR: Any other opponents? Neutral testimony? Senator Nantkes, would you like to close? [LB869]

SENATOR NANTKES: Thank you, Chairman Aguilar, members of the committee. Thank you for your kind consideration of this important issue this afternoon. I know it's been probably a long afternoon for you and I have a committee to get back to as well. Just a couple of points here and I think that some of the questions today really helped to draw out some of the important ideas contained within this legislation. And I'd be happy to work with the committee if they see merit in this idea moving forward on any issues relating to terminology, enforcement or otherwise that might be an improvement upon this piece of legislation that's admittedly modeled after legislation in other states and could obviously be tailored to meet our specific needs here in Nebraska. Also some of those issues are probably rules and regs issues down the road if adopted that I think that we could look at as well. In terms of what kind of contracts we're really talking about here, the vast majority of contracts where this instance arises in other states, and in Nebraska it comes in terms of private vendors who contract with the state in terms of child support enforcement, unemployment insurance, TANF benefits, and food stamp benefits as I mentioned before. You'll also probably see this in terms of customer

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

Government, Military and Veterans Affairs Committee  
February 13, 2008

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service and other software development issues that the state may engage in. I guess in terms of security, of course our intent would not be to breach the security or peace of Nebraska citizens. I'd be, I guess, surprised if the state were contracting at a lot of those functions at this point in time, but would also want to know if they were I guess. And I think that some of the broader principles contained in this legislation have merit in moving forward and helping us to decide, you know, what exactly are we contracting out? What core functions of government are being handled by private entities? What questions does that beg as we develop public policies? And again, we're not saying that there's any sort of blanket prohibition upon this type of activity. Indeed it may be most cost effective for the state to contract out in many regards. And quite simply I think then the company or the private vendor can just simply provide a reason why these jobs are not performed within Nebraska or within the United States. And it just would allow us as policymakers to have more information available to do an analysis about whether that's appropriate for state tax dollars to be sent and that work to be performed. And I'd like to know some of that information as I think more about those broader questions. So with that, thank you again. [LB869]

SENATOR AGUILAR: Questions for the Senator? Seeing none, thank you. And that closes the hearing on LB869. [LB869]

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Government, Military and Veterans Affairs Committee  
February 13, 2008

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Disposition of Bills:

LB869 - Held in committee.

LB884 - Advanced to General File, as amended.

LB962 - Advanced to General File.

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Chairperson

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Committee Clerk