

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

Executive Board Committee
February 27, 2015

[LB580]

The Executive Board of the Legislative Council met at 12:00 p.m. on Friday, February 27, 2015, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB580. Senators present: Bob Krist, Chairperson; Dan Watermeier, Vice Chairperson; Kathy Campbell; Ernie Chambers; Colby Coash; Galen Hadley; Dan Hughes; Tyson Larson; Heath Mello; and John Murante. Senators absent: None.

SENATOR KRIST: Okay, if we could bring it all together. Please turn off your cell phones. And if you have handouts if you're going to testify, make 15 copies...we'll make 15 copies if you don't have it. But if you want to give it to us, we need 15. We'll let our page take care of that. If you are testifying, please make sure when you come up here you give us your name, first and last, and spell it, please, not for us but for the transcribers. How many people are intending on testifying today? Okay, thank you. We won't use the light system then, but I want to be respectful of the fact that we need to be out of this room by 1:00 because the Forecasting Board is going to be here so we'll just be respectful of that, please. Okay. If you're not testifying and you want to sign in on the sheet on the outside, please do so. I'll let everybody introduce themselves. Brandon is gone. He's our page today. Start over here.

SENATOR COASH: Senator Coash from Lincoln.

SENATOR HUGHES: Dan Hughes, District 44, southwest Nebraska.

SENATOR CAMPBELL: Kathy Campbell, District 25, Lincoln.

BETH DINNEEN: Beth Dinneen, committee clerk.

SENATOR KRIST: Bob Krist, District 10, Omaha and Bennington.

JANICE SATRA: Janice Satra, committee counsel.

SENATOR WATERMEIER: Dan Watermeier from Syracuse.

SENATOR HADLEY: Galen Hadley, District 37, Kearney and the rest of Buffalo County.

SENATOR MELLO: Heath Mello, south Omaha.

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SENATOR MURANTE: John Murante, District 49.

SENATOR KRIST: Okay, with that, let's start with LB580 and, Senator, you're on.

SENATOR MURANTE: Thank you very much, Senator Krist. For the record, my name is John Murante, J-o-h-n M-u-r-a-n-t-e. I represent District 49 in the Nebraska State Legislature, and I am here to introduce LB580. LB580 is the product of almost a year's worth of work following the redistricting discussion of last year's bill introduced by Senator Karpisek. Senator Mello and I began discussions on what sort of legislation could go forward in this Legislature to enact some sort of redistricting reform. Since that time, I have worked closely with the redistricting and elections standing committee through NCSL, gone to several of their meetings, and have worked with them to understand better what other states do relative to the redistricting process to see what we can do to improve upon our own. And LB580 is what I consider to be the first step in the process as you see it right now. It is by no means a finished product. Before this session began, on the 10th day actually, as Senator Mello and I continued our negotiations, the form basically we had to tear out a section and put a section in. I called it the patch, just to put it in a form that was able to be introduced. So there are portions of the bill as it exists right now which don't make any sense, such as the size of the committee, the commission itself. But the more important element to me was starting the discussion off on a good tone that we understood that we were both operating in good faith and I think we've done that and our discussions continue. At the end of the day, the creation of an independent redistricting commission is the goal. There are a lot of details that need to be hammered out to achieve that end. I think Senator Mello and I are probably 90 percent of the way there. It's just a matter of hammering out the last details and coming to the language that will make this in good enough form to pass. So I'd be happy to answer any questions you have about the details of this bill. But again, as I said, it's a work in progress right now. [LB580]

SENATOR KRIST: Thank you. Any questions for Senator Murante? Seeing none, thank you very much. First proponent, well, actually, you're going to... [LB580]

SENATOR MELLO: Proponent. [LB580]

SENATOR KRIST: Okay, good. [LB580]

SENATOR MELLO: Good afternoon, Chairman Krist, members of the Executive Board. My name is Heath Mello, H-e-a-t-h M-e-l-l-o. I represent the 5th Legislative District in south Omaha. I serve as a cosponsor of LB580 and am here in support of the general premises that you see in the bill. As Senator Murante mentioned, it's a...I think it's a very good first start and it's a pretty good foundation from which Senator Murante was able to get the bill in by day 10. As he

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said, there's a couple of areas that no doubt have some technical changes and we're still talking about some other areas of the independent redistricting commission that we would like to see some compromise on. But more importantly, I just wanted to emphasize to the Executive Board how grateful I am to Senator Murante for keeping his commitment that he made to the Legislature and to the state last year when we were having this debate on former-Senator Karpisek's bill. We discussed it on the floor, discussed it in the public record on the mike that this was going to be a goal of ours to work on this issue the next two years and to come to some kind of consensus from a very bipartisan perspective of creating a new way of doing redistricting for the state. And I think Senator Murante deserves a tremendous amount of applause and credit for not only keeping his word, not just to me but to the remainder of the body, but also doing a lot of the heavy lifting as you see in the bill and introducing the bill. And him and his office deserves a lot of credit in my mind in regards to being able to make some of the changes that we were negotiating at the very end of bill introduction to be able to get that in a format for you, the Exec Board, and the public at large to be able to see that bill. And so I'm very grateful for his leadership and for his willingness to continue working diligently in negotiating areas of the bill to make this really work, I think not just for the Executive Board but for the entire Legislature, people of all political persuasions and ideologies, to see that we're trying to create I think a process and a system that will yield results that I think the Legislature and the state can be proud of and to be a trailblazer in regards to redistricting in 2021. So with that, I'll answer any questions you may have. I think Senator Murante covered a lot of the general technical issues. There are some areas that we've got to work on, but more importantly I just wanted to emphasize how I'm proud to cosponsor this bill and work with Senator Murante moving forward on it.

[LB580]

SENATOR KRIST: Thank you, Senator Mello. Any questions? Thank you. First proponent, those speaking in support of LB580. Welcome. [LB580]

GAVIN GEIS: (Exhibit 1) Chairman Krist, members of the Executive Board, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm the executive director for Common Cause Nebraska. The sheet that's being handed around to you has a couple of different things on it. One of them, just things we like about the bill and other suggestions that we want to make. Another, just a list of other organizations that I've been working with and talking to that are in support of LB580, some that I believe sent letters in to the committee, others that did not, but that are in support of LB580 and support of this sort of reform in Nebraska. For those of you who do not know Common Cause, we work in the areas of government accountability and transparency; and that is what has brought us to the doorstep of redistricting in Nebraska. This is an issue we've been working on and talking about since the '90s but just this year decided to take on more seriously. And that's when I started talking with other organizations to rally support and come to a consensus about what we want out of redistricting in Nebraska. We are in support obviously of LB580 and we think that redistricting reform is important for Nebraska for a variety of reasons. First of all, we

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think that this is a nonpartisan Legislature. We all agree to that. But every ten years we take on a partisan process. This does multiple things, but one of them is decreased voter trust in the nonpartisan nature of this Legislature. One study that I found has resounding effects that looked at a variety of different states that have a nonpartisan independent commission found that 45 percent of people in those states who had an opinion on the trust they place in independent redistricting, 45 percent of them trusted the results of those processes. When we looked at states that did not have that where the process was handled by the Legislature, only 25 percent of people who had an opinion found that they could trust the process. I think it's easy to say that with an independent process like the one that is laid out in LB580 Nebraskans will just have greater trust and greater belief in the accountability of the system. That the lines that are drawn, the districts that are created are not drawn so that legislators can pick the voters but so that voters can pick their legislators. Finally, one of the final reasons that we think this is important is that population shifts are moving away from rural areas and they are moving more and more into the cities in Nebraska. And while we don't have gerrymandering now, that will create more compact districts. More compact districts mean more availability, more ability to create those districts that maybe play the lines a little bit, that shift things from one area to another. LB580 does away with that by making sure that the districts are not only compact but that minority communities are not abridged, that communities of interest outside of minority and majority communities that are respected, and that political persuasion that election results don't play in to the drawing of maps. So we are in support of LB580. The other organizations that are not here today because you are limited on time are in support of LB580. We know there are things that need to be fixed with the bill. There are suggestions we have, but we know that it's an ongoing discussion between the two legislators that are bringing this. And we just want to be here to help where we can and give input and just be in support of making this process happen in Nebraska. Thank you. [LB580]

SENATOR KRIST: Thank you, Mr. Geis. Senator Hadley. [LB580]

SENATOR HADLEY: Under your suggested changes, the second one down... [LB580]

GAVIN GEIS: Um-hum. [LB580]

SENATOR HADLEY: ...is that physically possible to find one Democrat in the Third District in Nebraska? (Laughter) I was just wondering if there was... [LB580]

GAVIN GEIS: I imagine there's one. [LB580]

SENATOR HADLEY: I was just wondering if there was any out there. [LB580]

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GAVIN GEIS: It may default to just the one Democrat, you're right. [LB580]

SENATOR HADLEY: Okay. [LB580]

SENATOR KRIST: There will be after Senator Mello moves to the Third District. (Laughter). [LB580]

SENATOR HADLEY: Okay. I just want to be sure it was possible for us to do that. [LB580]

SENATOR KRIST: Thank you. Any other questions? Thank you, sir. [LB580]

GAVIN GEIS: Thank you. [LB580]

SENATOR KRIST: Next proponent of LB580. Welcome. [LB580]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union. We are in support of LB580 as a good starting place for what we think is a good evenhanded process. We have supported these kinds of efforts in years gone by and we do so in part because we are 101 years old. My organization did help support efforts to create the Unicameral, the public perception of how it operates. And the processes and procedures that it uses are important when you look at it over the long term. So the public perception of what gets done, how it gets done is important that we have the trust of the citizens that this body governs. And so we think that this is a good starting place, and we commend both Senators Murante and Mello for tackling what we know is a prickly issue. And with that, I would end my testimony and answer any questions if I could do so. [LB580]

SENATOR KRIST: Any questions for Mr. Hansen? Thank you, sir. Thank you for coming. [LB580]

JOHN HANSEN: Thank you. [LB580]

SENATOR KRIST: Any other proponents for LB580? How about opponents for LB580? Welcome. [LB580]

JOHN ELSE: (Exhibit 2) Thank you. Senator Krist and committee, I'm glad to be here. My name is John Else, E-l-s-e, like anything else. I want to congratulate Senators Murante and Mello for

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bringing forth the redistricting legislation. Redistricting is really important. It's critical to open and fair government. It's also an extremely complex issue. So I would urge the Executive Board to withdraw this bill and introduce a legislative study for the year to bring another bill, an improved bill next year. Maybe working with them this year would do the same thing. We'll see. This testimony is not from an organization. It represents my personal views based on my study of redistricting in four states whose redistricting processes are most frequently mentioned and my analysis of LB580 as in comparison. I'm not going to go through these. I just noted that the four states are Florida, which has been in court for five years and it's still not settled; Arizona and three of the four states brought constitutional amendments by initiative. Only Iowa passed it in the Legislature so I think it's good that the Legislature is dealing with it. Arizona currently has a case before the U.S. Supreme Court to decide whether a nonlegislature group can set districts. That's going to be decided this summer. California passed an initiative that has a 14-member commission, 5 Democrats, 5 Republicans, and 4 Independents. It's recruited and the Bureau of State Audits, the nonpartisan part of that, recruited over 30,000 candidates; and then they went through the process of selecting the committee. And the district received a positive vote from all three groups of commissioners and survived legal challenges. Iowa is the only district, as I said, that has a legislature passed it. It's also the only one that has a legislative, a nonpartisan legislative body, a legislative services agency, which is similar to Nebraska's Legislative Research Office, actually creates the districts with no input from their committees. The committee's only function is to schedule and conduct hearings around the state and prepare a report for it and submit it. The legislature has three opportunities to vote on that, the first two without amendment, the third with amendments. It's gone in the first two, three times and then a third, a fourth time. The problems: First of all, none of these are equivalent because Nebraska is a Unicameral, nonpartisan. All of the states that have committees have nonpartisan commissions. They are a certain number of Democrats, an equal number of Republicans, and one or more Independents who, one of whom has to serve as the chair. And that's really worked well. It also means in other states the leaders, Republican and Democrat of the House and Senate, select those members. And that wouldn't be possible here because you don't have that kind of leadership. I would suggest that the Republican and Democratic party leaders select one person from each Congressional District and then have a seventh member who is a nonpartisan that's selected by those six. That's the way it works in the other states. I think that really is effective and makes clear it's nonpartisan. The other option, of course, is to have the nonpartisan legislative office conduct and I think that's an option that really ought to be considered. The issue of ignoring incumbent addresses: An objective redistricting can't happen and consider the addresses of incumbents. That simply means that...well, it increases the chances of gerrymandering and makes it virtually impossible to do it without that. That, however, is part of the constitution. So one of the issues would be...and I don't know when that came into the constitution, but one of the issues would be I would suggest a study consider the possibility of an amendment to the constitution that would allow two-year elections, as is true in the other states for incumbents that have two years left. Sometimes those states have two incumbents in one

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district; other times, none. So that's really important. Four other quick problems: One is the deadline date of April 1. It's excellent to have that. There's no provision for what occurs if that date is missed, and there is in legislation in other states. The maximum allowable variation in population except the U.S. Congressperson is 10 percent. And I question whether the courts would accept that much variation. The third, it appears that amendments to the redistricting bills are not allowed but that's not specifically stated or contradicted. And finally, there's no provision for what occurs if the Unicameral is unable to approve the bills. In Iowa, the Iowa Supreme Court assumes responsibility for creating the district maps if the legislature can't agree on it in the third time that they do it with amendments. But that would probably require a constitutional amendment for the Nebraska Constitution as well. I sincerely thank you for the opportunity to give you this testimony. [LB580]

SENATOR KRIST: Thanks for the education. Very good. Any questions? Senator Chambers. [LB580]

SENATOR CHAMBERS: Are you the same John Else I knew all those years ago? You grew a beard. [LB580]

JOHN ELSE: No, I've always had that. [LB580]

SENATOR CHAMBERS: You've always had a beard? See, my memory is failing. But it's good to see you again. [LB580]

JOHN ELSE: Thank you. It's good to see you. [LB580]

SENATOR CHAMBERS: Okay. [LB580]

SENATOR KRIST: Any other questions for Mr. Else? Really, thank you for your testimony and for all the research you've done. I have one other comment for you. You asked or you noticed, you highlighted Arizona. I have a paper here that legal counsel gave me and the NCSL writes that that hearing was on October 3 of 2014 and they're still...they haven't made their decision. And you said you thought it would happen this summer. Do you think that that's... [LB580]

JOHN ELSE: The decision is supposed to be by June. [LB580]

SENATOR KRIST: Okay. [LB580]

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JOHN ELSE: So they'll have that information to put in here. [LB580]

SENATOR KRIST: And that is pertinent to us because they use an independent rather than keeping it in the legislature. [LB580]

JOHN ELSE: Except that your bill avoids that problem because it brings it back to the Legislature to vote on. [LB580]

SENATOR KRIST: Okay. [LB580]

JOHN ELSE: The other...the places like California and Arizona, those commissions actually make the decision and announce them. [LB580]

SENATOR KRIST: Great. I don't know what you're doing in your spare time, but you might want to help these guys. (Laughter) [LB580]

JOHN ELSE: I'd love to. [LB580]

SENATOR KRIST: (Exhibits 3, 4, 5) Thank you, sir. Any other opponents? Anyone in a neutral status? Okay, we have...I'm going to take your letter of support with the folks that you listed on here. And I have also letters from Appleseed and neutral testimony from a private citizen, and I'll get copies of that to all of you. We just got them off my e-mail. Senator Murante to close, please. [LB580]

SENATOR MURANTE: I will address a few things that Mr. Else had said and then a few other considerations for the committee before we continue with negotiations. First of all, the constitutional question is something that we're paying very close attention to. I have no idea how the Supreme Court is going to interpret that or whether they are going to broaden the exact question. Now the case in Arizona was a popular initiative. It was an independent redistricting commission enacted by a popular vote so a petition initiative process. The legislature did not delegate that power as we would be doing here. So that may be a difference, but we have to watch that very closely. Something that I'd also like the committee to consider is this will place a tremendous burden on the Legislative Research Office. Nancy Cyr will be the redistricting czar. I've already told her that that is her unofficial title in the Nebraska State Legislature. Whether she can or whomever the director of Legislative Research can do the amount of work that this bill would require that person to do and still function and do the other things necessary to be the director of Legislative Research is a matter capable of question. So we may have to consider how exactly the Legislative Research Office is going to function in a world where the director is

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spending a considerable amount of time on the redistricting process. Of the concerns brought up by Mr. Else, I think a lot of them are very legitimate. I want to address one in particular because I know there were some media questions about it relative to including incumbent addresses on allowable information for the commission to consider. Mr. Else adequately described why I included that. It's because I believe that the constitution requires it. If a person...the good news is for all legislators with odd-numbered districts, your districts aren't going anywhere. Anyone who is elected in 2020, which is going to be the odd-numbered districts, are granted four-year terms. And there's nothing that the redistricting process can do to shorten that term so the redistricting process cannot make a legislator who is elected in 2020 run in 2022. So the odd numbers are going to stay where they are. And in my view if we are going to draw maps which meets the constitutional burdens, information that the commission has to have is where the incumbents live. Because if they don't have the incumbents' addresses and they draw a map which draws an odd-numbered senator into an even-numbered district and force that senator to run in two years rather than four, the map will get thrown out. So we have to take that into consideration. But another thing I'd like to point out is that this bill and the logic that was employed in crafting it is fundamentally different from any other redistricting process. I mean, how we basically do it is create a statutory instruction manual for how to draw the maps. We say these are the standards. These are the priorities. This is what you have to consider, independent redistricting commission. Just go do it. There are not a lot of statutes out there that have this level of detail of what is more important than what. And I think that we are going to...I think we need to consider applying this not only to the redistricting that's done at the legislative level, but at the political subdivision level in applying these same standards such that the protections, especially for minority voters, are taken into consideration at the redistricting at all levels. But we codify that into state law here and I believe that those protections will be easier to implement when they are codified into law. So that was the logic that we were using, and now we just have to hammer out the details.

[LB580]

SENATOR KRIST: And I trust you two will hammer each other out. (Laughter) Any other questions? [LB580]

SENATOR CAMPBELL: Senator Krist. [LB580]

SENATOR KRIST: I'm sorry, Senator Campbell. [LB580]

SENATOR CAMPBELL: Thank you, Senator Krist. I just want to make a very brief comment and support what the senator talked about for other political subdivisions. Having done that as a county board member, it would have been particularly helpful to know what those standards were and have them apply because at a time your local political subdivision is sort of making up the standards and that would be helpful, very helpful. [LB580]

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SENATOR MURANTE: And I can tell you there is an extreme...especially when we're talking about the creation of majority/minority districts there is confusion as to when it is allowed. But the more important question, mind you, is when a majority/minority district is capable of being created when it must be. That is the question I think that needs to be codified into law. We have some court precedence on it, but I think we need to take that, put it into law, as I said. And it's basically an instruction manual so that there is no possibility or potentiality that it gets violated.
[LB580]

SENATOR KRIST: Thanks. Any other questions? Thank you, Senator Murante and Senator Mello. That concludes our hearing on LB580. Exec Board, stick around for two minutes, please. I just want to go over a couple of things with you. I will not take very much of your time.
[LB580]