

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board January 24, 2022

**VARGAS:** --Chairman Hughes, members of the committee. You do brief introductions, correct?

**JANICE SATRA:** Yes, yes.

**VARGAS:** Great. So brief introductions, I'm Senator Tony Vargas. I represent District 7. I serve as Vice Chair of the committee and I will let my colleagues introduce themselves, starting with Senator Lathrop.

**LATHROP:** Steve Lathrop, District 12.

**LOWE:** John Lowe, District 37.

**PANSING BROOKS:** Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

**SLAMA:** Julie Slama, District 1.

**McCOLLISTER:** John McCollister, District 20.

**HILGERS:** Mike Hilgers, District 21.

**GEIST:** Suzanne Geist, District 25.

**HUGHES:** Dan Hughes, District 44.

**VARGAS:** Perfect and we also have our wonderful page, Chloe Fowler, who's a senior at UNO and is a major in political science. And a thank you to our committee staff, Mandy and Janice. We will get started. This is an Executive Board Committee public hearing for January 24. We have two bills up today, LB686 and LB708, and we'll start the hearing on LB686 with Chairman Hughes and whenever you're ready. Thank you and welcome.

**HUGHES:** Thank you, Vice Chairman Vargas and members of the Executive Board. My name is Dan Hughes and I represent the 44th Legislative District. That is D-a-n H-u-g-h-e-s. I was asked by the Clerk of the Legislature to introduce LB686. As you know, the membership of the Executive Board is set in statute. The members shall include the Chairman, the Vice Chair, Speaker, and Chairman of the Appropriations Committee. The board's membership shall also include six members at large; two from each of the three caucuses. LB686 changes the breakdown of the at-large membership on the Executive Board so that it takes into account the changes that occurred during redistricting last

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year. The bill takes the easiest route by moving District 36 to the Second District. Depending on what happens with this bill, a Rules amendment will be drafted to mirror the same change of the three committee, of the three Committee on Committees caucuses. When Patrick brought this to me, he says, how do you want to do it? I says, you draw it. I don't care how the-- how they come out. So in the past, the third caucus had 17 members. The first and second had 16. Now the first has 17, the second and third have 16. So he, he drew them. I haven't even looked at the map, how he drew it. So with that, I'll be happy to answer any questions. If it gets too technical, Brandon will bail me out.

**VARGAS:** Thank you very much, Chairman Hughes. Any questions? Speaker.

**HILGERS:** Thank you, Vice Chair Vargas. Just for the record, I think the second will have 17.

**McCOLLISTER:** Yes.

**HILGERS:** And this-- and the third in the first will have 16.

**HUGHES:** OK. Correct--

**HILGERS:** And--

**HUGHES:** --thank you.

**HILGERS:** And I think you said-- mentioned you hadn't seen it, but I'll-- my understanding, because I have seen it, is that District 36-- we know the map. District 36 is almost-- I wouldn't say it's identical because I haven't actually compared the lines, but it is substantially within a portion of Sarp-- western Sarpy County that is in Second, the Second District after redistricting. Is that your memory as well?

**HUGHES:** I have not seen the map.

**HILGERS:** Well, in terms of what we redistricted--

**HUGHES:** Yep, yep, that's correct, yes.

**HILGERS:** OK. Is that-- do you know if that's why the proposal is to put District 36 into the Second as opposed to the First District?

**HUGHES:** I believe that, that is correct.

**HILGERS:** Thank you, Mr. Chairman.

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**VARGAS:** Thank you. Any other questions?

**McCOLLISTER:** Tony.

**VARGAS:** Oh, sorry. Senator McCollister, go ahead.

**McCOLLISTER:** Yeah. Thank you, Vice Chair. I talked with Patrick about the drawing of these maps and it's just a sway kind of process that you employ. I was wondering if it-- you should employ a process that those counties that have the highest proportion of population in the second or wherever, whatever congressional caucus it is, that's where the, the, the district should go. So all I'm pointing out is that the process is pretty loose and maybe we should employ some kind of protocol to determine where, where the, where the county-- what, what congressional caucuses the legislative caucuses go into. I think there was nine legislative districts that are split between the various caucuses, is that correct? Is that-- Patrick is not here. So, you know, I'm just wondering if we need some process in future years to determine where a particular legislative district belongs in what caucus.

**HUGHES:** Was that a question?

**McCOLLISTER:** That's, that's a rhetorical question.

**HUGHES:** Yeah, I, I don't disagree with that, but this is something that happens once every ten years. I didn't want to draw, draw the maps because I didn't want there-- any hint of partisanship so I left it in the hands of staff and I have the highest confidence in our staff of, you know, not trying to gerrymander. I think they just made it as clean as possible. There's no way to make it follow all the lines, all the county lines. There's too many, too many boundaries that we're trying to mesh, but I--

**McCOLLISTER:** I just want--

**HUGHES:** --I don't-- you know, if, if you want to try to draft a procedure, you know, to be used ten years from now or nine years from now--

**McCOLLISTER:** I won't be here.

**HUGHES:** --be my guest.

**McCOLLISTER:** Thank you.

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**VARGAS:** Thank you, Senator McCollister. Any other questions? Seeing none, are you staying for closing?

**HUGHES:** Absolutely.

**VARGAS:** Perfect. OK, LB686, do we have anybody testifying in support? Seeing none, do we have anybody testifying in opposition? Seeing none, anybody testifying in a neutral capacity? OK, seeing none, Chairman waives closing. That ends our hearing on LB686 and we start our hearing for LB708. Chairman Hughes.

**HUGHES:** Thank you, Vice Chairman Vargas and members of the Executive Board. My name is Dan Hughes. That is D-a-n H-u-g-h-e-s and I represent the 44th Legislative District. LB708 was brought to me by the Revisor of Statutes, Marcia McClurg. It strikes the provision in section 49-707 that requires the Revisor to copyright the supplements and revised volumes of the Nebraska Statutes. Last year, the U.S. Copyright Office notified the Revisors' Office that the Legislature could not register a copyright claim for the 2019 General Index. The, the denial followed a 2000-- or 2020 United States Supreme Court decision, which found that federal, state, and local statutes and court decisions are in the public domain and are ineligible for copyright, a concept known as the Government Edicts Doctrine. The court held that under the, the Government Edicts Doctrine, officials empowered to speak with the force of law cannot be the authors of and therefore cannot copyright the works they create in the course of their official duties. The Supreme Court's holding applies to judges and legislators and any commissions deriving power therefrom, regardless of whether the law-- whether the work carries the force of law. I believe it is appropriate to repeal this provision since the Revisor can no longer comply with it. I'm happy to try and answer any questions, but I have asked Marcia to come up and testify next, as she may be a-- better able to answer specific questions. I would appreciate your support in advancing LB708. Thank you, Mr. Vice Chairman.

**VARGAS:** Thank you very much. Any questions? Seeing none, thank you. That opens up our hearing for LB708. Anybody testifying in support? Welcome.

**MARCIA McCLURG:** Thank you. My name is Marcia McClurg, M-a-r-c-i-a M-c-C-l-u-r-g. I am the Revisor of Statutes and I am testifying in favor of LB708. As a personal note, I've been in the Legislature over 37 years and this is the first time I've testified before a committee. Nebraska law requires the Revisor of Statutes to apply for copyright

protection for the statutes of Nebraska. This requirement is found in section 49-707. It appears that the Revisor has done this since 1945. Until recently, the actual text of the Nebraska statutes has never been eligible for copyright protection. The statutes represent the law of the state of Nebraska and must be freely available to all. Instead, what their Revisor has sought to copyright protection for is the particular compilation and arrangement of the Nebraska statutes published in the reissues and supplements, which includes the numbering system, the catch lines, the source notes, the case law annotations and index, and various tables and appendices. In the roughly eight decades since the Revisor began applying for copyright protection, the United States Copyright Office has rejected more and more components of the Revisor's application and in recent years, the Copyright Office has rejected the few remaining components that were potentially eligible for the copyright protection: the catch lines, the case law annotations, and the index. And as of 2020, there is nothing left that the Copyright Office will approve for copyright protection. However, Nebraska's law still requires the Revisor to apply for the copyright protection. While this is not a major undertaking, it is a minor expense and a yearly exercise in futility. LB708 will remove this requirement. I am testifying in support of LB708. It is consistent with federal copyright law and it supports the public's right to freely access the law. First, some legal background: copyright is a form of protection provided by federal law to authors of original works of authorship. The protection applies from the time a work is created in a fixed form. However, copyright law, as mentioned, only protects the works of persons who qualify as authors and under the long-standing Government Edicts Doctrine, legislators and judges are not considered authors of any works produced in the course of their official duties. Although the Government Edicts Doctrine is based on the principle that no one can own the law, it is not limited to publications that carry the force of law and instead, the test focuses on the status of the author as a public servant. Based on the Government Edicts Doctrine, the Copyright Office has, over the years, rejected various components of the Revisor's application for copyright protection. In 2016, the Copyright Office determined that the catch lines were not subject to copyright protection. Our section numbering had also been left out of that copyright protection. This left only the index and the case law annotations and in 2020, the Copyright Office determined that these were also ineligible for protection. This most recent development stems from a 2020 United States Supreme Court decision, *Georgia v. Public.Resource.Org*. In that case, the court held that the annotations to Georgia's official statutes were not entitled to copyright

protection. Although the annotations did not carry the force of the law and were prepared by a private company, the private company acted at the direction of a commission which consisted mostly of Georgia legislators and which functioned as an arm of the Legislature. Thus, the annotations were subject to the Government Edicts Doctrine and not eligible for copyright protection. As of 2020, there was nothing prepared by the Revisor of Statutes that the United States Copyright Office will approve for copyright protection. But even before 2020, the materials that the office would approve had dwindled to nothing of real consequence. Thus, it is the opinion of the Revisor of Statutes' Office that the requirement to apply for copyright protection in section 49-707 should be removed. I would be glad to answer any questions.

**VARGAS:** Thank you very much, Marcia. Any questions? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for bringing the-- or for testifying today, sorry. This is fascinating to me that-- did-- so do-- are other states doing this now or what's happening?

**MARCIA McCLURG:** I did a brief review of other states' provisions and many of them say all their material is open to the public. There's also a segment of them that are silent and it's not clear and then there is a portion that still maintains some sort of copyright protection, but it's not over this law itself. It is because maybe an ancillary group does the publication of their statutes.

**PANSING BROOKS:** Well, it's fascinating. It's in the weeds, but I really think it's interesting. Thank you very much for coming today.

**MARCIA McCLURG:** Yes.

**VARGAS:** Thank you. Any other questions? OK. Thank you for coming.

**MARCIA McCLURG:** Thank you.

**VARGAS:** Any other testifiers in support? Seeing none, any other testifiers in opposition? Seeing none, anybody testifying in a neutral capacity? Seeing none, Chairman Hughes waives closing. That closes our hearing on LB708 and closes our hearing for--