

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON EDUCATION
February 8, 2005
LB 39, 47, 352, 196, LR 28CA

The Committee on Education met at 1:30 p.m. on Tuesday, February 8, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing regarding the confirmation of gubernatorial appointments and LB 39, LB 47, LR 28CA, LB 352, and LB 196. Senators present: Ron Raikes, Chairperson; Dennis Byars, Vice Chairperson; Patrick Bourne; Gwen Howard; Gail Kopplin; Vickie McDonald; and Elaine Stuhr. Senators absent: Ed Schrock.

SENATOR RAIKES: Good afternoon, and welcome to this hearing of the Education Committee of the Nebraska Legislature. We're pleased you could be here this afternoon. Today we have four confirmation hearings and then followed by five bills to be introduced. They are posted on the outside of the door there, and we'll handle them in that order. Get on with the preliminaries here, we're a little bit short on force here. We've got at this time of the session, we have folks that are busy introducing bills in other committees, so that's at least one possible explanation for our turnout here. But we'll proceed as though they were all here, at least in the way of introduction. To my far right, I think soon will be Senator Pat Bourne from Omaha. Next to Senator Bourne is Senator Gail Kopplin from Gretna, Nebraska. Next to Gail is Senator Elaine Stuhr from Bradshaw. Soon will be our committee counsel, Tammy Barry. I'm Ron Raikes, represent District 25. To my left soon will be Senator Dennis Byars, the Vice Chair of the committee.

CHUCK HUBKA: That should be your first...

SENATOR RAIKES: Okay, please stand by. We're getting through the preliminaries here. I'll be with you in just a moment. Next to, Byars I finished with. Next to Senator Byars will be Senator Vickie McDonald from St. Paul, Nebraska. Next we have Senator Gwen Howard from Omaha, and Senator Ed Schrock from Elm Creek will, I think, be here this afternoon, although he was in other committees as well. And finally, LaRue Wunderlich, our sometime committee clerk. Welcome. Let me remind you that our procedure, as usual, will be to have an introduction, I guess I'm talking now about the bills, an introduction followed by proponent testimony, opponent testimony, then a close from the

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

Committee on Education
February 8, 2005
Page 2

introducer. Please, as you testify, state your name and spell your last name for us. That's strictly a need for the transcription. We will use our light system. It will allow five minutes, more or less, depending on whether LaRue gets the button pushed right away. But at any rate, when you have minute left, you will get a yellow light, and then a red light right before the bomb explodes. So please honor that as best you can. It's intended simply to make the best use of your time as well as others in the room. I think I'm fairly well through with the preliminaries. I'll just remind you about cell phones. If you have one, why, appropriately disable it, if you would please. We'll move first then to the confirmation hearings. And our first hearing is for Stephen Lewis who is a, is to be appointed to the Board of Trustees of Nebraska State Colleges. And I'll have to ask, is Stephen on the phone, or...?

CHUCK HUBKA: He should be.

CONFIRMATION HEARING ON
STEPHEN LEWIS TO THE
BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES

SENATOR RAIKES: Okay, Stephen, are you there?

STEPHEN LEWIS: (Exhibit 1) Yes, I'm here. Thank you very much.

SENATOR RAIKES: Okay. Well, thank you for being with us today. The way we'll begin is to ask you to explain about your background and your interest in the Nebraska State College System, and your interest on serving on the Board of Trustees.

STEPHEN LEWIS: Okay, well, first of all, I'd like to thank you for allowing me to do this by phone today. The weather here in Lexington is not very good. The roads are kind of slick, so I appreciate your accommodating me like that. I currently have served on the State College Board of Trustees for one six-year term, and this is a reappointment, a reappointment that I volunteered for. I'm very interested in higher education and I feel like our state colleges provide an access, a physical access for higher education to students, high school students in our state. I think they

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

Committee on Education
February 8, 2005
Page 3

do a good job. I think they are excellent institutions of higher education. And it's just been a real pleasure the first six years to serve on this board and see improvements made to that system, and I'm just looking forward to the next six years to build upon that.

SENATOR RAIKES: Okay. Thank you, Stephen. Are there questions for Stephen? Let me ask you, Stephen, the Legislature it seems like is always interested in receiving comments about the various institutions that are a part of the higher education system. In your opinion, what is the special niche in that system filled by the Nebraska State College System?

STEPHEN LEWIS: Well, I think that there's a lot of special niches that they serve. Number one, we're open access so anybody who wants a shot can basically take a shot at getting a college education. And I think that's important that our state serve of those needs. Teacher education is a real good example of how we educate some of our finest teachers, high school and elementary teachers across the state. They do a good job of that. They're very strong on business. Both Chadron and Wayne are very strong in sciences and have a cooperative agreement with the RHOP program for medical personnel in rural areas. So those are just to name a few. But I can take the rest of your afternoon singing praises about where all these colleges.

SENATOR RAIKES: Well, thank you for that offer, but I'll turn that one down. But I do appreciate your response. Are there any other questions for Stephen? Senator Byars has a question.

STEPHEN LEWIS: Hi, Dennis.

SENATOR BYARS: How are you, Steve?

STEPHEN LEWIS: Good.

SENATOR BYARS: I'm not sure if it's the Governor's office or what, but in the last few appointees we've had, we haven't been getting all of the resumes attached to the applications. And yours was one of those that doesn't have...it says resume attached, but it isn't. Does the Governor have that on file and he just hasn't added it on to

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

Committee on Education
February 8, 2005
Page 4

this appointment?

STEPHEN LEWIS: You know, I'm not really for sure. I got reappointed by the Governor right during the transition between Governor Johanns and Governor Heineman, and I'm not for sure about that but I can sure get you a resume. That's not a problem.

SENATOR BYARS: Well, and we'll check too, but it seems to be inherent in the appointees we've been getting for the last week or so, so I'm sure that you've submitted it but I just wanted to make sure if... One of our members is pretty picky on this and if you don't get your appointment immediately, you'll understand why.

STEPHEN LEWIS: Okay, well, I'll get you a a resume. It's just an e-mail away, so that's not a big deal.

SENATOR BYARS: All right. We appreciate it. Thanks for all the hard work you do for the Board of Trustees.

STEPHEN LEWIS: Well, thanks.

SENATOR RAIKES: Do we have other questions for Stephen? I see none, but thank you for your willingness to continue your service, Stephen. We much appreciate that.

STEPHEN LEWIS: Well, thank you, for allowing me to serve, and it's been a great pleasure, and hopefully we can have another good six years and improve what we've started on.

SENATOR RAIKES: Thank you again.

STEPHEN LEWIS: Okay.

SENATOR RAIKES: We'll move on now to proponent testimony for the confirmation of Stephen Lewis. Opponent testimony? Neutral testimony? Okay, that will close the confirmation hearing for Stephen Lewis and we'll move to the hearing for Carter Peterson who also would be appointed to the Board of Trustees of the Nebraska State College System. And the term would be January 1, 2005, to January 1, 2011. So, Carter, please tell us about yourself and why you're interested in this appointment.

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

Committee on Education
February 8, 2005
Page 5

CONFIRMATION HEARING ON
CARTER PETERSON TO THE
BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES

CARTER PETERSON: Well, thank you for allowing me the opportunity to be here. My name is Carter Peterson, P-e-t-e-r-s-o-n, from Wayne, Nebraska. The opportunity is that; it's an opportunity. I'm a Wayne State grad with a Bachelor of Art in education. After I graduated from Wayne State, I taught in a high school system for five years. Changed a career, went into the insurance world which I'm still in. But during that point in time, to help pay for the rest of my kids in college, I was an adjunct professor at Wayne State in the business department, primarily in the insurance and principles of insurance of risk management. I did that while, took over Jerry Conway's, when he moved down here to the Senate, then I was taking come of his classes and I still do some substitute teaching for him when he has a need to be out of there. And so I've been involved with the college, Wayne State. I'm on their foundation and some of those types of things. Been actively involved with Wayne State, the Wayne high school system, on the school board for 12 years. I was on the state school board. So I've been involved in education. I think it's the way to go. I'm an advocate of the high school system, the state school systems that we have in Nebraska. And I like the college systems, so I wanted to be a part of it, see if I could help the young people of Nebraska continue their education in Nebraska, and then possibly be residents and work in Nebraska.

SENATOR RAIKES: Okay, thank you, Carter. Questions?
Senator Stuhr.

SENATOR STUHR: Yes, Mr. Peterson, what have you seen as one of your greatest challenges serving on the board of trustees?

CARTER PETERSON: On the board, the state college board?

SENATOR STUHR: Um-hum.

CARTER PETERSON: One of the greatest challenges you're

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

Committee on Education
February 8, 2005
Page 6

going to have is the population. As the population moves, with the outstate areas, of trying to keep students there, as well as getting students to move there. You're dealing with the population center of eastern Nebraska, to try to get them to Wayne or to Chadron or to Peru, sometimes it's a difficult, that's a challenge. We have to tell our story, which I think is a good story. I think we do an excellent job of doing what we do, as well as the university system. That is a challenge that we have to do to tell the people we're there. As our president of Wayne State says, I don't like to be the best kept secret. We do not want to be that.

SENATOR STUHR: Um-hum. All right. Thank you for your service.

CARTER PETERSON: Um-hum.

SENATOR RAIKES: Other questions? Carter, this would be your first term?

CARTER PETERSON: This would be my first, yes.

SENATOR RAIKES: Now, you mentioned that you've served on the staff as an adjunct. Would you continue that?

CARTER PETERSON: No.

SENATOR RAIKES: No. Okay.

CARTER PETERSON: I'm not, the last time I was as an adjunct has been about three or four years ago. The only thing that I do right at the present time, it would be as a guest lecturer or something along this line.

SENATOR RAIKES: Okay. Obviously, you're very well acquainted with Wayne and Wayne State College. Do you know much about Peru or Chadron?

CARTER PETERSON: Well, yes, from the years of being with them in Wayne because they were always within the athletics, you know, from the athletic side. So I participated in athletics at Wayne State and so I've also followed the athletic side. And some of my children were in music, so some of the music camps that they would have at those things, my children would be involved there, so from that

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

Committee on Education
February 8, 2005
Page 7

standpoint, yes.

SENATOR RAIKES: Okay. All right. Any other questions for Carter? I see none. Well, thank you for your willingness to serve and for being here today.

CARTER PETERSON: Thank you very much.

SENATOR RAIKES: Do we have any proponent testimony? Any opponent testimony? Neutral testimony? Okay, that will close the confirmation hearing for Carter Peterson and we'll move to Marilyn Harris who is a candidate for appointment to the Coordinating Commission for Postsecondary Education. Welcome.

CONFIRMATION HEARING ON
MARILYN HARRIS TO THE
COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

MARILYN HARRIS: Senator Raikes, thank you.

SENATOR RAIKES: Marilyn, if you would please give us the pitch here, about yourself and about your interest in this appointment?

MARILYN HARRIS: Great, thank you. I'm a longtime Nebraska resident, actually a Lincoln resident. Three degrees from the University of Nebraska, and have been in education for my entire career, elementary school teacher, elementary school counselor, and administrator at the Lincoln Public Schools. And then 13 years with Harris Laboratories, now MDS Pharma Services, and was responsible for training and development at all of our sites worldwide. Retired from that and was adjunct faculty at Nebraska Wesleyan in the business department, and retired from that. I kind of a resume thing going here, don't I? And now I do consulting in the area of training and development at the corporate level. Interest in the commission. Governor Johanns called me in July and asked me to serve, so I've had several months to observe the commission. And what I'm most impressed with is the vision of the commission. It takes a view at the 50,000 foot level. It is big picture and it's long-range. And the opportunity as both a taxpayer and an educator to observe the professionalism of the staff and the

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

Committee on Education
February 8, 2005
Page 8

expertise of the staff in terms of gathering information that can be helpful to the Legislature, to the sectors in which the commission serves, and to those of us as taxpayers, so.

SENATOR RAIKES: Okay. I misspoke already. I should have said Dr. Harris and I apologize for that. Do we have questions for Dr. Harris? Yes, Senator Howard.

SENATOR HOWARD: As a parent of a child who's gone to a Nebraska college and also another child who went to an out-of-state college, how do you see promoting our state college system? My out-of-state college child is now looking at law school, and I keep saying, Nebraska. So how do you see addressing that?

MARILYN HARRIS: Well, the one of the things that the commission is looking at and has the opportunity to do, is working with the sectors and working with the business community of Nebraska and identifying those opportunities that first, encourage our students to stay here to go to school, and also then for people to come back and view this as a good place to live. I think higher education can play a unique role in terms of economic development within the state, and the commission really serves as a partner in that process, identifying what's the best use of the financial resources that the state has in terms of advancing not only higher education, but economic development and quality of life. So to answer your question directly, I'm not sure that the commission is in a role to do the promotion of that, but it's really more of a partnership. It's maybe setting up some dialogue that might not happen otherwise.

SENATOR HOWARD: That's really being open to it. Thank you so much.

MARILYN HARRIS: Yes, yeah, thank you.

SENATOR RAIKES: Any other questions? I see none. Well, thank you very much for your willingness to serve and for being here today.

MARILYN HARRIS: Great, thanks.

SENATOR RAIKES: Is there proponent testimony? Opponent

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

Committee on Education
February 8, 2005
Page 9

testimony? Neutral? Okay, that will close the hearing for Dr. Marilyn Harris. And we'll move to the confirmation hearing for James Strand, again for the Coordinating Commission for Postsecondary Education. This would be a term running from October 26, 2004, to January 1, 2006. It's about halfway in the...

JAMES STRAND: (Exhibit 4) Short-termer.

SENATOR RAIKES: Short-term. Well, thank you for being here and please tell us a little bit about yourself and your interest in the Coordinating Commission.

CONFIRMATION HEARING ON
JAMES STRAND TO THE
COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

JAMES STRAND: Be glad to, Senator. Jim Strand, S-t-r-a-n-d, resident of Lincoln, Nebraska. Retired telephone executive after about 30 years. Product of the state's university system with a couple of different degrees. Six kids between Mary and I that have attended the university, three with postsecondary educational degrees. And a longtime interest in state education. Actually, in my, about 30 years ago, served at the University of Nebraska on something called the Career Education Commission, which was looking at the Liberal Arts College in particular, and the job outcomes coming from a liberal education. It wasn't particularly well-received by many of the people in the College of Arts and Sciences, but nevertheless, the emphasis on outcomes in education. Currently serve on the Lied Center advisory board, on the Hixon-Lied College of Fine Arts trustee, and on the Peter Kiewit Institute for Information Technology in Omaha. Those latter two experiences are probably the thing that drives me the most toward my interest in the coordination of activities between the state's institutions, because I've seen those institutions with a real focus on excellence, the ability to target their, in this case, many cases, private dollars toward the bringing in of people in particular topical areas, study/research areas, and then build their institution based on truly focused emphasis which has a halo effect of bringing in graduate students, other students, and really builds upon the program. Just those two examples are

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

Committee on Education
February 8, 2005
Page 10

just unparalleled in my experience in the last three or four years. Would like to see the other institutions find ways to do that as well. Certainly, it's going to take private money and it may take some public money. And it certainly is going to take an elimination of any duplication of efforts that take place if you're going to truly focus each institution on where its core strengths are.

SENATOR RAIKES: Okay, thank you, James. Questions for James? You mentioned the issue of dealing with duplication, and that certainly is one of the core functions of the Coordinating Commission, to so-called border wars. Do you have any particular notions about instances of that that you think need to be addressed?

JAMES STRAND: No, I really don't. I'm not comfortable yet with the word coordinating. Certainly, it means there is no direct authority. I've attended one meeting so I have had that briefing, if you will, on the commission's activities. It seems to me they do an excellent job of collecting data from the institutions. Without data on what each institution is doing and the ability to publish that in a meaningful way and summarize it so that you folks who have decisions to make about funding, know whether or not there is some sense of duplication, and sometimes because of the sheer geography of our state there will be duplication which is appropriate. Clearly, we need somebody to present the data in an objective manner so that policy makers, whether it's the governing boards of those institutions or the Legislature when they're deciding fiscal issues, has the best information in front of them upon which to make the decision. It seems to me that if you're an effective, quote, Coordinating Commission, you have the credibility of presenting that unbiased data in a way that is held in high esteem. And that in lies the real effectiveness of the commission in their ability to do that for their mission under the law of the state.

SENATOR RAIKES: Okay, any other questions? Thank you for your willingness to serve and for being here today.

JAMES STRAND: Okay, you're welcome.

SENATOR RAIKES: Do we have proponent testimony? Opponent testimony? Neutral testimony? That will close the

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

Committee on Education
February 8, 2005
Page 11

LB 39

confirmation hearing on James Strand, and we'll move to Senator Byars.

LB 39

SENATOR BYARS: LB 39, Senator Raikes, will be presenting. Welcome to the Education Committee, Senator.

SENATOR RAIKES: Thank you. I appreciate that every time you offer that, Senator Byars.

SENATOR BYARS: We're awfully glad to have you.

SENATOR RAIKES: Thank you. Senator Byars and members of the committee, Ron Raikes, representing District 29, or District 25--I didn't move--here to introduce LB 39. Who is District 29, by the way? They're not offended I hope. Okay, LB 39 would remove a phrase in state statute, and I will quote, "it is persons employed as professional foresters be graduates of accredited forestry schools of recognized standing." This phrase will be eliminated. Now, it's difficult for me to control my emotions on a matter of this magnitude. Clearly, this is wrong to have something like this in statute. For example, it means that any forestry service worker in the state that deals in any way with trees and shrubs be a graduate of an accredited forestry school, when, clearly, in some instances an arborist who deals with individual trees, rather than stands of trees, would be the appropriate person for the job. I won't go on. I'll let others finish the case, but this is important.

SENATOR BYARS: Thank you, Senator Raikes. Any questions? Thank you, Senator. Proponents of LB 39? Welcome.

DAVID MOOTER: Thank you. My name is David Mooter. I'm a community forestry program leader with the Nebraska Forest Service, part of the University of Nebraska. And while it seems maybe like a trivial matter or a small matter, sometimes when we have things in law it does reduce the flexibility of an agency to operate. The current Statute 85-162.04 governing personnel to work under the state forestry requires that persons employed as professional foresters be graduates of accredited forestry

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

Committee on Education
February 8, 2005
Page 12

LB 39

schools of recognized standing. LB 39 would delete this language. There are several reasons that we support this bill. The language can be interpreted by some to mean that any NFS employee that deals in any way with trees or shrubs be a graduate of an accredited forestry school. As the Senator pointed out, in some cases an arborist may be able to perform some of the tasks for some of the positions in our agency. For other positions, persons with expertise in horticulture might be a better fit for the needs of the position. And in still others, persons with training in wildlife management could be more appropriate as in those cases where woody vegetation is used to create an enhanced wildlife habitat. Just because one's position requires working with trees and shrubs, it doesn't follow necessarily that the person should be a professional forester. The current requirement in the law means that graduates of the University of Nebraska cannot be employed by the NFS because the University of Nebraska-Lincoln, or any of the university system, does not have an accredited forestry program. And that clearly is a somewhat undesirable situation, given that many UNL graduates would prefer to remain in the state if there were job opportunities for them. In addition to that, the university has a category of employees called managerial/professional. The NFS employs several people in this category and one could interpret the requirement in the law that because these people are labelled as professionals, the language in the current statute applies to them. Most people in our fire program are not foresters, nor do they need to be. Our solution to the problem, again, is for the Legislature to pass LB 39 and amend the language in the current statute. This would put the responsibility for determining required qualifications and training for the various NFS positions in the Office of the State Forester, which we feel that's where it belongs.

SENATOR BYARS: Thank you, Mr. Mooter. For the record, could you spell your last name, please?

DAVID MOOTER: Thank you. Oh, I'm sorry. M-o-o-t-e-r.

SENATOR BYARS: Thank you very much. Questions of Mr. Mooter? Thank you for being here.

DAVID MOOTER: Thank you.

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

Committee on Education
February 8, 2005
Page 13

LB 39, 47

SENATOR BYARS: Next proponent.

DAVID MOOTER: Do I leave this little sheet here?

SENATOR BYARS: Yes. Next proponent? Any opponents? Anyone testifying neutral? If not, would you care to close, Senator Raikes?

SENATOR RAIKES: Thank you, Senator Byars. I was probably inappropriately flip in my introduction. This is a technical issue, certainly, but I think one that deserves your careful attention, and I'm sure you will accord it such.

SENATOR BYARS: Thank you, Senator. Is Senator Landis on his way? We'll take a 30-second break until Senator Landis comes to introduce LB 47.

AT EASE

LB 47

SENATOR LANDIS: Senator Raikes, members of the Education Committee.

SENATOR RAIKES: Senator Landis, welcome. Great to have you here.

SENATOR LANDIS: Thank you. I'm delighted to be here. David Landis, principal introducer of LB 47, the distinguished scholars bill. I'm representing the "Garden District" today; thrilled to see you all. I'm down in Urban Affairs in the middle of gas wars. So towards that end, let me say, this is a darn good idea. Okay. I introduced this bill about, I don't know how long ago, 15 years ago, something like that. And we got it up to, I think, Bob Kerrey, at the end of a legislative session and vetoed it and we didn't have the votes to override him, and there was a downturn in the economy at the time. The truth of matter was, it was a way of leveraging private funds to assist in endowing chairs so that you could have a permanent improvement, a reliable improvement of the quality of faculty by having the resources necessary to get a distinguished scholar in the field. It was a way of

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

Committee on Education
February 8, 2005
Page 14

LB 47

leveraging private funds to improve the academic quality of the university, not just the sky boxes above the football field, which I think is a pretty darn splendid idea.

SENATOR RAIKES: The sky boxes or the...? (Laughter) Thank you, Senator Landis. Senator Stuhr has a question.

SENATOR STUHR: Yes, Senator Landis, however I see that the Legislature would be directed to appropriate \$3 million.

SENATOR LANDIS: Yes, we have to have a little pumping of the prime here. That's right. It's not just private money. You're quite right. That money is available from us in the event it gets matched. That's right. This is private and public money.

SENATOR STUHR: All right, thank you.

SENATOR RAIKES: Okay, other questions? Senator Byars has one.

SENATOR BYARS: I'm very much in favor of this bill, Senator Landis. It reminds me somewhat of LB 28 that we might have been...

SENATOR LANDIS: Does it really?

SENATOR BYARS: It might have been debating this morning relative to utilizing private money.

SENATOR LANDIS: Oh, thank you. I believe in the climactic sword fight scene, at one point Laertes touches himself, "A touch, a touch, I do confess it," when Hamlet's blade just strikes his forearm. While I think there is some distinction or two, there is some similarity as well. I confess the similarity.

SENATOR BYARS: Thank you, Senator. That's a very noble piece of legislation.

SENATOR LANDIS: Thank you. I'm going to leave right now. It's not going to get any better than that. Even if you have questions, I'm not answering them after that.

SENATOR RAIKES: All right. Are you going to stick around,

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

Committee on Education
February 8, 2005
Page 15

LB 47

Senator?

SENATOR LANDIS: No, I trust the wisdom of this committee so implicitly that I'm not going to need a closing argument.

SENATOR RAIKES: The consummate politician, yes. Thank you, Senator.

SENATOR LANDIS: Back to gas.

SENATOR RAIKES: Okay. All right, we will move to proponent testimony for LB 47. President Milliken, welcome.

J.B. MILLIKEN: (Exhibit 5) Thank you. Good afternoon.

SENATOR RAIKES: Good to have you here. I believe this is your first trip.

J.B. MILLIKEN: It is my first visit...

SENATOR RAIKES: Well, in your current position.

J.B. MILLIKEN: ...before this committee in my current position. I'm...

SENATOR RAIKES: There you go. Well, congratulations on your...

J.B. MILLIKEN: Thank you. Thank you very much. I'm not sure I want to follow Senator Landis, but. And I was an English major once upon a time, but he's a current practitioner. My name is J.B. Milliken, M-i-l-l-i-k-e-n. I'm the president of the University of Nebraska and I'm appearing in support of LB 47, the Distinguished Professorship Act. And I appreciate the leadership of Senator Landis and Senator Beutler and Senator Raikes and Senator Brashear, for producing this legislation to enhance the quality and competitiveness of the University of Nebraska and the State College System in Nebraska. I think it's appropriate to have this first opportunity before this committee to talk about ways to improve the quality of the faculty at the university. That is perhaps the most important job that I have, to build the quality of the University of Nebraska so that it can best serve the state of Nebraska. And I believe that this bill will do just

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

Committee on Education
February 8, 2005
Page 16

LB 47

that. It's also pleasant for me to have the occasion of my first appearance before this committee be to support a bill introduced by the Chair of the committee that I find so positive. So, thank you. The faculty of any institution of higher learning are the foundation of the institution and I believe are the major determinant in the quality. They are the difference between a mediocre and an exceptional institution. They are responsible for the classroom instruction of our students, the research that is conducted at the university, and the outreach to citizens across the state of Nebraska. We have been able in recent years to attract a number of outstanding new faculty to the university who are making a difference in Nebraska. I'll give you a couple of examples. Some of you had the opportunity to meet some of these faculty members the other day. One is Bruce Avolio who is the chair of the Gallup Leadership Institute and holds a distinguished chair at the university. He's one of the experts in the world in the field of leadership and individual integrity. We were able to recruit him from the state of New York where he was the director of the Global Center on Leadership Studies. Dr. Ilze Zigurs at the Peter Kiewit Institute in Omaha is another example. We were able to attract Dr. Zigurs from the University of Colorado with the help of Mutual of Omaha Chair in Information Science and Technology. She is one of the leaders in the world in the field of the use of information technology and business and how it's changing the shape of business. There are many other examples at the university now in medical research, agriculture, computer security, national defense, biochemistry. In some of these areas we have among the best faculty anywhere. I'm delighted that one of them, Dr. Donald Umstadter, who is an expert in laser physics, is here to testify also in favor of this bill because he provides a little personal knowledge about the difference in competitive positions at the universities who are able to recruit and retain faculty with the help of this kind of a partnership. Now, there is a growing gap in the country in terms of competitiveness. Some of this information, you've got a few graphs in the handouts, which I think are dramatic. We've watched over the years the difference, and I am cognizant that Tip O'Neill is directly behind me so I'm going to be careful to parse this...there is a growing disparity between large, private research universities and large, public research universities and what they can pay. And I'm not talking

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

Committee on Education
February 8, 2005
Page 17

LB 47

about Tip's institutions, but I'm talking about many of the institutions that compete with us for faculty, and particularly research faculty. Where a few years ago, maybe 20, the difference was several thousand dollars, now it's between \$20,000 and \$30,000 a position, depending on the level, assistant, associate, or full professor. This is a growing gap. And it's one that I don't believe we are going to see decrease. We need to try to find new strategies to meet this. We are not going to do it with state support alone. So the goal is to provide private support to leverage public support. Now, you're going to hear from Terry Fairfield, I think in a moment, about his perspective on this as a fund-raiser. The University of Nebraska Foundation has done extremely well in raising private money to support the University of Nebraska. We have a number of distinguished chairs now. But, as you can see from the chart, the amount that we are able to invest in these chairs is considerably lower, sounds like...it looks like LaRue found the button, than many of our competitors. The bottom line is that this is a bill that will help the university and the state colleges to be competitive. It will leverage private dollars. It will build on the support of people in the private sector who are speaking with their dollars about the priorities of the university and the state colleges, and it will be good for the state of Nebraska. I'd be happy to respond to any questions.

SENATOR RAIKES: Thank you, Mr. President. Questions? What other states have programs like this and what's their experience been?

J.B. MILLIKEN: In some of the material that you have, Mr. Chairman, there's a map of the United States that shows 23 states that currently have this program, many of them instituted about the time that Senator Landis' bill first passed in 1984. And in another one of the charts, you can see the comparison between the amount of money that Nebraska is able to put into distinguished professorships, compared to some of these other states. In the state I'm most familiar with other than Nebraska, which is North Carolina, the Legislature last year tripled the amount of funding in their matching professorship program. And the reason they did that was not because the university asked them to. We didn't ask. We certainly were in favor of it. But the reason is, the business community asked, and a statewide

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

Committee on Education
February 8, 2005
Page 18

LB 47

biotechnology strategic plan for North Carolina on how to position the state, had as its first recommendation, among many, the significant increase in the amount of funds in their distinguished professor matching program because the private sector folks thought that was the best way to grow the talent base in the state so that they could be more competitive in biotechnology.

SENATOR RAIKES: Okay. The interest in North Carolina, the interest in the private sector in the state in this sort of a program, typically you would think that they're doing this because they figure to get something back from it. And what was that, in your judgment?

J.B. MILLIKEN: I think that this program is a win for both the public sector and the private sector because the sort of first actors here are private contributors, whether it's a business, whether it's the Mutual of Omaha Chair that I mentioned, or another business, or private individuals who make a contribution based on their sense of what the state's interests are, the state's needs, what their interests are. And then the state of Nebraska gets to invest in a program where it knows that the private sector is stepping up and committing to this. So I think it's a benefit to the private sector and it's useful for the state to have in place matching programs like this where they're able to see a demonstrated commitment to it.

SENATOR RAIKES: Okay. Thank you. Any other questions? Well, again, thank you for being here today.

J.B. MILLIKEN: Thank you very much.

TERRY FAIRFIELD: Good afternoon, Senator Raikes and members of the committee. I'm Terry Fairfield, F-a-i-r-f-i-e-l-d, with the University of Nebraska Foundation, and I'm here at President Milliken's request really to endorse this program and to talk a bit about the incentive that it does provide to donors in the private sector, and equally important, I think the investment the Legislature could view, which they are making that has a multiplier effect in these kinds of programs. The question was asked about successful programs in other states, and certainly we have, as fund-raisers, followed this throughout the country. One of them that's most interesting to us is the state of Florida that was

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

Committee on Education
February 8, 2005
Page 19

LB 47

founded very early in 1979. And since that time, the collective support from private contributions, as well as state contributions, exceeds \$1.2 billion, of which over \$280 million has been for these in endowed programs. So it really has had an impact on the 11 state universities in the state of Florida to improve the academic quality of those institutions. I think at home, we even see the example here. The university chose to direct a significant portion of an endowment that came to the university and the foundation from the estate of Don and Mildred Othmer to create on the Lincoln campus, that estate was directed to the Lincoln campus, a challenge grant or a matching program for endowed faculty positions. To date, 24 endowed faculty positions have been matched by the Othmer money based on private contributions from other donors. The program itself has attracted outstanding faculty in all areas--in plant science, I might mention the Ralph and Alice Raikes chair in plant science, which helped us to attract Sally McKenzie from Purdue University. And certainly, three in engineering and computer science and mathematics and business ethics, programs that really have enhanced this university both by retaining outstanding professors who other institutions are always trying to attract, but also attracting others that have helped to fill in across campuses, to create a critical mass of talent. And as you read about the increase in the university's federal support, especially at the medical center and on the UNL campus, in large part that is due to the outstanding faculty that have been attracted under these endowed programs, individuals who in some cases bring with them research grants and in others who have teamed, both interdepartmental and across campuses, to submit proposals in areas of virology, in areas of nanotechnology, and agriculture sciences. And it really has a major multiplier effect in the state when those kinds of funds come from the federal government, certainly a benefit to the university but beyond that I think to the citizens of the state. And lastly, I would say that truly it does have an incentive to donors. Many individuals in the matching program created by the Othmer fund did indeed increase the level of support that they were contemplating in order to fund a full chair, with the idea that a half million dollars would be matched by half a million dollars, or a quarter of a million for a quarter of a million for endowed professorships. Others who had intentions of supporting through estate plans, accelerated their giving to fund it now, and actually to

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

Committee on Education
February 8, 2005
Page 20

LB 47

enjoy meeting the faculty member that holds that endowed chair and see the progress. So they're wonderful programs and I think it is a wise expenditure--easy for me to say--of the members of the Legislature in a matching program to enhance the university, and through it, the state.

SENATOR RAIKES: Okay, thank you, Terry. Questions for Terry? Senator Stuhr.

SENATOR STUHR: Yes, I see on the one handout where it talks about the total endowments supporting endowed professors and chairs, and then it lists the various states. I don't know if you're familiar with this handout that was...

TERRY FAIRFIELD: I have not seen it for awhile.

SENATOR STUHR: ...included, but it lists Iowa. I'm particularly just looking at some of our neighboring states. It shows Iowa at \$170 million, Kansas at \$65 million, and UNL \$33 million. Do you have any idea, are Iowa and Kansas receiving support like this bill is asking for from the Legislature, whether those states also have support from their state legislators in a similar program?

TERRY FAIRFIELD: Certainly. I would really prefer President Milliken or Ron Withem to answer that question. They're more familiar on the state level with the state programs. On the donors' side, I can tell you that both...well, all three major institutions, Iowa State University, the University of Iowa, and University of Kansas, have recently conducted capital campaigns as we did. And endowed faculty support were certainly high priorities in each of those programs. I think they have different levels of matching programs, but I don't know the exact ratios or matches involved.

SENATOR STUHR: Okay. Maybe that information could...

TERRY FAIRFIELD: We'd be happy to provide that; yes, absolutely.

SENATOR STUHR: All right, that would be great. Thank you.

SENATOR RAIKES: Okay, other questions? Terry, the endowed chairs, there are 24, I think you said, at UNL. Are there

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

Committee on Education
February 8, 2005
Page 21

LB 47

any on the other campuses?

TERRY FAIRFIELD: Yes, there are a significant number that were raised during the campaign that we conducted from, well, publicly from 1996 through 2000--chairs in cardiology, both in terms of the research side, as well as the clinical side; chairs in the basic sciences that have enhanced the medical center's ability to bring in outstanding faculty and to occupy the Durham Research Center that recently was built with private money on that campus. We have attracted some for the University of Nebraska at Kearney--one testamentary plan that will fund professorships in the college of business at UNK, as well as a chair then that would be at the discretion of the UNK Chancellor to be allocated to the other colleges. So there is quite an example of this. I think, Senator Raikes, 82 just during that time frame were funded. It did accelerate significantly upon the announcement of the program of the Othmer gift in '97 where we did do the challenge. It helped us; it provided the incentive that really encouraged donors to go ahead and say, yes, to if you will close the gift, as us beggars say in the fund-raising world.

SENATOR RAIKES: So, in essence, this bill would be to replace the Othmer challenge money with state money in some...?

TERRY FAIRFIELD: No, I think it would just simply enhance it. That was a one-time program. Those will be ongoing support. Those dollars have been segregated and will continue to fund those positions.

SENATOR RAIKES: And I probably, it's in here and I just haven't dug it out, but given all the endowed chairs you've created, we're still behind in that regard from our nearby competitors, Kansas, Iowa...or nearby universities I should say rather than competitors...Kansas, Iowa, and so on?

TERRY FAIRFIELD: Yeah, I think that's correct. One would have to look at the statistics, and we'll provide it. If you look historically, professorships at one time in the early '80s were funded at a level of \$50,000, with chairs at the level of \$100,000. So when you look at numbers, it doesn't necessarily translate dollarwise. You'll also find...but more recently in the '90s, the campuses have been

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

Committee on Education
February 8, 2005
Page 22

LB 47

funding chairs at \$1 million. That would be UNL and the Med Center, and UNK and UNO at a half million dollars. So the level of support has increased and we also expect then to see the total dollar, from a competitive standpoint, increase. You will also find at the University of Kansas, and I know the University of Iowa, that there are some cases where chairs are fully funded. Those will require anywhere between \$3 million and \$5 million per chair to generate enough income to fully support the salary of the faculty member, as well as the benefits, and as well as some of their research support. So more and more you're seeing publics mirror private institutions in terms of establishing chairs at the \$3 million to \$5 million range, depending on the discipline of study. Obviously, in the biological sciences the costs are higher than it would be for a chair in English.

SENATOR RAIKES: Okay. Any other questions? I see none, thank you, Terry.

TERRY FAIRFIELD: Thank you.

SENATOR RAIKES: Other proponents, LB 47? Stan.

STAN CARPENTER: Good afternoon, Senator Raikes, and members of the committee. My name is Stan Carpenter, C-a-r-p-e-n-t-e-r. I'm the executive director of the Nebraska State College System and I am before you today to speak very briefly in favor of LB 47. Speaking on behalf of the students that we serve, we know that faculty members are the most important key to a student's success at our institutions. If they make a connection with a faculty member, if they understand the program they're in, we know they have a much better chance of succeeding and graduating from our institutions. Recruiting and retaining excellent faculty is as difficult for us, and perhaps even more so than it is for larger institutions, and we're always working at that. We're always trying to find ways to be successful at that. We are looking for well-educated, bright folks who want to teach, who want to work in our kinds of institutions, and who will be successful there. We're looking for people who care about students and about their programs and about their curriculum, and are in it because they find it to be rewarding, more psychically than financially, because we know that nobody is going to get

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

Committee on Education
February 8, 2005
Page 23

LB 47

extremely wealthy teaching at our institutions. And we think we do a good job of recruiting and retaining excellent faculty. But LB 47 would, in fact, help us by providing us the opportunity to raise money privately that could then be matched from this fund, and to attract faculty, perhaps that might not otherwise be able to come to our institutions. I can see, for example, the foundations at Chadron raising some money for somebody to come in and teach in their range management program because there's an interest in that kind of specialized program at Chadron. It's a bit of a reach for us to think about raising \$250,000 or a half a million dollars to be matched by the state. But I think if the state were to come through on this program, to find it to be something that you would be interested in, I think that would give us great incentive through our foundations to go out and raise some funds for these kinds of programs and to bring some specialized faculty into our institutions. Obviously, I can't guarantee that we would be able to do that in the short term. But I do think it would give us a chance to talk to our foundations, and to have them talk to folks. And it's always important to donors, as I'm sure you all know, to know that there is some leverage that for money they donate, that the state will also contribute to this, to this kind of purpose. So we are in favor of this. We were pleased when contacted by the university about this proposal, to go along with it, and just say that we very much support it, and I'd be happy to answer any questions that you might have.

SENATOR RAIKES: Thank you, Stan. Questions? I see none, thank you.

STAN CARPENTER: Thank you, Senator.

SENATOR RAIKES: Other proponents, LB 47?

DONALD UMSTADTER: Chairman Raikes, Education Committee, my name is Donald Umstadter and I'm here today to testify on behalf of LB 47. Well, you've already heard why the University of Nebraska needs to attract senior faculty. As one such recent recruit, I'd like to discuss how the offer of an endowed chair worked for me, and then how such offers work more generally. As of last month, I began an appointment as a professor of physics in the Lincoln campus. Before then, I was a full professor with tenure at the

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

Committee on Education
February 8, 2005
Page 24

LB 47

University of Michigan, Ann Arbor, which is one of the nation's top-ranked universities. I'm considered an expert in laser plasma interactions. And I'm building here at the University of Nebraska-Lincoln what should become one of the world's most powerful lasers. And this should increase the visibility of the university considerably. I was told that UNL's interest in recruiting me was motivated by their long-range strategy of increasing their rankings, which requires investing in selected academic disciplines in order to recruit the best faculty, including senior professors from, in some cases, higher ranked universities. My interest in UNL was motivated in part by their offer of the Leland J. and Dorothy H. Chancellor's Distinguished Chair. While not being my sole reason for coming to UNL, it certainly played an essential role. My motivation can be explained with an analogy from physics. A basic law of nature is that a force must be applied in order to overcome a body's inertia. Fully promoted and tenured professors have, as you might guess, considerable amount of inertia. They're well-established in their careers; usually they're at the top of their game. They're highly valued by, and consequently loyal to, their present universities, and they're closely tied to their communities. So what force could possibly overcome this great inertia and induce someone to disrupt such a stable life situation and start anew? Well, the usual carrots that work in recruiting junior professors, such as tenure and promotion, are of course ineffective in recruiting a senior professor, as they already have these at their present university. But there are effective ways to compensate senior faculty. They can be given greater financial freedom with a more competitive salary, and some unrestricted funds for their research which an endowed chair provides. Also, a more prestigious title such as distinguished professor or distinguished chair, further compensates them even when coming from a higher ranked university. It also helps to know one is joining a winning team such as the one at UNL. So, since I still have some more time, let me just answer a question that was brought up from an earlier speaker, and that is, what is your return on this? Well, in my case, immediately I brought a half a million dollars worth of federal grants, so you might say it was a wash for you. But I would say that, on the long-term, this is a virtuous cycle because my experience at the University of Michigan was, at where the endowment is quite large, that if you have a very good

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

Committee on Education
February 8, 2005
Page 25

LB 47, LR 28

faculty, you'll have very good alumni and very successful alumni. And then that successful alumni will bring to that university large endowments, and the cycle just continues. And I think this bill is just helping give that cycle a jump start. Thank you for your time.

SENATOR RAIKES: Thank you, Professor. Questions? I will tell you that I think we understand inertia problems right here in the Legislature. Let me ask you, if I might, let me ask you this. You mentioned you came from Michigan, a higher ranked university. What interest should the citizens of Nebraska have in seeing that the University of Nebraska becomes a higher ranked institution?

DONALD UMSTADTER: Well, I realize that these rankings are largely a sales mechanism. I mean, you know, some people can question the accuracy of the journals like U.S. News and World Report, which puts out these rankings. But be that as it may, it turns out that students and their parents respond to those rankings. And I think you all know, as parents you do consider that when you're making a choice where your children go to school. So the rankings are part of this virtuous cycle, in that it attracts top-quality students, and those top-quality students attract...well, eventually become alumni which give back to the university. It just so happens Michigan has the largest alumni of any university in the United States, so they're fortunate in that regard.

SENATOR RAIKES: Okay, well, thank you for being here. Other proponents for LB 47? Is there opponent testimony, LB 47? Neutral testimony? Okay, and Senator Landis has waived his closing so that will close our hearing on LB 47 and we'll move to the hearing on LR 28CA, and welcome our Speaker, Senator Brashear. Mr. Speaker.

LR 28CA

SENATOR BRASHEAR: Mr. Chairman. You have lights in Education now?

SENATOR RAIKES: We have lights. We have arrived.

SENATOR BRASHEAR: Wow.

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

Committee on Education
February 8, 2005
Page 26

LR 28

SENATOR RAIKES: You know, as an honor to you, we could use the lights on you as an opening. We don't normally do that, but... Please.

SENATOR BRASHEAR: Thank you. Mr. Chairman, members of the Education Committee, my name is Kermit Brashear. I'm a legislator. I represent District 4. I come in introduction of LR 28CA. LR 28CA would eliminate the constitutional references to the Coordinating Commission for Postsecondary Education. Let me extemporize for a moment if I may; a couple things I'd like to cover. I did this introduction after much thought, little consultation, and in response to a desire to act upon the fact that many, many people say to me, and have over ten years, that we never, ever eliminate anything. And there are jurisdictions that have automatic sunset laws and those kinds of things, where you must justify your existence no matter who and what you are, and I think it's a worthwhile exercise. I would like to be very clear. I thought I had caught the Coordinating Commission in the middle of a, or at the beginning of a search for a new executive director, and that is my error and I take responsibility for it. And I would hope that the committee would not draw any conclusion from the fact that I entered it right at the point where the executive director was being selected. Rather than aim my fire at the commission, which will no doubt fend for itself, please allow me to repeat again things that some of you have heard. But I will continue to spread them upon the public record for the two years I have remaining with the body. This resolution is really about forcing a discussion about the size and role of state government. I hesitate because I know there are people in the room who've heard me speak just within the last seven days on this subject, but bear with me. I'll go through the litany that I've used before and I will use again. Eighteen counties have not grown in population since 1930; 18 more since 1920; 12 more counties since 1910; 11 more counties have not grown since 1900; 10 counties have not grown since 1890; and I'm not certain people understand that yet and are acting in relationship to it. That adds up to 69 counties that have had no growth. Only 14 counties reached their highest historical population in the 2000 census, and others have lost ground since some point in their history. During the 1990s, 41 counties--41 counties had more deaths than births; 23 of those 41 counties also had more people move out than move in. Second, please

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

Committee on Education
February 8, 2005
Page 27

LR 28

consider with me that while our total population will be relatively static, as it has been relatively static, the composition of our population is changing dramatically. Our population of people 65 and over will grow from 232,000 in 2000, to 405,000 in 2030. That is within the approximately 1.7 million static population base. In addition, the percentage of our children who are minorities or children of international immigrants will increase significantly. This diversity strengthens our state and I am an advocate of population growth from all sources, but we cannot blink the fact that we will need to spend more money on education and social services in order to ensure that these young people are not denied the opportunity to become fully productive members of our community. Third, it is necessary at this point to consider that we right now are taxing just about everything that it is appropriate to tax, at about the highest rate that we can reasonably, competitively, in the marketplace, do it. Our tax base is now sufficiently broad so as to be competitive with other states, or like other states. Our tax rates are as high or higher than those of competing states. In other words, there is not much room for increasing our revenues except by means of growth. So when you put it all together, you can see that looking forward there will be greater and greater pressure on expenditures, and absent unusual amounts of revenue growth, very few sources of revenue therefore. This means that we need to be looking seriously at reducing the amount of government we are providing and paying for. And that means that we need to start looking at the idea of eliminating entire agencies, which as we know, does not very often, if ever, happen in government. Is it fair to start with the commission? Perhaps not. But we need to start somewhere. And now it has the platform to justify its existence to you. But we do need to start some sort of a thought process that will put everything on the table. We need to stop just talking about cutting, and start thinking about and achieving some elimination. I very much appreciate the committee's time. It's a privilege to be back among you. Thank you.

SENATOR RAIKES: Thank you, Mr. Speaker. Questions? To paraphrase something I read in the paper recently, I think it was quoted to Ronald Reagan, "A government program is as close as you'll ever come to eternal life."

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

Committee on Education
February 8, 2005
Page 28

LR 28

KERMIT BRASHEAR: (Laugh)

SENATOR RAIKES: And maybe you would add to that, a state agency or a local government subdivision. I understand your argument as being mostly along the lines of the amount of government infrastructure institutions we support as a state, and a need to somehow attack that.

SENATOR BRASHEAR: Yes, and if I may add, one of the things I wanted to extemporize about, and neglected, is the fact that as I sat on the Education Committee, and as I have served with you in the body, the Postsecondary Commission has always been resisted, in my opinion. That is a personal opinion. It's been resisted. It's about saving money, coordinating, being efficient, but I'm not going to go into it. We can talk about "creep" from one institution to another, into one geographic area or another, but I've always felt like there was a resistance. If we're going to continue to have the commission, we ought to embrace it and really achieve the value of its mission.

SENATOR RAIKES: Okay. Senator Bourne.

SENATOR BOURNE: For the record, Kermit, Senator Brashear, Speaker Brashear, we did eliminate one commission over the past two years of our...

SENATOR BRASHEAR: The Commission on the Status of Women, wasn't it? Yeah.

SENATOR BOURNE: That's right. It was \$65,000. (Laugh)

SENATOR BRASHEAR: Which I'm not certain was, in terms of policy, tone, and everything else, something we should do, and I don't even remember how I voted. But, yeah, we take what we can do, whether it matters or not.

SENATOR BOURNE: Speaking for the process, did we get a show of hands of those individuals testifying in support? And the reason I ask that is, you know, I see public hearings as a discussion. But I would be willing to bet that those people, and this isn't a reflection on the commission, but I'd be surprised if there was anybody in support because of the reluctance to engage in the discussion, and that's unfortunate. Just my comment.

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

Committee on Education
February 8, 2005
Page 29

LR 28

SENATOR RAIKES: Okay, any other questions or comments? Well, thank you for being here. Are you planning to stick around or...?

SENATOR BRASHEAR: No, I've always respected not closing, so...

SENATOR RAIKES: Okay, so I assume you won't close. All right, thank you again.

SENATOR BRASHEAR: Thank you.

SENATOR RAIKES: So let's have a show of hands. How many people will speak as proponents? How many as opponents? Okay, we'll move directly then, I'll ask again, proponent testimony? Opponent testimony, LR 28CA? Please come forward.

DAVID POWERS: (Exhibit 6) Mr. Chairman Raikes and members of the committee, I want to thank...

SENATOR RAIKES: Dr. Powers, now you understand that we need to have the names preceding the speaking for the transcriber.

DAVID POWERS: Yes, sir.

SENATOR RAIKES: Okay. All right.

DAVID POWERS: And I think we'll probably do it in the order of me first, and then the two commissioners; the chair and the vice chair will speak next if I may.

SENATOR RAIKES: All right.

DAVID POWERS: And I want to thank Senator Brashear for the opportunity to explain the important work the commission does. And I too wish that this committee and the higher ed committee would embrace the commission and what it can do to contribute to efficiency. I'm David Powers, P-o-w-e-r-s. I'm executive director of the commission. I am retiring from the commission in another 13 days, so anything that I say is not to serve my self-interest, but in behalf of higher education and the people of Nebraska. In 1990, the

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

Committee on Education
February 8, 2005
Page 30

LR 28

people of the state voted to create the Coordinating Commission. They wanted an independent voice. They wanted there to be 11 lay commissioners not beholden to anyone, and a professional staff to provide an independent voice. There's an important difference between a coordinating board and a governing board. Governing boards govern. They manage their institutions, they hire presidents, they set policy. They become strong advocates for their campuses. They are kind of beholden to the administrations, the faculty, the deans of their campus. They fall in love with it, as they should, and they really become advocates for it. Whereas coordinating boards focus, really, on the interests of the state and the people of the state, and the students. They identify statewide needs, they prioritize statewide needs. That independent voice serves the Legislature well and the Governor well, because we do studies like LR 174 for you. And we, in that sense, provide a good system of checks and balances. Often, a governing board will advocate to you a \$5 million or \$10 million building and \$5 million or \$10 million increase in operating budget--the kind of concern that Senator Brashear expressed. Whereas we often will come back to you, and you have handouts and the material being given to you, that we say, yes, I know the campus wants it and it's good for the campus, but is it good for the state? Is it good for the taxpayers that Senator Brashear is talking about? Is it good for the people of the state? And we often say, no, it's not. The paramount value that we should seek here is that all of higher education, all of the higher education community, works in your behalf, in behalf of the people of the state, in behalf of Nebraska. And one thing that a Coordinating Commission can do that a governing board cannot is try to develop collaboratively a common statewide plan, a common statewide vision. And to do that, we held 77 meetings to create this statewide plan. This is the Executive Summary of it, and we'll give you the thick one if you want it. But it is indeed a common vision and a common set of 14 goals. Many of the cost savings that we've recommended are summarized in this biennial report, appendixes 2, 3, and 4. We review hundreds of programs all the time, and we shut some of them down, usually in collaboration with the governing board, and we try to do it in a low-key way. It's interesting that just before this began, I was visiting with your former chairs of the Education Committee and former speakers. And I was hearing stories from Tom Vickers and Ron Withem and Dennis Baack

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

Committee on Education
February 8, 2005
Page 31

LR 28

about how this committee had to struggle with what programs each institution should offer. And it had to come before this committee who should give nursing degrees and who should give MBAs. You were the Coordinating Commission. You were it. And you had to sit through 29 different people testifying, or whatever the number was, about who should get nursing programs. In fact, I think to read the papers, you're about to have more ink about who should offer vet med, veterinary medicine programs, and who should have dental hygiene programs, and these will come before us. Do you want them to come before you? Do you want to be the ones who have to decide all of these program decisions and hear 25 more people testify on each side of each of these issues? We have constitutional responsibilities. They're in pages 5 to 9 of this book so I'm not going to read them to you. We do have a few summary handouts so that you can browse them at your leisure when we are through here. Among them are things we're doing with a comprehensive plan, a blue handout about consumer protection. I think I should point out, on this pink sheet we are the smallest Coordinating Commission staff in the United States. In the 26 states that have coordinating commissions, we are the smallest. It would appear that Delaware would be since we have 12 people, but theirs is just a planning council. I might add, the lowest paid executive director, but, of course, that would be disinterested of me to point that out except for one other person. I would also like to point out the dollar savings that we do.

SENATOR RAIKES: I will interrupt you at that point and ask you what else it is in this packet that you would like to call our attention to.

DAVID POWERS: Mr. Chair, I will stop at this point and turn to our chair and vice chair. If I may add one more thought: Senator Jerry Warner sent me a note. He had interviewed me for this job and he had sent a note to me saying, "I have not changed my mind about the issues that coordination require. The Legislature could not avoid political considerations, my hope the commission will. So please consider the alternatives." And with that, I'd like to turn to the vice chair of the Coordinating Commission.

SENATOR RAIKES: Would this be a good time to answer questions, or...?

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

Committee on Education
February 8, 2005
Page 32

LR 28

DAVID POWERS: As you wish, sir.

SENATOR RAIKES: Okay. Do we have questions for David? Let me ask you this if I might, 1.7 million people in the state and the contingent of postsecondary students that goes with that, aren't there states that if you looked at a population base that would account for the higher education needs of a group of postsecondary students as big as we have in Nebraska, with just one governing board?

DAVID POWERS: Yes, that is true. About half the states have a single governing board model, or no model at all--let you do it. And about one-half the states have a Coordinating Commission. So indeed, it is possible. I once was a vice chancellor in one of those systems, yes.

SENATOR RAIKES: Okay. So if I could pursue that just a little bit, what are the advantages and disadvantages? How does the ledger look on that one?

DAVID POWERS: When I was vice chancellor of the Board of Regents of one state, all 16 colleges and universities reported to us. We were the governing board. So we were the governing board. In fact, we came to you as advocates for the 16 institutions. We gave you long presentations about why you ought to build them five new buildings, why you ought to add more degree programs, why you ought to add much more money. There was no check and balance. There was no Coordinating Commission to say, "Powers, now listen, you're sitting here telling us why you want more things that are good for your campuses. Are they good for the taxpayer? Is there no objective voice? Is there no independent voice, 11 lay commissioners who could say, you know, yeah, I know it's good for your campuses but it's not really good for the state or the students or the taxpayers." There was a void, an absence of checks and balances. That's the alternative I will not encourage you to take.

SENATOR RAIKES: So if I interpret that correctly, in states where there is a governing board but no Coordinating Commission, higher ed spending tends to run wild?

DAVID POWERS: It's that the Education Committee or Appropriation Committee have to become the Coordinating

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

Committee on Education
February 8, 2005
Page 33

LR 28

Commission.

SENATOR RAIKES: I see.

DAVID POWERS: The last state that I was in where it was a coordinating board, not a governing board, they had to create two committees of the Education Committee in the House, and two committees of the Appropriations Committees of the House and the Senate in order just to manage higher education affairs. You nine were the Coordinating Commission, instead of these 11.

SENATOR RAIKES: Okay. Senator Stuhr.

SENATOR STUHR: Yes, on the pink sheet, there is a star that talks about funds for the Midwestern Higher Education Commission. And I know that there has been some discussion whether our state should continue being members. I think it's \$82,000 for, and I would just appreciate your comments. And if we were trying to cut...

DAVID POWERS: Yes. Well, Senator Raikes and Senator Beutler are, were, last year, the two members representing you on that commission. So I would value their thoughts about it. It is my belief that for that \$82,000 a year, the sum total of savings just in Nebraska is \$1.8 million. The biggest savings was the University of Nebraska in the insurance program. The university and the state colleges are participating with the other ten Midwestern states in jointly buying insurance for their buildings through a pool. And the last figure I saw was \$1.8 million saved just in insurance premiums by having ten Midwestern states join together. Other examples are computer purchases. I don't know the dollar value of the computer purchases, but I will find it out for you and get it to you. But it is my belief that there is several hundred thousand dollars saved by having ten Midwestern states together get major discounts, educational discounts. So even apart from any policy or planning functions or statistical analysis functions they perform, the pooling of over 800 colleges and universities in ten states is a very wise investment.

SENATOR STUHR: Okay, thank you.

SENATOR BYARS: Enough questions of Dr. Powers? If not, we

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

Committee on Education
February 8, 2005
Page 34

LR 28

can hear from the vice chair. Vice chair, if you'd identify yourself for the record, please, and spell your name; we are transcribing the conversation.

MARY LAURITZEN: I'm Mary Lauritzen, spelled L-a-u-r-i-t-z-e-n from West Point. I'm vice chairman of the Coordinating Commission. I was appointed by Governor Johanns in May of 2005, so I have lived with the commission--2000; this is 2005. Five years, five years on the commission, half of its life. And as a volunteer commissioner, it's been an extraordinary experience. I speak to you today to remind you that my guiding principle on this commission is to do what is best for the people of Nebraska. I'm a small business owner. Like anyone else, I'm concerned about how the state spends its money. And I'm here to tell you that the Coordinating Commission for Postsecondary Education is a good investment, and one that the state cannot afford to do without. The commission fulfills a unique role within Nebraska's higher education system. It enrolls no students, hires no faculty, and has no role in the daily operation. It's a coordinating body, not a governing body, and that is the important difference. A governing board is an advocate of its own institutions, campuses, and that's as it should be. Its job is to ensure effective management and operation, to hire good faculty and staff, and to lead those institutions. A coordination commission, on the other hand, looks first at the needs of the states and the demands of the citizens and the employers. An independent commission provides an objective point of view and a statewide perspective to its decision-making process. Its primary responsibility is to coordinate the whole array of higher ed institutions in the context of a forward-looking, statewide, comprehensive plan for postsecondary education. Charged with coordinating responsibilities and regulatory duties relating to public higher ed in the state, the commission serves as an independent voice working to foster the best interests of the people of Nebraska, the students, and the public postsecondary institutions. The commission remains independent to ensure objective analysis in the decisions regarding academic programs, facilities, and budget requests. All too often, state leaders see the amount of funding that goes to higher education and looks for ways to economize. As David has pointed out, eliminating the commission would not save the state money. But this issue

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

Committee on Education
February 8, 2005
Page 35

LR 28

is not just about money. As taxpayers and consumers, we're not just looking for the least expensive option; we're looking for the best option. Nebraskans care deeply about the state's higher education system, for themselves and for their children, and a lot of taxpayers' dollars go in to support higher ed. That is why the people of Nebraska voted to create this commission--to coordinate, help oversee, and to protect their investment in higher education. The commission is an insurance policy, ensuring that new programs, facilities, and budget requests are consistent with the state needs identified within the comprehensive plan and to eliminate unnecessary duplication whenever we can. I run a small business. I understand the value of a dollar. I also understand the almost greater value of an educated work force. Nebraska's demographics are changing. A large segment of the prime work force population, which are persons aged 18 to 44, is projected to drop in the next 20 years. Many of our college graduates leave to take jobs in other states. Meanwhile, the minority population is projected to grow--a population that now is underrepresented in our high schools, colleges, and universities. The commission has always been concerned about encouraging the creation and maintenance of a well-educated work force. But now, we are sharpening our focus. With these changing demographics, it's easy to see that Nebraska must be proactive in finding ways to raise the high school and college graduation rates of minorities, and also to keep our college graduates working in Nebraska and contributing to this economy. Work force and economic development is essential to the state's growth. As a commissioner, I believe in the work that we're doing. I would look any taxpayer in the eye and tell them what I've told you today. I believe in what we do; the people I take this case to believe in what we do; and I ask you to continue to believe in what we do. Thank you.

SENATOR RAIKES: Thank you, Commissioner. Questions for the commissioner? Okay, I see none. Thank you. We ready for...? Please.

DICK DAVIS: All right. My name is Dick Davis. I'm the chairman of the commission. I'm one of the two original commissioners on the commission, so my looks are somewhat deceiving. I had a great time on the commission and that's the reason why I'm still here. You heard from David and

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

Committee on Education
February 8, 2005
Page 36

LR 28

from Mary, the issues of savings and efficiencies, such as the research center on an annual basis saving a half million dollars or more a year, or the UNK college education building, a one-time savings of a million dollars. You heard all of those kinds of things. So I think the logic of us being well-positioned to support the state government is well-documented under the documents that David has given you. But I'm here to talk about the future of the commission. You know, I had a conversation with Kermit Brashear, who is my senator by the way, and after we had a conversation, I found out that he and I, really very frankly, had the same vision. I had told him that when David announced his retirement, we went to national consultants--Dennis Jones and Aims McGuinness from the National Center for Higher Education and brought them in, and said, you know, we started this in the twentieth century. We want, as a commission, to look for the twenty-first century. So you tell us, what we're, you know, where we are and where we need to go. And they came out and they basically gave us a score card in terms of what we've been doing. Now, there are some things that we've been doing enormously well. And that, again, is because of our great staff and David's national experience of bringing us as far as we have. But we also need to go further. And so what we did then is, as we looked for a national consultant to bring in the new director, we wanted to make sure that we were hiring a forward-looking strategist, someone that could bring us to the twenty-first century. And in the audience right now today is a person that we did hire. His name is David...Dr. Marshall Hill. You're David. And see how quick I am? And he's from the Texas Higher Education Coordinating Board and so we're very happy to do that. But I wanted to make sure that when I talked to Kermit Brashear and yourself, is the fact that we want to look and see our strategy and have a philosophy, what I call "right-sizing," a "right-sizing" organization. You know, a lot of times there's the duplication of efforts. As you know, we've started with the bill, or the project LR 174. And there were a lot of things that we were doing and had been very helpful. And I really appreciate you folks, really, giving us that task as a focal point that allows us to move as a whole institution, educational institution, going forward. But at the same time, you know, we were doing things that were also duplicative of LR 174. So my point is the fact that we're trying to say, okay, what are we doing now, what

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

Committee on Education
February 8, 2005
Page 37

LR 28

were we doing in the past, what is a duplicate, what is a nonessential task? And we're moving forward. And so, as we look forward, we're also looking to make sure that we have stronger and better relationships. It does not mean that we're going to lose our independence, because I think that's the most important thing you need to have. But I've had several conversations with the university president, J.B. Milliken. We've had some discussions even as the LR 174 came to you folks, or to at least to Appropriations, to make sure that we were doing it in concert and collaboration. So I think Kermit's particular issue about the resistance of the commission, I think is going to be more positive and stronger as we go forward because we also know that we need to do a bit more outreach in terms of not only Lincoln, but Omaha and all the other communities to make sure that they really understand our value. So we're extremely happy to really have a time to sit with you here, and I think as we go through this process, I think you'll be very proud of us as we come and give you recommendations of what we think the commission should look like in the twenty-first century.

SENATOR RAIKES: Okay. Thank you, Dick. Questions for Dick? I'll bring up one to ask you to comment on. In an earlier bill, a person testified about having been at Michigan, which is a highly ranked, very strong university. And I asked about, well, you know, why should citizens of Nebraska aspire toward having a highly ranked university like the University of Michigan? My impression has been that the response to that from the Coordinating Commission would be, they shouldn't. We can't afford that; there's no sense us pretending; we ought to be satisfied with something less.

DICK DAVIS: Well, I think your impressions would be wrong on the commission. I think the commission basically says, we have limited resources and we should pick our particular fields of excellence and focus a significant amount of funding in those fields of excellence, and be as high-ranking as any university in the nation. So, you know, there's a practicality in education, but also there's this aspiration that we should never ever lose.

SENATOR RAIKES: Okay. The Coordinating Commission's role in exactly that, picking priorities for the various campuses

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

Committee on Education
February 8, 2005
Page 38

LR 28

and so on, is that something within the scope of the Coordinating Commission or is that something you have to basically allow the governing boards to do? Deciding that we're going to have only so many programs, and we're going to emphasize this one and this one, and maybe not that one?

DICK DAVIS: Well, from a practical standpoint, you know, the governing boards will make whatever final decisions that they have to make in terms of their programs, in terms of the existing programs. In terms of new programs, there's no question that we would look at that from a duplicative standpoint, and in terms of and the need of the Nebraska. An example, if there's a need, if there's no duplication, we generally are very positive moving that forward. We try, we truly try not to get into the governance position of the universities. What we do, is we try to...and try to build some benchmarks. And we've been doing a better job in the last several years in establishing those benchmarks as we can be able to see performance measures in terms of how well they're doing. And so, it's like an issue of coordination is not an audit. It's very frankly, it's a guidance. And many times when a program is not successful, if you can lay down the data that says it's not successful, it's very easy for that university or state college, community college, to take that off the table because everybody obviously wants higher performances.

SENATOR RAIKES: Okay. Thank you. Are there any other questions? Senator Stuhr and then Senator Bourne.

SENATOR STUHR: Yes, this handout that talks about some of the surveys and that, in relationship to the 77 meetings, are those published surveys or programs?

DAVID POWERS: Yes, Senator Stuhr. I suspect you're talking about the Implementing the Comprehensive Plan.

SENATOR STUHR: Yes, yes.

DAVID POWERS: Throughout the comprehensive plan, and I might add that building exemplary institutions is one of the five goals of the comprehensive plan, we have materials, and I'll provide them to you, on how some of those goals can be met. In terms of priority programs, that second one down, Workforce Development/Economic Development, in concert with

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

Committee on Education
February 8, 2005
Page 39

LR 28

the Department of Economic Development, we have said the pilot project should be in healthcare in Grand Island and Kearney; industrial manufacturing systems and engineering in Columbus, Norfolk, and West Point; and then the other pathway pilots that are not ready to launch are transportation and logistics, because the Department of Economic Development said we should pursue that; biotechnology, which President Milliken and others have spoken to very eloquently; entrepreneurship, which the Center for Rural Development has talked about repeatedly and the University of Nebraska's Rural Development Project; and finance and insurance because that is, indeed, much of the wealth of Omaha. Those, indeed, are program priorities that we've identified for Workforce and Economic Development through the commission. And we do it in concert with all of the higher ed sectors. And we do it in concert with, as I said, economic development and education. So that both between the five goals and 15 themes here--14 themes of the comprehensive plan, including exemplary institutions, and these particular initiatives, we are indeed trying to focus on the twenty-first century, as Dr. Davis was saying. I think one of the things that he touched on that when Senator Brashear is worried about the growth of government, Dr. Davis mentioned saving a million dollars by one decision on the part of the commissioners. These 11 people, we had a million-dollar decision, and I might add our whole operating budget is only a million dollars, our entire budget, which is two-tenths of 1 percent of the higher ed budget. And the interesting thing, when you look at savings, the salmon-colored sheet, it's kind of an interesting one, Senator, because what we try to do is find out what it is that you assigned us to do. And if you take a look at it, you find out that somebody has to perform for the federal government, the data reporting called IPEDS. Somebody has to do the federal reporting for major grants. Somebody has to award the Eisenhower that used to be called teacher improvement grants, on behalf of the federal government. Somebody that you have to assign to, has to give out your student aid money, your program that you've created. So the total savings, the salmon suggests, to meet Senator Brashear's goals, we can only identify \$395,000 that could be saved if we didn't exist. Why? Because you chose to give us a whole bunch of tasks that don't suit any one governing board or one institution, that had to be done by somebody. So if you take a look at the savings issue here

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

Committee on Education
February 8, 2005
Page 40

LR 28

on those yellow sheets and what we save in our program decisions, plus what you're going to have to pay somebody to do, there's not a lot of savings. Matter of fact, we think we make you money. We are not part of the problem of state government. We are part of the solution. We started with 11 people 12 years ago. We now have 12.8. I doubt any state agency, if you look at the tables on the pink sheet, has had as little a budget growth as the Coordinating Commission. I doubt if any state agency has only grown from the equivalent of 11 to 12.8 FTE. We are the ones who keep identifying and prioritizing for you how to spend state dollars. Appendix 2 and 3 of this book shows a prioritization of what we strongly recommend and what we don't recommend that you fund. And the Appropriations Committee takes that seriously. We are the ones who prioritize every single capital construction project in the state for higher education. And what people don't understand is that we do that in consultation with the building division of the Department of Administrative Services, two legislative fiscal analysts on behalf of the Appropriations Committee, plus one person from the Governor's Budget Office. Those staff consult with our architect and make those prioritizations and make those recommendations. So we don't just coordinate higher ed; we coordinate state government.

DICK DAVIS: I want to make sure that when he said that growth of 11 to 12.4, 12.5, we've done some preliminary analysis that says we should, in terms of the work that needs to be done, it should be up to around 15.5, just in terms of doing the statutory requirements. And that's why I'm talking about, from a commissioner's standpoint, "right-sizing." Because we may come back to you and say to you, look, this is the work that you want us to do. We won't even prioritize the work that you want us to do and say, you know, we only have so much resources, here's what we need to do. And we're going to try make this right so we can still continue to be efficient. So I didn't want you to think that, that small increase had the same impact on the work that has been increased over the years.

MARY LAURITZEN: And not to be left out, the first year I was on the commission, it occurred to me in a bolt of lightning, the commission is a \$1 million insurance policy that protects the \$600 million investment that the people

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

Committee on Education
February 8, 2005
Page 41

LR 28

make with their tax money toward the cost of higher education. And our future goal, to summarize what David said, is finding ways to bring business and education together, really truly looking at those things in coordinated effort. And I wouldn't have wanted them to drag these booklets without letting you realize that every one of these reports would not be produced anywhere else had there not been a Coordinating Commission. If you want to know every inch of space that is used for postsecondary education, it's in this one. If you want to know what the future plan is, it's in these two. If you want to know how many students are doing what, where, community college, state college, or university, it's in this one, and so on. And these are all available. And part of my plan was to read page by page aloud to you from every booklet, but I chose not to because of those little lights. We work hard for you and the people know it. Page 1, chapter 1, first book, no way.

SENATOR RAIKES: Senator Bourne. Oh, okay.

SENATOR BOURNE: Thank you.

SENATOR RAIKES: Any other questions? All right. Well, thank you all for being here today.

MARY LAURITZEN: Thank you.

DAVID POWERS: Thank you for giving us the time. We appreciate it.

SENATOR RAIKES: Other opponents, LR 28CA? Okay. Is there any neutral testimony? Mr. Baack.

DENNIS BAACK: Senator Raikes and members of the Education Committee, for the record, my name is Dennis Baack, B-a-a-c-k, and I'm executive director of the Nebraska Community College Association. When you get to these kinds of policy discussions, in my opinion, these are not ones that the sectors probably get involved in the policy decisions that the Legislature makes on these issues because they are broader issues than that. But I will tell you that in the past we've had some concerns with these sorts of bills that have been brought to the Legislature before, because Senator Kristensen used to introduce this bill, and

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

Committee on Education
February 8, 2005
Page 42

LB 352, LR 28

one of the things that he did was he took all of our program review and all of our budget review and those kinds of things and put them under the Board of the Regents of the University of Nebraska. And quite frankly, we're not very comfortable with that. We don't think they necessarily understand our role and mission very well. So we would hope that if you do do something like this, that at least you would consult with us and we would have to come up with some other way of dealing with our program review and our budget review because I'm not sure that the Board of Regents is the entity that would do a good job of that. We quite frankly find that the Coordinating Commission is a quite good buffer for us between what the university does and the state colleges do, and what we do. And so with that, I'd be happy to answer questions if there are any.

SENATOR RAIKES: Okay, questions? Dennis, when you mentioned program review, are you talking about review of new programs being offered or more than that?

DENNIS BAACK: We have both. There's existing program review that we go through on a continuing basis. There's certain programs, there's a schedule that the Coordinating Commission has and they do existing program review, and they also then, any new programs that we're going to do, they also review those.

SENATOR RAIKES: Okay. I see no other questions. Thank you. Any other neutral testimony? Okay, that'll close our hearing on LR 28CA. And we welcome Senator Preister to introduce LB 352.

LB 352

SENATOR PREISTER: Chairman Raikes, members of the Education Committee, it's an honor for me to be before you this afternoon. My name is Don Preister, P-r-e-i-s-t-e-r, from Legislative District 5, the "Immigrant District," as the primary introducer today of LB 352. It may be the longest bill you'll have before you all year. It consists of one sentence, and it states that a person who has been hired to fulfill the duties of a teacher or school nurse who is on a leave of absence shall not accrue rights under Sections 85-1528 to 85-1534 during the period that the

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

Committee on Education
February 8, 2005
Page 43

LB 352

person is fulfilling such duties. Revisors may add a couple of commas, but otherwise it's perfect. (Laugh) Senator, the intent of LB 352 is to provide for the protection of teachers or nurses who may be on leave of absence from losing their contractual rights to a temporary employee who may be hired to fill the vacancy. That essentially is the purpose. That is the bill itself, the one sentence, as I said. And there will be other testifiers following me. If you have questions, they can answer them perfectly.

SENATOR RAIKES: Okay, thank you, Senator.

SENATOR PREISTER: Thank you, Senator.

SENATOR RAIKES: Questions for Senator Preister? Okay, thank you. Are you planning on sticking around?

SENATOR PREISTER: I'll stick around for a minute. I do need to get back to my committee. I will probably waive closing. If I'm not here, I waived closing.

SENATOR RAIKES: Okay, all right. Thank you, Senator. So, proponents for LB 352? Jack, welcome.

JACK HUCK: Senator Raikes, thank you. Members of the committee, my name is Jack Huck, H-u-c-k. I'm president of Southeast Community College and here today to support LB 352 as introduced by Senator Preister. I guess what I wanted to do today really was to give you just a little glimpse of reality in terms of what this bill means. It is very short. It's very to the point, and I think the reason that we've asked that it be introduced on behalf of the community colleges is that this was one of those issues that most likely when the community college districts were formed in the early '70s and the statutes were created pertaining to us, a number of those statutes, as many of you realize, were moved over from the K-12 sector. This was one of those statutes that existed and exists today in the K-12 sector, but did not make the transition to the community college sector, thus the unique wording about teachers or school nurses. The reason that wording is there is because that is...was and is the wording that came from the K-12 statutes and certainly applies to us just as much as the other wording in our statutes does today. The experience and reality is one such that where we find ourselves very

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

Committee on Education
February 8, 2005
Page 44

LB 352

occasionally today is that we do occasionally find that we have a staff person, faculty person, who is on leave from us. In our case, my experience has been in a couple of instances the leave was due to illness, due to disability. And in our statutes, you'll also find provisions that say that if we have a faculty member employed for more than two years, once they reach the two-year benchmark, they pass to what is called permanent status and they have the rights associated with the expectation of continuing employment, basically what's known to you I think as the continuing contract provisions of state law. The issue for us has been, quite frankly, that we've had a couple of occasions where a staff person has been on leave for an extended period of time. You bring in a fill-in person for that staff person who is gone. And as you approach that two-year benchmark, you're faced with a decision about asking the temporary person to leave your employment because if they pass the benchmark, they then become on permanent status. And hopefully if and when the existing person is ready to come back, you have two people filling the same job, both of whom have rights in law to the job. So what we found ourselves doing, quite frankly, is we say to the temporary person when that two-year benchmark approaches, you're not able to be employed with us any longer. We need to find somebody else to fill in if it extends beyond that benchmark, and we have actually had to do that. I think the most problematic part of that decision, quite frankly, relates to services to students because one of our goals is to have quality teaching and to have it on a basis that provides for continuity. And when you occasionally face those kinds of determinations, obviously you've impacted the quality of education for students, assuming that you have a quality person in front of them that you're currently employing. We think this really creates a playing field then that is fair in many ways. It's fair to the current employee who happens to be on leave because they continue to know they have a job to return to. It's fair to the temporary employee if LB 352 is invoked because you are then able to say to them, you can stay with us until the full-time employee is ready to return to their job. But certainly when they return, that's the point at which we then switch positions, if you will. And best of all, I think it makes good sense in terms of continuity for students. So that's just a glimpse, as I said, of our experience. It's why we think it's, although it's a small

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

Committee on Education
February 8, 2005
Page 45

LB 352

provision, it's an important provision to have available to us. And we would certainly encourage your support of LB 352.

SENATOR RAIKES: Thank you, Jack. Questions? Senator Kopplin.

SENATOR KOPPLIN: What has been your experience with length of some of these leaves of absence?

JACK HUCK: Most of the time they are shorter than that two-year period, the permanent period I referred to in statute. The longer than two-year experience is the exception, it's not the rule. I've...in the 12 years I've been in this position now, I think we've had three of those occurrences. All of ours happened to have been related to illness or disability situations. And actually in two of those three cases, although it was long term, two of those people were able to come back to us which is, again, a wonderful outcome. That's what we hope for. We hope they get better and they are able to return to work. And in two of the three cases of our experience, that did happen.

SENATOR KOPPLIN: Okay, thank you.

SENATOR RAIKES: Senator Bourne.

SENATOR BOURNE: I'm just curious because you had made a comment in your opening there in your statement that somehow they have rights to employment. And I don't...are they under contract? I mean I thought...we're a right to work state where you can fire somebody for any reason, no reason, bad reason. I'm trying to understand exactly what rights to employment it would be.

JACK HUCK: In our world of education, I guess I would not...I have not been trained that we are a right to work state in the way that I think you're suggesting it from the labor law point of...

SENATOR BOURNE: I said it wrong. I'm sorry, I said it wrong. I'm thinking like isn't it employment at will?

JACK HUCK: Not for faculty people in community college. Our faculty people in community colleges would be very

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

Committee on Education
February 8, 2005
Page 46

LB 352

similar. And again, our statutes came from the K-12 statutes. So if you're familiar with the provisions for K-12 teachers where there is, in our case there's a two-year probationary period when a new faculty member comes to us. Once you pass that...during that two years, it is I would say fairly equivalent to employment at will. The statutes say that we can dismiss a faculty member during that initial two years without cause. Once that two years passes, then the principles of with cause and the continuing contract provisions of the state of Nebraska for teachers do come into play. And our people do have a right of a...well, an expectation of continued employment beyond that two-year benchmark.

SENATOR BOURNE: I was unaware that existed. Thank you.

SENATOR RAIKES: Yes, Senator Howard.

SENATOR HOWARD: Thank you, sir. Would this be in any way interpreted as a means to circumvent that system that's in place? I mean I understand your motivation to cover while someone is out on an illness, for example. But could people be indefinitely in this status without benefits?

JACK HUCK: Well, the statute is written, as I understand it, to only be in effect while you are fulfilling the duties of a person who is on leave. So in a sense, you've always got the original employee in a waiting situation. And I think the trigger event is the return of that original employee back to the workplace. So I'm not sure that you could circumvent. I mean somehow you'd have to, it seems to me you'd have to get rid of that commitment that you had to the original employee and that's always there. That's actually the triggering event for what happens under this statute.

SENATOR HOWARD: I respect what Senator Bourne had asked. I kind of have the same concern if that's a way that any bargaining unit or any contractual agreements would not be in effect.

JACK HUCK: No. I have to tell you I don't see this as having any impact on ability to bargain or contractual agreements. And I believe, now I'm getting a little out of my domain here, I would think in the K-12 sector where this

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

Committee on Education
February 8, 2005
Page 47

LB 352

has been present forever essentially I don't believe there have been, that I'm aware of, any of those concerns that have ever bubbled up from this provision.

SENATOR HOWARD: Thank you.

SENATOR RAIKES: Jack, to follow up on that a little bit, so you had three instances that you know about.

JACK HUCK: In our case.

SENATOR RAIKES: In two of the cases the person eventually came back.

JACK HUCK: Correct.

SENATOR RAIKES: I take it in the third that didn't happen.

JACK HUCK: Unfortunately, it did not.

SENATOR RAIKES: So this fill-in person, what would be their status beyond two years? I mean what if it is not, you know, sort of a decisive measurable event at which it's clear that the permanent person, if I can call them that, is not coming back?

JACK HUCK: I have a couple of thoughts in that regard. Number one, because it's about a person and the statute states who is in the status of a leave of absence, it seems to me there is from our perspective as an employer, paperwork backing that up. They're on a leave of absence for some reason. In my case, all three cases happened to be illness. It could be a leave of absence due to study sabbatical, study abroad, whatever the case may be. It could be a leave of absence due to a number of other kinds of reasons. But I guess my point would be that leave of absence is the event under which this statute comes into play. And the leave of absence itself, it seems to me, creates then the parameters for the occurrence of the event that triggers an ending to that status. In other words, if they're on a sabbatical, the sabbatical ends. If they're in a situation of illness, as my experience was, they're either getting better and able to return or unfortunately, in the one case where that didn't happen, our instructor passed away. I mean that was the result. But there is, I think,

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

Committee on Education
February 8, 2005
Page 48

LB 352

an ending event in all of those cases to that leave status. Now when that leave status occurs, I think the second part of your question, when that leave status occurs and ends, then the person who was filling in under this approach really does not have any rights to that position, any more rights than anybody else. So what we would do is we would then treat that position as a vacancy, advertise that position at large, as we do all other positions within the institution so on, and we would fill that position. Now is the temporary person likely to apply for it and be interested in it? That could very well be the case and they might even be a future employee. But I think that's the set of events that would unfold as your question outlined.

SENATOR RAIKES: Okay. One other, the contract rights that we're protecting here for the permanent position, would that involve monetary items, fringe benefits or retirement or anything like that? Or is it strictly our rif procedures?

JACK HUCK: I think you're asking would there be monetary implications for the employer, for us as an employer.

SENATOR RAIKES: Or for the employee, the temporary or the permanent employee.

JACK HUCK: I think that will depend probably on each college's personnel policies.

SENATOR RAIKES: Well, the question I'm asking, suppose you go to the two years and then you go beyond the two years by two years. So would there be any claim from the temporary person that, look, you know, you need to compensate me for fringe benefits if that's in play for everything after the two years.

JACK HUCK: With the focus on the temporary person.

SENATOR RAIKES: Yeah.

JACK HUCK: Okay. Again, I can only give you my experience. In our cases when we hire a temporary to fill in behind the person who is gone, if they meet our qualifications, and in our case it has to be a three-fourths time employee or greater, which typically a faculty member would be, they are treated just like any other faculty member. So they receive

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

Committee on Education
February 8, 2005
Page 49

LB 352

full benefits, full compensation. They are really no different than any other faculty employee that we have other than the fact they're not accruing rights to that job under the provisional status probationary period and continuing contract provisions. That's really the only difference.

SENATOR RAIKES: Okay. All right. Thank you, Jack. Seeing no other questions, other proponents to LB 352? Jim.

JIM GRIESS: Senator Raikes and members of the committee, I'm Jim Griess, G-r-i-e-s-s, the executive director of the Nebraska State Education Association, here to wholeheartedly support this legislation. We've had this system in place in K-12 education for a number of years. And before it was in place, we had people who wanted to take sabbatical leaves and couldn't. We had women who wanted to take some child rearing leave and couldn't because school districts were in a situation where if they hired a replacement they had to give them all of the due process rights that a regular teacher receives. As far as contract salary, fringe benefits, and all of the other benefits that are covered by a negotiated agreement, a new employee is a full employee with all of the rights and benefits. But as far as accruing rights under the continuing contract law, they have none because they are a replacement. They sign an agreement at the outset of their employment that fully explains that they are there only for the period of time that the individual teacher they're replacing is absent. So it gives flexibility to the district, in this case the community colleges, and it gives flexibility in terms of employees who need to take leaves of absence either for illness or for sabbaticals or for child rearing or a variety of other situations. And we are in total support. We've not had difficulty with this in the K-12 sector, and I do not believe it will create any problems in the community college sector either.

SENATOR RAIKES: Okay, thank you, Jim. Questions? Senator Kopplin.

SENATOR KOPPLIN: Yeah, Mr. Griess, I'd ask the same type of question. I was trying to put this in a public K-12 school situation. How many of these leaves of absence are you aware of that really extend beyond two years?

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

Committee on Education
February 8, 2005
Page 50

LB 352

JIM GRIESS: There are some. Illnesses would be the most likely where someone...in the case of K-12 today, we have a three-year probationary period so it becomes more remote that it would extend past the continuing contract rights plateau, but community colleges still have two years. And some women do take two years of child rearing and get a grant from their board of education and then return to the classroom. So it can be...there's more to it than just accruing tenure. Under the old law, a school district had to go through the procedure of notice and firing a probationary teacher. And while you can fire a probationary teacher for any reason or no reason at all, you still had to file the procedural due process in the law. Since this change was made in terms of the continuing contract law for K-12 teachers, districts are no longer required to do that because at the outset the individual teacher knows that they have no continuing rights. And so that's also a potential barrier for granting a leave of absence if you have to go through a legal procedural due process, process.

SENATOR RAIKES: Okay. Thank you, Jim.

JIM GRIESS: You're welcome.

SENATOR RAIKES: Other proponents to LB 352?

DENNIS BAACK: Senator Raikes and members of the Education Committee, my name is Dennis Baack, B-a-a-c-k. I'm the executive director of the Nebraska Community College Association. Just one comment, Mr. Chairman. You, as a resident of District 25, you kind of got my hopes up when you said you were from District 29 instead of District 25, but then you corrected it and I was right back where I was. So I'm here to testify in support of LB 352. I think that they, you know, they've discussed the issues very well and I did sit down with the NSEA because they do represent our faculty on five of the six campuses. NSEA is the faculty representative and does the collective bargaining for my institutions. And I did sit down with them and we went through all of the language, and I worked this out with NSEA before we ever brought it to you. So I think it's something that we need to have. And, Senator Kopplin, in response to yours, as my presidents discussed this issue, the president that's been on the longest, about 30 years, is Dr. Harms out in Western Community College, and he can only remember one

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

Committee on Education
February 8, 2005
Page 51

LB 352, 196

or two cases in 30 years. Most of the rest of them are fairly new. They couldn't really remember any instances where that had happened on their campus, so it's a very, very rare time that this happens. But it does happen occasionally. So we just think it's something that we need to put into place for the community colleges because it's something I think has worked very well for the K-12. And we'd like to see that also in the community college statutes. With that, I'd be happy to answer questions.

SENATOR RAIKES: Thank you, Dennis. Were you also the one that suggested the best way to improve the quality of the Nebraska Legislature would be for me to resign?

DENNIS BAACK: I don't believe so. But now that you mention it...

SENATOR RAIKES: I see, okay. I thought I remembered that.

DENNIS BAACK: (Laugh). I can't say that I'd disagree with it, but I don't think I was the one that said it. (Laughter)

SENATOR RAIKES: Any other questions? I see none, thank you, Dennis.

DENNIS BAACK: Thank you.

SENATOR RAIKES: Is there any other proponent testimony? Any opponent testimony? Neutral testimony on LB 352? And Senator Preister has disappeared so that will close the hearing on LB 352.

SENATOR BYARS: And we will hear Senator Raikes to open on LB 196.

LB 196

SENATOR BYARS: You've been officially welcomed.

SENATOR RAIKES: (Exhibit 7) Thank you, thank you. It always helps.

SENATOR BYARS: So make it fast.

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

Committee on Education
February 8, 2005
Page 52

LB 196

SENATOR RAIKES: Thank you, Senator Byars, members of the Education Committee. Ron Raikes here to represent LB, excuse me, to introduce LB 196. I represent District 25. LB 196 is a truly, I think, technical bill offered by the...well, offered by me, but on behalf or at the request of the Coordinating Commission. It deals with a couple of things, in particular one of them is the definition of a capital project. Another one deals with their procedures for approving a new program. There is one amendment that I will offer you which is, again, is of a technical nature. And so I would apprise you of that and stop there and have the Coordinating Commission give you some detail.

SENATOR BYARS: Thank you, Senator Raikes. Proponents?

LARRY SCHERER: (Exhibit 8) I'm waiting for LaRue to to hit the button before I go. Good afternoon, Senator Byars, members of the Education Committee. I'm Larry Scherer. I work for the Coordinating Commission in the policy and planning area, and we bring this housekeeping bill to you just to clear up some things that need to be updated and clarified so that we don't run into a problem. As was mentioned earlier today, we review all new facilities and new academic programs at all the public institutions. And these changes relate to those functions. The first one has to do with acquisition of new facilities. Sometimes someone will donate a building to the university, state colleges. And there is a special rule, it was Senator Warner's idea originally. And it was met to get at the idea of "creep" where somebody donates a building but then there isn't money donated for operation and maintenance as well. So there's a rule that if that happens for ten years, the institution can not request 1-M funding. This just clarifies that that applies not just when there's construction or renovation or a substantial completion, but at the date the gift is, the building is acquired by gift or whatever means. So it's a technical provision. It doesn't really change how we've been operating but it makes that whole section just read consistently internally. The second has to do with the base amount. Right now, the base amount is a threshold. If a facility construction project is too small, they don't come to the commission. This would raise that base amount from \$200,000 to \$500,000. Actually, the current amount is \$275,000 because the legislation gives the commission the

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

Committee on Education
February 8, 2005
Page 53

LB 196

authority to update it for inflation. With the cost of building going up dramatically and also to be consistent with the DAS budget for state facilities, we're just asking that this be raised to \$500,000. There aren't very many in this category. Mike Wemhoff is here from the commission, would only be one or two every year that would be this small. The last change has to do with approval or disapproval of new programs, and this could include, a program is defined to include a capital construction project, as well. So it could be a new academic program or a new building project. The bottom line is there's two statutes. One says for approval it takes the majority of the members, and another one says we have to disapprove a project within 90 days or it stands approved. Within that, there's a gap where we might have a commission meeting where we didn't have a sufficient amount, number, to disapprove the program because of people not being in attendance. So this would say that to either approve or disapprove a new facility or program takes a majority of those members of the commission. And actually it's a little extra burden on us to get people there, and if we have to, we'll have a special meeting by video to do that. But there is that gap there where nobody knows what has happened. It's not approved, it's not disapproved, it falls in a hole. And so the 90-day clock runs and nobody know if the program is approved or not. The last provision was there is a section in the bill that would allow for carryover in scholarship funds between bienniums. We've been advised that's not a good idea by the people in DAS Budget Office, and so we, Senator Raikes has an amendment to strike that, and we'll deal with the timing problem on those scholarship funds in a different way. I believe the university has an amendment they've shared with us, and it has to do with similar types of the threshold for reviewing revenue bond projects and raising those to \$500,000 (inaudible), and the O & M screen moving from, I think it's \$50,000 to \$75,000, is that right? And we don't have any problem with those. Those should have probably been in the original bill and we thank them for bringing those to our attention. Any questions? I would be happy to answer. See, I am on yellow.

SENATOR BYARS: Thank you, Mr. Scherer. Any questions?
Thank you, Larry.

LARRY SCHERER: Thank you.

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

Committee on Education
February 8, 2005
Page 54

LB 196

SENATOR BYARS: Next proponent?

RON WITHEM: (Exhibit 9) Senator Byars, members of the Education Committee, my name is Ron Withem, W-i-t-h-e-m. I'm representing the University of Nebraska, supporting LB 196. We view it as a cleanup bill also, as Mr. Scherer indicated. And as he indicated in reviewing the bill, our facilities director came across a couple of other instances where the policy decision is that there is a level below which you do not subject a project to review. It takes quite a bit of staff time, both at the institutional level and at the commission level. And the individuals who originally drafted this statute indicated that there some projects that you just do not need to bother to review. Mr. Scherer indicated one of those. It was in the original bill. Our facilities director found a couple of others. One of those is a project currently is reviewed if the operation and maintenance cost of that building has a base amount of \$50,000 or above, and we're suggesting that that be raised to \$75,000. And in the area of revenue bonds, when a facility is built with revenue bonds, typically a dormitory we're talking about, the fees that are collected to repay those bonds have a provision that there is a surplus that is developed, a surplus to do routine maintenance of the building. Whenever we expend more than \$250,000 out of that surplus fund, the statute currently requires us to go to the Coordinating Commission to review it, to have a recommendation, and then bring that to the Legislature. And it's probably...when significant sums of money are spent, it's probably an appropriate level of review. But if it's under \$250,000, the current statute says, it's at the level that do not need to trigger the review. We're suggesting that that number be raised to \$500,000. And as Mr. Scherer indicated to you, we've shared this with the commission and they think this makes good sense. So I believe the amendment has been distributed and we would appreciate your support.

SENATOR BYARS: Thank you, Mr. Withem. Any questions?
Thank you very much.

RON WITHEM: Thank you.

SENATOR BYARS: Any other proponents? Any opponents?

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

Committee on Education
February 8, 2005
Page 55

LB 196

Anyone testifying neutral? Would you care to close?

SENATOR RAIKES: I wouldn't.

SENATOR BYARS: Senator Raikes would waive closing. That concludes the hearing on LB 196 and concludes the hearings for this afternoon, and I would move we go into Executive Session.