

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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EXECUTIVE BOARD
February 11, 2005
LB 180, LB 588, LR 27CA

The Executive Board met at 12:00 noon on Friday, February 11, 2005, in Room 2102 of the State Capitol Building, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 180, LB 588, and LR 27CA. Senators present: Pat Engel, Chairperson; Jim Cudaback, Vice Chairperson; Chris Beutler; Philip Erdman; Vickie McDonald; Arnie Stuthman; Nancy Thompson; Don Pederson. Senators absent: Kermit Brashear, Ernie Chambers.

SENATOR ENGEL: I'd like to welcome all of you to this public hearing of the Executive Board, and I'd like to introduce the members that are here, and there will be others coming. On my right is our counsel, Janice Satra. On my left is our committee clerk, Beth Otto, right? She's been with me about 8-10 years now, so...but she never did...would tell me what her last name was. (Laughter) Oh, this is on record. I've got to be careful what I say. I'm sorry. (Laughter) And we have Senator Vickie McDonald from Rockville and...pardon? Oh, Saint Paul now. I'm sorry, we'll correct that. And Senator Arnie Stuthman from near Columbus, Platte Center. And, oh, I'm sorry. Okay. Senator Phil Erdman from Bayard on the right. So we do have to wait for one more person and as soon as they show up, we'll proceed. And in the meantime, some instructions: Everything will be recorded and transcribed, so if you do have a cell phone, appreciate you turning it off or at least putting it on vibrate. And first, we'll hear testimony from the introducers of bill, followed by the proponents of the bill being considered, and then testimony in opposition, and then testimony in the neutral capacity. Today doesn't look like we have that much on the agenda, but we would like to limit the testimony to...for the introducer to five minutes; and then those who are in...opponents or other testifiers, three minutes. If you need more, I'm sure we can accommodate you. And then I would also like to mention that if you are testifying as proponent or opponent, if you'd just...anything you have to add, please add it, but please don't repeat what we've already heard. And if you have any written testimony, and we'll need about 15 copies of that, so if you present...if you need copies made, we have...we can get those made for you. And Senator Thompson from Omaha just showed up...

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SENATOR THOMPSON: That would be LaVista.

SENATOR ENGEL: ...LaVista just showed up. And so we do have a quorum so we can get started. And would appreciate you filling out the form. There are forms up here to fill out, so you could have those filled out ahead of time, if you like, and drop them in the box. And that's about it, I guess. It's about it, so I guess we can proceed. We start with Senator Schimek on LB 180. Welcome.

LB 180

SENATOR SCHIMEK: (Exhibit 1) Thank you, Mr. Chairman and members of the Executive Board. For the record, my name is DiAnna Schimek from the 27th Legislative District here in Lincoln, and I'm here to introduce LB 180. And before I begin, for those of you who have been on the board for some time, you will recognize this bill from last year when I introduced LB 897. It's virtually the same bill. It has...and, incidentally, you did advance it to General File last year, but we did run out of time. The purpose of LB 180 is to create a State-Tribal Relations special Committee. Now, just to remind you, we already have several special committees. We have a Building Maintenance, Education Commission of the States, Exec Board of the Legislative Council, Intergovernmental Cooperation, Legislative Program Evaluation. This would add another committee to that list. The way it is constructed, there would be seven members on the special committee, and it would be up to the Exec Board to appoint those members from the Legislature. And it suggests that those members come from any one of six standing committees: Education; General Affairs; Government, Military and Veterans Affairs; Health and Human Services; Judiciary; and Revenue. And the Exec Board would also appoint the Chair and the Vice Chair of the committee. And the purpose would be, as the bill says, to consider, study, monitor and review legislation that impacts state-tribal relations issues and present draft legislation and policy recommendations to the appropriate standing committee. And if we did pass this bill, incidentally, there would have to be a rules change in our own rules. I believe that the tribes are supportive of this bill. They were last year. I do have a letter here from the Santee Sioux, from Roger Trudell, the chairman of that particular

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tribe, if the page would like to distribute that. In addition, I'd also like to have distributed the chart that shows what other states do, and we have 16 other states that already have some type of a legislative committee to deal with these issues. And if you will look at it, you'll see that in some states they have legislators and tribal members on it, and in some cases they're structured more like ours is with legislators on there. And we get into that constitutional question of what task forces or committees legislators can serve on. The issues that I think need to be addressed from time to time are in the area of jurisdiction, taxation, gaming, economic development, community relations, water rights, landownership, burial ground disturbance, historical representation, taxing administration, and so forth. There are a myriad of issues that come up regarding state-tribal relations and I believe that this would be helpful to the understanding of some of these issues, and perhaps even more important with term limits kicking in and not having enough knowledge about some of those issues. So, with that, Mr. Chairman, I have...I would like to conclude my remarks.

SENATOR ENGEL: Thank you, Senator Schimek. Are there any questions, Senator? Oh, before we start that, we've been joined by Senator Pederson from North Platte, and Senator Beutler here from Lincoln on my left. Now, Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. Chairman. Senator Schimek,...

SENATOR SCHIMEK: Yes.

SENATOR ERDMAN: ...the bill doesn't suggest membership. It would require membership. Just so that I'm clear, you said that it was...it would...

SENATOR SCHIMEK: You're right, and I, as I was saying that, I thought maybe I should clarify that. It does say that they should come from one of those committees, but it doesn't say they have to be the Chair or anything. I mean, I suppose they could all be from one committee, as a matter of fact.

SENATOR ERDMAN: You're getting ahead of me.

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SENATOR SCHIMEK: I'm sorry.

SENATOR ERDMAN: Do you think they should all come from one committee, or do you think there should be language added in line 6 that says from the membership of each of the following?

SENATOR SCHIMEK: I'm not sure you want to say that because I think...I would hope that the Exec Board would want to have a variety of committees represented, but you might not have people on each of those committees that would be interested in serving on this special committee. You've got to take that into account as well.

SENATOR ERDMAN: Or you may have people that serve on both, like I serve on General Affairs and Health.

SENATOR SCHIMEK: Right. So I would hope that the committee would...the Exec Board would want to have a variety of committees represented, but I don't think we should mandate how it should be done.

SENATOR ERDMAN: A final question.

SENATOR ENGEL: Sure.

SENATOR ERDMAN: Do you believe that the way that the bill is drafted now accomplishes your goals of the committee discussing other issues, besides legislation that's introduced? It appears that there's a emphasis on reviewing the issues directly related, maybe legislation that may impact state-tribal relations issues. Do you feel that the final language there of the way it's drafted could address those other issues, economic development and other issues?

SENATOR SCHIMEK: Right.

SENATOR ERDMAN: You think this is adequate to accomplish that?

SENATOR SCHIMEK: Right, because it does say you can present draft legislation and policy recommendations to the appropriate standing committee of the Legislature. And, incidentally, I didn't...I didn't pass that...this out this year, but last year I did pass out what would probably be a

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proposed rules change, and it does mention in that that you would have hearings like any other committee, all subject to Rule 3, Section 13, which says you've got to have seven days notice and so forth.

SENATOR ERDMAN: Get a priority bill too?

SENATOR SCHIMEK: No, you don't...this committee can't introduce legislation. It can only suggest legislation to the standing committees.

SENATOR ERDMAN: Okay.

SENATOR ENGEL: I have a question. We already have the Native American Commission. Would this do away with the commission then, or would this replace it, or you'd have additional?

SENATOR SCHIMEK: No, it would not replace it, and they're two different things, in effect, because the Indian Commission itself is an advocate on tribal matters, and this would be an in-house legislative committee that would hopefully be able to study and understand some of these issues that are so complex and difficult between states and tribes.

SENATOR ENGEL: But at the present time, doesn't the commission bring a lot of that to the the different legislators to bring to the body? I mean...

SENATOR SCHIMEK: That's true.

SENATOR ENGEL: Yeah.

SENATOR SCHIMEK: But, you know, under ideal conditions, Senator Engel, I would want both tribal members and legislators melded together, but I don't know constitutionally that we can do that.

SENATOR ENGEL: I see, because of the sovereignty issue there?

SENATOR SCHIMEK: Yes. No, because of our own constitution.

SENATOR ENGEL: I see.

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SENATOR SCHIMEK: And it's been a long time since I looked into that, but my recollection is that we have to be very careful about putting members of the Legislature on public task forces.

SENATOR ENGEL: We've been joined by Senator Jim Cudaback from Riverdale. Any other questions of Senator Schimek? If not, thank you, Senator Schimek.

SENATOR SCHIMEK: Thank you very much.

SENATOR ENGEL: And would you like to close?

SENATOR SCHIMEK: No, I'll waive closing.

SENATOR ENGEL: Okay, waives closing.

SENATOR SCHIMEK: You have heard this bill before, so...

SENATOR ENGEL: Okay. Thank you.

SENATOR SCHIMEK: ...I'll be easy on your today.

SENATOR ENGEL: Do we have any other proponents? Do we have any opponents? Do we have anybody testifying in a neutral capacity? If not, that closes the hearing on LB 180.

LR 27CA

SENATOR ENGEL: Next up is Senator Langemeier on LR 27CA. If you'd please sign in, Senator, and then state your name. And your long name, you'd probably spell it for us, too, because it's on the record.

SENATOR LANGEMEIER: Good afternoon, Chairman Engel and members of the Executive Board. My name is Chris, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r. I represent District 23. LR 27CA is a straightforward approach to deal with the coming mandate of term limits. Term limits are reality and we need to prepare for the future of the Legislature to ensure that the body will continue to run in its most efficient level. This resolution would change the organizational day from the first Wednesday after the first

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Monday in January, to the sixth Tuesday after the statewide general election. Generally, this would be the second week of December. Senators would be sworn in. Committee Chairmen would be elected that day. The reasons are twofold for this resolution. In two years, 20 current members of the Legislature will be term-limited out of office, and 20 new members will replace them with little knowledge of how the system works. We will also have 40 potential new employees to go along with the senators. Two years later this process will again be repeated large groups of new...with large groups of new senators. This will provide them with approximately four weeks instead of a couple days to work with their staff, be assigned office space, and perhaps prepare new, better legislation, and generally more aware of what lies ahead. Granted, four weeks is not much time, but having gone through it, I think it would all...we'd all agree that this would be a good start. Secondly, is logistics. The Executive Committee's office, in particular Chuck Hubka, does an outstanding job of moving and managing office space. In two years, 20 new senators will want their offices, along with several Chairmanship offices, to be assigned and moved into. Chuck has not spoken to me at all about the idea, but I am sure very few of us will want his job during those hectic days. At first, I had approached several senators about possibly starting the session 30 or 60 days after normal day presently set aside for this purpose. None thought much of extending the session beyond the current day, but said they would agree to a proposal such as LR 27CA, and that someone should...something should be done. With that, I thank you for the opportunity to talk to you today, and if there are any questions.

SENATOR ENGEL: Thank you, Senator. Senator Pederson.

SENATOR D. PEDERSON: Senator Langemeier, do you have any idea, I don't see any fiscal note in here, do you know what this might cost?

SENATOR LANGEMEIER: We're not anticipating any cost different, because the current 20 senators would be out of office basically a month earlier, so we'd be shortening their term basically not quite a month. So the staff, total staff members, would stay the same.

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SENATOR D. PEDERSON: But the convening of the group early, that is what I'm asking,...

SENATOR LANGEMEIER: At this...

SENATOR D. PEDERSON: ...of the newly-elected senators. Wouldn't that be a different cost?

SENATOR LANGEMEIER: It would...that cost would come from the first day of January to the first day of December. It's the same activity, the same day. So I don't know for sure. I can't answer that to it.

SENATOR ENGEL: Any other questions? Senator McDonald.

SENATOR McDONALD: And so you're just saying for one day they would...

SENATOR LANGEMEIER: One day.

SENATOR McDONALD: ...organize and do the swearing in and elect the Chairmen of the committees and then do all the office moving around and selecting offices in one day?

SENATOR LANGEMEIER: Right.

SENATOR McDONALD: Do you think that we could do it in one day?

SENATOR LANGEMEIER: We do it today in one day.

SENATOR McDONALD: But with that many new senators, do you think we could do it in one day?

SENATOR LANGEMEIER: Well, the...Chuck would have to move the people from that day, however many days it takes them.

SENATOR ENGEL: I'd like to comment there. We select our Chairman in one day, but all the moving isn't done in one day. That takes at least two days.

SENATOR LANGEMEIER: And that would continue to take several days, as it does now.

SENATOR ENGEL: Yeah, so it takes several days in order to

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do that. Then, of course, the existing senators, a lot of times they want to change offices too, and that's part of the mix. So it would be kind of hectic, but here a couple years ago we kind of had a hectic situation, too, where everybody was moving.

SENATOR LANGEMEIER: Right.

SENATOR ENGEL: But it would take more than one day, Chris. Yeah.

SENATOR LANGEMEIER: Okay.

SENATOR ENGEL: Senator Erdman.

SENATOR ERDMAN: And this is just an observation. It would be logical that once the member was sworn in that the selection of the office could take place at any time. We would not necessarily have to be in session for that to happen. I think the point that Senator Langemeier is getting to, unless that individual is sworn in, we can't do anything with them, until they've been sworn in, as far as moving the offices. So even...I don't think he's getting to the point that you have to move them that day. I think his point is, until we can swear them in and begin the process, we have to wait until session actually begins and then we have the discussions that we had the other day taking place. Just a clarification maybe.

SENATOR ENGEL: Well, one thing, we can't do anything until the Chairmen are selected. You know, that has to be done first because we don't know who's going to be on what committees and so forth, because they're going to have some...

SENATOR ERDMAN: No, absolutely. Absolutely.

SENATOR ENGEL: Yeah, because they will, if we have all these new Chairmen, they'll be vacating their offices.

SENATOR ERDMAN: Correct.

SENATOR ENGEL: Until we know which offices are vacated, there's no way we could possibly do...is what you're saying. Senator Cudaback.

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SENATOR CUDABACK: I hear what you're saying is that the so-called pay period would be shifted up. The new senator would be paid and the senator going out would have one less so-called pay period, right?

SENATOR LANGEMEIER: Correct. That's my anticipation.

SENATOR ENGEL: Any other questions of Senator Langemeier? Do you want to close later?

SENATOR LANGEMEIER: I guess I would wait to see if there's any opponents or proponents.

SENATOR ENGEL: Okay, that's fine. You have that option. Are there any other proponents? You might not have to go very far here, Chris. (Laughter) Are there any opponents? Anyone to testify in a neutral capacity? Senator Langemeier, we're ready for your closing.

SENATOR LANGEMEIER: One final comment: It's been indicated to me that the Lincoln Journal Star has talked about every day of the Legislature costs us about \$7,000 a day in that organizational time, so that might be a cost that would be there. That's my final comment. Any questions?

SENATOR ENGEL: Okay. Thank you very much.

SENATOR LANGEMEIER: Thank you.

SENATOR ENGEL: Thank you. That closes the hearing on LR 27CA.

LB 588

SENATOR ENGEL: Next, LB 588, and Senator Beutler. Senator Beutler.

SENATOR BEUTLER: (Exhibit 2) Mr. Chairman, members of the committee, this bill relates to the Legislature's Performance Audit Committee and defines the conditions under which the committee would have access and the actual unit would have access to confidential information. This has been worked on over a period of a couple of years now and is

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a committee bill, actually. The core of the bill is actually in Section 4 on page 7, if you want to follow along. It just basically says that the section, that means the Performance Audit people in the Research Division, have access to any and all information and records, confidential and otherwise, of any agency, in whatever form they be...may be, unless the section is denied such access by federal law or explicitly named and denied such access by state law. And then it indicates that if such a law exists, it sets out a procedure whereby the parties verify the information and the reasonableness of the information and whether reasonable accommodations can be made. It goes on to indicate in subsection (2) that any confidential information or confidential records shared with the section shall remain confidential, so in no event are records ever revealed to any party, and shall not be shared by an employee of the section with any person who is not an employee of the section, including any member of the committee. So that kind of information, except in one very limited circumstance, is not shared with any member of the committee. Then it goes on to describe a situation where there may be some question about the accuracy of information involving confidential information. Then it allows, in that case, the Speaker of the Legislature alone, as a member of the committee, will be allowed access to the confidential information or confidential records for the purpose of assessing the accuracy of those records. It goes on, on the next page, to set out penalties. It's a Class III misdemeanor to divulge confidential information, not only that, but the employee shall be dismissed. In a...in one particular area, that area relating to tax records, where our access is the most limited, and I'll try to talk about that a little bit, it's not a misdemeanor but it's a felony to reveal information. So I want to then just to talk a little bit about subsection (10) on page 15 of the bill, which has to do with some of the more sensitive records that a couple of members of the committee were intensely interested in, and that is the area of the records held by the Tax Commissioner, including state income tax records and whatever federal records may be available in the state office related to those particular returns. And you'll see that a lot of the language in this subsection (10) is already in law, and it's already in law because it is law that is applicable to the Auditor of Public Accounts, and the Auditor of Public Accounts can already do these things

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that I'm about to describe to you and we have not gone beyond that, but are merely asking that the Performance Audit side in the Legislature be allowed to do what the financial audit side in the State Auditor's Office can already do. So it describes a very strictly delineated process when you're working in the Tax Commissioner's Office. First of all, you have to make a written request for information of any sort of tax return or tax return information. Then, in addition to that, you need to tell them exactly what it is you're going to be doing, what your plan is. Your access is to statistically and randomly select the tax returns. You can't pick out an individual and ask to look at his or her tax return. The Tax Commissioner retains a lot of authority to approve whatever sampling method you're using. The returns, anything that's confidential in that office, has to be audited only on the premises of the office. The material cannot be removed from the office. And when it's stored, it has to be stored in a secure place still within the Department of Revenue. So there are very strict provisions. There were some questions about whether federal law curtailed access to tax records. The...in the first instance, the bill indicates that anywhere where federal law prohibits a state audit, then federal law would prevail and we could not do such an audit. However, in the area of income tax audits, the federal law is quite clear and it indicates that any returns or return information that is given over by the federal government to the state government, any state agency, body or commission shall be open to inspection by or disclosure to officers and employees of the state audit agent for the purpose of and only to the extent necessary of making the audit...making an audit of the state agency, body or commission, and it goes on to describe state audit agency as any state agency, body or commission which is charged under the laws of the state with the responsibility for auditing state revenues and programs. And, of course, that would be the jurisdiction of the Performance Audit Committee insofar as performance audits are concerned. And when that law went into place, the federal committee gave a statement as to why they were putting that into law, and they indicated that the committee was concerned that by denying state auditing agencies access to federal return information, they seriously impede an audit agency's ability to exercise effectively its oversight responsibilities with respect to the state taxing authority, and so forth and so forth. So it seems quite clear that,

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under federal law, our Performance Audit Committee can get into tax returns to the extent that we allow it under our state law. And under the green copy of the bill, as you see it there, is how we would make our state law. Please remember that the bill is really about one thing. It's the effort of the members of this Performance Audit Committee and members of former committees, part of their efforts to develop the performance audit union...unit into a first-class bipartisan tool for promoting effectively...promoting efficiency in government operations. The function I think will become even more critical as term limits kicks in and senators generally have to spend most of their short time in the Legislature learning the basics. We need to have all of the legitimate legislative tools, such as a top-notch Performance Audit unit, in shape for their use and not cause them to spend their time fashioning these tools rather than being able to immediately apply tools that are ready for their use, hopefully, the Performance Audit unit for one.

SENATOR ENGEL: There any questions?

SENATOR BEUTLER: And I think that's...

SENATOR ENGEL: Oh, I'm sorry.

SENATOR BEUTLER: ...that's it, Mr. Chairman.

SENATOR ENGEL: Okay. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. Chairman. Mr. Chairman. The section of the bill relating to the access to the confidential information, I remember we discussed that briefly about whether or not the Speaker was the appropriate representative to access that information in a dispute.

SENATOR BEUTLER: If...I'm sorry, Senator, if what?

SENATOR ERDMAN: Go ahead. The Speaker, as member of the committee,...

SENATOR BEUTLER: Yes.

SENATOR ERDMAN: ...is the one authorized to, I guess, mediate the dispute and to review the information to make

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sure or I guess to make a determination on who is correct or who is more appropriately arguing their position. My concern, or at least the question that I have is, is that the appropriate person or structure to ensure accuracy and adequacy with the final report, but while still being sensitive to the information? I mean, I don't know if it's appropriate to only limit it to the Speaker, or if the dispute arises between an agency, whether the Chair of that committee somehow has input. I'm trying, I'm struggling with that part because...

SENATOR BEUTLER: Yeah.

SENATOR ERDMAN: ...the way that we know whether something is accurate is we can see from point A to point B how we got there, and I want to make sure that as we go through this that we're sensitive to making sure that we don't preclude ourselves for the right people from the access needed to make sure that the information is as accurate as it needs to be. And maybe you could just comment. It's more of a...

SENATOR BEUTLER: Okay. Well, I feel at a slight disadvantage in commenting because, you know, I'm...as long as somebody can look at verify, to me that's the most important thing. And whether it's the Speaker or the Chair of the committee, you all will have to decide that. And I do have some technical amendments that I'll pass out to the committee, and one of those restores language we inadvertently struck, which gives the Chair of the committee the right to look at documents that are not confidential in the course of the audit. So if it's reasonable to do so, to kind of keep track of what's going on between the Audit Committee and the audited agency, so the committee Chair would have that power, but not if it's confidential information. That would be the limitation. Now, whether you think, as a matter of continuity or good management practice, the Chair of the committee ought to continue to have that kind of function when the information is confidential or not, you can decide that. But did I make that distinction clear to you?

SENATOR ERDMAN: Clear as mud.

SENATOR BEUTLER: Okay.

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SENATOR ENGEL: Are there any other questions of Senator Beutler? If not, thank you. Oh, I'm sorry, Senator Pederson.

SENATOR D. PEDERSON: Just to clarify, maybe a member of the audit group could answer this, but what kind of a certification is made on the report when there's not necessarily access to the actual documents themselves?

SENATOR BEUTLER: Well, I know there is a certification and I don't know the specific language, Senator. Perhaps Martha can comment on that.

MARTHA CARTER: (Inaudible.)

SENATOR D. PEDERSON: We can do that later if you wish, or are they going to testify too?

SENATOR BEUTLER: No, I don't think...

(UNKNOWN FEMALE): She's probably (inaudible).

SENATOR BEUTLER: They were not going to testify, but that would be fine.

SENATOR ENGEL: Okay. I assume the proponents are coming forward.

MARTHA CARTER: This would be neutral testimony. We're always neutral.

SENATOR ENGEL: Please sign in.

MARTHA CARTER: Senator Engel, for the record, my name is Martha Carter. I'm in the Performance Audit Section in the Legislature. To answer Senator Pederson's question, the short answer is it wouldn't be so much a certification as a statement in the report that said we didn't verify the information that was provided by the agency. As a general rule and as a standard, we have talked often about the yellow book standards, which are GAO standards for auditors, and those standards require you to verify the information if at all possible. You know, for obvious reasons, you want to be sure that even if an agency has compiled the information, it's been compiled accurately without error, without

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computer glitches, with all the things that can happen when you compile information. And there are some limitations within those standards. If it's very sensitive information and you're going to be making findings and recommendations and you haven't verified that information, that's not considered a very good practice by audit standards. But the important thing would be to just clarify that it's not been verified.

SENATOR D. PEDERSON: So you'd probably say, in effect, that you've verified this by records that you believe to be accurate, or reports that you believe to be accurate.

MARTHA CARTER: Exactly. Generally speaking, you'd probably take some kind of random sample of the information that you were going to rely on, and you'd look at the original documentation and the information as it was compiled to be sure that everything matched up the way it should.

SENATOR D. PEDERSON: Okay. Thank you.

MARTHA CARTER: Uh-huh.

SENATOR ENGEL: Senator Erdman.

SENATOR ERDMAN: Martha, you're testifying neutral or you're testifying as a proponent, just for the record, so that we're clear.

MARTHA CARTER: I'm just providing information, would be my...

SENATOR ERDMAN: So you're...you're just neutral. Just so that...

MARTHA CARTER: I'm not taking a position one way or the other.

SENATOR ERDMAN: Just so the record is clear.

SENATOR ENGEL: Any other questions? If not, thank you very much.

MARTHA CARTER: Sure.

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SENATOR ENGEL: Are there any proponents? Any opponents? Anyone testifying in a neutral capacity? Here we go. Could you please identify yourself and sign in and spell your name?

MARY JANE EGR EDSON: (Exhibit 3) Good afternoon, Chairman Engel and members of the Executive Board. For the record, my name I Mary Jane Egr Edson. That's spelled E-g-r E-d-s-o-n. I'm the State Tax Commissioner, appearing before you today in a neutral capacity with regard to LB 588. I do have copies of my prepared remarks, and so I don't know that I have 15, but...give you what I have. Thank you. There are a few technical issues that I wanted to bring to your attention, and then I'd like to speak to a policy issue that I believe is raised by the bill. From a technical standpoint, LB 588 would authorize the Legislative Performance Audit Section to, among other things, conduct a performance audit of the tax incentive programs administered by the Department of Revenue. However, the bill does not appear to address all of the tax programs necessary in order to conduct such a comprehensive review. The bill defines "tax returns" as that information which is provided under 77-2714 to 77-27,135. Those are the statutory sections that cover the income tax, general provisions of the tax code, and aid to political subdivisions. The bill as currently drafted, unless there's an amendment that I have not seen yet, does not cover the sales and use tax, which are, of course, significant portions of the tax incentive programs, and those sections of the code are in 77-2702 to 77-2713. In addition, I think it should be noted that this bill would provide access to not only the corporate income tax returns under the tax incentive programs, but also to personal income tax data as a large number of the qualifying companies are nowadays pass-through entities as corporations, partnerships, LLCs. Those entities do not pay tax at the entity level, nor are the credits under the incentive programs used at the entity level. The liability and the credits pass through to the individual shareholders or members, and I thought that was probably at least worth noting.

SENATOR ENGEL: I'd like to interject there.

MARY JANE EGR EDSON: Yes.

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SENATOR ENGEL: I don't have a clock, so if you don't want to go as fast, you don't have to.

MARY JANE EGR EDSON: Am I going too fast?

SENATOR ENGEL: No, you go as...no, I'm fine.

MARY JANE EGR EDSON: Okay. My friends down south always ask me to record and then play back at half speed so they can follow what I'm saying. (Laughter)

SENATOR ENGEL: No, I'm fine. I'm fine. (Laugh)

MARY JANE EGR EDSON: The second technical issue is actually significant in substance. The department, like most state tax agencies, relies very heavily on federal tax information, and I'm going to refer to that as FTI, the acronym. When you deal with the federal government, everything is done in acronyms. We rely very heavily on FTI to administer and enforce both the individual and the corporate income tax programs. In order to receive this information from the IRS, the department is subject to extensive regulation and oversight. First of all, the tax commissioner or the head of the tax agency is required to request the information in writing. We must designate the names of the individuals who may receive that information. The FTI can only be used for state tax purposes, not for general civil or criminal enforcement. Those who receive the information may only disclose it to other officers or employees of the tax agency, its legal representatives, or the agency's contractors for tax administration purposes only. Those requirements are met through the execution of two agreements with the IRS and the Department of Revenue. The basic agreement provides for the exchange of tax data and the required procedures and safeguards. The implementing agreement, which is the second agreement, makes the arrangements for those disclosures that are to be made on a continuing basis, and contains the tolerances and criteria for those disclosures. For example, the IRS provides what are called RAR, revenue agency reports. Those are adjustments to someone's tax liability at the federal level. We don't request every single RAR that the IRS issues for a Nebraska resident. We only request those that are above a certain dollar amount. So when we talk about tolerances and criteria for regular exchange, those are the

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kinds of tolerances and criteria that I'm referring to. An important concept that's related to the Internal Revenue Code Section 6103, and 6103, as Senator Beutler knows, is the provision in the federal code that deals with disclosure of federal information, and I have a copy of that section here, if anybody wants to look at it, but it's fairly lengthy. But another concept relative to disclosure is need and use. The IRS conducts systematic and periodic reviews of our need and use of FTI. If the data that we are receiving is no longer being used by the Department of Revenue then we no longer receive that information. Also, if we cannot show that we have a use for that information, we no longer receive it. We're also subject to regular and systematic safeguard reviews to ensure that we're securing FTI in the manner dictated by federal law and is provided in the implementing agreement. If we are not meeting those requirements, we're given a brief period of time to cure the problem, and if we do not cure it then the data is not provided. Also, if there is an unlawful disclosure, whether intentional or not, if there's an unlawful disclosure by the Department of Revenue, the IRS can immediately terminate all access to federal tax information. As Senator Beutler pointed out, there is an exception to the general nondisclosure rule; 6103(d)(2) of the federal code addresses disclosure to state audit agencies. I won't go back through that. Senator Beutler has already pointed it out. I would like to let the committee know that I have had some informal discussions with both our local IRS liaison and our disclosure officer and, while they have tentatively indicated that they believe that this committee and the section would fall under that exception as a state audit agency, I believe it would be prudent to request written confirmation from the IRS national office that any disclosure to the Performance Audit Section or the Performance Audit Committee is not in violation of our agreement with the IRS, because we just want to make absolutely certain that we're not jeopardizing our access to that federal tax information. Third technical issue that's raised by the bill is confidentiality under state law. I've read the bill and would certainly expect the bill to subject any employee of the section or any member of the Legislature who has access to returns or return information to be subject to the exact same penalties as our employees at the department. This includes immediate termination. It includes both civil and criminal liability and subjects our

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employees to a Class IV felony. Further, the section could not provide any information in its audit report that could conceivably identify a taxpayer. That's why the annual report that the department does every year for the tax incentive programs is always done in what we refer to as appropriately aggregated data. Give you an example: If we wanted to include in the annual report on LB 775 the amount of credits earned on a county-by-county basis--how many in Douglas, how many in Washington, how many in Sarpy--we couldn't do that without being in violation of confidentiality. Because once you get outside those metropolitan areas there's typically one company in the county that is a LB 775 company. And so if we disclosed that Cherry County had \$5 million in credits earned, we'd be identifying that company and we'd be in violation of the disclosure rules. That really is only one example of confidentiality requirements that are imposed at the state level. Finally, there's one policy issue, really two policy issues, I think, raised by LB 588 relative to the tax incentive programs. As you're all probably aware, the Revenue Committee has been and is continuing to debate several bills that would either replace LB 775 and the other tax incentive programs, or at least amend those programs. All of those bills contain some provisions to varying degrees about the type of information that will be disclosed, the method for disclosure, timing for disclosure and so on. I believe that as a matter of good tax policy any evaluation of the tax information relative to the incentive programs should be addressed only in conjunction with the tax incentive programs and not as a stand-alone bill. The reason for this is that I think any changes or any authorization to review the confidential information relative to the incentive programs should be part of the incentive bill itself. It should be in that section. This would allow all applicants and qualifying companies under the incentive programs to have due process notice up-front of potential disclosure of their tax information outside the Department of Revenue, and I think just as importantly it would allow us to incorporate that into the agreements that we sign with the companies. A related question to this is whether or not LB 588 authorizes access to information for existing projects under LB 775 or ones that have been completed, or whether it would only apply to those projects that are signed, the agreements that are signed, after the effective date of this bill. The reason I raise that is

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because I can tell you from experience the LB 775 companies and their legal representatives are very, very, very particular about their information being disclosed outside the Department of Revenue. They are also very particular about making us adhere to the exact terms of the agreements that we execute with them, and our agreements currently make no provision with respect to disclosure of their tax information outside the department. So I think that's just an issue that perhaps the committee might want to consider. So thank you for your time today, Mr. Chairman, and ask that you consider these issues as you debate the bill, and I'd be happy to answer any questions.

SENATOR ENGEL: Are there any questions? You did a great job.

MARY JANE EGR EDSON: Goodness.

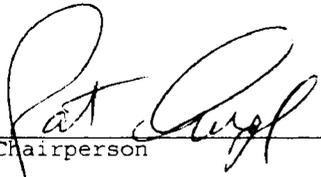
SENATOR ENGEL: Thank you for being here.

MARY JANE EGR EDSON: Thank you.

SENATOR ENGEL: Are there anyone else to testify in a neutral capacity? Senator Beutler, would you like to close?

SENATOR BEUTLER: No, I think that's fine.

SENATOR ENGEL: Closing has been waived. That will end the hearing on LB 588. I would like to mention the hearings are over, they've all been closed, but I'd like to introduce John Blackhawk who is Chairman of the Tribal...Winnebago Tribe in Nebraska, and thank you for coming. Sorry you missed the hearing, but I'll talk to you.


Chairperson


Committee Clerk