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COMMITTEE ON GOVERNMENT, MILITARY AND VETERANS AFFAIRS
February 10, 2005
LB 451, 525, 591, 581, 685

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 10, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 451, LB 525, LB 591, LB 581, and LB 685. Senators present: DiAnna Schimek, Chairperson; Pam Brown, Vice Chairperson; Carroll Burling; Deb Fischer; Chris Langemeier; Mick Mines; Rich Pahls; and Roger Wehrbein. Senators absent: None.

SENATOR SCHIMEK: Good afternoon, ladies and gentlemen, and welcome to the hearings of the Government, Military and Veterans Affairs Committee. We're happy to have you with us today. For the record my name is DiAnna Schimek, from here in Lincoln, and I chair the committee. And I'd like to introduce the Government Committee to you at the moment. Senator Deb Fischer on my extreme left is from Valentine, Nebraska; and next to her is Senator Mick Mines of Blair; next to me is Sherry Shaffer, who is the committee clerk; on my right is Christy Abraham, who is the legal counsel to the committee; and next to her is Senator Carroll Burling of Kenesaw; and next to him is Senator Rich Pahls from Omaha. And we will begin today in just a moment. First of all, the exact order of the bills today is as posted: LB 451, LB 525, LB 591, LB 581, and LB 685. We would like, when you come forward to testify, for you to state your name and to spell it for the record. That's for the transcribers. Once the bill is introduced by the principal introducer, we will take proponents, then opponents, then those who wish to testify in a neutral capacity. If you have any copies that you would like to have made and distributed to the committee, we'll be happy to do that. We would ask that you sign in on the sheets that are at the door; they look like this. You can do those before you actually come up to testify and then just put the sheet in the box on the table. Senator Pam Brown, who is Vice Chair of the Committee, has just come in. And the only other thing I would like to mention is that cell phones are verboten; if you've got them on, turn them off please. And with that, Senator Wehrbein is ready to introduce LB 451.

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

Committee on Government, Military LB 451
and Veterans Affairs
February 10, 2005
Page 2

SENATOR WEHRBEIN: Okay. Good afternoon, Senator Schimek, members of the Government, Military and Veterans Affairs Committee. I am here representing District 2, Roger Wehrbein, and I'm here to introduce LB 451, a fairly simple bill. I'm not going to spend a lot of time talking about it. It's one I do understand pretty well, but it would allow county clerks to dispose of uniform commercial code and effective finance statement lien records. These documents had been filed with the Secretary of State's Office since 1999. In a nutshell, since we moved all these files to the state level it's no longer necessary to have these files in the county courthouses across the state, and so this allows them to destroy those or dispose of those and because all of this filing is now done at the state level. And that simply is all the bill does.

SENATOR SCHIMEK: Okay. Thank you, Senator. Are there questions? I just have one. Are these paper records, is that the way the Secretary of State is keeping them?

SENATOR WEHRBEIN: I'm not sure; they might be both. You can ask Greg Lemon, who will be coming behind. I wouldn't be surprised they're both, but I don't know.

SENATOR SCHIMEK: Okay, I will do that. Okay, thank you, Senator Wehrbein. Next we will take proponents of the bill.

GREG LEMON: Good afternoon, Chairperson Schimek, and members of the...

SENATOR SCHIMEK: You're having as much trouble as I am today.

GREG LEMON: Chairperson Schimek and members of the Government, Military and Veterans Affairs Committee, my name is Greg Lemon, Chief Deputy Secretary of State, L-e-m-o-n, representing the Secretary of State's Office and John Gale, Secretary of State, today. Senator Wehrbein, first I would like to thank him for working with us in introducing this bill. He stated it fairly well and fairly succinctly, so I don't want to expand on that too much. But basically in 1999, the filing of these records in question was centralized with the Secretary of State's Office. The records have a different shelf-life, as it were. A filing

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

Committee on Government, Military LB 451
and Veterans Affairs
February 10, 2005
Page 3

is generally good for 5 years, but it can be continued as well. So, at this point, the counties have these paper filings, but they are being continued at the Secretary of State's Office, so they don't know what's active and what's not. As time goes on, there's less and less active there. The information in the files is also in the files of the Secretary of State's Office, is in answer to your question. It's submitted to us either electronically or on paper. It's stored in a number of ways, on microfilm, redundantly on electronic optical disk; we have that pretty well covered. So the information is in the Secretary of State's Office, and it is also readily available. There are provisions in law, the information is available online, and there are also provisions in law that require the Secretary of State's Office to furnish a PC to each county clerk, and that PC has access to these online records. So, we're not eliminating access in any way; we're just eliminating some redundant paper that's no longer needed. And I'm not sure if the Bankers Association is here today, but I did speak to their counsel, Mr. Hallstrom, and he was comfortable with this bill, as well. With that, I'd be glad to answer any questions you may have.

SENATOR SCHIMEK: Thank you, Mr. Lemon. Are there questions? Seeing none, thank you very much for being with us. Are there other proponents to the bill? You are a regular visitor this week.

SHERRY SCHWEITZER: I am. Hello, my name is Sherry Schweitzer, S-c-h-w-e-i-t-z-e-r. I'm the Seward County Clerk and also cochairman of the County Clerks, Register of Deeds, and Election Commissioner's Association. For many, many years, the UCCs did have their filing place with the counties. In 1999, the law was changed to provide for a central location and a better process. A six-month window was created at that time for all financial institutions to refile their original document. Although counties did lose revenue with it, I believe having a central location probably was a good deal. It makes for better checking and monitoring by the financial institutions. Meanwhile, those UCCs we have and that were originally filed are just getting dustier every year. A lot of courthouses are older, and my historic, 100-year-old courthouse space is at a premium. I could use this space where all these UCCs are taking up...I

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

Committee on Government, Military LB 451
and Veterans Affairs
February 10, 2005
Page 4

could utilize it much better. Since the Secretary of State is the place of filing now, and the effectiveness of each UCC depended on the financial institution filing it properly during the six-month window, our records five years ago are obsolete. I would appreciate you advancing LB 451. Any questions?

SENATOR SCHIMEK: Thank you, Sherry. Are there questions? Seeing none, thank you. Are there other proponents of the bill? Good afternoon.

SANDRA STELLING: Good afternoon. I'm Sandra Stelling, S-t-e-l-l-i-n-g. I'm the Jefferson County Clerk and also cochair of the Clerks, Register of Deeds, Election Commissioners Legislative Committee. I would ask that you would support LB 451, since the Secretary of State's Office has had our UCC filings for several years, and as Sherry said, we do need the space. We have all of these old books that go back, I didn't look to see how many years, but we could utilize the space in our offices for other records that we do need to keep. And since all of these are filed with the Secretary of State's Office now, most of ours would be obsolete. All of them should have, at least a continuation on them if they're still alive.

SENATOR SCHIMEK: Thank you. Are there questions? Yes, Senator Fischer has a question.

SENATOR FISCHER: I just have a question: How do you plan to dispose of all these old records? Are you going to just throw them away or are you going to give it to the historical societies, or what are you going to do with them?

SANDRA STELLING: I would assume they would have to be shredded. They are in bound books. They have a sticky thing across the top of them, and we put them in those books. The binders we cannot shred because they're hard-covered, but the paper inside of them I'm assuming we would probably shred them.

SENATOR SCHIMEK: Seeing no further questions, thank you for being with us.

SANDRA STELLING: Thank you.

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

Committee on Government, Military LB 451, 525
and Veterans Affairs
February 10, 2005
Page 5

SENATOR SCHIMEK: Are there other proponents of the bill? Any who wish to appear in opposition to the bill? Any in opposition? Any in a neutral capacity? Seeing none, Senator Wehrbein waives closing, and that will conclude the hearing on LB 451. And Senator Engel is here to open on LB 525. Welcome, Senator Engel.

LB 525

SENATOR ENGEL: (Exhibit 1) Thank you, Senator Schimek. Good afternoon, Senator Schimek and members of the Government, Military and Veterans Affairs Committee. My name is Pat Engel; you spell that P-a-t E-n-g-e-l. I represent the 17th District and I'm here today in my capacity as Chairperson of the Executive Board. In 1997, the Legislature amended the State Records Management Act to allow the State Records Board to provide for electronic access to public records for a fee, through a centralized, electronic information system also known as a gateway. Nebrask(at) Online is the gateway for Nebraska, and the State Records Board contracts with them to provide this service. As part of the State Records Management Act, a state agency is required to get approval by the State Records Board before it can provide electronic access to public records through Nebrask(at) Online for a fee. The judicial branch, however, is specifically exempt from this approval process because of an amendment adopted at the request of the court. The court's concern was that the approval process violated the separation of powers doctrine by requiring the judicial branch to get permission from the State Records Board, which could result in the executive branch making decisions regarding the distribution of these court records. LB 525 would provide the same exemption for the legislative branches for the judicial branch. The bill would allow the Legislature to provide electronic access to public records for a fee through Nebrask(at) Online, so long as the Chairperson of the Executive Board files a report with the State Records Board. The report would include the same information that the court is required to provide, so, in other words, equal to the courts as far as separation of powers. And why is the Executive Board interested in this now? Last year, we met, and the State Records Board entered

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

Committee on Government, Military LB 525
and Veterans Affairs
February 10, 2005
Page 6

into a one-year agreement to have Nebrask(at) Online provide an enhanced bill tracking system for the 2005 session. The system includes bill tracking, automatic e-mail notification, and the opportunity for development of user profiles. Fees are assessed to those who track large numbers of bills, but the basic electronic bill book and e-mail notification are available to the public at no charge. However, in order for Nebrask(at) Online to continue to collect this fee, the Executive Board would have to get approval from the State Records Board. And that, of course, raises the same constitutional separation of powers issue that the court was concerned about earlier. LB 525 will exempt the Legislature from the approval process in the same way the courts are exempt. To summarize, under this proposed legislation the Executive Board will be able to maintain its contract with the State Records Board to use the services of the state's gateway manager, Nebrask(at) Online. In turn, Nebrask(at) Online will receive direct access to legislative information, provide enhanced bill tracking service to the public at no charge, and charge a fee for premium bill tracking services. In addition, Nebrask(at) Online will continue to provide both the enhanced and premium bill tracking services to the Legislature and state agencies at no charge. The Executive Board will keep the State Records Board informed by providing a report, and will take into consideration any recommendations made by the State Records Board. That's it. And if you have questions about Nebrask(at) Online itself, or the bill tracker service, we have Doug Gibbs from Nebrask(at) Online is here to address them. So if you have any questions of me, I'd be glad to try to answer them.

SENATOR SCHIMEK: Thank you, Senator Engel. Are there questions? Would it be possible to have a copy of your remarks, would you mind?

SENATOR ENGEL: Yes. You can have them right there.

SENATOR SCHIMEK: Thank you. Seeing no further questions, thank you very much for being with us, Senator Engel.

SENATOR ENGEL: Thank you.

SENATOR SCHIMEK: Are there proponents of the bill? Any

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

Committee on Government, Military LB 525, 591
and Veterans Affairs
February 10, 2005
Page 7

proponents of the bill? Any opponents of the bill? Anyone who wishes to testify against the bill? Anyone in a neutral capacity? Seeing no testimony, Senator Engel, did you wish to close?

SENATOR ENGEL: I waive.

SENATOR SCHIMEK: Senator Engel waives closing, and that will conclude the hearing on LB 525. The next bill is LB 591, and we may have to wait a minute for Senator Preister because I don't think we expected that last bill to go quite so quickly. So we'll stand down for a minute or two here.

AT EASE

SENATOR SCHIMEK: Welcome, Senator Preister. We didn't notify you quite as quickly as we should have because we didn't know the other bill wasn't going to have any testimony on it. So, I don't think yours is going to be the same type of bill. So we will reopen the hearing with LB 591 by Senator Preister. Before we do that though, I should mention that Senator Chris Langemeier from Schuyler has joined the committee too. With that, Senator Preister, it's all yours.

LB 591

SENATOR PREISTER: (Exhibit 1) Thank you, Senator Schimek, Chair of the Government, Military and Veterans Affairs Committee, and committee members. My name is Don Preister, that's P-r-e-i-s-t-e-r. I am the primary introducer of LB 591. This bill grows out of testimony and correspondence received from the interim study that I introduced, that this committee held to take a look at these acts. I had originally introduced the interim study because of a number of contacts that I had received over the past year from citizens who have had difficulties either gaining access to records or with public bodies holding meetings in which the public was not able to adequately participate. Most of the concerns over the years that I have heard pertain to problems with state agencies. However, I have been surprised by the number of people who have contacted me

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 8

about problems they're having with all levels of government, including such public bodies as school boards and city councils. This is a statewide problem; one that occurs in communities throughout our state. The amendments I am proposing to the Open Meetings and Open Records Acts are to accomplish several goals. One is to increase the enforcement in penalty provisions and make them consistent between the acts. A second is to add clarity and explanation to existing provisions, such as the information that must be included on agendas. Third, to require greater accountability of public officials through such mechanisms as the requirement to tape record all closed sessions. Fourth, to clarify what costs can be factored into the fees that can be assessed for copying public records and to define the amount of deposit that can be assessed. Five, to allow the public to speak at all public meetings. I won't go through all the provisions of contained in the bill. You've got those on your statement of intent, so if you wanted to look at those. I believe all of these provisions are important protections for the public, to ensure proper access to the process of government and to require necessary accountability by all public officials. The most common concerns that I've heard expressed are: a lack of information provided on public agendas, so the public really cannot adequately determine what's going to be discussed at the meetings; and the abuse of executive sessions by public bodies. It's not my goal to make the work of public servants more difficult. We all know that it's a challenge as is, already. I'm only trying to tighten up the current provisions to assure that the Open Meetings and Open Records Act are complied with as originally intended. I would also offer an amendment, if I could get the page to give this to the members. It changes the, on page 10, line 13, the one-year provision, and inserts four years. And the reason for that is so that the provision is consistent with other sections which require agencies to hold on to records for four years. So there would be some consistency, which I hadn't caught originally. With that, I will conclude my opening, and Senator will answer questions. I'm not sure about the number of people that will testify. As I said, each of the provisions, I believe about 14, were different ones that different people brought to me, and I compiled them all in one bill. So the number of people who may speak individually to those, or collectively, at this point I'm

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 9

not certain of. So I don't have any organized testimony following me.

SENATOR SCHIMEK: Thank you, Senator Preister. Are there questions? Yes, Senator Wehrbein has a question.

SENATOR WEHRBEIN: Senator Preister, I'm on page 14 and 15, and I just...it's kind of a clarification, line 26, 27, and 28, where you've taken out, "A body may not be required to allow citizens to speak...and it may not forbid public participation..." And also the next. What does that mean when that's taken out now?

SENATOR PREISTER: It would allow them to speak.

SENATOR WEHRBEIN: But what if they were denied?

SENATOR PREISTER: There are some penalty provisions that are in the bill.

SENATOR WEHRBEIN: So, I've been reading the paper about some areas where there's...maybe they call it excessive, I don't know, for want of a better term, but wanting to participate. I'm wondering, can the public speak? Do you consider the public should be able to speak at will at a school board meeting or a town board meeting?

SENATOR PREISTER: No, Senator Wehrbein, I don't think speak at will is the intent. But where there is a public meeting and where there is an opportunity for people to speak, however that's scheduled on...I think it needs to be organized; I think it needs to be done in a way that facilitates how the meeting is going, but an opportunity, if it is a public meeting, at some point to have some input by the public. Now, the amount of time? I think there's still some opportunity to structure that, and I'm not denying that, but at least the opportunity to speak, however that's put into the agenda.

SENATOR WEHRBEIN: So you're leaving that open. And what I'm saying, it's kind of subjective. As I have been reading, some have allowed for it--I guess it was Lincoln as I think about it. But it can be subjective, and this probably leaves it even more subjective as to whether a city

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 10

council or a school board could control the input time, let's call it.

SENATOR PREISTER: They could still have a lot of control over it. I'm simply saying that there should at least be the opportunity for the input. How they structure it, I don't think I've addressed.

SENATOR WEHRBEIN: So if there's a problem eventually, a court will decide what is enough or not enough. Would that be where this could lead?

SENATOR PREISTER: If someone took that action, the action would have to be brought, and that would be a recourse that a citizen would have.

SENATOR WEHRBEIN: Okay.

SENATOR PREISTER: I think we have a pretty open process in all forms of government and we have continually worked to provide the openness with our sunshine laws with those opportunities. But people have brought to me a number of abuses, and I think most government bodies operate in the open and provide opportunities, but we have heard of those that have not, that I'm assuming you will hear about also today after I get done.

SENATOR WEHRBEIN: But I think we still have to be cognizant of the fact, having enough time to participate or speak could be fairly subjective.

SENATOR PREISTER: Yes. Yes, that's correct.

SENATOR WEHRBEIN: Thank you.

SENATOR SCHIMEK: Senator Brown has a questions, Senator Preister.

SENATOR BROWN: There have been instances of individuals who have utilized the opportunity to speak at public meetings as a way to...it's almost self-promotion,...

SENATOR PREISTER: Sure.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 11

SENATOR BROWN: ...and in a way that actually limited other people's rights to be represented in open meetings. And I just have fears that this provision makes it even more difficult for elected bodies to control individuals who have an agenda in that way. Would you like to speak to that?

SENATOR PREISTER: Yes, Senator Brown, we've probably both been at meetings where people have tried to push their own agendas, and sometimes even been abusive to the people on the boards, including one that I sat in on, and don't feel good about that, when people do that. It's a balancing act, as I see it. And we need to provide the opportunity, structuring it, trying to limit how people do that, keeping them on topic. Those are all challenges of governing boards. I understand the issue and can see the potential for abuse by the public. And yet I got to get down to the basic that we are here to serve the public, and providing more opportunity I think is essential. It's how do we balance it.

SENATOR SCHIMEK: Seeing no further questions, thank you, Senator Preister. Are you going to stay around for awhile?

SENATOR PREISTER: Senator, I don't think I'll be able to close. I've got another bill that I've got to introduce, and then I need to get back to the Revenue Committee, as well, so.

SENATOR SCHIMEK: Okay, thank you very much.

SENATOR PREISTER: Thank you for your interest and your time.

SENATOR SCHIMEK: We will now take proponents of the bill. Are there any who wish to speak in favor of the bill?

JEFF POKORNY: Do you have a sign-in sheet?

SENATOR SCHIMEK: Oh, you weren't here earlier. There are sign-in sheets available over there. You can get one after you testify and then just drop it in this box up here if you would, Jeff.

JEFF POKORNY: My name is Jeff Pokorny of Omaha, Nebraska,

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 12

4969 South 149 Court.

SENATOR SCHIMEK: Oh. We're asking people to spell their name, too, so I should be consistent. I'm not always. Would you spell...

JEFF POKORNY: P-o-k-o-r-n-y. And I testified for this bill, or to contribute to the drafting of this bill in Omaha, and I'm here today to reaffirm that testimony and also ask the committee a couple of questions before they do anything. On page 2 in line 9, it's kind of the key to the whole thing. The last four words are "all free of charge." And basically that means you can go to any public body. And the Legislature is a great example of this. Before I do anything, I'd like to preface this. Senator Preister talked about time and then Senator Brown responded. There are very seldom that I've been to a meeting, I've been to maybe 1,000 meetings, that anybody monopolized the time. And the beauty of the system is that you, as a group, have the ability to say you've got five minutes, Pokorny, or ten minutes or 15. Everybody has that. I've asked OPPD what their rules are. They don't have a rule on time, but they will shut you off. So it's got to be coming from both ways. I'm sure when Patrick Henry and Benjamin Franklin were giving their dissertations, nobody said, gee, time is up. And you probably have never shut anybody off in this committee.

SENATOR SCHIMEK: Oh, yes, we have. (Laughter)

JEFF POKORNY: And then it's a question of what your tolerance is for people. Virtually every...I'm sure, I would say this, every public body in the state of Nebraska adopts the Robert's Rules of Order to govern their meetings. It's been sometime in their history. Now in Schuyler...a little background: I was the mayor from '70 to '82. When I did invoke Robert's Rules of Order, it was amazing the indignation you got from the council members. You can't do that, Pokorny. I bet I heard that 50 times. I said, okay, fellows, what do you want to do then? We could stay here until midnight or 3:00 in the morning or whatever, or how do we orderly conduct the meetings? But I would bet that everybody has adopted Robert's Rules of Order. There's one guy in the whole state and maybe in the nation that understands the rules, and that's Senator Chambers. Luckily

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 13

he's not here today to critique my dissertation. But he really is the only person that follows the rules and he knows them. Everybody else, and I'm not going to attack anybody's voracity or credibility on this committee, but people just don't know them. They just don't. And when you get to a place like Schuyler where you have part-time councilmen, an hour every two weeks or two hours every week, they just do it on a real homestyle basis. If a friend comes in, he can talk for two hours. If an enemy of the situation comes in, then he gets the one-minute or the two-minute program. But that's where my background is. I've seen the extremes on both sides. The big thing is that the rules, and every group has got them, so if somebody does have a complaint, Senator Brown, then you say, what are the rules guys? Tell me how many minutes I've got, pro or con. Getting back to my original point, it says "all free of charge" and that's the key to this whole thing. It's free of charge. I've given up asking copies from OPPD because they are obstructionists. Now the county assessor in Omaha, you go in and they've got it on computer too. They give you anything. The Legislature, this is a great opportunity, I'm in the building where the greatest freedom of records is being practiced. Patrick is the Clerk of the Legislature. You go down to the Bill Drafter. I stopped there today to pick these up. They didn't ask my name, they didn't ask...they didn't ask me for money. They could have. This is the classy group. So the Legislature is setting the tone. And if OPPD, MUD, I think they're two of the critical agencies right now that are under fire, but if they filed city of Omaha, you go into the city of Omaha and they say for every piece of legislation that comes up, pros and cons, we're going to have a hearing. And then they usually have two hearings or three hearings. And if it's controversial, it goes into four or five. They never limit. I've never seen them limit the conversation. They've got a fellow by the name of R.J. Brown; he goes to every meeting. They never ever say to R.J. Brown, sit down. It's kind of like you should be encouraging that input. And I'm reaching my ten minutes here already, and I don't want to belabor that point. But the main thing is you've got to decide if it's all free of charge on line 9 or if it's going to be 4, 5, and 6 where the public body can maneuver and figure out charges. It's either free of charge or it isn't. And I hate to have that conflict in here. Now, like I say, I went

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 14

in and asked for the legal billings from Fraser Stryker which is OPPD's law firm. They don't have internal law. And the first thing they gave me 36 pages or 63 pages, it was \$6.30. The next time I went in and asked, they didn't give me copies. They gave me reworked pieces of paper. They spread out the charges so I got 910 pages and they weren't copies. So I said, guys, these aren't the copies; I'm returning them to you. Either give me the copies or now I ask to examine them and then I can make copies. That's another way OPPD has of obstructing the process. There aren't many groups that do and you're luckily working with...and Patrick is working for you and he's setting the tone for the whole state. And I think the state attorney's office is good about it too. I'm just trying to think if I've ever had a problem getting a record from Omaha, from Douglas County, Clerk of the Legislature, bill drafter's office, but you have a few. And then...anyway, enough said on this. You either have to delete page 591 (sic) or change "all free of charge," one of the two. They're just not compatible. And like I say, the best advice I can give to anybody asking for copies is, it says "to examine." Go in and say, let me look at it. And then, say, it's \$50 to make a copy, say, hey, I'm going to check this out and I'm going to go across the street to Kinko's and do it, or I'll bring my own copy machine in. If you want to make 5,000 copies, bring your own machine in. That's one of the problems with the MUD opponents right now is MUD wants to charge them \$5,000 for copies or something. This is where you say, okay, I want to examine this and then wheel your copy machine in. Or if you have to bring an attorney in and notarize, I want to borrow these copies, these papers, and go make copies. Okay.

SENATOR SCHIMEK: Jeff, did you say there was another point in here that you wanted to call our attention to?

JEFF POKORNY: Yes.

SENATOR SCHIMEK: Okay.

JEFF POKORNY: I think the minutes of closed sessions is a great addition. And I'm not sure how you do it because almost always the things that are said in closed session, and I've been in a dozen of them probably, are not...they

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 15

shouldn't be in closed session. They should be things that are said in open session. They really should. People have a tendency to say dangerous things in closed session. They will talk about somebody, assassinate somebody's character, and then not have that ability for people to reply. Personnel issues are one that constantly groups go into closed session for. Never do they say, this reason, personnel matters, is versus Jeffrey Pokorny so he can come forward and say, hey, I request an open hearing. I never see it, never see it, and it should be there. That somehow should be written into the law so that when they do close the meeting for personnel reasons, they state who the person is or they state that they've notified that person and given them the opportunity for open session because normally they go in and say we want to talk about Senator Schimek but we're not going to say Senator Schimek. I've got just a couple more points. Schuyler does it with the communications or they used to do it on their agenda. They would have like number 2 or 3 on the agenda they would say communications. So that opened it up for just about anything. If a person wanted to bring a letter in or sit down and say, guys, the police aren't doing this or whatever, and then later on in the agenda if an item came up people could stand up and say, they'd raise their hand. And usually the mayor would acknowledge them. Now I mentioned in Omaha how they do it. They have hearings on virtually everything they do, pros and cons, every meeting. And normally no one is there to testify, but they give everybody that opportunity. I think that covers basically all my, not objections but...that one about free of charge, you've got to deal with that before it becomes law.

SENATOR SCHIMEK: Thank you.

JEFF POKORNY: It is free of charge or it isn't.

SENATOR SCHIMEK: Are there questions? I would just like to say for the record that we generally don't encourage ten minutes of testimony. I don't know where you ever got that idea.

JEFF POKORNY: Oh, and I know you folks are really busy. I see all the bills have been introduced, 700 or 800, and they're not new legislation; they're tweaking basically. And

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 16

hopefully...

SENATOR SCHIMEK: Yeah. And we don't generally say, you know, you're limited. On a day like today we might when we know there's a lot of people; we want everybody to have the chance to testify. So I think it's really legitimate to say you can only have three minutes or you can only have five minutes.

JEFF POKORNY: And I don't know what your committee rules say. They might say ten minutes.

SENATOR SCHIMEK: We don't have a committee rule. It depends on the day and the number of bills and the number of people in the room. It makes a lot of difference so.

JEFF POKORNY: Okay. Well, then just as a windage thing, you'd say I'm putting my finger in the air and it's really busy in here and you say today we're going to limit to five minutes. And then the person that's testifying could say, Madam Chairman, could I have another five minutes like they do on TV when you watch the Senate, the House, or the Legislature. It's just common courtesy, common sense.

SENATOR SCHIMEK: And that's what we try to use is common sense.

JEFF POKORNY: And I think you guys are doing it too. But the thing is, the dictators, and every once in awhile there is one, a mayor or a chairman of a body. You need the rules then to control his behavior or her behavior. That's the problem. I'm not complaining about this committee or any committee that I've testified before in the Legislature. It's always the renegade that's the problem. Right now it's MUD and OPPD. They very...are trying to confine the inquiries. And like I say, everything you do to encourage inquiries makes your job easier in the end. A lot of people say, oh, we can't let them look at those records, we can't...the more that's brought to the light of the day, the better for you folks, the better for the state of Nebraska. The classy cases where \$141 million that the state is burdened with now, if those meetings would have been open and completely open, to imagine that we spent \$141 million and never got one stick put in the ground. It was for

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 17

nothing, absolutely nothing except tests. Thank you, I appreciate it.

SENATOR SCHIMEK: Thank you very much.

JEFF POKORNY: I'll get this to you.

SENATOR SCHIMEK: Thank you. Are there other proponents of the bill?

DAVE McREYNOLDS: I'm for this bill. He made it kind of easy, and I appreciate all you guys' time. I've watched you work...

SENATOR SCHIMEK: Would you get a little closer to the mike, please?

DAVE McREYNOLDS: Yeah, and had better tell you my name, I guess.

SENATOR SCHIMEK: Yes, that would be nice.

DAVE McREYNOLDS: Dave McReynolds from County Road...

SENATOR SCHIMEK: Dave McReynolds?

DAVE McREYNOLDS: Yes, from County Roads...

SENATOR SCHIMEK: Would you spell it please?

DAVE McREYNOLDS: M-c-R-e-y-n-o-l-d-s...

SENATOR SCHIMEK: Thank you

DAVE McREYNOLDS: ...and I'm from 721 County Road 6, Ashland. And he brought up a lot of good points, and that's just what I want to say. I was on the local school board, and we never had any problem; we talked the things out. You'd get into some pretty good discussions, but I think everybody should be able to give their talk, and that's the way Nebraska has been. Whether you're in the pork producers, as some of us have been in this building, and whether you're on the football team for Nebraska, whatever, people get to speak their voice and people listen. And at

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 18

the meeting rooms, when they know they're going to have a big crowd, they definitely ought to have enough room at the meeting rooms for everybody to sit down. And then the other point, these cases ought to be pushed along and practical earliest, come up to time, not be pushed back and held off, and put up a smoke screen, and get to the point. Take care of the meetings on hand, and I just want to say that I always appreciate you senators' time, I've known several of you a long time, and thanks. I just think everybody ought to be able to speak, thank you.

SENATOR SCHIMEK: Thank you, Mr. McReynolds. Were there any questions before...? Seeing none, thank you very much for being with us. Next proponent. May I see the hands of those who wish to testify in favor of. Oh, goodness; okay, let's make it...this is when the rules go into effect. Try to keep it to about three minutes. I'd also like to see the hands of opponents, please. Yeah, let's try to keep it...I'm not going to be, I'm not going to be mean about it, but if you can do it in three minutes, do, but no more than five, okay? Thank you.

GEORGE BRAY: (Exhibit 2) Good afternoon, Chair Schimek...

SENATOR SCHIMEK: Good afternoon.

GEORGE BRAY: ...and committee members. My name is George Bray, G-e-o-r-g-e B-r-a-y. I am here on behalf of the Great Plains Environmental Law Center, reading the comments of Executive Director Steve Virgil. Thank you for allowing me to comment today, in support of LB 591. I ask that you include this letter in the record of today's proceedings as having been submitted on behalf of the Great Plains Environmental Law Center. The Great Plains Environmental Law Center is a Nebraska nonprofit corporation, with an office in Omaha, Nebraska. We are a membership organization with members across the state of Nebraska. Although less than a year old, nearly 100 people have joined the center as members, and we expect our membership to reach 500 by the end of 2005. Our mission is to serve as a resource for citizens who are concerned with protecting the environmental quality and natural resources of Nebraska. We provide resources and assistance to individuals in community-based organizations as they participate in the setting of public

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 19

policy affecting the environment. The ability of public to participate in their government, at any level, gives the transparency regarding the action of their elected representatives. The Great Plains Environmental Law Center supports LB 591 because the law would improve the openness of Nebraska government at all levels. This would create greater opportunity for public participation and, more importantly, inspire trust in the actions and policies of elected officials. LB 591 makes several significant and positive amendments to current law which would lead to greater openness and accountability in government. One, protects the public against abuse of a closed session. Members of the public are often confused and concerned when their government bodies enter a closed session. On controversial issues, including such things as zoning environmental regulation, the public's concern is amplified by the emotions of the meeting and the nature of the matter before the public body. By requiring that all records be kept of closed session meetings, LB 591 will directly address one of the most serious concerns regarding how public bodies operate. The benefit to public participation will be substantial. The costs, however, are minimal and there is no additional burden placed on the public body. In addition, the records will be kept sealed and may only be opened by a court. This is a very needed and timely amendment. Two, improves public notice requirements. LB 591 addresses a significant problem with the public notice requirement of public meetings. Many public bodies follow a practice of noting agendas in one-line statements that often fail to describe the matter before the public body. Without some minimal requirement description, the public is often unaware of the issue the body will address. Three, reduces cost of public participation. Changes to Section 84-712 (3) would lower the cost of individual members of the public who are seeking public information. As such, it will reduce barriers of public participation. Four, allows for local...

SENATOR SCHIMEK: Mr. Bray, may I tell you, you're over five minutes now, so could you do it, but do it faster or summarize what you have left for us, please.

GEORGE BRAY: Well, there's five points to be made,...

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 20

SENATOR SCHIMEK: And you're on the fifth?

GEORGE BRAY: ...and just in summation of it, LB 591 provides for more positive changes in the Nebraska system of open government. These changes will improve public participation and increase the public's confidence in its government. The Great Plains Environmental Law Center supports LB 591 and its commitment to open government. And there are copies for each of the committee members.

SENATOR SCHIMEK: Thank you.

GEORGE BRAY: Thank you.

SENATOR SCHIMEK: Are there any questions of Mr. Bray? Seeing none, we'll take the next proponent.

LAURA KREBSBACH: (Exhibits 3 and 4) Good afternoon.

SENATOR SCHIMEK: Good afternoon.

LAURA KREBSBACH: Laura Krebsbach with the Sierra Club, and it's L-a-u-r-a K-r-e-b-s-b-a-c-h. And I have, for the record, comments from one of my members, Dorothy Lanphier, for you. And I also have a copy of a couple of things I just want to touch on briefly. One of the things that my organization feels is really important about LB 591 is I've worked in a partnership with the Great Plains Environmental Law Center across the state on quite a few different issues involving public participation. We've actually litigated in five different counties because of oversights and abuses, and also not recognizing that there are public participation laws, sunshine laws, that afford folks those abilities to participate. And it really brings home the fact that these changes are needed to ensure and guarantee and protect the average citizen out there. Oftentimes when a situation has occurred, someone will call my office and say, I'm not exactly sure what happened or what you call it, but I know it wasn't right. And oftentimes when you walk them through what the laws are, they'll recognize right away that either it wasn't proper notification or there wasn't an agenda that was published or there isn't the notice published where it needs to be published. So, in support of this, as an organization, the Sierra Club would really like to see this

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 21

come out of committee.

SENATOR SCHIMEK: Thank you very much, Ms. Krebsbach. Are there any questions? Seeing none, thank you for being with us today. Next proponent.

JAMES MCKENZIE: I timed myself and it was seven minutes, so I'm going to talk fast and maybe you can read slowly, because this is pretty much...

SENATOR SCHIMEK: Okay, the page is right here.

JAMES MCKENZIE: There's two copies, two sets. My name is James McKenzie.

SENATOR SCHIMEK: Would you spell that, please?

JAMES MCKENZIE: (Exhibit 5) Oh, M-c-K-e-n-z-i-e. And I generally definitely support LB 591, but I also have some concerns. I speak from the perspective of someone who has long been active in promoting the rights of parents in relationship to the schools. Public accountability and the Parents Right to Know have always been paramount in my mind. I do, however, also speak as a former school board member. I want to emphasize that I have dealt with and questioned individuals in many schools besides local ones, and so the personal opinions I express here are not to be construed as necessarily pointing a finger at a particular school, administrator, or board. I am very grateful that proposed changes to Section 84-712.03 will enable a citizen to petition either the Attorney General or the local county attorney to look into a possible violation of the open records laws. This makes it easier and quite possibly less intimidating to the average parent. This would also seem to be more in line with Section 84-1414 in the enforcement of the open meetings laws. The proposed changes to 84-1410 that would mandate both detailed minutes and tape recording of closed sessions may meet resistance, but I believe there would be much merit in such changes in light of the strict conditions imposed, which are sealing the records and subjecting them to a court order before disclosure. In a closed session, especially after a difficult public meeting, it could be tempting to illegally stray from the publicly stated purpose of the closed session or to stretch the

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 22

interpretation of the "protection of the public interest" clause, or as someone mentioned, personnel issues. The greater accountability afforded by these proposed changes would make it easier for the conscientious board member to keep the closed session on track by being able to more effectively object to any such occurrence. There may also be resistance to the proposed deletion to the sentence in the second paragraph of Section 84-1412. I would expect resistance to such a change because the very first sentence of Section 84-1212 seems to indicate that the public would then have the right to speak at all public meetings, excepting of course, closed sessions. I hesitated a little at this proposed change at first, since such a situation might get out of hand. On the other hand, it may be quite sufficient that Section 84-1412 also provides that the public body can make reasonable rules which I think could include limiting each speaker to something like three minutes, if necessary, not allowing duplication of points made by subsequent speakers, and even putting a limit on the total overall time allowed for public input. I think this depends a lot on consistency and good leadership by the chairperson. I see a problem with Section 84-1414...oh, boy, yeah, I almost didn't want to bring this up...but anyway, I'll try to be clear and short...I see a problem with Section 84-1414 in both its present form and as it may be changed. And I gave you a couple references which you probably have looked up already, and I put them on the side of the paper, a couple court cases, and they're what got me going on this, and plus an actual incident that happened. What if a board member knows a public meeting is in violation of a provision of an open meetings law; he objects but the others choose to go ahead with the meeting anyway. If the objecting member leaves in order to comply with the present version of Section 84-1414, that is, as a board member you're not supposed to remain at an illegal meeting, he misses out on important firsthand information that he should have to fulfill his responsibilities, especially if it turns out later he's mistaken about the illegality of the proceedings. Yet, if he stays, because of Section 84-1414, he would be subject to significant legal penalties. Could a clarification be made that if the board member voices an objection to the legality of the meeting being held, he can remain in attendance under protest but not be subject to penalty? And this is a little bit related...yeah, I kind of

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 23

 tied in...I strongly support the addition of the sentence that a "...suit may be commenced regardless..." As you know, it's actually proposed; I'm not saying I'm proposing it, but I support the addition of the sentence that is proposed that a "...suit may be commenced regardless of whether the citizen attending the meeting at which the alleged violation occurred or whether the citizen raised objections to the alleged violation at the meeting" he may commence the suit. Some of this begins to sound awfully complicated to me, yet the above addition would have, in fact, answered a question, I think, that I was once asked about a situation where a board member was told by a patron just before a meeting that proper notice hadn't been posted, and yet the patron was not in attendance and it could have been difficult to verify the information right at that time. Quite naturally, the board member would want to stay at the meeting even if there was disagreement about its legality. With the proposed changes, both the board member and the absent patron could have recourse if his concern was found to be legitimate and verifiable, and the board member, if he made an objection, has expressed his concern, then he does his duty but he doesn't get penalized. Finally, I must speak in defense of any board member who unknowingly violates a provision of the open meeting laws. There are plenty of very intelligent and capable people who perform this valued public service without pay. But you can't expect all of them to understand all the laws in the first months of service. The open meetings laws and open record laws are the only part of what a board member should know in order to be effective. Isn't the proposed removal of the word "knowingly" in Section 84-1414 a bit harsh? Perhaps the deletion isn't needed. I know of an incident where a board was publicly informed that they were in violation of a provision of the open meetings laws, and that as per Section 84-1414, the severity of the misdemeanor would be raised for a subsequent offense. They then got the message and the problem was corrected. If you raise the performance bar for school board members by deleting the word "knowingly," then maybe the law should be...I think there was another law that was proposed, I don't know if it's been...if it's on General File or what happened to it, but maybe the law should be passed that mandates training of all new school board members, and I know in the past a law was proposed that would allow the position of the school board

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 24

member to be a paid one. Thank you.

SENATOR SCHIMEK: Thank you; you did good. I don't know if you did it in five minutes or not, but you probably came close.

JAMES MCKENZIE: Oh, I had a lot of things I wanted to say and I crossed them out.

SENATOR SCHIMEK: I know you did. Are there any questions from the committee? Seeing none...oh, yes, Senator Fischer.

SENATOR FISCHER: If this is all right with Senator Schimek, I would think if you would make copies of that...

SENATOR SCHIMEK: He did.

SENATOR FISCHER: Oh, okay.

SENATOR SCHIMEK: You just got it.

JAMES MCKENZIE: There's two, anyway.

SENATOR FISCHER: Oh, good.

SENATOR SCHIMEK: We didn't have it while you were reading it, but we do have it now.

SENATOR FISCHER: Thank you. So thank you very much, for being with us.

JAMES MCKENZIE: Thank you.

SENATOR SCHIMEK: Next proponent.

BILL WILLIAMS: Good afternoon.

SENATOR SCHIMEK: Good afternoon.

BILL WILLIAMS: Could I ask the page to distribute this?

SENATOR SCHIMEK: Yes, you can. We're keeping the page very busy today. I should mention that this is Krystl Knabe from the University of Nebraska here in Lincoln, who is paging

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 25

for us today.

BILL WILLIAMS: (Exhibit 6) My name is William, Bill Williams, W-i-l-l-i-a-m W-i-l-l-i-a-m-s. And I wanted to thank you for the opportunity to testify on behalf of LB 591 and I also wanted to take this opportunity to thank each and every one of you for your vote on LB 54 concerning the restoring of benefits to those with general discharge. On behalf of those veterans, I want to thank you very much for that. I also wanted to recognize Senator Preister and Chambers and Beutler and Jill Johnson for their excellent testimony on behalf of that. I'm going to try to talk fast and know I only get five minutes. If you need to cut me off, I'll understand that. I wanted to also share with you that the information in those packages there are copies of minutes and agendas and public meeting notices going back to 2001, and I don't expect that all of you will read them, but it's there if you care to. I've given you all access to it. It's also on the Internet, and I've provided you the first...my written testimony, which is considerably longer than I could have covered here today is there and it's embedded with hyperlinks to the documents that are referred to in the testimony. If you care to utilize those, you can do so on the Internet. I wanted to say that I strongly believe that if the Nebraska Department of Veterans Affairs and the Veterans Advisory Commission had even partially complied with the provisions of the Open Meeting Act, that the veterans advocates of Nebraska would have identified the intentions of the Nebraska Department of Veterans Affairs director early enough that we could have easily prevented the elimination of benefits to those with general discharges. What, if anything, can be done now, to minimize the risk that other veterans might also lose their benefits in the future to the reckless actions of one individual? At least part of the answer lies in the passage of LB 591, I believe. Why do we need to strengthen the enforcement of the Open Meetings Act and the Open Records Act? One answer to the question is, because veterans with general discharges probably would not have lost access to Nebraska veterans benefits for nearly eight months if the director and the commissioners would have complied with the level of communication required by the Open Meetings Act. I'm going to now briefly go over the history, knowing that I only have probably four minutes or so left. We first became aware, on

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 26

September 12, 2002, that there was perhaps a problem with the Nebraska Veterans Aid Fund, financially. It was announced to us at the Holiday Inn in Hastings, a group of county veteran service officers, by Director Hilgert. On that day, he asked for recommendations about what to do, and I suggested that he go back and visit with the Legislature about narrowing the eligibility, where it had been broadened by LB 441 and LB 227. He chose not to do that. Two months later, on November 13, they had a meeting of the Veterans Advisory Commission. There was nothing in the agenda or in the minutes about them talking about a fiscal problem; this is two months after it was announced to us that they were having a fiscal problem. I don't know whether they talked about it, but if they did, it isn't in the minutes and it isn't in the agenda. At their next meeting, May 1, 2003, there is nothing in the agenda, there's nothing in the minutes about them talking about the fiscal problems. I think they probably ought to; maybe they did, but isn't in the minutes. At that meeting also, they discussed two rule changes to the Department of Veterans Affairs. That doesn't appear in the agenda; it doesn't appear in the minutes either. I'm sorry; it is in the minutes, it's not in the agenda. On October 28 we received notification of a meeting to be held on November 5. There was nothing in that public notice in the Omaha World-Herald that there would be discussion about two rule changes to the Nebraska veterans aid and that they were going to talk about asking for an Attorney General's Opinion to eliminate benefits for those with general discharges. But that's what they did on that day. It wasn't on the public notice; it wasn't in the agenda; nothing about it. In the meeting, even the minutes, there's a motion, there's a second; it talks briefly about a clarification of general discharge. It doesn't even show that they voted, much less how the vote came out. It doesn't say that they voted yea or nay, that it was passed, or who voted which way. It simply doesn't say in the minutes. Two days after that meeting, we were notified of the two rule changes and told that they were effective immediately. Nothing was said to us about the asking for the Attorney General's Opinion on that day, two days later. The Opinion was asked for, written on December 31, 2003. We still hadn't been told anything. On March 31, of 2004, a letter was written...the Attorney General's Opinion was published and the director wrote a letter to the county

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 27

veterans service officers that we received the next day, telling us that as of July 1, veterans with general discharges would no longer be eligible for state of Nebraska benefits, and that's the first we knew about it. At the next meeting, which was in May of 2004, there was considerable discussion about the Attorney General's Opinion and about the financial problems of the Nebraska Veterans Aid Fund. And there isn't a single thing on the public notice or the agenda about either of those things being topics of discussion at that meeting.

SENATOR SCHIMEK: Bill, you are at five minutes or over.

BILL WILLIAMS: Okay.

SENATOR SCHIMEK: Could you wrap up real quickly? I mean just give us a real quick synopsis. I mean, I think we've gotten the picture of what you're wanting to tell us.

BILL WILLIAMS: Okay. The last thing that I would like you to know is that at the July 27 meeting, 2004, we received...there was a notice in the Omaha World-Herald that said there is a special meeting being held at the Nebraska Veterans Advisory Commission. It said nothing in there about the purpose of that meeting. Then we received a memorandum from Deputy Parker, saying that there was going to be a meeting. There was nothing in there about the purpose of the meeting. Then we received the agenda. There was nothing in there about the purpose of the meeting. We attended the meeting and nothing was said about the purpose of the meeting at the beginning of the meeting; there was no discussion about the Attorney General's Opinion by any of the members of the commission or the director. Halfway through the meeting, the chairman announced to us, now for the sole purpose of the meeting or one of the sole purposes, we're inviting your testimony today. And I rose and said, where does it say on the agenda that we're going to be having testimony, giving testimony today, or that we're invited to? And Director Hilgert responded, it's under "else" on the agenda. And I said, we're to take from that, that we're going to be giving public testimony today; on what issue? And the chairman...

SENATOR SCHIMEK: Bill...

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 28

BILL WILLIAMS: I'm almost done. The chairman said...

SENATOR SCHIMEK: Look, let's stop and let us ask you questions now.

BILL WILLIAMS: Okay. Sure.

SENATOR SCHIMEK: Are there any questions of Mr. Williams? Do we have any? I'm sorry to have to stop you...

BILL WILLIAMS: Okay.

SENATOR SCHIMEK: ...but we have many people behind you who also...but you did leave a pack of information with us...

BILL WILLIAMS: I did.

SENATOR SCHIMEK: ...and we will be able to peruse it that way. So thank you very much.

BILL WILLIAMS: Thank you.

SENATOR SCHIMEK: We appreciate your testimony. Next proponent.

MELISSA KONECKY: Hi. I'm Melissa Konecky; it's M-e-l-i-s-s-a K-o-n-e-c-k-y, and I live in Mead, Nebraska. I'd like to thank Senator Preister for introducing LB 591 and I appreciate the opportunity to speak in favor of it, as it addresses some problems that citizens have been running in to. Among the benefits of LB 591, there are three that I'd like to share with you. First, regarding open records, one benefit would be that it would allow the citizens to petition the county attorney, in addition to the Attorney General, to review the matter of public records being withheld. This would be good because the county attorney has a more local orientation or view of things; the county attorney is more accessible to local people; and this would provide an option to deal with any potential conflict of interest that the Attorney General could possibly have. The second benefit, regarding open meetings, is that it would require that meeting notices and agendas contain at least a one-line description or explanation of each agenda item to

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 29

avoid the confusion that we've been hearing about today and that numerous citizens have experienced in the past, and, of course, any closed sessions would also be explained. Last, there would be beefed-up penalties for violating these conditions, including possible removal or impeachment. And just in conclusion, I'd like to say that, you know, we live in a democratic...we have a democratic form of government that requires an informed citizenry. And as Thomas Jefferson said, and I quote, "The most effectual means of preventing the perversion of power into tyranny are to illuminate as far as practicable the minds of the people at large." And, I think, you know, LB 591 would do that.

SENATOR SCHIMEK: Thank you, Miss Konecky, is that the way you pronounce it? There's a question from Senator Mines.

SENATOR MINES: Thank you, Madam Chair. Melissa, that was great testimony. Thank you.

MELISSA KONECKY: It was short.

SENATOR MINES: Who do you represent?

MELISSA KONECKY: Myself.

SENATOR MINES: Well, thank you for being here. And that really does mean a lot, to me anyway. Tell me, you're from Mead, and you're here because of local incidents that you've encountered?

MELISSA KONECKY: Yes.

SENATOR MINES: Where you don't feel you've had public access or the information hasn't been provided?

MELISSA KONECKY: Yes.

SENATOR MINES: Okay. Just as a point of clarification, I spent eight years as a mayor of a city, and as you're aware when a local body goes into executive session, we talk about either personnel or real estate matters; that's really about all we do. And if...let's just say that we in the local city were having trouble with the director of public works; there were personal issues; they were very sensitive issues.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 30

And if we had to publish in the paper what we were going in to talk about or who we were going to talk about, that raises questions at the local level that may not be fair to the individual. And that would be a concern that I have, if we have to publish information about individuals that were going into executive session about. What do you think?

MELISSA KONECKY: Well, actually I don't know the particulars of that.

SENATOR MINES: Oh, that's okay, just general comment.

MELISSA KONECKY: But if I'm not mistaken, at least it would be tape recorded so that someone would have recourse if something were said about someone that could stick to them forever and...

SENATOR MINES: It's the publication or the public notification of what we're talking, we as a local body, would be talking about, because, again, you could damage the reputation of someone just by saying you're going to talk about them in an executive session. You know what I mean?

MELISSA KONECKY: Well, that is a possibility.

SENATOR MINES: Yeah.

MELISSA KONECKY: But I know, you know, I'm on the planning commission in Mead, and just simply saying we were going to discuss someone's job or perhaps the hours, or..I mean if we...you know, it wouldn't necessarily, people wouldn't necessarily just assume that we were talking badly about them.

SENATOR MINES: But the inference, once it's published, we're going to talk about Melissa in executive session, and that's a matter of public record. My concern when I was a local elected official, and now, would be what damage might we do to the Melissas of the world if that happens? You know, just a thought.

MELISSA KONECKY: Well, perhaps...I don't know if our attorney could clarify this,...

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 31

SENATOR MINES: And maybe there'll be testifiers later.

MELISSA KONECKY: ...but, I mean, you know, I think...is the provision that they would be tape recorded?

SENATOR SCHIMEK: He's asking you. If you don't have a response, it's okay to say so.

SENATOR MINES: Yeah, and that's okay. I'm just looking for just your personal opinion, and you did just great. You did fine.

MELISSA KONECKY: I guess we think more information is better than less, generally speaking.

SENATOR MINES: Okay. Thank you. Thank you for being here.

MELISSA KONECKY: Thank you.

SENATOR SCHIMEK: Thank you. Seeing no further questions, we'll take the next proponent.

JAREL VINDUSKA: Hello. My name is Jarel Vinduska. It's spelled J-a-r-e-l, Vinduska, V-i-n-d-u-s-k-a. Did you want the address, too?

SENATOR SCHIMEK: No, that's not necessary; thank you.

JAREL VINDUSKA: Members of the committee, I'm here to support LB 595 (sic), and I'm going to make it short because what I'm probably going to say you already know. But our system of government that we're proud of and that we enjoy is based on citizen participation. And that participation can only happen if we have great transparency in the government. And by and large, when I've dealt with public officials, I've been pleased with the way I was treated. But every once in awhile you run onto a person that tries to thwart your efforts to obtain information. And if a person that has a more timid personality runs onto an official like that, it can be very damaging and make that person be apathetic toward working with government. And that's one thing our system needs, is the participation of as many people as possible, and we can't afford to alienate anybody in our system. And that's why I would appreciate your

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 32

support of this bill because any effort toward making it easier for people would be appreciated. Thank you.

SENATOR SCHIMEK: Thank you, Mr. Vinduska. May I ask you where you're from? You don't have to give us your address, but where are you from?

JAREL VINDUSKA: Oh, Sarpy County, Gretna area.

SENATOR SCHIMEK: Thank you.

JAREL VINDUSKA: Okay.

SENATOR SCHIMEK: Appreciate it.

JAREL VINDUSKA: Thank you.

SENATOR SCHIMEK: Oh, were there any questions? I'm sorry, anybody? Okay, that's fine. Next proponent.

JOHN KNAPP: My name is John Knapp, K-n-a-p-p. I'm from Sarpy County also. And I would like to speak in favor of these amendments to LB 591. I'd just like to give some personal experience. Years ago in Sarpy County when we were trying to, when the county was trying to site a landfill, people were trying to get copies of information at that time. When typically you get a copy at an expensive place for a quarter a copy, the county upped the fee to a dollar a copy when we were requesting copies of the records. During a closed session, you mentioned real estate is an issue, and the county did go into a closed session to discuss some land, and to this day...it may be available, I don't know how to get it...but I've never been told how much the county paid for the landfill site. And one of the issues at the time, the county had a landfill outside of Bellevue, and one of the issues or the justifications the county gave for moving the landfill was the cost of...it was going to be more costly to upgrade the current landfill than to buy the new one. Well, when you're arguing with the stuff on that basis, if you don't know what the cost is of the new landfill, you're kind of left out in the dark. And I've been at meetings, county board meetings and school board meetings, where the opportunity to speak has been denied. During this landfill issue, that one meeting we had

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 33

700 people come into the county board meeting, and several of the commissioners wanted to go ahead with the meeting in the courthouse, which probably would have seated about 100. And somebody finally prevailed and talked them into moving to the Papillion High School, and they said the auditorium held 700, had a capacity of 700, and there were still people standing there, so that gives you an idea. But some of the board members did want to let everybody stand in the hall or whatever. And at some of the other meetings where there wasn't quite as great attendance people were, you couldn't hear out in the hallway there was just so many. They didn't have provisions to hear what was even being said. And a similar situation on a school board meeting when they were discussing a bond issue. And so I think it's important that these amendments be considered. And there was an amendment to keep the Open Meetings Act take precedence over court cases, and I think that's an important issue, too, to keep the issue current so that you're dealing with things that are happening now and not debating or extending the debate out longer. And I guess I'd just like to say that when I try to get people to participate, they often say, what difference does it make, the board is going to do what they want, anyway? And if you don't give them the opportunity to speak and feel that they've at least had a chance to talk, it discourages people from coming in. And I guess that's it.

SENATOR SCHIMEK: Thank you very much, Mr. Knapp. Are there questions? Seeing none, we thank you for being with us today. Are there other proponents? Why don't you come on forward if you're still wanting to testify in favor. You can sit in one of these up-front seats, here. Are there any other proponents that haven't spoken yet? If so, you should move up towards the front of the room, also. Hello.

LORUS LUETKENHAUS: Good afternoon, everyone.

SENATOR SCHIMEK: You've got your watch out, good.

LORUS LUETKENHAUS: Yeah. My name is Lorus Luetkenhaus. I should be given an extra minute just for this first name is L-o-r-u-s, last name is L-u-e-t-k-e-n-h-a-u-s. I thank you for this opportunity to speak in favor of LB 591 proposed changes to make this a better law for all citizens and to

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 34

bring it up to date. I thank this committee and Senator Preister for his endeavors to make this a better law than now exists and to address the problems that have hindered the ability of Nebraska citizens to know and participate in public matters. Earlier generations carved in stone on this very building, "The salvation of the states is watchfulness in the citizen." My question is, how can a citizen be watchful if we are denied access to examine public records? The proposed changes to LB 591 will only enhance the public's right to public records in accordance with our countries founders, their dreams of a good and just government. On Section 84-712, we as citizens need a limit on copy fees and limit charges for information retrievable. We need to limit a deposit for copies to 30 percent of estimated cost instead of being told that it's going to cost \$5,000, their guesstimate. On Section 87-712.03, we need to give the citizen the right to use the Attorney General or their county attorney to review the matter of records being withheld. That just gives us something maybe a little closer to home. Section 84-1411 require that public meetings and agendas are clear and accurately describe the changes to be voted on. Now, this is not being done; it has not been done; and it needs to be done. On another one, Section 84-1414, we need the ability to file suit on any open meetings violation without attendance at that meeting. We must also be able to file an objection at a later date after careful thought and review of the meeting. Another, Section 84-1414, it is important that the court consider each case de novo, for the first time, and that the case is registered on the courts docket and precedes all other cases as expeditiously as possible. Another Section 84-1414, we need stiffer penalties because the ones that we have now are not doing the job because we still have violations of this open meetings law continually, we need, including removal or imprisonment from office and change from Class IV to Class III misdemeanor with second offense or subsequent offenses from Class III to Class II with appropriate fines or imprisonment or both. I thank you. Any questions?

SENATOR SCHIMEK: Thank you very much. Are there questions? Seeing none, we thank you very much for being with us today.

LORUS LUETKENHAUS: Thank you.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 35

SENATOR SCHIMEK: Next proponent.

PAUL RANDAZZO: Hello. My name is Paul Randazzo; that's spelled R-a-n-d-a-z-z-o. I would just like to say...I'll be very brief...I would just like to say that something like this is obviously needed by the number of people that are here to speak to it or for it, and also against it. It's obvious that the law is vague and needs some more direction to it. I strongly support the way Senator Preister has written this bill and I think it's great. I would, Senator Mines, if you wouldn't mind, I would like to respond to your question that you just asked recently...

SENATOR MINES: Please.

PAUL RANDAZZO: ...to someone in the audience. May I do that?

SENATOR SCHIMEK: Certainly. It's in part of your remarks, you may do that.

PAUL RANDAZZO: Okay. Could you ask the question, though, so that I can respond to it. I don't want to answer the wrong question.

SENATOR SCHIMEK: Well, why don't you wait till the question and answer period, how about that?

PAUL RANDAZZO: Only if he's going to ask me the same question that he asked earlier.

SENATOR SCHIMEK: He can ask any question he wants.

PAUL RANDAZZO: Okay, I'm sorry; I didn't mean to violate that.

SENATOR SCHIMEK: Does that conclude your testimony?

PAUL RANDAZZO: I have one more sentence to say.

SENATOR SCHIMEK: Good.

PAUL RANDAZZO: I think that it adds accountability to the public bodies. I think that's what it's all meant to do.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 36

It's not meant to change their behavior or actions that greatly, it just adds the accountability aspect to it.

SENATOR SCHIMEK: Are there questions?

SENATOR MINES: There better be.

PAUL RANDAZZO: Please.

SENATOR SCHIMEK: No, I'm sorry. There's a protocol that we have to follow.

PAUL RANDAZZO: I'm sorry, I don't know that.

SENATOR MINES: That's okay, you did great. My question was, I think the one you want to asked, is let's say that you are an employee of a city, and the city or village board or city council is questioning your ability to do your job. To discuss that would require going into it. It wouldn't require, but common sense would take you into executive session. Would you want your name published as a matter of public record that we're going into executive session to discuss your job performance?

PAUL RANDAZZO: Absolutely. If I'm a member of that community. I was a teacher in Minnesota in a town called Anoka, Minnesota, which is a suburb of Minneapolis. And they used to post our salaries in there. As a new teacher, I got hired and they would post every teacher in the district salaries, so you'd know where your tax dollars are going. And if I was not a good teacher or not effective or was being written up for sexually assaulting a kid or whatever, I would suspect that to be on that closed session. And I think the bigger question is, Senator, is what if you don't have to post that on the agenda? What if you can just put on there closed session? And you can be talking about anything...

SENATOR MINES: No, you cannot; you can only, here, I'm I'm asking. The only reason you can go into executive session at the local level is for personnel matters or real estate matters; that's it. Anything else is a violation. So those are the only two issues you can talk about.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 37

PAUL RANDAZZO: Okay, well, then there's been many violations.

SENATOR MINES: I have no doubt there have been.

PAUL RANDAZZO: So, and again I think the law speaks to that, and to answer your question, I personally...if you're a mayor or a member of a city or county or whatever, and my employment is a basis of tax dollars, I don't think there should be anyone that takes that job without realizing that they might be in an agenda at some point in time.

SENATOR MINES: Okay. Thank you.

SENATOR SCHIMEK: Thank you. Any others? Seeing none, thank you for being with us. We appreciate it. Next testifier? I believe this is the last proponent. Do I see...? And then we will start with the opponents. Welcome.

LYNN MOORER: (Exhibits 7-10) Thank you. Good afternoon, Chairman Schimek. I apologize, I have a cold; that's why I sound like I'm a tenor or a baritone here. My name is Lynn Moorer, L-y-n-n M-o-o-r-e-r; I'm an attorney in Lincoln. I represent today two citizen groups, WQEC and ENACT, the acronym ENACT, as well as I represent a private citizen, Dean Busing, who in his official capacity is a commissioner for Saunders County. We appreciate Senator Preister introducing LB 591 and appreciate this opportunity to make brief comments for you. Let me summarize, because I do know your time is limited. In general, it's a very worthy idea that you would be making consistent the enforcement provisions between the public records law and the public meetings law. For some inexplicable reason there have been some features in one that weren't in the other. And it makes sense to have them be consistent with each other; for example, putting the burden upon the public body to sustain their violation, whether it's the public records law or the public meetings law. Likewise, lawsuits under both acts should be given precedence within the courts. Currently right now, only public records law violations have precedence within the courts. And therefore if someone brings a lawsuit challenging a violation of the open meetings law, then it has to get in line behind all the rest

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 38

of the cases in the court's docket, in whatever court you are. And, for example, so if you have an action which is being challenged on very valid reasons and seeking to void something, that may take not-secret, actually have resolution till nine months or a year down the road. And there's a whole lot of action that may have occurred between in that interim time, and it doesn't make sense for that to not also be given precedence. Remember, of course, that the goals of both of these laws is basically to make sure that the government business is public and that there is an opportunity for the public to have a reasonable opportunity to participate and know about what that is. And so that there needs to be speedy redress if there are problems with violations or there's a perception of problems with violations. It makes sense that there be the dual enforcement options in both laws, to either go to your county attorney or to the Attorney General. It's available for public meetings law but not for public records law. So it makes sense that those be evened up. I want to speak in just a little more detail on three points. First of all, on this business about why a one-line description or an explanation is needed. I have asked to have copied for you a little handout here. This clarifies the nature of the problem. You have here, I hope you all have, I asked to have copied for you, this is the agenda for the Lower Platte North Natural Resources District for January 2004. There's also one for February 2004 and one for March 2004. And you will note, except for the date, they are all identical. The agendas for each one of these is exactly the same; that is, very brief listing of a series of very general topics that no one, unless they are actually probably working within that office, would know what actually is planned for that meeting. No member of the public would be able to tell one whit of difference between the January agenda and the March agenda.

SENATOR SCHIMEK: And Lynn, I might interrupt you at this point and say that we haven't got all of them yet; they're having to copy them. We got the first one, I think, the January one.

LYNN MOORER: And my explanation I hope will be sufficient for you...

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 39

SENATOR SCHIMEK: It is.

LYNN MOORER: ...to let you know...

SENATOR SCHIMEK: And we will get the others.

LYNN MOORER: ...that all three of them are exactly the same.

SENATOR SCHIMEK: Yes.

LYNN MOORER: Then there is a fourth one for you to look at, which is a three- or four-page agenda, includes a calendar on the back. This is the result of the NRD's effort after a lawsuit was brought, among other reasons, for lack of proper public notice. You realize the standard in the law currently is "reasonable advanced publicized notice." That's all it says. And other than the fact that the published notice has got to either include the agenda or say that the agenda is viewable, at the main office of the public body. That's all the law currently says. So after a lawsuit was brought, saying what you provided was not reasonable, then they came up with a three-page agenda. But the problem is, it still is not much better. It has things on it like a heading that says, "Water Committee - Action as Required"; this is item number C on the list. And you go down underneath it, "Groundwater Programs," item (c) "Groundwater Quantity." That still doesn't tell you anything. That's the nature of the problem; that's why a one-line description is needed.

SENATOR SCHIMEK: Thank you. Are there any questions of Lynn? We will get the rest of the copies. Yes.

LYNN MOORER: May I make one other point?

SENATOR SCHIMEK: Yes, you may.

LYNN MOORER: There was one other point I wanted to make, why it's important that citizens that have the ability to challenge the validity of a meeting action, even though they may have attended the meeting but did not protest. Currently, the public meetings law does not specify that is what is required. But the Supreme Court, through case law,

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 40

has interpreted the law to mean that if you attended a meeting and didn't object then, you no longer have the right, afterwards, to bring a lawsuit. I'm saying, now is the time for the Legislature to perhaps make it clearer, know that even if a person did attend the meeting, that they can object. And let me just cite one example of why this is needed. Say, the body goes into closed session. It passes and they, within that session, come out with a very detailed motion which had not been publicly noticed; there had been no public comment on it. They passed the motion, then, in open session; there's no public comment allowed or the comment has already taken place previously in the meeting. Okay, so what the board comes out of the closed session with, is a surprise, okay? They vote on it; there's no opportunity for public discussion, and then they adjourn the meeting. Effectively, there's no opportunity for the public to even protest. And you see, that would be an inability for a person, according to what the Supreme Court now says is a necessary thing to have happen, that they can't even challenge that action because they didn't have the opportunity to protest.

SENATOR SCHIMEK: Thank you.

LYNN MOORER: Now if you make it clearer, that will clear it up. Thank you.

SENATOR SCHIMEK: Thank you. We appreciate the examples. And if you wish to follow up, that will be great. Thank you.

LYNN MOORER: I appreciate the opportunity to speak. If you have any questions, I'm happy to follow up with you.

SENATOR SCHIMEK: Okay, thanks a lot. Are there any questions now? Seeing none. Now, I believe we're done proponents. I don't see any other proponents coming forward; we will take opponents. Opponents?

JOHN BONAIUTO: Senator Schimek, members of the committee, my name is John Bonaiuto, B-o-n-a-i-u-t-o, executive director of the Nebraska Association of School Boards, here in opposition of LB 591. I'm going to narrow this to a few issues in the bill. But before I get to those, our

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 41

organization works very hard, and I'm sure as the County Association and the League of Municipalities, to work with governing boards on the open meetings law, on agenda issues, on closed sessions, and we do seminars and we do trainings, we have resource guides. And so we try to do the best we can to help our lay board members that are elected to meet both the spirit and the letter of the law to the best of their ability and knowledge. As I look at this law, or this bill that would change the law, we see no need or reason to take detailed notes or tape closed sessions. And the boards, one of the first things that we tell boards is that you cannot take any action in closed session. You must come out and deal with the issues in open session. And now as far as being able to have people rebut what the action is or challenge the boards on their action, I think that sometimes people forget that these are meetings of a governing board in public. It's not the public's meeting; it's the governing boards meeting. And that brings me to my second issue, and it's public participation. And the public participation by members of the public, and we have looked at many agendas, and school boards list public participation is an item on the agenda and they have policies that usually speak to how the public will participate in the meeting. And we do hear of situations, where because a board has taken a certain action, whether it's to pass a bond issue or to close a facility, that there are groups that will do whatever they can to disrupt the meeting or to monopolize the meeting. And so boards will take control of their meeting because it is their meeting and they must do their business in public and should do their business in public, but it has to be governed and controlled in such a way that it can be done in an orderly fashion. And so I think that making a change to limit how a governing board can allow that public participation to happen would be problematic. And then the last thing I would say, my conclusion to my testimony would be, when you get into legislation that really starts to address lawsuits and punishment, and we get into some serious issues for these, in my case, volunteer governing boards, there's nothing that I'm reading in that part of this proposed bill or law change that would make it at all appealing for someone to run for this school board or any governing board. With that, I will conclude my testimony.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 42

SENATOR SCHIMEK: Senator Mines has a question.

SENATOR MINES: Thank you, Madam Chair. John, I'm going to use your time to make a correction. I stated earlier that the only time local boards can go into exec session is for real estate, matters of real estate personnel. There's one more; Senator Wehrbein corrected me, and it is litigation...

JOHN BONAIUTO: Yes, there is; that's correct.

SENATOR MINES: ...and you brought that up as well.

JOHN BONAIUTO: I was going to say, we see board, and constantly coach boards that there are reasons that they can go in and they should not in any way expand on those reasons. Yes, Senator.

SENATOR WEHRBEIN: John, one of my concerns, and I'll have to say it's a long-time concern, I've been in public bodies for a long time, commissioners and all that, and a lot of people are uncomfortable making decisions in public, and I used to be too. But I've come to the point where I'm not bashful about saying any time, any place. But one of my concerns that I've observed, reading minutes, and here and there, is many, and I'm going to talk about schools, but it's broadly true, where a lot of decisions are made...you have the committee set up, and people have...break up into two- and three-member committees, then come to the school board, and in about thirty minutes the school board is done, or an hour. I really have a big concern about that. I've seen it going so far as the motions are already written out. There's no opportunity for discussion; you don't go through the parliamentary procedure, by the way; we use Mason's rather than Robert's Rules of Order. But there really is no public discussion, and if there's any complaints that I hear consistently over the last many years, is there's so many are canned because a lot of the work is done in committees. Are committees open to the public when they make their discussions, let's say the salary committee, probably not the salary committee, I'd understand that, but, let's say curriculum committee, or whatever, whatever?

JOHN BONAIUTO: It is not a meeting that is required to be posted, and unless there were a quorum present, and I know

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 43

that there are boards, a number of boards have gone to the committee structure, and it's a balancing situation, is trying to deal with multiple complex issues and not be at a board meeting until twelve or one o'clock in the evening. And so this may be an issue that needs to be looked at, and we're always looking to balance and make sure that we're conducting business in the right way. And I don't think there's an intent to use the committee structure as a cloak, but more as the ability for the board to divide up the work and then deal with it in an expedient way so that the meetings don't drag on and on.

SENATOR WEHRBEIN: Well, I want you to know, I'm a stickler for parliamentary procedure and I really believe a lot of public meetings, and I've seen a lot of mistakes made in public meetings because they were not run correctly. And I think a strong chairman could overcome a lot of problems where there's reluctance for people to speak or not to speak or are excessive because it's not controlled by the chairman. But I think school boards and others and others and others, could do a lot better by opening up the process so the citizens at least know what other people think. People ought to say what they have in public so they know. It doesn't have to be, cause a problem in there, just as long as the chairman controls it. And I don't know if any of that training goes on, but I think it should. And I admit, I'm on my high horse here or I am on my pedestal a little bit because I think that's one of the public's frustration with open meetings. And we're trying to legislate some things here that I think should be common sense. And the committee system, to me, evades that, and I don't really appreciate it myself. And I know it's quite widespread. But I've often thought that if the public knew the rationale behind most of the decisions we make, they wouldn't disagree. But it's because there's hidden agendas, dah-dah, dah-dah, dah-dah, that they get really frustrated, and that's the reason we end up having to make bills...

JOHN BONAIUTO: A discussion like this.

SENATOR WEHRBEIN: So thank you; that's enough.

SENATOR SCHIMEK: Thank you. Any other questions?

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 44

MELISSA KONECKY: I have a question.

SENATOR SCHIMEK: No, excuse me. That's not the procedure. That's okay. I guess that's all the questions we have for you today, John.

JOHN BONAIUTO: Thank you, Senator Schimek.

SENATOR SCHIMEK: Thank you very much for being with us. Are there other opponents of the bill?

DANA ROPER: (Exhibit 11) Senator Schimek, my name is Dana Roper; I'm with the city attorney's office in Lincoln. I'm also here representing the Lincoln/Lancaster Public Building Commission. We appear in opposition to this legislation, as it burdens the courts, it wastes tax dollars, and creates unnecessary bureaucracy and procedures. First of all, the executive session. Public bodies will now be required to take minutes and tape recordings of executive sessions. The whole purpose of executive sessions is to have a frank and open discussion. That won't occur; the dynamics of a closed session will change if you do that. This legislation says that you are to take detailed minutes as opposed to minutes; I'm not sure what that is. It also says you're to record the action occurring at the closed meeting. Well, we've always been under the impression that you weren't supposed to take any action in a closed meeting. You adjourned, came back in the open meeting, and took your action. It also creates a new class of public records--that of secret public record. We're going to record, we're going to transcribe, we're going to keep these minutes, but we're going to keep them secret. Well, only a judge can review these, so I guess we might call them double secret public records, if that's not one of the great oxymorons. Public bodies are not set up for that. I visited with our city clerk on what would you do if you have these records that you're supposed to segregate and keep not accessible. And she said, well, we'd have to get a safe; we'd have to buy a safe and put them in there. Public clerks are set up to preserve records, to access records; they're not set up to try and secure records. Second point, speaking at every public meeting. Access to the process is not the problem. There are letters, there are phones, there are e-mails, there are personal appearances. Many times...not many times, but on

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 45

occasion our council will meet at one meeting and then delay action, reconvene at another. Under this legislation we would have to open it up and allow people to speak at every meeting. I would note that Omaha has a limitation, a Frank Brown Rule, on rule 11E, that no person may be permitted to address the council in excess of 20 minutes at any meeting. The problem is running an orderly and efficient meeting that doesn't discourage the average citizen from attending and participating. I would also point out the problems with the penalties. We have now made, taken out "knowingly," so we're holding anyone who violates the open meetings, to removal, impeachment, and a Class III misdemeanor. You can do this quite innocently, and I think that's inherently unfair. I assume, if the tape recorder doesn't work at a meeting, you've got to adjourn the meeting. If three members of a county board, which would be a quorum, if you look at your definition of meeting, it is formal and informal meetings. So any time there's a quorum together, that would constitute an informal meeting. And if there is discussion of public business, you would be in violation. The idea that everything should be made free is...I'm not sure who's going to pay for this. What we're seeing is that attorneys, rather than gain information through discovery, are filing public records requests. They may want a needle in a haystack, but they're asking for the whole haystack. We have no ability really to object to a public records request. It's a public record, we've got to give it to them. And to say that we must give it to them at no charge, just imposes an undue and unworkable burden on a government. And I'd be happy to answer any questions.

SENATOR SCHIMEK: Thank you. Are there any questions of Mr. Roper? I just have one. Is there no redeeming value in this bill at all?

DANA ROPER: I'm sorry?

SENATOR SCHIMEK: Is there no redeeming value in this bill at all? Are there any parts of it that are good, do you think?

DANA ROPER: The addition of the county attorney is fine. I guess I would have guessed that was always the law, that the county attorney could enforce public records and public

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 46

meetings. I don't think that adds anything, but if that helps clarify it, that's fine. As far as the notice requirements, there are notice provisions that are required now and I think that they just need to be enforced. This creates more problems than it solves.

SENATOR SCHIMEK: Thank you.

DANA ROPER: Thank you.

SENATOR SCHIMEK: Are there any other opponents?

DAN CROUCHLEY: Senator Schimek, members of the committee, my name is Dan Crouchley, C-r-o-u-c-h-l-e-y. I'm senior vice president and general counsel for Metropolitan Utilities District in Omaha. Some of my points have already been made, but the board of directors of MUD passed a resolution opposing this bill on February 2. Just some points that haven't been brought up: This bill excludes overheads when employees are retrieving records. Overheads, the way we use them and I think most people do, are added onto the cost of the basic cost of the salary, are legitimate costs to charge. The statutes already allow us to charge them and we think it continues to be legitimate. With regard to increasing criminal penalties or adding second offense penalties, it has an ironic effect that hasn't been mentioned. My knowledge is, in eastern Nebraska, in 30 years, I don't know of any public local official who has been charged with a criminal misdemeanor. Increasing penalties will guarantee no one will ever get charged. There won't be a county attorney that will charge a public official the higher of the penalty. I'm not sure of the rest of the state, but I'm not sure that there's been any charges under that. With regard to a court voiding an action of a public body, it says that the subject matter must be given substantial reconsideration in a later meeting, if it's brought up. The nature of political discussion...many of you have been local elected officials...is that there may be no discussion on a particular item or a lot of discussion. You could have four hours or zero. You don't even have that obligation up front, but in this case you then are obliged, it's a control over political discussion to make a substantial discussion occur after the fact. With regard to all these

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 47

legal actions, both civil and criminal, this shifts the burden of proof onto the public entity. The vast majority of civil cases simply...the burden of proof is on the person bringing the action. There's no reason to change that. With regard to expediting things, everybody thinks their own issue is the most important. So there's numerous statutes to try to push themselves to the front of the line. And this is like everyone else's, everybody thinks it's important, and it just doesn't seem to be necessary. Again, somebody mentioned the removal of "knowingly" makes this basically a strict liability criminal action. You can violate it criminally, but without intent at all. In conclusion, I'd ask that this not be advanced. Any questions?

SENATOR SCHIMEK: Are there any questions? Seeing none, thank you very much for being with us, Mr. Crouchley.

DAN CROUCHLEY: Thank you.

JACK CHELOHA: (Exhibit 12) Senator Schimek and members of the committee, my name is Jack Cheloha; the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I'd like to testify in opposition to LB 591. I've asked the page to hand out a letter that...I won't read it to you; I'll just paraphrase from it. It's a letter from our city clerk in Omaha, and also our city attorney, relative to this bill. Before I go on, maybe I should try and clear up the record a little bit. The witness, Mr. Roper from the city of Lincoln, testified in Omaha that we have a Frank Brown Rule; that's not correct. Frank Brown is one of our council members, which is on the council right now. His colleagues might wish we had a Frank Brown Rule, but we don't have one. (Laughter) So it's actually, there is a rule related to a citizen who testifies frequently, where they have adopted on occasion, a limit of testifying only on three topics. It's actually commonly known as the R.J. Brown Rule, so I don't know if some of you are familiar with that Mr. Brown, but that's the rule that they've had to implement locally, sometimes where citizens would literally testify on every resolution or ordinance before the city council. But getting back to the reason for our objections, first of all, the taking of detailed notes and tape recording on closed sessions seem onerous and potentially

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 48

chilling to the open and frank discussions that are needed at these few important situations. As has been pointed out here, there's only rare occasions where you can go into closed session. If you go down to the bottom of our first page of this handout, the Omaha City Council rarely goes into executive session. Since 2001, which would be in the last five years, we've only gone into executive session 18 times, and then we have a breakdown for those reasons, which I see as they split it up, I think labor negotiations and personnel would probably fit into the same category. I don't see us ever having gone into closed session for real estate matters, which was one of them that was pointed out, or the other matter would be litigation. So, you know, I think it's important to have these open discussions for elected officials. Likewise, there needs to be rules to anything, and we need to have an understanding for the citizenry, as well as the elected officials. These citizens that are elected to office are part-time representatives, much the same that you are. And so, in order to run these meetings in an efficient manner, where it's not taking an exorbitant amount of time away from your career or your family, et cetera, we need to have structure, et cetera. Secondly, as has been pointed out before, we're very concerned about taking away the mental aspect of making this a crime for violating the rules, taking away the knowingly violating the rule. If you look at these penalties, they're quite severe; I mean, they can include jail time and significant fines and/or both, in addition to the loss of your position. In Omaha, I've worked for the city now for 11 years. When I'm not down here being the lobbyist, I work on the city council staff, and I just can't recall any concerns we've had with citizens relative to our agenda, relative to being heard, relative to getting copies. I mean, our city clerk, Buster Brown, goes out of his way to accommodate the public, to help them in any way possible. If they don't understand what the agenda item is, he's very helpful; he'll try and point them to, if there might be supplemental documents or whatever might be available to help them out. As was pointed out, a lot of this might be common sense. Maybe in some of these communities where a lot of the proponents were coming from, maybe there's just some disconnect locally or something is going on where we can't make the citizen feel comfortable with what their government is doing. Finally, the third point on our letter

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 49

has to do with the county attorney's office being authorized to look into this. Frankly, I think Lincoln said that that wouldn't be a problem; we see it the other way. We think it would be a problem because the open meeting laws are in state statutes, and they are governed accordingly. We think that if you open it up to the 93 counties, and being able to have them interpret it, that you could get maybe all kinds of results and maybe it was better to leave it within the Attorney General's Office for consistency's sake, to get the law applied uniformly. And I think that would benefit everybody because then, from those decisions or those cases that go forward, everybody would know how to act accordingly. And basically for those reasons, I'd just like to sum up and say those are the reasons why we are opposed to this bill. It seems like maybe there are some concerns in some areas, but to bring a bill like LB 591 with the magnitude and the penalties, et cetera, it seems to be quite severe.

SENATOR SCHIMEK: Thank you, Jack. Are there questions? I would add courtesy to common sense; common sense and courtesy I think takes care of a lot of problems. And that works both ways.

JACK CHELOHA: That's right.

SENATOR SCHIMEK: Right.

JACK CHELOHA: Thank you very much.

SENATOR SCHIMEK: Thank you. Are there other opponents of the bill?

LAURA PETERSON: (Exhibit 13) Good afternoon, Senator Schimek, members of the committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm general counsel for the Department of Administrative Services; I'm also the State Risk Manager. And I'm here to testify on behalf of both DAS and the other code agencies in opposition to this bill. I'm passing out for you my formal written testimony, and because of the length of it and the time you've been here, I'm not going to go through it all. I'll try to just highlight a few points that haven't been said. You'll see that there's explanation in there and if you have questions I'm happy to

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 50

answer them. The first thing we're concerned about is obviously the increase in criminal penalties and the "knowingly," removing "knowingly." One of the things you might not have heard from local government or other people who have been up here, is that the state has a statute requiring them to indemnify state officials, state volunteers, people who are working on the state's behalf. We manage that in my office, the fund. And we think that there might be, with the increase in penalties and the increase in the type of action, the unknowing action being a criminal penalty, we might see increases in requirements to indemnify state employees, and therefore an increased cost associated with that. The second concern we have relates to the current defense of open meeting laws, that a person who was there but failed to object would now be able to object later. You've already heard some discussion about that. The third concern we have with the bill is that it would subject the withholding of public records to the review of the county attorneys. Right now, I actually believe the public meetings law actions are able to be reviewed by the county attorneys. But the public records, withholding of public records under the provisions of 84-712 that allow withholding, are only subject to the review of the Attorney General's Office. If we're going to open that up to county attorneys, we think that you would maybe want to limit it to the county where the public entity is. But for the state's purposes, it should probably be left at the Attorney General's Office. The concern would be, if we have a public record that's in Lincoln and now it's going to be subject to the interpretation whether it can be withheld or not of 93 county attorneys or slightly less than that, plus the Attorney General's Office, we work very closely with the AG's Office when we withhold and being sure that that's proper; if there's a conflict between the AG's Office and a county attorney or two county attorneys on the same record, it's unclear to me what exactly we would do--if we would be able to withhold that; if we would not. So if you're going to make it subject to the county attorneys, you certainly would want to clarify maybe who has the ultimate authority on that so we know who to listen to. The fourth concern we have relates to the overhead costs. And this primarily arises for the Department of Administrative Services. As you probably know, Materiel Division within the department is responsible for copy services for the state. And the

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 51

Legislature has established that as a revolving fund authority. So the division creates charges for copies that everyone in the state uses. The copy machine in my office has one rate. If I take it to Materiel Division and they copy it for me, there's another rate. By necessity and by the way it's appropriated, we charge what is thought to be overhead charges, although there's no definition of overhead costs in the bill. But it includes things like machine repair, machine replacement, the salaries of the copy services staff--those are generally things that are thought of as overhead--the space for the copy machines in the copy center. And so we're not sure if we would be required to create a separate charge if we're copying a public record for the public who is requesting it, or exactly what we'd be required to do there. So that's of concern to us. And then the final one relates to only being allowed to charge the cost of the lowest paid employee who's capable of copying the record. Oftentimes, that person either may not be available or, and that would either... It's going to do one of two things, either cause a delay in us getting the record or cause us to eat part of the cost of making that record because we're going to have a higher paid employee copy it, but we won't be able to charge their salary. Do you have questions?

SENATOR SCHIMEK: Thank you. Are there questions? Seeing none, thank you very much for being with us; we appreciate it. Next opponent.

BILL MUELLER: (Exhibit 14) Senator Schimek, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association, in opposition to LB 591. The page is handing you a letter from Elaine Menzel, who is the chair of the Bar's government practice section. Ms. Menzel has drafted a letter setting forth the bar's objection to LB 591. Let me just amplify one of the points that Elaine refers to. On page 17 of the bill, the proponents attempt to expedite these cases, and we certainly are sympathetic to the proponents thinking that their case is worthy of being expedited. We do find that problematic, in that, number one, we're expediting one more type of case. I think currently criminal cases are expedited because of the speedy trial rule. I believe workers' comp cases are expedited. I'm concerned about

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 52

adding one more expedited case to that list. I'm not sure that everyone would agree that these kinds of cases are more important than a child custody case that's on appeal in a court, or a guardianship case or a conservatorship case or a divorce case. I'm also concerned that if you read the language on page 17, lines 25 and 26, the language appears to suggest that proceedings under this section shall take precedence, except as to cases that the court considers of greater importance. I don't really think it's a good idea that we put a court in a position where it's deciding whether Senator Schimek's case is more important than my case, or Senator Schimek's type of case is more important than my case. That is of particular concern to the Bar on LB 591. I'd be happy to answer any questions you may have.

SENATOR SCHIMEK: Thank you, Mr. Mueller. Are there questions? Seeing none, thank you for being with us' we appreciate it.

BILL MUELLER: Thank you.

SENATOR SCHIMEK: Next opponent? May I see hands? Is this the last opponent, or are there others? Okay. You better come forward.

MARY SOMMERMEYER: Senator Schimek and members of the committee, I am Mary Sommermeyer, and that's M-a-r-y S-o-m-m-e-r-m-e-y-e-r. I'm here on behalf of the League of Nebraska Municipalities, in opposition to LB 591. And many of our concerns have already been expressed, so I won't go through those. I do want to say we certainly are supportive of the open meetings law and the open records law; we believe in the principles that they were enacted for, and we do do training for newly elected and appointed officials; we do try to emphasize to them. Next week we have our midwinter conference and a session on this will be done by Lynn Rex, and I can guarantee you that she tries to drive home to our officials the need to comply with the law. Just a few things I wanted to mention, as far as striking the provision about you're not in violation if you hold your meeting at your traditional place. You can't always know when there's going to be a crowd. You may...so if you have your meeting at your usual place and you just didn't realize that an issue was of concern, it appears that you would then

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 53

be in violation because you didn't predict that there would be a crowd, because you were in your traditional place but it suddenly wasn't big enough. And I don't know that you could always find another place to move to. If you think of the small towns that may just have a village hall, there may not easily be another bigger place to move to, to have the meeting. Another provision is the one that requires that on the agenda it state that when you'll be having a closed session, and that's another thing you can't always predict. There might be times during a meeting when something would come up and there would be a need to go into closed session. So, you couldn't always state it on the agenda. The third thing would be on tape recording the closed sessions. A lot of the boards don't tape record sessions now, so they would have to get equipment just for that purpose for the closed session. I think that's all the other points I would make at this time.

SENATOR SCHIMEK: Thank you, Mary. Are there questions? Seeing none, thank you very much for being with us; we appreciate it.

MARY SOMMERMEYER: Thank you.

SENATOR SCHIMEK: Next opponent.

JOHN MIYOSHI: (Exhibit 15) Chairperson Schimek and members of the Government, Military and Veterans Affairs Committee, my name is John Miyoshi, spelled J-o-h-n M-i-y-o-s-h-i. I'm the general manager of the Lower Platte North Natural Resources District located in Wahoo. Today I'm speaking in opposition to LB 591. My testimony represents my NRD and the official position of the Nebraska Association of Resources Districts. We oppose changes to 84-1410, subsection 6. This change requires detailed minutes of all discussion, persons present, and actions occurring at a closed session and shall also tape record all of the closed session. The purpose for closed session is for protection of the public interest or for the protection of needless injury to the reputation of an individual. While we can find some merit to this request, the burden, costs, and potential pitfalls placed on the public body exceeds the benefit. The sensitive nature of these closed sessions is most often for legal matters, personnel issues, or

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 54

negotiations, which is land rights in the case of the NRD. This added requirement will drain time and money away from the intended purpose of the public body and increase the likelihood of sensitive information leaking from the closed session. And there's a couple of attachments there, how often our NRD and the Upper Big Blue have gone into executive session. We oppose changes to 84-1411, subsection 1: Such notice and agenda shall contain at least a one-line description or explanation of each agenda item. And you can see on Attachment C is the four-page agenda from our January 13 board meeting. Adding these one-line descriptions is an inefficient time and cost burden to our NRD. The information packet we provided at our January board meeting was 94 pages, including the four-page agenda. We oppose changes to 84-1414, subsection 3: When a citizen of the state files suit, with this change the burden is on the public body to sustain this action. Placing the burden of proof on the defendant is not fair or the American way. Invariably, when a citizen's suit is filed in the court over a public record or open meeting law violation, the citizen has failed to win an argument on the merits of the disagreement, so they file a nuisance suit under the guise of the public record or open meetings law. The burden of proof should remain on the accuser, not the defendant. We oppose changes to 84-1414, subsection 5. This subsection increases penalties against our elected officials. Wording in this section promotes legal action against public bodies. The current statute is written as it should be, to punish those who knowingly violate the law. We should continue to let the law operate as it does. In summary, the changes proposed to LB 591 add extra time and expense burdens to our public bodies and promotes unnecessary litigation. Our current statutes provide the protection we enjoy.

SENATOR SCHIMEK: Thank you, Mr. Miyoshi. Are there questions? Yes, Senator Langemeier.

SENATOR LANGEMEIER: I have one question. Thank you, Mr. Miyoshi, for testifying. We were handed out the Lower Platte North NRD's agendas, and it was stated that the agenda was changed to the second one, 10-8-04 I believe is the date they have on here, due to a lawsuit. Is that lawsuit concluded or is that still in effect?

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 55

JOHN MIYOSHI: There is actually two lawsuits filed against us. Ms. Moorer said she represented Dean Busing in his lawsuit against the NRD. No, it does not cover that. It's the other lawsuit she did not mention. But we felt it was in the best interest to expand our agenda. You'll notice on that agenda, each item that there is to be action on, it says "Action" and there's a star after that. All the other items are reports and updates, so there would be no voting on any action unless it is so listed on the agenda.

SENATOR LANGEMEIER: And the reason I bring that up is I want it noted for the record, I sat on the Lower Platte North NRD Board at the time of these agendas, as well as part of those lawsuits.

JOHN MIYOSHI: At the time of the changes, yes.

SENATOR LANGEMEIER: Thank you.

SENATOR SCHIMEK: Thank you, Senator. Are there any other questions? Seeing none, thank you for being with us today. Other opponents?

SHERRY SCHWEITZER: One more time. My name is Sherry Schweitzer, S-c-h-w-e-i-t-z-e-r. I'm the Seward County clerk and cochairman of the County Clerks Legislative Committee. There are many items of interest with this bill. I will speak from a perspective of a secretary of the board; as you know, county clerks are the secretary to the board of commissioners or board of supervisors. One part of the bill requires all closed sessions of the county board to have minutes taken and be tape recorded. While there are many counties with professional types of recording systems, you must remember Nebraska is a diverse state. We have many counties with no tape recording system whatsoever; we have some with very inexpensive tape recording equipment, equipment that would not probably be proper if you were making a court transcript. Some counties have wondered if this is an unfunded mandate, that they would have to supply their commissioner room with a tape recording system. Also there are many county clerks that are not part of an executive session, for individual reasons of that board. There are many counties who prefer executive sessions to stay within the board only. This would mandate that all

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 56

county clerks be in that closed session. I believe county boards that I know of do adhere to the laws of Nebraska. When it comes for reasons to be going into executive sessions, most clerks who are currently parts of the executive session do keep their commissioners or supervisors on task; I know I do. Knowing that they are being taped may inhibit frank discussion which is one of the main reasons they go into executive session. We do make public meetings open to the public by posting notices, publishing them. Most counties now are putting agendas and minutes on the Internet. If there's any question at all, I think most people know they should be able to call either the department or our clerk's office if they have a question about something on the agenda. So a common phone call is all that would take. I think there needs to be...keep a process to keep this discussion totally confidential for the board.

SENATOR SCHIMEK: Thank you. Are there questions? Yes, Senator Pahls.

SENATOR PAHLS: Do you get very many complaints in your county?

SHERRY SCHWEITZER: About the agenda?

SENATOR PAHLS: Yeah, agenda, of not being able to have access?

SHERRY SCHWEITZER: No, we have our agenda on the Internet the day after a meeting, and that would be the agenda for the next meeting. We continually keep it updated throughout the week, and at the time that it is closed 24 hours prior to the meeting, we make that statement at the end of the agenda. I can't say that I put a full one-liner on every agenda item. Sometimes it's not needed. A lot of times, for instance, a road project, we will say authorize the chairman to sign a contract with John Doe Equipment to purchase a maintainer or something of that order. We describe it, I guess, and I think most clerks do.

SENATOR SCHIMEK: Senator Wehrbein has a question.

SENATOR WEHRBEIN: Thank you. Do you have guidelines of the way you keep minutes of the county board meetings?

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 57

SHERRY SCHWEITZER: I, personally?

SENATOR WEHRBEIN: Well, or from NACO.

SHERRY SCHWEITZER: Or county clerks? Yeah. NACO continually does do some discussion with this at our workshops. But they also...I can't say that we have an actual guideline. We use the statutes as our guideline. It is in there about reasonable notice, things like that. And I will say that county clerks do a lot of discussing between each other to decide, are you doing this, are you doing that; maybe I need to update mine a little bit more often; things like that.

SENATOR WEHRBEIN: Well, I read quite a few minutes and some of the time I'm a little frustrated because it just will say, Citizen X came before the board. That's just one sentence; that's all there is in the minutes. So you have no idea what it was or if there was, you know, any...and I don't know whether you should or shouldn't provide more information on that.

SHERRY SCHWEITZER: And that is totally up to the clerk, I think, to put in the minutes how much they want to put in. I do have a constituent that constantly comes in and complains about some road department procedures, and so I will put John Doe came in and discussed the maintaining of roads in his area, and I'll kind of give the, not an address, but the village of where he lives. It kind of addresses it, but a person can come in and rattle on for ten minutes about the same item. And so one sentence pretty much can take care of all of it.

SENATOR WEHRBEIN: And even though the subject matter isn't mentioned.

SHERRY SCHWEITZER: I will put...now, what you're talking about isn't...I will at least put the subject matter always.

SENATOR WEHRBEIN: Okay. I just wondered; thank you.

SENATOR SCHIMEK: Thank you, Sherry; appreciate it.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 58

SHERRY SCHWEITZER: Thank you.

SENATOR SCHIMEK: Next opponent.

SANDRA STELLING: Senator Schimek and committee, I'm Sandra Stelling, S-t-e-l-l-i-n-g, Jefferson County clerk, register of deeds, election commissioner, and I'm also cochair of the legislative committee for the Clerks, Register of Deeds, and Election Commissioners Association. And Sherry mentioned part of it, but I do want to say that our Clerks' Association and NACO does give training to the county boards and to us, as clerks, on the open meetings laws and how to take the minutes and what needs to be in those minutes. A lot of them say the only thing that needs to go in the minutes is what was acted upon. Personally, I don't feel that way. If John Doe comes in and wants to talk about his road, I put John Doe was in to discuss his road, or whatever. As for recording the closed sessions, I guess I have a little problem with that. What kind of equipment are you going to record it on? That's going to be an extra expense to the county. Is it an unmandated fund that we're not going to get any funds to do this? How much are you going to require? We do post our agendas on our Web site, and like Sherry said, they're already there for next week and they are updated continually. They're always in our notice in the paper that they can access them on our Web site. As to the cost for the copies that we make in our office, there again we have had much discussion in our association workshops on what we feel is a feasible amount. I know not all counties are charging quite the same, but there again your wages vary across the county on what you could charge. The agenda items that are on there, most of mine, hopefully, you can understand what they are. We're going to adopt resolution 2005-1 to transfer money from one fund to the other, and I put that on there and what it is for. My understanding of closed sessions is on personnel negotiations or the purchase of real estate. I don't feel those should be out to the public. I would say that might hinder, especially on personnel; when you get into small communities, everybody knows everybody and you know how stories fly. I don't think that needs to be on the agenda or open to the public. Other than that, I guess if you have any questions I'd be willing to answer them.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 59

SENATOR SCHIMEK: Thank you, Ms. Stelling. Are there any questions? Seeing none, thank you.

SANDRA STELLING: Thank you.

SENATOR SCHIMEK: Appreciate your being here. Are there any other opponents? Seeing none, I think we're ready for neutral testimony.

ALAN PETERSON: Chairman Schimek and members of the Government Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I am the lobbyist and attorney for Media of Nebraska. We just couldn't bring ourselves quite to be registered as an opponent of this bill because we do believe strongly in strengthening both public records and public meetings laws. And we think there are at least two good points made; perhaps not drafted well, but good points made for consideration--maybe three. And we think there are something like 15 serious problems with this bill as drafted. Nevertheless, because it's a mix, I testify as neutral. What's good, in my personal view and from our standpoint, the criticism of the notice given to the citizenry of what's going to happen at the meeting. I think it's fair criticism. I think there are a lot of agendas published or posted, which is all they have to do, as you know, in many situations, post at the office, where you just cannot tell what's the issue. And I don't think you have to put down what the motion is going to be, nor do I think you even have to put down, well, there's going to be a closed session, because that can come up and you wouldn't know about it in advance. But, yes, whether it's a one-line requirement, as this bill suggests, Senator Preister's bill suggests, or other language to make it necessary to be really informative about what's coming up. That's a good idea and I don't see how anybody can really object to that piece. Secondly, with regard to the public records, there is language on page 3 to try to hammer down the costing or pricing of public records so it really does just represent the added costs to the public entity of producing that record. And I think that's a good idea. We tried, in that very same statute back about five years ago perhaps, to make clear that the general principle is that public records should be furnished at cost, and because lots of different things can go into cost, we didn't hammer it down further.

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 60

If there are abuses, if there are people charging excessive amounts for retrieval or putting a high-priced officer to pull the records and then charging a portion of their salary, that's an abuse. So we think we've...there's two legitimate complaints here. I think the problem is, this is a shotgun bill. It needed a rifle, maybe a two-shot derringer if they still make those. There's one other position taken, which is to tape the executive sessions. And, you know, I don't think we need that at this point. But I think it's fair to say that if we continue to learn, and I learn about a lot of public meeting situations because I do hotline for the media on these things. And we know there are some abuses where they go into executive session on one reason, but they really do stray. And unless you have a turncoat on the public body or one who wants to do the right thing and get it stopped, there's nothing, as the proponents say, that you can do about it. Well, if that keeps up, it may come a time when taping and a court review, and so forth, is necessary. I don't think we're there yet, but I think it's a fair warning that's put in this bill. So that's a maybe. What's wrong with this bill, from our standpoint, in my own opinion, many, many things; it's draconian. You do not need to jack up the penalty from three months in jail and \$500, to \$1,000 and six months in jail. The only prosecution I know of was in connection with the lovely activities in Boyd County, where the opponents of the siting got somebody indicted who happened to be a proponent of the siting under the open meetings law. That's the only prosecution I know of. It's a law that is a criminal statute, and that should be used by the prosecutors as a warning device, but very seldom a prosecution. These are volunteer people, for the most part; they shouldn't be prosecuted unless it's really extraordinary. Many years ago, the Regents were threatened with prosecution if they didn't stop having breakfast meetings where they really decided most of the day's issues. Now, they still have the breakfast meeting, but I think they now limit it to breakfast, rather than talking about the agenda. Another problem, I think...I don't believe you really want to use the county attorneys as the enforcer because they are the advisors of most of the county officials. You create many conflicts of interest. And if you don't use the Attorney General, you can have several different opinions on the same issues. I just don't think that's a particularly

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 61

good idea. Trying to define what's public business so you know when they should be having a meeting--good try, but the language offered on page 7 is so vague, that's not going to help. It's not well drafted, in my opinion. Removing the provision that allows the chair to limit the meetings at which a particular person can speak: The present law says you can't stop people from speaking all the time, but you don't have to let them talk at every meeting; that's where the law is now. This bill removes that, with the necessary implication that if somebody is there, you've got to let them talk, no matter how busy, no matter how many times you may have heard them. I don't think it's a good idea. There are many other problems in this bill. Nevertheless, the output from citizens especially, not litigators, but citizens who want better access to records and meetings, is frankly pretty heartwarming to me. And I think to the extent the motivation for this bill is really public access and not to create an axe for litigation, then it's worthy that you take a good look at pieces of it. I'd like to see it totally redrafted obviously. We're neutral because of the good idea, but the execution in this particular bill is very poor in my opinion.

SENATOR SCHIMEK: Thank you, Mr. Peterson. Are there any questions? Seeing none, thank you for being here and waiting.

ALAN PETERSON: Thank you.

SENATOR SCHIMEK: Is this the last neutral testimony of the day? I think so.

JACK GOULD: Senator Schimek, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I'm here representing Common Cause Nebraska. We also feel very good about seeing the number of citizens that have come forward to speak on the issue. And we have concerns. One concern is certainly the use of executive session. I think it's very naive to assume that every school board across the state follows the rules closely. If there is a better way to have this done, we know that many public agencies already begin to tape executive sessions. If taping it will solve the problem, then so be it. That would probably give people at least a recourse to know what did go on if they go to

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

Committee on Government, Military LB 591
and Veterans Affairs
February 10, 2005
Page 62

court and force the disclosure of the records. The notification issue is really a serious issue, as well--letting the public know exactly what is going to be addressed in the meeting. Another part of that is also the time factor. The law itself says a reasonable amount of time for notification--and this hasn't come up today. Reasonable is up for discussion. The only case that has ever been brought before, successfully, before the courts, was a hearing that was within 12 hours or 24 hours. I think the meeting adjourned at midnight, and they immediately called for a meeting at 10 o'clock the next morning. And that was decided unreasonable. But the time factor as to notification and actual holding of the meeting is something that needs to be addressed, as well. Finally, the punishment issue I think is the thing that also kind of scares us off. There is a point at which, when you start to punish people, that you start to lose their willingness to serve. And the increase in penalty is not that great that it's going to be a deterrent. I'm not sure that that is the way to solve the problem. I think about everything else that we could comment on has already been said.

SENATOR SCHIMEK: (Exhibits 16-21) Thank you, Jack. Are there any questions? Seeing none, thank you for being with us. Are there any others who wish to testify in a neutral capacity? Seeing none, Senator Preister did waive closing, and before I close the hearing, I would like to mention that we received a letter from the Lancaster County Board in opposition to LB 591; one from Gage County, Riverside Township, in support; one from GASP of Nebraska in support; one from the Nebraska Association of County Officials in opposition; one from the University of Nebraska--it's hard to tell where they are on this bill but they have suggestions for us; and one from the city of Omaha in opposition. So with that, we will conclude the hearing on LB 591. And Senator Raikes has joined us to open on LB 581.

SENATOR RAIKES: Thank you, Senator Schimek.

SENATOR SCHIMEK: You're welcome. We are beginning testimony on another bill, so if you would move your conversation outside, that would be great. Thank you.

SENATOR RAIKES: Everybody will be focused on their

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 63

attention on this bill.

SENATOR SCHIMEK: Right.

LB 581

SENATOR RAIKES: Senator Schimek, members of the Government Committee, I'm Ron Raikes, representing District 25, the "Prevailing District," as contrasted to Senator Langemeier, the 23rd District, which would be the "Two Votes Short District."

SENATOR LANGEMEIER: I needed a title, thank you. Two votes short; I'll write that down.

SENATOR SCHIMEK: I'm sorry I've never heard this prevailing stuff before. What does that mean?

SENATOR RAIKES: Here to introduce LB 581. LB 581 proposes the inclusion of another type of record among those which may be withheld from the public under Section 84-712.05, and thus I present you, of course, a dilemma. The bill, if adopted, would allow the county assessor to withhold from the public, information pertaining to income and expenses of any type of income-producing properties submitted to the assessor's office to establish a value for that property. Presently, there's a reluctance on the part of business owners to turn over information related to their income. As a public record, competitors can access such information and potentially use it to gain advantage in the market place. Offering the opportunity to keep these records sealed will give businesses the peace of mind to be more forthcoming with this information, which in turn enhances the accuracy of the assessment process, at least potentially. I think it's important to note that the authority to withhold records is discretionary under statute. Adding these records to statute will not mandate that this information be kept private; it simply gives the assessor the ability to exercise his or her discretion with regard to the release of such information. However, as stated earlier, I think that good reason exists for withholding these records. It offers the opportunity for the assessor to protect this information, giving businesses greater willingness to share

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 64

it with the assessor and thereby leading to a more accurate assessment of the value of property. Thank you.

SENATOR SCHIMEK: Thank you, Senator Raikes. Are there questions of Senator Raikes? Yes, Senator Wehrbein, then Senator Fischer.

SENATOR WEHRBEIN: This is deeper than what you're talking about, so I'm not...but we use income producing approach, the formula, to determine the value of some property apparently.

SENATOR RAIKES: Some, yes; not all.

SENATOR WEHRBEIN: Okay.

SENATOR RAIKES: You've got, what, sales, income, and something

SENATOR WEHRBEIN: So, you're not using sales, in this case; you're backing into the value of the property.

SENATOR RAIKES: Well, yeah, and certainly Norm Agena can explain to you much better than I exactly when this approach might be used. But there...I hope I've made it clear that there are times when this, if not the main method of assessment, is at least an important component. And if you really can't promise a property owner that this can be kept confidential, they may be very reluctant to provide that information. So that's the point. And I understand the other side of it is, when do you stop. You know, it's very important to have public information on assessment because people have the right to compare and see how they're being treated. So I leave that job to you.

SENATOR WEHRBEIN: Okay, thank you.

SENATOR SCHIMEK: Thank you, Senator Raikes. Any other questions? Oh, Senator Fischer did yours get taken care of?

SENATOR FISCHER: I think from Senator Raikes' comment, I'll wait and ask my question of the next person.

SENATOR SCHIMEK: Okay, thank you. Thank you, Senator

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 65

Raikes. Would you be here for closing?

SENATOR RAIKES: I've got to get back to the tax incentive wars.

SENATOR SCHIMEK: Oh, okay, do a good job. Next proponent, our first proponent.

NORMAN AGENA: I'm Norman H. Agena, A-g-e-n-a. I'm the Lancaster County Assessor/Register of Deeds. To address why we're asking for this, we mail out approximately 800 surveys every year to only those property owners that own income-producing property, which is multifamily, commercial, or industrial. Those are the only ones that we use the income approach to develop value. We have found over the years that they're very reluctant to mail in this information because once it hits our office, with a few exceptions, their individual income and expense statements become public documents. We are to the point right now, we have so little information to work with and we can't really go out here and determine what typical rental value should be for types of property. We have visited with several of the property owners, they assured us they would be not so reluctant to share this information with us if, once it gets into our office, it's not considered to be public information. There is, however, one exception to this public information. If you get into a protest process, and you have as part of your protest packet all of your income and expense information, and that is a public document. The document that I'm talking about is the one that I initially get so that I can establish typical rents and typical expenses and typical vacancies for a type of property. We certainly hope that you'll advance this bill because we're having some real problems. Right now, particularly in Lincoln, we don't know for sure what the vacancy rates are because no one wants to talk to us right now because they think, if we tell you what the vacancy is in our building, you're going to talk to the next building owner and tell him what's going on, and we need to stay out of that war. We just need the information. I'd be glad to answer any questions.

SENATOR SCHIMEK: Yes, Senator Langemeier.

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 66

SENATOR LANGEMEIER: Thank you, Chairman. Are there not enough sales on income-producing properties to use the sales method that we use for everything else?

NORMAN AGENA: It's not a reliable source to use because when you buy a piece of income-producing property, you're going to be buying the income stream on it. What it sales for in a market, unless you know what the actual motivation of the buyer was, you can't rely on the market sale. We don't rely on market sales; we rely strictly on income. That way we can treat...for example, if I'm a good manager of my property and I keep my rents up, and you don't, I can assure you that people are going to pay more for my property than they are for yours because they don't have to go through the hassle of raising rents and a variety of things on it. So, it's an indication of value but we don't rely on it very heavily, no. We do that as far as residential is concerned, but not income producing property.

SENATOR LANGEMEIER: If you cannot determine the motivation of a buyer based on sale prices, how do you determine the motivation on a buyer versus return on investment? You may settle for 4 percent...

NORMAN AGENA: We don't know.

SENATOR LANGEMEIER: ...return; I may settle for 7 percent return. That would drastically affect the value.

NORMAN AGENA: I'm going to pick out of the market what the typical investor is looking at in the way of a return, based upon the market sale and what was reported at the time of the sale. That doesn't necessarily mean that that was accurate information. But I do need to know what that investor, a typical investor, his return requirement is for a particular kind of property--and it may vary. Right now, we're seeing people are buying multifamily. And they're paying more for the multifamily, in quote, than what it's really worth in the market, based on the income. And the reason they're doing that, they're getting a better return out of that than they are their savings accounts right now. We try to stay out of what their motivational factor is. We look at it after it happens. Say, it appears that they were looking for a 6 percent return, whatever it may be, we need

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 67

to know that. But in order for us to go out and take an individual property and say the typical rents on it are X number of dollars, here's the typical expenses, and here's the typical vacancy on there, we use that information to do approximately...oh, I want to say there's probably about 5,800 properties in Lincoln.

SENATOR LANGEMEIER: Thank you.

SENATOR SCHIMEK: Senator Fischer.

SENATOR FISCHER: And did I understand you to say you don't rely on market sales, you rely on income?

NORMAN AGENA: On income-producing property, that is correct, yeah.

SENATOR FISCHER: Is this property listed as commercial then, on valuations?

NORMAN AGENA: It could be multifamily, it could be commercial, it could be industrial. That's the only time we use the income approach.

SENATOR FISCHER: When is the only time you use the income approach? On the three you just mentioned?

NORMAN AGENA: Those three types of properties, yes, ma'am.

SENATOR FISCHER: Okay. You said you have problems getting these surveys back?

NORMAN AGENA: Um-hum.

SENATOR FISCHER: Obviously, it's not required that the surveys be returned then?

NORMAN AGENA: That is correct; right now, it is not. We simply ask...we mail it out to the property owners so that we have an idea of what typical rents may be for a typical type of property. And right now, they're very reluctant to mail that information back to us.

SENATOR FISCHER: But do you...you know the people that you

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 68

are requesting this information from probably should be getting it back to you?

NORMAN AGENA: They...

SENATOR FISCHER: They do own this property...

NORMAN AGENA: Yes, ma'am.

SENATOR FISCHER: ...and they should be responding.

NORMAN AGENA: Yes.

SENATOR FISCHER: Would penalties help in this case?

NORMAN AGENA: I don't want to go down that road, no. I don't think you can require them to submit an operating statement to you, and I would not suggest even trying that.

SENATOR FISCHER: Okay, thank you.

SENATOR SCHIMEK: Thank you. Any other questions? Yes, Senator Wehrbein.

SENATOR WEHRBEIN: Well, I'm trying to refrain from getting off into the appraisal assessor issue, because this is a bigger issue and I want to confine it. But if...can you relate back to sales at all?

NORMAN AGENA: We do. We go back and look at the sales, but we do not rely on those very heavily for determining...because you need to remember that you're looking at history when you look at a sale. If this year you send me what the income is, I know what it was when it sold, a typical type building, but I need to relate it to what's happening this year, not what happened last year or two years ago.

SENATOR WEHRBEIN: Well, I can understand your dilemma except I also wonder, and maybe it makes too much work with 5,800 properties, but if they don't send it back, why can't you simply put your best judgment into it, and if they don't like it, they can appeal it?

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 69

NORMAN AGENA: We do that and we get a lot of protest.
Um-hum.

SENATOR WEHRBEIN: But at least you get...you force the
figures out of them, right?

NORMAN AGENA: Well, they may not necessarily come back in
and give us the information, even at that time, because that
protest process is handled by the Board of Equalization.
They may not even submit income and expense statements at
that point. They may just come in and say it's too high
because my rents are, I've got vacancies, or whatever it may
be.

SENATOR WEHRBEIN: Will the board listen to that type of
thing?

NORMAN AGENA: Oh, yes, they do.

SENATOR WEHRBEIN: Are yours appraisals or are yours...do
you use your Board of Equalization or do you have referees?

NORMAN AGENA: We have referees. Lancaster County has
referees.

SENATOR WEHRBEIN: So they are more...well, I
won't...(laugh) okay.

NORMAN AGENA: When they protest, they're asked to bring in
information that the referee can review. Very few of them
will bring in operating statements. But they'll bring in an
abbreviated statement; you're not real sure if it's accurate
or not. We need to have a little more accurate information
than that. And I can tell you when they come in to protest,
their income is always down and their expenses are always up
and their vacancies are out of sight.

SENATOR WEHRBEIN: Well, I understand your dilemma. I'm
just relating to the big picture which you're more familiar
with than I am. But as we get into farmland and everything,
the (inaudible).

NORMAN AGENA: Yeah, that's a whole other issue.

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 70

SENATOR WEHRBEIN: Yeah, I know; I know it is. And that's why I don't want to go there, except it's a big issue.

NORMAN AGENA: Yeah, Senator, what we do now, the ones we get back in, unless we have a request that we mail them back to them, we shred them. And I can assure you, we probably get back in 10 percent, maybe on a good year of our surveys.

SENATOR WEHRBEIN: Okay, thanks.

SENATOR BROWN: Senator Fischer has a question.

SENATOR FISCHER: Do you have any authority right now to demand information from people?

NORMAN AGENA: Yes, I can on...

SENATOR FISCHER: Do you use it?

NORMAN AGENA: Well, hold it; just give me a moment here. I have the right to subpoena information on, for example, personal property schedules. I do not have that authority to demand any other information from...in fact, you can tell me not to come onto your property, and I will not walk on your property. So I cannot demand a whole lot of anything, and prefer not to.

SENATOR FISCHER: That's true of any property in Lancaster County?

NORMAN AGENA: Yes, ma'am. We have several of them that they refuse to have us come on the property, and we don't.

SENATOR FISCHER: Is that true across the state?

NORMAN AGENA: Yes, ma'am. Um-hum. It used to...several years ago, we had the right to do anything we wanted to do, and then there was some federal laws that came into existence, and so we always ask now, if somebody's home, may we walk around your property; we even ask permission to do it now. And you can say no and we won't.

SENATOR FISCHER: And that's based on federal law.

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 71

NORMAN AGENA: Yes, ma'am.

SENATOR FISCHER: Okay, thank you.

SENATOR BROWN: Any further questions? Senator Wehrbein.

SENATOR WEHRBEIN: I don't want to harass you, but if you use this information, will that go to the Board of Equalization? I mean, it looks like to me...

NORMAN AGENA: No, it doesn't. It's the information that I use in-house. For example, I want to know what the typical income is on fourplexes in southeast Lincoln in a three-block area. If I get all that data back in, I do not assign a particular income to a particular building. I look at all of those incoming and expense statements, and say, it appears the typical rent for an apartment in a fourplex that's 25 years old in southeast Lincoln in this area should be X number of dollars per square foot or per unit. It appears the typical expenses should be...that's what I'm after is to determine that typical income, the typical expense, and the typical vacancy. I do not apply it to individual properties.

SENATOR WEHRBEIN: So, you're saying you could be more accurate when you submit your form, and then...for the appraised value.

NORMAN AGENA: Um-hum.

SENATOR WEHRBEIN: And then it should reduce the amount of appeals.

NORMAN AGENA: That's exactly correct.

SENATOR WEHRBEIN: And then the Board of Equalization, in theory, wouldn't have the rationale to raise or lower those values on appeal.

NORMAN AGENA: That's correct, because you wouldn't have the appeal.

SENATOR WEHRBEIN: But they will not, even at that time, have the benefit of your analysis to help it, so they still

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

Committee on Government, Military LB 581
and Veterans Affairs
February 10, 2005
Page 72

could be arbitrary, quote--that's my words.

NORMAN AGENA: They will have everything, because we produce what we consider to be the typical income and expense statement for a property. That is public record.

SENATOR WEHRBEIN: And that might be an average of those that you get back?

NORMAN AGENA: That's what it's based on, yeah, to determine what the typical...

SENATOR WEHRBEIN: So, you're saying you would have more of a rationale than you do now.

NORMAN AGENA: That would be more accurate information.

SENATOR WEHRBEIN: And you would have a higher percent. Instead of 10 percent, you might have 50 percent.

NORMAN AGENA: That's exactly correct, um-hum.

SENATOR BROWN: Any further questions?

SENATOR WEHRBEIN: Thank you.

SENATOR BROWN: Thank you. Any further testifiers in support of LB 581? Any opponents?

KORBY GILBERTSON: (Exhibit 1) Good afternoon, Senator Brown and members of the committee. For the record, my name is Korby Gilbertson, that's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Media of Nebraska in opposition to LB 581. I think Senator Raikes made my testimony for me when he said there are two sides to this. The one side that thinks that this needs to be secret and the other side that thinks that there is an overriding interest in having these types of records public; that's the side I'm falling on. Media of Nebraska feels that there needs to be a compelling reason to keep these types of records private, and that this does not equal that type of situation. There's a couple reasons why. First of all, anyone can object to anyone else's property valuation. If the records are kept secret,

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

Committee on Government, Military LB 581, 685
and Veterans Affairs
February 10, 2005
Page 73

that gives them less information to go on, to do that. Secondly, it's not clear as to how many people are actually objecting to this type of information being made public. Is it one very large landowner in Lancaster County that doesn't want other people looking at their income producing property, or is it a more overreaching problem of many landowners not responding to the surveys? I think that needs to be addressed. And I won't go through and read the letter to you because I feel that all of you can probably do it on your own time. But I want to just restate that because of the impact that this could have, and when you look at property taxes, especially as they relate to large landowners, they have direct impact on the valuations of other property in the counties. So that, we feel, is a very important thing to think of when looking at this type of legislation and an overriding reason to keep this type of records public. With that, I'd be happy to answer any questions.

SENATOR BROWN: Any questions? Seeing none, thank you.

KORBY GILBERTSON: Thank you very much.

SENATOR BROWN: Any further testifiers in opposition of LB 581. Any neutral testimony? Then we will close the hearing on LB 581 and move on to LB 685. Senator Smith is not here and so we will stand at ease for a few moments.

AT EASE

LB 685

SENATOR SCHIMEK: Good afternoon, Senator Smith. You are going to open on LB 685.

SENATOR SMITH: (Exhibits 1 and 2) Thank you. Madam Chair, members of the Government Committee. My name is Adrian Smith, for the record, A-d-r-i-a-n, Smith, S-m-i-t-h. LB 685 would change the Nebraska law pertaining to records that may be withheld from the public. Currently, Nebraska law allows job application materials of applicants seeking employment with a public body to be withheld from the public, with the exception of finalists. LB 685 would

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 74

include reference letters and school transcripts of finalists as job application materials that could be withheld from the public. Employment applications and resumes of finalists could not be withheld. There's a little bit of concern on some wording. Page...

SENATOR SCHIMEK: Oh, we don't have enough pages anymore.

SENATOR SMITH: That's all right. And so I've proposed a couple of different amendments. You'll see that my intent is to not keep everything behind closed doors. I can appreciate the need and desire of the public to know who the finalists are, who true finalists are. And if you look at the current statute, it basically requires that any applicant who receives an interview by the public body, regardless of the managerial level or whatever level, for example, is required to disclose their transcripts. I think that there could be some rather interesting things that could come about from that, so I am wanting to be proactive more than reactive. I think we're at a stage now where we're not looking for a university president or other high-level positions, to my knowledge, where we can be proactive on this, and, I think, clean up some language. So I have proposed a green copy and then two other amendments that are different ways of, well, I'd say skinning the cat, but I just came from Natural Resources and I might get thrown out on the street for saying that. Nonetheless, those are my proposals and I would take any questions you might have.

SENATOR SCHIMEK: Senator Wehrbein has a question.

SENATOR WEHRBEIN: Could you distinguish between the two amendments that you're having and how you changed?

SENATOR SMITH: It's, same way of approaching that...let me pull that up here...and AM0370... It's just a different way of wording it, I believe. And, as it reads there it's...

SENATOR WEHRBEIN: It doesn't change the main...

SENATOR SMITH: Not to my knowledge,...

SENATOR WEHRBEIN: Okay...

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 75

SENATOR SMITH: ...and that's certainly not my intent. There could be...let me see the other one, AM0359. It generally gets to the same thing.

SENATOR WEHRBEIN: Okay. It just reduces the amount of information to be made public, once they reach the finalist stages.

SENATOR SMITH: Right. And the interview must occur by the public body. I mean, that's the most relevant; that, to me, truly defines finalist. The regents are hiring the president, the city council is hiring the city administrator. I think that is very fair to disclose those; those are the relevant ones anyway; that's basically what happened with LPS last year. And, I think that Senator Schimek very effectively pointed out last year that it worked well. I would like to see us form our statute around what worked well, for the future, rather than, I think, having very problematic language that requires any teacher to disclose transcripts, any receptionist working for a public body, if they get to the interview process. And what defines interview? Is the initial phone interview with LPS that takes place over the phone, or at least used to? That could be considered an interview. And anyone could go and demand to see the transcripts and that information, their reference letters, and, I think, downright harass the applicants whether or not they're truly a finalist and interviewed by the public officials or not.

SENATOR WEHRBEIN: Thank you.

SENATOR SCHIMEK: Yes, Senator Langemeier and then Senator Brown.

SENATOR LANGEMEIER: I think I'm out of order here, but thank you, Madam Chair. Can you...I know you submitted the green copy as your first choice. Do you want to clarify which one of these and what order? Or do you not really rank one over the other, after the green copy?

SENATOR SMITH: There was some concern that...right, it's been a little challenging because there's a lot of double negatives in what cannot be withheld, what may be withheld,

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 76

what shouldn't be withheld, (laugh) and so I really at this point don't have a preference. But it does indicate my intent here, and I think it's workable regardless.

SENATOR LANGEMEIER: Thank you.

SENATOR SCHIMEK: Senator Brown.

SENATOR BROWN: Thank you. So each of the choices still maintains the underlying idea that it's the public body hiring the individual, rather than some administrative level that is downstream from the public body.

SENATOR SMITH: Correct. The public body elected by the citizens; that's the public body doing the interview for that high-level position, whether it's local or state.

SENATOR BROWN: But my question was, all three maintain that same idea.

SENATOR SMITH: Yes, yes.

SENATOR BROWN: It's just that there's different materials withheld in the different versions?

SENATOR SMITH: Actually, I believe the same materials would be included or excluded.

SENATOR BROWN: So what is the difference? We're trying to get a big difference. (Laugh)

SENATOR SMITH: I know. It was indicated that the green copy was a little difficult to understand, and so these different like copies I thought would be additional approaches to the same goal. And I apologize.

SENATOR BROWN: So we just have to read them.

SENATOR SMITH: I'm sorry.

SENATOR SCHIMEK: Seeing no further questions, Senator Smith, thank you very much.

SENATOR SMITH: Thank you.

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 77

SENATOR SCHIMEK: Are there proponents of the bill? Any who wish to testify in favor of LB 685? Are there opponents to the bill?

JACK GOULD: Senator Schimek, members of the committee, my name is Jack Gould, and I'm here representing Common Cause Nebraska. I don't have privilege to the amendments, so I'm probably...I might be off track here, so forgive me if I am. But we're taking the green copy and telling you that we have some serious concerns. First of all, this restriction of information is really confined to the final candidates, whether that be one, two, three, four, or five. And we would assume that in most cases of hiring, anything that would be particularly harmful to the public knowing or to the candidate would, by this time, be eliminated. And so it seems to us there's no reason why the finalists could not disclose their academic standing or whatever. This is information that apparently is vital to the hiring process, so it ought to be vitally available to the public. There's no question about that. Back in 2004, if you remember, there was LB 1202, which was brought before the Government Committee. And in that bill there was an effort to limit public access to...specifically to the hiring of the president of the University of Nebraska, and it did try to restrict the records and information about other candidates. And we spoke very strongly against that bill, and we were very pleased to see this committee withhold the bill, and we think the same logic applies to this case. The problem with...one of the most serious problems with LB 685 is the fact that it also would give public agencies the opportunity to hire consulting firms to do the hiring, because if you read further in the bill, you'll notice that a consulting firm would not have to provide any information. They are stricken out of the legislation. And so the consulting firm could actually do the hiring, recommend one candidate if they chose to, to the University of Nebraska or whatever public entity it was, and they could, in turn, just disclose the final candidate's resume to the public and that would be it. And that takes the public out of the whole process. So we are very strongly in opposition to LB 685. We think the public always has a right to know. The hiring process is already...the disclosure process has already been limited to finalists. And so any further limiting of public access is

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 78

going to be severely criticized by the public.

SENATOR SCHIMEK: Thank you. Are there any questions?
Seeing none, Mr. Gould, thank you. Next opponent.

ALAN PETERSON: Chairperson Schimek and members of the Government, Military and Veterans Affairs Committee, I'm Alan Peterson and I'm the registered lobbyist and attorney for Media of Nebraska. And I still spell my name P-e-t-e-r-s-o-n. We oppose this bill. I had opportunity to check with the representative of the University of Nebraska, which my law firm for a hundred years or so has represented, to be sure that I might testify today against this bill without being deemed in conflict, and was assured that it is not the university's bill. And so I do want to testify very strongly that this bill, if passed...and I haven't had a chance to look at the amendments but assume they're about the same...if passed, it would mean that when public bodies hire their key employees, whether it's city, county, or statewide, simply by giving an interview, not by the whole public body, but just by a part of it, less than a quorum, or by hiring an employment agent or consultant to do the interviewing, nobody becomes a finalist under the definition that this would now have. Nobody becomes a finalist until a quorum of the whole public body does an interview. So that if we should have an entity that wants to hire in secret, without input from the public as to an important public employee, this will allow the subterfuge of simply weaning down the candidates to the last one or perhaps two, and then granting them an interview by the entire public body. And then they become the finalist by the definition in here. And if they're a finalist, then their job application materials, only now just part of them, would become available to the public. I might suggest that the horse will be out of the barn, saddled and bridled and probably halfway to the market by the time the public gets any input at all under that scenario. It's more than horse out of the barn. And the compromise made about seven years ago was that, okay, even though the Attorney General says all job application materials of public employees are public, the compromise made was in response to concerns from the school administrators and the city/county and the university will compromise, only those who become a finalist and get interviewed. But we specifically foresaw the possibility of

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 79

this sort of subterfuge, so we said, interviewed by the public body or its agents, makes them a finalist, makes the records public. And to be honest, that's worked pretty well. It's not private people being hired for private business. It's our, the public's that is, employees. And why their credentials and the decision making about hiring them or not hiring should be left solely in the hands of the consultants or agents or the public body, without the public's input is far beyond me. We, at Media Nebraska, opposes this bill strenuously.

SENATOR SCHIMEK: Thank you, Mr. Peterson. Are there any questions. Seeing none, thank you for being with us today.

ALAN PETERSON: Thank you.

SENATOR SCHIMEK: Any other opponents? Any who wish to testify in a neutral capacity? Senator Smith to close.

SENATOR SMITH: I guess I've tried to find a compromise and didn't. And again, I just reiterate the fact that I believe that current statute is problematic with what I think are otherwise highly-confidential items and keeping in mind that personnel files, I guess after the application and hiring, is of the utmost confidential nature. And, in fact, federal guidelines establish that. And I would hope that we could rein things in just a little bit. Thank you. Questions?

SENATOR SCHIMEK: Thank you. Any questions? Yes, Senator Brown.

SENATOR BROWN: Do you believe that current law speaks only to key positions which was referred to by a previous testifier?

SENATOR SMITH: No. It says in any interview by a public body or its agents, representatives, consultants for any public employment position. Any public employment position; that's current statute.

SENATOR BROWN: And so, even if the Board of Regents, let's say, is not responsible for the hiring of the...directly responsible for the hiring of the person, it's somebody within the administration that that information could still

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 80

be considered a key position and all information would be available?

SENATOR SMITH: Do I think that it is currently?

SENATOR BROWN: Yeah.

SENATOR SMITH: Yes, yes.

SENATOR BROWN: Do you think that our current statute clearly defines what a finalist is?

SENATOR SMITH: No.

SENATOR BROWN: Thank you.

SENATOR SMITH: Thank you.

SENATOR SCHIMEK: Yes, Senator Langemeier.

SENATOR LANGEMEIER: Senator Smith, do you think the current policy we have now, directly inhibits the ability to get quality candidates?

SENATOR SMITH: I think that it certainly could. I wouldn't be able to speak to exactly what's happened, but I think that recruiting phone calls should be allowed, and it's cloudy as to whether or not that can occur without disclosing and sending a press release prior to the call. And I think that's problematic. I just think that the current statute is wide open, inappropriately so, and we can bring that in a little bit; at the same time, releasing relevant and necessary information in the public interest.

SENATOR LANGEMEIER: Thank you.

SENATOR SCHIMEK: Senator Fischer.

SENATOR FISCHER: Senator Smith, under current statute does it only apply to administrative positions of public employees?

SENATOR SMITH: No, it applies across the board.

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

Committee on Government, Military LB 685
and Veterans Affairs
February 10, 2005
Page 81

SENATOR FISCHER: Would this apply to school teachers?

SENATOR SMITH: Yes.

SENATOR FISCHER: In any public school district in the state?

SENATOR SMITH: Right.

SENATOR FISCHER: I guess I was always under the impression as a board member that their personnel files were confidential, and their transcripts were not shared, even with the board most of the time because of problems down the road if the board had to have a hearing. But now you're saying that under current law anyone can go into any school district in this state and ask to look at a teacher's personnel file...

SENATOR SMITH: Well, personnel...

SENATOR FISCHER: ...or transcripts, their school transcripts.

SENATOR SMITH: Right. Right, their application, resume, reference letters, and school transcripts--those items. And what I'm saying is, let's make it upper management effectively and only job application and resume.

SENATOR FISCHER: So you would say any of the employees throughout the state, in any agency or legislative employee, anybody, that the public can go and ask to see their transcript if it's available?

SENATOR SMITH: Yes; job application materials, yes.

SENATOR SCHIMEK: Seeing no further questions, Senator Smith, thank you.

SENATOR SMITH: Thank you.

SENATOR SCHIMEK: And that will conclude the hearing on LB 685 and that concludes the hearings of the day, and I would entertain a move to go into exec session.