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Government, Military and Veterans Affairs Committee
February 26, 2009

[LB402 LB422 LB488 LB550]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 26, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB422, LB488, LB402, and LB550. Senators present: Bill Avery, Chairperson; Pete Pirsch, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Rich Pahls; Scott Price; and Kate Sullivan. Senators absent: None. []

SENATOR AVERY: I want to welcome you to the hearing of the Government, Military and Veterans Affairs Committee on this 34th day of the 101st Legislature. My name is Bill Avery. I chair this committee. Before we get started, I would like to introduce the phantom members of the committee. I don't know if I've ever been able to introduce all of them while they were here. Do you ever get a chance to do that? []

SENATOR CORNETT: Occasionally. []

SENATOR AVERY: Soon to arrive on my extreme right over here will be Senator Rich Pahls from Omaha. He is seated next to Senator Charlie Janssen of Fremont, and next to him is Robert Giese from South Sioux City who is present. Thank you, Senator Giese. And Senator Pete Pirsch from Omaha who is also Vice Chair of the Committee. Next to me is Christy Abraham, the legal counsel for the committee. Senator Karpisek from Wilber will be joining us in a few minutes. And he is seated next to Senator Scott Price from Bellevue. And also joining us later will be Senator Kate Sullivan from Cedar Rapids. Sherry Shaffer is our committee clerk. If you are testifying, you will be asked to fill out a form that you can find at the entrances. It looks like this. We ask that you complete this in very clear, legible print, and give it to Sherry so that we can have a record of your testimony. If you are here to appear not as a testifier, but you wish to be recorded for or against a bill, there is a second sheet of paper to fill out. They are also available at the entrances. Please print on that as well. We have two pages: Courtney Lyons from Plattsmouth and Nick Bussey from Lincoln. They will...if you have any material to give to the committee, they will distribute it and make sure you have enough copies for all of us; that's 12 copies, I believe. A few comments about our procedures. The bills will be taken up in the order of the agenda posted outside the room. That is, we will start with LB422 followed by LB488 and then LB402 and LB550. Those of you who have been here before know that the introducers get to make initial statements followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the introducing senator only. If you have a cell phone, please turn it off or put it on silent so you don't disturb the proceedings. We are pleased to have with us today, Senator Abbie Cornett from Bellevue. Am I right about that, Bellevue? []

SENATOR CORNETT: Yes. [LB422]

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SENATOR AVERY: Who is going to introduce LB422. Welcome. [LB422]

SENATOR CORNETT: (Exhibits 1 and 2) Thank you very much, Chairman Avery and members of the Military and Veterans Affairs Committee. My name is Abbie Cornett, and I represent the 45th Legislative District. I am here before you today to introduce LB422. LB422 is simply a modification of Section 80-401.01 of Nebraska state law which defines a veteran for the purpose of certain benefits. It is important to first note that as indicated on the fiscal note and from information from both the Department of Revenue and the Department of Veterans Affairs, that the service men and women fighting in our Global War on Terror which I am addressing in this bill already fall under the current definition of veteran in 80-401.01. As a veteran of the Persian Gulf War, however, I feel that it is appropriate for the Legislature to keep current with terminology in this section which is why I come before you today with this definition change. The green copy of the bill narrowly defines a veteran of the Global War on Terror as a person who has served in the Armed Forces since September 14, 2001, within the borders of present-day Iraq and Afghanistan as this is the most visible front on the War on Terror. However, it is clear that every service person today contributes to the broad mission of the Global War on Terror in some way. This is why I will be handing AM327 to LB422 which I hope the committee will adopt when moving the bill forward. And then I have further information to hand out in regards to why we picked September 14, 2001. LB422 with AM327 is intended to include all persons who have served in the Armed Forces since September 14, 2001, as a veteran of the Global War on Terror, in Section 80-401.01 for the purpose of claiming certain benefits offered by the state. Thank you for your time, and I'd be happy to answer any questions. And this came out of what we were doing this summer with the BRAC Commission--things that we could do to improve state statutes for our veterans. [LB422]

SENATOR AVERY: Good. Thank you. Any questions from the committee? Senator Price. [LB422]

SENATOR PRICE: Yes. Senator, thank you. Senator Cornett, thank you for bringing this forward. But when you talk about to get certain benefits, are we saying right now, there are benefits they are not receiving under the definition of terms now? [LB422]

SENATOR CORNETT: No. They are allowing the veterans to receive the benefits, but the terms need to be updated. That's simply what this bill does. The terms in statute refer to the Gulf War. And we are...we have moved...progressed since that point. [LB422]

SENATOR PRICE: But it's only because of their graciousness? Is it actually not mandated by statute right now that a veteran receive those same services? [LB422]

SENATOR CORNETT: I...that's where the rub is. The statute says the Gulf War, and it

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depends on how you define that. Typically it has not been defined to include Afghanistan, and that is where we are now. But we are including that in this state. [LB422]

SENATOR PRICE: Thank you. [LB422]

SENATOR AVERY: Any more...Senator Janssen. [LB422]

SENATOR JANSSEN: Thank you, Senator Avery. Senator Cornett, I actually had that same question and I just want to follow up on that with a...it's my understanding and maybe there's going to be somebody to come after you, and if so, that's fine. But veterans of...you would be included, I think, it was since August 2, 1990, anybody that served in the military would be considered a veteran of, I guess, I was in then, considered a... [LB422]

SENATOR CORNETT: Yes. But if you look at the statute and it's covered in the green copy... [LB422]

SENATOR JANSSEN: And I didn't so... [LB422]

SENATOR CORNETT: It breaks down all of the different wars we've been involved in, including the Spanish-American War. So this is basically cleanup language. [LB422]

SENATOR JANSSEN: Okay. I didn't know if we just started at one point and said that or? [LB422]

SENATOR CORNETT: No. No. If you look, it includes veterans of Vietnam. It defines that. Veterans of Spanish-American War. It defines that. Basically this is cleanup language. [LB422]

SENATOR JANSSEN: Okay. Thank you. [LB422]

SENATOR AVERY: We probably don't have any veterans of the Spanish-American War? (Laughter) [LB422]

SENATOR CORNETT: I wouldn't assume so. I think that only went to 1902, so I seriously... [LB422]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you. Are you going to hang around? [LB422]

SENATOR CORNETT: No, I have three other bills up in another committee, so. [LB422]

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SENATOR AVERY: Oh, lucky you. [LB422]

SENATOR CORNETT: Yes, I am going to waive closing. [LB422]

SENATOR AVERY: Okay, thank you. We'll now hear from the proponents of LB422. [LB422]

WENDY JOHNSON: Good afternoon. My name is Wendy Johnson, it's W-e-n-d-y, Johnson, J-o-h-n-s-o-n. I don't have any prepared formal testimony. I'm here as a representative of the National Guard Association of Nebraska and just to state that we support this bill as amended and answer any questions that you have for the Association. [LB422]

SENATOR AVERY: Thank you, Ms. Johnson. Any questions from the committee? Senator Price. [LB422]

SENATOR PRICE: Yes, if a person on drill, okay, and they're doing the two-week drill, deployed overseas to do the, fulfill the two weeks, would they then be considered, or do they not have enough days of active duty service? [LB422]

WENDY JOHNSON: If I understand your question correctly, deploying in a drill status is not permitted outside of the continental United States. So you have to enter into a Title 10 status to leave the continental United States. [LB422]

SENATOR PRICE: Oh that's, and that does my heart well, because my wife deployed to Saudi and we have a good...we have some issue then. Thank you. [LB422]

SENATOR AVERY: Senator Pirsch, you had a question? [LB422]

SENATOR PIRSCH: Yeah, just a couple here. First of all, and I'm trying to garner, I know some of the previous questions kind of addressed it, but the usefulness of these classifications that are encompassed in subsection...well, for instance, (8) veteran of Grenada; subsection (9) veteran of Panama; veteran of Persian Gulf War...how are these categories utilized in other sections? Do you know that or should I ask somebody further testifying? [LB422]

WENDY JOHNSON: You may need to ask further, but I can speak from... [LB422]

SENATOR PIRSCH: It's important to say more than just veteran, but in this statute, in current law, they delineate veteran of World War II in subsection (4). In subsection (5), veteran of Korean War; subsection (6) veteran of Vietnam War; and so if you're going down and specifying specific types of wars and whatnot, how is that definition further breaking down into smaller categories? I assume then they're utilized for different

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purposes. If you're a veteran of this war and that, but not this one, then you get this? Or is that how it is? [LB422]

WENDY JOHNSON: Correct. Correct. In the personnel systems, on a separation document, for example, it would specify if a person served in a specific campaign and that entitles them to various military campaign awards and sometimes that goes to whether a veteran is entitled to certain services and they define them by those campaigns. So I think...personally, I think that's where updating the language helps. [LB422]

SENATOR PIRSCH: Okay. And is the language taken...I mean, is this just Nebraska that does it this way or do other, most other states have specific benefits tied to specific service? [LB422]

WENDY JOHNSON: I can't speak for other states. I can speak on the federal side different awards and different federal benefits sometimes are tied to different campaigns. [LB422]

SENATOR PIRSCH: Okay. That's helpful. And I noticed in this latest one, subsection (11) which is being added here, veteran of the Global War on Terror means a person who has served on active duty in the Armed Forces of the United States and served...and then this language: within the borders of the Republic of Iraq or the Islamic Republic of Afghanistan. Would...that would exclude anyone who is, for instance, you know, in the Gulf, but perhaps in Kuwait or... [LB422]

WENDY JOHNSON: Right. And the Association supports the proposed amendment that strikes that language because that is a very narrow definition and doesn't really capture the number of people who deployed say to Kuwait or you know, other countries in that region, people supporting the Global War on Terror through Predator missions, maybe even from the continental United States. [LB422]

SENATOR PIRSCH: Okay. So if you...the way after the amendment, as veteran of the Global War on Terror means a person who served on active duty in the Armed Forces of the United States and... [LB422]

WENDY JOHNSON: If I recall correctly, beginning on September 14, 2001. [LB422]

SENATOR PIRSCH: Oh, I see...served in the forces of the United States beginning on September 14. Okay. Okay, thank you for clarifying that for me. [LB422]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you, Ms. Johnson. [LB422]

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WENDY JOHNSON: Thank you. [LB422]

SENATOR AVERY: Additional proponent testimony? Seeing none, we will move to the opponent testimony. Anyone wish to testify in opposition to LB422? Anyone wish to testify in the neutral position? Welcome, Senator, how are you? [LB422]

JOHN HILGERT: Thank you. I'm doing fine, Senator. Mr. Chairman, members of the committee, I am just...did not anticipate testifying, but I did want to answer one of the questions that arose during the testimony by Senator Cornett on LB422 was that are Nebraska veterans receiving all of the benefits and eligibility currently from the August 2 date. And that is indeed the case. Right now, in statute, we have the August 2, 1990 date for the Gulf War, and I believe the statute even says, let's see...until, until a date prescribed by presidential proclamation or by law. So technically, my friends, the Gulf War is still continuing to this day. So they are covered and as wartime veterans in the state of Nebraska, and that's all I wanted to do was to clarify that one point. And offer myself if there's any other questions that you may have. [LB422]

SENATOR AVERY: Thank you. Questions? Senator Price. [LB422]

SENATOR PRICE: Thank you, Mr. Chairman. Mr. Hilgert, I had a question for you. Kosovo is on my mind. [LB422]

JOHN HILGERT: These are wartime dates, Senator. They're not done by the combat or the theater of operations. For example, if you were repairing generators in Norway during the Gulf War to support our effort, you would be a Gulf War veteran. You do not have to go to the theater of operations and be one of the 652,000 deployed. [LB422]

SENATOR PRICE: I just wanted to have it on record. That's why I... [LB422]

JOHN HILGERT: Absolutely. [LB422]

SENATOR PRICE: But the Kosovo thing, particularly for some of our Guard and Reserve folks, that was my question, but. [LB422]

JOHN HILGERT: And we've lost soldiers there, in the Nebraska National Guard. [LB422]

SENATOR AVERY: Senator Pirsch. [LB422]

SENATOR PIRSCH: Without this addition of this language in subsection (11) or as amended, there may be some veterans who would not be offered certain services then? [LB422]

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JOHN HILGERT: Not state benefits, Senator. [LB422]

SENATOR PIRSCH: Okay, but we're just dealing with state law...does this make, in your estimation, any substantive difference to how vets are going to be...the passage of this or the nonpassage of this, does that affect any, in a substantive manner, any benefit that a Nebraska veteran might receive? [LB422]

JOHN HILGERT: Well, not a Nebraska benefit currently. You're inviting me to comment on a policy decision which I'm not prepared to testify on. Currently, all Nebraska veterans are covered. One might observe though the latest, newest permutation of the GI Bill is the post 9/11 GI Bill. So there could be in the future. There certainly is federal benefits. And certainly one might say the need to or the policy decision to recognize those veterans that are serving in the Global War on Terror certainly in our community and in the vernacular, they're not referred to as Gulf War vets. When they say Gulf War vets, they're usually talking about the liberation of Kuwait, part one. Yes. I saw the T-shirts when I was there. [LB422]

SENATOR PIRSCH: Very good. Thank you. [LB422]

SENATOR AVERY: Any more questions? Seeing none, thank you. [LB422]

JOHN HILGERT: Thank you. [LB422]

SENATOR AVERY: Any other neutral testimony? All right, we will close the hearing on LB422, and we will move now to LB488 and welcome to the committee hearing, Senator Mike Gloor from Grand Island. [LB422 LB488]

SENATOR GLOOR: (Exhibit 1) Thank you, Senator Avery, fellow Senators. I am Senator Mike Gloor, G-l-o-o-r, District 35, Grand Island, and I am a veteran. And as you have been talking about, I believe, although I caught just the tail-end of it, understand that there are different definitions of veterans, peacetime, wartime. I happen to be a wartime veteran, Vietnam era, but I was nowhere near combat. Like the person working on the generator in Norway, I was working in a hospital in Germany while people were fighting and dying in Southeast Asia. Yet, I am considered a wartime veteran and imagine my surprise to find out years later that that came with a degree of notoriety and some benefits within the Veterans Administration that I never felt I was any more deserving of than people who happened to go into the military a year or two after me. So I was very pleased when the Department of Veterans Affairs presented me this opportunity to change eligibility for Nebraska Veterans Homes, and that's what this bill will do, LB488. You might recall that we have already had, I believe, it's moved from General to Select File, a bill that would change the definition of Veteran Service Officers from not having to be just peacetime...or, wartime, but also peacetime. This fits in that same general category. We as a state had limited eligibility requirements for Veterans

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Homes because HHS believed, in the past, that the United States Department of Veterans Affairs paid a per diem only for wartime veterans. Recently, the Department has become aware that, in fact, per diems are paid for all veterans, peacetime or wartime. Therefore, veterans who served in peacetime will cost the state no more than a veteran who served in wartime. This will be addressed by a representative of the Nebraska Department of Veterans Affairs, I'm sure Mr. Hilgert. In my opinion, this is simply the right thing to do for all our veterans. I've handed you an amendment and this is for clarification. The intent of the bill is to open up eligibility for residents of a Veterans Home to persons who served in the military in a full-time active duty capacity. Without this amendment, the language of the bill as we originally drafted it could be interpreted to mean Veterans Homes could also be open to National Guardsmen and women who have never been called active duty. That's not the intention of this bill, and I ask your support of the amendment as well as LB488. Thank you and I'd be glad to answer questions, although as I said, there will be people up here afterwards who can also answer those questions. [LB488]

SENATOR AVERY: Thank you, Senator. Any questions from the committee? Senator Pirsch. [LB488]

SENATOR PIRSCH: Just to clarify...if you're in the National Guard and you were called to active duty, then you'd... [LB488]

SENATOR GLOOR: Yes, Senator Pirsch. [LB488]

SENATOR PIRSCH: Okay, thank you. Appreciate it. [LB488]

SENATOR AVERY: Any other questions? Seeing none, are you going to stay for closing? [LB488]

SENATOR GLOOR: I will stay for closing. This is such..the committee is held in such high regard that I would like to see it in operation for a little while, for a little period of time. [LB488]

SENATOR AVERY: Thank you. Proponent testimony. [LB488]

JOHN HILGERT: (Exhibit 2) Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs committee. I am John Hilgert, J-o-h-n H-i-l-g-e-r-t. I apologize for not doing that previously. This bill, I am ready to make a policy position and statement on. I serve as the Director of the Nebraska Department of Veterans Affairs as well as the Veterans Home Division Director for the Nebraska Department of Health and Human Services, Division of Veterans Homes. I want to thank Senator Gloor for introducing LB488, a bill to allow peacetime veterans access to our state veterans homes. A bill like this one has been introduced many times. I believe

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last year was the only time since I've been Director of Veterans Affairs that this bill has not been introduced. And last year I offered to the Nebraska Veterans Council, I offered to study this issue with attention focusing primarily on the fiscal impact. Mike Coatney, the supervisor of the state service office of the Nebraska Department of Veterans Affairs will be following me to explain any...the many nuances that might arise with this policy decision you're about to make. The summary though being that peacetime veterans will be able to receive the USVA per diem. A peacetime veteran may be eligible to receive USVA service connected disability payments. A peacetime veteran will not be able to receive a USVA pension. And Mike Coatney, again, will explain those nuances. The major part was the...and what I had handed out was the letter from the United States Department of Veterans Affairs stating that peacetime veterans can receive the per diem. Right now, the Veterans Homes Board has a guideline that veterans are a priority for admission. If this is maintained, the peacetime veteran should be compared to--not the wartime veterans, which are already priority--but rather to nonveterans which are spouses, widows, Gold Star parents, which do not receive per diem. There are many scenarios that might affect fiscal impact of this policy. But we believe again, the overall impact will be negligible, that's a term I don't often get to say in my job at HHS, (laugh) negligible in the long run. Again, Mike Coatney will provide a few of the many factors and will elaborate if requested. I am supportive of this bill. The policy of differentiating between peacetime and wartime, I believe, was easier to support decades ago when the United States would mobilize for war while keeping a very small standing army. Since the end of World War II and the specter of Soviet imperialism, the United States has determined it necessary to maintain a large standing army. Our Armed Forces during the Cold War stood at the ready for 50 years, preserving our peace and safeguarding our freedom. Now the threats are as evident today as yesterday's headlines. Those that served in this period though, for example, at the bottom of a Titan II ICBM silo deserve our thanks for keeping the peace. I cannot imagine a time when there is a general demobilization, but should that day come, it will truly be a blessing to revisit this policy, should you adopt it. We have seen Senator Gloor's amendment, and we are supportive of defining the veteran as amended to make sure that active duty peacetime veterans can be included into our state veterans' home. We will be glad to assist the committee if necessary, and that concludes my remarks, and I'd be more than happy to answer any questions that you might have. [LB488]

SENATOR PIRSCH: Very good. Thank you, Director Hilgert. Senator Price, you had a question. [LB488]

SENATOR PRICE: Senator Pirsch, thank you. Director Hilgert. What's your occupancy rate right now for the homes? [LB488]

JOHN HILGERT: Our occupancy, we're low in one of the homes. We have approximately, and I've been out of town for the last week; I usually do this about weekly, but we're about...we're almost full at the Eastern Nebraska Veterans Home.

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We're at usually capacity of one or two within...at Norfolk Veterans Home and it takes longer when an opening arises, as you can...might imagine, it happens rather, usually suddenly. And the admissions process does take some time. So there's always a few empty beds. We also keep a few empty beds for infection control and if someone in a lighter acuity should "decompensate" or degrade their physical status that they have to be to a higher acuity location within the facility, we also want to be able to do that. We never want to be in a position of having to kick someone out because we can't serve them if they're in their home. Western Nebraska is a little low; 80 beds or 80 is our, generally our census there. We're trying to get that up. We have a long waiting list for nonveterans, but we only can allow 25 percent of the population of any given home be nonveterans. These are generally the spouses of some of the veterans. We have taken steps to consider ways that will address the needs of Western Nebraska and hopefully in the future, we will be able to respond to those needs. Grand Island, we do have a lower census. It's approximately 192 right now. Our capacity is 266. Grand Island is an interesting situation though, being the oldest Veterans Home; cornerstone laid in 1887 by Governor Thayer, a Union Army veteran. It has a VA capacity of over 400 authorized beds. The state licensed capacity is 377, but our operating capacity, if you will, of quality beds, is 266. And right now we're about 192. The differences in all those numbers over time came from...you don't put veterans or anyone in a nursing facility, I believe, below grade, basement. They used to. We used to have four individuals in a room. We don't do that any more. So because of the oldness of the facility, we have a lower quality bed capacity. Right now, we did have a freeze on admissions last year and that was not...that was due to staffing issues. We were...we unfortunately had to have agency staffing which are nonstate employees. We have to hire off the economy in order to augment our staff. And since July 17 of last year, we have not had to use agency staff, I am proud to report, at the Grand Island facility, and we are now rebuilding that census. It's taken certainly longer than I would like. My job is to serve veterans and to have them in the home. But that's why that that census is markedly lower than the other ones perhaps. [LB488]

SENATOR PRICE: And would the Cold War certificate that a lot of veterans receive...I didn't think so. [LB488]

JOHN HILGERT: I've got one. [LB488]

SENATOR PRICE: All right, I see the shaking heads. I mean we have, we've got lots of them out there. It really is just a feel good thing. It really doesn't give you much of anything. [LB488]

JOHN HILGERT: I don't know a single federal VA benefit that follows on, past that wonderful certificate suitable for framing, Senator. [LB488]

SENATOR PRICE: Thank you very much, sir. [LB488]

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SENATOR PIRSCH: Well, thank you, Director Hilgert. Do you have a question, Senator Janssen? [LB488]

SENATOR JANSSEN: Yes. Thank you, Senator Pirsch. Senator Hilgert, basically now with this, if this does pass now, would nonmilitary, what you're talking spouses, your occupancy rate, would that essentially be done, do you think? [LB488]

JOHN HILGERT: There is a couple of things that certainly I don't think would be done. One of the things the board has done is if you apply with your spouse, I mean, if a veteran applies with the spouse at the same time, concurrently, joint application, we're going to cap that as a veteran's application, and will be in that line of veterans coming first. We had quite a lengthy discussion...it was broken down 2-2. Are we here, you know, on the one side you could say well, we really don't care about spouses, we're here for the veterans. That's our priority. The other side was we're supposed to be providing a home and are you going to do that by turning your back on an institution that they've spent 60 years nurturing. How's that serving the veteran? And it was back and forth, and it was split among the administrators. The veterans on board finally decided to take veterans first and using the federal regulation of a 25 percent maximum occupancy at any home for nonveterans as the Governor, if you will, to make sure that it doesn't get overemphasized. There may be a reduction of nonveterans as a result of this. I think that's something that is rationally able to be anticipated. Whether if they're squeezed out all together, you know, like in the Grand Island Veteran's Home, we have 76 beds open. We're not staffed for it yet. By the way, we'll...we ramp up staff as our census goes up by the way. We want to be careful about that. But I don't think it will ever happen. It might. You know, that's something to be concerned, and it's certainly another stresser, but right now, I can't imagine that happening. We have a waiting list for nonveterans currently simply because of the federal regulation of 25 percent maximum. But it is, but again, we've decided in the Nebraska Veterans Council as well as our, both departments, that this is the way to go. How do you say no to a peacetime veteran? I actually had an application once of a veteran who maintained a golf course during World War II. And yet this person gets in the home which I think he should. You put on the uniform, you don't pick where you go; the government does that for you and usually doesn't consult you very much. But on the other hand, you know, you have these persons that...you know, again, my example of a Titan II missile silo, a guy in the bottom of the silo with a key with Armageddon on the other side, you know, shoot, you know, I thank them. You know, I was going to be a peacetime veteran until Saddam Hussein decided to occupy Kuwait. I never thought, I was with the 1st Infantry Division. The mission was to reinforce Europe should the Soviet Union invade, which seemed highly unlikely in 1989. Lo and behold, we got a lesson in geography as a result of Saddam Hussein. [LB488]

SENATOR JANSSEN: Thank you for that long answer. [LB488]

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JOHN HILGERT: Yeah, sure. You bet. [LB488]

SENATOR JANSSEN: Appreciate that. And I would just like to mention, you made mention that you're proud to report that you're no longer using agency staff and being a person that makes his living supplying agency staff sometime I'd like to have a discussion with you about those...the many benefits of using such staff. But that's all I have for questions. [LB488]

JOHN HILGERT: I won't respond at all to that one. (Laughter) [LB488]

SENATOR PIRSCH: Thanks very much, Director. I agree with you, certain words should just be stricken from the English language and negligible clearly one of those, but. You had mentioned the feds have certain...obviously if you're paying the per diems, paying the piper, one of the requirements, you can't have more than 25 percent of nonveterans at the home. [LB488]

JOHN HILGERT: Yes. [LB488]

SENATOR PIRSCH: Do they have caps on the capacity of how many beds you can offer these homes, that they're willing to pay per diems on? [LB488]

JOHN HILGERT: Yes. Yes, they do. And there is a ratio that the federal people in Washington said each state can have so many beds. We are overbedded because we were grandfathered in. No one will have more beds per capita than Nebraska, evidently. So I'm happy about that. [LB488]

SENATOR PIRSCH: Yeah. [LB488]

JOHN HILGERT: They grandfathered in, they're not taking them away. That's why I want to hold those beds on our licenses if I can. [LB488]

SENATOR PIRSCH: Well, I appreciate that, relating that tidbit. And here's the question that, with respect to the per diems that now federal, so federal law has changed and they're willing to, with these peacetime veterans cover these per diem costs, right? Or is this just a thought that that's what we're talking about? [LB488]

JOHN HILGERT: I will say that upon our research, I have found that they will pay per diem. [LB488]

SENATOR PIRSCH: I see, it's just an understanding that has come to light that they will cover the per diems then. [LB488]

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JOHN HILGERT: That's...yes. [LB488]

SENATOR PIRSCH: Okay. Very good. And the per diems that, the federal rate of per diem coverage is sufficient to cover the costs of? [LB488]

JOHN HILGERT: Absolutely not. [LB488]

SENATOR PIRSCH: No. Okay. So would there be... [LB488]

JOHN HILGERT: It is quite deficient. [LB488]

SENATOR PIRSCH: Would there be then a fiscal appropriation that the state will have to match or? [LB488]

JOHN HILGERT: No and this is why. Here's what's interesting. First of all, if...and as Senator Janssen, and I forgive for such a lengthy response, but I am excited about this and do support the policy decision. If you compare them to individuals that are in our homes that are currently not getting any per diem, it might be a plus. If we get to the point where we're displacing more time and energy, which I don't anticipate, it could be a slight minus. On the other hand, we will get service-connected disability; there's other things that we can get. So it's, it's really hard to say. That's why I say negligible, you know. HHS looked at it. The finest minds in our finance department there, as well as the...our great people in NDVA and we couldn't come up with a number. There's just too many variables. [LB488]

SENATOR PIRSCH: Right. But bottom line is we don't think that there's any appropriation to a... [LB488]

JOHN HILGERT: No, I am not requesting any appropriation and do not anticipate an A bill. [LB488]

SENATOR PIRSCH: Super. And that's even going forward into the future per diems, right, or do you think..I mean, as far as we can judge now. We don't, if things stay the same? [LB488]

JOHN HILGERT: You know, usually per diems are modified by inflation. The National Governors Association, I'm proud to say, is calling for a per diem for state veterans homes that are up to 50 percent of the cost of care. That would help. Secretary Shinseki I was, had the great honor to discuss some issues with him in the last 10 days; actually twice, two different venues. And he is looking at this. And there is a bill that was passed in the year 2007 by U.S. House of Representatives. The Legislature gave me another state Veterans Service Officer, in fact, because of this. We...if there's a 70 percent or higher service-connected veteran within our state veterans home, we'll get full cost of

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care which is a huge increase. So there's a lot of things that I would find very optimistic that hold in the future. I do not see any cuts in the future regarding veterans benefits. [LB488]

SENATOR PIRSCH: Very good. And I just...did you have a question, Senator Karpisek? [LB488]

SENATOR KARPISEK: I will. [LB488]

SENATOR PIRSCH: Very good. Well, then I'll hold off my comments until Senator Karpisek, go ahead. [LB488]

SENATOR KARPISEK: Thank you, Senator Pirsch. Senator Hilgert, I'm excited about this, too. My question is when we...when we started messing around with the--I shouldn't say messing around--with the people who are on the county committees, those sort of things, we got some really nasty e-mail. And I'm wondering is this going to be taken poorly by the wartime veterans. [LB488]

JOHN HILGERT: That was certainly a concern of mine. And all those on the side. Here's a couple of things. One, the bill has been introduced almost annually. It has the complete support, unanimous support of the Nebraska Veterans Council. In fact, they just had their legislative day, I believe, February 12, something like that. This was one of their priorities. The Nebraska Veterans Council represents the American Legion, wartime veterans; the VFW, very obviously wartime veterans and theater veterans; the AmVets, which are peacetime veterans; the PVA, military or the Purple Heart; the American Ex-POWs; and the Disabled American Veterans. All those are organizations that have gone on record as in complete agreement of this bill. I have, there is approximately, I'd say, 154,000 veterans in Nebraska. If 1 percent think it's a bad idea, you know, it's a thousand e-mails, you know. Not that you're going to get them all. You know, can I say that everyone will be unanimous. I haven't found anything that all Nebraska veterans agree on. But I think we have done quite a bit of work trying, and I have encouraged...during that year off when this bill wasn't introduced, I, when I spoke to conventions, I said, take it back to your post halls. Take it back to your clubs. Discuss this and if there's resistance, let me know. I have not heard that. [LB488]

SENATOR KARPISEK: Very good. I, because, I am not a vet, I thank those of you who are. And I think it is only the right thing to do, but I don't, I don't want to profess that I know what's best for the vet, so I do appreciate those groups being in support. That makes me feel much better. Again, and then you did bring up, if a vet or a wartime vet would be displaced on the money side, I'm just wondering, are wartime, are they going to have a better chance of getting in or not? [LB488]

JOHN HILGERT: Well, I'll tell you what's not going to happen. And at least I hope I

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never am part of this. We don't do a means test and say if you're able to pay, you know, because we have a sliding scale. Roughly, \$3,000 down to zero. We don't, we report to the board what their assets are. But the board does not go and say, you know, we're going to approve you, Mr. Moneybags, because you can pay the state a lot of money and help defray the costs. And we're not going to approve you, because you don't have any money. I have not seen that. Does the board support and does HHS support more aggressive third-party pay? Absolutely. Absolutely. Do we, are we going to try to cherry pick and say those veterans who are the most wealthy should be allowed to come in? Absolutely not. [LB488]

SENATOR KARPISEK: And it won't be between wartime and peacetime? [LB488]

JOHN HILGERT: The board, the board hasn't, you know, had that directly confronted because we're not allowed to do that right now. I would certainly, you know, pass your feelings on to the board. I can't imagine them doing it. I think that their bottom line is they want veterans treated equally. That is clearly the message that I have received. [LB488]

SENATOR KARPISEK: Very good. Thank you, Senator. I, again, I'm very excited about it, I think it's only right. Thank you, Senator Pirsch. [LB488]

SENATOR PIRSCH: Very good. Chairman Avery is back so. [LB488]

SENATOR AVERY: This is proponent testimony? So it's almost as if nothing happened since I left, right? (Laughter) [LB488]

SENATOR KARPISEK: That's the Government Committee. [LB488]

SENATOR AVERY: Any other questions from the committee? [LB488]

SENATOR SULLIVAN: One quick one. Thank you, Senator Avery. Yes, Mr. Hilgert, maybe this isn't quite germane to this legislation, but when you were talking about the fact that Nebraska is overbedded, and we are grandfathered in, I guess my concern is that, is that a concern or an issue in terms of upkeep and maintenance of the facilities that we do have? [LB488]

JOHN HILGERT: No. You know, when I say overbedded, it's by the rationale or the formula that the federal government has for allocating beds. There was, up until a few years ago, some states that didn't have and I think almost all of them have a veterans home or one under construction. And they wanted to do a formula to help with their prioritization of new construction. That's where that comes from. Our funding won't...your question again, if we pass this, our funding in general... [LB488]

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SENATOR SULLIVAN: No, yeah, just funding, I mean, I guess, you know, I just wanted to make sure that we, the facilities that we have are adequately serviced and maintained for our veterans. [LB488]

JOHN HILGERT: And I am too and we, when you passed LB296, when the Legislature passed LB296 a couple of years ago and broke up HHS into its divisions, we were part formerly in a pot of ten 24/7 care facilities. You broke us out and the Governor, and the Governor's bill into our own division for veterans homes. We immediately set about to study our current practices, enhancing things. I hired a systems clinician that was frankly the systems clinician of 41 private sector facilities. I said, come join the state. I've got four. We need to make a system. We introduced concepts like consistent staffing, acuity based staffing, quality indicators that had not been introduced before. And again, the mechanism that allowed all this to happen, I believe, is LB296. Wasn't just Pat Moeller and me and all of our administrators and our staff, but it was that bill that allows us to look at this in a new way. We also looked at third party payment, You know, we have a large general fund obligation to our state veterans homes. We also are budgeted, our spending authority is larger than our general fund allocation so there's that gap in there. I have a ways to go in order to encourage third party payment to find funds within our present funding system. We have our spending authority that we don't fully utilize because of our lack of third-party payment. So I feel like I have room for growth under the budget as it now sits. I should preface that by...I didn't see the results of the Appropriations Committee. I was out of town yesterday, on how it affected HHS, so I'm hoping we still have that. But you know, I don't expect anything less than that though. But we still have a ways to go, and we still have opportunity for growth without impacting veterans and without impacting our general funds. So that's where I put my encouragement. When we start butting up against that, I am sure, you know, I will certainly not be shy to talk about those challenges. But right now, we have room for growth. And I want to focus on that. [LB488]

SENATOR SULLIVAN: Thank you. [LB488]

JOHN HILGERT: Thank you. [LB488]

SENATOR AVERY: Senator Price. [LB488]

SENATOR PRICE: Mr. Chairman, thank you. Director Hilgert, I'd also like to ask or have you reiterate, there is still a prioritization process for applicants to the homes, correct? [LB488]

JOHN HILGERT: Correct. And that is a guideline of the Veterans Home Board. [LB488]

SENATOR PRICE: Okay, thank you. [LB488]

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SENATOR AVERY: Any more questions? Seeing none. [LB488]

JOHN HILGERT: I'm happy to be here as always, and I apologize if I am a bit too long-winded. I'm excited about my job and glad to be here. [LB488]

SENATOR AVERY: Well, you held, held things down until I got back. Thank you. [LB488]

JOHN HILGERT: There you go. It was a plan. Thank you. Thank you all. [LB488]

MIKE COATNEY: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I am Mike Coatney, M-i-k-e C-o-a-t-n-e-y. I serve as the supervisor of the state veterans service office of the Nebraska Department of Veterans Affairs. I would also like to take this opportunity to thank Senator Gloor for introducing LB488 which will allow peacetime veterans to reside in our state veterans homes. Its fiscal impact is very difficult to precisely calculate, but please allow me to present the issues that may affect the residents' cost of care. First, we have provided a letter from the United States Department of Veterans Affairs which Director Hilgert provided which explains that the USVA, United States Department of Veterans Affairs, makes no distinction between wartime and peacetime veterans for purposes of paying per diem to the nursing home for their care. Their only consideration, that of the VA is eligibility for VA benefits. Second, we have 437 veterans and 81 nonveterans in our four veterans homes for a total of 518 residents. The nonveterans consist of spouses, widows, or Gold Star parents of veterans. Each of the veterans and veteran residents presents a unique set of financial circumstances that impacts the cost of the state for their care. Some of the funding sources are Social Security benefits, private or public pension, bank accounts, USVA compensation or pension and the per diem costs paid by the Veterans Affairs. But only the residents who are veterans are eligible for USVA compensation: compensation, pension, and per diem. In this regard, both wartime and peacetime veterans may be eligible for VA disability compensation and both receive USVA per diem for exactly the same amount. The pension, however, is only available to those with at least 90 days of active service, which one day must be during a period of war, that's the definition of a wartime veteran. It should also be noted that the pension is income and assets based, the USVA provides funding to bring the veterans income up to a level established by Congress yearly. As a result of the myriad funding scenarios that exist, it would be, it would probably help to clarify the issue if we compared the impact of accepting peacetime veterans with the cost of nonveterans rather than with wartime veterans. Nonveterans do not receive per diem from the VA. Peacetime veterans do. Nonveterans are not eligible for VA disability compensation, peacetime veterans may be. Nonveterans do not receive discounted or free prescriptions from the VA. Peacetime veterans may receive free prescriptions if they are rated over 50 percent disabled and have only a modest copay of \$8 if less than 50 percent. It is the consideration of this office that allowing peacetime veterans in our veterans home may

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likely have a positive impact on revenue and be at least neutral over time, and Director Hilgert spoke on a lot of that before me, so if you have any questions, I'd be pleased to answer them. [LB488]

SENATOR AVERY: Thank you, sir. Questions from the committee? Seeing none, thank you for your testimony. [LB488]

MIKE COATNEY: Thank you. [LB488]

SENATOR AVERY: Any other proponent testimony? Anyone wishing to testify in opposition to LB488? Anyone wish to testify in a neutral position? Senator Gloor has left and waived his closing. That ends the hearing on LB488. We'll now move to LB402. And I will pass the gavel to Senator Pirsch. [LB488 LB402]

SENATOR PIRSCH: Very good. Thank you, Chairman. And since Chairman Avery is the sponsor of LB402, we will proceed whenever you are ready, Chairman. [LB402]

SENATOR AVERY: Let me give you a little bit of background on LB402. Last year, my priority bill was a bill that came to be known in my office as the arena bill. We worked on it basically for two years. It allowed...it amended current law to allow the city of Lincoln to access sales tax receipts in order to help build a convention center facility in the Haymarket. And that legislation was first passed to assist Omaha in the development of the Qwest Center which has been an enormously successful venture for the city of Omaha. Lincoln has an aging facility at Pershing Auditorium that's desperately in need of replacement. And so this, the arena bill was designed to help Lincoln do that. Well, things have changed since then. The economy has worsened and we have discovered some things in the existing law that are restrictive with respect to Lincoln's ability to get the arena built. So LB402 changes certain provisions of the Convention Center Facility Assistance Act. The first thing is if you look under Section 32-108, you'll see that an election by the voters of Lincoln or any other city that would use this legislation, would have to garner 51 percent of the vote in order to approve the facility. Frankly, I don't know how that got into the original law, but 51 percent is an odd number, when in most elections, you simply have a majority, 50 percent plus one more vote is a majority. That, we think, is unnecessarily restrictive and so we propose in LB402 to change that to simply greater than 50 percent of the electors voting on the question at any election as defined in that section. The second thing that it does is allow the election at a statewide regular primary or general election. Right now, I believe it's more restrictive, the language is. With this change, general obligation bond elections may be held at any statewide or local primary, special, joint, or general election. This gives the city of Lincoln the flexibility to decide which election it wishes to have the referendum basically on the arena decided. The final change extends the deadline for the board created under the act to accept applications for assistance. Right now, the applications have to be in by June 1, 2010. We are asking that that be changed to December 31, 2010,

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which would allow Lincoln time to have an election conceivably as late as November 2010 to approve the arena. These changes are not enormous. They are designed to allow some additional flexibility for the city in the building of this project. As you know, the economy is not doing well right now and the city is convinced that if they have this flexibility in timing the election and being able to pick the type of election where it could be a special election, it could be a general election, November would be late in order to meet the December 31 deadline, but at least we'd like that flexibility. It's, in a sense, it's a cleanup legislation to allow Lincoln to fully utilize what has already been passed and signed into law. This is important to Lincoln. It's important to the University of Nebraska. The...Coach Sadler desperately wants this facility as a recruiting tool. Coach Osborne has indicated that they need this in order to compete in the Big XII. They need to have this facility and a practice facility. Of course, the practice facility, I believe, might be a part of this overall project. So I would ask you to advance this to General File. Thank you. [LB402]

SENATOR PIRSCH: Very good. Thank you, Chairman. Senator Giese, you have a question. [LB402]

SENATOR GIESE: Thank you, Senator Pirsch. Senator Avery, so basically you can do any of what's in the bill right now. This just fine tunes... [LB402]

SENATOR AVERY: It's riskier. Right. It's riskier right now because the mayor recently announced that they're not going to have the election in May. And that was the plan, the plan was to have the election this coming May. And he announced that we're going to postpone that. The conditions are simply not good, given the economy, to have an election and to move forward. We...the city believes that things will probably improve, and they need the flexibility of what kind of election they can have it in; what kind of election they can have rather than being restricted to just a general primary. It's really, you know, I hate to say it's a technical bill, but it is. It doesn't change the substance of the underlying law. It just changes some of the provisions to allow for more flexibility in how the city goes about implementing that law. [LB402]

SENATOR GIESE: But it still has to...it still has to go through everything passed by at least 50 percent plus one? [LB402]

SENATOR AVERY: Absolutely. But it doesn't have to be 51 percent. I find that an odd piece of the legislation, and I'm not quite sure how it got there. It didn't come from my office. It was in the original Qwest Center bill, I believe. [LB402]

SENATOR GIESE: Thank you. [LB402]

SENATOR PIRSCH: And maybe just for a quick edification of some, I guess, members who are here today of the committee who were not present, and the underlying bill that

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we're discussing or modifying here today, the arena bill as it were, was passed. Could just give kind of a brief overview of, you mentioned the sales tax receipts. Part of the bill was designed to then forego the state's...the normal rule would be the state would collect sales tax from certain transactions? [LB402]

SENATOR AVERY: I'll explain that, that provision. It's very creative. In fact, the person who is responsible for bringing this to the state of Nebraska was Senator Ashford before he came back to the Senate. He was working for the city of Omaha, I believe, and they were looking for ways to finance the Qwest Center. And he, Senator Ashford had heard that Little Rock, Arkansas had a pretty creative idea about how they went about building their center. So he went down, at his own expense, he went down to Little Rock and started talking to people and found out that they had this idea of a sales tax turn back mechanism, where you take the sales tax generated in certain distance of the facility that you want to build. You get the restaurants and the hotels in that area, and you collect the sales tax and you turn back a portion of that to help finance the bonds that will build the facility. And that's, that's the concept that built the Qwest Center. The same concept that we used for the arena bill. [LB402]

SENATOR PIRSCH: Very good. Any other questions? Seeing none, we'll move on to proponents. Thanks for coming in this afternoon. [LB402]

DON HERZ: Good afternoon, members of the Government, Military and Veterans Affairs Committee. My name is Don Herz and the last name is spelled H-e-r-z. I'm the finance director for the city of Lincoln, and I'm here today in support of LB402. First, I would like to thank Senator Avery for introducing this bill at the request of the city of Lincoln, and I'd also like to thank the entire Lincoln area delegation, all of whom signed on to LB402 as cosponsors. I think Senator Avery has pretty well summarized the changes, but it simply makes a couple of minor changes to the Convention Center Facility Assistance Act. Last year, the Legislature, and I think it was via LB912, made some major changes to the act to allow the city of Lincoln to be able to apply for assistance under the act, and this assistance will be used to help with the arena project that the city is planning for the West Haymarket area, which I think you're all familiar with that area. After last year's LB912 was passed, we discovered that Section 13-2611, page 3, line 4 of LB402 requires that a vote to issue GO bonds be approved by more than 51 percent of the voters and as Senator Avery indicated, we did not catch that last year, and we're not sure why it was there, but we're suggesting that this be a simple majority of greater than 50 percent which is what is generally required in most referendum votes. The other changes are made to Sections 13-2611 and 13-2612. These are changes as the result of the city deciding to delay the vote that was expected to take place in May of 2009 to a later date because of the current economic condition and actually ongoing negotiations for the purchase of some of the land for the project. As a result of this need to delay the vote, we have proposed changes on page 3, lines 6 and 7, that would allow the vote to be held at any statewide, local, or special election

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affording the city maximum flexibility as to when we could hold the election. Also on page 3, line 24, we are proposing that the sunset clause be extended to the end of 2010 rather than June 1, 2010. If, for example, the arena project is voted, the vote is delayed until the next statewide general election in May of 2010, you know the city would have very little time to complete the application required under the act which is that June 2010 date. It is our understanding that Omaha required approximately seven months to file its application upon voter approval for the Qwest Center. So extending the sunset clause until the end of 2010 would afford the city the additional time to ensure that our application packet is complete. Again, we appreciate the opportunity that the Convention Center Facilities Assistance Act provides to grow our meeting and entertainment facility needs. We believe that this project will create significant economic benefits for the city of Lincoln as well as the entire state of Nebraska. I would therefore encourage you to approve these minor changes that LB402 proposes. I should note that there is a fiscal note that doesn't indicate any fiscal impact. And with that, I'd be willing to answer any questions that you may have. [LB402]

SENATOR PIRSCH: Thank you. Are there any questions for this testifier? I just have one, and it doesn't really relate to this bill, but rather the underlying LB912. And I'm just going by memory, but that was confined to the bill that was enacted to cities of the primary class, correct? Or did that have general application to other; that's just cities of the primary class, right? [LB402]

DON HERZ: Correct. I believe that is correct. But I do know that there was a date certain by which time applications had to be made to not leave that as an open, so that there was only a certain period of time to apply. [LB402]

SENATOR PIRSCH: Very good. Thank you very much. I appreciate it. Any other questions? Seeing none, thank you for coming down and testifying. [LB402]

DON HERZ: Sure. [LB402]

SENATOR PIRSCH: We'll move on to our next proponent. [LB402]

BRUCE BOHRER: (Exhibit 1) Thank you, Senator Pirsch, and good afternoon, committee members. My name is Bruce Bohrer appearing on behalf of the Lincoln Chamber of Commerce in support of LB402, and for the record, my last name is spelled B-o-h-r-e-r. We are supportive of LB402 and the chairman and Mr. Herz have already gone through the reasons and the details of the bill. I think I would just say maybe for the record, we are the holder of the Lincoln Convention and Visitors Bureau contract through our county. The Chamber does that work and so obviously we're very supportive of anything that is in keeping with those key objectives that include our mission to bring more visitors, events, and conventions to the Lincoln area. So we see this as improvements. We've been very involved. I kind of chuckled a little bit when I

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heard the chairman mention the arena bill. That's what we referred to it last year in our office or really last year and the year before. It was a strong effort last year in getting that changed through, and I would just say the change was really, I know it became known as a change for Lincoln. But the change that really LB912 did was allow for private hotel investment to be counted under turn back financing rather than only public hotel. Because before under the act, only a publicly owned hotel could count as a revenue stream under the turn back financing, and there's only one publicly owned hotel across this state, and it's the hotel up next to the Qwest Center. And we really wanted to see another option that would allow private investment to come in and really we saw that that would be an arena that would be more likely for not only Lincoln, but probably most likely other communities across the state. They wouldn't get their municipalities in the business of owning a hotel. That worked for Omaha. It didn't quite work for Lincoln. So I just wanted to put that on the record. And I think it also kind of relates somewhat to why we want to see if you would be amenable to adding a little extra time. We've got more partners in our project here in Lincoln because of that. We're got a private partner developing a hotel, we've got private investors that are developing along with the arena, a lot of the mixed use commercial development that's going to be a part of this. We've got private landowners that we're dealing with. And so it, having the flexibility on the elections and whether or not we would be tied into just a general statewide or a primary or if we could have more flexibility there, and also having the flexibility of having a little bit more time given the current circumstances would be very helpful. I think, again, not only to Lincoln, I think to other communities across the state that might be willing or might be looking to use this bill. With that, I would close and answer any questions you might have. [LB402]

SENATOR PIRSCH: Very good. Any questions? Seeing none, thank you very much for coming down. [LB402]

BRUCE BOHRER: All right. Thank you. [LB402]

SENATOR PIRSCH: (Exhibit 2) We'll move to any other proponent. Is there any other proponents? I'm going to read into the record at this time the League of Nebraska Municipalities letter which supports LB402, dated February 26 of this year. Are there any opponents here to testify today? Seeing none, are there anybody...is there anybody in a neutral capacity regarding this bill? Seeing none, Chairman Avery if you want to...he will waive closing, and we will thus conclude the hearing on that bill and move on to the next bill, LB550. Again, Chairman Avery, you're the sponsor, whenever you're ready. [LB402 LB550]

SENATOR AVERY: I was looking back to see if I saw a uniform in the audience. And since I do, I feel much more comfortable with this testimony. (Laughter) I am here to introduce LB550 on behalf of the Military Department of the state of Nebraska. This bill contains two provisions. The first deals with personnel within the Military Department.

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Under LB550, the Military Department will consist of the Adjutant General in the minimum grade of lieutenant colonel, one deputy adjutant general, a chief of staff of the Military Department or deputy director with a minimum grade of colonel, one assistant director for Nebraska Emergency Management Agency and other officers and enlisted personnel in the number and grade as prescribed by the United States Department of the Army and Department of the Air Force personnel documents. The chief of the Nebraska Guard Bureau will appoint a United States property and fiscal officer who will hold the minimum grade of colonel. The Governor will nominate one or more officers for the position after consultation with the Adjutant General. This bill is attempting to clean up some of the laws regarding rank in the National Guard. The testifiers who will follow me will go into greater detail, but the Military Department has expressed concern that the current statutory structure has limited some personnel in regard to rank advances. For example, the Guard Bureau doesn't think the state needs an additional two-star general in addition to the Adjutant General. So we hope that this can clear up that issue. The second provision of the bill gives the Nebraska National Guard members law enforcement authority while on National Guard orders in a federal status. The bill permits the Governor to limit the law enforcement authority to the missions he or she determines are necessary and also to modify the law enforcement authority as the missions develop. This is currently not permitted. The Governor would also have the authority to extend law enforcement authority to National Guard members from other states that come to Nebraska to assist in instate emergencies in the manner that the Governor can for National Guard members from Nebraska. That's simply saying that if other National Guard come in to assist us from out of state, then they would come under the authority of our Governor. Current law grants National Guard members peace officer authority when on active service by the direction of the Governor during periods of emergency. In other words, it is limited to periods of emergency during active state duty. This limitation does not fit well with the reality of how the National Guard is now employed during emergencies. Since September 11, 2001, the National Guard has responded to numerous national disasters and Homeland Security missions, including airport security and assisting with Hurricanes Katrina and Gustav and also assisting in the recent presidential inauguration. These missions have been funded by the federal government based on Title 32, U.S. Code 502(f) which was amended to specifically address these missions. This change permits the President or the Secretary of Defense to request that the National Guard perform specific operational missions which are then funded by the federal government. The use of Title 32 authority is becoming more common for large-scale disasters and security issues of national importance. If a large natural or man-made disaster were to occur in Nebraska, the National Guard would need to augment state and local law enforcement. As the statutes currently exist, the National Guard would have to be in a state active duty status to provide such law enforcement augmentation. This proposed statute extends law enforcement authority to Nebraska National Guard members serving in Title 32 status. This change would permit the state of Nebraska to take advantage of the federal funds that could be made available by the President or the Secretary of Defense, saving the Governor's

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emergency funds for other needed expenditures. While the proposed statute expands law enforcement authority for National Guard members, it also limits that authority. LB550 requires the Governor to specifically grant law enforcement authority. Currently, the authority is automatically granted upon a call to state active duty. This would require authorization by the Governor. The Governor will also have the authority to limit the scope of that law enforcement authority so that the law enforcement authority can be tailored to meet the needs of the existing emergency. Law enforcement authority would be granted in the military order, calling the National Guard to state active duty or National Guard duty under Title 32. The Governor will be able to modify the authority contained in the order as the situation unfolds to meet the needs of the state through separate written orders or directives. So I would stop at that and hope that you understand everything that I just said, even though I may not. However, I am sure that we have people here representing the Military Department who will be able to answer any and all of your questions, so I respectfully ask you to hold them. Thank you. [LB550]

SENATOR PIRSCH: Very good. Well, then, we will move on unless there is any questions here, to the first proponent. Seeing none, we'll ask for the first proponent to step forward. [LB550]

COLONEL DOUG WILKEN: (Exhibit 1) Good afternoon, Senators. My name is Colonel Doug Wilken, and it's D-o-u-g W-i-l-k-e-n. I'm the Judge Advocate General for the Nebraska National Guard, and I am here today on behalf of the Adjutant General and Major General Timothy J. Kadavy. General Kadavy sends his apologies. He had to go to a mandatory school at Carlisle Barracks in Pennsylvania. The Military Department supports the passage of LB550 which clarifies two specific issues contained in Chapter 5 which is the primary statute governing the Nebraska National Guard. Both issues result from the ever evolving requirements of the National Guard created by the joint war fight in Afghanistan and Iraq and the War on Terror as well as the increased call to respond to emergencies outside of the state of Nebraska. Nebraska has sent troops both to Operation Katrina and to Gustav, and we've also supported the inaugural for the President, as well as Operation Jump Start down on the Mexican border. Sections 2-5 of LB550 seek to clarify the rank structure and the selection procedures for the United States Property and Fiscal Officer. Section 6 deals with refining the peace officer authority for members of the National Guard serving in duty statuses. With regard to the rank structure, the duty requirements and the rank structures of the Nebraska National Guard are determined by mission requirements and the force structure needs as outlined by the Department of the Army and the Air Force. And those are handed down to us in manning documents that indicate how many officers we get in each military rank. The joint war fight has resulted in dramatic changes in and unprecedented use of the National Guard and the National Guard has evolved to serve as an operational force rather than just a strategic reserve as we were in years past. And we're now an integral partner with the active duty forces while continuing to be the primary force responsible for the defense of the homeland. One result of this evolution offers increased

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opportunities for National Guard officers to serve in leadership positions not previously open to National Guard officers. Many of these opportunities allow Nebraska National Guard officers to serve alongside active duty leadership which permits our officers to be promoted; well, actually to promote the capabilities of the Nebraska National Guard and the National Guard as a whole, as well as to be able to influence the active duty's opinion of the National Guard and bring more dollars and equipment into the state of Nebraska which will help us perform our state mission of protecting and assisting the citizens of the state of Nebraska. An example of this was Major General Bailey, one of our Air Guardsmen. He is also the deputy for the Adjutant General. He works for the Air Force commanders as a deputy and as a two-star general. His original rank was one-star with the state of Nebraska. When he was offered this two-star position as a liaison, if you will, for the active duty, the National Guard Bureau came forward and said, your state statutes don't permit a second two-star general in Nebraska. We disagreed with that, but they held up his promotion, indicating that we were misreading our own statutes. And it took quite some time for him to actually get that promotion. We were able to convince them that we, in fact, could do it, but the reason we want to pass this legislation is to prevent those situations from happening again. Another instance where we had an officer promoted beyond the rank that the state of Nebraska authorized was Major General Walt Zink. And he was the Northern Command deputy commander. He held a one-star position, but was able to be promoted to two-star and hold that rank. And at one point in time, Nebraska, kind of unprecedented, the United States had three two-star generals in the state of Nebraska. It shows a lot for the officers of the state of Nebraska in these two fine officers. And what we're trying to do is just clean that up so the Guard Bureau can, understands that our state statutes do permit us to promote people to whatever rank they're willing to offer them positions to hold. So if they have a two-star position, they want them to hold and fill, they can offer that position and our statutes will permit the promotion in state as well. The current rank structure for the positions in the state of Nebraska will not be affected. We will keep everything that we have here in the state. These promotions do not have a dollar impact on the state of Nebraska. These promotions only affect the federal budget. They're paid for by the federal government. The state of Nebraska incurs no cost for any of these. In addition, LB550 updates Section 55-125 to reflect the current selection process and rank requirements for the United States Property and Fiscal Officer. That is a position for an individual who manages the federal dollars and federal equipment as they come into the state of Nebraska. He's the person that signed for it, he's the person responsible for it. The selection process, therefore, since he is a Title 10 officer is controlled by federal law and federal regulation. And what we're trying to do with this provision is just to marry it up with the federal requirements so our state statute would reflect the same selection process as is indicated in federal law and regulation. Since 9/11, Guard troops have been called upon to support an expanding variety of missions in response to emergency situations throughout the United States. Generally, when responding to an emergency within their home state, members of the National Guard serve in a state active duty status under state jurisdiction and paid with state funds.

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However, in some circumstances, including response to support missions in other states, National Guard members serve in a National Guard duty status under Title 32 of the United States Code, which is paid for with 100 percent federal funds. That's the case of Operation Gustav, Katrina, Operation Jump Start and the president's inaugural. Recent multi-state missions including the California wildfires highlight the challenges created due to discrepancies encountered when military status in which they are serving limits the ability of the National Guard to impose the necessary authority in order to be successful and accomplish the mission. What we found during Operation Katrina was that Louisiana's law was not entirely clear with regard to law enforcement authority; whether that could be extended to troops coming in from other states. The National Guard projected 40,000-plus troops into Louisiana in a matter of ten days. They needed law enforcement authority in Louisiana to affect the missions that they were being given to control the situation in Louisiana. And it wasn't all entirely clear that they have that authority. And in Nebraska, we actually limited our troops to nonlaw enforcement missions. Mississippi, the law was completely different. We also, the troops that went down there for Katrina, it was very clear on their statutes, state statutes that law enforcement authority was extended to National Guard troops regardless of whether they were in state status under their state codes or under the federal code Title 32 in a more traditional National Guard duty as you would think of it. Current Nebraska statute automatically authorizes peace officer authority to all Nebraska National Guard members serving in a state active duty status at the call of the Governor to an emergency. Even when it may not be necessary, a lot of times we will be called out just to clean up rubble. You might remember the ice storms approximately ten years ago where we cleaned out, cleaned up debris and branches and those types of things. Obviously, law enforcement authority is not needed to clean up tree limbs. So this statute will allow us to limit that. The purpose of the change contained in LB550 would serve multiple purposes. The first is it removes the automatic peace officer authority currently granted by Nebraska National Guard members when serving in a state active duty status and requires the Governor to actually authorize that authority. It would also authorize the Governor to extend peace officer authority to Guard members serving in a state active duty and a National Guard duty under Title 32 for an emergency response; the latter being a 100 percent federally funded status, which again would save the state money. It requires that peace officer authority be granted in the official order so there would be something published in the order and as the Senator indicated, the Governor can limit that authority to the specific needs of the prescribed mission in the current situation. And it also authorizes the Governor to extend that peace officer authority to Guard members from other states serving either on state active duty under their own state statutes or under Title 32 orders. Originally, when we went down to Katrina, we went down in a state active duty status for the purpose of helping the state of Louisiana and as we went down there in that status under the EMAC agreements, our forces could have some law enforcement ability under separate agreements. But when the federal government passed or agreed to pay for this, and the Secretary of Defense and the President authorized us to go to Title 32, that was all lost. And so all the troops that

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flooded down to Louisiana, then this question of law enforcement authority crept up. In Nebraska, we would have the same problem, but it would be very clear; those troops coming in would not have that law enforcement authority and we would have to either lose out on the federal funding and pay for it ourselves or just limit the law enforcement mission to the Nebraska National Guard, and depending on the emergency, that may or may not be a viable situation. That's my testimony. If you have any further questions for me, I'd be glad to answer them. [LB550]

SENATOR PIRSCH: Very good. Thank you for that testimony. Senator Price. [LB550]

SENATOR PRICE: Senator Pirsch, thank you. Colonel, thank you very much for coming down today and helping us understand this. Do you foresee that with this language in this bill, should it pass, that there would be greater utilization of Nebraska forces? [LB550]

COLONEL DOUG WILKEN: In the state of Nebraska or in other states? [LB550]

SENATOR PRICE: Either one. [LB550]

COLONEL DOUG WILKEN: I don't think the utilization in the state of Nebraska or elsewhere would increase. The Adjutant General has the absolute ability and, of course, the Governor is the Commander-in-Chief so it's his decision to limit what missions we respond to. We don't, we do not have to accept missions under EMAC or under Title 32. They cannot order us to go. [LB550]

SENATOR PRICE: But would it open that venue up because I mean, would you, could you foresee that? Are there other states that say, Nebraska has the ability on their statutes and they would come to us, but before they wouldn't have come to us. [LB550]

COLONEL DOUG WILKEN: It's not going to, this statute would not affect our ability to do law enforcement missions in other states. We would have to defer to their state statutes as to whether we would have that authority. This will, this change will only affect the ability of the Nebraska National Guardsmen and Guard units that we invite into the state to do law enforcement missions within our own state. [LB550]

SENATOR PRICE: Great. Because I asked those questions, talked to MTOE, to our training and maintenance tails and things like that to make sure that we're adequately taken care of in those venues should there be a greater demand on forces. That's why I asked those questions. Thank you. [LB550]

SENATOR PIRSCH: Very good. Any other questions? Seeing none, I thank you for coming down here today. [LB550]

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COLONEL DOUG WILKEN: Thank you. [LB550]

SENATOR PIRSCH: Are there any other proponents of this measure? Seeing none, we'll move on to opponents of LB550. Are there any? Seeing none, are there any here to testify in a neutral capacity here today on this bill? Very good. Chairman Avery will waive closing, and with that, we'll conclude both the hearing on LB550 as well as all the hearings here today, so thank you very much. [LB550]

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Disposition of Bills:

LB402 - Placed on General File.

LB422 - Placed on General File with amendments.

LB488 - Placed on General File with amendments.

LB550 - Placed on General File.

Chairperson

Committee Clerk