

Transcript Prepared By the Clerk of the Legislature
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Government, Military and Veterans Affairs Committee
January 28, 2010

[LB716 LB815 LB839]

The Committee on Government, Military, and Veterans Affairs met at 1:30 p.m. on Thursday, January 28, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB815, LB839, and LB716. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Bob Krist; and Kate Sullivan. Senators absent: Rich Pahls. []

SENATOR AVERY: (Recorder malfunction)...Government, Military, and Veterans Affairs Committee. My name is Bill Avery from District 28. We are going to be hearing three bills today. The order is posted outside the room. And if you are curious about the order, you can check there, or you can wait, and we'll announce it. If you are planning to testify, there is a form I would like to have you fill out, for testifiers only. This provides us with information for the record. Please print your name clearly and indicate on this form whether you are in opposition or whether you support or you are neutral on the bill. That should be handed to the clerk at the end of the table down here before you testify. If you do not plan to testify but you wish to be recorded for or against a bill, there is another form for you to fill out. That will go into the record as well. Those are available, I believe, at each door. The members of the committee are: Senator Rich Pahls, who will not be here today--I believe he is not feeling well; Senator Charlie Janssen from Fremont--he has a couple bills in another committee, but he will be joining us later; Senator Bob Giese from South Sioux City--my mind has been on football lately, and I keep wanting to call him "Griese" (laughter). He is...next to him is Senator Scott Price, the Vice Chair of the committee, from Bellevue; to my immediate right, Christy Abraham, legal counsel to the committee. Senator Karpisek sits here--he will be coming later--he is from Wilber; Senator Kate Sullivan from Cedar Rapids; and then the newest member of the committee, Senator Bob Krist from Omaha. And Sherry Shaffer is the committee clerk. We have two pages. When you come to the table to testify, if you have any handouts, we'll need 12 copies. And give those to Sherry; she will make sure that the pages distribute those to us. Our pages are Lisa Cook from Omaha and Mark Woodbury from Oswego, Illinois. Please fill out these forms clearly so we can read them. When you come to testify, I would ask that you state your name clearly and spell it, even if it's a simple name like Bill; spell it for the record so that the clerk can get it down without making errors. The order of business will be LB815 first, followed by LB839, and finally LB716. Introducers will make initial comments and statements, followed by proponents, who are then followed by opponents and neutral testifiers. Closing remarks are reserved for the introducing senators only. If you have a cell phone, please do turn it off or put it on silent so that you don't disturb people around you or disrupt the proceedings. With that, we will turn to our agenda for today and call Senator Haar to the table for LB815. Welcome Senator Haar. []

SENATOR HAAR: Thank you. Mr. Chair, members of the committee, my name is Senator Ken Haar, K-e-n H-a-a-r. LB815 is about transparency, and it's about sunshine.

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Again, to quote my favorite singer--Bob Dylan said: Money doesn't talk; it swears. The intent of LB815 is to cover all of state government to find out what private money is involved. The bill, at this time, only covers political subdivisions and public power districts, because they are the only ones currently covered by the Budget Act. And I'll talk a little bit about how we'd like to expand this later. We would like to continue working on this subject to see transparency on all of state government. The concern is that as budgets will continue to be cut, government will turn to private dollars more and more to supplement their budgets. And then we have to ask the question: Who influences policy? Taxpayers or the people writing the checks? Private money also is usually given with strings--strings that could easily affect policy. LB815 requires all political subdivisions to include in their budget report to the State Auditor all money received from private sources of amounts over \$1,000. This bill does not affect the university or state agencies currently; we would like to work on adding those to future legislation. It would cover public school foundations. It also requires that private money received be reported on the State Treasurer's Web page for transparency. I would support an amendment, and I'd like to talk to you about an amendment to this that would clarify that private money, for example, given to a school would not be held against a public school district in the TEEOSA formula. We don't want to discourage people to become invested in their community; we just want to know when that happens. As I said, the university is not covered in this bill, because the university is not covered by the Budget Act. And in this case, to cover them--and that was kind of the original intent--would require drafting a whole new statute, according to Bill Drafting. And so we will be introducing a resolution later in the session that would look at this whole issue of what we would have to do to draft a new section to cover the university as well. So with that, I'm certainly open to questions. [LB815]

SENATOR AVERY: I may... [LB815]

SENATOR HAAR: Sure. [LB815]

SENATOR AVERY: ...if you don't mind, I will start. Are you aware that there are other public agencies that are not required to reveal sources of income or contributions? I guess it's not contributions you're after so much as it is private money that's going into public agencies. [LB815]

SENATOR HAAR: Correct. [LB815]

SENATOR AVERY: The public power districts, for example. [LB815]

SENATOR HAAR: Now, public powers are, I believe, covered by this bill. But, like we said, one of the big fish, the university, is not, and we would like to do a study to see what...you know, we'd have to draft a whole new statute for that purpose. And we just ran out of time on that part. But this is a beginning and just basically says that any gift

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over \$1,000 needs to be reported. [LB815]

SENATOR AVERY: And made public. [LB815]

SENATOR HAAR: And made public, right. [LB815]

SENATOR AVERY: Yeah. Any questions from the committee? Senator Sullivan.
[LB815]

SENATOR SULLIVAN: Thank you, Senator Avery. Okay, so you're not including the university, but what about state colleges? [LB815]

SENATOR HAAR: That would be another thing, I believe, that's not covered currently by this. But by doing the resolution...we've done what we can to the current Budget Bill, but what we want to do is we want to cover all state agencies--including agencies, the state colleges, the university, and so on. [LB815]

SENATOR SULLIVAN: And currently there...what's available to the public now, in terms of--in these entities, in terms of knowing what kinds of private monies they've received?
[LB815]

SENATOR HAAR: Well, really there isn't. And this has been one of the problems. Trying to get that information has been a problem. And so by requiring it on a regular basis--a regular reporting basis--it would be much easier to get that information, to see what the information is and just say that this is a necessary part of showing where the income is.
[LB815]

SENATOR SULLIVAN: Have you gotten a sense from any of these entities just how much recordkeeping would be involved in doing that? [LB815]

SENATOR HAAR: No. No. My own personal opinion is that it will probably require some additional recordkeeping, but I think that's far outweighed by the ability of citizens to see where money is coming from. Again...and there's some just really...it's just simply philanthropic, with no strings attached. But money usually does speak, and we like to see where that comes from. [LB815]

SENATOR SULLIVAN: Thank you. [LB815]

SENATOR AVERY: Any more questions? Senator Price. [LB815]

SENATOR PRICE: Thank you, Chairman Avery. Senator Haar, are you aware of the letter that the State College System has provided for us? Do you have a copy of that?
[LB815]

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SENATOR HAAR: I haven't seen that. [LB815]

SENATOR PRICE: Okay. Well, I'm going to refer to this just to make it quicker and simpler. But they have a question here--I guess there's some questions about fine-tuning... [LB815]

SENATOR HAAR: Sure. Sure. [LB815]

SENATOR PRICE: ...and everything. But it...I guess it's on page 6, line 20-21, where it says: "The amount of money received as private donations, gifts, or grants and the source." And they wondered, does that mean just private donations or private donations, private gifts, private grants? I guess there's all sorts of that minutiae here. [LB815]

SENATOR HAAR: Um-hum. Um-hum. [LB815]

SENATOR PRICE: Well, it may not be minutiae... [LB815]

SENATOR HAAR: Sure. [LB815]

SENATOR PRICE: ...but you understand. Are you willing to...are you going to clarify that some more? Because that expands greatly... [LB815]

SENATOR HAAR: Um-hum. Um-hum. [LB815]

SENATOR PRICE: ...particularly for the colleges and university... [LB815]

SENATOR HAAR: Um-hum. [LB815]

SENATOR PRICE: ...for clarity's sake... [LB815]

SENATOR HAAR: Right. Right. [LB815]

SENATOR PRICE: ...what your intent is. [LB815]

SENATOR HAAR: Well, one of the things you see in this is it only requires any amounts received over \$1,000. So that in itself...I mean, we're not after if a PTA gives some money to the school for books, for example, unless it's over \$1,000. So, yeah, this would be any kind of private donations, gifts, or grants--to tell the source, allocation, and expenditure of such money that was received in increments of 1,000 or more. So, certainly, eventually we would like to see that happen for the university foundation, which is probably the biggest such kind of private gift that goes into an institution.

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[LB815]

SENATOR PRICE: Okay. Great. And then finally, are you contemplating this would cover in-kind also? [LB815]

SENATOR HAAR: It's a good question. I don't know that. [LB815]

SENATOR PRICE: Okay. Thank you. [LB815]

SENATOR HAAR: But that's a good question, and certainly if there's some tweaking to be done, we would go along with that. I already suggested one amendment that's come to our attention that...for example, any private money that's reported would not be counted against a school's resources for the TEEOSA formula. We're not trying to discourage in any way giving of private money--that's a good deal. We just think that we all have a right to know where that money comes from and where it's going. [LB815]

SENATOR AVERY: Senator Krist. [LB815]

SENATOR KRIST: You--in your opening statement, you say that the bill does some things... [LB815]

SENATOR HAAR: Um-hum. [LB815]

SENATOR KRIST: Yet you're not able to do all that you want to do... [LB815]

SENATOR HAAR: Um-hum. Um-hum. [LB815]

SENATOR KRIST: ...because the university is not included in on the product. [LB815]

SENATOR HAAR: Right. [LB815]

SENATOR KRIST: Is it time to put the subject forward? Is it--would it not be more prudent to wait... [LB815]

SENATOR HAAR: Um-hum. Um-hum. [LB815]

SENATOR KRIST: ...until we can do it all at one time? [LB815]

SENATOR HAAR: Well, again, the problem of including the university is because it's not covered by a statute as such. So we're going to have to come up with a whole new statute. If we waited, we would then come back and still do this but add to it. So I think this is relevant, because it's a start to the process; it's something we would do whether or not we do the university and state colleges. So this is a beginning; we'd do a study

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and then next year tackle the next step, which would be the state colleges and so on.
[LB815]

SENATOR KRIST: And then an unrelated question... [LB815]

SENATOR HAAR: Sure. [LB815]

SENATOR KRIST: ...but still, in my mind, a valid question. School District X, extremely well funded by its local area, has \$10 million in the bank as a result of that and reported and open and honest. [LB815]

SENATOR HAAR: Um-hum. Um-hum. [LB815]

SENATOR KRIST: What keeps us, at some point, from adjusting TEEOSA based upon critical needs of the state and the school system itself... [LB815]

SENATOR HAAR: Well... [LB815]

SENATOR KRIST: ...or any entity, I guess? [LB815]

SENATOR HAAR: Yeah. Yeah. I would...I mean, that's a good question. And that's why this idea of an amendment that we would like to add--if not through the committee, on the floor--of putting that in law, as saying that's off limits. Now, of course, any future Legislature can come and change that. That's...we can't tie the hands of future Legislatures, even though we may be wiser than they will be. (Laugh) [LB815]

SENATOR KRIST: Obviously. [LB815]

SENATOR HAAR: But that...by stating--by adding an amendment, at least that wouldn't happen now. Again, some future Legislature could do, I suppose, whatever they wanted with it. [LB815]

SENATOR KRIST: Thank you, Senator. [LB815]

SENATOR HAAR: Yeah. Good question, though. [LB815]

SENATOR AVERY: Is it your contention that when private money leaves a private entity and goes to a public entity it is no longer private? It becomes public? [LB815]

SENATOR HAAR: I would agree with that. I would agree with that. [LB815]

SENATOR AVERY: And that's part of the motivation that lies behind this legislation?
[LB815]

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SENATOR HAAR: Yes. Yeah. Funding--again, funding of any public entity is all of our business. We encourage it, but we think it needs to be recorded and out there in the open. [LB815]

SENATOR AVERY: Any more questions? [LB815]

SENATOR KRIST: I do have one follow-on, if I could, Chairman. [LB815]

SENATOR AVERY: Okay. [LB815]

SENATOR KRIST: I'm trying to equate this to a 501 and restricted funds status when you look at the legal documents. If private money is given to a public entity and it's set aside into restricted funds or they open their own...they're not restricted from opening their own nonprofit organization in support of public. Do you see a slippery slope there? I mean, I'm... [LB815]

SENATOR HAAR: I'm... [LB815]

SENATOR KRIST: Have you gone down that road? I'm sorry. [LB815]

SENATOR HAAR: Yeah, I don't see the slippery slope, because to me...and I suppose Senator Avery put it quite well. I think once private money is given to a public entity, it becomes the public's business. And obviously there are a lot of foundations out there. I believe--I'm not sure of this, but I think, for example, that Lincoln Public Schools...well, I know they do, because they've asked me for money. And so there's an example of a nonprofit supporting efforts within the Lincoln Public Schools. And, again, I certainly encourage that, but I simply think that we have a right to know where--how much money is coming, where it's coming from, and what it's being used for. [LB815]

SENATOR KRIST: Thank you. [LB815]

SENATOR AVERY: If I might add something to this--when we were discussing private money going to a public entity... [LB815]

SENATOR HAAR: Um-hum. [LB815]

SENATOR AVERY: ...the private money becomes public. I believe the reverse of that is also true. Public money that goes to a private entity becomes private money once it is received by the private entity--such as, for example, public money that may be paid in the form of dues to the Nebraska School Activities Association... [LB815]

SENATOR HAAR: Um-hum. Um-hum. [LB815]

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SENATOR AVERY: ...which is a 501(c)(3). [LB815]

SENATOR HAAR: It certainly...you know, all kinds of public entities give grants to private foundations and that sort of thing. So I suppose you could say that's the flip side. Obviously, that sort of thing has to be reported already. [LB815]

SENATOR AVERY: Any more questions from the committee? Seeing none, do you plan to stay around for closing? [LB815]

SENATOR HAAR: Yeah. [LB815]

SENATOR AVERY: Okay. [LB815]

SENATOR HAAR: Thank you very much. Appreciate your time. [LB815]

SENATOR AVERY: Thank you, Senator Haar. We will now hear from the proponents of LB815. [LB815]

JACK GOULD: (Exhibit 1) Senator Avery, members of the committee, my name is Jack Gould; that's G-o-u-l-d and J-a-c-k. My name is Jack Gould; I'm here representing Common Cause Nebraska. The current economic downswing and the need for public entities to cut budgets have created an opportunity for private funds to influence public policy. Foundations, grants, private donations are becoming important resources for budgets that have been stretched to the limit. The willingness of the private sector to help public entities in their time of need is admirable. But private dollars often come with conditions, and those conditions may attempt to redirect public policy. LB815 does not discourage private participation in public projects. The bill simply requires accountability. The public should be made aware of how much money is coming from the private sector and who is making each contribution. Private funders should not fear disclosure. The public is likely to be grateful with the tax dollars which are being saved. However, disclosure of private funding sources also makes efforts by special interests to influence public policy more visible. A large contribution followed by a shift in policy should raise red flags. Although LB815 does not trace the private dollars to specific expenditures by the public entity, Common Cause would encourage that legislation in the next step. And I think if we went to every senator in this body and asked them if they were for openness in government and if they were in favor of disclosure, I think we'd get a resounding yes from everyone. Bills like this and bills like the settlement agreement bill are steps toward more openness. And I think we oftentimes get bogged down with the exceptions, trying to find out what is the exception to the rule, when in reality the overall purpose is simply what everyone's goal is--openness in government. [LB815]

SENATOR AVERY: Any questions from the committee? Senator Sullivan. [LB815]

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SENATOR SULLIVAN: Do you think there should be a balance, though, between a certain level of transparency with the time, effort, and expense of accomplishing that, which might in the long run diminish the favorable impact that an institution might gain by that private donation? [LB815]

JACK GOULD: Well, I can think of cases where there might be anonymous donors--people who want to remain anonymous. And I don't think there's a problem with that, because the money would still be identified as private money. I mean, if there was an anonymous donor who said: I don't want my name used--that would just be identified as private dollars provided by an anonymous donor. And...so I don't think it jeopardizes even foundations who want to keep the sources private. The fact is that when the money leaves the foundation and goes to the public entity, then it becomes money from that foundation. And I think one of the dangers, when you go in to try and attract this money, is it...when money goes from a private entity into a general fund, it becomes invisible. And you can go--you can talk to a public entity about, you know: What money did you use to refurbish the office? I'm just...this is not a real case, but--what money did you use? And they'll say: Well, we used foundation money. You know. And then you can come back again another time and ask about: Did you use foundation money? No, we used general fund money. Well, that's because the public can't see it; it's money that goes into the general fund. And certainly the body may know whether it's foundation money or whether it's tax dollars or tuition money or what it might be. And I think that the public needs to know. I mean, what exactly did pay for this particular item? This bill doesn't go that far into the expenditure side of it. But it does go to the point of saying: This is where we're getting our money, and this is how much. And I think that's important to the public. And, you know, I'm not sure I answered your question, but, I mean, if there's an example that you're thinking of that... [LB815]

SENATOR SULLIVAN: No, not really. [LB815]

JACK GOULD: Okay. [LB815]

SENATOR SULLIVAN: No. Huh-uh. [LB815]

JACK GOULD: Okay. I think the anonymous donor is one that people might be concerned about. And this doesn't shut the anonymous donor down. [LB815]

SENATOR AVERY: Any more questions? Seeing none, thank you very much for your testimony. Other proponents? Seeing no additional proponents, we'll move to opponent testimony. Anyone wish to speak in opposition to LB815? [LB815]

RON WITHEM: Senator Avery, members of the Government Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m, representing University of Nebraska. A wise lobbyist

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would have listened to the introduction, where Senator Haar indicated this is not intended to apply to the university, and would have thanked him and gone away. (Laughter) That's what a wise lobbyist would have done. I feel compelled, though, to point out at least our reading of the bill, and perhaps committee counsel can clarify this for the committee later on. It's true that the first section deals with the Budget Act that does not apply to us. Second section, I believe, deals with public power. The third section, however, on page 6, beginning on line 7, amends the statute--I believe it was just passed last year--indicating that state entities, of which we are one, are required to provide certain information on the State Treasurer's Web site. And it adds in section (ii), i-i, I believe, on line 20: "The amount of money received as private donations, gifts, or grants and the source, allocation," etcetera, etcetera. And for that reason we think this probably does apply to us and not in the same way it does everybody else. And we have a concern with that. Our primary concern is putting into statute the requirement of divulging the source. And I know Mr. Gould indicated he might view the source as the foundation. We're just concerned about words getting into statute and being interpreted differently, because the ability for our individuals that raise private funds to support the activities of the University of Nebraska to deal with contributors--often very wealthy individuals who do not want their identity known--is critical. Particularly in this era when the ability of the state to continue to support institutions of higher education is becoming more and more stressed, the importance of private dollars to support higher education become more and more important. Last year over \$100 million were transferred from the foundation to the university to support university activities. That's \$100 million that the state did not have to provide for such things as capital construction, student scholarships, and professorships. We're concerned if you put language in the statute that says we have to divulge the source of that income, we would put a chilling effect on the fund-raising abilities. We also don't think that this is necessarily needed. I caught the exchange between the two senators here before regarding whether: When private money enters a public institution, does it become public? Do the requirements for disclosure at that point kick in? And we agree that it does. The public records statutes of the state are pretty clear on what is and what is not a public record. And if it's not an exception to the public records statutes, it is a public record, and we would agree that this is subject to requests for disclosure. So we're concerned about the potential negative impact--that we don't think it's necessarily needed for open government. We do have within the Board of Regents standards a requirement to disclose gifts above \$100,000. Now I know this bill calls for \$1,000, which we think is extremely low. One would require a lot of time and effort to disclose--compile information for what are relatively small contributions. So certainly if Senator Haar is interested in continuing further discussions on this bill, we'll be happy to engage in those discussions. But at this point we would ask you not to advance LB815. [LB815]

SENATOR AVERY: Thank you. I'm a little bit curious about your claim that you have donors that wish to remain anonymous. You know, I spent a long time at that university. My observation was that most of them want their names on a building, which is not very

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anonymous. [LB815]

RON WITHEM: Many of them do; many--some of them do not. Many of them will make a contribution, prefer not to have the dollar amount disclosed. That was the case of some fairly major donations to the University of Nebraska Medical Center a few years ago. [LB815]

SENATOR AVERY: I guess I could understand the amount not being disclosed, but usually the people are quite pleased to be associated with supporting the university and, I would think, would be proud to be in the class of donors that are considered significant. [LB815]

RON WITHEM: That oftentimes is the case; I would agree with that. [LB815]

SENATOR AVERY: But you do have enough of these donors to make you a little bit squeamish about this bill. [LB815]

RON WITHEM: Yes. [LB815]

SENATOR AVERY: Do you have any idea how many donors we're talking about... [LB815]

RON WITHEM: No. No. [LB815]

SENATOR AVERY: ...and how much money is involved? [LB815]

RON WITHEM: No, I don't. [LB815]

SENATOR AVERY: It's just a general feeling? [LB815]

RON WITHEM: It's based on what the people who work at the foundation tell me anecdotally from their work with donors. [LB815]

SENATOR AVERY: Hmm. Anecdotal evidence. [LB815]

RON WITHEM: Agreed. [LB815]

SENATOR AVERY: Okay. Senator Krist. [LB815]

SENATOR KRIST: Having some familiarity with trying to raise money for institutions myself, we had, in several cases, large amounts of money that they neither wanted to be identified with their name or the amount of money that was given, because, in a couple of cases, they didn't want the next institution to think that they were going to get

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the same amount of money, nor did they want anybody knocking on their door. So I can understand some of your concern. Could you clarify for me the public money going private, private money going public? You have nonprofits, 501-registered, in support of UNMC or the university system. [LB815]

RON WITHEM: The University of Nebraska Foundation, I believe, is a 501 organization that exists to support the activities of the University of Nebraska--all four campuses; there's not a separate foundation for each entity. In addition, I believe, some of the alumni associations engage in fund-raising to support university activities. [LB815]

SENATOR KRIST: And they comply with all of the IRS standards for 501 in terms of registering... [LB815]

RON WITHEM: Oh, certainly. [LB815]

SENATOR KRIST: ...and reporting and all those. [LB815]

RON WITHEM: Oh, certainly. [LB815]

SENATOR KRIST: And that's public knowledge once it becomes part of the university funds, if that money is spent in support of the university? [LB815]

RON WITHEM: Once the money comes to the university, it does not necessarily come with the identification of the individual donor. It comes from the University of Nebraska Foundation. What I meant is that money, once it hits our books, is treated the same way as state money, other sources--federal grants, other sources of income--in that it's a public record, and individuals who wish to find out how that money is utilized can ask those questions. [LB815]

SENATOR KRIST: Thanks for the clarification. [LB815]

SENATOR AVERY: Senator Karpisek. [LB815]

SENATOR KARPISEK: Senator Krist stole my story. [LB815]

SENATOR AVERY: Oh. Okay. (Laughter) Anybody else have a story--or question? [LB815]

SENATOR KRIST: Sorry. [LB815]

SENATOR KARPISEK: It's okay. [LB815]

SENATOR AVERY: Seeing none, thank you, Mr. Withem. [LB815]

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RON WITHEM: Thank you very much. [LB815]

SENATOR AVERY: Any more opposition testimony? Welcome. [LB815]

DENNIS BAACK: Thank you. Senator Avery and members of the Government, Military and Veterans Affairs Committee, for the record my name is Dennis Baack, D-e-n-n-i-s B-a-a-c-k, the executive director of the Nebraska Community College Association, here appearing in opposition to LB815. I think from our perspective as we look at this bill and as my various foundations looked at this bill, there was more of a fear of the unknown than there was anything else. They weren't exactly sure what this was going to require of them more than they do today. And, quite frankly, our foundations are very small. We don't have a lot of people working for our foundations. If we're going to talk about some huge reporting requirements and stuff, that's going to be a big burden on them, because, quite frankly, right now, most--almost all of the money from our foundations that goes to the colleges themselves is purely scholarship money. And they make a report to the board every year, and they are audited, and they have--those audits are available to the public once they're audited. They feel like there's pretty good transparency already with the funds that our foundations have. Our foundations are not all that large, but they do get some fairly sizable sums. But almost every bit of their money goes to scholarships. A little bit of it will go to--for administration of the foundation itself, but all the rest of the funds go to scholarships. And we're a little concerned about it and would be probably supportive of--if you're going to do a study of this issue--for trying to include the university. Maybe we ought to study the whole issue and we ought to all be involved from the beginning so we know exactly what we're getting into and know what the reporting requirements are going to be when we get there. And that would be our concern. I'd be happy to answer questions if there are any. [LB815]

SENATOR AVERY: Thank you, Mr. Baack. Any other questions from the committee? Just an informal observation--we just had two former speakers address us. [LB815]

DENNIS BAACK: Yes, and a former Chair of the Government Committee. [LB815]

SENATOR AVERY: That was you. [LB815]

DENNIS BAACK: That was me. [LB815]

SENATOR AVERY: That was you. [LB815]

DENNIS BAACK: That's right. [LB815]

SENATOR AVERY: We're honored. Anyone else wish to address the committee in

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opposition? [LB815]

BRIAN HALE: Senator Avery, members of the committee, my name is Brian Hale, B-r-i-a-n H-a-l-e. I represent the Nebraska Association of School Boards. Among the many duties assigned, I'm also the chair of a group of school foundation directors around the state, and so I have some experience in some of the things that they're working with. Following Ron Withem, I should also say that once the word was given that these sorts of receipts might not be used as accountables receipts against us, I should probably have said thank you. But as easily as you can draft an amendment that excludes foundations' funds as an accountable receipt for schools for the purposes of calculating state aid, a line can be drawn through it in future years; and I think that's a very dangerous situation. We're concerned not just from the foundation level, but there are a number of efforts in schools to raise money for band uniforms, for football uniforms, for any number of things. And just exactly how that reporting comes and goes and how you account--where it may be a compendium of many \$20 gifts that the booster club gets together and gives as a block that exceeds \$1,000--certainly becomes a bit of a quandary and a concern for us as that moves forward. I think that anything that...our major concern is that anything that appears to chill the willingness of community members to invest back in their community, to take the lives of their community in their own hands--to build a community center that just happens to be attached to the school, to build a library, to build any number of things that not only benefit the school but mutually benefit communities large and small throughout this state--I think we are concerned with that. Ultimately that is going to be the future certainly of rural Nebraska, but I think even in urban Nebraska the ability of local people to take matters into their own hands is going to be the key to the future. And foundations are a way in which people--they...we see a lot of this with schools. People get to a point at the end of their lives--they may not have any heirs, they may not like their heirs very much. They may otherwise see--look around for opportunities. Giving their estate at the end back to their community, the place that raised them, the place that helped them make a living and raise their kids, is what it's about. And it allows...that it allows school districts and other entities to do things that they could never do if they were waiting for their state aid boat to come in I think is not as serious as the fact that having Nebraskans roll up their sleeves and do what's best for their community really is something that we should be encouraging and not discouraging. And so I'm not sure that this bill discourages that outright, but there's a concern. Certainly there's been some concerns expressed that it may discourage people if they have a choice between giving it here or there, that if their name has to be reported and the amounts are reported and it's on the state Web site, that may be a chilling effect that we'd hate to have happen. As far as school foundations go, the monies that they spend, almost without exception, are designed not to supplant but to supplement state aid, that it works on the edges. There are many examples. In Grand Island, they had in just two weeks this last year collected enough money to put field turf on their football field. Three hundred thousand dollars--they just asked, and the money came. Grand Island Public

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Schools didn't have extra money lying around to do that. In Lincoln, there was a young man injured seriously at the football field--down here at Seacrest Field--several years ago, and somebody said, you know, that can't continue, and so he came forward. The locker room, which serves six football teams, six soccer teams, and everything else, at Seacrest Field did not have any sort of medical facilities or first aid at all. And so a citizen came forward and said: That can't continue; I'm going to make sure we have a locker room that's sufficient to the needs. Again, even Lincoln Public Schools, with their budget and their concerns, didn't have an extra million dollars lying around to enhance that locker room at the football field. But if the community members feel that's important enough and they come forward, we should encourage that. That helps the common good, to make sure the next time a kid is injured at least potentially there's some services available for them to go forward. With that I'll sit tight and allow questions. [LB815]

SENATOR PRICE: Thank you. Senator Sullivan. [LB815]

SENATOR SULLIVAN: Thank you, Senator Price. So I'm trying to figure out, in light of what Senator Haar said, that this information is not easily accessible to the general public, but you sort of indicated that it could be. So in the course of making budgets available to the general public, open meeting laws, does the public have access to information about private donations? [LB815]

BRIAN HALE: Each foundation must file with the IRS a reporting of their outlay--where they have given money in and about their workings. The IRS form number escapes me. Anyway, there is a requirement for each foundation or each charitable group or individuals to report that through the IRS. The problem in trying to track it directly to what does this school district get is that they may have gotten contributions from a lot of different directions. And so the difficulty, on the surface, with that raw data may be trying to sort out how many different ways did School District X get a contribution from all the different directions. Now, there are companies who have developed software by which you can sort that. I mean, you can go through and look up North Platte Public Schools, and they will show all of the sorts of donations that they have received. But that's not something that you can, at least to my knowledge, that you can go pick out for free very easily. But it does exist in some ways; there are requirements for the donors of these things to report through the IRS. [LB815]

SENATOR PRICE: Senator Krist. [LB815]

SENATOR KRIST: Thank you, sir. Thanks for your testimony. In your association, in your capacity, you're familiar with all the foundations in the public school system. [LB815]

BRIAN HALE: I'm familiar--probably not all the nuts and bolts, but I've certainly met a lot

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of the people and... [LB815]

SENATOR KRIST: By definition, as a foundation, a 501 or 501(c)(3) or some kind of... [LB815]

BRIAN HALE: The IRS requires a foundation to be a distinctly separate entity from the school district. [LB815]

SENATOR KRIST: And when the foundation gives to the school district, the school district is--right now--is capable of telling us what foundation--of telling you what foundation that money came from? [LB815]

BRIAN HALE: I believe they could. The transaction is sometimes whether--in the example of the locker room, if the cash was given to the district to build the locker room or the foundation build the locker room. Sometimes that may have a ruling, in terms of when you talk about giving cash--sometimes they're giving them buildings or they're giving them something that isn't cash. But mostly they could. [LB815]

SENATOR KRIST: You see, my problem with this is that if you build a cage, somebody's going to figure out how to get out of it. That's just the way it is. So if we tell you to be accountable and we--and LB815 does what it's supposed to do, instead of giving them money, if I want to be anonymous, I'm not going to give it to the school district, I'm going to give it to the foundation. The foundation has already a set of legal requirements as imposed by its organization under the IRS. If I want accountability for the money going into the school district, I'll go back to the foundation and then use a whole different set of rules. I'm not understanding, I guess, the need for where we're going down this road unless we can back up and include everything statewide and we do the study, as someone mentioned before. And my other problem, honestly--and I've already said it, and I'm going to say it again publicly. I'm a little concerned, as you presented, that at some point somebody's going to amend it and we're going to start including in the donations from foundations and/or donations from the public in the TEEOSA formula. And that's going to, in part, hurt the school district itself. And that does not encourage people to give, because then the state is pulling money out of a cash fund to bail itself out. And we never do that. (Laughter) But...so thank you for your...yeah, go ahead. [LB815]

BRIAN HALE: We do, as the school boards association--school boards throughout the state--we are accountable to all of the public monies that come to school districts through federal funds, through state funds, through the local property tax payers. And that's right. And we will continue to do that. This is different; it's a trust between an individual and the foundation and the school district and sort of a trilateral trust that needs to be built and expressed. It happens now, and people are still learning this lesson. In O'Neill, an elderly lady, about ready to pass away, got a blue-lined notebook

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paper and wrote on the blue-line notebook paper: I want to give \$100,000 to O'Neill High School and \$100,000 to O'Neill Elementary School--signed it. Her executor got it after she passed away; they made out a check--one to O'Neill High School and one to O'Neill Elementary School. Fortunately, the superintendent didn't dance down the street and deposit that in the bank, because if they had, they would have lost state aid, and that person's gift would have been netted out to zero. And so I think the importance of foundations is still there; we need to find ways to encourage it rather than discourage it. [LB815]

SENATOR AVERY: Any other comments from the--or questions? Senator Price. [LB815]

SENATOR PRICE: Senator Avery, thank you. I have a question for you. [LB815]

BRIAN HALE: Yes. [LB815]

SENATOR PRICE: Do you find that contributions sometimes come in on a recurring basis from donors? Like someone will have a continual, like, I don't know, annuity maybe or something of that nature. [LB815]

BRIAN HALE: Sure. [LB815]

SENATOR PRICE: Okay, great, because I know in the federal acquisition regulations there's a certain part of it that says you can't get into the privity of a subcontract. And I'm concerned that that may be what we're doing; we're getting into the privity of a contract between two other parties here. So would you see that to perhaps have a negative impact or be a potential pitfall? [LB815]

BRIAN HALE: Certainly another concern--and particularly with existing situations like that: to, say, to pass a law that says that all of that must be reported under an arrangement that was set up 5 or 10 or 20 years ago. [LB815]

SENATOR PRICE: Okay. [LB815]

BRIAN HALE: That would be concerning. [LB815]

SENATOR PRICE: All right, thank you very much, sir. [LB815]

BRIAN HALE: Thank you. [LB815]

SENATOR AVERY: Any other...? Senator Karpisek. [LB815]

SENATOR KARPISEK: Thank you, Senator Avery. First, I'm glad to see that you must

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have met some of my family--talking about the ones that don't like their heirs. (Laughter)
Second, Grand Island won't have to raise money for their new baseball and soccer fields, because we gave them \$1.5 million from the state to rebuild that. [LB815]

BRIAN HALE: Yes. [LB815]

SENATOR KARPISEK: Other than that, I just wanted to say thank you for bringing up the...that it's a little closer to home...the university and the colleges, and, you know, yeah, you think about the \$10 million trying to raise band uniforms. That's where I think I'm sure Senator Haar will probably, maybe in closing, say that's not what we're after. But thank you for raising that. To me, that kind of brought it a little closer to home, and I said: Oh--because I know I'm probably not going to donate \$10 million to the university, and, well... [LB815]

SENATOR PRICE: That means I'm still in. [LB815]

SENATOR KARPISEK: Yeah. Yeah, you're still in, Senator Price. But I may be involved in the band uniform; I might be the one trying to raise that money. [LB815]

BRIAN HALE: Sure. Um-hum. [LB815]

SENATOR KARPISEK: And again, I'm trying to do this to give Senator Haar a little heads-up to...I'd like to hear about that in his closing. But thank you for bringing that up. [LB815]

BRIAN HALE: And there's a lot of stories. In North Platte, there was a house across the street from the high school that sat vacant for a while. And the foundation and the school got together and decided: You know, if we could get the foundation to buy that house, we might be able to use the construction trade kids, go over there, renovate the house to make it handicapped-accessible. And now they have a program by which they're teaching their handicapped kids how to do life skills--how to do dishes, how to do the laundry, how to maneuver around in a household--so that when they graduate and, hopefully, get their own place, they'll have some experience with that sort of thing. Again, North Platte Public Schools didn't have the money to buy a house, and probably, politically, that wouldn't have been wise for them to do that. But that was an opportunity that was raised for them. [LB815]

SENATOR KARPISEK: Thank you. Thank you, Senator Avery. [LB815]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you for your testimony. We're still on opposition testimony. Anyone else wish to testify in opposition to LB815? Anyone wish to testify in a neutral position? [LB815]

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BETH BAZYN FERRELL: Good afternoon, Senator Avery, members of the committee. For the record my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I am the assistant legal counsel with the Nebraska Association of County Officials. We're appearing here neutral on this bill just because we wanted to give you a little information about the kinds of grants that counties receive. Typically most of our grant money comes from governmental sources, whether that's directly from the state--from a state funding program--or from, perhaps, the federal government and it's filtered through the Crime Commission, for example. But most of the money that we get comes from those kinds of sources. We do have some instances of private grants. We heard recently about a county that received a \$25,000 grant from a private individual who also donated \$100,000 to the community foundation for purposes of economic development and stimulating that community. And that was reported, because, according to the Budget Act, revenue from all sources has to be reported on the budget forms. We've heard of a sheriff, for example, that received a grant from Wal-Mart, which--he went out and actively pursued that grant. I believe that there may have been some counties that have received funding from the Gates Foundation or similar foundations like that in relatively small amounts. In most cases, if someone wants to make a donation to a county, they try and really focus it to the county or the community foundation, because typically it's something like courthouse renovation, you know, geared toward a specific...restoring a statue or, you know, a stained-glass window or something or maybe lighting the courthouse at Christmas--that sort of thing. The donations would typically be relatively small amounts, and so they would--the county would try and focus them to the community foundation or economic development corporation, that type of thing. I'd be happy to try to answer questions. [LB815]

SENATOR AVERY: Thank you. Any questions from the committee? Seeing none, thank you for your testimony. Any other neutral testimony? Okay, Senator Haar, you are recognized to close. [LB815]

SENATOR HAAR: Members of the committee, I've been part of a lot of organizations where we have to raise money, and I know how difficult it is. And in some of those cases, we would do just about anything to raise money, like going door to door to sell cookies (laugh) and those kinds of...I mean, one of the things that struck me about the opposition is we're scared we're going to lose money. And public entities are public, and the public has a right to know. That's all we're saying: The public has a right to know. There's nothing in this bill that says you have to give the names of donors. And if we need to clarify that with some other language to quell the fears of organizations, let's put that in as well. I have no problem with that. If \$1,000 is too low, let's clarify that. But the public has a right to know; these are public institutions. For example, a school...I don't care how much money they need, but part of that's my money; part of my money is going to the Malcolm schools. And so I have a right to know how that school is being financed, because that's my money. Now, also we kind of hear: Well, jeez, if you dig hard enough you can find this information. Well, I'm a computer guy, but I have to admit

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I don't read all that fine print every time I get a new piece of software, because it goes on for, you know, forever and forever, and so I just put the checkmark "I agree." So some of this information has to be...I mean, it may be available somewhere. Why do we even bother with a Web site then? My God, if people can call up agencies, you know, state agencies and so on and get the money, why...you just say to the citizen at the door when I'm running for office: You know what, if you want to find that information, here's the number for the operator at the Statehouse, and, you know, if you spend enough time looking, you're going to find out what you want. To me, the talking about transparency and sunshine--it's, frankly, to make it easy for people to see what's happening in their government, to make it easy for citizens who are busy with all the other parts of their life to see what's going on in government. And so the argument that: Wow, it's going to cost us some money to make some money, and we might lose somebody...we're not asking for the names of donors. We're not asking for that. This is really a form of consumer protection. And again, the public has the right to know. And if we have to make a decision and say: Well, maybe if the public knew this, they wouldn't want us to take the money--then we shouldn't take the money as a public entity. Now as a private nonprofit you can do that if you want but not as a public entity. I'm really quite offended--this whole idea that we'd just sort of take the money and run. There's a five-letter word that describes that, which I won't say. The fear of the unknown--it's going to threaten donors. One of the questions was: Well, how many people are there like this, and how much money would be coming from that--those sources? And the answer was: I don't know. Well, isn't that exactly what transparency in government is about? The public has a right to know those things. I think the public probably does have this right to know if...you know, the anonymous donors. If somebody wants to be anonymous, that's fine, but I also have the right to know that. Fear of the unknown--yeah. It's as easy to exclude as to include. Any Legislature in any session can change the TEEOSA formula. So because I'm excluding with an amendment, I don't see--I mean this doesn't put up flashing lights that say: Oh, let's include it in the future. Any, you know, any Legislature in the future can change the TEEOSA formula in any way they want. And this bill is not going to threaten that ability, and it's not going to enhance the ability; it's not going to enhance the chances of some future group saying include. So it's kind of like let's hide this money from the Legislature so they don't see it. That's really the concept here. Now, somebody also, in the neutral testimony, talked about, you know, all the government funding. That's not covered in this bill. This is private gifts. Let me go back and quote you exactly. This has to do with "private donations, gifts, or grants." So we could say, you know, private donations, private gifts, or private grants. That's what we're talking about. We're not talking about public money, federal money. But what does that say, again, about our democracy, that if we give citizens information, it's going to put a chilling effect on some part of our democracy? I'm almost offended by that. Then form a foundation and have people give their money to the foundation; that's what we're saying, you know. Then they just report the money coming in from the foundation. But if public institutions have to hide information--or make it difficult to get--from citizens, then we're in trouble. I'm open to questions.

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[LB815]

SENATOR AVERY: Senator Price. [LB815]

SENATOR PRICE: Thank you, Chairman Avery. Senator Haar, to make sure I understand... [LB815]

SENATOR HAAR: Yeah. [LB815]

SENATOR PRICE: An anonymous contribution is an acceptable response. [LB815]

SENATOR HAAR: Sure. [LB815]

SENATOR PRICE: Okay. [LB815]

SENATOR HAAR: I... [LB815]

SENATOR PRICE: In general. [LB815]

SENATOR HAAR: Yeah. Yeah. [LB815]

SENATOR PRICE: Okay. In one of the supporting arguments you provided for us, it was to see who is influencing. So if I have an anonymous contribution buys a building or, you know what I mean, or a large contribution, and then you go and you look and say it's anonymous, how do you get to influence? So I'm trying to understand--with that agent, an agent of influence there, through the medium of money, and we still don't know. So have we made it any clearer in that instance? I mean, there are a lot of instances being covered here. [LB815]

SENATOR HAAR: Sure. Sure. And you ask a good question, but I think Senator Avery brought up a really good point. Most people would like their name to go with it. So, you know, an anonymous donation to build a brand-new school is going to be very uncommon. And we don't cover that here; I agree to that. Most people, you know, are going to say the Haar Memorial Middle School (laugh) or something. Every school in... [LB815]

SENATOR PRICE: Or the fourth fountain project. [LB815]

SENATOR HAAR: Yeah. Every school in Lincoln has a name connected with it and so on and so forth. So, you know--and I suppose if somebody really wanted to be devious and influence the school in certain ways, they could give a whole series of anonymous gifts. But then, again, there are people in the public who want to know and who will take the time to find out. And I suppose if you had a dozen anonymous gifts, then it

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would--then you'd go to the school board or whatever and say: What's going on here? What's going on? [LB815]

SENATOR PRICE: Especially if they're only \$990. [LB815]

SENATOR HAAR: Yeah. (Laugh) [LB815]

SENATOR PRICE: Thank you, Senator Haar. [LB815]

SENATOR HAAR: Yeah. Yeah. [LB815]

SENATOR AVERY: Seeing no more questions, thank you very much for your testimony. [LB815]

SENATOR HAAR: Yeah. [LB815]

SENATOR AVERY: I... [LB815]

SENATOR HAAR: And, Senator Avery, we're more than willing to work with people if we need some specific clarification. I think you see the intent here. [LB815]

SENATOR AVERY: Yeah, we'll probably talk to you about that... [LB815]

SENATOR HAAR: Thanks so much. [LB815]

SENATOR AVERY: (Exhibit 2)...if we need to. Let me read into the record a letter of neutral support--I guess that's not the correct word (laugh)--a neutral letter by Stan Carpenter, chancellor of the Nebraska State College System. With that, the hearing on LB815 is closed. We'll now move to LB839--Senator Lautenbaugh. Would you pass this to Sherry for me? [LB815]

SENATOR AVERY: Welcome, Senator. [LB839]

SENATOR LAUTENBAUGH: Good afternoon, Mr. Chairman, members of the committee. It is not my intention to take a lot of your time today. It is not my intention to tell...thank you, Senator Karpisek. It is not my intention to tell you this will be the most weighty and important bill you will deal with this session. And I will get right to it. Unbeknownst to almost everyone, it seemed to me, once the process of regulation promulgation is at its end--after we pass a bill and say whatever agency is to promulgate rules and regulations thereunder--it goes to the Attorney General's office for their comment, approval, disapproval; it goes to the Governor's office for essentially a veto; and then it goes to the Secretary of State's office, where it sits for five days before it becomes law. This bill removes the five days' sitting around. I guess they don't really

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become law; they become official regulations, which have the effect of law. That's it in a nutshell. If there's a good reason that is lost on us to have the five days still, then you should kill this bill; if there's not a good reason, you should advance the bill--very simply put. [LB839]

SENATOR AVERY: Well, that was going to be my question. What purpose do you think that five-day rule served at all? [LB839]

SENATOR LAUTENBAUGH: It remained unclear to us. I know the Secretary of State does put rules on its Web site, but I'm not sure that that is where people go who are in the affected industry to find the rules in the first instance. So I'm just not sure it serves a purpose. And believe me, I'm not going to belabor the point with you, because I... [LB839]

SENATOR AVERY: And you're not...you can't find anybody that can defend it and say: This is why we have it, and that's why it's important, and we need to keep it. [LB839]

SENATOR LAUTENBAUGH: Someone may follow... [LB839]

SENATOR AVERY: Yeah. [LB839]

SENATOR LAUTENBAUGH: ...and they may do a better job at this than I am. So I don't know that there'll be any proponents; there may be an opponent, and they may be the one who can justify keeping the rule. [LB839]

SENATOR AVERY: Any questions from the committee? Seeing none... [LB839]

SENATOR LAUTENBAUGH: Thank you. [LB839]

SENATOR AVERY: You're going to stay for closing? [LB839]

SENATOR LAUTENBAUGH: (Laugh) Normally I would, just because it's not in my nature to waive it. But I am supposed to be back in my own committee introducing a bill there also, which is a problem of my own making by introducing too many bills. So, yes, I will waive closing. [LB839]

SENATOR AVERY: We...many of us are in the same boat. Thank you. [LB839]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you. [LB839]

SENATOR AVERY: Proponent testimony. [LB839]

MARY JOHNSON: Good afternoon, committee members. My name is Mary Johnson,

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M-a-r-y J-o-h-n-s-o-n, and I am with Ruth Mueller Robak, testifying today as a registered lobbyist for the Nebraska State Bar Association. We wanted to let you know that the bar association has reviewed LB839 and has looked to find a need for the five-day waiting period and have not been able to find that need. And so the bar association is in support of the removal of the five-day waiting period. So I am sharing that with you today. [LB839]

SENATOR AVERY: So you're in favor because you can't think of a reason to oppose it. (Laugh) [LB839]

MARY JOHNSON: Well...and we would like to find one but did not. So we're in support of the bill. [LB839]

SENATOR AVERY: I see Senator Lautenbaugh has decided to leave. Any questions? [LB839]

SENATOR PRICE: Yes. [LB839]

SENATOR AVERY: Senator Price. [LB839]

SENATOR PRICE: Senator, thank you. Ms. Johnson, can you...maybe I missed this somewhere along the line, but is there a maximum period that they have to file in? We talked about a minimum waiting period, like a cooling-off period is what I see, and it's five days. But is there a maximum period that they have to do it within? [LB839]

MARY JOHNSON: That I'm not aware of. I think in this case and in a number of cases when rules and regs are promulgated, you have so much time to respond. There are a number of different time constraints; you have so much time to respond positively or negatively or give comment. Other than that, for...once they come back from the process that Senator Lautenbaugh commented on, why an additional five days is...we would agree--in the fact that we don't know why that is. [LB839]

SENATOR PRICE: Thank you. [LB839]

MARY JOHNSON: Um-hum. [LB839]

SENATOR AVERY: If this law were to pass... [LB839]

MARY JOHNSON: Um-hum. [LB839]

SENATOR AVERY: ...then when would a rule become--when would it take effect? [LB839]

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MARY JOHNSON: I would guess it would be...and I would probably look to your counsel--but I would assume that once it's gone through the process that Senator Lautenbaugh described--where it goes to the A.G.'s office and to the Governor's office--and once all of that piece is done, once it arrives in the Secretary of State's office, I would assume that it would be completed. [LB839]

SENATOR AVERY: I agree. That's probably when it would happen. Any other questions? Looks like there might be one. (Laugh) [LB839]

MARY JOHNSON: Oh. Thank you. [LB839]

SENATOR AVERY: Thank you. Any other proponents? Any opponents? Welcome. [LB839]

JAMES GODDARD: Mr. Chairman, committee members, my name is James Goddard; that's J-a-m-e-s G-o-d-d-a-r-d. I'm a staff attorney at Nebraska Appleseed Center for Law in the Public Interest. We're a nonprofit, nonpartisan public interest law center here in Nebraska. Hopefully, I can furnish a reason for having this waiting period in the first place. I would argue LB839 puts the public in an uncertain position. The current five-day waiting period shields or guards against harsh consequences of immediate enforcement. Now the public has five days to learn about a rule being final and to conform their conduct to it, should that need arise. LB839 would remove this important lag time. So basically what that means is one hour I could be in compliance with the law and the next I could be in violation of it. Because of this, it can force the public into making a difficult decision. One, they're going to have to follow a proposed rule before it's actually in effect. That could make them really have to monitor closely the rule as it progresses through the process, and it might require an adjustment in conduct and cost associated with that. All of that could end up being unnecessary. As was mentioned, the rule-making...there's notice and comment: it goes to the A.G., then it goes to the Governor. Between that period and the end, the public doesn't know if it's going to be amended, if it's going to be vetoed, or what...or just killed. So basically, they could be following an unnecessary or unfinal rule. The other option I see is that they wait until the rule is final--when it's filed with the Secretary of State--and risk being instantaneously in violation of it. The five days relieves the public of this difficult decision about what they're going to do. It allows a reasonable time for them to have notice and to change their conduct if they need to. Now, most states have this waiting period in one form or another. Some states have 30 days before it's effective; some states have 90 days. Others require it to be published before it's effective. Still others say in the rule it will be effective on a predetermined date. All of this is to say that most states acknowledge a need for some sort of lag time between the rule being actually finalized and then it being effective and enforceable against them. Currently, Nebraska's Administrative Procedure Act recognizes this need and has a five-day period, which is already pretty short. If the Legislature sees a need to alter this, then it should be some other standard whereby the

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public has enough notice to hear about the new rule and change their conduct if need be. In closing, I'd just like to say the purpose of the Administrative Procedure Act is to make rule-making more open, understandable, and transparent. For all the reasons I mentioned already, I would say LB839 would be contrary to this purpose. For these reasons, I urge you not to advance the bill. [LB839]

SENATOR AVERY: Thank you, Mr. Goddard. Any questions? Senator Krist. [LB839]

SENATOR KRIST: Thank you for your testimony, Mr. Goddard. Did...how long have you known that you were coming to the hearing to talk to us about the opposition to the bill? [LB839]

JAMES GODDARD: I think I looked at the bill when it was dropped a week or so ago and started thinking about it about a week ago maybe. [LB839]

SENATOR KRIST: Did you make any attempt to talk to Senator Lautenbaugh about the proposal, the bill, the--your opposition? [LB839]

JAMES GODDARD: No. No, I did not. I assumed that there was some purpose behind this that I just wasn't seeing--getting rid of the five-day waiting period. I assumed that I would find out today what that purpose was and would address that. [LB839]

SENATOR KRIST: A lot of assumptions. And going to the guy who's writing the bill can sure help to get to the bottom line faster than just assuming that you're not. But I see your points, and I don't disagree, but I'd encourage you to go to the bill writer the next time and maybe given them a reason why. [LB839]

JAMES GODDARD: Okay. [LB839]

SENATOR KRIST: Thank you. [LB839]

SENATOR AVERY: Senator Price. [LB839]

SENATOR PRICE: Thank you, Chairman Avery. Mr. Goddard, again thank you for coming down. My question comes in--in that five-day period, is there an action that the public can take to impact that rule, reg, at all. I mean, once it's done, once it's to the Secretary of State, it's kind of basically in a final state; and in five days it's de facto going to happen. [LB839]

JAMES GODDARD: Right. [LB839]

SENATOR PRICE: And...but is there any action that the public would have or a machination that they can take to, like, stop it, like an injunction is what I'm thinking. I

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don't know law, but you know... [LB839]

JAMES GODDARD: Perhaps, yes. Something like if there--you could seek some sort of a declaratory judgment, alleging it's unconstitutional or for some other reason, and try to enjoin it from going into effect. That's a possibility, I would say. Other than that, once it's filed, it's final; and then after five days, it's enforceable. That's how I understand it anyway. [LB839]

SENATOR PRICE: So filed and final and then enforceable--you could enjoin it after it's final? Okay. [LB839]

JAMES GODDARD: Does that answer your question, sir? [LB839]

SENATOR PRICE: I think it does. [LB839]

JAMES GODDARD: Okay. [LB839]

SENATOR AVERY: Mr. Goddard, you represent Appleseed... [LB839]

JAMES GODDARD: That's correct. [LB839]

SENATOR AVERY: ...as a lawyer. [LB839]

JAMES GODDARD: That's correct. [LB839]

SENATOR AVERY: Do you represent them as a registered lobbyist? [LB839]

JAMES GODDARD: No, I don't. [LB839]

SENATOR AVERY: Yeah. [LB839]

JAMES GODDARD: We have another registered lobbyist. [LB839]

SENATOR AVERY: So you know that it is illegal for you to go to the introducer of this bill to try to influence the shape and content of it since you're not a registered lobbyist and you are a legal representative of an organization or a principal. [LB839]

JAMES GODDARD: Right. [LB839]

SENATOR AVERY: Okay. I just wanted that on the record. [LB839]

JAMES GODDARD: No. Thank you for mentioning that, Mr. Chairman. [LB839]

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SENATOR AVERY: Any other questions? Okay. [LB839]

JAMES GODDARD: Thank you for your time. [LB839]

SENATOR AVERY: Thank you for your testimony. Any other opposition to LB839? Any neutral testimony? [LB839]

COLLEEN BYELICK: Chairperson Avery, members of the Government, Military and Veterans Affairs Committee, my name is Colleen Byelick; it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I am the associate general counsel with the Secretary of State's office. As you're probably aware, the Secretary of State's office maintains the Nebraska Administrative Code and is responsible for filing, certifying, and distributing state agency rules and regulations. Notice of rule-making hearings and draft copies of proposed regulations must be filed with the Secretary of State's office 30 days prior to the hearing date. The Secretary of State is required to maintain a public docket for each pending rule-making proceeding and make copies of proposed regulations available. We believe that public access to regulations is very important, and therefore we maintain pages on our Web site where all proposed and current regulations can be viewed. We'd just like to give you some background information about our processes and that--how that five-day period is currently being used by our office. Once a regulation is approved by the Governor, it's hand-delivered to our office, and we officially file it that same day. We then complete a number of steps to ensure that the public and the agency are notified of the filing of a new regulation. So we date-stamp each page of the regulation; we send a copy back to the agency, thereby notifying them that the regulation has been filed. The regulation is sent out for scanning and uploaded into an internal database which maintains the history of each regulation. To inform the public, we update both our proposed regulation page, which triggers an automatic e-mail to anyone that subscribes to our page notifying them that the regulation has been filed. We also send a clean copy of that new regulation to our Web post, where it's uploaded to our current regulations page. So the current five-day period allows our office time to complete these steps so that the agency and the public are put on notice that the reg has been approved and filed, before it goes into effect. So should this period be eliminated, our Web site will no longer be up to date. In 2009 our current regulations search page received between 109,000 and 212,000 hits per month. Our proposed regulation Web page receives between 19,000 and 29,000 hits per month in those in 2009. We're not here to speak for other agencies, but we do believe that they also use this five-day period to update their forms, their manuals, their procedures so that they're in compliance with the new reg once it becomes effective. And I can answer any other questions you might have. [LB839]

SENATOR AVERY: Any questions of Ms. Byelick? Senator Sullivan. [LB839]

SENATOR SULLIVAN: So do you see some potential problems in, then, having your Web site technically be out of date? [LB839]

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COLLEEN BYELICK: Well, I do. And just based upon the number of hits we're seeing, obviously, you know, someone's looking at this Web site. And, you know, we strive to make sure that we've got everything current. And so, you know, once something is filed, then we get it to our Web post so it's uploaded. So, you know, if we can't do that, the public may not know, you know, what the current regulation is. [LB839]

SENATOR SULLIVAN: Okay. [LB839]

SENATOR AVERY: Senator Price. [LB839]

SENATOR PRICE: Thank you, Chairman Avery. Ma'am, real quick, about--approximately how many regulations do you have on your Web site? [LB839]

COLLEEN BYELICK: Well, I...for 2009, I think we had 100 hearing notices filed. And sometimes regulations may carry over from a previous year, so there's more than 100, you know, currently in process at one time, because you might start the process in 2008 but not finish it, and so... [LB839]

SENATOR PRICE: The question I was getting to--because we had talked about IT yesterday and everything--is more about the total universe of products on your Web site that anybody can get to. That's what I'm asking. Are you saying there's only maybe 100 on the Web site--your total Web site--that you reference to all the hits? [LB839]

COLLEEN BYELICK: Okay. No, that's...I'm talking about our current search page. And that's all state agency regulations. So I think there are 73 different agencies; there's over 200 titles; each title has, you know, several chapters. I mean, there's, you know, tens of thousands of documents out there. [LB839]

SENATOR PRICE: Great, because I just want to make...for the record. When you talk about 212,000 hits or 90,000 hits, generally speaking, in most IT situations, that's for each product. Each time someone goes and asks for Reg. 1, that's a hit; you go to Reg. 2, that's another hit. That's not 212,000 separate people, unique identities, that have come to it. So I just want to make sure we're clear. But it does obviously state that people are looking at your products and have a need for it. [LB839]

COLLEEN BYELICK: Right. [LB839]

SENATOR PRICE: So I appreciate that clarification. [LB839]

SENATOR AVERY: Any more questions? Seeing none, thank you. [LB839]

COLLEEN BYELICK: Thanks. [LB839]

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SENATOR AVERY: Any additional neutral testimony? Seeing none--Senator Lautenbaugh has waived closing--that ends the hearing on LB839. We will now open the hearing on LB716. I will turn the chair over to the Vice Chair. You're in charge; you are large and in charge. [LB839]

SENATOR PRICE: Good afternoon, Senator Avery. [LB716]

SENATOR AVERY: Senator Price, thank you. Members of the committee, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I am here to introduce LB716. This would add "community college area" to the definition of "high elective office." Current law provides that "no person serving in a high elective office shall simultaneously serve in any other high elective office." So under this bill, members of the community college board of directors would not be able to serve in any other high elective office at the same time. This committee authorized an interim study on various rules and regs and practices, procedures of the accountability and disclosure law. And during the course of that interim study we held a hearing, in October of last year; and at that hearing the committee learned about a situation in which a member of a community college board was also serving on a city council. This raised some concerns, because there are often issues that overlap between these two entities. And the reason why we have such a prohibition in the law is to avoid those conflicts. Adding community college board members to the list of higher elective office would be consistent with current law, which includes, among others, the offices of the State Board of Education; the University of Nebraska Board of Regents; county, city councils and commissions; and the learning community or school district elective offices. The bill also eliminates language that provides that no person is eligible for membership on a community college board of governors who is an elected or appointed member of any other board relating to education. This...the provisions we are proposing we think are sufficient to handle the simultaneous occupancy of high elective office. To say that someone is not eligible for even a candidacy, we think it's too restrictive. And if we retain the language in the law now, it would be, we think, too restrictive, so we're proposing that be stricken. With that, I will end and take any questions you may have. [LB716]

SENATOR PRICE: Any questions for Senator Avery. I have a quick...oh, go ahead, Senator Janssen. [LB716]

SENATOR JANSSEN: I apologize for just getting here. Actually, I introduced two bills, and I was in my office watching this on TV, and I saw LB716 come up and saw that it was Senator Avery's and thought that I liked it, so I wanted to get down here, because this is rare. [LB716]

SENATOR AVERY: It is rare. [LB716]

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SENATOR JANSSEN: Yes, it's...and I love this topic too. So...and we just had this discussion, because I was in a different--testifying--with election and people holding certain offices. And there was a gentleman that testified in front of Natural Resources on one of my bills that was simultaneously holding an NRD position and a county board position. And I didn't even know that was possible. And I don't think your bill addresses that, but I, too, don't like the idea of people holding similar elective offices at the same time. I've had this question for, oh, probably four years--when I first ran for city council. Somebody else was running for city council and school board at the same time. And I didn't know if that was possible and how it all worked and haven't really gotten to the statutes, but are you aware of your bill affecting NRD and county board level? [LB716]

SENATOR AVERY: You know, I think you might want to check. I'm not sure if NRD is in that list of high elective office. I don't think it is. But city council and county commissioner--or was it city council and school board? [LB716]

SENATOR JANSSEN: School board. School board. [LB716]

SENATOR AVERY: They are. So that person probably would have been in violation if they were serving in both. You can run; but once you win, then you're holding two offices; you have to resign one. [LB716]

SENATOR JANSSEN: Well, he lost both. So that wasn't...but I didn't really get my answer in that particular situation. But no, this is--it's actually a good thing, and I'd like to spend more time looking at it and see if we couldn't broaden some areas, or maybe that's already there. [LB716]

SENATOR AVERY: Maybe include NRDs. [LB716]

SENATOR JANSSEN: And something along those lines. But that was my... [LB716]

SENATOR AVERY: I think we've heard from some other people about wanting to expand the list. [LB716]

SENATOR JANSSEN: Are you...? [LB716]

SENATOR AVERY: So we can talk about that. [LB716]

SENATOR JANSSEN: Are you aware what's a higher office, and would it be county supervisor or city council? Say, if you're on the Lincoln City Council versus being on the Lancaster County Board? [LB716]

SENATOR AVERY: Which one is considered "higher"? [LB716]

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SENATOR JANSSEN: Yeah. [LB716]

SENATOR AVERY: I don't think there is any pecking order. My own sense would be--just a off-the-cuff response--the more responsibility that the office holds and the broader number of constituencies served, I think, would help define "higher office." [LB716]

SENATOR JANSSEN: Yeah, I was...I don't know, sometimes. But I guess I looked at Lincoln--or, like, with the city of Fremont...is the biggest city... [LB716]

SENATOR AVERY: Um-hum. [LB716]

SENATOR JANSSEN: ...because you represent the majority of people. The county supervisors, however, represent a portion of them, so there are more... [LB716]

SENATOR AVERY: Um-hum. [LB716]

SENATOR JANSSEN: ...and this is just a good-natured argument between me and another county supervisor, that what--who is the higher elected official? And I was on the city council then. I've since told him--and with your law--I said: I'd like to run for county board as well as state Legislature; that way I could get paid more, like they do--you get paid (inaudible). [LB716]

SENATOR AVERY: You know, I think it's an interesting question. Obviously the Governor is a higher office than the Lieutenant Governor because of responsibilities but not because of the number of constituencies served. We, in this position, would be considered higher than a city council person because of the larger...well, maybe that wouldn't be the case; maybe the scope of what we deal with would be more significant than a city council, even though if you have at-large members of a city council, they might represent 250,000 people, while we represent about 35,000. [LB716]

SENATOR JANSSEN: Right. Right. [LB716]

SENATOR AVERY: So it would depend, I guess. [LB716]

SENATOR JANSSEN: Interesting topic, that's all. [LB716]

SENATOR AVERY: Yeah. [LB716]

SENATOR PRICE: Thank you. Senator Avery, question for you, and I'm running it through my head here. On the...you introduce the Statement of Intent here in your--I got one, two, three--fourth paragraph, last portion. It talks about you can't serve in two of the level offices at any one time, and this current statute says they can't do it. And I'm

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wondering about that. Can you sit on a learning community board and be an elected board member of a school board? [LB716]

SENATOR AVERY: No. You cannot. [LB716]

SENATOR PRICE: Can't? [LB716]

SENATOR AVERY: No. It seems that the community college board members kind of are an outlier; it's kind of an exception. Nobody can explain why. It's a little bit like the last bill that we heard; not a whole lot of people know why it exists the way it does. [LB716]

SENATOR PRICE: Okay. Just to make sure, can you be an appointed member of a board to another board, though? [LB716]

SENATOR AVERY: No. [LB716]

SENATOR PRICE: Because in the learning community, I know that they have to... [LB716]

SENATOR AVERY: It's not how you get there; it's the service. [LB716]

SENATOR PRICE: Because I know in the learning community they have people who are serving, it seems, in two positions. You have one that sits on a board and then is a member to the board, like in Mr. Hansen down in Bellevue. He represents on the learning community, and he's also a board member--the president of the board of the Bellevue School District. So I was just wondering about that. [LB716]

SENATOR AVERY: I don't know about that particular case, but it sounds like it's illegal. [LB716]

SENATOR PRICE: Well, we'll find...there's probably some parts in there I didn't get right, so I don't want to cast aspersions; I just find it interesting. Senator Karpisek, please. [LB716]

SENATOR KARPISEK: Thank you, Senator Price. Yeah, I wanted to make sure Senator Avery understood the question. The learning community board is comprised of school board members... [LB716]

SENATOR AVERY: Some of them, that's right. [LB716]

SENATOR KARPISEK: Yes. [LB716]

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SENATOR AVERY: In fact, I wrote that provision of the law; I should have known better. [LB716]

SENATOR KARPISEK: So that's...I just wanted...I figured you knew that, but... [LB716]

SENATOR AVERY: (Laugh) Thank you. [LB716]

SENATOR KARPISEK: Helped jog your memory. Thank you. [LB716]

SENATOR PRICE: Thank you, Senator. And that's why I wanted to make sure, because it seemed to...from first glance, we had an elected member serving on a board and an elected member serving on yet another board. [LB716]

SENATOR AVERY: The...I remember now. The way in which we broke the logjam in the Legislature was to come up with a formula for...some members of the coordinating council can be appointed from the school boards. [LB716]

SENATOR PRICE: Okay. [LB716]

SENATOR AVERY: They wanted to be a part of it; we couldn't figure out a way to make everybody happy, so we had...a portion of them would be elected, a portion appointed. [LB716]

SENATOR PRICE: So you don't feel that enactment of this would jeopardize that? But you said serving; you didn't say how you got there. [LB716]

SENATOR AVERY: That's a separate law; and that law, I think, constitutes an exception. [LB716]

SENATOR PRICE: Pardon me? [LB716]

SENATOR AVERY: That law that created the learning community and established its procedures is a separate law and creates an exception, to the extent that it would conflict with what we're talking about here. [LB716]

SENATOR PRICE: Okay. Thank you. Seeing no further questions, first we will listen to...will you, of course, be wanting to wait for closing? [LB716]

SENATOR AVERY: I think I'll stick around. [LB716]

SENATOR PRICE: All right. Proponents? [LB716]

MICHAEL NOLAN: (Exhibit 1) Senator Price, members of the committee, my name is

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Michael Nolan; you spell it M-i-c-h-a-e-l N-o-l-a-n. I'm a resident of Norfolk, Nebraska. I'm here as a proponent of this, on my own time and as a citizen of Norfolk and not in any other capacity. The testimony that I've given you--the written testimony--is a summary of the same testimony I provided at the October 16 interim study, from which, I think, this bill emanates. The only difference between what I said on that occasion and what's in the bill, that I can discern, is what I said in the--about the fourth or fifth paragraph down, that I didn't feel that I was entitled to tell the committee how to solve this conflict that occurred. I certainly concur wholeheartedly with the way that Senator Avery has solved it so that there won't be any ambiguity about that. I do agree, totally, that, in fact, there should only be one position. And should you decide to advance the bill and the Legislature decide that it wishes to enact it, I hope that that remains in the bill and that it becomes effective, because I really do believe that representative government is better served when there aren't any of these kinds of conflicts. The other attachments I gave you were the same ones I offered on the 16th, which is what my suggestion was as to how to solve it. And then you can see by looking at the colored Web site page from the board of governors Web site and the same kind of page from the city of Norfolk who the individual is. I will also indicate for the record that I am a resident of Ward 2, which Mr. Fauss is the city council member of, so he is my city council member. And I feel by telling you all of that information I've established my bona fides as a citizen of Norfolk to tell you why I really encourage you to adopt this bill. But all of the reasons that Senator Avery gave you for why the bill should be adopted I think are valid and self-evident to all of you. I'm happy to answer any additional questions if you have them, but I'm solidly in support of the bill. [LB716]

SENATOR PRICE: Thank you, Mr. Nolan. Are there any questions? Seeing none, thank you, sir. [LB716]

MICHAEL NOLAN: Thank you. [LB716]

SENATOR PRICE: Any other proponents? Any opponents? Would anybody like to testify in the neutral? [LB716]

DENNIS BAACK: Thank you, Senator Price. Members of the Government, Military and Veterans Affairs Committee, for the record my name is Dennis Baack, D-e-n-n-i-s B-a-a-c-k. I'm the executive director of the Nebraska Community College Association, appearing in a neutral capacity just from the standpoint that this is not a bill that was generated by us as the community colleges. Do my board members feel like they are--should be qualified as "higher elective office"? I think they all do, quite frankly. And having served on a school board for a number of years and knowing the duties that go with that--and I also know the duties that go with being a community college board member--I don't think there's a lot of difference in the two. So I think that we certainly wouldn't object to being put into that category. I will tell you that we have had some instances where people served on two boards, and I will tell you that the experiences on

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those boards have been very positive; they haven't had any difficulties in those people meeting their obligations to the community college board. Now, whether that meant they weren't meeting their obligations on the other board, I don't know--that they served on. But we have not had any particular difficulties with that--with the people who did serve on two boards. So with that, I'd be happy to answer questions if there are any. [LB716]

SENATOR PRICE: Thank you, Mr. Baack. Are there any questions? Yes. [LB716]

SENATOR JANSSEN: Mr. Baack, do you see Mr. Nolan's premise in this, saying that there could be a conflict in those...and he gives a very good example, I think, in reading some of his testimony. [LB716]

DENNIS BAACK: Sure. There absolutely could be conflicts involved. And that was...I remember some of these discussions taking place when I was Chair of this committee; we talked about some of those kinds of things. And one of the reasons that we didn't put too many different groups in those is because in some smaller communities there just aren't that many people... [LB716]

SENATOR JANSSEN: Right. [LB716]

DENNIS BAACK: ...to run for posts, and it's difficult to find people to run for posts, so we didn't want to preclude too many things from being in these categories. But, yeah...no, I...there absolutely could be conflicts. I just will tell you that so far we have not experienced any. But that doesn't mean they couldn't happen, because they certainly could. [LB716]

SENATOR JANSSEN: Well, I certainly agree that the community college boards should be classified, if they're not, as a higher office--just from the metro school boards. [LB716]

DENNIS BAACK: Um-hum. [LB716]

SENATOR JANSSEN: Just from seeing some of those meetings. They should get paid; I don't know if they do or not. [LB716]

DENNIS BAACK: No. [LB716]

SENATOR JANSSEN: They should. [LB716]

DENNIS BAACK: They do not get paid. My...the community college board members do not get paid. [LB716]

SENATOR JANSSEN: And those elections go far and wide too. I just got a fund-raising

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letter from a candidate in my district... [LB716]

DENNIS BAACK: Um-hum. [LB716]

SENATOR JANSSEN: ...and they need to raise money for those positions. And it was highly competitive... [LB716]

DENNIS BAACK: Um-hum. [LB716]

SENATOR JANSSEN: ...in the Fremont district the last time for the Metro board, and it will be this time as well. [LB716]

DENNIS BAACK: Yeah. [LB716]

SENATOR JANSSEN: So thank you. [LB716]

SENATOR PRICE: Are there any other questions? Seeing none, thank you. [LB716]

DENNIS BAACK: Thank you. [LB716]

SENATOR PRICE: Are there any other neutral testifiers? Seeing none, Senator Avery? Senator Avery waives closing. And that will conclude the hearing today on LB716 and will conclude our business today. Do we have an exec...? Make a motion, go into exec? Seconded by Senator Karpisek. [LB716]