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Government, Military and Veterans Affairs Committee
November 05, 2010

[LR409 LR431 LR471 LR519]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, November 5, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR409, LR431, LR519, and LR471. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Robert Giese; Russ Karpisek; Bob Krist; and Kate Sullivan. Senators absent: Charlie Janssen, and Rich Pahls.

SENATOR AVERY: All right. I'm going to get the meeting started while we wait for other committee members to get back from lunch. My name is Bill Avery, Chair of the Government, Military and Veterans Affairs Committee. We are convening today to consider bills that are a part of the interim study process. We have four on the agenda and we'll take them up in the order that they are printed, I believe they are posted outside the door, starting with LR409 and continuing on through the last one, LR471. The members of the committee, there are only three of us here and one is going to be testifying. Let me introduce them, nonetheless: Senator Pahls from Omaha is not going to be with us today. He had other commitments. Next to him is Senator Charlie Janssen from Fremont. He'll be back in a few minutes. We have also Senator Bob Giese, who will be our first testifier, from South Sioux City; and Senator Scott Price, the Vice Chair of the committee, from Bellevue; and just sitting next to me here, to my right, is Christy Abraham, the committee counsel, legal counsel for the committee; Senator Karpisek, to my immediate left, is from Wilber, he will be here shortly; next to him is Kate Sullivan from Cedar Rapids; and Senator Bob Krist from Omaha. The committee clerk is Sherry Shaffer, right there on the very end. The practice is that we ask you, if you wish to testify on any of these resolutions, to sign a sheet that will be provided for you. They're available at each door. Sign the sheet, fill out the information by printing your name very clearly for the record, and when you appear at the table to testify please spell your name so that we can get it accurately recorded. If...and when you are there and fill out the sheet, hand it to the clerk for our records. If you wish to record your opposition or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

your support for any of these resolutions but do not wish to address the committee, you can sign a sheet of paper indicating that. They're available at the door as well. If you have copies of your testimony and you'd like for us to have that, be sure to have enough copies for all of the committee members and staff members. I think that would be about ten copies total. Please turn off your cell phones or otherwise silence them so that we're not disturbed, and that goes for committee people, too, including me right now. So we'll start with LR409, Senator Giese, an interim study to examine the subject of on-line voter registration. Senator.

SENATOR GIESE: Thank you, Senator Avery and members of the Government, Military and Veterans Affairs Committee. LR409. I appreciate the senator and the committee's willingness to address this issue over the interim. It's an issue we talked about last session and I think that it certainly is worth looking at this session or next session or the next session, if we have to, to eventually get that done. You will hear testimony today about probably nine states that have done...have on-line voter registration and some of the challenges that they've gone through to get that done. One state that has got it done went through...three secretaries of states were involved in getting it to fruition. So it's a very important issue that is not going to be done overnight, and we've talked about that before. But it is a challenge and it is a process, so we're here today to hopefully provide you, the committee, with some new information in regards to on-line voter registration. And I thank my two members of the committee--Senator Krist, Senator Price--that have a better grasp on the technology portion of the situation than perhaps, well, myself and maybe other members of the committee. But hopefully we can address some of those issues for you today and look at this as a long-term solution for us to eventually save costs on the state, and that's why we're here and we spent the morning talking about things that we can do as a state to save money. So with that, I'm going to defer to some of the other testifiers and I thank you for your attentiveness and letting me address this on-line voter registration issue again. [LR409]

SENATOR AVERY: You want to stay around and close on this? [LR409]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR GIESE: I will be here. [LR409]

SENATOR AVERY: You will be here. Okay. Any questions from the committee? Okay, thank you. [LR409]

SENATOR GIESE: Thank you. [LR409]

SENATOR AVERY: I forgot to introduce our intern page--where are you, there you are--Sonya Sukup, who will be returning next year to serve as a page in the regular session of the Legislature. Anyone wish to speak on behalf of LR409? [LR409]

ADAM MORFELD: I have some handouts here too. [LR409]

SENATOR AVERY: Welcome. [LR409]

ADAM MORFELD: (Exhibits 1 and 2) Thank you. Members of the committee, good afternoon. My name is Adam Morfeld, that is A-d-a-m M-o-r-f-e-l-d, and I am the executive director of Nebraskans for Civic Reform. We are an organization that advocates on election and civic education reform. I'd like to thank Senator Giese, first off, for introducing on-line registration legislation. And in addition, I'd like to thank Senators, again, Giese, Avery, Price, and Krist for having a willingness to look further into this issue and supporting the resolution creating the interim study. First off, we have discovered some new information from this summer. Our legal clerk researched and delved into what Arizona did. But I also kind of want to reiterate a few of the reasons why Nebraskans for Civic Reform is interested in promoting on-line registration, and it really began with a desire to reduce administrative costs, increase the accessibility of our civic institutions, while simultaneously maintaining security of the registration process. On-line registration does all three of these. A recent study in Arizona found that the costs of processing a voter registration went from 83 cents per registration to 3

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

cents per registration with on-line voter registration. On-line registration has become so popular in Arizona that 60 to 70 percent of all registrations are now being conducted on-line. Besides the obvious benefits of cost savings and increased efficiencies, on-line registration is also more secure in that one must have a driver's license or photo identification card from Nebraska in order to be able to register on the Secretary of State's Web site, or that's how we'd envision it and that's how it's done in other states. This is something that's not currently required to register except in limited circumstances where they are a first-time voter and showing up to the polls. It should also be noted that with on-line registration, it's really not a surprisingly new concept. I think the legislation is actually on the books in about six states and there's three states that have actually implemented it, creating a total of nine states that have legislation that allows for it. Most notably is Arizona, Washington, and Kansas, all have implemented it and currently have functioning on-line registration systems. I know that Arizona and Kansas, in particular, uses the same election vendor that we use for our electronic voter registration system, which is ES&S, which I think Neal Erickson is here today and perhaps he can expand a little bit more on that. In addition, Arizona implemented on-line registration in 2002, so it's been around for about eight years and they haven't had any problems, which is addressed in the document, the question and answer document that I created or our legal clerk created, which was actually a document of questions from the committee that she researched over the summer. So you can kind of peruse through that. In addition, I've talked to administrators in both states and both report...and both states as in Arizona and Kansas, and both report there have been no major problems with the system and it's been successful and cost-effective and popular. In addition, since Kansas and Arizona go through the same election vendor, the proprietary software is out there and the ability to do it. So I think that's something that's important to note, that this isn't something that we'd be reinventing the wheel or creating a whole new program. There are...there's a company out there that we're currently using and they currently have experience in implementing this in a similar system. Also, over the past several years, I've had the opportunity to talk with various election officials around the state and one of their overriding concerns has been that there's a shrinking election

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

budget and increasing costs, and on-line voter registration has proven to be effective and a secure cost-savings tool. For many years now, state and federal agencies have allowed the on-line submission of various documents and there's certain protocols in place and security measures in place to encrypt that data. And most recently Governor Heineman encouraged and listed several examples of state agencies using technology to save money and to minimize the fiscal impact on the state budget. And then finally, Secretary of State's Office has most recently testified--well, last session anyway--in support of LB791, which would allow the office to accept electronic filings of a number of corporate documents on-line. In their testimony, they stated that LB791 would greatly enhance the services that they provide to the general public or, excuse me, to the business and legal community. We believe the Secretary of State's Office should also consider not only enhancing services provided to the business community but also to the general public with on-line voter registration. It should also be noted that on-line voter registration also increases the accuracy of voter registration records in that the user enters all the information themselves and leaves little room for administrative error. In addition, like any service that's made more convenient, on-line voter registration increases the likelihood that voters will utilize and update their registrations often, reducing the need for time-consuming provisional ballots filled out at the polls and reviewed after the election. Finally, it is my understanding that the DMV had some privacy concerns last time with the electronic signatures that would be transposed from the DMV records on to the on-line...or electronic voter registration card that would be generated by the system. In states that have on-line voter registration, each county clerk does not have access to this electronic signature database. They only have access to the individual's electronic voter registration card with the signature transposed on it, something that they would already have if they simply just mailed one in. And that being said, even access to the Secretary of State can most likely be restricted by the DMV if they wanted or had that concern. The program automatically generates the card through the secure DMV database information and then the Secretary of State does not necessarily have to have full access to the signature database. Another thing that I'd like to note is that...and I forgot to bring copies of it but there's a Pew Center report that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

studied on-line voter registration extensively in both Washington and Arizona, and they found that it was extremely popular. Ninety percent of individuals that did not use on-line voter registration that were polled showed a very favorable view of using on-line voter registration and had very little concerns in the actual security or accessibility of that system. But I'll forward on that study to you after the committee. And I guess in conclusion, I just believe that on-line voter registration has a proven record of increasing administrative efficiencies, saving money, and increasing the security of our voter registration process. And I'd be more than happy to answer any questions that you may have. [LR409]

SENATOR AVERY: Thank you, Mr. Morfeld. Are you at all concerned about the security issue? [LR409]

ADAM MORFELD: I'm not. You know, there's always a certain...I mean there's always a certain level of concern that needs to be had with anything that's electronic and anything that's not electronic. One of the points that the Pew Center research study pointed out is that, first off, voter registration fraud is actually fairly rare, but it would actually be easier to commit voter registration fraud with our current system than on-line, because with on-line voter registration you have to have your driver's license card, your driver's license number, the information has to match up on the card with the database, and you go through all those...that process in order to move forward with the actual on-line registration. So it's actually more secure than our current system, whereas, if I really wanted to, I could fill out a registration card for Senator Avery and fill out a fake address and send it in, and I would hope that they would cross-check the signatures but, you know, a person could also find your signature since you're a public official. So I mean there's ways to get around the system under our current system but it's made much harder, actually, by on-line voter registration. [LR409]

SENATOR AVERY: Senator Sullivan has a question. [LR409]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR SULLIVAN: Thank you, Senator Avery. You talk a lot about the cost savings and efficiencies with on-line voter registration but any knowledge on the up-front cost to implementing something like this? [LR409]

ADAM MORFELD: Certainly, and I shouldn't have omitted that actually. It was \$100,000 to implement in Arizona. That was in 2002. And I believe that they have about \$100,000 to \$125,000 a year in upkeep. The cost savings, I believe, would probably be mostly on the county level because they're the ones that process registrations, from my understanding. So it would create a lot of time savings and efficiencies on that level. However, there would be an upkeep and the state would have to put some money towards it, and obviously that's a concern right now. [LR409]

SENATOR SULLIVAN: So does that...you envision every county having to purchase the software? [LR409]

ADAM MORFELD: No. And maybe...I don't know if Neal Erickson is testifying on this issue this afternoon but maybe he can expand upon this a little bit more. It's my understanding that we have a statewide electronic voter registration database, so that information would be dumped into that database. So then hopefully there would be a way to...or I'm sure there's a way for the county election officials to be able to check who's currently registered in their county and prepare for the election based off that on-line state database. [LR409]

SENATOR AVERY: Senator Krist. [LR409]

SENATOR KRIST: Thank you, Senator Avery. Thanks for your testimony. I have just one question. Do you know statistically, in the states that have started an on-line registration, how much has that reduced their provisionals in terms of the ballots? Do you have any data? [LR409]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

ADAM MORFELD: That's a fantastic question actually and I don't know the answer. The Pew report, I read through it again yesterday, I didn't see anything in regard to that. However, I do know that from my experience, my limited experience with elections or actually working in the elections--I've only worked in one before--that oftentimes people not actually reregistering is often the reason for the provisional ballots, because they move from one place to another in the county and they have to get a provisional ballot. Usually their vote is counted but, at the same time, it takes a long time to fill out a provisional ballot, about ten minutes so...but that's an interesting question and I haven't seen an answer to that. [LR409]

SENATOR KRIST: And I would note that just in Douglas County alone there are thousands of provisional ballots that exist just from this election that are yet to be counted... [LR409]

ADAM MORFELD: Uh-huh. [LR409]

SENATOR KRIST: ...days afterwards. And I do know part of that answer. In Arizona, I think they reduced it by over 40 percent just the first year. So thank you for your time. [LR409]

ADAM MORFELD: Fantastic. [LR409]

SENATOR AVERY: Senator Price. [LR409]

SENATOR PRICE: Chairman Avery, thank you. Thank you, Mr. Morfeld, for coming forward. Obviously, since I helped put this in and we're listening to it, I'm favorable to it. But I did have some questions from your testimony. [LR409]

ADAM MORFELD: (Inaudible) [LR409]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR PRICE: First of all, when we say the costs for implementation, that we're assuming that we're in the same place Arizona was for a baseline on our IT infrastructure, in other words, you know, if they already had certain elements available. So we don't really know the cost projection because it's based on where they were in their IT implementation plan. But the next thing is on provisional ballots, and maybe Mr. Erickson can answer this more completely later. If you have on-line registration, that doesn't mean same-day registration. So provisional ballots, you know, you have to register within a time frame. If you're not registered within a time frame, are you still going to be able to vote on a provisional? [LR409]

ADAM MORFELD: Well, the cutoff, the cutoff for the registration period would be the exact same on the on-line. I guess, you know, what I'm trying to get at with it is that if it's more convenient it's more likely...if it's more convenient, more easier for the voter, it's more likely they're going to get on there and update their registration than if we didn't have the system. So I would think that people would have an easier, more convenient way to keep their registration updated and to come to the polls on election day prepared and not having to fill out a provisional ballot because they moved from one place to another in the county. [LR409]

SENATOR PRICE: So more about their accessibility and ease of it... [LR409]

ADAM MORFELD: Uh-huh. [LR409]

SENATOR PRICE: ...than any of the other factors, because there are other factors that cause the provisional balloting. Correct? [LR409]

ADAM MORFELD: Certainly. I mean there's a lot of other factors. I think this is just one of many ways that we can mitigate that issue with the provisional ballots. [LR409]

SENATOR PRICE: Great. Thank you. [LR409]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

ADAM MORFELD: Yeah. And just to respond to the implementation, you're certainly right. I mean we could be much farther along than Arizona was in 2002 with our IT systems. I know that Senator Avery's office sent out a letter to the Chief Information Office asking for some information on where we were at and where we are with our current systems and how much it would take to implement the system. And I know that there's a lot of collaboration that still needs to be done on that. So I hope that the Secretary of State, DMV, and the Chief Information Officer do collaborate on that. [LR409]

SENATOR PRICE: Thank you. [LR409]

SENATOR AVERY: I don't see any more questions. Thank you. [LR409]

ADAM MORFELD: Okay. Thank you very much. [LR409]

SENATOR AVERY: I want to correct myself. We're not taking pro and con testimony. This is an interim study so anyone who wishes to address this issue for or against, you're welcome to come forward at this time. I figured you might want to. (Laughter) [LR409]

NEAL ERICKSON: Members of the committee, for the record, my name is Neal Erickson. I'm deputy Secretary of State for elections and here on behalf of the Secretary of State's Office and, understanding the nature of the interim study, is basically here providing information, answer your questions, etcetera. And the things we'd like you to keep in mind as you look at this issue, number one is the initial cost aspect of it. We put a fiscal note together back when the bill was introduced in last session and we reaffirmed that prior to this interim study, and we're looking probably in the neighborhood of \$100,000 to implement this to begin with. Basically, what we're looking at is about \$80,000 from DMV, the DMV will need, to change the format of their

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

signatures, because really what we're doing is just capturing DMV's signatures and putting into our database. So about \$80,000 for them, about \$20,000 to modify ours. And it's the same...it was the same as the fiscal note we provided last session. The other things that you need to keep in mind, and this actually was in a conversation with Director Neth after the hearing on the bill, is she has some concerns, as do we, about the quality of the signatures that DMV captures. And understand that we utilize these signatures to do a few things, number one is early voting, to verify the person who has sent in that early voting envelope is compared with the database. The other big one is the petition process, and if we have low-quality signatures, we're not going to be able to compare those and utilize that as a tool to detect fraud. So that's something that needs to be considered. We also have questions about whether, when there is...if there was fraudulent activity using on-line registration, would we be able to prosecute that fraud? Because we don't actually have somebody signing an oath and taking an oath that the information on there is true. There's no signature. There's nothing for us to say, yes, they took this oath and we can prosecute them on. And some people say, well, that doesn't happen. Well, actually ten years ago, in 2000, we had a gentleman that forged about 500 voter registrations in Douglas County. We were able to compare the signatures or the handwriting on those registrations and determine they were all by the same hand, but this was a petition circulator and he had left the state. The State Patrol indicated the only way we'd be able to show that it was him was have him voluntarily return and submit a handwriting sample, which was probably fairly unlikely that was going to happen. We're also...and I don't even know the exact status of it at this point in time, but in 2008 we had a gentleman in Omaha forge, oh, 200 or so registrations. That person is currently being prosecuted. As a matter of fact, a few weeks ago Douglas County got a victim impact statement so I think they're fairly close to resolving that. I assume the individual is going to plead to some charge at least for forging those registrations. So it does occur, not fairly common but it does happen and it's something we take very seriously when that fraud does occur. One of the things we have to do is we have to prosecute because that's what sends that message that there are consequences to doing this. The last item that I'd mention that I think should be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

considered is there may be some activity on the federal level on this particular issue. In this particular Congress there is a bill, H.R. 1719, that was introduced that required on-line registration. And one of the things that we certainly would be interested in, it was actually scheduled for markup in mid-July and it was pulled because of concerns about it from election officials across the country, in addition, questions about funding. And certainly if there is a situation where it's going to be a fed mandate and they're willing to fund it, we would rather use their money rather than having to use our General Funds on that. So I think that's something to keep in mind as you discuss this issue. And with that, I'd answer any questions you might have. [LR409]

SENATOR AVERY: When do you expect this, the federal action, if any? [LR409]

NEAL ERICKSON: With a new Congress? No idea. [LR409]

SENATOR AVERY: No idea. Probably not in the next Congress. [LR409]

NEAL ERICKSON: Well, hard to say. The H.R. 1719 was actually introduced by Zoe Lofgren, who was chair of house administration. Well, she will no longer be chair with the new Congress coming in. You know, it wasn't something that picked up bipartisan support. Hard to read on that one in particular. So I don't know if this is something that will end up crossing party lines or not. [LR409]

SENATOR AVERY: Okay. Senator Krist. [LR409]

SENATOR KRIST: Just a quick one. Thanks for your testimony. Are there things that we can do to prepare so that we're first on the block once the federal money becomes available? [LR409]

NEAL ERICKSON: Well, the big thing is...probably the biggest step in it is having DMV, lack of a better term, translate their signature data into something that our system can

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

accept, and that's where the big cost is. That format is different than what we have and, like I said, they're looking at about \$80,000 worth of work on that. So I'm not sure there's a whole lot in terms of prep stuff to do it. I think the bigger thing is going to be maybe deciding some of the policy issues about, you know, if the quality of these signatures is poor, we're going to have to go out and try and get better signatures and that will involve some additional costs in terms of mailing to these people and saying your signature isn't acceptable for our purposes, for petition verification and early voting verification, and we need you to update your signature. We currently have that ability in the law, whenever we think a signature is out of date or is illegible, to ask for a new one, but there is a cost associated with that as well. [LR409]

SENATOR KRIST: Thank you. Thank you, Chairman. [LR409]

SENATOR AVERY: Senator Price. [LR409]

SENATOR PRICE: In talking to the crux of your conversation, the quality of the signature,... [LR409]

NEAL ERICKSON: Uh-huh. [LR409]

SENATOR PRICE: ...I mean, as you already stated, we currently face that issue and we have a mechanism in place to deal with that. So would it be reasonable to expect that a policy for DMV would be made that they would ensure that we have better quality as we go forward? You know, so that's one way of doing it as we go forward, because renewal of licenses has to happen. So there are ways that we can increase that capability for a better signature, but I'm not so certain that signature quality is...now a lot of signatures aren't good and consistent. [LR409]

NEAL ERICKSON: Well, yeah, but we use it...we do it a little bit differently now. I mean if you look at DMV, what they do is they have you sign a signature pad and it's digitized.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

What we do for our signatures now is we actually scan in the voter registration application so you're actually taking that clip right off of there. It's exactly how they signed it. Now on those signature pads, I mean you've all used them at various places, you know that sometimes the way you sign that thing doesn't really show up too well compared to your regular signature. You know, prior to the hearing last spring I looked at my driver's license and the signature wasn't too bad. I think it would be something we'd be able to utilize. And like I said, after the hearing, talking to Director Neth, she said don't expect them all to be that good. And I can understand that using, you know, when you're talking about signing onto a pad and having it digitized and then basically reconvert it back into a signature. [LR409]

SENATOR PRICE: And I'd also add as a side note to that what Senator Krist said. One thing you have to be careful, when the federal government comes down with something, they could pick a third format. You know, we often see that when you go from JPEG to PNG to something else. So we wouldn't want to hang our hats on waiting for a decision on the format. That's just a side note on that one and a cautionary tale. But thank you very much, Mr. Erickson. [LR409]

NEAL ERICKSON: You're welcome. [LR409]

SENATOR AVERY: Any more questions? Seeing none, thank you. [LR409]

NEAL ERICKSON: Thank you. [LR409]

SENATOR AVERY: Anyone else wish to testify on this issue of LR409, on-line voter registration? Okay, seeing none, do you have anything more to say, Senator? [LR409]

SENATOR GIESE: Just a couple...thank you. And I appreciate the Secretary of State Office coming, Mr. Erickson. It's good just to have this discussion. I feel one of the things that he pointed out, though, that I just want to mention, on the voter fraud, on-line

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

voter fraud, for something for 200 signatures perhaps to be...200 to 500, used that way on on-line, you'd have to have 200 different IDs to do that. So I'm not sure that...I'm not saying it's impossible but it would make...I think this would make it more difficult on-line to do something like that. And the cost is not a, in my opinion, is not a deal breaker on this today. I mean I haven't heard anything, any numbers this afternoon that are millions of dollars to implement this and, as Mr. Morfeld said, we're not reinventing the wheel here. So I think the fact that we just carry on this conversation is just great. And one last note in closing, if we're waiting for federal funds or federal mandates on this issue, well, we've been waiting for a long time and I think it's not going to do us any good to wait ourselves. So thank you again, committee, for listening to the on-line voter registration discussion. [LR409]

SENATOR AVERY: I see no questions for you. Thank you very much. [LR409]

SENATOR GIESE: Thank you. [LR409]

SENATOR AVERY: That will end the hearing on LR409, and we'll now move to the next item on our agenda and that is LR431 introduced by Senator Ken Haar from District 21. [LR409]

SENATOR HAAR: Colleagues, good to see all of you. This past bill that you're discussing here, the study I suppose relates to me. If this Burke Harr gets elected, I got to change my name. (Laughter) And I haven't decided yet what I'm going to change it to. Ken Funk just doesn't sound right so...(laugh). [LR431]

SENATOR SULLIVAN: (Laugh) Oh, why not? [LR431]

SENATOR PRICE: How about Trapper? [LR431]

SENATOR HAAR: There you go. Maybe have a contest to give me a new last name.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

[LR431]

SENATOR KRIST: How about just Green? [LR431]

SENATOR SULLIVAN: It's not easy being green. [LR431]

SENATOR HAAR: Okay, LR431, disclosure of private money to public entities. Last year I introduced LB815 and it was just too broad. It tried to find and disclose everywhere private money went into public entities and it was just too broad. For example, we found that things like cemetery districts would have to disclose private money and so on. So over the interim, we've worked to draft a much narrower bill and you should all have a copy of that in your packets. First of all, I guess, why do we need this? And it's my feeling that the public has a right to know how and to what extent their public servants are being compensated, and there's no value judgment in this bill saying somebody is being compensated too much or too little. It's simply the right to know. And in these...actually in these budget times, we need to know what the real salary of our public servants are as we make budget decisions and could actually help us as state senators. So what the proposed bill does, it requires public schools and postsecondary education to file with A&D a copy of each contract of employment for high-ranking officials, and we say high-ranking officials defined as president, vice presidents, chancellors, superintendent, assistant superintendent, chief executive officer, chief financial officer, or other senior administrative personnel, and the contract must include, and this is really the crux of it, the contract must include the salary and benefits package and specify each benefit. It has to say the source of the benefit and the value of the benefit, including any from private foundations. Right now these kind of contracts are public but it might simply say, for example, that there's a benefit without giving the value to it. What the bill does not do, it does not require disclosure of donors to a foundation, so we don't have to know who donated to the foundation; simply, we'd know, though, that a foundation is contributing a benefit to one of these elected officials. It does not prohibit private foundations from contributing to a school or university. Really, all it is, is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

about the transparency of any benefit from an organization such as that with a value connected to that benefit. The other thing it does not do, it does not raise our salaries. Sorry about that. We'll have to (laugh)...we have to wait with that one. So that's my introduction if you have any questions right now or... [LR431]

SENATOR AVERY: You have already prepared draft legislation for next year? [LR431]

SENATOR HAAR: Yes. Yeah, and I think you have a copy of that in your folders. [LR431]

SENATOR AVERY: Yeah, I think you're right. [LR431]

SENATOR HAAR: It's really a one-pager, pretty simple. Yes. [LR431]

SENATOR PRICE: Go ahead, please. [LR431]

SENATOR AVERY: No. [LR431]

SENATOR PRICE: Thank you, Chairman. [LR431]

SENATOR AVERY: I was just about to recognize other members. Go ahead. [LR431]

SENATOR PRICE: Maybe it's after lunch and I had a great lunch. We're going to go to Accountability and Disclosure and ask for people to put in a contract of employment for officials from institutions? But they're not elected officials, and you said "elected" just now, those who are going to be elected. So who's this... [LR431]

SENATOR HAAR: No, I'm sorry, this is for public officials like... [LR431]

SENATOR PRICE: Okay. [LR431]

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Transcriber's Office
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Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR HAAR: ...president, vice president, chancellor. [LR431]

SENATOR PRICE: Okay. Because when you said that, I was a little... [LR431]

SENATOR HAAR: I'm sorry if I misspoke. [LR431]

SENATOR PRICE: Okay, that's fine. And then if their contract...what if the...what if what they're getting, if they would decide to say...to go around and say, okay, (inaudible) contract, this contract will say this and we have another contract on top? Then you would have to say all contracts for all monies received because you have this job, basically. Is that what you're trying to say? [LR431]

SENATOR HAAR: Yeah, exactly. Yeah. [LR431]

SENATOR PRICE: Because right now we're seeing, well, then let's write two separate contracts or something like that. So I just wonder how would you contend with that. [LR431]

SENATOR HAAR: Well, yeah, right now this information would...the contracts of people like, you know, the chancellor and so on are currently public information but in some instances they list benefits but not the value of those benefits, and so that's what we're talking about. [LR431]

SENATOR PRICE: Okay. Thank you. [LR431]

SENATOR HAAR: Yeah. [LR431]

SENATOR AVERY: Any other questions from the committee? [LR431]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR HAAR: Later. Okay. [LR431]

SENATOR AVERY: Okay. You're going to hang around? Anyone wish to address this issue, LR431? Welcome. [LR431]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould. I represent Common Cause Nebraska. I think I've sent all of you a little packet, a booklet, that had some background information and, really, my purpose for speaking is to make a broader appeal based on things that have happened in 2009 that call for the need or show the need that Senator Haar's bill presents. These are extreme examples. There are others that are not as extreme, but I think the extremes are the things that you need to look at. This is how bad it can get. In the case of Kearney Public Schools, it was a serious situation. I think we have to understand that there are more and more private foundations springing up to support public schools and public schools ranging not only you're thinking of K through 12, state colleges, so forth. The fact that the budgets are being cut dramatically makes these foundations kind of a lifeblood and it's also a credit to the public that so many are willing to step up and donate to the foundations. But that also raises the need to ensure the integrity of the foundation and the integrity of the public entity that's receiving the private dollars, so I think that's the main gist of what we're talking about today, is that that must be ensured. In the case of Kearney, it was sort of a tragic story in that the foundation was receiving about \$300,000 a year in funding, private dollars, and beginning five years ago the executive director was able to embezzle \$577,000. She had been there, I believe, nine years, but the statute of limitations limited the investigation to the last five years. So there's a possibility more money could have been involved. I talked with the executive...the current executive director. The last executive director is now in jail, facing a sentence of 9 to 12 years. But the current executive director said that they had never been audited in the years that that foundation had been there, and so it was her, what should I say, her responsibility to take it over and redo it, and they will be audited every year by a private auditing firm now, which I think is the right thing to do. The second example that I think I sent you

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

was what happened at Kearney and Common Cause was directly involved with that situation. If you remember or if you've seen the articles, the press really revealed the fact that there had been a secret arrangement between President Johnson and the foundation that he would receive a half a million dollars in deferred payments if he would stay on for five more years. So the agreement was you stay on for five more years, you will get the half a million dollars, but it was not disclosed to any of the supervising groups. The administrators at the school knew nothing about it. The state board knew nothing about. And so the foundation was operating completely independent, making a secret deal. And in the process of that, after that article broke, we looked at the statement of financial interest that had been filed by President Johnson and it was clear that he had never identified the foundation as a source of income. So based on that fact alone, not on the secrecy or anything like that, we filed a complaint with Accountability and Disclosure arguing that he should have disclosed the arrangement with the foundation on his statement of financial interest, and our complaint was upheld. A lot of people laughed because I think the fine was only \$1,200. People say, well, he got a check for \$75,000 on a first year out of office, but the thing that was not reported was the fact that the board then stepped in and terminated the half a million dollars. So although he received \$75,000, the rest of it was terminated. But this is, I think, an important thing to recognize is that the complaint that was filed was based purely on not recording the fact that he was receiving funds from the foundation. As you may have read, the Attorney General then stepped in and I think there were probably other complaints filed through his office, but it ended up that they found another private foundation, which was set up to supplement and to support the school book store, was also available to the president and during his tenure there he had taken in the neighborhood, I think, of \$46,000 from that fund, from the foundation fund supporting the book store, for his own personal use. And that was again disclosed. The tragedy of it all is that President Johnson, who had moved to Florida by this time, committed suicide. It's a tragic end to a tragic story, but it also reveals the fact that foundation money is something that needs to be...clearly needs to be watched carefully. When you have private dollars donated by good people who want that money to go to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

support education, they have a right to know that that money is actually reaching its intended goal. It's also vitally important that the taxpayers who are making up the difference, in this case are paying tax dollars to support the education, and the students who are paying tuition, increasingly higher and higher tuition, have an idea of what the total amount of money is that's coming in and how it's being used. And in the case of Peru there was nothing visible. So this raised an interesting question with our board, because after we had discussed what had happened at Peru, we also realized that at the University of Nebraska the statements of financial interest were not being...they were not identifying the foundation as a source of income. And it really was a big discussion within our board, because what's fair? I mean we had filed the complaint against Peru based on the fact that they had not disclosed this information on the statement of financial interest, and here we have the largest institution in the state (laugh) and they had for years reported the foundation as a source of income. But within a two-year period, I think in 2008 and in 2009, they simply decided that they were no longer going to do that and the problem with their not filing it is that there were about...I'm going to...I can't give you the exact figure but there's probably 36 individuals at the university who must file statements of financial interest. When they were filed, all but two left out the foundation as a source of income, but Chancellor Perlman and Chancellor Kristensen did record the foundation as a source of income. So we decided, do we file a complaint against all these people? We said, no, the thing is we file it at the top level, which was President Milliken, because he had not identified the foundation. So we filed the complaint and I can't discuss the investigation. I mean these things are confidential. I can't talk very much about the outcome of it. The only thing that I can tell you is that the policy continues; that the university administration continues to argue that they do not have to identify the foundation as a source of income. The argument that is public is that all foundation money goes through the university budget and, therefore, any accountability should be there for the State Auditor's Office. So our logical conclusion was, okay, if we're not going to identify the foundation as a source of income and all of the money is going...all of the foundation money is actually going through the General Fund, then the Auditor should be able to find these things. So we went to the

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

Auditor and we've talked with him about this and we asked, well, exactly how much money is involved here, and in 2009 I believe the figure was \$132 million was coming from the foundation to the university budget. Now the next step in this progression is this money has to be accountable. This is \$31 million dollars. So we asked the Auditor to try to find some of the things that we over the years had wondered about, or instance, the deferred payment question, which was a big question at Peru: Where can we find in the audit the deferred payments? And the answer is, it's not there. So then we looked at some of the other more trivial issues but such things as automobiles, country club memberships, these things that we brought to you in the past. They may sound trivial but a county club membership may be \$30,000. Automobiles, you know, the leased automobiles in some cases are \$800 a month. This is sizeable money. So we asked the Auditor, can you show us that in the audit, is it there? And when that came back, the Auditor said we can track down everything that goes to contractors, we can track down everything that goes to scholarships, you know, anything dealing with education, it all showed up, but we can't account for \$31 million. Now that's staggering. That was...that hit us hard--\$31 million is not accountable. This is a public institution and we're dealing with private dollars that are donated by well-meaning people. Many of you may well be donating to that institution. If that money is going to the foundation and we aren't able publicly to account for \$31 million then, you know, there's something wrong. And it's not necessarily a criminal act or anything like that. It's really a simple question of disclosure: One, the public has a right to know how it's all spent and the donors to that foundation have a right to know if their money is being used properly. And it is the Legislature's responsibility to make sure that this money is used properly. It's a public institution. We all need to know where it goes and how it works out. Now the deferred payments, just to give you an idea of what we're talking about here, the money amounts involved in the case of President Milliken, the deferred payment is 11.5 percent of base salary, so I believe, if I have my note here, I think it was in the neighborhood of \$38,000 a year was being put into deferred payments. Now you can say, well, okay, this money isn't actually going to the individual and it's not going...it may not be going through the budget, we don't know that, but is maybe held by the foundation. And if indeed it is held by the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

foundation then we would still stay that that deferred income is also income and should be...the foundation should be identified as a source of that income, which is exactly what happened at Peru. So I could go on. I mean I could talk a little bit more about some of the individual benefits that we could not find, but I'm open to questions. [LR431]

SENATOR AVERY: Thank you. Senator Price. [LR431]

SENATOR PRICE: Senator, thank you. Just real quick, to make sure I understand that, we're talking about private dollars that are being used for a public employee, going to a public institution. [LR431]

JACK GOULD: Yes. [LR431]

SENATOR PRICE: Okay. Thanks. Just wanted to make sure I had that boiled down to the smallest common denominators. [LR431]

JACK GOULD: Okay. [LR431]

SENATOR AVERY: The Auditor, though, is able to audit the accounts, not of the private foundation, right? [LR431]

JACK GOULD: Correct. [LR431]

SENATOR AVERY: But can audit the accounts of the public institution. [LR431]

JACK GOULD: Correct. [LR431]

SENATOR AVERY: But the problem comes in when the money is not reported, not on the reports? [LR431]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

JACK GOULD: Well, there are a lot of possibilities as to where...how money is handled. I mean one case, let's say, you know, we've had a history of tracking automobiles and country club memberships. If the foundation takes that money and gives it to the vendor, which would be the country club or to the car dealer, that money, it's going around the budget if it goes directly from the foundation to the vendor. But it's still income and should be visible either as...once the automobile arrives, it's either a gift or it's income, one or the other, and it should appear on the statement of financial interest. In some cases, like I said, the deferred payment issue is somewhat hazy, because if the money is held by the foundation for five or seven years, depending on how the terms...the terms of agreement is you can half of the money after five years, you can have the remainder after seven years, and it's sort of guaranteeing employment. That's one of the intent. But it's tax exempt and it's protected. So, you know, whether that is income now or income later, I know that it shows up when it's given to the individual. I mean you can see each year some of the administrators take part of their deferred payment and it shows up at that time. But we don't know the status of that money within the foundation. [LR431]

SENATOR AVERY: Uh-huh. [LR431]

JACK GOULD: And if the foundation is correct in saying that all the money is going to the University of Nebraska, then we still ought to be able to track it. [LR431]

SENATOR AVERY: Now the legal department at the systems office, they obviously decided somewhere about two years ago that they didn't have to make these reports. [LR431]

JACK GOULD: Correct. [LR431]

SENATOR AVERY: What argument did they use to make that decision, because somebody must have asked them why and I suspect you did? [LR431]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

JACK GOULD: I did. [LR431]

SENATOR AVERY: (Laugh) [LR431]

JACK GOULD: But I think it's sort of a difficult question to (laugh) answer. Several years ago, I can't go back how long ago and I know that Ron Withem is here and he may be able to shed some light on this, the Internal Revenue Service made some demands on the University of Nebraska saying that there needed to be greater disclosure, and at that time I think they...and again, I don't have all the facts here, but I believe the argument then was that all...everything would be disclosed and given through the university, everything would go to the university. And I've had, you know, Joel Pedersen has said to me we don't have to do this because everything, \$132 million, is going through the university budget and that should satisfy and it would satisfy us if once that money gets into the budget it ought to be all trackable. And the Auditor's Office is saying, well, I can account for everything but \$31 million. So, you know, why is that? That's what we're asking you and I think that's one of the concerns about these foundations--private money coming to a public entity. If it's going around the back door, like going through vendors to individuals, that needs to be disclosed. And if it's, you know, direct payments from the foundation to individuals, that should be...that should be known. These are public individuals. If there's a direct payment going to them, in whatever form it takes, it should be visible. And there's a lot in the contracts that are identified as money coming from the foundation, a long list of things that are coming. [LR431]

SENATOR AVERY: So we're talking about cars, leased cars, country club memberships. [LR431]

JACK GOULD: Well, expense accounts,... [LR431]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: Expense accounts. [LR431]

JACK GOULD: ...\$22,000 expense account for the president of the university. Part of it comes from the foundation, part of it comes from the General Fund, at least that's the way it's disclosed in the contract but not in the...they don't find it in the audit. You know, housing allowances and they, I assume, include, because it's in some of the contracts, that they get snow removal, lawn care, maid service. These are some of the specifics. [LR431]

SENATOR AVERY: So your argument is that public individuals, public employees... [LR431]

JACK GOULD: Right. [LR431]

SENATOR AVERY: ...being paid with public money and partly private money... [LR431]

JACK GOULD: Right. [LR431]

SENATOR AVERY: ...should disclose all funds to the public. [LR431]

JACK GOULD: I think that's to be expected. These are public...that's the thing that I think is different. I mean if this was Harvard or Yale, you have a private foundation and you have a private institution and that's their business how it's run. But in the case of a public university, a land grant college which is set up to serve the public, then it should all be very visible, no matter how it's used, and know, whether it's private or public money, it should all be there and accountable. [LR431]

SENATOR AVERY: Any other questions from the committee? I think we've had enough. Thank you, Jack. [LR431]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

JACK GOULD: Okay. Thank you. [LR431]

SENATOR AVERY: Anyone else wish to address this issue? [LR431]

RON WITHEM: Senator Avery, members of the Government Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m, here representing the University of Nebraska. Came today basically to address the general concepts of Senator Haar's resolution and will do that also, so hopefully shed a little bit of light on some of the things that Mr. Gould brought up. Have to admit the specifics about the dispute that he seems to have had with...I don't know if it's our legal department or who it was. I'm not privy to that information. If you have questions about that, that you'd like additional information to kind of flush out what I'm sure is the other side of the story, I'll be happy to get that to you, but I will up-front apologize to you because I just am not privy to those discussions. First of all, we were here a few months ago when Senator Haar introduced LB815, which, as he indicated, was a broader bill. We did appear in opposition to that bill. We have a very real concern about anything that might have a chilling impact on gift givers to the university. A little later on I'm going to talk a little bit about how important having private support is to the university, particularly in this era of smaller budgets. So we were in opposition to LB815. Candidly, we don't know that much about what Senator Haar is proposing; haven't had an opportunity to go through the ins and outs and the language of a bill introduction. But the way it was described, it seems reasonable at this point and if a bill is introduced we'll, of course, be testifying in regard to it. In regard to the \$31 million, there's a very good reason that the Auditor couldn't find that on the university books because it never went to the university. There's a statement in our financial documents for this year that includes a summary of University of Nebraska Foundation expenditures. During that year, they did donate over \$100 million to the university and that \$100 million did in fact flow through the university's books. And I know, again, Mr. Gould has maybe some concerns about the way in which that money is reported and accounted for, and again I'll get you answers to those questions. But the \$30 million never did go through the university's books. The University of Nebraska

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

Foundation is an independent corporation that has its own employees, its own salaries, its own expenditures, its postage, professional services, office rent, all of those items. That accounted for about the \$30 million that did not go into the university's books, so I guess that's a fairly simply answer, I think, to where that particular money went. Indicating again this \$100 million that the foundation provides supports the core mission of the university. Those of you that have been around a while probably can remember...well, probably none of you can remember the day, in this era of term limits, where we used to go to the state upon practically an annual basis with a list of capital construction needs and actually get funded capital construction. We have not been funded any General Fund capital construction money for a number of years. I think in my 13 years with the university I can remember two generally funded projects, one at UNO and one at UNK, did fund some deferred maintenance for us a couple of different times. But in order to meet the capital needs of the state, it's important to have the contributions from the foundation. Foundation also supports endowed chairmanships, endowed faculty chair seats, and provides a lot in the area of scholarships. So as had been proposed in the past, the desire to have those individual contributions made accountable as to who the donor was, would, we felt, put a chilling impact on these contributions and for that reason much prefer what's being talked about here today to what was being talked about here in the last spring, last winter, last spring. And again, I am not privy to what the conflict was in terms of what's being reported, what had previously been reported, what's not being reported at this time. I think some good questions were raised and I'll get you some information as it relates to that. [LR431]

SENATOR AVERY: I want to go back to...are you finished? [LR431]

RON WITHEM: I am finished. [LR431]

SENATOR AVERY: Okay. I thought you sounded like you were stopping. [LR431]

RON WITHEM: Whether I was or not, I apparently am now so let's go ahead. [LR431]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: (Laughter) I want to go back to the statement Mr. Gould made about the university previously reporting this income from the foundation, where it went and how much. And then a couple years ago the decision was made, we don't have to do this anymore so we're not going to. My question is, what could the university possibly hope to gain by hiding this information or withholding it? [LR431]

RON WITHEM: Senator, again, that's the portion of Mr. Gould's testimony I do not have information on and I'm going to have to get that information back to you. [LR431]

SENATOR AVERY: But it came up in the last...when the bill was introduced and we heard it here in this committee, this issue came up and that's been a long time. There's plenty of time to have gotten that answer. [LR431]

RON WITHEM: Well, again, nobody came to me and asked me for information for that question. Had they, I would have gotten to them. If there's been communications with others and university officials... [LR431]

SENATOR AVERY: So you'll wait till you get a specific question before you're going to go get information that might help this committee... [LR431]

RON WITHEM: That's normally the way I operate, yes. [LR431]

SENATOR AVERY: Hmm. But we are trying to understand this issue and you know that maybe there are questions that we would like answered that we may not think to specifically ask for that document or this document, but you know what we're trying to get at. [LR431]

RON WITHEM: Again, Senator, if I had additional information I would give it to you. I would be delighted to. I don't. [LR431]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: I know you don't, but you had since... [LR431]

RON WITHEM: And I was not aware of the... [LR431]

SENATOR AVERY: ...since the last session to get it. [LR431]

RON WITHEM: I was not aware of these specific questions being brought up. Nobody had come to me after the fact and said they wanted that information. [LR431]

SENATOR AVERY: I think we may not have asked for it but I do remember that question coming up last February or whenever we had the hearing. You mentioned that donors may not want their money or their contributions to the foundation to be made public. Are you suggesting that these are people who make contributions to the foundation with the explicit knowledge that that money they give to the foundation is going to go to lease a Lexus for an administrator or a football coach or I don't...? Is that the case, donors actually give money knowing or specifying that this money is going to be used to pay for a country club membership? [LR431]

RON WITHEM: You'd have to ask someone from the foundation as to how that money flows through. I don't know. I think the automobiles, as I remember, and this is just from my reading the newspaper that's available to everybody else, those individuals do in fact contribute to a specific fund that they know full well that money...people do not...if the question is, do people just give million-dollar checks to the foundation without knowing what specific project they're going for, no, they don't. [LR431]

SENATOR AVERY: No. [LR431]

RON WITHEM: They tend to support individual projects that they know about. [LR431]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: And so you're suggesting then that when someone gives money to the foundation, they know how that money is going to be spent. [LR431]

RON WITHEM: Yes. [LR431]

SENATOR AVERY: So there are people out there who are giving large sums of money to the university knowing that the money is going to be used for country club memberships and things of that sort, right? [LR431]

RON WITHEM: Again, you ask about specific line-items in the foundation accounts. I can't respond to those. In the general sense, contributors to the foundation make contributions for specific projects. Whether or not there's a specific contributor that contributes X dollars for a specific benefit for a university employee, that I don't know. [LR431]

SENATOR AVERY: But you were suggesting, though, in your previous comments that there are donors or even suggesting maybe most or all donors would not like to have public scrutiny placed upon how their money is being spent. [LR431]

RON WITHEM: That's...I don't believe that's what I said. I said there are donors who would rather not. If I didn't say it, I'll say it now. There are donors who would prefer, some cases, not to have their identity revealed. In other cases, they don't object to having their identity revealed. They object to having the full amount of the contribution made public. You know, they get on these lists and get... [LR431]

SENATOR AVERY: Yeah. [LR431]

RON WITHEM: ...solicited for other contributions that they may not be as interested in participating in. So we like to be able to protect the anonymity of contributors to the extent that they want that protected. [LR431]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: But I don't think...my reading of this legislation, I haven't studied it carefully, it is doesn't identify the donor. [LR431]

RON WITHEM: And I believe I started out by indicating that the specific proposal before you at this particular time on the surface doesn't appear to have those problems that the bill did during the regular session. [LR431]

SENATOR AVERY: I would really like to know what the rationale was for the legal department deciding that we just aren't going to provide that information to the public anymore. I'd like to know that argument. [LR431]

RON WITHEM: I understand that and will get back to you. [LR431]

SENATOR AVERY: Because it's got to be good. (Laughter) [LR431]

RON WITHEM: I'm sure it is. I'm sure it is. [LR431]

SENATOR AVERY: Senator Krist. [LR431]

SENATOR KRIST: Thank you, Chairman. Senator, when you describe the foundation, you are describing a true 501 nonprofit. Is that correct? [LR431]

RON WITHEM: That's my understanding, yes. [LR431]

SENATOR KRIST: In support of the public institution. [LR431]

RON WITHEM: It exists to support the mission of the University of Nebraska but it is an independent, separate organization, separate offices, separate government structure, not subject to control of the Board of Regents. [LR431]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR KRIST: In my understanding, although I'm not a legal mind, but my understanding of the nonprofit 501, those boards are charged with running and being accountable for the funds that are donated to them and even, to some extent, have to adhere to restricted fund status. If someone donates \$1 million, I would like to remain anonymous and I would like this to go for ten Lexuses for the football team or coaches, if that were the way it was presented. So I understand the dilemma, but I also would say or ask the question, and I would hope that you could get back to us, if the 501, the foundation, is run efficiently, effectively, and I'm sure they are because there's accountability, they also would have an audit, either external or internal, so that information, that audit, could be made available? It is...it has to be available internally. Is there...and then so the other follow on question is, is that...could that be used by the Auditor in any capacity for that information being passed on? [LR431]

RON WITHEM: Yeah, I understand the question. I'm not the one to answer that question. I'll get an answer to you. [LR431]

SENATOR KRIST: Yes, sir. I appreciate it. Thank you. [LR431]

RON WITHEM: Yeah. [LR431]

SENATOR AVERY: Any other questions from the committee? Thank you. [LR431]

RON WITHEM: Thank you. [LR431]

SENATOR AVERY: And we have someone else who wishes to address this, Senator Haar. [LR431]

ROGER HOLMES: Very quickly. Can I fill out the little form after I... [LR431]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: Absolutely. [LR431]

ROGER HOLMES: My name is Roger Holmes, R-o-g-e-r H-o-l-m-e-s. I'm one of the copresidents of Common Cause Nebraska. These are basically follow-ups. Our understanding from the foundation is that they claim to have given \$132 million to the university. If the university only passes \$100 million of that through their books, what we would like to know is where is the other \$31 million. It may be accounting practices, it may be whatever, but the...as our understanding is, is that the foundation claims to have given the university \$132 million. The second point I'd like to make is perhaps not germane to this specific bill but is to the question of donor's anonymity. And I'd like to speak just to the idea of why one would like to know that. The University of Nebraska is a public institution and, therefore, acts on behalf of the public, including its research projects, all of the outreach work...(recorder malfunction--some testimony lost)...money earmarked for specific kinds of research. Let's say Cargill decides that they would like to donate \$20 million to the chemistry department for specific research. That sounds on the face of it as though that's quite a nice thing. Maybe they don't want to be public about that. However, Cargill has their own research capacities. If in fact they are seeking to make use of the University of Nebraska as their research arm for things that they will use proprietarily or otherwise, I as a taxpayer would like to know that. I would also like to know if TransCanada, for example, were to decide that they wanted to give money to the university for some research or something like that, that would direct, by its reception by the university, to use of its resources, the resources I pay for as a taxpayer, to further the ends of their particular agenda, I would like to know that too. I may not object to it, I may think it's wonderful, I'd just like to know it. And that really is the reason why I think disclosure of donors is a good thing to do, despite its problems. Thank you. [LR431]

SENATOR AVERY: Any questions? [LR431]

SENATOR KRIST: One. [LR431]

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Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: Yes, Senator Krist. [LR431]

SENATOR KRIST: The two examples that you gave of disclosure... [LR431]

ROGER HOLMES: Uh-huh. [LR431]

SENATOR KRIST: ...are on one end of the spectrum, admittedly. Are you against a benefactor who does not want to be recognized for giving a large donation because he or she or their foundation does not want to be hounded by other people that would want to solicit funds? [LR431]

ROGER HOLMES: I am not. I think it's a very difficult question. It is a very difficult question and... [LR431]

SENATOR KRIST: So there are some scale weighting. [LR431]

ROGER HOLMES: There are some scale, but I think in the scale of something on the nature of significant portions of the university's mission being directed to do something that the funds would accommodate but not necessarily cover entirely or just would direct the university in that direction, there I think it becomes a problematic policy question. [LR431]

SENATOR KRIST: Okay. Thank you. Thanks, Chairman. [LR431]

SENATOR AVERY: See no more questions. Thank you, Mr. Holmes. [LR431]

ROGER HOLMES: Thank you. [LR431]

SENATOR AVERY: Anyone else wish to address this resolution? Senator Haar.

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

[LR431]

SENATOR HAAR: Well, apparently my bill sits on the lid of Pandora's box. I'm not opening up that whole box and that will have to wait for future legislation. I would like to say I certainly appreciate the work of foundations and in no way would want to destroy that, and so we do not ask in this bill for knowing who the donors are and so on. It's really as simple as I said. We want to know if it's part of...if foundation money, for example, is part of an official's--at the university, public schools and so on--a part of their salary. We need to know that and we need to know the value of that, and that's all this does right now. I guess it also shows the usefulness of having every bill introduced and talked about in committee, because I think this is a better bill than last year. I apologize that we didn't get this to you beforehand but it's about as simple as I described it. So with that, I guess I'd just like to say I believe that transparency is good for democracy and that's what this is about, to making these things transparent. And just to digress for just a moment, you know, as we campaign or talk with constituents, they're always talking about efficient and effective government, and I think transparency helps shed light on that issue. I would like to carry this one step further and someday I would like to see energy transparency, that were talking about that now with schools, that schools would take the Department of Energy's ENERGY STAR self-rating system to see kind of where they stand in relationship to other schools who have done the same. And again, how efficient and effective people are in the use of...government agencies are in the use of energy I think would be a good concept, energy transparency. So that's what it's about. It's fairly simple. It's much simpler than last year. And any questions? [LR431]

SENATOR AVERY: Questions from the committee? Seeing none, thank you very much. [LR431]

SENATOR HAAR: Thank you so much. [LR431]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

SENATOR AVERY: We will now move to the third item on our agenda, which is LR519, introduced by Senator Pirsch. I understand Senator Pirsch is not here but he has sent his talented assistant, right? [LR431]

TANYA BORJES-HAYES: Yes, that is correct. [LR519]

SENATOR AVERY: Legislative aide? [LR519]

TANYA BORJES-HAYES: Yes, correct. [LR519]

SENATOR AVERY: Okay. [LR519]

TANYA BORJES-HAYES: I don't know about talented but thank you. I appreciate it. Good afternoon, Chairman Avery. [LR519]

SENATOR PRICE: You know how to clear a room. (Laughter) [LR519]

TANYA BORJES-HAYES: (Laugh) [LR519]

SENATOR AVERY: Go ahead. [LR519]

TANYA BORJES-HAYES: Okay. Good afternoon, Chairman Avery and members of the committee. Senator Pirsch, as we were wrapping up legislative session just this past year, wanted to introduce a study, LR519, and this is to examine the Firearms Freedoms Act. It's something that has been enacted. It started in Montana and that was enacted in October of 2009, and several states have followed suit, approximately four as of June 2010. We also have 20-something states that are looking at or maybe have introduced legislation as well, so that remains pending. The reason we did this, you may ask, because it relates to gun manufacturers, we don't have those within the borders of our state, however, it's a little further reaching than that. What it boils down to is, of

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Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

course, you have the Tenth Amendment and you have the Second Amendment and you have the Commerce Clause and all of those get intermingled into that. And we have the right to keep and bear arms. It's a fundamental right, we will agree, but this tends to slide towards that Commerce Clause area. During the colonial times, for example, there was a little bit of a problem where the commerce crossed line between colonies and if you had something that was coming from one state to the state of New York, as it passed through Virginia it was heavily taxed, so by the time it got to New York, it was so overpriced that no one could purchase it. So we were able to address that. Our Founding Fathers were able to address that and it was a regulation. It was meant for the buying and selling of products that were made by others, but it did not include agriculture, it did not include manufacturing, mining, land use, etcetera. It was a power, actually, this commerce power was one that was not used very often until we came upon the FDR administration and the New Deal. It was during this time that there were several laws actually that he wanted passed, his Congress wanted to pass, that the U.S. Supreme Court came back and said it lacked unconstitutional authority. In response, FDR asserted his Commerce Clause authority. There ended up being a little bit of a standoff, you could say, between the U.S. Supreme Court and FDR and his administration as he threatened to expand the number of justices and gain some approval for the bills that were coming through. Unfortunately, during this period of time there was a case, Wickard v. Filburn, that came before the Supreme Court and this is what we're getting to is where, when these types of things, when we come down to state sovereignty, Commerce Clause and whatnot, can expand into areas that we don't want them to expand into, and that's our state's authority. This was an individual who was a farmer. It was a farmer that was participating in the current price supports, participating in the quotas that they had for growing wheat, who also had set aside an acre of land for his own family, and he grew that wheat and his wife then would mill it and use it for their needs. The government was able to come back and claim under the Commerce Clause that he was violating those quotas because he was using an acre of land to grow wheat and, because it was being used for his family, it could affect that balance. He sued of course, but, because there was a little bit of a standoff between FDR's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
November 05, 2010

administration and the Supreme Court, he lost and essentially was told you cannot grow wheat on your own land for your own family. It seems unimaginable today that that would happen, that a farmer would be prohibited from using his or her own land for their own needs for their family, but it's a piece of our history. And I guess what we're trying to say is that maybe we don't have gun manufacturers in the state of Nebraska but we do have state sovereignty and it's just something to throw out on the table and keep that discussion open. What if someday we do have gun manufacturers, we do have other types of industry in our state? And we just need to be aware of the potential, whether that be in relation to firearms or farming, that we can keep history or we can pretty much avoid it from repeating itself. Thank you. [LR519]

SENATOR AVERY: Thank you for your testimony. Any questions from the committee members? [LR519]

TANYA BORJES-HAYES: Thank you very much. [LR519]

SENATOR AVERY: Thank you. [LR519]

TANYA BORJES-HAYES: Appreciate it. [LR519]

SENATOR AVERY: Anyone here wish to address LR519? I don't see any. Do you have anything you would like to add? All right. Thank you very much. We'll now move to LR471. This is a resolution that is introduced every year so that we can examine any and all issues that come under the general jurisdiction of this committee. This is a time when we allow people to testify on any issue that is within the subject matter of the Government, Military and Veterans Affairs Committee. We have three people in the audience. Do any of you wish to bring before this committee any subject that we have not talked about so far today? Seeing none, that will end the session today. Thank you all for coming. [LR519 LR471]