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Education Committee
February 07, 2012

[LB990 LB991 LB1074 LB1105]

The Committee on Education met at 1:30 p.m. on Tuesday, February 7, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB991, LB990, LB1074, and LB1105. Senators present: Greg Adams, Chairperson; Bill Avery; Abbie Cornett; Brenda Council; Ken Haar; Kate Sullivan; and Les Seiler. Senators absent: Gwen Howard, Vice Chairperson.

SENATOR ADAMS: Good afternoon, everyone, and welcome to the Education Committee and the hearings for today. Today, the Education Committee will be hearing, first of all, LB991. We'll then go to LB990, LB1074, and LB1105, so you can see that we have a long afternoon ahead of us, and we're going to get started right away. Let me initiate this hearing by first of all introducing the people who are up here and then briefly outlining the rules of the road for hearings in this committee. To the far right at that end of the table is Becki Collins, and Becki is the committee clerk for the Education Committee. And if you wish to testify today on any of these bills, you'll have an opportunity to testify as a proponent or as an opponent or in the neutral. Now you're going to have to make your mind up which one of those you want to go in. And when you do get ready to testify, back by the door--each of the doors--there is a testifier sheet for you to fill out. And when you come up to the table to take your turn, please have that filled out and hand it to Becki, and then we'll begin your testimony. I would ask though that before you start your testimony that the very first thing you do is to clearly state your name and spell it for the record so that Becki can hear it and so that the transcribers can get it for the record on this hearing, all right? Next to her is Senator Seiler from Hastings. Senator Council will be joining us before too long. Senator Cornett is here from Bellevue. Next to me is the research analyst for the committee, Kris Valentin. I'm Greg Adams, representing the 24th Legislative District. Next to me here is: Senator Howard--she will be here--and she is the Vice Chair of the committee from Omaha; Senator Sullivan from Cedar Rapids; Senator Avery will be joining us again here in just a moment from Lincoln; Senator Haar from the Malcolm area. I would ask right at the outset that if you have cell phones, turn them off; you got iPads, get rid of them. If you want to text, you want to e-mail, that's what the hallway is for, not this committee hearing room, all right? We're here to listen and on all sides of this issue. With the exception of credentialed press, shouldn't be any computers operating either. Are we clear on that, everyone? If that be the case, then let's open the hearing on LB991; Senator Krist to open.

SENATOR KRIST: Thank you, Senator Adams and members of the Education Committee. I was sort of hoping Senator Howard would be here for this, so I guess I'll have to give her a copy of the transcript. My name is Bob Krist, K-r-i-s-t. I represent the 10th Legislative District in Omaha, Bennington, and parts of unincorporated Douglas County. I introduced LB991 initially for two reasons. One of them has gone away initially with the Supreme Court ruling on the Learning Community and the funding issue. I

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really thought that it was...if in the event that it had been ruled the other way that we would be having more serious discussions about reorganization of school districts throughout the state and particularly in Douglas County, in my home county. But the second reason is equally as important. As I look at this body and this...you represent years of experience; not just the years that you have been here, but many of you go back to Senator Raikes who has a thread from years before. You have heard in this committee, that I know of, five different opportunities to look at one county/one school district in terms of a piece of legislation. One of them actually was brought forward by Senator Raikes. It is in that way that I would suggest that many of you, a few of you, will not be here because you're term-limited. Many of you may be moving on to do other things in life. There's always a possibility of moving up and into a different committee. I would suggest that the makeup of this committee has a plethora of good experiences that they can bring to this kind of a look-see. The fact that I recommended one county/one district in terms of this discussion goes back to something I remember from St. Ignatius: Recommend the impossible and during debate, you may get to the possible. I do not agree that one county/one district is even possible in this state. We have multicounty districts that are working very, very effectively and have consolidated and have brought themselves to that point. Douglas County, really it would never happen. The district would be much too big to be effective. So let's open the dialogue with: What does Senator Krist want you to do? I would like to take your years of collective experience here on this committee, and I would like you to steer us in the direction and leave some bread crumbs down because in a term-limited environment that's what we need to do. We need to leave a legacy or at least a potential "lessons learned" for the next committee that will come forward. One county/one district is probably so far fetched in this state that...but it's a good place to start in terms of the discussion. How can we consolidate? Where can we make changes? Where are there changes required? What's working and we should leave it alone? To the point though, and I will close with this. TEEOSA is near \$1 billion right now--\$1,009,000,000 and change. If we don't do something to set up a track that allows us to look at other options, other consolidations, other ways of doing business, my prediction is in the next decade or by the end of this decade we'll be well over \$1 billion and probably \$1 billion and a quarter. That's staggering when you think about it. I thank you for listening to me and for the potential of looking at this as a potential study within the committee. I would admit right now that what I've recommended is probably not the makeup that you would want to go forward with. I don't think there are the kinds of representation that you need to look forward. Administration is probably not well assembled within that body, but I would trust that the...again, the knowledge that's here, the wisdom that's here would look at the impossible and try to chart a course for what might be possible. I do know, having many of them visited my offices, that there are many people who will come in, in opposition to one county/one district. And to that I would say, good for you because it just energizes the discussion and affirms for me that we're having that discussion to move forward in this state about trying to control education funds and keep TEEOSA within limits. With that, sir, I thank you for the opportunity to come before your

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committee, and I will waive closing. I have other matters that I need to get back to. I look forward to reading the transcript of this debate. [LB991]

SENATOR ADAMS: All right. Thank you, Senator. We appreciate your being here, and you're willing to jab us a little bit. Committee, what questions? Senator Sullivan. [LB991]

SENATOR SULLIVAN: Thank you, Senator Adams, and thank you, Senator Krist, for your comments. I can't disagree with you that that's a fact that we need to have a conversation around this. But if in fact as in the summary of your introduction that you indicate that you're not totally happy with the makeup that you're suggesting--which would include representatives from the business community, teachers, Commissioner of Education--you know, there's some glaring omissions, and you mention administration being one of them, I would venture also to say school board representation is very important. But step back from all of that for a minute, and where do you think the conversation should begin? [LB991]

SENATOR KRIST: Empowering those people who know their districts to make consolidation efforts at the local level, at the lowest level possible, to make good decisions. Example: We know historically that--excuse me--we know historically that the way to doom an urban school district is to lock them into an economic environment where OPS has become. We know that statistically those school districts do not do well; we have examples of that happening in Detroit and other places. Potentially, the Douglas County area needs to look at how far Millard wraps around one side, how far OPS goes out, expanding the economic diversity that a school district would have as a funding level to include TIF funding and how that affects an individual school district and how much takes away. Empower them to look at their situation, to do a white-board approach and say, how do we fix this problem? How do we help our kids achieve the level and not hold them down because of economics, because of geography, because of ethnic persuasion, whatever it might be? [LB991]

SENATOR SULLIVAN: Thank you. [LB991]

SENATOR KRIST: Thank you, Kate. Sorry--Senator Sullivan. [LB991]

SENATOR AVERY: Senator Haar? [LB991]

SENATOR HAAR: Senator Krist, one thing I appreciate about you, you think outside the box and...however, Einstein had a statement that went something like this: One definition of insanity is to keep doing the same thing over and over again and expecting different results. So what were the results of those earlier studies that you think might change? Or do we just need to drag out those early studies and look at it? [LB991]

SENATOR KRIST: I think that's...my course of action while I've been here, in the time

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that I've been here in the Legislature because of the term limits and because of my ignorance in a lot of cases is to reach back and grab those floor debates, reach back and grab those committee hearings and find out why it didn't work or what didn't work about it and what did. I think one of the most interesting reads was Senator Raikes who tried again to force an issue, and I would invite you to look at that one. I think, you know, again lessons learned. Let's not repeat the mistakes that takes us down the bad path, but let's try to recreate and not recreate the wheel. And those that would put us in a good path... [LB991]

SENATOR HAAR: Good. Thanks. [LB991]

SENATOR KRIST: Thank you, sir. [LB991]

SENATOR ADAMS: Are there other questions for Senator Krist? Seeing none, thank you, sir. And you did say you were going to waive closing? [LB991]

SENATOR KRIST: Yes, sir. [LB991]

SENATOR ADAMS: Okay. [LB991]

SENATOR KRIST: Thank you. [LB991]

SENATOR ADAMS: Thank you. We will begin with proponents, and we are going to go with the three-minute light today. Are there proponents to this bill? All right, then we'll slide over to the opponent side. First opponent? [LB991]

JOHN BONAIUTO: Senator Adams and members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, a registered lobbyist representing school boards. And we are as an organization troubled by the county portion of this bill because we've looked at it a number of times and my members did not, until I talked with Senator Krist, have the insight that he was looking for a way to generate a discussion on how we deal with the challenges that we're facing. And so he and I had that discussion, and I told him, well, we were as an organization of school board members troubled by the countywide districts not just because there are districts that overlap counties, but as we looked at this and creating districts in the metro area of...that would be a lot larger with a lot more students compacted into a geographic area. And then the problems that you have in greater Nebraska where you don't close a single site really, you keep all the sites open, you know, any efficiencies that you may have would probably come from fewer administrators going to a county district. But we've had bills where we've talked about the geography and how the distances are really problematic, and when you look at some of our counties like Cherry County, they've already got tremendous distance and problems there. They've got a county that's the size of some eastern states. So I...you know, I without question believe that our discussions in the future are going to need to

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look at how do we reach a shrinking population of students in greater Nebraska to keep the districts viable. And my organization is one that always promotes local control, and I know for a fact that the school boards that look at their districts, they see firsthand, up front, that something different needs to occur, but there's nothing that gets a school board member unelected quicker than talking about merging with your neighboring district. That's one of the issues that we're seeing, and we're seeing those discussions, they just don't happen as quickly as we'd like. But, you know, I can tell you that school board members are struggling with this issue, and they're trying, as they see their districts shrink, viable districts that in the last five or six years have really shrunk in size. They're not attracting new students, and they're going to have to figure out how to work with their neighbors. Whether they merge or do something else, multidistricts...I don't know what the right answer is, so we have to have these discussions. With that, I'll conclude my testimony. [LB991]

SENATOR ADAMS: All right. Thank you, John. Questions for John? Senator? [LB991]

SENATOR SULLIVAN: Thank you, Senator Adams. You're point is well taken, John, and the conversation needs to be had at a variety of different levels but probably not in individual silos. [LB991]

JOHN BONAIUTO: Yeah. [LB991]

SENATOR SULLIVAN: So do you have any suggestions on how we have that collective statewide discussion short of shoving something down the mouths of local entities? [LB991]

JOHN BONAIUTO: And that is part of the discussion, I think, Senator. But having the policymakers at this level and the local elected officials, the community members, it needs to be a broad-based discussion on how we do it, looking at ways that we will be able to reach students differently. [LB991]

SENATOR SULLIVAN: Um-hum, um-hum. [LB991]

JOHN BONAIUTO: You know, we're talking about the virtual high school and independent studies and more on-line learning to keep districts viable. When you get to a size where it's hard to attract really good teachers and administrators and so it...and maybe we need to revisit the issue of incentives to get people to merge and go together. And at one time the state did set some resources aside to try to get...entice districts to look at merging, and so maybe it's time we have that discussion again as part of that. [LB991]

SENATOR SULLIVAN: In Senator Krist's bill, he had some recommendations in the makeup of his committee that would extend into the business community. Maybe we

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just need to even think beyond the boundaries of the education community to start this conversation. Is that a possibility? [LB991]

JOHN BONAIUTO: Absolutely. Senator, I was thinking about that this morning when we had the testimony on bills dealing with vocational education and looking at how we might bring the business community into this conversation because I think that would be critical. And again I think that multidistrict concept was part of that discussion when those bills were heard in this committee. And so I think that taking a look at--as Senator Haar would say--at solutions that are outside the box, you know, what are the things that we haven't really tried to tackle that we could try? [LB991]

SENATOR SULLIVAN: Thank you. [LB991]

JOHN BONAIUTO: Um-hum. [LB991]

SENATOR ADAMS: Senator Haar? [LB991]

SENATOR HAAR: Well, just briefly I'd like your comment. One problem with term limits now is that we're here and gone very quickly. [LB991]

JOHN BONAIUTO: Yeah. [LB991]

SENATOR HAAR: And so there have been a number of...like water issues where we do the same study again and again and again. Do you see a better way to do things if we're really looking for change? [LB991]

JOHN BONAIUTO: Well, I...and we've studied the issue of efficiency and we've looked at efficiencies, and I think that, you know, having the conversation. And I don't know if it requires a task force and developing that conversation across the state, but I know that in...especially in the rural areas there are more districts that are struggling because they are shrinking, and they need to figure out ways that they can work with their neighbors. [LB991]

SENATOR HAAR: Okay, thanks. [LB991]

SENATOR ADAMS: Other questions from the committee? Thank you, John. [LB991]

JOHN BONAIUTO: Thank you. [LB991]

SENATOR ADAMS: Next opponent? [LB991]

JON HABBEN: Good afternoon, Senator Adams, members of the committee. My name is Jon, J-o-n; Habben, H-a-b-b-e-n, executive director of Nebraska Rural Community

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Schools Association. Term limits...how many of you remember 50/15? Okay. [LB991]

SENATOR HAAR: And I don't. [LB991]

JON HABBEN: That's sort of where my history with "let's take a look at school consolidation" goes back to. And basically it was let's see, the best way to handle this and get it all straightened out is that if you have 50 or fewer students in high school and you were closer than 15 miles on an improved road, you shall close. That's where my history started as a member of the NRCSA legislative committee and various other kinds of things. Now that's back a little ways--Senator Bohlke, Senator Withem--and the time is it's moved forward. My question about doing these kinds of studies is: If the purpose of the study is we're going to save money, then I would simply suggest that, at least from a rural perspective with 95 districts that don't get any state aid at all, just exactly how much are we talking about savings if we're going to go to all this work to put a school in a county? But let's step back, broader picture. Let's say, okay, how do we have this discussion on anything other than a local basis? If local control is going to...if we're going to kind of move that aside a little bit so that we can have the policy discussion on the state level, how do we get to include everybody that's a stakeholder in the discussion? That's the question. Support a study? Sure, we can. Sure, we can. We've never been afraid of studying things. The question is: Who participates in the study? And how do we come together in such a way that we can hide our hot buttons so that the second you mention that, our organization or any other organization doesn't say, stop, stop, you're threatening us? [LB991]

SENATOR ADAMS: Thank you, Jon. Are there questions for Jon? Jon, may I ask, having come through the ranks of the small school world, if somebody...if a school board member came up to you and said, Jon, what's the criteria? How do we decide if it's time to pull the plug and unify or consolidate with the school just down the hard-surface road, and if I stood out on the road I can see the water tower? What do you tell them? When do you make that decision? [LB991]

JON HABBEN: One of the first issues is how much curriculum can you offer for the amount of money that you have, given the number of students that you have. Those three things are the key elements. If you can't offer enough curriculum, then the red flag should be coming up immediately because then what are you saying about the education of your kids? That's the heart of it, but enrollment and money dictate curriculum. I've been a part of these discussions in several of the school districts that I have been in, and they are highly charged, emotional, worried. And then you add things like freeholding into it, and then they become explosive and so on and so forth. And you know all of that's going to happen in schools that are community schools. You remove the school, the community has no school or it has only an elementary site, so you know that's the environment that you're in. But it comes down to how much money, how many students, and how much of a curriculum can you have, based upon those two. And

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once you get... [LB991]

SENATOR ADAMS: Not how many you have on your football team anymore? [LB991]

JON HABBEN: You know, co-oping will take care of that issue. [LB991]

SENATOR ADAMS: You're turning red on me, Jon. [LB991]

JON HABBEN: Well, you kind of have this idea that maybe schools think a lot of their activities and their sports and they do. But as I've told a number of my colleagues, when I go back home to my parents--my whole family is from north-central Iowa--and I open up the Des Moines Register and I look at the schools that are listed in all of the sports and I see hyphen, hyphen, hyphen, hyphen, you know the environment is changing there too. That's the way you deal with those kinds of issues. But money, students, and how much curriculum can you deliver, that's really the heart of it. [LB991]

SENATOR ADAMS: Jon, one other question, and it's...I'm going to put it in the form of a question, and ultimately it may sound more like a statement. [LB991]

JON HABBEN: Sure. [LB991]

SENATOR ADAMS: You mentioned the local control, and we try our best on this committee to recognize that with every piece of legislation that comes our way and properly so. What do I say to a school board member or two or three that have just been recalled because they made a decision, based on just what you've said, to consolidate? And now their lives are miserable and they're asking the Legislature, don't make anybody else go through this, you do it to us. [LB991]

JON HABBEN: You know, Senator, I've heard that for 20 years at various points where people have just thrown their hands up and they have said, oh, for crying out loud, just tell us, this is awful. Well, I have to admit I still prefer the local control because local control, even if it's a levy override that may fail or not and decide the issue, local control still allows you to make the choice about your school and your kids and your families. People can make each other miserable and that's sad, really sad. You know, I think about my dad as a retail businessman who could have seen people walk out his door and never come back. Those are awful, ugly circumstances, and there will be people who will take the low road, sad to say. [LB991]

SENATOR ADAMS: Thank you. Are there other questions? Thank you, Jon, for your candor. [LB991]

JOHN HABBEN: You bet. [LB991]

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SENATOR ADAMS: Next opponent? Any other opponents? Neutral testimony? Is there any neutral testimony? Seeing none. Senator Krist chose to close. That will end the hearing on this particular bill, and we will proceed right on to LB991 (sic). Is Senator Fulton present? [LB990]

SENATOR HAAR: Nine-nine-zero. [LB990]

SENATOR SULLIVAN: Nine-ninety, you mean. [LB990]

SENATOR ADAMS: Or LB990, excuse me. Is Senator Fulton present? All right, we'll... [LB990]

RICHARD ZIERKE: I'll take his place. [LB990]

SENATOR ADAMS: No, can't do that. [LB990]

RICHARD ZIERKE: Okay. [LB990]

SENATOR ADAMS: There he is. As we're initiating this hearing now that Senator Fulton is here, how many of you here intend to testify as proponents? Proponents, in support of the bill. No holdouts on me, are there? All right. How many opponents to the bill? All right, here's what we're going to do. We're going to go with the three-minute rule--the lights are right here--and I'm going to limit the overall testimony on both sides--it doesn't look like we'll need it but just in case--to 45 minutes on each side if it's necessary to do that. Otherwise, we'll just stick with our three minutes. I would ask you...it's going to be a long afternoon. I don't want anyone to feel like they can't testify; you have that right. But if your testimony is going to be simply redundant--what has been said multiple times--if all you did was come to the microphone and say, I'm so-and-so and spell your name and I agree, that goes into the record. Senator Fulton, you're recognized to open. [LB990]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent District 29 here in the Legislature, and I bring to you LB990, which intends to ensure that the Pledge of Allegiance is a daily part of the education of our children. Forty-three states contain provisions within their respective statutes relating to the recitation of the Pledge of Allegiance. There exists no provision in Nebraska statute that addresses the recitation of the Pledge of Allegiance. Nebraska law does require that the flag of the United States and the flag of the state of Nebraska be prominently displayed on the school grounds of all schools that receive public funds. Moreover, Nebraska law also requires each school board to form a committee on Americanism which is charged with, among other things, ensuring that at least one hour per week in classrooms be devoted to the development of reverence for the flag and instruction as to proper conduct in its presentation. Although the pledge

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may be being recited in individual schools throughout the state, it certainly is not a universal aspect of school life throughout our state. LB990 operates at the district level to ensure that beginning next school year all pupils enrolled in a school district are lead in a group recitation of the Pledge of Allegiance during the first class of each school day. LB990 does not mandate the participation of all pupils or all teachers or treat the refusal to participate as a punishable act. Although it could be constitutionally appropriate to require teachers to lead the pledge, LB990 allows respective school districts and individual schools the latitude to decide how such a group recitation should be led. LB990 follows United States Supreme Court and various federal circuit court precedent that have repeatedly upheld the pledge recitation policies so long as pupils are free not to participate. Our flag is the primary symbol of the virtue of our forbearers and the rich legacy that each prior generation of Americans has provided to us by their sacrifice. I think it is therefore fitting that our children be formed in their education to cultivate the greatest respect for and understanding of the meaning of this most precious of symbols. And if I could, Mr. Chairman, just echo what you said. I know there are a number of people who have come to testify, and I thank them for their testifying. We'll try to keep this all under 45 minutes and make our point, with thanks to the committee for their indulgence and time. [LB990]

SENATOR ADAMS: Thank you, Senator. Are there questions for the senator? Senator Avery. [LB990]

SENATOR AVERY: Thank you, Chairman Adams. Thank you, Senator Fulton. Do you intend this only to apply to public schools, not to private schools? [LB990]

SENATOR FULTON: Yeah, that's my intent and there is a reason behind that. The...let's see. This has more to do with...let's see...yeah. Those institutions for which the law applies now with respect to the flag, it's those institutions receiving public funds, and so we did not go any further than what already exists in statute. That's part of the rationale behind this. [LB990]

SENATOR AVERY: You see this as an important teaching activity? [LB990]

SENATOR FULTON: I do. I do, I... [LB990]

SENATOR AVERY: Okay, then why wouldn't it apply to private schools and home schools? [LB990]

SENATOR FULTON: Yeah, I don't know that we are able to do that. These...the school districts are a creation of the state, and our funding of those school districts...yeah, I'm not going to get too much in the philosophy, but that's an expression of the fact that these school districts are a creation of the state, and so that's why I chose not to go any further. If the committee is interested in taking it further, I mean, I'd be open to that, but I

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was looking at existing statute and drawing on what already exists in this...in our law.
[LB990]

SENATOR AVERY: And you've looked at the fiscal note? [LB990]

SENATOR FULTON: Actually, I have not seen the fiscal note yet. [LB990]

SENATOR AVERY: Well, it's...altogether, it's somewhere around...close to \$300,000 and the department of...well, the K-12 schools can't calculate the cost because some classrooms already have flags and some don't, so they don't really know what it would cost them, so it's not cost-free. [LB990]

SENATOR FULTON: Hmm. I understand it...that there would be some cost associated with it; \$300,000 frankly causes my eyes to bug out. [LB990]

SENATOR AVERY: Well, that's mostly because of the six campuses of the community colleges. [LB990]

SENATOR FULTON: Okay. [LB990]

SENATOR AVERY: They have over 1,300 classrooms. Then you have the University system. I think they come in at \$96,000 and state colleges over \$12,000, so it adds up. [LB990]

SENATOR FULTON: Yeah, okay. Yeah, understood, and I will...I have not had the opportunity to look at the fiscal note yet. I will and I'll review it. If fiscal implications are such that we can't move forward, I'd be very disappointed with that. But at the same time, hopefully fiscal implications are something that the community would take into consideration, and perhaps a prudential judgment could be made to move forward. [LB990]

SENATOR AVERY: Well, one more thing. We...in this committee, we hear a lot about local control. You don't see any problem with the local control argument here, that we're imposing things on school districts, things that they ought to have the authority to decide for themselves? [LB990]

SENATOR FULTON: I don't, Senator, and I've...the argument of local control is...it's effectual with me and it's a persuasive argument, but local control is not in and of itself an absolute. I mean, the way that...I've said this before, and I think it's worth saying again. The state is the sovereign. Within our republic, the state is the sovereign. School districts are not sovereign entities; they are creations of the state. And so I do think it's legitimate, at appropriate times, for the state to exercise diligence and judgment and indeed sometimes mandate. So that's my philosophical vantage on the...this idea, this

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principle of subsidiarity and... [LB990]

SENATOR AVERY: I agree with you, yeah. [LB990]

SENATOR FULTON: Yeah, so I...that's where I'm coming from. I do recognize that could be an argument against it. It resonates with me, but not to the point where I don't think this falls outside the purview of the state. The state is the sovereign. [LB990]

SENATOR AVERY: Yeah. Yeah, I have seen that argument taken too far many times. Thank you. [LB990]

SENATOR ADAMS: Senator Cornett? [LB990]

SENATOR CORNETT: Senator Fulton, why the community colleges and the University? I...why not just K-12? [LB990]

SENATOR FULTON: Good question, and that...well, with the...how the committee discusses. The provision exists right now, if you look at your green copy, and this is all...this was something I've learned also. The flags of the United States of America and the state of Nebraska shall be prominently displayed on the school grounds of, etcetera. That's already a requirement in the statutes. [LB990]

SENATOR CORNETT: School grounds is different than every classroom. [LB990]

SENATOR FULTON: Yeah, understood, understood. So when we are putting this forward, recognizing that the Pledge of Allegiance and the flag, one is going to have one in his...is going to have to have that flag in the classroom, that's where we drew for this bill. Now if it encompasses the university system or colleges such that it's a hindrance for this to move forward--and that would be in the case of a fiscal note--that's something that I'm...no, that's not my intent. I'm not trying to lay a burden that's unbearable on the system. This simply was looking at what exists in the statute, drawing it out, and making it apply appropriately and evenly across the schools in our state. [LB990]

SENATOR CORNETT: Thank you. [LB990]

SENATOR ADAMS: Additional questions? Yes, Senator Sullivan. [LB990]

SENATOR SULLIVAN: Thank you, Senator Adams. Thank you, Senator Fulton. Just a couple other additional clarifications. You mentioned that 43 other states have some semblance of this. Are their statutes similar or more broad, more restrictive? Can you shed some light on that? [LB990]

SENATOR FULTON: Yeah, it really runs the gamut. [LB990]

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SENATOR SULLIVAN: Okay. [LB990]

SENATOR FULTON: Let's see, we took ours from...I believe it was Massachusetts. That's where we borrowed...my staff and I borrowed the language... [LB990]

SENATOR SULLIVAN: Um-hum. [LB990]

SENATOR FULTON: ...and researched with...I think it was the Massachusetts statute. But indeed, with virtually every other state having some semblance of what we're trying to propose here, it runs the gamut. Some are in schools and some are...I...yeah, I couldn't begin to address all of them. But I can say that we looked at Massachusetts as the model for what we put forward here. [LB990]

SENATOR SULLIVAN: Short of a mandate like this, in the structure of what school districts now have in the Americanism committee, it would...they have the latitude right now to do probably what you're suggesting in this. Is that correct? [LB990]

SENATOR FULTON: I...yes. And I want to be clear in saying that I believe a lot of schools do this--not all, but a lot. We have checked here in Lincoln, and I understand that there are perhaps those who follow me who have checked in other places. Not all elementaries do this, but most do. Junior highs? I don't think many do. And high schools? I haven't found many who do. [LB990]

SENATOR SULLIVAN: Um-hum. [LB990]

SENATOR FULTON: So while that latitude does exist, it still...it was just a judgment call on my part. I think this is something that should have pride of place in our statute. [LB990]

SENATOR SULLIVAN: Thank you. [LB990]

SENATOR ADAMS: Senator Council. [LB990]

SENATOR COUNCIL: Thank you, Chairman Adams. And Senator Sullivan asked a question that I have a concern about, Senator Fulton. We're quick to say what other states have. And I've looked at a variety of court decisions from various states, and each of these states say something slightly different. Some are permissive and some are mandatory, but in terms of what they mandate, they are different. How many states have language in their statutes comparable to what you're proposing in LB990? [LB990]

SENATOR FULTON: Hmm. [LB990]

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SENATOR COUNCIL: I mean that other than Massachusetts, that's the number of states that have language that is substantially the same as LB990, because the...at least from the various court of appeals decisions and things that I've reviewed, the language of these other states' statutes run the gamut. Someone asked the question...Senator Avery asked about local control. A lot of those other states' statutes that were the subject of litigation placed significant local control over how they handled the recitation of the pledge with the local school district. So a blanket representation that 43 states have a mandate of the Pledge of Allegiance I take exception to and would like to see, other than Massachusetts, how many other states has a mandate that's comparable to LB990. [LB990]

SENATOR FULTON: Good question, Senator. I don't have a precise number. We can go through and get that number for you and we will do so. It's entirely possible my staff has the number. I don't have it in my mind, but I do know that...well, we've looked at how this has been challenged in other states, and we are not putting forward anything here that has not been upheld in the courts. So the number of states? I'll have to get that number for you. [LB990]

SENATOR COUNCIL: Okay, and because I think that's significant. And Senator Avery also touched upon the exclusion of students in private schools. And what I understand to be the objective of LB990, the fact that private schools aren't directly funded with public dollars--private schools receive federal funds for special education, private schools receive other funds--and I question why you would exempt, if the objective is that everyone demonstrate their reverence for the flag, why you would exempt children enrolled in private schools. [LB990]

SENATOR FULTON: Senator, I want to be...I was giving a philosophical...I should stop being philosophical. What exists in the statute presently, we simply expanded upon. And what exists presently is public schools...so the flags of the United States of America and of the state of Nebraska...in the green copy of our bill, that language which is existing language applies to public schools, and so this was where we implemented it; we simply were expanding on what exists in the statute. If it is the committee's prerogative to take this further, and if indeed we can take this further, I'd be glad to. [LB990]

SENATOR COUNCIL: All right. But what's in existing statute is not a mandate of the recitation of the Pledge of Allegiance. It talks about displaying the flag, right? [LB990]

SENATOR FULTON: Right. It's a mandate for the flag but not the pledge. [LB990]

SENATOR COUNCIL: Yeah. And when you're talking about expansion, the only thing your bill in terms of the expanding the existing statute is the existing statute talks about displaying the flag. It doesn't say anything about mandating the recitation of the pledge.

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So in terms of the addition that is reflected in LB990, it goes beyond what the existing law says. So in the rationale that you tied it into the existing, existing statute says nothing about mandating; it talks about displaying the flag. [LB990]

SENATOR FULTON: That's right. [LB990]

SENATOR COUNCIL: So the fact that that's been added arguably takes it out of the realm of what the current confines of flag display are and broadens it if you're, you know, if you're talking about mandating recitation of the Pledge of Allegiance. So that's something you need to consider in addition to providing information about how many states mandate the recitation of the Pledge of Allegiance to the extent reflected in LB990. And rightly or wrongly, I have a concern about...because our constitutional right to free speech also includes the constitutional right not to speak. And, you know, we have varying age groups. I mean, you're talking about K-12. Younger children may or may not. But older children, when they start exercising their freedom of expression, and we're quick to clamp down on them at that high school level about freedom of...exercising their freedom of expression. But in this case, this is mandated. And I'm really concerned about the conflicts that could arise--particularly at the high school level when students who feel strongly about their constitutional right of free speech to include not to speak--the impact on classrooms, and the potential for disruption. So I just want to put that out there as well as a factor to be considered in addressing this issue. That's all I have, Senator Adams. [LB990]

SENATOR ADAMS: Did you want to respond to that, Senator, in any way? [LB990]

SENATOR COUNCIL: And you feel free to respond for now. [LB990]

SENATOR FULTON: Yeah, I...okay, I'll take that opportunity. Thank you, Senator. What we can't do is to mandate an individual to speak, nor should we. We can't and we shouldn't, and so we drafted this such that we don't do that. There should be an opportunity. There should be an avenue by which one can opt out, or in other words one...an avenue by which one doesn't participate, and that exists. And that's not just my...our own--my office and myself--it's not just our own feeling. It is our own feeling, but we also went out and researched what has withstood constitutional scrutiny as respects the First Amendment in other states, and we've taken that into account in this drafting. So I...what you're saying is very important. It was not lost on us. [LB990]

SENATOR ADAMS: Other questions for Senator Fulton? Thank you, Senator. [LB990]

SENATOR FULTON: Thank you, Mr. Chairman. [LB990]

SENATOR ADAMS: We will begin now with proponent testimony, and we'll use the lights. [LB990]

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BOB EVNEN: Thank you, Mr. Chairman, members of the committee. My name is Bob Evnen, B-o-b E-v-n-e-n. I'm a member of the Nebraska State Board of Education, and I am appearing before you today on behalf of the State Board to express the board's strong support for LB990. We're in the midst of revising our social studies standards. Those standards have components that involve history, geography, economics, and civics, and the provisions of LB990 fit really quite well into our objectives in terms of the revision of those standards. It's our hope that the standards will form a continuing basis under which the students in Nebraska will be young patriots who have a love of country and who have both an intellectual understanding of the history of the country and in addition feel an emotional connection to it. That doesn't mean that we think that our students should be uncritical. To the contrary, we view...it's our view that you cannot have a true and genuine love of country without understanding what our country has done well and what our country has done not so well but always viewed through the lens of love of country. LB990 then really fits well into our objectives as a State Board in the revision of our social studies standards, and for that reason we strongly support the bill. We hope that this committee will, and we hope that the bill is ultimately adopted by the Legislature and signed by the Governor. And with that, I would be happy to entertain any questions from any members of the committee. [LB990]

SENATOR ADAMS: All right. Are there questions from the committee? I guess you're off the hook. Thank you, Bob. [LB990]

BOB EVNEN: Thank you, Senator. [LB990]

SENATOR ADAMS: Next proponent? [LB990]

GREG HOLLOWAY: Good afternoon. My name is Greg Holloway, G-r-e-g H-o-l-l-o-w-a-y. I am the department commander for the Disabled American Veterans Department of Nebraska and also serve as a member of the Nebraska Veterans Council, and presently I'm the junior vice commander of the Nebraska Veterans Council. Nebraska Veterans Council and the Disabled American Veterans strongly support this bill. Needless to say, we have all fought for our flag and fought for our country. So yes, we do believe that this is very important, that the youth of our nation understand our flag and what our flag represents. And as the American...the Pledge of Allegiance does give you some sense of belonging to our flag, belonging to our country, and respect for our country, so yes, we do support it. And I can't speak for any other veterans organization on this, too, but it comes to when you find some sort of a funding issue here, it is mandated by the Disabled American Veterans to spend money. So when it comes time for flags in our smaller communities that might have a little problem with the funding this, if they go to the Disabled American Veterans...I don't have a school in Bee, Nebraska, anymore, but Dwight and Brainard, my grandsons, go to there. So if they wanted, if they come to me for some help, we'll do our best to help them purchase their

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flags and maintain their flags, so if you have any questions... [LB990]

SENATOR ADAMS: All right. Are there questions of this testifier? Senator Sullivan. [LB990]

SENATOR SULLIVAN: Thank you. Thank you for your testimony. And you raised a good point as far as maybe a little collaboration between a local legion unit because many units have a celebration of flags over Memorial Day, and those flags are used at that one time during the year. It's possible that there could be some cooperation between the local school district to use those flags during the school year. [LB990]

GREG HOLLOWAY: Well, correct. I know in Seward, Nebraska, the VFW there has a lot of flags that they put up on Memorial Day,... [LB990]

SENATOR SULLIVAN: Um-hum. Um-hum. [LB990]

GREG HOLLOWAY: ...and maybe there could be some collaboration with them to store those flags in the schools. [LB990]

SENATOR SULLIVAN: Um-hum. Um-hum. [LB990]

GREG HOLLOWAY: And I don't think there's going to be too much problem finding the flag around somewhere, and we'll do our best to assist that. Like I said, I can't speak for the American Legion, but I can speak for the Disabled American Veterans and my 5,000 members, and we'll do everything we can to support this. Thank you again. [LB990]

SENATOR ADAMS: Senator Avery has a question. [LB990]

SENATOR AVERY: Thank you. The bill doesn't specify how large the flag needs to be. Would you like to address that? How do you...how big do you think the flag ought to be before it's appropriate size? I think, I mean... [LB990]

GREG HOLLOWAY: Well, I...you know what... [LB990]

SENATOR AVERY: You've seen the little flags that you can set on your desk. [LB990]

GREG HOLLOWAY: I know. [LB990]

SENATOR AVERY: I mean, that would be too small, I would think. [LB990]

GREG HOLLOWAY: Well, I have saluted at meetings flags on somebody's lapel. So a flag is a flag is a flag is a flag. But I think the...there's...the appropriate size is, I do believe, considered...a burial flag is probably too large, but at least the...this is five by

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nines? It is about the right size; I think they usually are. [LB990]

SENATOR AVERY: They do...most of the estimates in the fiscal note assume they're going to have to buy a holder, so that assumes something big enough to go on a pole. [LB990]

GREG HOLLOWAY: I assume. [LB990]

SENATOR AVERY: Yeah. [LB990]

GREG HOLLOWAY: Right there, there's the pretty basic flag that...displayed at a lot of churches and at veterans organizations, and that size right there is the most appropriate size. [LB990]

SENATOR AVERY: Yeah, and I... [LB990]

GREG HOLLOWAY: And, you know, it doesn't have to be something fancy for the pole. [LB990]

SENATOR AVERY: Hmm. I display a flag in my office, and I think I paid \$200 for it and something less for the state flag. Does that sound about right to you for a classroom flag, about a \$200 item? [LB990]

GREG HOLLOWAY: Well, I can't with any degree of education speak on cost of flags because we get a lot...probably a lot better deal than the school boards' districts would when we purchased our flags. And to be honest with you, I haven't had to purchase a flag for quite a... [LB990]

SENATOR AVERY: You buy in bulk? You buy...? [LB990]

GREG HOLLOWAY: We usually do. That's true though. [LB990]

SENATOR AVERY: Yeah. Schools might do the same thing. [LB990]

GREG HOLLOWAY: And I let my adjutant take care of that, and my treasurer takes care of that. They know our budget, and I don't let them spend over our budget. [LB990]

SENATOR AVERY: Okay, thank you. [LB990]

SENATOR ADAMS: Are there other questions? Senator Seiler? [LB990]

SENATOR SEILER: Refresh my memory, but it seems to me like when we stood tall at the raising of the flag on a post, we were so...most of us were so far away, we couldn't

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see it. Maybe we could be close enough to hear it, but if the meaning was still there when you stood tall to raise and lower the flag on a post...if the flags are already on the school grounds--assuming they couldn't buy the flags or the money couldn't be raised--isn't it possible to do the same thing that we did when we were in the service? [LB990]

GREG HOLLOWAY: Now see, why, I stopped and got out of my vehicle a time or two, and taps were being played on-post, and you get out and you stand at attention and salute, yeah. [LB990]

SENATOR SEILER: Okay. [LB990]

GREG HOLLOWAY: And you might not have any idea where you're saluting, but you do anyway. [LB990]

SENATOR SEILER: I thought my memory was correct, but I...it's been a long time. [LB990]

GREG HOLLOWAY: Yeah. All right. [LB990]

SENATOR ADAMS: Other questions for this testifier? Thank you, sir, for being here. [LB990]

GREG HOLLOWAY: Thank you. [LB990]

SENATOR ADAMS: Next proponent? [LB990]

MICHAEL LANDKAMER: Senator Adams and members of the Education Committee, good afternoon. My name is Michael J. Landkamer. The last name is spelled L-a-n-d-k-a-m-e-r. I'm a member of the American Legion Hartman Post 84 in Columbus, Nebraska. Senators, I'm here today in support of LB990, and I wish to thank those senators who are in support of this bill also. We firmly believe that this is very important to our youth not only to recite the Pledge of Allegiance every morning but also to learn what the Pledge of Allegiance stands for. I wonder how many of us in this room today knows exactly what the pledge really means. Let me help you with that. I pledge allegiance: It means I promise to be true to the flag, the symbol of our country of the United States of America each state has joined to make our country. And to the republic: A republic is a country where people choose others to make laws for them. The government is of, by, and for the people--that's what you folks do. For which it stands: The flag means the country. One nation: a single country. Under God: The people believe in the supreme being. Indivisible: The country cannot be split into parts. With liberty and justice: freedom and fairness. And for all: for each person in the country--you and I. The Pledge of Allegiance means that you are promising to be true to

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the United States of America. The explanation I've just given you comes from the United States District Court, Southern District of West Virginia, titled The Pledge of Allegiance and Our Flag of the United States: Their History and Meaning. When I see youth and adults in this great nation at sporting events fail to put their hands over their heart during the national anthem, I often wonder, do they know any better? LB990, I feel, is a bill which would educate our youth on the respect and the love of our great nation and of our flag. Let's not lose this opportunity to educate our youth. I thank you, Senators, for your time this afternoon. [LB990]

SENATOR ADAMS: Thank you, sir. Are there questions for this testifier? Anyone? Thank you. [LB990]

MICHAEL LANDKAMER: You're welcome. [LB990]

SENATOR ADAMS: Next proponent? That young man just jumped right up there. [LB990]

ANDREW SHELBURN: (Exhibit 1) Good afternoon, Chairman Adams and members of the Education Committee. My name is Andrew Shelburn, A-n-d-r-e-w S-h-e-l-b-u-r-n. How many of you guys watched the Super Bowl Sunday? Did any of you happen to pay attention while they were singing the national anthem? How many of them put their hands on their heart? I was very disappointed at the number of people I saw that actually had their hand on their heart in respect. I have been paying... [LB990]

SENATOR ADAMS: Andrew, why don't you grab that microphone and pull it down and maybe scoot up a little bit? There you go. [LB990]

ANDREW SHELBURN: I have been paying attention to this for the last few months, and this lack of respect for the American flag and the "Star-Spangled Banner" is just as bad right here in Nebraska. Why is this something that we find acceptable? I feel that we are once again a country that is deeply divided. We need to bring back patriotism and help people rediscover a love for our great nation. In 1888, James Bailey Upham felt it was important to reunite the country again after the Civil War, and he thought that the best way to do this was to start with schoolchildren. Although it would take him four years, he would get the American flag flying over every...over schoolhouses and with the help of Francis Bellamy, the Pledge of Allegiance. I don't think that kids today really respect the flag of the United States of America or the Pledge of Allegiance. As a 12-year-old growing up in the Midwest, it is my opinion that kids really don't have an understanding or appreciation for the flag and the pledge. I feel that most of my peers take the freedoms that are represented by the flag and the pledge for granted. I don't think people find it cool to show their patriotism anymore. For a period of time after the terrorist attacks of September 11, 2001, people came together and had a sense of unity as a nation for the first time in a long time. They freely gave of themselves to help their

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neighbors, and they would salute the flag or recite the Pledge of Allegiance, sing the national anthem, and flags flew over most homes and businesses. Ten years later, I think we have lost the sense of pride and unity because we have forgotten the day that our freedoms were threatened. According to the Rasmussen Report in 2008, 77 percent of the United States voters thought that schoolchildren should say the Pledge of Allegiance every morning. The same survey reported that 82 percent felt that the contested words "under God" should remain. To be honest, before I did this report I would respect the flag, but I would only recite the pledge because we were told to. But now I plan to educate my friends and push for curriculum about the flag and pledge. I support Senator Fulton's proposed legislation and feel that it is a start in the right direction. I feel that history and the meaning of the flag of the United States and the Pledge of Allegiance are very important things for not only students but for all Americans to know. I think we should start learning about our flag and the pledge in elementary school. What is the point of reciting the pledge or saluting the flag when you don't know the meaning behind it? I consider myself to be very patriotic, yet I didn't know a lot of this until I did this...did a report on this last fall. While I would like to see the curriculum... [LB990]

SENATOR ADAMS: Go ahead. If you're really close to finishing it up, finish it up. [LB990]

ANDREW SHELBURN: ...in our schools on the flag and the Pledge of Allegiance so that we can start learning and understanding these symbols of freedom at a younger age. I would be happy to see Senator Fulton's bill advance. [LB990]

SENATOR ADAMS: All right, good job. Are there questions for this testifier? Yes, Senator Sullivan. [LB990]

SENATOR SULLIVAN: Thank you, Senator Adams. Andrew, thank you for your testimony; you did an excellent job. I have a question regarding the Pledge of Allegiance in your school. When and how do you recite it? [LB990]

ANDREW SHELBURN: We do it at the very beginning of school and our teacher leads it basically, and everybody does it in the school. Well, our teacher leads the class, but there's a person announcing it in the front office. [LB990]

SENATOR SULLIVAN: Okay, and you do that every day? [LB990]

ANDREW SHELBURN: Uh-huh. [LB990]

SENATOR SULLIVAN: Thank you. [LB990]

SENATOR ADAMS: Senator Avery? [LB990]

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SENATOR AVERY: Where do you go to school? [LB990]

ANDREW SHELBURN: Scott Middle School in southern Lincoln. [LB990]

SENATOR AVERY: Yeah, I know where it is. [LB990]

SENATOR ADAMS: Anyone else have a question? Thank you, Andrew. You did a good job. Next proponent? Good afternoon. [LB990]

RICHARD ZIERKE: Senator Adams, committee members, my name is Richard Zierke, Z-i-e-r-k-e. I thank you for your time this afternoon. I visited with you--a number of you--since last year in working with Senator Fulton and getting this bill written and the committee hearing today. There are a number of schools, like Senator Fulton said, who say this...say the pledge and the flag. If I could address Senator Avery's questions in regards to cost of the flag and size of the flag, I guess all I was looking for when I started this bill last May was a two-foot by three-foot flag hung over the chalkboard, 45 degree angle with a bracket. That costs \$9.70, so this \$300,000 number is, I think, a little large. Also, I have been told by a number of people if it comes to a fiscal bill or any items with the flag, there would be private funding for and to take that off the table as regards the discussion of any cost of any school boards. And as you've heard in testimony, the veterans would also step up, but I've had people tell me that they'd write checks for flags. I guess my biggest thing on the whole education...as I went into the six high schools in the city of Lincoln and none of the high schools in Lincoln say the Pledge of Allegiance. And I went up to the principals of these schools and asked them why they didn't, and they couldn't answer me. I don't know if you've ever been in the front door of Lincoln High School. There are World War I plaques there where about 200-300 people have died, the same with World War II plaques. And if you walk up the steps to the principal's office in the school, there's no flags there. And then I walked into the principal's office and talked to him, and he couldn't answer my questions. He said, no, we don't say the pledge and no, we don't have any flags in the hall room...or in the halls, so that's...to me, that's very hallowed ground, just those front doors of Lincoln High and all those plaques of the war veterans, and I just think that this is where we need to go in this area. And Senator Fulton has been very... 100 percent behind this and pushing it out, and I've talked to a lot of you members, and I appreciate your support on this bill. That's all I have, Senator Adams. [LB990]

SENATOR ADAMS: All right, are there questions for this testifier, any of you? Thank you. [LB990]

RICHARD ZIERKE: Okay. [LB990]

SENATOR ADAMS: Next proponent? [LB990]

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COBY MACH: (Exhibit 2) Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h, the president of the Lincoln Independent Business Association, and I'll eliminate about 90 percent today, just to...in the interest of time. President Ronald Reagan said, and I quote, "Freedom is never more than one generation away from extinction." He said also, and I quote, "We didn't pass it on to our children through the bloodstream. It must be fought for, protected, and handed on for them to do the same." Our organization believes that the Pledge of Allegiance serves as a reminder of the great cause of freedom. In closing, I would like to say you've heard about others' willingness to help raise money. I will also tell you that I understand that the University would have a large fiscal note if this is passed. The UNL Foundation just raised \$172 million this last year. They've also raised \$1.2 billion in a big campaign for scholarships, research, and programs. I'm not saying that their foundation should help, but perhaps if asked, they might. I will tell you that LIBA does have a foundation. Our foundation is willing to help raise funds as well to help cover the cost of flags for schools here in Lincoln and Lancaster County, in addition to the others that you have heard from. So that's all I have, and I'll give you a full copy to the clerk. [LB990]

SENATOR ADAMS: Thank you. Questions for this testifier? Anyone? Thank you. [LB990]

COBY MACH: Thank you. [LB990]

SENATOR ADAMS: Next proponent? Gosh, I thought I saw more hands than that. Next proponent? All right, we're going to shift over then to opposition testimony. First testifier in opposition? [LB990]

DAVID MOSHMAN: (Exhibit 3) My name is David Moshman, M-o-s-h-m-a-n, and I figured somebody had to oppose this bill, so here I am. I am a professor of educational psychology at UNL, where I teach and study adolescent development, cognitive development, and intellectual freedom in education. I am the author of Adolescent Rationality and Development and Liberty & Learning: Academic Freedom for Teachers and Students, and I blog on intellectual freedom in education for the Huffington Post. In addition, I have served since 1982 on the board of directors of ACLU Nebraska and since 1988 on the board of the Academic Freedom Coalition of Nebraska, AFCON, and I'm a past president of both organizations. Both ACLU and AFCON oppose this bill. Should the Pledge of Allegiance be required? Should patriotism be compulsory? The Supreme Court, it turns out, has already addressed these questions in a classic statement of American liberty: West Virginia State Board of Education v. Barnette, 1943. Not many people have favored Supreme Court decisions, but I do and this is it. The Court ruled, "If there's any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith

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therein." The case that led to this ruling came out of West Virginia but reflected a national crisis over compulsory patriotism. In January 1942, seeking to foster "the ideals, principles, and spirit of Americanism," the state board of education mandated that teachers and pupils in public schools regularly salute the flag and pledge their allegiance. Jehovah's Witnesses nationwide refused to participate. "Thou shalt have no other gods before me," God had commanded in Exodus. "Thou shalt not bow down to them nor serve them." In Barnette, the Supreme Court found the mandatory flag rituals to violate the constitutional requirements of democratic self-government. Democracy requires free minds and is thus inconsistent with forms of schooling that "strangle the free mind at its source." The Court explained, "There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority." And I'm going to skip a little bit. In summary, patriotic ceremonies must be "voluntary and spontaneous instead of a compulsory routine." To doubt that American patriotism can flourish under such conditions, the Court observed, "is to make an unflattering estimate of the appeal of our institutions to free minds." And one last quote from this decision, my favorite, "Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." Thank you for allowing me to question the existing order. [LB990]

SENATOR ADAMS: Thank you. Senator? [LB990]

SENATOR COUNCIL: Thank you, Senator Adams; and thank you, Mr. Moshman. One of the statements in your testimony and in your printed remarks, the statement where you...in summary, patriotic ceremonies must be voluntary and spontaneous instead of a compulsory routine. And when I read that, I draw from that the spirit of patriotism, and I guess one of my concerns is reaching a point of diminishing returns when there's compulsory recitation. And the young man, Andrew...and I must commend him; he gave an excellent testimony and wrote an excellent report. But even he stated: Before I did this report, I would respect the flag, but I would only recite the pledge because we had been told to. And that's a concern that...I think what's reflected in young Andrew's statement is what is represented in that summary statement that you recited. I just want your opinion on it. Do you concur and...? [LB990]

DAVID MOSHMAN: Yes, I agree. I think there's something problematic about the whole notion of compulsory patriotism. I think it's the nature of patriotism that it comes out of your understanding and your own feelings about things, and it's what you spontaneously believe and want to do. To require somebody to be patriotic just doesn't really make sense. And to require somebody to say the Pledge of Allegiance as if the saying of those words is patriotism, I think, misses the point. Now it is the case, as a result of this decision, that a student who really didn't want to say it can't be required to say it, but

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there's a lot of peer pressure under these circumstances, and most students will just go along with what to them is either meaningless or objectionable. I think it's much better to certainly teach about the Pledge of Allegiance and the history of the flag and the history of the country, and you can arouse patriotism in these ways. But the idea that a mandatory flag salute and pledge is a road to patriotism I think is psychologically naive as well as questionable on, I think, political grounds. [LB990]

SENATOR COUNCIL: Thank you. [LB990]

SENATOR ADAMS: Other questions? Thank you, sir. [LB990]

DAVID MOSHMAN: Thank you. [LB990]

SENATOR ADAMS: Next opponent? [LB990]

DANA GARRISON: My name is Dana Garrison, and I'm a UNL student. I'm a junior agriculture education major, so in a sense I guess I represent the next generation of educators. [LB990]

SENATOR ADAMS: Could you spell your last name, please, for the record? [LB990]

DANA GARRISON: Sure. It's G-a-r-r-i-s-o-n. [LB990]

SENATOR ADAMS: Thank you. [LB990]

DANA GARRISON: And I think I'm going to reiterate a lot of what the previous person just said, so I'm not going to spend too much time on it. But one thing I wanted to point out is that we've talked about students having the option to opt out of saying the Pledge of Allegiance and just remain seated or face the flag, hand on their chest, whatever they choose to do. But what about the leaders? What about the teachers? Most teachers I'm sure would be willing to do this. I'm not going to put my opinions on anyone else or anything. I would be willing to do it myself. But suppose there was a teacher who wasn't willing to lead this? What does that say to the students? What does that say to the history behind this? I'm just kind of pointing that out in the sense of there needs to be a leader leading the Pledge of Allegiance. And yes, it can be a student, but it is an issue that I think the committee should at least question in their minds. Another thing is how will it be enforced? We've heard today from people who have gone into high schools or middle schools or even elementary schools and noticed that the Pledge of Allegiance wasn't being recited. I'm wondering what the "reprimandations" would be to the teachers or classrooms that didn't recite the pledge, and how would it be enforced that it was being recited? Because we can mandate the teachers or classrooms say the Pledge of Allegiance, there's no way to really do that unless we're going to be having principals and administrators within those classrooms each morning to make sure that they're

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happening. So again I don't know if it's a cost issue or a time issue for those administrators, but it is something to consider also. And what many of the proponents of this bill have said today was that, you know, it's about the history behind the Pledge of Allegiance. We heard somebody describe, line by line, what it really means, and I think that that's where we're missing. I think that the history behind the Pledge of Allegiance, the history of this country, the flag, the national anthem, the history behind it is what's valuable. The history is what I take pride in. Yes, I recite these things and yes, I think about the history in my head. But going back to what Senator Council brought up, what makes it different for students, different from what Andrew stated? He was forced to do it or he was told to do it and, therefore, he did it. He's not taking that pride. He's not reflecting on the history that you and I do. There's going to be a sense of doing this, we should instill sense of history behind our country at a very young age so that they do know what they're stating things for. And I guess that's pretty much what I just want to say. It's about the history. Think about the leaders that would have...would need the option to opt out of this. And also, how will it be enforced, and what would the consequences of it not being stated be? [LB990]

SENATOR ADAMS: Okay. Questions? [LB990]

SENATOR COUNCIL: Just a... [LB990]

SENATOR ADAMS: Yeah, Senator Council. [LB990]

SENATOR COUNCIL: And thank you for your testimony. But in all due respect, I want the record to accurately reflect what Andrew said, and... [LB990]

DANA GARRISON: Sure. [LB990]

SENATOR COUNCIL: Okay, and Andrew said, "before I did this report," which is a report that he learned about the history of the flag, "I would respect the flag, but I would only recite the pledge because we were told to." And that was the point that I wanted to emphasize, and I think your testimony built upon it. It's teaching about the history; it's teaching about the reason. And then Dr. Moshman, I believe, about the spontaneity and the "voluntariness," that is probably the best expression of patriotism. I'm also concerned. You say you're the new, you know, next generation teacher. I really have this concern about high school students and with a mandate that the start of every...at the first class of the day there's the recitation of the pledge and what kind of potentially disruptive impact that could have. I mean, what would be your thought? You're much younger than I am. [LB990]

DANA GARRISON: Yeah. Well, first of all I would like to apologize to Andrew. I don't have his testimony right in front of me, so please let the record reflect that. As far as directly to high school students, I can say that I...and from what I understand, as it goes

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even farther into community colleges and colleges themselves...and that's an issue. What if I don't go to class until 1:00 in the afternoon in a college or even high school? I know that in high school, I didn't have a first-period class. I wouldn't be saying the Pledge of Allegiance. As far as the disruption, I think it comes down to the teacher's ability to have a respectful classroom, to be honest. I don't know that the actual act of students opting out or remain seating during the Pledge of Allegiance would cause disruption in itself, to be honest. I think that if the students come to a classroom with a respectful relationship between the teacher and them that they're there to learn and that they're there to be involved in the classroom. I think that in general adolescents and high school children will think this is unneeded and a waste of their time on some level. Even if they do know the history, that's just the mind-set of high schoolers. [LB990]

SENATOR COUNCIL: Okay. [LB990]

SENATOR ADAMS: Other questions? [LB990]

SENATOR COUNCIL: And thank you. [LB990]

DANA GARRISON: Sorry. [LB990]

SENATOR ADAMS: I'm sorry. Senator Council, were you done? [LB990]

SENATOR COUNCIL: No, I was... [LB990]

SENATOR ADAMS: Are there other questions? [LB990]

SENATOR COUNCIL: Oh, no, and just with...and with all due respect too. The bill doesn't require college students to recite, so. [LB990]

DANA GARRISON: High school or colleges, right, but the flag and all that. [LB990]

SENATOR COUNCIL: Well, yes. The flag in every classroom, yeah. [LB990]

DANA GARRISON: Yeah. [LB990]

SENATOR ADAMS: Thank you for your testimony. Next opponent? Are there any other opponents to the bill? If not, we will move to neutral testimony. [LB990]

JON HABBEN: Again, my name is Jon Habben, H-a-b-b-e-n, Nebraska Rural Community Schools Association. I really struggled with this bill in a lot of ways. As a history teacher for a number of years, the kinds of things I tried to do in my history classes as a principal, as a superintendent, in a family where my dad and all my uncles were World War II vets, I guess what I want to say is when you try to legislate your gut,

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you're...I think that is in so many ways wonderfully intentioned. On the other hand, I think you have to be careful to say, well, if there's a disruption in the morning with these three seniors that are going to be a pain in the butt, well, we shouldn't do this at all. Somewhere in the midst of this, there's a whole lot of schools that are using the pledge and the flags and the "Star-Spangled Banners" and the patriotic music in their music programs, and this is all going on in so, so many places. I would hate to see an attempt to legislate its requirement end up causing some type of backlash which threatened all of that to occur. That's why I'm testifying in the neutral, because I guess I support the concept. I support the gut, but I don't want to jeopardize all of the things that are currently going on now by having a battleground created about whether or not this is constitutional or whether or not we can implement it with the oldest students in the school, or would the kindergartners understand it or gosh, should we make people be patriotic. And by the way I have a thought on that. Sometimes you do have to make people do things in order to get them to the point of understanding what the bigger picture is down the road. I guess that's what teachers sort of do. But anyway, that's my thought on it. I'm a proponent in terms of my gut, but I don't want to jeopardize all of those good things that are already happening in schools by creating a fight over it and losing some of those opportunities that we currently enjoy. [LB990]

SENATOR ADAMS: Um-hum. Thank you, Jon. Are there questions for Jon? Anyone? Jon, may I ask a couple of questions? One you partially answered. Do you...in canvassing your organization, do you have a definitive number as to how many school districts already do this? [LB990]

JON HABBEN: It's quite common in elementary schools. I think somebody who mentioned...very common in elementary, less so in middle school, less...yes, that...absolutely, absolutely. [LB990]

SENATOR ADAMS: So would you say the majority of your schools? [LB990]

JON HABBEN: In the elementary, yes, no question. [LB990]

SENATOR ADAMS: Okay, then let me ask you this. I want you to put your old high school principal hat on. If you were told by the Nebraska Legislature that you're going to see to it that the Pledge of Allegiance is said each day, what logistical issues do you foresee? [LB990]

JON HABBEN: Well, the first thing you have to do with students that are high school students is you need to go through the teaching and the explanation as to why this is occurring because they are thinking students, and you can't just wish that away by saying, do this, and expect no question. The second thing you simply do is--now I'm really thinking principal here--let's see, first period needs to be about three minutes longer, so we lengthen first period so that we leave ourself enough teaching time

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because not every period in the morning is history. [LB990]

SENATOR ADAMS: But this is the reality of how it's... [LB990]

JON HABBEN: Yeah, that's what... [LB990]

SENATOR ADAMS: Okay, keep going. [LB990]

JON HABBEN: I mean, you're going to go through those things, certainly. [LB990]

SENATOR ADAMS: Okay, are there any other questions for Jon? Thank you, sir. Any other neutral testimony? [LB990]

RON WITHEM: (Exhibit 4) Senator Adams, members of the Education Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m, testifying in a neutral capacity on LB990. I'm going to first diverge from my very brief written testimony here, just to make a couple of points. Point number one is I want to make sure that I state how we interpret the bill applying to us. In case there's a misunderstanding, Senator Fulton can correct us. But paragraph 1 of Section 1 of this bill talks about the display of the American flag. Currently the language talks about prominently displaying the flag on school grounds. We interpret that to apply to us as a postsecondary educational institution. The new requirement that would be placed upon the University and other institutions of postsecondary education would be the display in each classroom. The second paragraph, which requires the recitation of the Pledge of Allegiance, applies to school districts. We don't interpret that as applying to us, so that's our understanding of the bill. Second point I want to make is there's been a number of comments made about the fiscal note on the bill. And I know part of the culture here at this phase of the Legislature is there is an assumption if a state agency puts in a fiscal note of any consequence that that's somehow veiled opposition to the legislation. In this case, that certainly is not the case. We simply tried to determine the number of classrooms that we've had, multiply that by a number--and the number we had was quite higher than the gentleman that testified before, around \$80 to \$100 per flag--and that's what we came up with. The fact that it's going to cost us this amount of money should not be interpreted as a statement in opposition. We support the intent of LB990, which we understand to be to help inculcate into students and the public a respect and appreciation for the American flag, our nations, and the values it represents. Currently, while we do not have a flag in every classroom as this bill would require, we do prominently display the U.S. and the Nebraska flag in many public locations throughout our five campuses. We also prominently display the flag during many of our public events and activities such as graduation ceremonies, athletic events, and other significant University-sponsored activities. Varner Hall, the home of the University of Nebraska Central Administration, displays the two flags in the front of the building and also in the meeting room for the Board of Regents, for example. If it is the policy or decision that state statute should

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require the display of the U.S. and Nebraska state flag in every classroom, we would of course comply with that requirement. [LB990]

SENATOR ADAMS: Thank you, Ron. Are there questions for Mr. Withem? Anyone? Thank you for appearing. [LB990]

RON WITHEM: Thank you. [LB990]

SENATOR ADAMS: Any other neutral testimony? Any other neutral testimony? Seeing none, Senator Fulton to close. [LB990]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. First, there were questions asked for which I did not have responses. I do have those responses now. Senator Council had asked, how many states do what we are proposing to do? The answer is 35; 35 states require schools to include recitation of the Pledge of Allegiance during the school day. The question...Senator Cornett, I believe, asked the question--or maybe it was another member of the committee--why not private schools? It would apply to private schools, for they do receive public funds, so you caught me off guard. And yeah, we've checked, and if they do receive public funds it falls under the category of this statute, so it would be...then to...well, to respond. There was one of the testifiers in opposition brought up Barnette, and rather than take time for the committee, we have a memo that's been written with respect to Barnette. But I just...I simply point out that if indeed Barnette disallows what we're trying to propose, then at least 35 other states stand contrary to the Constitution, which isn't the case. The enforcement mechanism? And we actually talked about this, and in one of the renditions we had actually had an enforcement mechanism. And what we did was we looked at other areas of curriculum, and there was one other member that stood out. There was a multiculturalism requirement that said if indeed...if multiculturalism isn't included in the curriculum, then there could be the loss of funds for accredited schools. And I looked at that and thought, you know, that's...we trust our schools. If we were to pass this in law, let's just look at the area of statute where the flag exists and that's why...one of the reasons why we chose this area of statute, because we don't feel that an enforcement and punitive mechanism is appropriate. So I'll just...I'll close with that and say that I have learned, even today, listening. The young man, Mr. Shelburn, who testified gives me great hope for our future. And it's just a reality that in schools sometimes we are told to do things that we may not fully understand--Algebra might be a good example. But this is the nature of teaching and forming our youth, and we have these mandates in our statute at present. I don't think it's outside the bounds of this Legislature to include the pledge, and indeed a number of other states have agreed. And then there were others who testified, individuals who have served our country bravely. I have great respect for that, and there were things that were said about the flag and etiquette and respect toward the flag that I didn't know, such as being able to salute a lapel pin. Didn't know that. I'll bet you a lot of students don't know that. I'll be you a lot of us here in the

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Legislature don't know a lot about the etiquette and respect due our flag. So perhaps this would be a mechanism by which we can teach this to a new generation, so I ask...oh, and there's one last thing. When we drafted this, we looked to an area of statute, and we put this forward and recognized that when we put forward legislation under the light of a public hearing, we find out that there are things that we missed, things that are wrong, and this is the nature of a public process. It's...if we can get this drafted...and we probably can get this drafted such that the university system, this postsecondary education is not hit with this requirement on the displaying of the U.S. and state flags, then we should do that. I'd hope that we could get this bill forward without the hardship that was expressed. I have great respect for Mr. Withem and, you know, what he says. And it's not our intention to put this on other...that kind of fiscal note. So if indeed that's the case, then I am expressing a willingness with the committee to work past that. So thank you, Mr. Chairman. [LB990]

SENATOR ADAMS: Senator Council? [LB990]

SENATOR COUNCIL: Yes, a question, Senator Fulton. If you don't see the necessity or don't view it to be appropriate to have the kind of enforcement mechanism that exists--for example, on the requirement for multicultural education--you don't see the appropriateness or the necessity to have it with regard to recitation of the pledge, why mandate it? [LB990]

SENATOR FULTON: Well, there are levels. I mean, there are levels of stricture to which a mandate can be put forward, and we looked to the statute for examples. In addition to other states, we have in the statute the flag of the United States. It's a mandate, it's required, and so we thought it was appropriate to place the...our bill for the Pledge of Allegiance under the same...with the same level of stricture. [LB990]

SENATOR COUNCIL: Okay, but you...in your statement you said, well, we looked at the multicultural education requirement, and there's an enforcement mechanism there that goes to your accreditation, and we didn't think that that punishment or punitive nature was necessary. So if that's not necessary as it relates to the patriotism that you're seeking, why mandate the recitation of the pledge? If it doesn't rise to that level of importance to you, what difference does it make what section of the statute you put it in? [LB990]

SENATOR FULTON: There's a couple of things. Part of Barnette...there was a question in Barnette as to whether one can put punitive penalties for not reciting the pledge... [LB990]

SENATOR COUNCIL: ...on the student. [LB990]

SENATOR FULTON: Or the teacher. [LB990]

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SENATOR COUNCIL: Or the teacher, but multicultural education requirements go to the school. [LB990]

SENATOR FULTON: Understood. We didn't even...we didn't want to enter into that argument on this bill, and so we looked at...it just...if we're pledging allegiance to the flag, and if indeed it's a requirement at present that the flag exists in the way that it exists now in the statute, that was the rationale that I used. And that was my call ultimately, that we shouldn't put this into that same area of statute where we have the multiculturalism provision--mandate. So, I mean, there's a conglomeration of reasons, but this doesn't...I wouldn't have brought this is if it didn't merit our attention. I think it does merit our attention, but I am not putting forward a punitive sanction for constitutional potential arguments but also because under the way the statutes exist presently with respect to the flag. [LB990]

SENATOR COUNCIL: Okay, but that section that contains the multicultural education requirement contains other curriculum requirements, doesn't it, Senator Fulton? [LB990]

SENATOR FULTON: It does. [LB990]

SENATOR COUNCIL: Curious. [LB990]

SENATOR ADAMS: Other questions? If not, thank you, Senator Fulton. [LB990]

SENATOR FULTON: Thank you. [LB990]

SENATOR ADAMS: That will close the hearing on LB990. (See also Exhibit 7) I would ask you if you're going to leave the hearing room to do so quickly so that we can move right on to our next bill. [LB990]

SENATOR ADAMS: Okay, let's begin. We move on to LB1074, and Senator Schilz is here to introduce that for us. Senator, you didn't draw near the crowd, but you are welcome to introduce. [LB1074]

SENATOR SCHILZ: (Exhibit 5) I like it this way. Thank you very much, Senator Adams and members of the Education Committee. Thanks for having me back; I was wondering how the reception would be. But my name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent Legislative District 47. I introduce LB1074 today to bring our state statute in line with the federal Family Educational Rights and Privacy Act, also known as FERPA. U.S. Department of Education noted the ambiguity that was created by previous FERPA interpretations and inconsistent guidance among the states. Such a negative impact was created among educators who attempt to use education data consistent with state and local needs as well as federal mandates and recognized the

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importance of utilizing student data for education reform. The U.S. Department of Education made changes to FERPA regulations to address these issues. The new regulations broadened access to state and local data systems, balanced privacy protections for students with these educational needs, and strengthened the enforcement of FERPA. I have an amendment which I believe is to be passed out, which I would like to offer as a possible committee amendment that would give the state the authority to make sure the school districts comply with the FERPA regulations and share information in a standardized way. Thank you and I'd be happy to try and answer any questions you have, although my expertise on this is very limited. [LB1074]

SENATOR ADAMS: Thank you, Senator. Are there questions for Senator Schilz? Well, you're getting off easy. Thank you, Senator. [LB1074]

SENATOR SCHILZ: Thank you. [LB1074]

SENATOR ADAMS: First proponent? First proponent of the bill? Seeing none, opponent testimony, the first opponent testimony? Seeing none. I'm assuming we have a few neutral testifiers. If that be the case, let's begin. [LB1074]

BRIAN HALSTEAD: Good afternoon, Senator Adams, members of the Education Committee. For the record, my name is Brian Halstead, B-r-i-a-n H-a-l-s-t-e-a-d. I'm with the Nebraska Department of Education, and I'm here in a neutral capacity in the sense that I believe the amendment, if you have that, it was our understanding this is what the bill was going to be on today. We're back to the old issue of student data and sharing of student data. The U.S. Department of Education in the past two years put out proposed regulations to modify FERPA, the Family Education Rights and Privacy Act, and the new regulations do make it far easier for educational institutions to share student data in order to improve instruction and improve student achievement. So in that regard I think the issue kind of goes back to what my boss told you last week about we have to stop thinking about education as being a preschool program, a K-12 program, and then a postsecondary program. We have to start thinking of it as being an entire system for educating individuals in Nebraska, and one of the best ways of dealing with that is making sure you're sharing information so that you can make informed decisions that improve instruction. So the amendment as I understand it has the board adopting rules and regs to promote the idea that the sharing of student data should occur between school districts, educational service units, learning communities, and the Department of Education. So with that, I'll defer to any questions there might be on the bill. [LB1074]

SENATOR ADAMS: All right. Senator Haar? [LB1074]

SENATOR HAAR: Yes, are there any issues of privacy here, or how do you address those? [LB1074]

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BRIAN HALSTEAD: Well, in the sense of, Senator, when you look to privacy, again federal law--the Federal (sic) Education Rights and Privacy Act--any educational institution that receives funds from the U.S. Department of Education is required to comply with FERPA. The new regulations, as you're well aware, even in the--I call it--the old days student data could be shared with teachers and administrators who had a need to know the specific information. Otherwise, you were not supposed to share that information with others. And that's still incorporated in the FERPA regulations today, but it also takes a bigger-picture look of the ability of other educators to share information that's needed in order to make informed decisions about whether instruction is occurring and, if it's not, what steps can be taken to address that, what strategies, what things can be going on to accomplish it. So in the sense of if I'm an educational institution and I'm just going to...in this case, I'm a school district, Senator, and you're an educational service unit. [LB1074]

SENATOR HAAR: Um-hum. [LB1074]

BRIAN HALSTEAD: If I share student data with you, you're still bound by FERPA. You just can't go out on the street corner and start talking about it. But at the same time, by sharing the data with you, you may be able to look at the data and help me better understand or see things that we're not seeing at this level or lack that capacity. So in some ways, as I think about this whole issue, you go back to my days in schools in the '60s and '70s. Most people grew up, went to the entire same school district their entire life, and graduated from the same school. Today, we have greater mobility; we have greater options for students. The option enrollment started in 1990, and we have a large number of students who move between schools and school districts. We have a large number of students who move because their families move; we have a number of families who move because the military moves them, so they don't necessarily have a choice in that regard. And the idea of sharing the data and looking at it has a greater component because it's not all just in York, Nebraska, where you need to be focused. So in that regard, keeping in mind if you're going to share student data you're still bound by the fact you can't give that out to the public. You don't have to under the current regulations get signed releases from every parent for sharing of data because that's what the new FERPA regulations are trying to deal with, is the ability of educational entities to share the data in order so that they can help each other better inform instruction. [LB1074]

SENATOR HAAR: So Google won't have this on-line? [LB1074]

BRIAN HALSTEAD: Well, actually I think if you Google it, you'll be able to find the FERPA regs and you can read it, the explanations that the U.S. Department of Education has put out. You know, two years ago we had in this committee a bill for the State Board, the Board of Regents, the State College Board of Trustees and all of the community college boards to sign a memorandum of understanding to share student

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data across that. In that regard, you used to do those memoranda of understanding because that's what the old FERPA regs suggested you do in order to do that. Today we probably wouldn't need the memorandum of understanding because we could do it under the FERPA regulations without necessarily getting the parent to sign off on that all the time, keeping in mind if we share it with the University of Nebraska they're still bound by FERPA. They can't just give it out to anybody else; they're bound by the same restrictions we are at the department. Same thing's true with the school district, a learning community in that regard, so. [LB1074]

SENATOR HAAR: Yeah, and I certainly see the need to share data and so on, and it's always going to be a balancing act; we'll have to deal with that versus privacy. [LB1074]

BRIAN HALSTEAD: Sure, sure. [LB1074]

SENATOR ADAMS: Senator Avery? [LB1074]

SENATOR AVERY: Thank you, Senator Adams. I apologize, I wasn't here for the opening, so this may have been covered. Would this in any way facilitate the acquisition of data by the Learning Community administrative team that has had difficulty because of interpretations of privacy and had difficulty getting access to data that they need in order to make good policy for the Learning Community? [LB1074]

BRIAN HALSTEAD: I think with the amendment that Senator Schilz has drafted that I hope you have... [LB1074]

SENATOR AVERY: That's what I was reading. [LB1074]

BRIAN HALSTEAD: Yeah, okay. In that regard, it clearly includes a learning community as being part of the sharing of data. I'm not the Learning Community; I don't work in it. [LB1074]

SENATOR AVERY: I know. [LB1074]

BRIAN HALSTEAD: The new FERPA regs and this would clearly give them better authority for that. It would also clarify for the 11 school districts, in any learning community that currently exists or any future ones, the fact that you can share data. I would submit to you, Senator, that a large part about sharing data isn't about the law prohibiting it, it's the lack of trust amongst the people in that regard, especially with the new FERPA regulations. [LB1074]

SENATOR AVERY: Maybe we need to change this to mandate the sharing of data. [LB1074]

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BRIAN HALSTEAD: Well, I think that... [LB1074]

SENATOR AVERY: The amendment says, "declares and finds that the sharing of data is vital." [LB1074]

BRIAN HALSTEAD: Correct, and I think that that part is key because going back to the last bill, I think Senator Fulton hit it right on the head. The state is the sovereign. School districts, educational service units, learning communities... [LB1074]

SENATOR AVERY: Um-hum. [LB1074]

BRIAN HALSTEAD: ...they only have those powers that you give them. [LB1074]

SENATOR AVERY: No, the people are sovereign. Sorry. [LB1074]

BRIAN HALSTEAD: I...it...well, in that regard, they...but from the perspective of the state being the sovereign entity not the school districts in that regard. And I think when you look back at this statute that's being amended here, when it was first put in place in the 1970s, we were also thinking about a single school district and not the mobility, all of the data that's being collected, and how it can inform better instruction, so I think it's more an evolution of our society and the better collection of data and the better uses of data. So I don't know if Mr. Stilwill from the Learning Community is going to testify. He'd clearly be the expert as to whether he thinks this is going to help the Learning Community in any regard. [LB1074]

SENATOR ADAMS: Other questions? All right, so this is permissive, so can a school district deny? [LB1074]

BRIAN HALSTEAD: Permissive...? [LB1074]

SENATOR ADAMS: Well, I looked at the amendment here, and I see the word "applicable law permits the sharing." [LB1074]

BRIAN HALSTEAD: Correct. [LB1074]

SENATOR ADAMS: So... [LB1074]

BRIAN HALSTEAD: Well... [LB1074]

SENATOR ADAMS: Can a school district say...if ESU 6 says to Milford Public schools, "We'd like X, Y, Z," can Milford Public Schools say, "Well, we understand you're an educational entity," and ESU 6 understands it's not supposed to share it with anybody in violation of FERPA? [LB1074]

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BRIAN HALSTEAD: Sure. [LB1074]

SENATOR ADAMS: Can Milford say, "We're not giving it to you?" [LB1074]

BRIAN HALSTEAD: Well, in the sense of I assume that's why there's the next sentence that says the State Board will promulgate the rules and regs to carry this out, those will be the issues. The mere fact that I ask for it, I've still got to state why am I asking for the data. What's the purpose if ESU 6 wants to look at the student data of Milford? If it is in fact because it wants to work with the staff development for the teachers in Milford to design better instructional strategies, that would probably fit within the current language under FERPA that permits it. [LB1074]

SENATOR ADAMS: Okay. [LB1074]

BRIAN HALSTEAD: So in that regard I suspect that's the key as to why the last sentence is there, for the State Board to promulgate it. Now the amendment I think requires us to. It says we shall adopt and promulgate a rule or reg. As I always say: Once you say "shall," we generally encourage using the word "may" because of numerous Supreme Court decisions that say if you haven't yet got the rule promulgated, you can't do anything until that's fully through. And probably a reg like this, it's going to take us at least a year to get it through the whole process because it will probably take several months to develop it, and the State Board has to adopt a hearing draft of it, have to give notice of 30 days before there's a hearing on it, get public comment on it, come back to the State Board, and then if there's no substantive change to the rules they can approve it and send it on to the Attorney General's office who then has to review it for its legality and whether we have the authority. And then if the Attorney General moves it on, then it's to the Governor's office and Policy Research, who evaluates it for the Governor to sign it. And if it moves on, then it's filed with the Secretary of State. So generally rules take about six months to work through that process, but sometimes the front end of developing a rule that's never existed before may take a little bit longer, and I am sure that they would be varying school districts, educational service unit, learning community, and others who would be interested in what a draft rule of the State Board would look like in its first inception, so that's why I said it may take a year. I can't predict how long it'll take if this were to become law, so. [LB1074]

SENATOR ADAMS: Other questions? Senator Haar? [LB1074]

SENATOR HAAR: I'm just curious. Does this...will this eventually mean then that all the school districts are going to have similar software for handling the data? [LB1074]

BRIAN HALSTEAD: No. It doesn't do that at all in the sense of we've as a state kind of

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let each of our school districts decide what type of data system they want to purchase from various vendors and collect data. We at the department have, for the last several years, been working very hard to better define the data elements so that they are common across all of the schools and the school districts. But trust me, what schools put into their student information system is still their authority to decide what they want in there, they don't want in there. Some of what they've got in there is because they know we're going to ask for it, the federal government is going to ask for it, so they built it to collect it that way. But schools and school districts are going to have far more student information in their systems than we'll ever have at the state level in that regard, so I...if you want to mandate that everybody uses the same data system, I can guarantee you that's probably a fiscal note that's not going to look kind at the moment. That's why we've done the process--or the Legislature--in the past decade of leaving it to schools to do it and adapt it and us at the department collecting it in a manner from various different methodologies so that we can get it. [LB1074]

SENATOR HAAR: But yeah, and I hear what you're saying, but I worked...and one job in data processing where I was to transfer the data from one insurance company to another system and it changed meaning, so you bring up an interesting point. [LB1074]

BRIAN HALSTEAD: That's why I think the focus isn't the system, it's what are the data elements and the common definitions for that. When you say the word "teacher," it means the same thing to everybody. Now how you go about putting teacher information in your system and keeping it and everything you add to it, it's an entirely different thing. It's more, especially again, also at the national level. There's an...the U.S. Department of Education is trying to come up with a better data dictionary of standard data definitions that can be used because again they're seeing the need for uniformity on data collection, better use of data, so the functional equivalent is we have a common word, we all understand what it means, and sometimes that takes a long time to get agreement on what that means. [LB1074]

SENATOR HAAR: Um-hum. Yeah, that's good. [LB1074]

SENATOR ADAMS: Other questions? Senator? [LB1074]

SENATOR COUNCIL: Thank you. And first, I apologize for being out of the room when you started, so I trust I won't be asking a question that you've already answered. But you focused us in on the last sentence of the amendment, and that was a question I had. Because while you focused in on the "shall adopt" versus "may adopt," I'm looking at rules requiring the uniform sharing of student data, so implicit in that is that the Department of Education is going to have to discern what is student data and...because the prior sentence says when applicable law permits. [LB1074]

BRIAN HALSTEAD: Correct. [LB1074]

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SENATOR COUNCIL: So, I mean, are we going to really get to...I mean, we're going get as close as we probably, I guess, possibly can get to some uniform data system, but I guess I just don't want people to leave with the impression that this is the cure-all to some of the data issues that we've heard in this committee. [LB1074]

BRIAN HALSTEAD: I would suggest, Senator, this is the first step of many on a long journey to getting to the ultimate goal of uniformity on data. [LB1074]

SENATOR COUNCIL: Okay, okay. [LB1074]

BRIAN HALSTEAD: You've got to start somewhere, and I think Senator Schilz, I would assume his intention is this is our first step. I know this committee still has two bills from last session about trying to clarify sharing of data amongst the Learning Community and its member school districts. It is a process that's going to take a lot of conversation amongst everybody to get some agreement on that. And again, you know, we at the department, we have a data dictionary that we have that we utilize to collect all of the personally identifiable student information we get from school districts, but that doesn't mean that's how the school districts use it. They may just use that as their interpretation of...crosswalk of their data system, so in the sense of some of this may take several years to get accomplished fully. [LB1074]

SENATOR COUNCIL: Okay, thank you. [LB1074]

SENATOR ADAMS: Other questions? Thank you, Brian. Next testifier? [LB1074]

TED STILWILL: Good afternoon, Senator Adams and members of this committee. I'm Ted Stilwill, S-t-i-l-w-i-l-l, CEO with the Learning Community, so perhaps it makes sense that I follow Mr. Halstead. We are testifying in a neutral capacity today. We just wanted to make the committee aware of those issues that were there in the past. We think it will be very useful for the Department of Education to provide clarification, really almost an educational function to the districts that have been somewhat confused about the federal regulations with regard to the privacy of student records. I think you're aware of those issues that were there in the past; you've referred to them even today. We were able to overcome most of those and really, as of last fall, we had all 11 districts that eventually contributed most of the information we needed to compile the report which we shared with you in December. I was struck--as you know, I'm new to Nebraska within the last year--I was struck by the confusion on the part of districts and even on the part of their legal counsel about what was allowable under FERPA. And as Mr. Halstead said, some of that may well have been an issue of trust in the legitimacy of the Learning Community or...I actually think there's a trust issue sometimes with each other almost that there's a fear that whatever information that would be shared might become public and there would be rankings in newspapers and so on. There is a concern and a

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trust issue of that kind, but on an individual student record basis, that certainly would not seem to apply. But there is a concern about sharing any kind of information with each other as school districts, which is a phenomenon I think we'll continue to work with. The second point I'd make, and the only other point before standing for your questions, is that it's particularly vital for us to be able to have access to this information not just around the open enrollment process, but around the elementary programs and the evaluation of those programs. We've now refined those programs, so we have pretty consistent programs across about nine of the districts. It'd be very useful to them if they could actually share information not on individual student record, but it is important that we are able to evaluate the progress of individual students in those programs and have access to this information. Federal regs make it very clear that that's an allowable use if the reasons are clearly stated, and of course they would be. So for those two reasons, we're pleased that this bill is before you today. We're particularly pleased with the amendment as well, so I'd be happy to answer any questions. [LB1074]

SENATOR ADAMS: Thank you, Ted. Are there questions? Thanks for coming down today. [LB1074]

TED STILWILL: Sure. [LB1074]

SENATOR ADAMS: Appreciate it. Any other neutral testimony? Additional neutral testimony? Senator Schilz, you can close then. All right, we will close. Kate, do you want to run the show? [LB1074]

SENATOR SULLIVAN: Sure. [LB1074]

SENATOR ADAMS: And we will move on to the last bill of the day: LB1105. [LB1105]

SENATOR SULLIVAN: Senator Adams, you're clear to open on LB1105. [LB1105]

SENATOR ADAMS: Thank you, Senator, and members of the Education Committee. My name is Greg Adams, A-d-a-m-s, representing the 24th Legislative District, here to introduce LB1105--that would be LB1105. LB1105 is the K-12 technical bill, and if you will bear with me, I want to run through some of the highlights of that bill that have been brought to us by the department. One of the things that we will do...and in current law, if a student changes a residence--their living residence or their school district merges with another school district--and they choose to option to a different school, we have a deadline by which they have to file for that option. And what we would intend to do in this technical bill is to simply say that between March 15 and the beginning of the school year--the next school year--within that broader window of time, that student who has changed their residence or whose school district has merged would have...that would be the period of time to which they could make application where currently, I believe--and I may stand corrected--I believe they have 30 days beyond March 15 in

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order to make that application. This would extend that out clear until the beginning of the next school year in order to do that, so we've created a...if we do this, we create a broader window of time, from March 15 up through the beginning of the next school year, for that student to make application for option enrollment into the school district of their choice. The second thing that would happen is that of course along with that we would clarify that that does not exempt the parents from our compulsory attendance laws. You know, they...the kid has to find a home, has to be a place where they're going to go to school. The third thing that we would do in this bill is we would eliminate the provision that the state Department of Education reimburse school districts for option transportation. The reason for this is because we have not had the appropriation and have not been doing that since--again, I'll stand corrected--probably about 2001/2002. So it's a thing of the past; we'd just as well clarify in language that we won't be doing that. The fourth thing is that what we need to do is to add...on the TEEOSA calculation we need to add tuition paid and transportation fees that have been paid to districts to their general fund operating expenditures. So currently...remember we always keep this balance? Whatever shows up on the resource side, we want to make sure it shows up on the needs side. So if we currently say to school districts that if you're receiving money for tuition, if you're receiving money for transportation, we're going to hold you accountable for it on the resource side. Well, if we're going to do that, then we should come over to the needs side and say, all right, then you can also include that amount in your GFOE calculation as an expenditure. So it's just a matter of balancing it out; it's a matter of fairness as much as anything else. Another correction that we would make...in the student growth adjustment, we made that adjustment to the aid formula several years ago. And in order to account, frankly, to account for those school districts that are experiencing extraordinary growth given that our state aid typically is in arrears, then what do we do about that school right up front that is experiencing a huge amount of growth and they need the dollars to hire the teachers and buy the books and the school desks and all of that? So we went into the aid formula, and we made an adjustment--not an allowance, an adjustment. Remember, that's an add or a subtract after we've calculated basic funding, before we send out aid. Well, what we would propose to do here is that when we calculate that student growth adjustment, we use the fall membership number that a school hands to us. So what this would do is simply say if we need...if we made a mistake and next time we do aid we need to make a correction for a school district, add or subtract, that we ought to use fall membership for that, too, rather than formula students, so it's a matter of continuity. If we're going to use fall membership for calculating what their student growth adjustment ought to be, then we ought to use that same fall membership to determine any corrections, subtraction or addition, that we might have to make in the next year if there had been a mistake in the calculation. Eliminating the exception to the spending lid for land purchased, and let me...I'm kind of going back in history, but I remember the evening that Senator Raikes and I spent until late into the night with the school districts--the Bellevue School District and the South Sarpy School District--working out an ability for one to purchase land from the other. And once that had been agreed to--I don't need to go into the history of

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all of that--but the reality is that year we went into the law and said, we're going to make an exception to the spending lid so school district A can write the check to school district B for the purchase of the land. It didn't occur, it doesn't occur, we don't need that spending lid exception anymore; that's just the reality of it. Programs under the Early Childhood Education Endowment Cash Fund for at-risk children, currently the law says it's until three years of age. Well, as a matter of clarification, then does that mean that once the kid turns three in the middle of a school year they've got to be dumped out of the program? I don't think we want that to happen. So if they're in the program, they ought to be able to finish out the year even though they are age three, so we would make that correction as well. You can see that one of the things we do is a matter of appropriateness in language: take out the language where we use "mentally retarded," and instead we would put in "intellectually disabled." Deadline for distance education reimbursement applications, we would set that at July 1, 2013. School districts that are making application for funds out of the lottery dollars that can be used for the purchase of routers and those types of things, we would say that July 1, 2013, that's the deadline for these applications. And the acceptable applications then would be funded in the '13-'14 school year. One of the other things that we attempt to do in this technical bill is to move some reporting deadlines for the Learning Community, moving them from December 1 to January 1. And if you will recall, more than once the Learning Community at least has been in my office asking that we move the deadlines for reporting and give them more time. I think they may or may not testify that they probably would have liked to have seen maybe even February 1, but the problem is if we're going to respond as a Legislature with legislation, we need to kind of have those reports a little bit earlier than February and you can understand why, being sympathetic to the December 1 deadline, maybe not having the data that they need to properly report but not pushing this out too far because it doesn't give us time to respond with needed legislation. That's the essence of the technical bill for this year. [LB1105]

SENATOR SULLIVAN: Thank you, Senator Adams. Are there any questions? Senator Council. [LB1105]

SENATOR COUNCIL: Yes. Thank you, Senator Sullivan; and thank you, Senator Adams. I just have a couple of questions so I can be sure that I'm clear. On the modification of the enrollment option and the emphasis on not relieving the parent from the compulsory education requirements, I guess I was trying to think of the situation that would present itself where the youngster would be out of school. I mean, I start in school district A at the beginning of the school year,... [LB1105]

SENATOR ADAMS: Um-hum. [LB1105]

SENATOR COUNCIL: ...and my parents move to school district B. But I really want to attend school district A, and I'd like to option back into...or option into A. [LB1105]

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SENATOR ADAMS: Right. [LB1105]

SENATOR COUNCIL: Now I'm now enrolled in school district B, and I'm expected to complete the year in B. And under the modification, instead of having 30 days to make that application to option into A, I can make that application any time up to the beginning of the next semester. And this is all assuming I've moved after March 15. [LB1105]

SENATOR ADAMS: Um-hum. [LB1105]

SENATOR COUNCIL: So I guess I'm trying to see how they're...I mean, what circumstances would present itself where the youngster may be subject to being out of school? [LB1105]

SENATOR ADAMS: You know, I guess I don't have a definitive answer for you. I think it's...it might be more a matter of, you know, currently the language...it says that just because you're checking out doesn't mean you can't...you have the right just to...you've got to find a place to be. That's not a very good answer for you. I apologize, but... [LB1105]

SENATOR COUNCIL: Okay, okay. Okay, I guess I'm...I was just trying to think of where the...where it would present itself because inherent in the statute it's like you're moving to a different school district after March 15 or your district has merged after March 15. [LB1105]

SENATOR ADAMS: Or it could be that you have moved from Minnesota to Nebraska, and you've come in and you've taken up residence here,... [LB1105]

SENATOR COUNCIL: Taken up residence, um-hum. [LB1105]

SENATOR ADAMS: ...but I want to go to school here. [LB1105]

SENATOR COUNCIL: Right. [LB1105]

SENATOR ADAMS: All right, then...you know we...what we're saying in essence to that parent is look, you've got to find a place for them, first of all, so that you're not... [LB1105]

SENATOR COUNCIL: Okay. [LB1105]

SENATOR ADAMS: ...up against the compulsory education, and then we're giving you this window of time to make that application. [LB1105]

SENATOR COUNCIL: Okay, so the...and what you're trying to cover is a situation

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where the parent moves in from Minnesota, their kid really wants to go to school district B but they reside in school district A, and you're just making sure that although they want to reside in school district...they want to attend school district B, they need to be going to school in school district A and... [LB1105]

SENATOR ADAMS: They need to be going somewhere. [LB1105]

SENATOR COUNCIL: ...you need, you know, and you just can't sit out and wait until you can get into school district B. Okay, is that what we're talking about? [LB1105]

SENATOR ADAMS: That would be one...I think that's one part of it, certainly. [LB1105]

SENATOR COUNCIL: Okay, okay. The second thing is--and I have sat through TEEOSA 101 twice--... [LB1105]

SENATOR SEILER: Did you flunk the first time? (Laughter) [LB1105]

SENATOR COUNCIL: ...and I guess I'm surprised that we've been treating tuition paid...that the district receiving the tuition as a resource but not crediting the district that's paying it as a need... [LB1105]

SENATOR ADAMS: With the expenditure, with... [LB1105]

SENATOR COUNCIL: ...as an expenditure. We weren't doing that? [LB1105]

SENATOR ADAMS: Apparently not. [LB1105]

SENATOR COUNCIL: Now wait, I'm surprised... [LB1105]

SENATOR ADAMS: I am too, I am too. [LB1105]

SENATOR COUNCIL: ...because I thought we put everything in the bucket. I mean, I know my bucket...I mean, you've taught me my buckets,... [LB1105]

SENATOR ADAMS: I know it, I know it. [LB1105]

SENATOR COUNCIL: ...and I thought I had everything in the bucket. [LB1105]

SENATOR ADAMS: And I thought we were including everything, too, and it was a bit surprising to me to see that we weren't. I mean, we know by statute those things that we do not calculate in GFOE... [LB1105]

SENATOR COUNCIL: Right. [LB1105]

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SENATOR ADAMS: ...like lobbying, expenses, and a portion of legal expenses, etcetera. [LB1105]

SENATOR COUNCIL: Right. [LB1105]

SENATOR ADAMS: But this is on the resource side, so somebody's getting "dinked" for it, then... [LB1105]

SENATOR COUNCIL: And not...and then the other person's not getting the credit for it. [LB1105]

SENATOR ADAMS: Right, right. [LB1105]

SENATOR COUNCIL: Okay. [LB1105]

SENATOR ADAMS: Right. [LB1105]

SENATOR COUNCIL: The last question I have is on this spending limitation. [LB1105]

SENATOR ADAMS: Um-hum. [LB1105]

SENATOR COUNCIL: And I understand and I think it's...the language was originally drafted, there were, you know, percentage spending lids that apply. [LB1105]

SENATOR ADAMS: Right. [LB1105]

SENATOR COUNCIL: But under the TEEOSA formula as we addressed it last year, there is a percentage growth limitation on spending. [LB1105]

SENATOR ADAMS: Um-hum, um-hum. [LB1105]

SENATOR COUNCIL: And wouldn't there still be a need for an exception for a transfer? [LB1105]

SENATOR ADAMS: Yeah. Yeah, let's say for instance, I mean, we...as you know, we have endured multiple times having to adjust the spending lid for school districts--needs-based, budget-based--but we have adjusted that. But in a normal environment not a recessionary environment where we've had to slow down TEEOSA, we look at 2.5 percent as that spending lid, equivalent with other political subdivisions but there are exceptions. And let's say, for instance, school district A and B have got some ground that they're fussing about, and the two school boards have finally come to an agreement on what they're going to do, and A is going to sell it to B. [LB1105]

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SENATOR COUNCIL: Right. [LB1105]

SENATOR ADAMS: But B is going to have to write a check for a couple million dollars, which will far exceed that 2.5 percent. [LB1105]

SENATOR COUNCIL: Exactly. Right. [LB1105]

SENATOR ADAMS: We give them that exception, and this was created at a time when we had a unique situation where we thought that was going to happen. It didn't and we don't see it happening anymore. [LB1105]

SENATOR COUNCIL: Okay, so if it did happen, eliminating the exception, we've...they...would they...? [LB1105]

SENATOR ADAMS: We'd probably have to go back in there again and create that exception. [LB1105]

SENATOR COUNCIL: Right. [LB1105]

SENATOR ADAMS: Not too likely, I don't...that you're going to see a school district give anything up, and you could understand that and... [LB1105]

SENATOR COUNCIL: Right, right. And I just don't want to, you know, eliminate a provision. And admittedly, we probably haven't had to use it in a while and may not have to use it,... [LB1105]

SENATOR ADAMS: Yeah. [LB1105]

SENATOR COUNCIL: ...but if in the unusual circumstance that midway through a school year district A does need to pay district B for some land and it would put them over... [LB1105]

SENATOR ADAMS: Um-hum. [LB1105]

SENATOR COUNCIL: ...the spending...the expenditure limitation,... [LB1105]

SENATOR ADAMS: I just... [LB1105]

SENATOR COUNCIL: ...I wouldn't want it to be... [LB1105]

SENATOR ADAMS: Right, I suppose I'm going to speculate. In the rare chance that that could happen, I suppose that if we were not in session, they would have to work out an

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agreement where the money didn't exchange hands until we'd had an opportunity to make the appropriate adjustments and... [LB1105]

SENATOR COUNCIL: Okay. Um-hum. [LB1105]

SENATOR ADAMS: And now I'm speculating, but I would think that would be one avenue. [LB1105]

SENATOR COUNCIL: Thank you. That's all I have, Senator Sullivan. [LB1105]

SENATOR SULLIVAN: Yeah, thank you, Senator Council. And Senator Adams, just sort of a general question then, in terms of these technical changes and clarifications and how they come about. Do I assume correctly they come about through your staff looking at the details all session long, they come from the Department of Ed, and also reaction from school districts? [LB1105]

SENATOR ADAMS: These...I think it's all three, but primarily these come from the department. [LB1105]

SENATOR SULLIVAN: Okay. Okay, thank you. Senator Avery, did you have a question? [LB1105]

SENATOR AVERY: Yes, thank you. I'm looking at the updating of language from "mentally retarded" to "intellectually disabled." [LB1105]

SENATOR ADAMS: Um-hum. [LB1105]

SENATOR AVERY: Did you consult with special ed teachers? [LB1105]

SENATOR ADAMS: I did not. [LB1105]

SENATOR AVERY: Well, the reason I asked that is that frequently people who are impaired don't like to be referred to as disabled, and I was thinking maybe we might consider "intellectually impaired." [LB1105]

SENATOR ADAMS: I don't have an answer for you, but there may be someone from the department that could respond to that better, Senator. I'm sorry. [LB1105]

SENATOR AVERY: Thank you. [LB1105]

SENATOR SULLIVAN: Any other questions for Senator Adams? Thank you. We'll now hear proponent testimony. Welcome back. [LB1105]

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BRIAN HALSTEAD: (Exhibit 6) Thank you, Senator Sullivan, members of the Education Committee. There's a letter that's being passed around to you that the State Board of Education has. I'm going to read it into the record just because it may speed things up. It's addressed to Senator Adams and you members of the committee. On January 23, 2012, the State Board of Education met to review the various bills before the Education Committee. After discussion, the board voted to support LB1105. The State Board of Education submitted a deficit appropriation request last November to make corrections to the funding for certain NDE programs that were transferred to the Education Innovation Fund in 2011. The Governor's budget recommendation that was submitted this year includes those corrections for that funding. However, when we went to the Appropriations Committee for our budget hearing a week ago, the Appropriations Committee indicated those required a change in a particular statute Section 79-812 (sic), which is a matter that's within your jurisdiction to deal with. As such, we're here to ask you not only to support LB1105 but to attach the amendment that goes with that letter to make those corrections. And with that, they certainly support the bill. If you want, I can go into greater detail about these technical corrections that need to be made for the Education Innovation Fund and everything else. In response to some of the questions that came up, the "intellectually disabled" is required by federal law. That's the terminology in IDEA as it now exists at the federal law, and that was a requirement for us to get approval for us, that we'd make that statutory change in our terminology. So I might have better words just like you, Senator, but the feds have decided it's "intellectually disabled." With respect to, I think, the option enrollment, what had gone on for a couple of years is we were trying to clarify the movement of students. We kept amending the first section of option enrollments which states the general principles. And what was happening was we were getting a lot of specific language intertwined with general principles, so what we're doing is moving out those specifics, putting them on a different one. And when we were doing that we realized okay, we need to make it clear. If you have moved and you want to participate in the option enrollment program, there is a window which you submit your application, the option district has a period of time to say, yes, we'll accept you or not. While that's pending, you're still obligated to be in school if school is open every day in session. I think the language is just to clean that up to make it clear to everybody. Even though you've submitted an application for option enrollment, your children still need to be in school every day while that's pending at the option school district because under the law the option district has the ability to say yes or no to an option request--they may be at capacity--so that's what the change is with option enrollment. I see the red light, so I'll stop and see if you have any questions.
[LB1105]

SENATOR SULLIVAN: Thank you, Brian. Are there questions? Senator Council.
[LB1105]

SENATOR COUNCIL: Thank you. Thank you, Brian. I'm looking at the amendment,...
[LB1105]

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BRIAN HALSTEAD: Sure. [LB1105]

SENATOR COUNCIL: ...and I have to become accustomed to looking at amendments from Bill Drafting. [LB1105]

BRIAN HALSTEAD: Well, we didn't send it up to Bill Drafting. [LB1105]

SENATOR COUNCIL: Okay, because that's what I'm saying. I mean, the amendment isn't like a total wholesale substitution of the... [LB1105]

BRIAN HALSTEAD: No. [LB1105]

SENATOR COUNCIL: ...that they... [LB1105]

BRIAN HALSTEAD: It is adding a new section to the bill to amend 9-812, the statute number. [LB1105]

SENATOR COUNCIL: Okay, but is that a new section, this...the entirety here? [LB1105]

BRIAN HALSTEAD: It is...yes. That is the entire...that's how long section 9-812 of the statutes are. [LB1105]

SENATOR COUNCIL: Okay. Okay, I just want to be clear on that. [LB1105]

BRIAN HALSTEAD: Yes. Actually, last Tuesday, before we appeared in front of the Appropriations Committee, Senator Adams was willing to meet with the Commissioner. He provided him with the amendment and asked him to consider it. We're here today to formally ask you to do that. It was our understanding, we thought that by submitting a deficit appropriations request that that would take care of it. It was not until the Appropriations Committee indicated to us that no, you have to change a statute, and that's in the purview of the Education Committee. So that's why we're today, to add that to this bill. [LB1105]

SENATOR COUNCIL: Okay, so...and maybe I'll ask, you know, Tammy--if it's appropriate, Senator Sullivan--that before the transfer, did we have language in the statute similar to the amendment? Okay. [LB1105]

SENATOR SULLIVAN: We'll probably have to talk about that in Exec if that's all right. [LB1105]

SENATOR COUNCIL: Okay, I...okay, I thought if... [LB1105]

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BRIAN HALSTEAD: And, Senator, I can try to answer that if you want. [LB1105]

SENATOR COUNCIL: If you can, but I don't wish to be out of order. [LB1105]

BRIAN HALSTEAD: Okay. What happened last year, as some of you are well aware because you had to do all the dirty work to cut the budget, you had LB333, which was the department's cut. [LB1105]

SENATOR COUNCIL: Right. [LB1105]

BRIAN HALSTEAD: In that, originally you proposed to eliminate multicultural education and the funding that went to the department for multicultural education. At the hearing, I think you heard from a large number of people who said, don't cut multicultural education and you didn't; you put it back in, but you decided to fund that out of the Education Innovation Fund. [LB1105]

SENATOR COUNCIL: Out of...right. [LB1105]

BRIAN HALSTEAD: There is a staff person at the department who is paid for out of those funds. [LB1105]

SENATOR COUNCIL: Um-hum. [LB1105]

BRIAN HALSTEAD: The dollar amount that was put into that statute is identical for the current year and for next year. Even though that staff member is supposed to get a 2 percent pay increase, that's the...that's not in the statute, so it isn't provided for there. What the Appropriations Committee did though, even though you didn't include it in the lottery funds they added some general funds to our program to pay for that, which is great. But now we've got an accounting issue of how much...how do we keep track of what is what? The other piece of that was an error made by us at the Department of Education in determining exactly what is the funding needed for certification investigations. And if you want to know who made the mistake, you're looking at him. When I discovered that the number was off by about \$12,000, I think, I had a meeting with Senator Adams last session. But the bill was so far down the road, his question was: Does it have to be done this session? And I said, no, we can do it this way, and he was more comfortable because of all the stuff you were dealing with budget cuts. So what you see there is the making the correction in the current-year budget to get that properly funded out of Education Innovation, and then the second year is the \$1,900 to handle that pay increase. [LB1105]

SENATOR COUNCIL: One-thousand...that 2 percent, okay. [LB1105]

BRIAN HALSTEAD: Now to be fully...with this committee, if you do that amendment,

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then the Appropriations Committee is going to take the like amount of pay increases out of our General Fund budget when they move their bill. From our purposes, it's just simpler accounting. Otherwise, we're going to have to start keeping track of how much of this employee's salary is coming from lottery funds,... [LB1105]

SENATOR COUNCIL: And how... [LB1105]

BRIAN HALSTEAD: ...and then with their 2 percent pay increase, that's a general fund. And then when we go to build the next biennium budget, how do we calculate what the general funds are for the...we just think it'd be simpler and cleaner. If you want it paid for out of the Education Fund, let's get it all in the Education Fund. Let's not have to rely on spreadsheets and then accountants' knowledge of how to do it. [LB1105]

SENATOR COUNCIL: Okay. [LB1105]

BRIAN HALSTEAD: I think the total amount that this adds up to in lottery funds is \$15,653. We're not trying to double-dip because if you do this, the Appropriations Committee will take out that amount of money that they put in our general fund, so I want to be up-front with the committee. [LB1105]

SENATOR COUNCIL: From your general fund, okay. Okay. [LB1105]

BRIAN HALSTEAD: We want to work with the committee. We just think this is a simpler way of accounting so that next year and future years...because not all of you will be back, we'll have to reeducate new senators about this, and trying to explain it to them is already, as I can see by your looks, complex enough for me now. I'm trying to figure out what it's going to be like in four years, so that's what they know. [LB1105]

SENATOR SULLIVAN: So in other words it's a simple way but a long way of getting there. [LB1105]

BRIAN HALSTEAD: It certainly seems that way, and we'd certainly like to work with the committee to get this all cleaned up so it's clear in the future. You know, the...we had a meeting yesterday with...no, excuse me, on Friday with staff to point out that we're already starting to work on the next biennium budget because it's due in September. [LB1105]

SENATOR SULLIVAN: Okay. [LB1105]

BRIAN HALSTEAD: So we'd like to get...yeah, I understand. I'm sure you're just loving to hear that already as you're working with the current budget, but that's where we are over in the agencies,... [LB1105]

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SENATOR SULLIVAN: Sure. [LB1105]

BRIAN HALSTEAD: ...having to get ready to start up for the next biennium budget while you're still working on the current budget, so anyway. [LB1105]

SENATOR SULLIVAN: Okay, very good. Any other questions? Senator Haar. [LB1105]

SENATOR HAAR: Are we going to be quizzed on this last point? [LB1105]

SENATOR SULLIVAN: I think could be. (Laughter) [LB1105]

BRIAN HALSTEAD: I know your legal counsel is fully aware of this, and I know that Legislative Fiscal has talked with that. So in that regard, if there's anything you need from us at the department, we want to be as transparent on this as possible. We just liked the simpler accounting of a single fund carrying all of that, and that's all it's about. [LB1105]

SENATOR SULLIVAN: Okay. Any other questions for Brian? Thank you. [LB1105]

BRIAN HALSTEAD: You're welcome. [LB1105]

SENATOR SULLIVAN: Any other proponent testimony? Okay, any opponent testimony? Anyone to speak in a neutral capacity? Welcome back, Mr. Stilwill. [LB1105]

TED STILWILL: Thank you. Ted Stilwill with the Learning Community, pleasure to be here. My only function is to thank you very much for your consideration of the date change in the reporting for the Learning Community. We would agree in each and every way with Senator Adams' excellent description of that matter and be happy to answer any questions. [LB1105]

SENATOR SULLIVAN: Seeing none, thank you. Anyone else in a neutral capacity? If not, Senator Adams waives closing, and then this closes the hearing on LB1105. Thank you. [LB1105]