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Transcriber's Office

Executive Board Committee  
February 01, 2012

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[LB1147 LR358CA LR365 LR372CA]

The Executive Board of the Legislative Council met at noon on Wednesday, February 1, 2012, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1147, LR358CA, LR365, and LR372CA. Senators present: John Wightman, Chairperson; John Nelson, Vice Chairperson; Mark Christensen; Mike Flood; Russ Karpisek; Chris Langemeier; Steve Lathrop; and Lavon Heidemann. Senators absent: Deb Fischer; and Rich Pahls.

SENATOR WIGHTMAN: I think we will go ahead and open. We're missing several members, but I think they will be here. So welcome to the Executive Board hearing. My name is John Wightman. I am from Lexington, Nebraska, and represent the 36th Legislative District and will be serving as Chair today. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation that we'll be considering today. To better facilitate today's proceeding, I ask that you abide by the following procedures. Please turn off cell phones or silence them. The order of testimony on each of the four matters we'll be hearing today are the introducer, the proponents, the opponents, neutral, and then closing. The testifiers need to sign in and you should have a sheet like this. So hand your sign-in sheet to the committee page when you come up to testify or let her know and I think she'll pick it up. Spell your name for the record before you testify. We'd ask that you be concise. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand it to the page for distribution to the committee and staff. We will need 13 copies. If you have written testimony but do not have 13 copies, please raise your hand now so that the page can make copies for you. If you do not wish to testify but would like your position to be part of the record, you can sign the form found at the testifier's table by the testifier sign-in sheet. I'll go ahead and we'll have introductions. We'll start out to the far right and we'll have self-introductions. But Senator Heidemann is not here, he's from Elk Creek. He serves as a nonvoting member as the Chair of the Appropriations Committee. Then we'll go to Senator Christensen. Would you...

SENATOR CHRISTENSEN: Mark Christensen, Imperial, District 44.

SENATOR FLOOD: Mike Flood, I'm less to the far right than Senator Christensen is. (Laughter) I'm from Norfolk and I'm the Speaker.

SENATOR KARPISEK: I'm Russ Karpisek from Wilber, District 32. And I'm even a little...not that far right. (Laughter)

SENATOR NELSON: Well, we're back to the more conservative (laughter). Senator John Nelson, District 6, Omaha.

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SENATOR WIGHTMAN: And to my right is Janice Satra, the counsel for the Executive Committee. And to my immediate left is Jessica Shelburn, our committee clerk. We'll go ahead now and start to the far left and (laughter) and I'm talking about location within the room.

SENATOR LATHROP: I'm sure he means geography. (Laughter) Steve Lathrop from District 12.

SENATOR WIGHTMAN: Thank you. We are missing two of our senators, Senator Fischer from Valentine, and Senator Pahls representing the 31st District from Omaha. Senator Langemeier.

SENATOR LANGEMEIER: And on that note, back to the right, Chris Langemeier, Schuyler, District 23.

SENATOR WIGHTMAN: Thank you. And our committee page today is Alex who will be...who you need to see if you...when you sign your sign-in sheet. With that, we'll take up the bills in the order that they are shown on the agenda posted outside the door. We'll start with LB1147, Senator Dubas.

SENATOR DUBAS: (Exhibit 1) Good afternoon, Senator Wightman, members of the Executive Board. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s, and I represent Legislative District 34. I'm introducing LB1147 today in response to a concern that wireless Internet access has been removed from our State Capitol Building. This building is a public place, paid for and supported by public dollars, where we encourage and rely on public interaction and participation in our government. We see more and more people using the most up-to-date technology and coming to committee hearings with iPads and notebooks. With the push for on-line documents and notices to reduce costs and increase awareness, it seems incongruous that the State Capitol Building would not have public Internet access. The public is welcome to come to the Capitol and request bills and amendments from the Bill Room. We have a table in the hallway with daily agendas and other information to help the public follow our progress. All the while, this same information is on-line and updated by the minute, in some cases. We provide so much helpful information on-line that a public wireless network is necessary. In this digital age, we are doing a disservice to our citizens by not providing this service. In response to the fiscal note, it was certainly not my intention to have wireless access in every nook and cranny of the building. There's no need for it in the basement or in the rafters. But it is my understanding that the same public wireless network can be reactivated without adding any infrastructure. I've heard from the Governor's Policy Research Office that a public wireless network would cost the state about \$99 a month. I think we should be able to find \$1,200 to allow the public access to government documents and keep people informed of the Legislature's work. We have provided this access out in the Rotunda and, you know, that's where the lobby spends a lot of time. I

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think our citizens should be treated no less differently. I've also heard concerns over the liability for the state for illegal downloads. And while I am no expert on the legal aspects of the Internet, I know it is an area of law that is changing quickly. I believe we have the capability to block sites that we would not want the public to have access to. I do not see logic in placing liability on the state for the possibility of illegal activity occurring because the state offers information access. It seems to me a waiver or a notice could also easily solve this problem. I appreciate the hard work of the Nebraska Information Technology Commission and the Office of the Chief Information Officer to keep our Internet safe, secure, and workable. I believe they have the capabilities to help us make information more accessible to the public when they visit or do business in our State Capitol. Wireless access is becoming as commonplace today as landline telephones were in the past decades. I don't think it's an unreasonable expectation and I am open to working with this committee to find a way to provide this service to the public. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Dubas. Do we have any questions? Senator Lathrop. [LB1147]

SENATOR LATHROP: I do have a question. Last year when we were here in session was there public wireless through the entire first and second floor? [LB1147]

SENATOR DUBAS: It's my understanding, yes, that there was that access. [LB1147]

SENATOR LATHROP: Okay. And I'm looking at the fiscal note that gets to \$88,000. Is that to provide wireless from the second floor up? Is that the problem? [LB1147]

SENATOR DUBAS: I think the language in my bill says "throughout the Capitol Building." And so, yes, if we were going to cover every square inch of the building it would require that additional access. What I really wanted was for them to just turn that access back on that we already had previously. [LB1147]

SENATOR LATHROP: What they already had. So if we amended this to the first and second floor, you wouldn't have a quarrel with that? [LB1147]

SENATOR DUBAS: I think there are a lot of options here for how we can make it available to the public, keep what we do secure, and not have it cost us additional dollars. [LB1147]

SENATOR LATHROP: Okay. Thank you. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Lathrop, Senator Dubas. Any other questions? Thank you for your testimony. Do we have other proponents? Senator Lautenbaugh. [LB1147]

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SENATOR LAUTENBAUGH: Mr. Chairman, members of the committee, my name is Scott Lautenbaugh. I represent District 18. I am a big proponent of this. I was going to joke this is my first outing before the Executive Committee and how anticlimactic this is. I really envisioned some sort of robes and rituals and whatnot for this mysterious group. (Laughter) But here you are. This is like coming to Business and Labor except you may not kill my bill, so. This is something...and I really do appreciate Senator Dubas bringing this. This is important, and this is something that we did have last year and that we do not have because of, as I understand it, the lack of a specific statutory authorization. I did meet with the technical people from the state, and this is something that could be provided as it was before, maybe not throughout the entire tower, but simply with the flip of a switch. I'm not a technical person. I know we have five units of bandwidth, if you will--that's not the technical term but that's how it was explained to me. And the state's business, we pay for five units; the state's business consumes about three units, and the public aspect did not come close to consuming the remaining two. This was excess capacity that we already had, that we're already paying for. And I think it was switched off just because of a lack of a clear statutory authorization to use that network for public purposes. I've been, as you've heard me talk, a big advocate of us moving towards a paperless, more paperless, paper-free environment, if you will. And I think this is a necessary precursor. I would like there to be a day where people who are sitting in committee rooms can access some file out there electronically--witnesses, the public, whatnot--and all of the testimony that's going to be submitted in written form will be there and accessible; all the exhibits that are going to be submitted to the committee will be there and accessible to the people sitting there in the committee rooms, so they can actually see what we're talking about. And that presupposes wireless being available to people before we can take any of those steps to increase public access. So I think this is something that we could accomplish on the first and second floors with no cost. I think it was taken away...while I understand the argument, I think it was a tremendous disadvantage to the public and to the people who otherwise have to be here every day. And I would just...I applaud Senator Dubas for bringing this bill, and I would ask you to look favorably upon it. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Lautenbaugh. When you usually make a self-effacing comment, and I thought you were, you were a big advocate and big proponent, I thought maybe you were getting to the big, but...(laughter)...and I fit in the same category, however. Any questions of Senator Lautenbaugh? Senator Lathrop. [LB1147]

SENATOR LATHROP: Just briefly. Senator Lautenbaugh, can you imagine any circumstance under which the state would have liability if somebody used the wireless Internet here to download a record or a movie or a... [LB1147]

SENATOR LAUTENBAUGH: Especially not if there is some sort of a disclaimer that

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comes up that says, don't do this kind of thing, that we do take some minimal steps to discourage that. I've never heard of a Starbucks being held liable or a McDonald's or a public library or the courthouse down the block or all of these places that routinely provide this service for the public. So with just a minimal effort and I believe zero cost, there is no conceivable way the state could actually face liability in my opinion. [LB1147]

SENATOR LATHROP: I wouldn't think so either. Is there a filter that the state can put on their wireless server to stop people from downloading, let's say, going into pornographic sites or downloading music or something like that, if you know? [LB1147]

SENATOR LAUTENBAUGH: I would be the wrong...I don't have any expertise in that area. I would be speculating and I'm sure I would get it wrong, so. [LB1147]

SENATOR LATHROP: Okay. [LB1147]

SENATOR LAUTENBAUGH: There are filters, but you either have to in the IP address or certain domain names. And there's...the new, they've approved a new pornographic Web site that has the extension XXX. Instead of .com, it's .XXX. But I don't know if all Web sites are required to use that, so I don't know if that would work. But there's certainly a way, and I think it used to happen last year. I don't think you could just roam the Internet and go to...I know one committee had to look at some gambling issues and they could not access gambling sites just to see what other states were doing because there was a filter blocking that. So I know it's doable, I just don't know the technical aspects of it. [LB1147]

SENATOR LATHROP: Okay. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Lathrop and Senator Lautenbaugh. Any other questions? Thank you. Any other proponents? [LB1147]

KENT ROBERT: Good afternoon, Senator Wightman, members of the Executive Board. My name is Kent Rogert, R-o-g-e-r-t, and I'm here representing myself today and speaking on behalf of many of the folks that work here every day during session and throughout the year, following the Legislature and doing the people's work, I guess from the other side of the glass, for lack of a better term. (A) I want to show my appreciation to the Clerk's Office and to the Chief Information Office for their counsel and efforts of discovery on how to move through this process. The bill is drafted broadly enough to just start the discussion on how to go forward and thus resulting in the fiscal note that came through there, the words "throughout the State Capitol." And if legal counsel wishes, I would be happy to sit down and try and help you figure out the language that would get rid of that fiscal note and move on easily. I think there are issues that are being asked: Is it a state purpose to have public accessible wireless Internet in the Capitol? And I would say yes. Times have certainly changed and they change rapidly.

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Not that long ago, 20 or 30 years ago, I could be sitting here testifying before you with a cigar in my hand. We don't allow that anymore. Just shortly before that, lobbyists throughout the session sat in chairs directly behind the senators, and there was no glass, there was no separation. We've changed those things to move forward, to protect the public interest of the Legislature and make it a better place and a better public institute. Technology and information, we're in the age of instantaneous information and that's only coming faster. The Clerk's Office and the Legislative Council spends a significant amount of time and resources to make all that information, transcripts, the Journal, amendments, bills available electronically, as Senator Dubas mentioned, even instantaneously. When Mr. O'Donnell reads something into the record and he hands it down to one of the ladies in front of him, and the summary page is updated almost instantaneously. And the folks can follow that and I think that makes for a better operation. Senator Lathrop asked about, you know, can you block some of these sites and the state liability. A couple of years ago, maybe three or four now, the university had some troubles with downloading of music through things like Napster and other sites where you could share files. And I believe the process was they came to the university and said, we need you to put a filter on this to try and stop it. They may or may not have, but they came back and I believe there might have been a fine or something down at the university saying, we need you to try and we're demanding that you put a stop to it. Some folks were downloading massive amounts of information and pulling them down. And they have stopped that. So I think you have the ability. There is, like Senator Lautenbaugh said, I don't know the technical terms exactly, but there is the ability to stop, slow, inhibit, and limit your liability on many of those efforts. I think that's pretty much all I had. I'd answer any questions if anybody had any. [LB1147]

SENATOR WIGHTMAN: Thank you, Mr. formerly Senator Rogert. Anybody else have any questions? Thank you for your testimony. [LB1147]

KENT ROBERT: Thank you. [LB1147]

SENATOR WIGHTMAN: Any other proponents on LB1147? [LB1147]

SENATOR SCHUMACHER: Thank you, Senator Wightman, members of the committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r. I represent District 22 and I find myself between the left and the right. (Laughter) [LB1147]

SENATOR LATHROP: Stand up day. (Laughter) [LB1147]

SENATOR SCHUMACHER: That's right. The last time that I was in this room it was a year ago, and the board was requesting that the new people try to get by with one secretary or one staff person. And I did that. And I did it because I could create an efficient operation where one person could handle the work. And that was done by using these toys. And I can tell you, since the public Internet has been shut down my

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efficiency has probably been cut in half. Some people think that was good, (laugh) but that's the fact. And it may be such that I won't be able to hold the fort on the one person throughout the rest of this year. As I understand it, from talking with the folks with the Administrative Services, we've got the bandwidth already paid for. The amount of bandwidth that the extra load is put on by the public is at or approaching zero in terms of the way things operate on the Internet. All the devices are in place. As Senator Lautenbaugh indicated, a flip of a switch or entry of a few codes into a command center will reactivate the entire system. So basically we could go back for no cost to where we were. And that was a good system; it was a speedy system. As you might know if you try to rely on AT&T or Verizon services inside the building, there are spots on the first floor, I mean it's worse than old dial-up. You just wait and wait and wait, and sometimes the thing times out and you don't get anything. I never had that problem last year. When that happens, when you have to rely upon the AT&T or the weak signal in the building, communication with constituents is impaired. There are a lot of times I know I, and I would pretty much guess that most people have communicated valuable information back and forth with constituents during hearings and more so from the floor. You could do research quick. You wouldn't have to sit there and wait forever for a Web page to come back up and it was very functional. Well, you say, well, why don't you just use the privileged network and enter in your password and everything else? And there is such a network. The problem is these devices have become integrated devices. You don't carry one around for communication with constituents, another around for your personal e-mail, a third one around for whatever businesses that you use in order to float the boat while you're making the big bucks down here. And so they're integrated devices. And when these babies are turned on and on-line, they are communicating on all fronts. And for those of us who might be inclined to do controversial things once in awhile, if you don't want to be in a position where you're using something, a privilege in order that might some private stuff or personal stuff might leak through on, that you just make a bigger target of already big targets. So that's not smart to do. So you're restricted to basically the AT&T or Verizon or some other cell-type services. When the public can walk in the public park, like we could last year, all those ethical and legal questions go away because the public can do it. And you're just a general member of the public and it's very functional and all those things you don't have an issue with. There was talk that this was all triggered by a liability question because somebody downloaded a movie or something like that during the special session. In one of my lives I ran one of the state's first Internet companies. And what ends up happening there is you get the copyright folks hire bounty hunters to go out and try to find out who is downloading illegal stuff without paying for the copyrights. And when they do that and they think they've found an IP address of where something might have come from, they contact the person in control of the IP address and say, identify who did this. And as an all practical matter, whether it's a Starbucks or whether it's hot spots in Game and Parks, or whether it's in the public library that has a hot spot, you don't know who did it. And that's all you've got to tell them, you don't know who did it, and they go away. And that is not an infrequent occurrence. People do download illegal stuff over the Internet. And there's nothing new

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about that, it's been going on for 10 years and it's going to go on for the next 100. To the extent you try to block sites and edit the Internet, you start taking on administrative overhead, which to operate equipment to do that, to operate programmers to do that, and it's really not a smart thing to do. So I'm just here today to say I would like the juice turned back on because it was really good stuff and it was really functional for not only the public but also the private sector that has to interact with state government.

[LB1147]

SENATOR WIGHTMAN: Thank you, Senator Schumacher. Any questions? Thank you for your testimony. [LB1147]

SENATOR SCHUMACHER: Thank you. [LB1147]

DON WESELY: Mr. Chairman, members of the Executive Board, I'm Don Wesely, D-o-n W-e-s-e-l-y, not representing anybody but myself in support of the bill and thank Senator Dubas for introducing it. I go back so far, I go back to the days when we had a chalkboard in front of the Legislative Chamber with the numbers of the bills and we would erase the number and move it as it went from General File to Select File to whatever. And today it's unbelievable what we can do. It's a vast change and it's a better change. When I first started, when you had an amendment you could scrawl something up and you'd hand it to Pat O'Donnell and trying to get that around was very difficult. People out in the glass didn't know what was going on. Now you can get on and find the information and it's a good thing. But I can tell you that this change has had an impact. And I do have an iPad and I actually know how to use it on occasion. And like just now, you have a fiscal note, I was going to look up the fiscal note and I can't get it. I can't access information. I was just at a hearing, another bill came up. I tried to bring it up to look at it. Couldn't find it, had to rush down to the Bill Room and get extra copies of the bill. It's costly in that sense in terms of time, but it's also, you run around, you run copies of stuff and you don't need it. If you have wireless and you got access to it, you can find it and take care of it without having to go down to the Bill Room and use up resources. Again, I just support the bill and hope that you'll deal with the issue and we'll get it back. Thanks. [LB1147]

SENATOR WIGHTMAN: Thank you for your testimony. Any questions? Any other proponents? Seeing none, are there any opponents to LB1147? Anybody wishing to testify in a neutral capacity? [LB1147]

BRENDA DECKER: Good afternoon. [LB1147]

SENATOR WIGHTMAN: Good afternoon. [LB1147]

BRENDA DECKER: I believe it's afternoon. Chairman Wightman and members of the Executive Board, my name is Brenda Decker. My last name is spelled D-e-c-k-e-r. I am

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the Chief Information Officer for the state of Nebraska. I appear before you today to testify in a neutral capacity on LB1147 to provide public wireless Internet access in the State Capitol. LB1147 provides public wireless Internet access to be an essential public function that will be provided to the user at no charge throughout the State Capitol. The Office of the Chief Information Officer, by statute, provides all telecommunication services in state facilities. When LB1147 was introduced, our staff worked with the Capitol Commission to survey the building regarding the signal strength of the current wireless access points to assure that the service could be provided throughout the building. As you know, the Capitol is constructed of limestone and marble. Neither of these materials is extremely wireless friendly. The signal strength survey identified that in order to provide public wireless Internet access throughout the entire building we would need to add 88...I'm sorry, 82 additional wireless access points to cover the various floors, offices, hearing and meeting rooms, and the public areas. We did not include the basement. The Office of the Chief Information Officer submitted a fiscal note for the installation of these additional access points and the associated equipment that would be needed that shows a one-time expenditure of \$86,998. The bill also indicates that the department may adopt and promulgate rules and regulations regarding network safety, reliability, and access. In order to ensure the integrity of the state's secure network, true public access to the Internet should be provided through a circuit that is totally separate from the state's current network. Our current pricing for a 15 meg circuit, which we estimate should be sufficient to handle the public access that's been used in this building, will cost \$99 a month or \$1,188 per year. Our fiscal note points out several basic assumptions of items that these costs do not contain, such as the public access is going to be limited to the Capitol Building, and we do not have any support issues included in those costs. Additionally, we also mention in the fiscal note that the bill does not identify a funding source to provide this service at no charge to the user. Because this public wireless Internet access is deemed in the bill to be an essential public function, it is assumed that it will be funded through General Funds. These costs all assume that the only option being considered is access throughout the entire State Capitol. There may be other options for the Legislature to consider that could lower the one-time cost for installation of additional access points. The one-time costs could be lowered by amending the bill to require that the public network be provided on the first, second, and third floors--we see that having the most public access--and those floors only of the Capitol. Our studies still show that this would lower the number of access points to 64 that we would need to put in because the floors are not covered on all three of those floors, and one-time costs for installation would be reduced to \$74,490. However, none of the offices or meeting rooms above the third floor would have public access Internet, and the public area on the 14th Floor would also be without public access. A second option would be to lower the one-time costs and amend the bill to provide public wireless Internet access only where there are current wireless access points in the Capitol today. In this case, there would be no installation costs and the only fee would be the monthly service fee that we would have. However, as I just stated, in order to completely cover the first, second, and third floors, we'd need to add those

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access points on the majority of areas in those floors. Without adding those additional points, some of the coverage would be spotty, but we would be back to the coverage that you had last year. In any of these options we still have the \$1,188 a year for the separate circuit that would be going on. I want to take this opportunity also to thank the Legislature for the support that you've shown for the management of technology in Nebraska. I'd be happy to try to answer any of your questions. [LB1147]

SENATOR WIGHTMAN: Thank you. Senator Heidemann. [LB1147]

SENATOR HEIDEMANN: How many access points...you know, it says there's access points, but you don't exactly say how many access points we have right now. [LB1147]

BRENDA DECKER: Senator, I don't have that number on the tip of my tongue. But I think you have about 60 right now, and most of them are in the legislative portions of the building. [LB1147]

SENATOR HEIDEMANN: In senators' offices? [LB1147]

BRENDA DECKER: Not necessarily in the offices, and that was part of the issue that we even found last year. There were senators who could not get access in their actual offices because of where the access points were placed. [LB1147]

SENATOR HEIDEMANN: Okay, because I have this thing that appeared about a year or so ago in my office. And I know my boy, for awhile, could access and then... [LB1147]

BRENDA DECKER: Yes, he could. [LB1147]

SENATOR HEIDEMANN: So is that an access point then? [LB1147]

BRENDA DECKER: Yes, it is, sir. [LB1147]

SENATOR HEIDEMANN: Okay. Thank you. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. Senator Christensen. [LB1147]

SENATOR CHRISTENSEN: Thank you, Chairman. I can talk to you later about this, but the Internet, if we have excess power, as I've been hearing from testifiers, proponents, afternoon I virtually can't get on. I can go back in the evening and get on; and I can get in, in the morning. On the sign-in, access is worthless in my office in the afternoon. It would take me five minutes to log on. [LB1147]

BRENDA DECKER: You're talking wireless access, Senator? [LB1147]

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SENATOR CHRISTENSEN: Yes, with the sign-in wireless access. [LB1147]

BRENDA DECKER: And that's the point I'm making. We do not have complete coverage into every piece of the first, second, and third floors of the Capitol Building. [LB1147]

SENATOR CHRISTENSEN: But a year ago, I had no problems. [LB1147]

BRENDA DECKER: We probably need to come in and look then and see if you've got a problem with the access point. Sometimes they get unplugged, sometimes we have issues with them. [LB1147]

SENATOR CHRISTENSEN: But I can log on in the morning, I can log on after 5 or 6 in the evening, but I can't log on in the afternoon. [LB1147]

BRENDA DECKER: We'll come take a look. [LB1147]

SENATOR CHRISTENSEN: Thank you. [LB1147]

BRENDA DECKER: You bet. [LB1147]

SENATOR WIGHTMAN: Speaker Flood. [LB1147]

SENATOR FLOOD: Given the separation of powers, Ms. Decker, do you receive any money from the Legislature in providing services to the Legislature? [LB1147]

BRENDA DECKER: Absolutely. Yes, sir. [LB1147]

SENATOR FLOOD: How much do you receive from the Legislature? [LB1147]

BRENDA DECKER: I can't tell you on an annual basis. But all of your telecommunication services are purchased through our office. [LB1147]

SENATOR FLOOD: And our computer networks, are they...I mean we have our own Technology Division. [LB1147]

BRENDA DECKER: Yes, sir. [LB1147]

SENATOR FLOOD: And they don't report to you, is that correct? [LB1147]

BRENDA DECKER: That is true. [LB1147]

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SENATOR FLOOD: What is their role in comparison to yours at it relates to the Legislature? [LB1147]

BRENDA DECKER: They provide all of the actual programs and all of the actual databases that the Legislature uses. They manage the services that you use, and they actually provide all of the hardware that the Legislature uses. For the Legislature all that I provide is the network services. [LB1147]

SENATOR FLOOD: Could you get to me all of the funding provided to you by the Executive Board of the Legislature? And the reason I want to know that is you are ultimately responsible to the Governor, is that... [LB1147]

BRENDA DECKER: Yes. Yes, sir. [LB1147]

SENATOR FLOOD: And if the Executive Board of the Legislature makes a request, it's the Governor that decides what decision will be made. Is that correct? [LB1147]

BRENDA DECKER: That's my understanding, yes, sir. [LB1147]

SENATOR FLOOD: So if we...you know, this is an issue that's specific to us. And I don't know what my opinion yet is on where we need it or how we need it or who to offer it to, but as a separate, independent branch of government it seems that we should be in control of our own decision-making as it relates to issues related to computer interface. We have a separate e-mail system from the state. Is that right? [LB1147]

BRENDA DECKER: Yes, sir. [LB1147]

SENATOR FLOOD: I would like to know from your office what it would take to sever ties with your agency and work with the Executive Board, the Clerk's Office, and the Technology Division. It may not be practicable. But it seems to me that this decision was made by the executive branch and it influenced the legislative branch. And I have to believe that you did communicate with members of the legislative branch? [LB1147]

BRENDA DECKER: Yes, we did, sir. [LB1147]

SENATOR FLOOD: And who was that? [LB1147]

BRENDA DECKER: We actually communicated with the Clerk's Office. [LB1147]

SENATOR FLOOD: Okay. I'm familiar with that. Okay. Well, I'd like to know what it would take, and it may not be possible for us to do it in a cost-efficient manner, to run our own network and understand what that is. And then we would transfer the money from the CIO back to the Legislature, because I feel we've got pretty capable folks too

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that work for us in terms of our Technology Division. [LB1147]

BRENDA DECKER: And I would agree. I want to make sure that you understand that the Legislature doesn't give us funding as in here is funding to support the Legislature's network. We send you a bill for the services you consume on our network... [LB1147]

SENATOR FLOOD: Okay. [LB1147]

BRENDA DECKER: ...and then you pay our office. [LB1147]

SENATOR FLOOD: Out of our budget. [LB1147]

BRENDA DECKER: Out of your budget. Yes, sir. [LB1147]

SENATOR FLOOD: Okay. And that's what I figured. [LB1147]

BRENDA DECKER: Yes, sir. [LB1147]

SENATOR FLOOD: I think it's something we need to look at to be responsive to our members and to determine. If we choose not to do that, I think we'll have to interface. But the challenge here is that, you know, we shouldn't have to go to another branch of government to decide what access our members are going to have with their technology. This should be something we decide. And although you do a good job and I think you serve the state well, I think considering a separation would be something that would be at least something we should consider. [LB1147]

BRENDA DECKER: Okay. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Flood. Senator Langemeier. [LB1147]

SENATOR LANGEMEIER: Thank you, Chairman Wightman. And thank you for coming today and thanks for the meetings we've had over this for the last few weeks. Just to clarify a couple things. If we want to go back to where we were last year, and that's going to get to be the big discussion, where we had pretty good service on the first and second floors of the Capitol, that would require, you're talking that would cost us somewhere in that \$1,200 range to continue that,... [LB1147]

BRENDA DECKER: Yes, sir. [LB1147]

SENATOR LANGEMEIER: ...and turn the signal up... [LB1147]

BRENDA DECKER: Right. [LB1147]

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SENATOR LANGEMEIER: ...so then it again begins to work. You talked earlier about separating that service away from the state for some security and some other reasons. And you talked about 15 megabytes to do that, a bandwidth to do that. Can you do that and use the current access points that are located around the Capitol? [LB1147]

BRENDA DECKER: Yes, sir. That's what I would propose. [LB1147]

SENATOR LANGEMEIER: So you could separate us off, so that 15 meg is the \$1,200 I take it? [LB1147]

BRENDA DECKER: That 15 meg is the cost for the...or that \$1,200 is the cost for the 15 meg, yes. [LB1147]

SENATOR LANGEMEIER: So if we want to get back to last year, it's going to cost us 1,200 bucks a year? [LB1147]

BRENDA DECKER: Yes, that's the proposal. [LB1147]

SENATOR LANGEMEIER: And some authority for you to turn this on. [LB1147]

BRENDA DECKER: Exactly. [LB1147]

SENATOR LANGEMEIER: Got it. Thanks. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. Any other questions? Yes, Senator Flood. [LB1147]

SENATOR FLOOD: If we were to recapture, and could we, if we severed the relationship with your office, could we then...would we have to go ahead and condemn--that's not a good word--the infrastructure that you have and take it back into our branch or would we...or would that be something that we've already paid for with our service agreement? [LB1147]

BRENDA DECKER: As I remember, the cost for that access that was a cost...some of it was paid through our office, some of it was paid by the Legislature. So we would probably have to go through and divide the equipment back up and determine who paid for what. [LB1147]

SENATOR FLOOD: Or we could pass a law that you provide us an inventory and, you know, the Executive Board decides what that is and then we'll take it. I mean, we could do that, too, probably. [LB1147]

BRENDA DECKER: You're the Legislature, sir. [LB1147]

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SENATOR WIGHTMAN: Thank you, Senator Flood. Senator Heidemann. [LB1147]

SENATOR HEIDEMANN: I appreciate where Senator Flood is going with this, and I understand why he has that thinking. But I believe it was several years ago that we directed that every technology that had a cost to it had to go through the CIO, because we had instances in this place that people would go off on their own and it was costing us tens of millions of dollars to make everything work again. Is this correct? [LB1147]

BRENDA DECKER: Yes, sir, that is correct. [LB1147]

SENATOR HEIDEMANN: And I know where you're going, but I'm very hesitant to go there because I will tell you that she has done a very good job of making everything work. And where you're going there, I would have the thought then, why won't the Supreme Court, which is a separate branch of government, say the same exact thing? There's just...there's a lot of behind the scene things that have happened over the last several years that we put things in the CIO and it has worked very well. But I understand your point. [LB1147]

BRENDA DECKER: Thank you. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. Anyone else have any questions? Thank you very much for appearing here. [LB1147]

BRENDA DECKER: Thank you. [LB1147]

PATRICK O'DONNELL: Mr. Chairman, my name is Patrick O'Donnell. I'm the Clerk of the Nebraska Legislature, O-'-D-o-n-n-e-l-l. And I want the board to understand something. First of all, I understand the concerns that members have expressed. Okay? The decision you have to make today is whether putting a public access point is an appropriate use of state resources. That's your decision. I want to tell you that the relationship that the Legislative Council has had with Ms. Decker is probably the best working relationship that we have with any entity of government. Okay? They accommodate us in more ways than I can tell you and they save us a lot of money. They do things for us they don't do for other people. Senator Heidemann is absolutely right in terms of if we were to start thinking about, and certainly this is a policy decision for the Legislature, but I think you wouldn't like the numbers that you would see if you were to start thinking about doing that. And I just wanted to assure you that the work that goes on between the Legislature and the OCIO's office is...it's integrated, it's a good working relationship, it has worked really well. This was a hiccup in terms of what happened last year. Ms. Decker made a call based upon information that she had. We worked through it. I didn't anticipate nor understand how serious the issues were going to be when they developed. But again, the issue really is not so much what the

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relationship is between the Legislative Council and OCIO but whether you think putting a public spot is an appropriate use of state resources. That's really the issue you have in front of you. And I'm not here arguing either for or against that. The members, you make that decision. But I did want you to understand that the work that we have is in...it's a great working relationship. And I would hate to see that jeopardized in any way. [LB1147]

SENATOR FLOOD: I have a question. [LB1147]

SENATOR WIGHTMAN: Yes. [LB1147]

SENATOR FLOOD: Mr. Clerk, you can, as much as anybody, appreciate the interplay between the three branches of government and the interest that we would have as an independent branch of government as it relates to a relationship with the executive branch or the judicial branch. [LB1147]

PATRICK O'DONNELL: I'd like to think that's true, Mr. Speaker. [LB1147]

SENATOR FLOOD: And I have to believe you do think it's true. And nothing that I've said today disparages the work of Ms. Decker or that agency. But as the Speaker of the Legislature, I feel a duty to the membership that we all work with to be responsive. And in this case, I believe you see a situation where a decision was made in a separate branch of government that has had an impact on the legislative community, more so than on the executive branch by far. Would you agree with that? [LB1147]

PATRICK O'DONNELL: I would agree that there have been members that have been inconvenienced, Mr. Speaker, and inconvenienced to the extent that they have not been as efficient as they were accustomed to being. I don't want to say...I don't know what the impact has been on members of the executive branch, I couldn't tell you. I don't particularly have a concern about that to be very candid with you. But I guess I'm here in part...I couldn't begin to tell you what it would cost us to establish our own legislative network. And perhaps part of my reaction to this is what the Legislative Council has just gone through with budget considerations. You know, we converted the e-mail system in part because of budget considerations. God knows I've spent a lot of my time this summer accommodating, appeasing legislative staff who were concerned about that transition. And I just am concerned about sometimes when we...I think you need to consider all elements of any decision before you would move off in that direction, because that would be a monumental task and I'm afraid one that would be terribly expensive. [LB1147]

SENATOR FLOOD: I guess just to clarify if I may, Mr. Chair, my inquiry of Ms. Decker has been to request information so we could find out what we're paying, what the equipment is, so that we could make an informed decision, which I think is a necessary

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step in this process that has become much bigger than this bill. And I guess the second point, and this does have a question in it is, do we as the Legislature want to set up some understandings that before the executive branch can make a decision that impacts a separate branch of government, there should be at least an advisement to the Executive Board of the Legislature with an opportunity for us to decide if that's the right decision for us? And maybe that's an intermediary step so that, you know, as Speaker we're not taking inquiries from every member and the general public that come here and want to use the Internet. I think there is a way to deal with this and there is a process. But as it goes to separation of powers, do you see any value in that process? [LB1147]

PATRICK O'DONNELL: Absolutely. But I think, Mr. Speaker, that happens now. If there was a failure here, it might have been on my part. And I'm not...but seriously, because Mr. Brown and I, when we were approached by OCIO, knew that there would be issues with this. Okay? As I said to you before, I did not anticipate how significant they were going to be. I "misguesstimated" that. And you're right, that process of communication that goes on between our relationship with OCIO and things that happen, maybe I...we need to develop a process where I'm reporting to the board at your meetings regularly in terms of those relationships. [LB1147]

SENATOR FLOOD: And I don't think there were any personal failures here and I don't think there was a poor communication. I think the law is infirm as it relates to the relationship between separate branches of government. And I think if there's anything that needs to be done, the Legislature needs to spell out what our role is going to be in relation to services provided by the CIO to the Legislature. And, you know...I...and you advised me of this over the summer, I didn't think much of it because I don't use wireless Internet, you know. I'm just not...don't have an iPad. But, you know, obviously it is a big deal. So I'm just trying to think about how do we do this from the Legislature's perspective. Thank you, Mr. Clerk. [LB1147]

SENATOR WIGHTMAN: Thank you, Speaker Flood. Any other questions? Thank you, Mr. O'Donnell. [LB1147]

PATRICK O'DONNELL: Thank you, Mr. Chairman. [LB1147]

SENATOR WIGHTMAN: Any others wanting to address us in a neutral capacity? Seeing none, we will close the public hearing on...what? Oh, excuse me. [LB1147]

SENATOR DUBAS: I will be very quick. I couldn't agree with what the Speaker said more. What we're discussing in here today is way bigger than the bill that I brought to you. I brought this bill from the very simple perspective of this is a public building paid for by public dollars. I think we need to go back to what we had available last year and allow the public the access that we have. We pride ourselves on encouraging our citizens to be involved with our process, and it works. It works really well for us. And so

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that was my basic reason for bringing this bill, but I think there's been some very good dialogue in this committee which shows this is going to be an ongoing discussion. And we have opportunities to look at it in a much deeper fashion. My hope is just to flip that switch back on and give the public the access where they had it in the past. So I hope to be able to work with the committee, legal counsel, whoever wants to be involved to see what we can put forward for this session. [LB1147]

SENATOR WIGHTMAN: Thank you, Senator Dubas. Any questions? Thank you for your testimony. [LB1147]

SENATOR DUBAS: Thank you. [LB1147]

SENATOR WIGHTMAN: With that, we will close the public hearing on LB1147 and open the hearing on agenda item number two, LR358CA. Senator Carlson. [LB1147 LR358CA]

SENATOR CARLSON: (Exhibits 2 and 3) Good afternoon, Senator Wightman and members of the Executive Committee. I am Tom Carlson, spelled C-a-r-l-s-o-n, representing District 38, here to introduce LR358CA. I do have letters of support from the Farm Bureau and the Nebraska ACLU and would like at some point those distributed. In the year 2000, the voters on a ballot initiative passed term limits. And the first year that that really affected the Legislature was with the election of 2004 and then the session occurring in 2005. And there were nine new senators that came in with the election of 2004. Then with the election of 2006, so the session of 2007, there were 23 new senators. In 2009, there were 17 more; and in 2011, seven. If you add all those numbers up it's 56, which simply shows that over an eight-year period, because of other things that enter the picture, we'll have a bigger turnover than just the number 49. Now, bills were brought to change or do away with term limits before they even took effect, so we didn't see any impact of this at all until 2005. But in 2003, 2004, 2005, there were bills brought before this committee to do away or change term limits. They hadn't even taken effect. I think that's unfortunate, because I think that generates some opposition to our consideration today. There was another bill brought in 2009, and many of you on this committee heard that bill. I support term limits. I think it's good for Nebraska. The question is whether two terms or three terms is better for the citizens of Nebraska. Now what's good about term limits? With term limits and new people, there is new energy, there's new ideas, there's new enthusiasm, and it does prevent a career in the Legislature and LR358CA doesn't change that. But in my opinion what are the negatives of having two term limits? I think without question the executive branch is more powerful and has more influence. I understand why they wouldn't like to see this change. I think the lobbyists have more power and influence. I think our legislative staffs have more influence. I think political parties have more influence. Another reality is that with two four-year terms, our senators have little opportunity to take leadership positions in regional or national legislative organizations because time goes by too quickly. So I

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think this lessens the Nebraska influence on these organizations that many of us are members of. It is appropriate to revisit issues. And the statement is made: We voted on it once, that's good enough. It is appropriate to revisit issues. I'm convinced that the people of Nebraska will be better served by the possibility of serving three consecutive four-year terms rather than two four-year terms. I believe one of the results of such a move would be more contested races. The last election there were eight of us that were unopposed, and I was thankful I was unopposed. But I think for the overall good of the state, the more contested races that we have the better off the people are. So I think the people should have the opportunity to decide this issue in the 2012 election, and I ask for your consideration for advancing LR358CA to the floor for debate. With that, thank you for your time. I'll try to answer questions that you may have. [LR358CA]

SENATOR WIGHTMAN: Thank you, Senator Carlson. Senator Heidemann. [LR358CA]

SENATOR HEIDEMANN: I just want to make it clear probably for the public record more than anything else, when Senator Langemeier and I came in, I don't believe that we were affected by term limits whatsoever. Actually, the first class that was affected by term limits would have been in the election of 2006. There was just retiring senators when we came on board. [LR358CA]

SENATOR CARLSON: Okay, all right. So there were that many that for one reason or another did retire. Okay, thank you. [LR358CA]

SENATOR WIGHTMAN: Thank you, Senator Heidemann. I guess I think perhaps the 2005 class was affected because they were term-limited. So even though that was a small class, they were nevertheless term-limited and could not serve three terms. So I think you may be correct in that, Senator Carlson. [LR358CA]

SENATOR CARLSON: They are affected, yes. [LR358CA]

SENATOR WIGHTMAN: Senator Christensen. [LR358CA]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Tom. Senator, do you think that we have given the two terms enough time to work to see how it's going to affect? Won't that be a question of the people: Have we given it enough time? You and I being in the first class, having the opportunity to run again a third time, have we given it enough time to work out and see if it is the best? [LR358CA]

SENATOR CARLSON: I think that we have. And that's always going to be a question. If it wasn't now, and if it was four years from now, the same question would be asked. We really haven't had enough time. I don't think it matters when you revisit it, that same point will be brought up. If we go back to a ballot initiative, that's brought about by people signing petitions. And I don't know the history, but I don't think it had a thing to

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do with the Legislature. I don't think the Legislature had any impact, not that they should have. But how was two arrived at to begin with rather than three? So we're still talking about term limits and I have no desire to eliminate term limits. A lot of people have talked to me and said, we ought to just do away with them. But this is simply an adjustment. I think it's an appropriate adjustment, and I think it's an appropriate time to talk about it. [LR358CA]

SENATOR CHRISTENSEN: Thank you. [LR358CA]

SENATOR WIGHTMAN: Thank you, Senator Christensen. Any other questions? Seeing none...oh, wait. Senator Karpisek. [LR358CA]

SENATOR KARPISEK: Sorry. Thank you, Senator Wightman. Thank you, Senator Carlson. Would this...it wouldn't affect then sitting out a term and then being able to rerun as we can now? [LR358CA]

SENATOR CARLSON: The only change to existing law is a change of the word "two" to "three." Nothing else changed in existing law. [LR358CA]

SENATOR KARPISEK: Did you think about if we would, say, going to three, then that would just be it; preclude you from running again? [LR358CA]

SENATOR CARLSON: Well, I think there's two questions there, because one aspect would be to go to three four-year terms and a twelve-year maximum, period. Maybe that's not what you meant. And I think that we'd have quite a bit of opposition to that. This is simply an adjustment in something that I think is working pretty well, but I think it would work even better if we had the option of three four-year terms, and not to do away with it and not to put a limit on the number of years that a person could serve. That wasn't in that ballot initiative to begin with. [LR358CA]

SENATOR KARPISEK: Thank you, Senator Carlson. Thank you, Senator Wightman. [LR358CA]

SENATOR WIGHTMAN: Thank you, Senator Karpisek. Any other questions? Thank you for your testimony. [LR358CA]

SENATOR CARLSON: Thank you. [LR358CA]

SENATOR WIGHTMAN: Do we have other proponents? [LR358CA]

JERRY STILMOCK: Good afternoon, Mr. Chair, members of the Executive Board. My name is Jerry Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of three of my clients: the Nebraska State Volunteer Firefighters Association, the Nebraska Fire Chiefs

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Association, and the Nebraska Bankers Association, to let you know that we're listening, we're enthusiastic of Senator Carlson's LR and support it. We believe it would be helpful. And given the fact that what we have heard, our members, as well as those in the lobby of what's coming this 2012, it's kind of the same thing what happened several years ago when that first wave was going out, oh my, what are we going to do. We're going to do just fine because of the caliber of people that are going to be left behind, but we still believe three four-year terms would be best serving the public. Thank you. [LR358CA]

SENATOR WIGHTMAN: Thank you, Mr. Stilmock. Any questions? Senator Karpisek. [LR358CA]

SENATOR KARPISEK: Thank you, Senator Wightman. Thank you, Mr. Stilmock. And obviously we're going to hear, well, sure the lobbyists want the longer time. Can you refute that and say why; can you tell me, has it made your job easier with term limits or has it made it harder? [LR358CA]

JERRY STILMOCK: Well, number one, the preface is, not to wag my tongue too much because there's others behind me, but I enjoy what I do. And part of that is getting to know you and the other members of the Unicameral that are present in this room. I enjoy it immensely. But yes, instead of having that relationship with a cast of senators, then it requires more hours, frankly, more time to devote in order to get to know the candidates that are running for office. And it places us, me in a position where I have to devote that much more time to getting to know candidates on a more frequent basis. [LR358CA]

SENATOR KARPISEK: So I think what I hear you saying is we've heard that term limits give lobbyists more power, which I don't know that I agree with. It makes you work harder because there's the turnover but you have to try to get in front of everyone more often to try to get your agenda or your point across. [LR358CA]

JERRY STILMOCK: I agree with what you said. LB344 was up this morning. That was a huge issue in 2000-2001, after the constitutional amendment to look at the county-city mergers. There was a small piece of that bill that was worked extremely hard by Senator Wickersham and Senator Schimek. At the time it took several days to work out, and there was a compromise reached. And in that piece of history that I was interested in, I had to go around and make sure, to the members of the Government Committee, that I had to reiterate those positions back from 2000-2001. And, yeah, it just requires a little bit more effort to go around and make sure you touch everybody instead of maybe two or three on a committee. [LR358CA]

SENATOR KARPISEK: And I would also just like to point out we hear a lot about special interests. But when we talk about special interests, you mentioned you're with

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the Volunteer Firefighters? [LR358CA]

JERRY STILMOCK: Yes. [LR358CA]

SENATOR KARPISEK: So special interest isn't necessarily a dirty word. [LR358CA]

JERRY STILMOCK: No. [LR358CA]

SENATOR KARPISEK: And I think that everyone has special interests probably represented here. [LR358CA]

JERRY STILMOCK: I can't cite the person and the particular business trade, but if you would fill in the blank with, if you're involved in X, then you have a need to be lending an ear to what the Legislature does. Fill it in with banking, volunteer firefighting, EMS, plumbing, whatever your professional trade is you need to be involved, at least have an ear to what the Legislature does, sir. [LR358CA]

SENATOR KARPISEK: Thank you, Mr. Stilmock. Thank you, Senator Wightman. [LR358CA]

SENATOR WIGHTMAN: Thank you, Senator Karpisek. Senator Lathrop. [LR358CA]

SENATOR LATHROP: Just briefly, Jerry, and maybe I'm going to use you to make a point, which is in your experience or having been an observer and a participant in our process, do you think that it takes a period of time before senators become more independent of staff and more independent from and think for themselves more as against lobbyists, the executive branch, the parties? [LR358CA]

JERRY STILMOCK: Senator Lathrop, I would...I don't think I could ever say a senator does, but I think just the nature of the position. Think back...I'll use my own life experiences. Think back to that first time when I went to that new position, I relied on everybody from the proverbial, at the courthouse: Number one, you finished law school, where's the courthouse; and second question is, where's the courtroom; and the third question is, where's the rest room? And we all play that game. But so I think by the very nature of the newness of the position, let alone the policy decisions that the 49 of you make and are faced with daily, I think by the very nature of the newness of going into the position and then escalate it to the public policy issues that you're trying to decide, you have to rely on those different categories of folks or individuals or other government that you would tend to look at. [LR358CA]

SENATOR LATHROP: Okay. And maybe one other observation and you can confirm for me if this is true. It occurs to me in the time of term limits and when I talk to people that were here a long time ago, folks would, if they stayed as long as the voters would

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let them, they would cycle in and out of Appropriations. And so we'd have more than just the Appropriations Committee on the floor that knew something about the appropriations process. And that would be true with every single committee. [LR358CA]

JERRY STILMOCK: Agreed. [LR358CA]

SENATOR LATHROP: And now we have, it occurs to me, people park in a committee for eight years and then they leave, and they haven't...essentially the only people that know the ins and outs of Appropriations are the members of the committee. [LR358CA]

JERRY STILMOCK: I have a comment, but I know there's other people behind me, so I'll just hang on. [LR358CA]

SENATOR LATHROP: Okay, thank you. [LR358CA]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. Any other questions? [LR358CA]

JERRY STILMOCK: Thank you, members of the board, thank you. [LR358CA]

SENATOR WIGHTMAN: Thank you for your testimony. [LR358CA]

RON SEDLACEK: Good afternoon, Chairman Wightman and members of the Executive Board. For the record, my name is Ron Sedlacek, that's spelled S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce in support of Senator Carlson's LR358CA. Ever since the issue of term limits arose in Nebraska and from the very beginning the state chamber has had a policy position in opposition to the imposition of term limits. This has been a subject that has been around for a long time, prior to the enactment of term limits itself for legislators. Our board of directors were very clear and very much opposed to the imposition of term limits. And the most common phrase you always would hear were elections are term limits; no one is guaranteed any more than the four years they're elected to. We believe that term limits should be repealed. However, we would also be very supportive of Senator Carlson's bill as at least a step in the right direction and that is to provide for the opportunity for an additional term. We believe that's better for the state of Nebraska and its citizens. And I'd be happy to answer any questions. [LR358CA]

SENATOR WIGHTMAN: Thank you, Mr. Sedlacek. Any questions from anyone? Thank you for your testimony. How many more proponents do we have just for...thank you. I'll go on. How many right now would be intending to testify as an opponent of the bill? Thank you. [LR358CA]

ADAM MORFELD: Good afternoon. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, and I'm the executive director of Nebraskans for Civic Reform. Many of

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you probably are not familiar, since I don't appear before this committee, with what our organization is. We are a group of young Nebraskans dedicated to making our civic institutions more accessible and then also strengthening K-12 civic education. Most of our members and our board members are actually just young attorneys, so that's the viewpoint that I'll be providing today. I won't repeat anything that's already been said other than that our board talked about this at length. We feel as though that again there is already term limits before there were term limits, and that's called elections, and that term limits actually limit the citizens' ability to have the people that they want to represent them, represent them in the Legislature. So we feel as though that any way to mitigate that is the best route to go and we're supportive of that. And we believe that Senator Nelson's (sic--Carlson's) bill is a step in the right direction at least. In addition, you know, one of the other points that have been made is that, you know, it's important to also have institutional knowledge. And having the opportunity for senators to be around longer, as long as their constituents let them, gives them an opportunity to be more familiar with the state policy issues that affect Nebraska and gives them a more informed approach on those issues. So we think that that's important as well. The only point of contention that was in our discussions as a board was whether or not these term limits should be extended for current members of the body voting on it. Obviously, this is a constitutional amendment, so it would ultimately be voted on by the voters, but there was some talk about that. And a few members felt as though this should not affect or, in their words, benefit current sitting senators. Other than that, I'd be happy to answer any questions that you may have. [LR358CA]

SENATOR WIGHTMAN: Thank you for your testimony. Does anybody have any questions? Again, thank you. Any other proponents? Is there anybody wanting to appear in opposition to LR358CA? Anyone wanting to appear in a neutral capacity? Before I have Senator Carlson close, if he desires to close, we do want to make a record that we are accepting the Nebraska Farm Bureau Federation's written comments and the ACLU written comments as part of the testimony. Senator Carlson. [LR358CA]

SENATOR CARLSON: Senator Wightman and members of the committee, thank you for allowing me to present LR358CA today. And I didn't go into some other material, but it was kind of brought up in some of the testimony. And certainly if this is advanced to the floor, we'll be talking about the learning curve, we'll be talking about the process and learning it, we'll be talking about serving on committees, we'll be talking about leadership positions, and we'll be talking about the necessity of learning and becoming familiar with the issues. So I didn't go into these areas, but certainly I would in bringing the bill before the body. Thank you. [LR358CA]

SENATOR WIGHTMAN: Thank you, Senator Carlson. With that, we will close the public hearing on LR358CA and move on to agenda item number three, LR365, Senator Lathrop. Welcome. [LR358CA LR365]

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SENATOR LATHROP: (Exhibits 4 and 5) Good afternoon. Thank you, Chairman. Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12. I'm here to introduce LR365. And very briefly, since we're running out of time today, I just want to tell you that this is the extension of what we've generally referred to as the BSDC Committee. Last time, instead of extending it for the whole biennium, I came before the committee and asked that it be extended for one year, expecting fully that in one year's time we would be able to bring BSDC across the finish line, the finish line being the recertification of all five of the ICF/MRs or the units that are at the BSDC center, and that's not happened for obvious reasons. As we all know, there were assaults down on the campus in the fall and that has impaired the ability to recertify. We also continue to have problems meeting the requirements that the feds have in the consent decree. And for that reason, I believe it's important that the committee continue its work. We are also looking at issues relating to community-based services and to the waiting list are just three of the things that the committee continues to watch. We also receive a great number of calls from individuals who have concerns about the care their loved ones receive or the services they receive or don't receive. And probably the strongest argument I can make for this is a letter from Senator Campbell, Chair of Health, who essentially says we have our plate full; she would appreciate the committee continuing its work. And we have, to the extent we're able to, involved the Health Committee. We include them in our hearings or at least afford them the opportunity to attend so that we can begin that transition. But frankly, the Health Committee, which is working on child welfare, pretty much has its hands full and would appreciate the BSDC Committee moving forward. [LR365]

SENATOR WIGHTMAN: Thank you. [LR365]

SENATOR LATHROP: And I'd be happy to answer any questions. I also want to ask that rather than have The ARC testify, they have a letter here in support. [LR365]

SENATOR WIGHTMAN: Okay. [LR365]

SENATOR LATHROP: And I'll make that or I'll tender that as a part of the record. [LR365]

SENATOR WIGHTMAN: Thank you. Speaker Flood. [LR365]

SENATOR FLOOD: Are you currently constituted now technically or did that expire? [LR365]

SENATOR LATHROP: No, I think it expired. [LR365]

SENATOR FLOOD: When did that expire? [LR365]

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SENATOR LATHROP: At the end of the last session. So I think it went up through the end of the year or the beginning of this session, one or the other, I'm not positive. But we need the reauthorization if we're going to continue. [LR365]

SENATOR FLOOD: Do you think that we could, I mean, see what happens this session and set this for floor debate toward the end of the session? Is it possible that by the end of this legislative session we wouldn't need the special investigative committee? [LR365]

SENATOR LATHROP: No, I don't see that we are going to...let me tell you what we continue to do. We continue to have hearings as necessary. We're not spending any money. And we're monitoring several things. One is how we're doing in relationship to the consent decree with the feds. And that has to do with the Department of Justice and the agreement that we have with them that we'll make certain changes, most of which or all of which we thought would be done by now and they're not, reason for concern. The second is the recertification of all of the ICF/MRs at BSDC, and that hasn't happened yet. The third is the community-based services. And we have people, Mr. Speaker, that contact us regularly, and we as a committee would be happy to hand that off to the Health Committee if they had the capacity to do it. But right now I think it's important that we reconstitute the committee, and not as an indication of the Health Committee's failure or even the executive branch's failure, but just so that we can continue to monitor the situation and have some authority to meet as we need to. [LR365]

SENATOR FLOOD: Would this be the fourth year of the committee? [LR365]

SENATOR LATHROP: I think that's right. I think it was a two-year process when you established it the first time. This would be the third resolution. [LR365]

SENATOR FLOOD: And the only hesitation I have is we don't want to create what appear to be standing committees essentially. I mean,... [LR365]

SENATOR LATHROP: Right. [LR365]

SENATOR FLOOD: And this going on for four years as a special investigative committee, you know, obviously I think you certainly provide us reasons to continue it. Is this the right precedent for an investigative committee? Should it investigate, submit its investigation and wrap up, or should... [LR365]

SENATOR LATHROP: Two things make this unique. One is that the problem that we thought would be resolved within two years hasn't been resolved within three. And the other part that makes it unique is that the Health Committee is working on the issues relating to child welfare. And so we've essentially taken the Health Committee, made them one of these committees, and I'm happy to make the transition and we're trying to

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do that by including them in our hearings. And frankly, they're coming to the hearings, which is good. But as you'll see from the letter from Senator Campbell, she would appreciate it, just so that somebody can pay close attention to these details as we try to cross the finish line. [LR365]

SENATOR FLOOD: Could we contemplate the transition in the language, with an amendment in the language that says, on or before November 1, the BSDC Committee shall terminate and its responsibilities and the follow-up shall be charged to the existing Health and Human Services Committee? I don't know how invested I am in that. I'm just trying to figure how to... [LR365]

SENATOR LATHROP: Well, I think that we probably have...the language on the resolution probably has that it should continue... [LR365]

SENATOR WIGHTMAN: Until the beginning of the One Hundred Third Legislature. [LR365]

SENATOR LATHROP: Yeah, until the beginning of the next session. And, Mr. Speaker, we're happy to turn that full responsibility over to the Health Committee at an earlier point in time. And we don't necessarily need to have hearings next fall, unless the circumstances dictate. [LR365]

SENATOR FLOOD: Okay. [LR365]

SENATOR LATHROP: And so I would suggest that we leave it as is. [LR365]

SENATOR WIGHTMAN: Thank you, Senator Flood, Senator Lathrop. Any other questions? Thank you. [LR365]

SENATOR LATHROP: Thank you. [LR365]

SENATOR WIGHTMAN: Do we have proponents for LR365? Do we have any opponents of LR365? Do we have anyone wishing to testify in a neutral position with regard to LR365? Senator Lathrop, do you desire to close? [LR365]

SENATOR LATHROP: I'll waive. [LR365]

SENATOR WIGHTMAN: Okay. That will conclude the testimony on LR365. We will close that hearing and open on the public hearing on LR372CA. Senator Fulton, welcome. [LR365 LR372CA]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I represent Legislative District 29.

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This is LR372CA. Last fall, the Secretary of State requested an Opinion of our Attorney General regarding the meaning of one-half of a term as it is set out in Article III, Section 12 in our constitution. The primary impetus for the Secretary of State's request was the question of whether I would be eligible to run for election to the Legislature in 2012 and whether the Secretary's method of calculating one-half of a term was correct in its application to my case. The Secretary's method of interpreting one-half of a term, according to the Attorney General's Opinion 11005, is based upon a mathematical calculation from the number of days contained in the original term itself. In my case, I was appointed to the Legislature to complete the term of outgoing Senator, now Auditor Mike Foley, and was sworn into office on January 3, 2007. Senator Foley's four-year term ran from January 5, 2005, to January 7, 2009. Applying the Secretary's counting method, Senator Foley's four-year term was to consist of 1,463 days. My service, from January 3, 2007, to January 7, 2009, totaled 735 days. I therefore, according to the calculation, served more than one-half of a term by a matter of three days. I do understand the need to have a line between eligibility and ineligibility, however, I think that such a line should be clear and apply universally. Currently, that line is arbitrary as it is based solely on when the first Wednesday after the first Monday in January happens to occur on the calendar. Because this line is arbitrary, it has been applied differently to senators who are similarly situated and will continue to be applied differently going forward. Indeed, as the Attorney General's Opinion notes, two senators served partial legislative terms where the length of the original term measured by counting days was four years and two days. Both of those senators were elected to fill the partial term and both began their service on the first day of the legislative session at the midpoint of the original term. However, the partial term counted as a full term for one senator but did not for the other, solely because of the calendar dates for commencing their respective midterm legislative sessions. As our four-year terms are not measured based on serving exactly 1,460 days, but rather on the beginning dates of annual legislative sessions, I think it is appropriate that the definition of one-half of a term be similarly interpreted. LR372CA accomplishes this and applies the definition of one-half of a term that is fitting with how we interpret the meaning of a four-year term. Advancement of this resolution will have no effect on my inability to run for Legislature. My experience simply has informed me of the need to further refine this definition within our constitution so as to provide greater uniformity in the application of term limits and to provide clarity for Nebraskans going forward. [LR372CA]

SENATOR WIGHTMAN: (Exhibit 6) Thank you, Senator Fulton. Does anyone have any questions of Senator Fulton? For the record, we will include a letter in support from John Gale, Secretary of State. Do we have any other proponents? [LR372CA]

DALE COMER: Senator Wightman, members of the Executive Board, my name is Dale Comer, last name is C-o-m-e-r, and I'm an assistant attorney general with the Nebraska Attorney General's Office. I'm here to speak in support of this particular resolution that's been offered by Senator Fulton. As he's indicated, this would amend Article III, Section

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12 of the Nebraska Constitution to clarify what constitutes one-half of a legislative term with respect to legislative term limits. As he's also indicated, our office prepared an Opinion for the Secretary of State this last year in which we indicated that one-half of a term is calculated based upon the commencement of legislative sessions. The Secretary of State takes a different position and calculates the halfway point of the term based upon a numerical, mathematical calculation of days. This particular resolution and constitutional amendment would resolve that dispute by defining what constitutes half of a term. And we support the resolution because it would resolve the dispute and resolve the issue without the necessity for any sort of protracted and expensive litigation regarding the meaning of the constitutional provision at issue. So for those reasons we support LR372CA. Thank you. [LR372CA]

SENATOR WIGHTMAN: Thank you for your testimony. Any questions? Senator Christensen. [LR372CA]

SENATOR CHRISTENSEN: I guess I'm confused why you would divide it by days. If a term starts on the 5th one year and the 7th the next year, one term is over, one's started, who cares on the days, it's the service. I guess I'm surprised. [LR372CA]

DALE COMER: Well, Senator, I'm happy to say you agree with our conclusion on that. Thank you. (Laugh) To the extent that I think the Secretary of State's reading is the plain language of the constitutional provisions as one-half of a term. And so they measure the term by you start out on one day, you end it the next, you calculate the number of days, one-half...the plain language of that means one-half. So you divide that number of days by two and then you determine on that basis what constitutes half of the term. In our view, since you...I'll try to summarize the Opinion to some extent. You don't calculate the length of the term based upon four precise calendar years or totalling up the number of days and dividing by two. There's case law from our Supreme Court that indicates the term is the beginning of one legislative session to the beginning of the legislative session four years later. So when you use that method to calculate the term itself, it makes sense. A commonsense reading would say, well, the halfway point is the term...the beginning of a legislative session in the middle of those two dates. And so that's part of the reason that we concluded the way that we did. I think both ways to interpret this are probably supportable. I think, obviously, because of our Opinion, we agree that ours is better. (Laugh) But ultimately, the point is by defining this in the constitution then that resolves the problem, and it doesn't mean that someone is going to have to litigate this down the road. And I assume the way that would happen is they'd file papers with the Secretary of State, the Secretary of State would refuse to accept those, and then there would be some sort of a lawsuit which would grow out of that. And this would solve the need or do away with the need to file that kind of a lawsuit. [LR372CA]

SENATOR CHRISTENSEN: Thank you. [LR372CA]

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SENATOR WIGHTMAN: Thank you, Senator Christensen. Senator Lathrop. [LR372CA]

SENATOR LATHROP: I do have one and it's kind of a simple question, but a thought that occurred to me. Can we legislate a clarification of what a term is without resorting to making it a constitutional amendment? So that the Supreme Court, were that the case, or the Secretary of State, has a statute to define... [LR372CA]

DALE COMER: I think the better practice would be to do it by constitutional amendment. I'm afraid the court may well say we have to look at the intent of this. I think the court would likely say, we'll look at what the Legislature said, but we still have to independently determine what this constitutional provision means, and to do that we're going to have to examine the language of the constitutional provision itself. [LR372CA]

SENATOR LATHROP: But you agree that the court would at least look at a statute if we took it upon ourselves to define the term by statute rather than...here's my concern. If we put Carlson's amendment on the ballot and then we put this language, which I understand completely, but it looks like lawyer double-talk, the first Monday after the first Wednesday, do you follow me? [LR372CA]

DALE COMER: Right. [LR372CA]

SENATOR LATHROP: I just wonder if voters are going to go, no and no. And then now we have the voters turning down a definition of what a term is without ever getting it defined. [LR372CA]

DALE COMER: Well, I think as I understand the process of the amendment of the constitution, there are opportunities in the materials, the explanatory materials that are given to voters and so forth to say, here's the purpose underlying this. And hopefully some of those concerns could be resolved in that sense, so. [LR372CA]

SENATOR LATHROP: Okay. [LR372CA]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. Any other questions? Thank you again for your testimony. [LR372CA]

DALE COMER: Thank you. [LR372CA]

SENATOR WIGHTMAN: Are there any other proponents on LR372CA? Seeing none, are there any opponents? Is there anyone wishing to testify in a neutral capacity? Senator Fulton, do you...Senator Fulton waives closing. With that, we'll close the public hearing and we will adjourn. [LR372CA]