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Government, Military and Veterans Affairs Committee
January 20, 2011

[LB37 LB62 LB101 LB116]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 20, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB37, LB62, LB101, and LB116. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Paul Schumacher; and Kate Sullivan. Senators absent: Rich Pahls.

SENATOR AVERY: Looks like everybody is here and ready. Welcome to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I represent District 28. I am proud to say that you are in it now. Before we start with the agenda, let me introduce the members of the committee. Senator Pahls, who sits at the very end down here on my right, is from Millard. He is excused today. I don't think he'll be back before we finish our proceedings. And one of our newest members of the Legislature, Senator Lydia Brasch from Bancroft, is sitting next to Senator Pahls. Senator Janssen is coming in right now with his Mountain Dew. (Laugh)

SENATOR JANSSEN: Diet.

SENATOR AVERY: Senator Janssen is from Fremont. Seated next to him is Senator Scott Price from Bellevue. He is Vice Chair of the committee. To my immediate right is the committee counsel, Christy Abraham. Senator Karpisek is here. He'll be here in a few minutes I think. And next to him is Senator Kate Sullivan from Cedar Rapids. Next to her is Senator Paul Schumacher from Columbus. Our committee clerk is Sherry Shaffer. She is there to make sure that everything goes according to how we have planned it. She runs the light system. When the green light is on you have four minutes, and that tells you that you probably can get it all done in four minutes. If you can't, when the amber light comes on you have one minute to wind up. And when the red light comes on, we don't actually don't lower the hammer, certainly not on Senator Harms, but we'd...you might see me tap my watch and if you see my tap my watch that means the red light is on and you should be ending your comments. We're experimenting with the lights this year and see if we like it, and if we do we'll continue using them. It has been observed that we only get five minutes to speak on a bill upstairs so there should be no reason why people can't say what they need to say in five minutes. That rule, however, Senator Harms, does not apply to introducers, you can take as much time as you need, and that is a courtesy we extend to all introducers. The bills that we will take up today are posted outside the door on the wall and we'll take them up in order as they are posted, starting with LB37, followed by LB62 introduced by Senator Heidemann, and then LB101 by Senator Schilz, and then my own bill, LB116. If you plan to testify, we would ask you, in addition to observing our light system, we'd ask you to fill out this form--they are available at the door, I believe--and it asks for the bill number, the date, your name and address, things of that sort. Please print clearly so that the transcriber

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can read it. If you are interested in recording your support for or opposition to a bill but do not expect to testify, there is another form that you can fill out with your name, address, and indicating which bill you oppose or support, and you can just leave it over there at the entrance to the room. We have two pages, Danielle Henery from Battle Creek and Kyle Johnson from Sutton. If you have any exhibits that you want to have the committee look at, please give those to the clerk and she'll have the pages distribute them. One other thing: When you appear to testify, please spell your name clearly for the record so that there is no ambiguity or no doubt or confusion about who is testifying. That is for the transcribers because it is important that we get the record right. The introducers will make initial statements and they will be followed by proponents and then, after the proponents have had their say, opponents will be given an opportunity to speak, and then finally people who are in a neutral position. Closing remarks are reserved for the introducers only. Please listen carefully to prior testimony so that you don't repeat what has already been said. That helps us move things along in an expeditious manner. We are not interested in stifling debate. We're interested in full and fair debate. And so please understand that we are happy to have you here. We want to hear from you and we will treat you with respect and we are sure that you will do the same for us. If you have any electronic devices, please silence your phones or turn them off. Sometimes I think I have silenced mine and it's not actually, so turning them off is probably the best approach. With that said, we will now move to a hearing on LB37 and welcome Senator John Harms from Scottsbluff. Welcome.

SENATOR HARMS: (Exhibit 1) Thank you, Senator Avery and colleagues. My name is John N. Harms, J-o-h-n, N. Harms, H-a-r-m-s. I represent the 48th Legislative District. First, I'd like to just simply say that...thank you for giving me the opportunity to come and visit with you about LB37. I always appreciate having this opportunity. I presently am the introducer of LB37 and I've been the current Chair of the...I am the current Chair of the Legislative Performance Audit Committee, so I have a little bit of a background about some of what some of the issues are for the past couple years that we've run into, and so we're trying to clean some of this up. It makes it easier for us to be able to deal with the issues that you are asking us to look at and to review. So LB37 clarifies that when the Legislature Performance Audit Section or the Auditor of Public Accounts requests information during the audit, the audit agency is required and has been required, and we've been very successful with this, where they've provided this at no cost. Both the Performance Audit Committee and the State Auditor's Office believe that the current law does clearly identify that for us and that the costs should be born by the auditor, the audit agency. Because the Legislature has not been authorized to transfer such costs to the Auditor, there's been some question about who pays for what. And what LB37 simply does is it removes that doubt, removes that question or that concern of who has the responsibility to pay for the documents that we're asking for. The need for such legislation arose in a recent audit when the question was posed, who pays for these records? There was a little bit of disagreement over that aspect of it. And I believe that testifiers who might follow me can probably better speak to those details of that

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situation, but I want to talk to you...I want to give you the outline of the general principles behind this bill. You may hear from agencies or you may have already heard from agencies that say they don't budget the cost for such a review in their offices. Well, neither do the auditors. The Performance Audit Committee or the State Auditor's Office don't budget for it and it's almost impossible for us to budget for it. So allowing agencies to charge the auditors could potentially undermine all audit work by just simply pricing us out of the business, and I think that's the last thing we want to have done. I think we have to be transparent and I think the people want us to be efficient and effective, and you don't want these issues to cloud what we're trying to get to, to the information and the data, and then argue about who's going to pay for it. It just doesn't function very well and I think that needs to be dealt with. LB37 would also put into statutes that when either the Legislative Audit staff or the State Auditor requests information during an audit, the agency would have no more than four days to...business days to either provide the information or provide a detailed explanation of why this information will not be provided. Now the four business days is a standard that is the same standard that's used in the public access to records, so it's nothing new. People are aware of it. And what I think we have found, at least on the Performance Audit Committee, without having that identified for people it makes it more difficult for them when we start asking for this information and how quickly we have to have that kind of data. This actually sets the standard for that. If the request is too difficult and...or extensive to be completed in four days, which I can tell you it will be in some cases--we've already seen that--agencies simply must tell us, tell the Auditor or tell the Performance Audit Committee the earliest date they can get that information to us, but we're asking it not to exceed three calendar weeks unless agreed to by the auditor. What this does is puts the standards in there that tells the people that we're going to be auditing exactly what we expect and how quickly we want them to move on that, that aspect of it. And if you look at the bill, there's added language at the end of the paragraph, one of the paragraphs, that allows the auditor to agree to a period longer than three weeks for receipt of information from difficult or extensive requests. Now until I became involved in this, I didn't realize how important that was. Because what happens to us, if you go to an agency that's a small agency but your requests are fairly extensive or difficult for them to gain and to get this information put together, three weeks is just not going to work for them. But by law, we have no other way to go here and so we're trying to say to them we want to be able to negotiate with those people to make it easier for them and better for them and not upset their whole process here. The way it is now, it's difficult for us and we really shouldn't, and can't by law, negotiate with those folks and we want to be able to do that, at least on the Performance Audit Committee side of it, and that would be very helpful. There are some agencies, as I said, that are just too small and it is a burden on them and it makes it more difficult for them. What I try to do, when we get requests from my colleagues, such as yourself, we would like for you to review this and the Performance Audit Committee says, you know, we think we probably should review this, as soon as we make that decision I call and talk directly to the agency head and say: Hey, we are coming in; Martha Carter will be here very soon, will be at your office

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very soon; we want to talk to you about these issues; I don't want you to worry about it; if you have any problems, talk to us so we can work with you and help you work yourself through this particular issue. I just want to make sure we clarify this in law so we know that we have the right to do that, okay? The final portion of the bill would add language to the State Auditor's side of this issue. Currently, the Performance Audit Act contains a penalty for an agency that willfully fails to comply with the audit, in other words, just blocks everything you want to do, throws enough mud up on the wall. It just slows everything down and really will not work with the State Auditor or even...and so what this does is that it puts in...LB37 would make the same language to the state's...would add the same language to the State Auditor side that appears in the Performance Audit Act, which is if you do that it's a Class II misdemeanor. So it does put a responsibility at the end, puts a penalty at the end. Without that penalty, at least on our side we can do that, we know what that penalty is and they know that. I can't speak for Mr. Foley but I know that's got to be what people look at: Well, you know, we'll just throw as much mud up on the wall as we want here, if it sticks, fine; we're not going to do it because there's no penalty at the end. That's the tragic part of that aspect of it. Senator Avery, that kind of completes what I've got. I do have an amendment and we would like to add the E clause to this, which I think I passed out, because we have some things are just kind of hanging there that we need to deal with and address. So I'd be happy to answer any questions you have. Senator Avery, I would also like the privilege of closing today if I can. [LB37]

SENATOR AVERY: Okay. Thank you. [LB37]

SENATOR HARMS: Okay. [LB37]

SENATOR AVERY: Questions? Senator Price. [LB37]

SENATOR PRICE: Thank you, Chairman Avery. Senator Harms, did I hear...I want to make sure I heard crystal-clear there that this would put everything in line with the Freedom of Information Act? [LB37]

SENATOR HARMS: Pardon me? [LB37]

SENATOR PRICE: That this is the same periods of time that are required for the Freedom of Information Act. [LB37]

SENATOR HARMS: For the public records, uh-huh. [LB37]

SENATOR PRICE: Thank you very much, sir. [LB37]

SENATOR AVERY: Any additional questions? Senator Sullivan. [LB37]

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SENATOR SULLIVAN: Thank you, Senator Avery. And thank you, Senator Harms. [LB37]

SENATOR HARMS: You're welcome. [LB37]

SENATOR SULLIVAN: You always give such good opening statements. Who determines, when you said that if there is a request for information that the entity feels is too extensive, who determines if it's too extensive? [LB37]

SENATOR HARMS: They do. They simply say to us: This is too extensive for us, it's going to be a problem for us. So what our auditors do then, sit down and walk them through, looking at the issues, determining...helping them determine whether they can meet it or not. And sometimes what you find is if we come at a time where it's their peak time and they don't have enough staffing to get this, we have to be sensitive to that, because the last thing you want to go in is put fear into these people. You're here to try to find out if there is a problem and can we address the issue. So it works out very nicely, at least on the Performance Audit side, because that's the only side I can speak about, is that we sit down and work that out with them and try to see that. I think...I don't...in the two years that I've chaired this, I don't think I've ever heard from anyone that the Performance Audit was not willing to work with them. We're just trying to put it in law so that we're not violating...doing something we shouldn't do and people could take us to task for that. [LB37]

SENATOR SULLIVAN: Can you just, partly for my own information, clarify what precipitates an audit by the Performance Audit Committee? [LB37]

SENATOR HARMS: From you. [LB37]

SENATOR SULLIVAN: Okay. [LB37]

SENATOR HARMS: People identify...my colleagues, all of you sitting in here, I would say that...I know that there have been a number of my colleagues who submit every year concerns or complaints that they get. Sometimes it comes from the Chairs who are working with different agencies and they're beginning to pick some things up that says, you know, I don't think this is quite right, and they'll...we ask to have it done in writing and ask them to identify the specific issue they want us to look at, and then that is discussed at the Performance Audit Committee and the committee then decides whether they want to take that issue on or not or whether we have the right staffing problems. And if it's a huge issue and we don't have the staffing to do that, we may be talking with Mike Foley and have him work under our control to maybe go into those issues because we don't have the staffing to do that. [LB37]

SENATOR SULLIVAN: The first part of the bill outlines timing and cost... [LB37]

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SENATOR HARMS: That's correct. [LB37]

SENATOR SULLIVAN: ...and those both apply to Performance Audit and the... [LB37]

SENATOR HARMS: That's correct. Uh-huh. [LB37]

SENATOR SULLIVAN: Now the final part of the bill that require...talks about the type of information reply... [LB37]

SENATOR HARMS: It would be with the State Auditor. [LB37]

SENATOR SULLIVAN: Would you prefer I ask...hold my questions for... [LB37]

SENATOR HARMS: Sure, you can if you want or I probably can. I don't know if I can answer it or not, but you can ask him. If not, I'll be back up and... [LB37]

SENATOR SULLIVAN: Sure. [LB37]

SENATOR HARMS: ...will clarify anything that you would like to have clarified. [LB37]

SENATOR SULLIVAN: Okay. Thank you. [LB37]

SENATOR HARMS: These are all good questions. Do you have any others that you would like to ask? [LB37]

SENATOR AVERY: Senator Schumacher. [LB37]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Senator Harms, is it intended that basically the teeth in this Auditor's portion, in the last portion of the bill, is the criminal penalty? [LB37]

SENATOR HARMS: Yes, because without any penalty at the end you can have a tendency just to let this drift by and to stall as long as you want and frustrate everybody to the end, but there's no penalty at the end. Unless you have a penalty at the end, people in many cases may not step up and address the issue. But you'd have to ask Mr. Foley about that. I think in our case we already have it and so that's why things move fairly smoothly for us on the Performance Audit side. Now keep in mind the Performance Audit side is on the legislative side. We're your folks, that we are the people who deal with your issues, okay? It's for the legislative side to be able to do the investigations that we feel might be there, that might be something we have to address. [LB37]

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SENATOR SCHUMACHER: So if an administrator is a little reluctant to cooperate and he, at least in theory, violates the criminal provision, once he's done it once there's no additional enhancement of penalty for dragging it out. Should this be over a period of time? I know some statutes or some ordinances talk in terms of, and every such period will be an additional violation, because once you've said no and decided to roll the dice with the county attorney on prosecuting you under this, you know, there's no teeth there. [LB37]

SENATOR HARMS: That's something you could, as a committee, could decide if you'd like to add. I don't have any problem with that at this point. [LB37]

SENATOR SCHUMACHER: Okay. [LB37]

SENATOR HARMS: But the point I would like to make, if you have an administrator who does that, the administrator should be gone. I don't think you should keep him or her. I mean if you're going to violate that openly and block things, and then when you go in and you find out that there are irregularities in this, then I think the administrator ought to be gone. I don't think I'd want to work with the person in the future because you can't trust them then. Good question. Thank you for asking. [LB37]

SENATOR AVERY: Any more questions? Seeing none, thank you. [LB37]

SENATOR HARMS: Yeah, you're welcome. I just wanted to ask you one question. For those of us who are color-blind, how do we know which is red and green? (Laughter) You better do your clock with me. [LB37]

SENATOR AVERY: Start...green on the left. [LB37]

SENATOR HARMS: Because my wife dresses me every morning. [LB37]

SENATOR AVERY: Other proponents? [LB37]

SENATOR PRICE: Just like a stoplight. [LB37]

SENATOR AVERY: Yes. Welcome. [LB37]

MIKE FOLEY: (Exhibit 2) Thank you, Chairman Avery, members of the committee. For the record, my name is Mike Foley, F-o-l-e-y, Nebraska Auditor of Public Accounts, here today in support of LB37. I'll begin by thanking Senator Harms for offering this important and much needed legislation, and also thank him for his collaboration over the past two years as he has chaired the Performance Audit Committee. We have forged a very unique and important partnership that I think over time is going to pay enormous dividends to the citizens and taxpayers of Nebraska, so I thank Senator Harms for all of

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that. For my part, my office conducts about a hundred audits per year, and the length of an audit could be a few weeks, it could be a number of months, depending on the complexity of the agency and other factors. And I want to acknowledge Deann Haeffner of my staff, who does an extraordinary job of scheduling all of the personnel to make sure these audits get done and get scheduled and are coordinated to completion. She does a remarkable job. And as we initiate an audit, we never know how long an audit is going to take. I remember going into Wyuka Cemetery a number of years ago and telling the president of the cemetery we'd be in and out of there in three days, because it's a small operation. We were there for five months, and by the time we were done we had covered a very serious embezzlement. The president was removed; the board was shaken up; a lot of problems were exposed. So you just don't know when you start an audit what you're going to find and how complex it might be. And also you don't know the level of cooperation that you'll receive from the agency being audited. This is a contract signed by one of our state agencies with a private company here in Nebraska, boilerplate language, the kind of contract the state might enter into a thousand times a year. If a citizen on the street wanted a copy of this contract, they could have it. It's public record. They file a written request with the agency, they ask for this document, and within four business days they would either have it or they would have an explanation from the agency as to why it might take a bit longer. If it was a more complex request, they wouldn't get it in four days, might be a number of weeks. That's fine. But they would at least have something back in writing within four business days. But what if the State Auditor wanted that contract or what if the legislative auditor wanted that contract? Can we have it? Of course we can. Under our statutes we have access to all government records. But the statutes don't say when we get it, and that's the gap. The citizen on the street can get it in four days; the auditor will wait. And we do wait and in this case I got this contract, not 4 days, 40 days. After multiple requests, I got this contract 40 days after I asked for it. That blows a hole in all the scheduling that we're trying to do to coordinate a hundred audits. And when I got it, I flipped through it and it was obviously and immediately apparent that there were pages missing and the pages that were missing were the critical pages that talk about how much the state will pay for the services provided under the contract. That's the kind of attitude that some people have in state government toward the audit process. That's the kind of gamesmanship that goes on and that's what needs to be stopped with this bill. It's important to bear in mind that auditing is all about looking at events that have already occurred, transactions that have already been executed. We're not asking agencies to create brand new records for us or to speculate on what expenses might be. We're asking them to tell us about transactions that have already happened. Give us the records that already exist, that's what this is about, not creating new records. We simply want access in a timely manner to records that already exist. The bill provides, as you know, that we get these records; we are to get these records without cost, and that's the way it's always been. Over the hundred-plus years of history of my agency, my agency has never had to pay for access to records. It's always been understood that the Auditor gets to have that access without cost. What's brought this issue up is a particular

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agency that entered into a contract providing that if their contractor needed to produce records for the Auditor, that that agency would pay for the production of those records, and that agency is now trying to push that cost on to me. I'm saying, no, I didn't enter into that contract; you did; you told your contractor that you would pay if you ever needed those records; it's your issue, not mine. I'm almost out of time. I'll just stress that the penalty provision that's in the statute or in the bill, rather, simply mirrors the penalty provision that's already in the Legislative Performance statutes. If somebody willfully obstructs the Legislative Performance process, there's criminal sanctions. If they willfully obstruct the State Auditor process, there's no sanction. So it just puts my statutes in conformity with those. What if there are disputes beyond this that we can't resolve? I've got an amendment that would simply turn over the issue to the Attorney General for his guidance and review, and that's the way it works with the public records statutes. If somebody asks for a record that may or may not be public, it goes over to the Attorney General. So that's what this amendment is all about and it mirrors the public records statute. Thank you, Senator. [LB37]

SENATOR AVERY: Okay. Thank you. Questions from the committee? Senator Janssen. [LB37]

SENATOR JANSSEN: Yeah, Auditor Foley, thank you. Thank you, Chairman Avery. How much do you anticipate, if this were to pass, it would expedite your audits and help your scheduling? [LB37]

MIKE FOLEY: I think it would be an enormous help. We're finding more and more agency officials who are engaging in tactics to block audits, and if we had this statute it would be a great help to the audit process to expedite the whole process, produce more audits, have more oversight of government expenditures. [LB37]

SENATOR JANSSEN: Now, in your opinion, do you think when they're doing that, are they doing that because an audit is...it's a headache or does that raise...obviously, to me, that raises a red flag of... [LB37]

MIKE FOLEY: Well, it absolutely raises a red flag. The more push back we get, the more intent we are on getting to the bottom of what the issues are. It does raise a red flag and often those red flags are warranted, as we later learn as we do the audit. [LB37]

SENATOR JANSSEN: Thank you, Auditor. [LB37]

MIKE FOLEY: Thank you, Senator. [LB37]

SENATOR AVERY: So your experience is that when you get this push back, usually they're hiding something. [LB37]

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MIKE FOLEY: Well, yes, in a word, yes. [LB37]

SENATOR AVERY: Any other questions? Senator Sullivan. [LB37]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Mr. Foley, for being here today. First of all, what's in a...how do you schedule these hundred audits that you do and how much lead time does a particular agency have? [LB37]

MIKE FOLEY: Well, typically, we'll send them a letter and informing them that their agency will be audited, and sometimes we hear back from them and they present a certain set of facts about their schedule, legislative demands, whatever it might be, and we try to work with them to schedule things and we can make adjustments as is warranted. [LB37]

SENATOR SULLIVAN: And can they anticipate the...sort of the average cost of an audit so that they can plan for that in their budgets? [LB37]

MIKE FOLEY: Well, the cost to the agency is generally minimal. It might involve some photocopying... [LB37]

SENATOR SULLIVAN: Uh-huh. [LB37]

MIKE FOLEY: ...because, again, we're just asking for existing records. [LB37]

SENATOR SULLIVAN: Uh-huh. [LB37]

MIKE FOLEY: And all of my auditors now have portable scanners. We're using scanners more and more because more and more files are electronic, of course. [LB37]

SENATOR SULLIVAN: Uh-huh. Okay. [LB37]

MIKE FOLEY: So it may take some of their time, I'll admit that, because we have to ask them questions. [LB37]

SENATOR SULLIVAN: Uh-huh. I'd like to spend a little time asking about the latter part of the bill and the request for types of information. Are there any limits? I mean the bill says a request for information. [LB37]

MIKE FOLEY: Well, there are limits on the types of records that would be confidential records versus public records. The Auditor would have access to confidential records but he couldn't make those records public. They don't become unconfidential, so to speak, simply because I've had access to look at them. They remain confidential. They

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remain in our work papers and there are severe...there are restrictions against me from releasing my work papers and criminal sanctions if I do. [LB37]

SENATOR SULLIVAN: Under the public records statutes and limitations though, are there limits with respect to disclosing personal, private information, names, that sort of thing? [LB37]

MIKE FOLEY: Yes, there are restrictions on that and we respect the confidentiality. We deal with confidential records every day. If I'm auditing the Department of Revenue, I might be looking at tax returns. I have access to that but, obviously, I can't release it. That's confidential information. Over at HHS, I'm looking at Medicaid files which may have health records. That's confidential. It could never be released. And there are other examples. Personnel files are confidential, can't be released, but the Auditor still needs to look at them. Out at Department of Corrections, I might be looking at inmate files. Those are highly confidential records but if there's financial information within those files that I need to do the audit I still have access, and that's what the Attorney General has always ruled in his opinions. [LB37]

SENATOR SULLIVAN: So have you actually had some push back from agencies when you've attempted to get different types of information? [LB37]

MIKE FOLEY: Yes. Yes, just last year, Department of Corrections is an example. We had to go to the AG and get an opinion and the opinion was, yes, the Auditor can look at it but the record doesn't lose its confidential status. [LB37]

SENATOR SULLIVAN: But again, is there a process for protecting that confidential information from...okay, you say that you're liable for that. But in terms of the whole process of auditing, several eyes looking at things when it's private information, what sort of oversight is there? [LB37]

MIKE FOLEY: Well, my auditors are trustworthy individuals, just as the agency personnel are trustworthy individuals, and my auditors have the same obligation that they do to safeguard those records, and we've built in those kinds of controls to make sure that those records are held, that only a minimal number of people would look at it, only those who have a direct need to look at it, and the records would be protected, and there's never been a breach of confidentiality by the Auditor's Office, never. [LB37]

SENATOR SULLIVAN: Thank you. [LB37]

SENATOR AVERY: Thank you. Senator Schumacher. [LB37]

SENATOR SCHUMACHER: I have a couple questions on this enforcement language in the proposed amendment. It says that if the Attorney General decides that it's a

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legitimate request and they continue to withhold information, then the Attorney General will bring suit in the name of the state in the trial court of the general jurisdiction. Two questions there: Who is the suit against, the agency or some individual in the agency would you contemplate? [LB37]

MIKE FOLEY: I'm not an attorney so I'm not sure, but what we've done is we've lifted the language out of the public records statute. Those words are right out of the public records statute. We just pull them up and put them into the Auditor's statutes. So whoever it is that they would go after under the public records law would be the same person you go after under the Auditor statutes. [LB37]

SENATOR SCHUMACHER: And then would you contemplate that suit would be, since most of these would be, I take it, state agencies? Are you looking at some county agencies too or who does this...? [LB37]

MIKE FOLEY: Well, it could possibly be. I think the reality of the situation is having that on the books would solve the problem. I don't think you're going to see lawsuits and criminal prosecutions and so forth. I think just having the teeth on the books solves the problem. That seems to be how it works with the public records statute. I don't know of extensive litigation of the public records statutes. The Attorney General offers his opinion and that ends the discussion. [LB37]

SENATOR AVERY: Any additional questions? Senator Price. [LB37]

SENATOR PRICE: Chairman Avery, thank you. Auditor Foley, the question I have, and I believe it hopefully ties in with something that Senator Sullivan was alluding to, is in our LR542 process we see that there are statutory requirements for audits. These are audits, obviously, out of the field that you have in any given year are well known and well scheduled. [LB37]

MIKE FOLEY: Yes. [LB37]

SENATOR PRICE: And then there are the ones that come up due to... [LB37]

MIKE FOLEY: Yes. [LB37]

SENATOR PRICE: ...an action or a question that comes up. So the question I would have is can you put a percentage...would you say that 25 percent of your audits...or ballpark the number of your audits that are statutorily required and/or come on a regular basis that you do in each year. [LB37]

MIKE FOLEY: Yeah, there are quite a number of audits that are done every year either by statute or by necessity because of the size of the agency. The University of

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Nebraska, Health and Human Services, the state's comprehensive annual financial report, those have to be done every year. Then there are some smaller audits. The state lottery, by statute we do that every year. My office is actually audited every year by statute. Auditors from the Revenue Department come over and audit me every year. So it's...I don't know what the right number is but it's a pretty hefty percentage of the audit work that we do... [LB37]

SENATOR PRICE: Nearly half maybe you would say? [LB37]

MIKE FOLEY: That might be close, yeah, that might be close. [LB37]

SENATOR PRICE: All right. I think this just helps us... [LB37]

MIKE FOLEY: Yeah. [LB37]

SENATOR PRICE: ...to understand the size, what we're talking about here, what you're doing,... [LB37]

MIKE FOLEY: Yeah. [LB37]

SENATOR PRICE: ...because if we all know this is coming up, if an agency would know that there's an audit coming up and it's the same audit they've had for a number of years. Matter of fact,... [LB37]

SENATOR FOLEY: Yeah. [LB37]

SENATOR PRICE: ...in the LR542 process we're hopefully going to allow for a little streamlining there so we're not doing audits for the sake of audits that don't show change. But the planning purpose that you were talking about for costs of an audit should be well known. [LB37]

MIKE FOLEY: Yes. [LB37]

SENATOR PRICE: I just wanted to have that stick to the tape so we knew. [LB37]

MIKE FOLEY: Yeah, a good point. [LB37]

SENATOR PRICE: Thank you. [LB37]

MIKE FOLEY: Good point, Senator. Thank you. [LB37]

SENATOR AVERY: Any additional questions? Thank you. [LB37]

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MIKE FOLEY: Thank you, Senator. [LB37]

SENATOR AVERY: Any more proponent testimony? Okay, we'll move now to opponents. Anyone wish to testify in opposition? Mr. Castillo, welcome. [LB37]

CARLOS CASTILLO: Good afternoon, Mr. Avery, members of the committee. My name is Carlos Castillo, C-a-s-t-i-l-l-o. I'm the director of Department of Administrative Services. Thank you for the opportunity to testify in opposition to LB37 today. We do not oppose the provisions of this bill that would codify our current duties under the public records statutes. My opposition to this bill is based on the cost-shift provisions and to the enhanced criminal penalties imposed by the bill. I'd first like to spend just a few minutes talking about the cost issues. It's important to keep in mind that today the Auditor of Public Accounts funds his office and chooses his audits separately from each other. It is important that the integrity of the audit process, whether those audits are financial audits or audits pursuant to the Legislative Performance Act, be above reproach regarding financial incentives to audit. Both the Legislature and the Auditor of Public Accounts are required, just like each and every agency, to budget for their office expenses annually. LB37 provides unfettered and unchecked capacity to direct audits without regard to costs on an agency's budget. Currently, the Department of Administrative Services is undergoing both a Legislative Performance audit and a financial audit. Both are being conducted concurrently by Auditor Foley. There has never been an issue regarding costs until recently this past summer. As many of you know, the Legislative Performance Audit Committee requested the Auditor to conduct a performance audit on the state employees' health benefit plans. When the Auditor requested personal, confidential health information about each and every employee, I objected because my agency does not keep that information. When the Auditor said we had to make the information held by our insurers available, we learned that there would be a cost, a sizeable cost. We objected and continue to object, primarily because of the confidentiality of the information, the fact that we don't believe personally identifiable health information is appropriate for release or necessary to conduct an audit. We believe the Auditor can conduct his audit of health plans pursuant to generally accepted national audit standards and guidelines without this personal, confidential information. The state health plans are managed by a third-party administrator. In order for us to comply with LB37, the original request for this performance audit would have had us give access to over 1 million personal health records held by our vendor for the period in question. In addition, there would have been unlimited vendor personnel costs at the rate of \$100 per hour utilized in the course of this audit. The cost of this effort was conservatively estimated at \$75,000, which, by the way I'd like to remind folks, is 10 percent of our operating budget for this program. Our fiscal note further outlines this cost issue. Finally, I would also like to object to the increased penalty provisions contained in this bill. Under current law, any state official who violates the public records law may be deemed guilty of a Class III misdemeanor. Failure to comply with LB37 would result in a more severe Class II misdemeanor. This new sanction does seem

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unwarranted, given the criminal penalty that already exists. For those reasons, that is why I'm here today opposing the bill. I'd be happy to answer any questions. [LB37]

SENATOR AVERY: Thank you for your testimony. Questions from the committee. Senator Sullivan. [LB37]

SENATOR SULLIVAN: Thank you. Thank you, Carlos. So what was the outcome? You did not provide the information, I presume. [LB37]

CARLOS CASTILLO: I think we were one of the agencies that is not providing information, as was alluded to earlier, and would take a bit of a difference that because we've put up a red flag I don't think the implication is that there is criminal wrongdoing here. I think this comes down to should the State Auditor, in this case, have access to every employee's personal healthcare information. The Governor does not believe that is appropriate. We think there are legal questions surrounding that. The Attorney General has acknowledged there may be legal questions surrounding that issue. So it is yet to be resolved. [LB37]

SENATOR SULLIVAN: Oh, okay. All right. Thank you. [LB37]

CARLOS CASTILLO: Uh-huh. [LB37]

SENATOR AVERY: Senator Brasch. [LB37]

SENATOR BRASCH: Thank you, Senator Avery. Thank you, Carlos. The question I have is when you're an employee of an agency you sign confidentiality agreements. When I worked in Revenue, you basically say what is said here stays here, and other agencies as well. The federal government, in working, say, with Medicaid services, free and reduced lunch, they also have rules for HIPAA, FERPA on confidentiality and access of records where there is extremely fine print on who may...does this affect what we're talking about here? Is that information going from federal to state agency to agency, or is there some sort of an umbrella that covers? [LB37]

CARLOS CASTILLO: Well, we go to great lengths, since we manage, in one of our divisions, the employee healthcare plans, which cover about 30,000 people, including dependents and spouses. So there's a very limited population within that department that has access to that information. And in this case, we don't even house that information here at the state. We house that with a third-party provider just so that employees have that safeguard to know that their information is protected. We don't have it here. And actually, on our...all of our wellness documents, we put a line in there that says to employees, because we would hear this time and time again as we were talking about wellness, is that the state does not have access to your personal healthcare records. In our case, Blue Cross Blue Shield has access to those. So when

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the Auditor requested those documents, we don't have those here. We went to Blue Cross and that's when we entered this discussion about there would be a cost associated with them to produce those for us. [LB37]

SENATOR AVERY: Anyone else? Senator Schumacher. [LB37]

SENATOR SCHUMACHER: Thank you, Senator Avery. What specifically was there in the Auditor's request that led you to believe that he wanted specific individual records about someone's health and not data? [LB37]

CARLOS CASTILLO: Well, he requested the names of those individuals. [LB37]

SENATOR SCHUMACHER: He requested a million names? [LB37]

CARLOS CASTILLO: He requested every transaction that occurred in a one-year time period and any associated medical issue that was...that could be linked to that. So if John Smith went in and had procedure B, he would have had access to all of...a year's worth of that information. And we just think that's highly inappropriate, I mean not only for state government employees but for the employees that work in his own office. He would have access to the medical information of employees that work for him. I just think that if you think about it, that just is not appropriate. I mean so if you are an employee for state government and you're being treated for a mental illness, he would have access to that. His employees would have access to that information. It just...it is not appropriate and we think there are legal questions surrounding that. [LB37]

SENATOR SCHUMACHER: Could you make available to the committee the text of the request? [LB37]

CARLOS CASTILLO: I'm sure we have it still and we've been working...let me just back up a bit. We've been working with Senator Harms and I believe the Performance Audit Committee, subsequent to these conversations, has altered their request to eliminate the names. So the problem now is occurring that the Auditor has said, well, now I'm going to conduct a financial audit at the exact same time and I'm going to request this group of information on the financial audit. And he's doing the performance audit at the same time. They've eliminated the names on the performance audit side but now he's requesting information on the financial audit side that gives him the ability to link those two pieces of information together and still get to the same result. [LB37]

SENATOR SCHUMACHER: So are you inferring then that the Auditor just wants a list of names for what will...? [LB37]

CARLOS CASTILLO: I don't know. I mean it's never really been clear to me exactly what his intent here is. You can do a full...we've talked to professional after professional

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auditor who says you can do a full audit of the employee healthcare plans without ever having to know John Smith was being treated for condition X, Y, or Z. It's just not necessary. And we have no opposition to an audit. We just don't think that you need the names to do that. [LB37]

SENATOR SCHUMACHER: Of the part that's been resolved that...in the modified request, how long will it take you to get him that information? [LB37]

CARLOS CASTILLO: Well, we won't be releasing that information because it would result in the release of identifiable healthcare information because of what he's requesting on the financial audit side now, which are happening concurrently. [LB37]

SENATOR SCHUMACHER: How would he correlate the two? [LB37]

CARLOS CASTILLO: Not to get too technical but basically the pool of information that he's requesting on the financial audit side would allow him enough information to link it back to payments and payment dates on the performance audit side. So even though there are no names on the performance audit side, it would still have the end result. And in our entrance conference regarding the financial audit, we had that conversation that that could occur, so that's not a new concept. [LB37]

SENATOR SCHUMACHER: Any indication that's occurred at any time in the past? [LB37]

CARLOS CASTILLO: Well, this is the first time that the performance...it's my understanding that this is the first time the Performance Audit Committee has ever authorized the Auditor to conduct a performance audit on their behalf. And in the four years I've been here, I've never had a performance audit and a financial audit also conducted at the same time. [LB37]

SENATOR SCHUMACHER: There's no way you can shuffle the information so it would be impossible for him to correlate it, if that's the danger? [LB37]

CARLOS CASTILLO: Not that I'm aware of. [LB37]

SENATOR SCHUMACHER: Is there some person, a data person in your department, that can shuffle the deck so he couldn't figure it out? [LB37]

CARLOS CASTILLO: I think it's safe to say...the Governor has a very, very strong view of this and there's been no assurances that that could occur to the level that we would be satisfied with. [LB37]

SENATOR SCHUMACHER: I don't have any further questions. [LB37]

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SENATOR AVERY: I'm going to revisit that slightly or just briefly. Just for the record clarify this. Is it, in your professional opinion, entirely possible, feasible, maybe not easy but feasible to conduct that audit without the names? [LB37]

CARLOS CASTILLO: Absolutely. [LB37]

SENATOR AVERY: Okay. Any other questions? Thank you. [LB37]

CARLOS CASTILLO: Thank you. [LB37]

SENATOR AVERY: Are we still on opposition testimony? Anybody here from the university? Oh, Mr. Pedersen. (Laugh) [LB37]

JOEL PEDERSEN: (Exhibit 3) Mr. Pedersen it is. Good afternoon, Senator Avery and members of the committee. My name is Joel Pedersen, it's J-o-e-l P-e-d-e-r-s-e-n. I am vice president and general counsel for the University of Nebraska. I am here representing the university and my testimony today is in opposition to LB37. We are supportive of the Department of Administrative Services and concerns presented by Mr. Castillo, especially regarding the protected health information and, in particular, the duties the university has undertaken to protect sensitive and personal information, something our faculty, our staff, and our students are very passionate about. This bill causes us concern from a cost perspective. The university's fees for our federal single audit were \$90,000 in 2007, when the audit was done by an external, Big 4 accounting firm. The State Auditor performed this engagement for \$80,000 in 2008. But since that time the fees are now estimated at about \$116,000. These are estimated because the State Auditor uses a time-based billing system instead of a flat fee. The changes to Section 84-305 in the bill are also a concern. We're very much in favor of granting access to the Auditor and the Legislative Performance Audit Committee and have every interest in doing so. However, the changes in 84-305 may produce unintended consequences. As an example, our service providers often respond to an audit provision in our contracts by specifying related charges and rates to comply. Our vendors and contractors are business savvy and will certainly resist provisions where they may incur related expenses. This resistance is not intended to avoid access or audits but to recognize the potential for unexpected expenses. If there is no easy way to forecast and plan for any related expenditures, we do not want to invite our contractors and vendors and service suppliers to make unfavorable assumptions about unexpected costs. The unintended consequences here are potentially higher contracting costs when we go out to our service providers and vendors. Of course, the university has our own process costs, and while these may be a different kind of a cost of doing business, the access to raw data is rarely enough in an audit. It's different in a public records request. To provide responses takes care, consideration, and sometimes even significant time of the right person to respond. We have developed a process to improve this important

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function at the university and we will continue to do so. We believe we can best do this without a rigorous, one-size-fits-all time line and a penalty. For example, the university currently receives a request for working papers from the Auditor as part of our year-end audit. That's not a public record. Preparation of these materials takes a good deal of time and we do not believe that the four-day time frame makes sense in that situation. We are, as always, willing to work with the committee, the section, the State Auditor to achieve audit objectives in the most cost-effective and expeditious manner. But for the reasons stated above, we are opposed to this bill. [LB37]

SENATOR AVERY: Thank you, Mr. Pedersen. Questions from the committee? Senator Karpisek. [LB37]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Pedersen. If you object to the four days, is there an amount of days that you wouldn't object to? [LB37]

JOEL PEDERSEN: Well, I think what we object to is not the four days. It's just making the association that this is always like a public records request. Sometimes it is; sometimes it isn't. And so I think, you know, sometimes the expectation that you can do it within a day happens, too, that the turnaround is much quicker than four days. So we don't want to impose a four-day with the idea that we can have a safe harbor to wait if we can do it more quickly than that. And we are trying to be responsive in that. This is the Internet age. People expect to be able to go and, with a couple of clicks, get things right away, and we want to encourage that timeliness, too, but... [LB37]

SENATOR KARPISEK: But there must have been a reason why Senator Harms brought four days because somebody must be stonewalling. [LB37]

JOEL PEDERSEN: Well, I hope it's not the university, and if that's the perception here, that's not...that's not why I'm here. I hope we're one of the good guys and that we're being included in a provision that may be aimed at some other issues but may have unintended consequences on us. You know, for our purposes, the big issue that came up was the protected health information and, like the state, the university went to a great deal of cost and expense to get this out to a third-party administrator. You know, nobody has mentioned it but HIPAA is a big deal. It's a federal law. We've approached that in a way that respects our...the sensitive nature of that information and we get that to our third-party administrator to comply with HIPAA as well. [LB37]

SENATOR KARPISEK: Okay. Thank you. Thank you, Senator. [LB37]

SENATOR AVERY: Are you suggesting the university always responds promptly to requests for information? [LB37]

JOEL PEDERSEN: We do our very best, and if we have not met that expectation

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always, we are on a continuous improvement program to do so. [LB37]

SENATOR AVERY: Good. Keep working at it. (Laughter) Senator Schumacher. [LB37]

SENATOR SCHUMACHER: Thank you, Senator Avery. The four-day requirement, as I thought I understood it before, is a snap to get it up to three weeks just simply by requesting it. [LB37]

JOEL PEDERSEN: Sure. [LB37]

SENATOR SCHUMACHER: And have you ever had any particular difficulty with the Auditor's Office and them responding reasonably if you needed an extra week or two in order to get something done? [LB37]

JOEL PEDERSEN: No, and again, I don't think the interaction that we've had with the Auditor is the issue here. I think it really is kind of just making it too much like public records when it's apples and oranges. Also the Performance Audit Committee, to me, is an entirely different role. They don't do regular audits. Everything at the Performance Audit Committee is ad hoc, and there's regular audits that are done by the Auditor of Public Accounts. So it's, again, that one-size-fits-all kind of problem. And, you know, I think...hopefully the university at least has been working with both the Performance Audit Committee and the State Auditor so we get these things handled in a conversational way where we don't need the rigor of a time line and an assumption and then a built-in penalty. [LB37]

SENATOR AVERY: Any other questions? Yes, Senator Brasch. [LB37]

SENATOR BRASCH: Senator Avery. Mr. Pedersen. [LB37]

JOEL PEDERSEN: Yes. [LB37]

SENATOR BRASCH: I'm curious. When we're talking about records here, these are electronic records. The Auditor is not asking for paper. Do...or yes, no, combination thereof? [LB37]

JOEL PEDERSEN: (Laugh) Generally, yes. I think the Auditor has access to real-time financial data on the SAP system so... [LB37]

SENATOR BRASCH: Okay. So the four days is... [LB37]

JOEL PEDERSEN: Yeah, generally, I don't even think we see a request for that,... [LB37]

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SENATOR BRASCH: Okay. All right. [LB37]

JOEL PEDERSEN: ...that kind of information. [LB37]

SENATOR BRASCH: Very good. [LB37]

SENATOR AVERY: I don't see any more questions. Thank you, Mr. Pedersen. [LB37]

JOEL PEDERSEN: Indeed. [LB37]

SENATOR AVERY: Any more opponent testimony? We're on LB37. Mr. Austin, are you trying to get my attention? [LB37]

JOHNNY AUSTIN: Beg your pardon? [LB37]

SENATOR AVERY: We're on LB37. [LB37]

JOHNNY AUSTIN: Oh, I guess it's LB116 I want to testify on. [LB37]

SENATOR AVERY: All right. That's last. [LB37]

JOHNNY AUSTIN: Yeah. Thank you. [LB37]

SENATOR AVERY: Okay. All right, seeing no more people to testify against, I'm going to ask for neutral testimony. I have one person. Welcome, Mr. Herz. [LB37]

DON HERZ: (Exhibit 4) Good afternoon, Senator Avery and members of the Government and Veterans Affairs Committee. My name is Don Herz, last name is spelled H-e-r-z. I'm the finance director for the city of Lincoln. Thank you for the opportunity to testify. I'm here today to speak in a neutral capacity with respect to most provisions of LB37. While it appears the focus of the bill is to ensure access to information and records of state agencies that are subject to the audit and review by the Legislative Performance Audit Section and the Auditor of Public Accounts, the bill does affect local governments as well. As you know, the Auditor of Public Accounts has the authority to perform financial audits as well as other types of audit engagements of local governments. We are primarily concerned with the new language in subsection (2) of the statute, which is Section 4 of the bill, and the new language in Section 5 of the bill. Page 27 outlines the general rules for responding to the Auditor's request for information. We would have four days to respond with a possible extension up to three weeks, unless the Public Auditor agrees in writing to an even longer time frame. I assure you that here in the city of Lincoln we attempt to respond immediately to requests for information from our auditors, whether it's the CPA firm that's conducting our financial audit or the Auditor of Public Accounts who may be conducting a special

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audit engagement. It is in our best interest to do so as we generally are responsible for paying for these auditors, whether they be private or the Auditor of Public Accounts. As we all know, time equals money and we recognize that delay will only add to the costs of completing the audit. Occasionally, we do have to advise our auditors that a request for certain information may not be available for a day, a week, or perhaps a few weeks. The reason for the delay--because the information is currently being compiled by one of our departments or perhaps we need to get the information from an outside consultant, such as an actuary or an engineering firm. In our experience, our auditors have been able to work around these timing issues and we have supplied the information as soon as practical. In the meantime, our auditors generally have other work that they can continue to perform until their request is fulfilled. We have no doubt that we have a...that if we had a similar circumstance arise with the current Auditor of Public Accounts, we would work through the issue. We appreciate the language on pages 27 to 28 which allows the Public Auditor to extend the three-week deadline because of significant difficulty or because of the extensiveness of the request. And again, we are confident that we would be able to work with the current Auditor if the need for an extension arose. Our testimony today is in no way meant to imply we anticipate a problem with the current Auditor or his staff, but we have no guarantees that we will have the same confidence in the future with a future Public Auditor. This caused us pause, particularly when considering the criminal sanctions outlined on page 28, which we believe to be inappropriate. We understand that the criminal provisions speak to "willful failures to comply" and "willful obstruction or hindering." But the risk that a disagreement with the Auditor of Public Accounts over the extensiveness of a request could rise to the level of criminal sanctions is very concerning. I assure you that we do not take our responsibilities as public stewards lightly and we certainly never want to find ourselves in the position of facing criminal sanctions based on such disagreements. We can envision a situation where a city or other audited entity has a disagreement with the Auditor of Public Accounts as to the scope of his or her authority, a disagreement over which responsible minds could differ. In such situations, the audited entity has no recourse or appeal. It essentially has to turn over the information within the time frames outlined in the bill or risk criminal prosecution. It just does not seem right to subject someone to the risk or threat of criminal prosecution based on what could be characterized as an unreasonable request. And I would also want to briefly note our concern with the language on page 27, lines 6 to 9, which requires that the requested information be supplied without fees or charges to the Auditor. We can also envision situations where the Auditor may request information that could only be provided by hiring an outside consultant, such as an actuary or professional engineer. With this language, these expenses would have to be borne entirely by the city and could be significant. We believe this, too, is inappropriate. So with that, I want to thank you again for the opportunity to testify and would be willing to answer any questions that you may have. [LB37]

SENATOR AVERY: Thank you, Mr. Herz. Questions from the committee? Senator

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Schumacher. [LB37]

SENATOR SCHUMACHER: Thank you, Senator Avery. A couple of them: You just mentioned that you may have to hire an outside consultant to provide the information. It was my understanding from earlier testimony that the Auditor only asks for stuff already in-house and not for the generation of new information. Is that not the case? [LB37]

DON HERZ: That's generally the case. I could envision where an Auditor may disagree with the way we've prepared our actual report or assumptions and ask us to recalculate it on a different basis, and obviously that could add expense, even though we originally prepared it in conformance with generally accepted accounting principles. So I think that maybe is our concern, that we would get requests to. Another example would be, you know, construction accounting. There's more than one way to calculate completed construction contracts and different methods of valuing inventory. So those are the... [LB37]

SENATOR SCHUMACHER: Well, do those requests ask for calculations, you know, recalculate, or just the data from which anybody can do their calculations any way they want to? [LB37]

DON HERZ: Well, I think it would...I think there would have to be recalculations, especially if it came to an actuarial report. We would, you know, we don't have the ability to do that but have to hire that, hire an actuary to make those calculations. [LB37]

SENATOR SCHUMACHER: But if the Auditor gave you the data in your file, then he could do all the calculating he wanted at his expense. [LB37]

DON HERZ: The Auditor could do the calculations? [LB37]

SENATOR SCHUMACHER: Yeah. [LB37]

DON HERZ: I don't believe so. [LB37]

SENATOR SCHUMACHER: Why is that? [LB37]

DON HERZ: Well, I think...I think to make a calculation of the pension liability is generally, you know, I'm certainly not capable of doing that. I think it's generally done by an actuary. [LB37]

SENATOR SCHUMACHER: Based upon some data that would be in your possession? [LB37]

DON HERZ: Correct. [LB37]

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SENATOR SCHUMACHER: Okay. If in the future we would look at a situation where you might have some arbitrary and capricious auditor who was making all kinds of willy-nilly requests, would that problem be solved if we simply had a provision in here that allowed the affected agency to bring a summary action to the district court and have the burden of proof showing the Auditor to be off-base? [LB37]

DON HERZ: I think that would help solve that issue. [LB37]

SENATOR SCHUMACHER: I have nothing further, Mr. Vice Chairman. [LB37]

SENATOR PRICE: Thank you, Senator Schumacher, and thank you. Are there any further questions? Seeing none, thank you, Mr. Herz. [LB37]

DON HERZ: You bet. [LB37]

SENATOR PRICE: Are there any other testimonies in neutral, just to make sure we got that one clarified? (Laughter) If not, please, Senator Harms. [LB37]

SENATOR HARMS: Thank you very much. Let me give you just a little bit of background so you can kind of find out where at least the Performance Audit Committee is coming from. We've had a lot of...a number of complaints in regard to our health insurance and the costs by our colleagues, okay? Our health insurance for married, for family insurance is the highest in the nation. And the fact that we were looking for a way that we could maybe even help ourselves be more cost-effective and efficient when we started to look at this particular issue, Mr. Foley also indicated that he would like to join with us in regard to doing an audit on this aspect. Our staffing, it would be impossible for us to go and do that with Performance Audit. We just don't have enough people to be able to do that, and so we worked out an agreement with him where he would be under our...for that part of the performance audit, that he would be under our rules, our regulations, and our policies. And I find it rather interesting that in the Web page...on the Web page for Administrative Services that Mr. Castillo has the responsibility for, if you go look at it, unless they've recently changed it, it says very clearly to all the staff and to all the people that in an audit they will have access to your public records. I brought that up in a conversation with him when we met about this particular issue. So we've said to the public and to our staff that you will have access to that, and as soon as this started to appear, that we had some interest in this whole process, the first thing that came out from Administrative Services, well, it's a violation of HIPAA. They're not going to violate HIPAA. It's a federal law and the penalties for that are severe. So why would any auditor want to violate HIPAA? It would be nuts. It just doesn't work. And so, because we couldn't get any clear answer on the HIPAA aspect, my staff, I think along with maybe Mr. Foley's staff, had a phone call with the federal government that said they have access to the audit data and it is not going to be a violation of a HIPAA responsibility.

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What you have here, to be very frank with you, I think is that people just don't want to deal with this issue. I don't think we're going to be in violation. I don't think anyone is going to try to track back whether or not you have cancer or whether or not you had some type of treatment. What they're trying to get to is the cost. And not only that, they're trying to get the simple fact is that do we have anybody on our insurance plan that doesn't belong there and how much is this costing us and why do you have the highest insurance cost in the nation by a long ways? That's the concern that I have and somehow we have to be able to get to that. Now I'd be happy to work with Carlos and anybody else if we can get to those figures and we can have that analysis, because I think the taxpayers deserve it. I also think that you deserve to have this. And I think what you've seen here is exactly the frustration that we have gone through by putting all these little issues in here. I mean this is the first time I've heard it's going to cost them \$75,000 to do this. Come on, folks. Why didn't you bring that out at the very beginning? So what I'm saying to you is this; that we have to find a solution to this issue because I think it's important enough to say to the public and to say to our colleagues this is why the insurance cost is so high. And I don't think you can continue to pay that kind of...amount of money in the future. I'm not being critical of anyone. I'm just telling you these are some of the issues we have. So when you see all these things come up you have to ask yourself, I'm getting all this push back for what reason? Am I getting this push back because there may be something irregular in here? I don't know that. I don't have any idea whether there is, but I sure don't want to let it go by if there is. And I'm not saying that there is, but when you see that sort of thing you have to ask yourself what's really going on here. What's the real reason behind this? With the State Auditor, when he came under our rules and regulations, he indicated then, and we said to him very clearly that we do not want the names of the people revealed, we do not want you to have access to the names, and he agreed to that aspect of it. Now what he does in his auditing side I don't know, but this is a difficult question and issue and I think what you're going to find is you're going to set the stage this year for whatever happens in the future. So the question is, do we want to have audits or do you not want to have audits? Do you want to have transparency or do you not want to have transparency? Do you want to be efficient or not efficient? Do you want to know whether there's fraud or no fraud? I don't know. But that's what this is about for me. And so I'm just really saying to you is that whatever we decide to do here, if we want to rethink this and go back over that, we can do all that, but it still comes back to the same thing. How do we get to the information, how do we get to the records that's best for the state of Nebraska and for our colleagues and for Performance Audit? I can't speak for Mr. Foley. I can only speak for Performance Audit. But that's what I see happening here. And so, you know, we'd be happy to continue to do it, continue to work at it, but somewhere along the line you just...you got to get to the issues. And if there's a better way to do this, then they need to show us. They need to reveal that so we can look at that and address the issue. But I think the audit has to go forward in some form or manner. That's where I'm from. So I'd be happy to answer any questions and thank you for your time. I know you guys have others coming up so... [LB37]

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SENATOR PRICE: Senator Sullivan. [LB37]

SENATOR SULLIVAN: Thank you, Senator Price. And thank you, Senator Harms. When you first started your comments at this closing, you said the individual employees' public records. Did you mean to say private or public? [LB37]

SENATOR HARMS: No, I didn't say anything about their records, did I? [LB37]

SENATOR SULLIVAN: Or public information with... [LB37]

SENATOR HARMS: Public information. I don't know for sure what you're saying so...yeah. (Laughter) [LB37]

SENATOR SULLIVAN: Well, I mean I was just trying to...I didn't know if you misspoke or, I mean, because of... [LB37]

SENATOR HARMS: I probably did. (Laughter) [LB37]

SENATOR SULLIVAN: Well, I mean, you know,... [LB37]

SENATOR HARMS: That's pretty typical for me. [LB37]

SENATOR SULLIVAN: ...when it comes to health information,... [LB37]

SENATOR HARMS: Yeah, (inaudible) the health information. [LB37]

SENATOR SULLIVAN: ...it probably means a pretty big deal because, you know, you want to check my mileage log, fine. You want to check my personal information about some...a health condition that I have? That's a whole different level of information. [LB37]

SENATOR HARMS: Yeah, we're really not...I can't speak for Mr. Foley. We're really not after that aspect. We're after the cost of the factor of what it's all about. [LB37]

SENATOR SULLIVAN: Okay, and that would be my second question is that when you compile all this information, you've made the assumption that that will give you an indication of whether or not you can lower the health insurance premiums. Do you know that for a fact? [LB37]

SENATOR HARMS: No, it gives us an assumption. It might give us an assumption where the problems might lie, and then you have to go back to collective bargaining, to all those issues. But it does then tell us what our problems are. Now you can argue the

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fact that your costs are up because you have older people. Well, I don't know that. How many older people do you have? I'm old and I know my costs are up because of my age. So am I answering your question or... [LB37]

SENATOR SULLIVAN: Well, yes, but I'm just... [LB37]

SENATOR HARMS: ...am I just talking around it as a typical... [LB37]

SENATOR SULLIVAN: ...I think it's, to make the assumption that this information across the board will be helpful and it's public information, yes, but what I'm saying is that when you deal with health information it's almost a different level. [LB37]

SENATOR HARMS: Yeah, it is, but we're under the HIPAA regulations and rules so we can't violate that. You'd be crazy to violate it. You'd have the feds down on you immediately. So the point is, if you see that information, know that it wouldn't have the names related to it at all. It starts to tell you a little bit of a story about why your costs are higher and whether you have people on it that shouldn't be on it. I don't know but somewhere in Nebraska has to analyze this aspect of your insurance cost. I mean it's staggering. So whatever the answer is and whatever you want to do here is fine. Just let us know. We want to bring it out, we'll keep working towards it and we'll try to find a solution to address the issue. [LB37]

SENATOR SULLIVAN: Thank you. [LB37]

SENATOR HARMS: Uh-huh. [LB37]

SENATOR PRICE: Senator Schumacher. [LB37]

SENATOR SCHUMACHER: Thank you, Senator Price. Senator Harms, I think we all sense the request and the blowback, and apparently the issue that is evolving out is do you need the names, are you asking for the names, do you want the names? [LB37]

SENATOR HARMS: No. We don't want the...as far as Performance Audit Committee, we don't want to know the names. We don't want to even know who the people are. I mean this is what we've asked our Auditor to do. We've asked him to abide by that and he has agreed to do that. Now whether he can get that on the other side, the fiscal side, I'm not an accountant, but he might be able to. I hope not. So that's where we need to just sit back and find somebody to bring us to the middle of the road and get this thing dealt with, because that's where it's at, and I'm hoping that this discussion will start that again. We've got to find a solution to it. If not, I think it has a real impact on whatever happens in the future. And I think this is important for our legislative side, to make sure that we can get to the information that we need to get to as long as we don't violate their rights, as long as we don't violate HIPAA. We have no reason to do any of that. And the

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last thing the Performance Audit Committee wants to know is who you are. [LB37]

SENATOR SCHUMACHER: I don't have any further questions of Senator Harms, but is it...and I'm a novice here, of course--is it...would it be improper to ask the Auditor to address some of these issues? That's improper? [LB37]

SENATOR SULLIVAN: Can't do that. [LB37]

SENATOR SCHUMACHER: Okay. That's all. [LB37]

SENATOR PRICE: Senator Brasch. No? With that, I guess, Senator Harms, you're off the hook for that. Thank you very much. [LB37]

SENATOR HARMS: Well, thank you very much. Sorry we took so much of your time. [LB37]

SENATOR PRICE: No, thank you. And I'd like to read into the record that we do have a letter here from Bruce Rieker, the vice president of advocacy for the Nebraska Hospital Association, and that they oppose LB37. (Exhibit 5) And with that, it closes the hearing on LB37. We'll move forward to LB62. Senator Heidemann can make his opening. [LB37]

SENATOR HEIDEMANN: Vice Chair Price, members of the Government, Military and Veterans Affairs Committee, I am Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, representing District 1 in the southeast corner of the state. I'm here today to introduce LB62. A county board cannot eliminate an office or unduly hinder a county officer through a budget revision. LB62 places the responsibility on an office or department, that is negatively affected by a budget revision, to prove that the revision is arbitrary, unreasonable, or capricious. The county board would consider all budget revisions when determining the priorities of the county government, and their decisions could not be overturned by the district court unless there was clear and convincing evidence that the action of the board was not in the best interest of the county. As I understand, in the past the burden was on the official or the department to show that the budget cut was unreasonable. The Wetovick v. County of Nance case changed this, placing the burden, instead, on the county board of commissioners to show a preponderance of evidence that the salary set by the official is unreasonable. LB62 would just revert it to the way it has been in the past, prior to the 2010 court case. The statutes state that the county boards are to set the budget, Section 23-1114 states that the county board shall set the salaries of all elected officers and all deputies in the offices of elected officers. This can be appealed to the district court. The statutes haven't changed, just case law has. LB62 sets a standard for the court to use, that of clear and convincing evidence. I have heard there is some concern with this language, would be agreeable to looking at alternative language, but I do believe that we want to avoid having district judges setting the county

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budgets across the state. Therefore, under LB62, the burden is placed on the person making the charge, which is how it used to be prior to the recent court case. If you have any questions, I'd be happy to answer. I will say that this was brought to me by some county commissioners in my area. I listened to what they had to say and I put myself in their place, and as Chair of Appropriations it scared me, to be right truthful, because they had other parts of government telling them how much money they was going to spend. And if you have to deal with that like I would have to deal with that and have lost the control, it would be very concerning to me. So with that, I will answer...try to answer any questions. There are some people that are following me that probably will be able to tell you some situations that have happened and be able to answer questions probably a little bit better than I. At this time, I also would like to say that I probably am going to waive closing. I got to get back to Appropriations because we have some things happening over there. So with that... [LB62]

SENATOR PRICE: Well, thank you very much, Senator Heidemann. Are there any questions from the committee? Seeing none, Senator Heidemann. [LB62]

SENATOR HEIDEMANN: I like this committee. (Laughter) [LB62]

SENATOR PRICE: Thank you very much. We appreciate that endorsement. With that, we will open up with proponents to LB62. [LB62]

TIMOTHY NELSEN: Good afternoon. Mr. Vice Chairman, Senators, my name is Timothy Nelsen. I am the chairman of the Otoe County Board of Commissioners. I have served 25 years in county government as an elected official, in the county attorney's office as public defender, and because of a tragic death I was appointed to the board and then recently elected to the board, and I've served for three years now as commissioner. When one becomes a commissioner, all that you thought you knew about budgets and about working with county government goes away. This last year the case that was quoted, Wetovick v. County of Nance, changed the entire playing field. Before, an elected official needed, if they sued the county board, which I don't think is a good idea incidentally, but if they did they had to show that the board was being arbitrary and capricious. The Supreme Court reversed that rule and said, no, it's up to the county board to prove that what they're doing is correct. It was not a unanimous decision, as many of our Supreme Court is. The Chief Justice, in his dissent, stated that this conflict between the 23-1111 and 23-908 "makes it difficult, at best, for budget-making authorities in counties such as Nance County to adequately budget. In my view, this interprets wrongly the statute and should be overruled." And the majority, in the majority opinion, acknowledged that, indeed, they were changing the rules and they say that if the Legislature does not amend...ordinarily, when the appellate court judicially construes a statute and that construction fails to evoke an amendment by the Legislature, it is presumed the Legislature has acquiesced to the court's determination of the Legislature's intent. Well, you've got two statutes that are now in total conflict with

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each other. One statute says the county board that is recognized as the budget-making authority has the ability to set the budget. The other one says that the county board, if they make any amendments to any budgets, are the ones that have to be able to prove in the district court that that is reasonable. We're just simply asking for a level playing field; that the budget issues that are facing you as senators are soon going to be facing us as county commissioners. If, for instance, there is no state aid this year, we're going to have to make budget cuts because we don't have the legislative authority to raise enough money through the mill levy to do it. So are you going to put all 93 county boards in the district and allow the district judge to make those decisions about where the cuts have to come or are you going to allow the elected officials that are responsible for the budget make that decision? Thank you, and I'll be happy to answer any questions you may have. [LB62]

SENATOR PRICE: Thank you, Mr. Nelsen. Are there any questions? Yes, Senator Sullivan. [LB62]

SENATOR SULLIVAN: Thank you. And thank you for your testimony. That wasn't too far away from where I live. I'm in Boone County, so I followed a little bit in the papers. Have there been any more instances similar to that since that time? [LB62]

TIMOTHY NELSEN: I understand that there have been a number of cases that have not reached the appellate level. Larry is here and maybe he can mention the specific ones. Down in the southeast side of the state, I have not seen any. I've seen some threatened issues that are coming, but I have not seen anything that has blossomed. But to give you some idea, if we have to do...if the senators, and we're certainly not a proponent of this, but if you say that we're not going to give county aid this year, Otoe County is going to have to cut \$250,000 out of our budget. We only have the statutory authority, because of the lid imposed upon us by the Legislature, to raise \$50,000, so we're going to have to cut \$200,000. So I don't know how...I don't have any idea or preconceived notions of how we're going to do that but I know that there's going to be unhappy officeholders, without question, when we start cutting the budgets. We all want to be the senators and the commissioners at the times when we can cut ribbons and hand out money, but we're not, unfortunately, in that time now and we have to be cognizant of the fact that if we don't do something the district judges are going to be setting the county budgets. [LB62]

SENATOR SULLIVAN: So, in other words, it's safe to say that with tighter budgets that you could have more instances like what we had in Nance County. [LB62]

TIMOTHY NELSEN: There's no question that that's going to happen, Senator. [LB62]

SENATOR SULLIVAN: Okay. Thank you. [LB62]

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SENATOR PRICE: Thank you. Senator Schumacher, please. [LB62]

SENATOR SCHUMACHER: Thank you, Senator Price. You might have to refresh my memory a little bit with regard to the way things are in county government. I've been away from it for about 20 years as the county attorney in Platte County, probably about somewhat the same time you were. [LB62]

TIMOTHY NELSEN: I remember you, Senator, when you were a county attorney. [LB62]

SENATOR SCHUMACHER: Yeah, I was the guy that was cutting the budgets, making the rest of you guys mad at me. (Laugh) But at any rate, the way it worked then, and tell me what's changed, is that we went in with a budget request,... [LB62]

TIMOTHY NELSEN: Uh-huh. [LB62]

SENATOR SCHUMACHER: ...bottom-line budget request. The board either approved it, raised it, or lowered it. And the only thing that as an official we couldn't mess with was our salary and the deputies', chief deputies' salary. [LB62]

TIMOTHY NELSEN: That's correct. [LB62]

SENATOR SCHUMACHER: And if we wanted to hire secretaries or buy paperclips, whatever, it just was on whatever nickel was left in that budget. Has that changed? [LB62]

TIMOTHY NELSEN: It has changed in the fact that if you decided to sue, and Nance County is a bit of an unfortunate case. I think that it was probably a case that deserved to be in the court because in that case the board tried to tell them to hire two part-timers, as I understand, as opposed to one full-timer, and that isn't the board's responsibility. I don't think anyone here doesn't recognize that. I'm not going to tell my sheriff how to spend his money in a specific line item, but I am going to say you have \$250,000 and that's it. It's changed in the fact that for the first time the case changed the burden of proof from the officeholder appealing to the county board defending, and so inasmuch as it changed that burden of proof, it changed the entire playing field. [LB62]

SENATOR SCHUMACHER: So is this with regards to then amendments to the budget or just when the (inaudible)? [LB62]

TIMOTHY NELSEN: Amendments to the budget. [LB62]

SENATOR SCHUMACHER: So they come in and they say, I need more money. [LB62]

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TIMOTHY NELSEN: Well, no, no, it's in terms of the budget document as a whole. So if you, as the county attorney, come to me, as the county board, and say I need \$2 million, and we say--after a hearing, you're required to have a hearing--we're only going to give you \$1.8 million, you can sue and say that it's an arbitrary and capricious action. I have to show, as the law stands now, that that's not the case. What used to be is you had to show that Tim has never liked me, he got a speeding ticket and there was some problem. No one is saying that we should run an individual officeholder's office. I understand, I understand what Nance was about. The unintended consequences of Nance is, with the fact that unless you lift the lid on county governments, we're going to have a lot of budget cutting across the board this year and, because of that, if we allow this to go unchanged, the burden, the burden of proof that the court will require, we're going to all end up in court. [LB62]

SENATOR SCHUMACHER: So basically what this bill is trying to address is when the county board says, okay, we've looked at the budget request and we've got tough times here; this is what you've got to deal with, Buddy; that's what you've got to deal with unless you can be awful convincing to the district judge. [LB62]

TIMOTHY NELSEN: Exactly. You spend the money; we're going to give you X number of dollars, like any other budget, and you can spend it within those line items, but if we have a lid problem, if we have another problem, there has to be a final arbiter and by law that's the county board. And, therefore, the county board should be given some deference when you get pulled into district court and we shouldn't have to go hire the expert to say that this is in the best interests. [LB62]

SENATOR SCHUMACHER: Thank you. [LB62]

TIMOTHY NELSEN: Thank you. [LB62]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any other questions? Seeing none, thank you very much. [LB62]

TIMOTHY NELSEN: Appreciate your time very much. [LB62]

SENATOR PRICE: Thank you. Are there any other proponents? [LB62]

TERRY KEEBLER: Thank you, Senator Price. My name is Terry Keebler, it's K-e-e-b-l-e-r. I am a Johnson County Commissioner, have been board chairman for the last eight years. I think Tim did a really good job explaining why we're here. In our specific instance, we had county officials come in at the start of the budget this year trying to raise the salaries of their deputies by \$1.70 per hour, quoting this case. Luckily in that case, as Senator Schumacher pointed out, the control over those deputy salaries

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is granted to the county board. By relying on that, we could roll that back pretty easy; you know, tell them that this is what the deputy salaries are. If they had more than just deputies in their office, we would have had issues with trying to prove that that was not a correct assumption. As Tim pointed out, we're going to be dealing with some tight budgets this year and probably in the future. We're losing...potentially losing revenue. It's what everyone tells us anyway. And, yes, we're coming up against levy restrictions. I don't know that we're quite as tight as what Tim said Otoe County would be, but we always have places that the money should go. The unfortunate consequence is when other budgets take too much of the money we cut roads department. That is our other big budget and is the one that we have control over. It's also the one we hear a lot from constituents about. In looking at budgets for our elected officials, 85 to 90 percent of those are personnel costs, so the paperclips and paper isn't a big part of that budget. It comes back to personnel. So that kind of describes, at least from Johnson County's side, why we are in favor of this bill, so that the county board has control again of the overall budget. And if we can't control those budgets, then it's going to be very hard to set a budget and keep it there. Thank you. [LB62]

SENATOR AVERY: Thank you, Mr. Keebler. Sorry I had to step out but I had a hearing in another room. Any questions from the committee? Don't see any. Thank you for your testimony. [LB62]

SENATOR SULLIVAN: Thank you. [LB62]

TERRY KEEBLER: Thank you. [LB62]

SENATOR AVERY: Any more proponent testimony? Welcome. [LB62]

PAMELA LANCASTER: Good afternoon. I'm Pamela Lancaster, P-a-m-e-l-a, Lancaster, L-a-n-c-a-s-t-e-r. I'm a Hall County supervisor, have been for 14 years, and I'm the immediate past-president of NACO, the Nebraska Association of County Officials. First of all, I'd like to thank Senator Avery and the rest of you as the committee for allowing us to speak to you regarding this bill, LB62. I am here, obviously, in support of this bill. Imagine if you will that you set the state budget for various offices and then an elected official, as you have some others, has the right to take you to court and sue you for the fact that you didn't give that office a particular amount of money that they thought was necessary to run their office. That's, in fact, what can happen and has happened in county government, and that's been discussed to some point. This discussion is not about whether elected officials know best. In my mind, this discussion is not about whether elected officials know best what's necessary to run their office. It's mostly about someone ultimately being responsible. There's only so much available to provide services to the best...to best serve the constituents of counties. Those dollars need to be spread most efficiently to the various departments of county government. Department heads or elected officials of specific offices do exactly what they should do;

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they look out for their own interest, and they should be doing that. That's their responsibility. County supervisors and commissioners, on the other hand, take into consideration the needs of the county departments and spread the resources accordingly, and they're limited, as has been said. One could say, how does an elected official then or a department head guard themselves against prejudices by the county board? The county board itself is that check and balance. In the case of Hall County, which happens to be my home county, there's seven members. It takes four, or a majority, to make anything happen. So four out of seven people, in this case, would have to believe that a particular line item of a budget is the best use of resource for that line item to stand or that budget to stand. To keep this discussion somewhat short, I know you're interested in that, the point is that someone ultimately needs to be in charge. Someone needs to make the difficult decisions that come with limited resources. Someone needs to be responsible to the public and be willing to say, these dollars given to us to run county government are spent best in this manner. I believe that supervisors and commissioners are that management put in place by the people to make those difficult decisions. Let them do their job, support this bill. In my mind, it is in the best interest of county government and the people we represent. And with that, I would also like to ditto all of the comments that were made, they are very appropriate. And thanks for listening. I'll answer questions if you have some and if I can answer them. [LB62]

SENATOR AVERY: Thank you for your testimony. Questions? Senator Schumacher. [LB62]

SENATOR SCHUMACHER: Thank you, Senator. Is suits or are suits by county officials against county boards over budgets, up to this point in time at least, a big problem? Are there many of them? [LB62]

PAMELA LANCASTER: We're reminded continually that they would have the right. In Hall County specifically, we haven't gotten to that point certainly. I think that there are other counties, I think, it's been some point back, but I think Douglas County actually did take their...the officials took their county board to court over specific dollar amounts of budgets. I don't know all the details, I don't remember them. But I do know that Terry is right, Terry Keebler that just testified. Our largest budgets are...in our case, it's our IT budget, it's our road budget that often stand the cuts because the smaller budgets, there's no place to go with it. Now do our county officials, then, do we work together on the budget? We do. You know, they create a budget and then we come in and I have to tell you very sincerely, we go over line by line. You know, and they are very good about going over those line-by-line issues. But it did come up this past year. We questioned travel and continuing education costs, that kind of thing, and we were reminded that we needed to butt out, that it was...that was a little beyond what we should be asking them. And so, you know, it's just...it's tough. County government is an interesting and unique animal and I love it. I think it is the closest thing to government by the people that we

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still have, but we do...when you think about it, a county board can't really get into the specifics of running another elected official's office even to the point, that like we're debating now, who has control over the money. And when the money gets tight, who gets to say where it's spent? Our roads are hurting. I know our sheriff wants a couple of more deputies. We told him, no, no, no. I don't know how long he'll stand that. You know, it's tough times, you know, and you're going to take more. So we understand you're going to try to take more from us. So 53 percent of our budget in Hall County goes to the protective services of the community, meaning the public defender, the county attorney, our court system, our corrections facility. Fifty-three percent goes to the bad guy, the guy or the girl that doesn't know how to handle...well, or work as a law-abiding citizen or at least has certainly stubbed their toe in that direction. So we have then, as was mentioned, 80-some percent goes to personnel. We have spent something like the last seven years asking our elected officials not to increase their budgets on the operations side. We allowed them to, or we asked and they went along with us, to only increase their budgets regarding their salaries and benefits. This year, we asked them not to raise it at all, and that was very difficult. And as you can well imagine, there were some budgets, smaller budgets, that could not do that. So we had to go back and...and we knew that, I mean, we knew that there were going to be some situations where you just...you couldn't manage. I mean, a sheriff's car is going to cost what a sheriff's car is going to cost. There's just so much you can do. And so we're going to, you know, I'm sure with all of these cutbacks, we'll end up taking benefits. Health benefits will be a major issue on the table as far as what we can afford, that kind of thing. So I've been chair of the audit committee for...I've been on the audit committee for, I think, 13 of the 14 years that I've been on the county board, and been chair of that committee for probably 10 of those. So we work hard and we work well with our elected officials, but this new decision, it was concerning enough when Douglas County had their issue a few years ago with this new court case. It's darn right scary to us. Who's going to have to make that decision or who gets to make the decision, put it that way? [LB62]

SENATOR AVERY: Thank you. [LB62]

PAMELA LANCASTER: Thank you very much. [LB62]

SENATOR AVERY: Any more questions? I don't see any. Thank you for your testimony, Ms. Lancaster. [LB62]

SENATOR SULLIVAN: Thank you. [LB62]

SENATOR AVERY: Any additional proponent testimony? Welcome, Mr. Dix. [LB62]

LARRY DIX: Good afternoon, Senator. Good afternoon, members of the Government, Military and Veterans Affairs Committee. For the record, my name is Larry Dix. I'm

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Executive Director of the Nebraska Association of County Officials appearing today in support of LB62. Many of the comments that the county boards made certainly I had down to present those to you. So a couple of things that I want to reiterate in some instances and some new information. But certainly our budgets at the county level are facing the same difficulty all of you are facing at the state legislative level. We're going through those same tough times and there are tough decisions that are going to have to be made. In our estimation, LB62 was intended to clarify who had the final authority to make those difficult decisions. The NACO board certainly voted in support of this as a needed tool that they need with future county budgets and their overall budget and taxing picture. And that was part of the discussion that we had at the NACO board level was that the NACO...or the county boards have to look at the overall budget picture when it relates to taxation. And individual officeholders, of course, have to look at what they need, that they have their correct amount of money to operate their offices. When I look at this, I think individual officeholders, there's no question that they know what their needs are for their individual budgets, and I think they need to present that. I certainly don't believe in my wildest dreams that this legislation was brought forward so that a county board could dictate how a county official could run their office. I think it's simply to clarify that final decision and who makes that. And I believe that is really what we're starting to see in some of these court cases. And as we look down the road at the tough decisions that are ahead, I think the clarification would be beneficial in that point of view. As Senator Heidemann mentioned in his opening, if there is certainly some language that the committee wants to look at, NACO would be happy to make sure we're at that table to discuss those changes in that language. I certainly would ask that the committee would advance this bill to provide county boards and county officials with the needed tools in order to work together in these very, very difficult budget times. And so I thank you for that. I'd be happy to answer any questions anybody would have. [LB62]

SENATOR AVERY: Thank you, Mr. Dix. When NACO discussed this, what was the vote? Do you remember? [LB62]

LARRY DIX: I do. And so that everybody on the committee...if I may, let me describe the makeup of the NACO board so that everybody is aware of that. The NACO board is made up of county board members and elected officials that we typically will call affiliates, and there's a mixture of those. And so the board is made up so it is geographically represented, all the elected affiliates are represented, and then we have the additional officers. And on the discussion, as we do with every bill that NACO takes a position on, the NACO board actually takes a vote to determine the position that I end up lobbying in. This one, I would tell you, was split, was a split vote. That vote, I believe, was ten to seven. So there was...and that vote lined up pretty much right along the lines of county board members and affiliates. That was where that vote took place. [LB62]

SENATOR AVERY: Any questions from the committee? Senator Schumacher. [LB62]

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SENATOR SCHUMACHER: Thank you, Senator Avery. Mr. Dix, what would...could you give us an example of when a county board would be acting arbitrarily, unreasonably, or capricious? I mean, what...when do you see the officeholder winning if he brings a suit or she brings a suit? [LB62]

LARRY DIX: Well, you know, when we get into the arbitrary, capricious, I mean, we're getting into some fairly specific legal terms in that area. And I think there have been court cases previously where there has been a determination that the county board cannot budget someone out of office. And I think in those instances certainly would be where the county boards would not provide for, one, adequate staffing to run the office, to do the duties of the office. Certainly in the instance where they would not provide them adequate computers, for an example, to do their job. I think that's where you may have that. But in the end, I think that's a decision that when you throw that language in, you're going to end up in court and a judge is going to make that determination of when it is arbitrary and capricious. [LB62]

SENATOR AVERY: Any more questions? Seeing none, thank you for your testimony. [LB62]

LARRY DIX: Thank you. [LB62]

SENATOR AVERY: Any additional proponent testimony on LB62? Anyone wish to speak in opposition to LB62? Welcome. [LB62]

RODNEY WETOVICK: Thank you. Members of the committee, my name is Rodney Wetovick. I'm probably the one who precipitated this potential legislation. My last name is spelled W-e-t-o-v-i-c-k. I appreciate a number of the comments that were made. I certainly understand the concerns that the commissioners expressed in terms of being able to control a budget. This particular case, I want to let you know, was not about budget, and I can demonstrate that with some of the comments that I have to make. It is exactly the kind of case where you had a board that made a decision that really was unjustifiable. It was found to be unreasonable by the District Court, and then again by the majority of the Supreme Court. A little bit of background, before I took office...I've been in office as county attorney now for four years. Before I took office, my predecessor was running the county attorney's office from a private office downtown in Nance County, and the county was paying one-half of his secretary's salary with none of the benefits or even the FICA taken out. When I took office, I wanted to locate in the courthouse, I wanted to have more accessibility from the public. I didn't feel it was appropriate that the county attorney could tell a member of the public, well, get out of my office because it was, in fact, his office. What I look to do is to make my office a little more accessible. I started without a computer. I started with hand-me-down chests that the drawers didn't shut in. I did go to the board asking for some of the amenities that could be provided and even a room in the courthouse. They were very slow and drug

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their feet about those issues. There was not enough money in the budget for staff. I was asked if you didn't like what was in the budget that was still here for you the second half of it or the six months that were left, why did you run for the office? Well, (laugh) I ran because I thought there were some changes that ought to be made and in order to do those, things needed to change just a little bit. And in order to make those changes, there needed to be some amendments to the budget. I proposed the full-time secretary, and that was kind of what the dispute revolved around. They did grant me, my board, a full-time secretary for the first six months, which was accommodating of them. During that next six months, we realized that even full time wasn't getting the job entirely done that needed to be done. So we asked to at least have that full-time person there for the next budget year, and that request was denied over about \$7,000 or \$8,000. I would really encourage you...I don't want to forget to ask you to read the opinion of the Supreme Court because there's a lot of these same facts in there and a lot of the background is in there. One of the big things that maybe people don't understand because it's not in here is after I had to make the decision or I felt compelled to make the decision, so I could do my job adequately, to sue the county board and get a little bit more money so that I could have a full-time staff member, and I fully agree that there's probably instances where there are counties that have numerous staff members and they could probably stand a cut and still function appropriately. But when you're talking about zero versus one, that's very difficult. I faced a recall attempt. And the biggest thing that I want you to know is that when I made the decision to sue, I had to fund the cost of that suit out of my own meager salary. It cost me \$12,000 to fight over this issue. The county board had the people's money, the taxpayer's money, to fight, and they were able to spend \$112,000 to fight this issue, and they were judged to be unreasonable. I don't think and I disagree with the previous comments that the burden had shifted. I think the burden was clarified. There's really only been four major cases that have to do with the employment or the clash between 23-1111 and 23-908, this last one of my case being the final one. I guess I'm out of time, so. [LB62]

SENATOR AVERY: You did a good job summarizing your position, Mr. Wetovick?
[LB62]

RODNEY WETOVICK: Wetovick. [LB62]

SENATOR AVERY: Wetovick, want to get it right. Questions from the committee?
Senator Schumacher. [LB62]

SENATOR SCHUMACHER: Thank you, Senator. Are you...is your position now a full-time or part-time position? [LB62]

RODNEY WETOVICK: It is considered a part-time position. I find myself spending virtually full time at it. [LB62]

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SENATOR SCHUMACHER: I understand. [LB62]

RODNEY WETOVICK: Are you talking about the staff member? [LB62]

SENATOR SCHUMACHER: No, the county attorney's office. [LB62]

RODNEY WETOVICK: County attorney is... [LB62]

SENATOR SCHUMACHER: So you could do private practice yet? [LB62]

RODNEY WETOVICK: I am allowed to do private practice and I do a very small amount. [LB62]

SENATOR SCHUMACHER: Okay. I don't have any further questions. [LB62]

SENATOR AVERY: Anyone else? Senator Janssen. [LB62]

SENATOR JANSSEN: Thank you, Chairman Avery. Thank you, Mr...I'm not even going to try to pronounce your last name. [LB62]

RODNEY WETOVICK: Wetovick. [LB62]

SENATOR JANSSEN: Wetovick, there we go. Mr. Wetovick, when you say you spent \$12,000, was that based on outside representation or was that your own hours? [LB62]

RODNEY WETOVICK: It was outside representation. I learned in law school that... [LB62]

SENATOR JANSSEN: Right, and you... [LB62]

RODNEY WETOVICK: ...he who represents himself has a fool for a client, and so I...and trying to hold down... [LB62]

SENATOR JANSSEN: You took my punch line, by the way. (Laughter) [LB62]

RODNEY WETOVICK: ...trying to hold down the duties of the county attorney's office in addition to all of the representation this case took just didn't seem like a good idea to me to try to do it myself. [LB62]

SENATOR JANSSEN: Thank you for the clarification. [LB62]

SENATOR AVERY: Any more questions? Senator Sullivan. [LB62]

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SENATOR SULLIVAN: Thank you. It was mentioned earlier that the situation in Nance County was a little bit different and probably should have gone to court. Looking at the legislation as proposed, obviously you're still in opposition to it, but realizing that the Nance County situation was a little bit different, would you accept the fact that maybe there is some legitimacy in allowing the board to have more responsibility in this in latitude? [LB62]

RODNEY WETOVICK: You know, certainly I understand the positions of the boards, and if I were a board member I might be looking at it a little differently. I think there needs to be some way for them to have some budgetary control, but I think there's a little bit of a misnomer. I don't think this case is all about budget. The court clearly says that the board has control over the budget. The real rub in this case had to do with employees. And in my instance, as I think was alluded to before, there's 93 percent of my budget goes to either my salary and/or benefits of my staff, which is one person, and the rest of it is the computer, paperclips, phone, postage, etcetera. There's not a lot there to cut. But you also have to look at, budgetwise, are you willing to cut essential types of services? If you go into the state statutes and put in county attorney, you're going to find that the county attorney is mentioned in, I believe it's over 400-and-some statutes of different duties that we have to be responsible for, whether it's coroner or other things. And to have staff that isn't up to speed just isn't advisable in any (laugh) way, shape, or form, in my opinion. And I'm happy to say the court agreed with me on that. I think, you know, they alluded to the fact that a percentage cut would probably be okay in a larger setting, and I think that would be adequate control for the board. I think there's certainly instances where the board really doesn't know entirely what it takes to run an office, so I disagree with the comments of Pam Lancaster. I think it is about that, at least in some instances. The county official in charge knows, in fact, what it is that it takes to run the office, what it takes to complete the required duties, and they're in a better position than somebody, at least in our case, who's sitting around the table a couple of times a month and probably attending some other meetings and so forth. But they don't come and see what my office does. [LB62]

SENATOR SULLIVAN: Okay. Thank you. [LB62]

SENATOR AVERY: Thank you very much, Mr. Wetovick. [LB62]

RODNEY WETOVICK: Thank you for the opportunity. [LB62]

SENATOR AVERY: Yeah, thank you. Any other opposition testimony? Anyone wish to testify in a neutral position? Seeing none, I suppose Senator Heidemann waived closing. That will end the hearing on LB62. Now we will move to LB101. Senator Schilz. There he is. The man who has generated all the e-mail to me here in the last (laugh) few days. Welcome, Senator. [LB62 LB101]

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SENATOR SCHILZ: (Exhibits 1-2) Thank you, Chairman Avery and members of the committee. Good afternoon. My name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent Legislative District 47. Today I sit before you to introduce LB101. This bill is put in there to explore the possibility of creating more consistency when it comes to time changes in our state. I would like to take some time to go back through and explore the reasons why and how daylight-savings time came into place and whether the reasons for the times shifts still apply in this day and age. I think it's always good to explore from time to time the effectiveness and usefulness of laws that govern us to make sure they still meet the purposes for which they were created. Daylight-savings time has been a policy of our country for many years. In fact, it was first thought of in 1784 when Benjamin Franklin was trying to find a way to reduce the numbers of candles that were burned. Hopefully, we've come a long way from that. And there's been many changes. In 1918, the act was actually passed in the United States. Of course, due to unpopularity, the next year it was repealed. So we've seen changes in it before. One thing that I should say is that daylight-savings time and standard time and those issues have seen a very tumultuous and controversial existence through time. Daylight-savings time has been a policy for our country for many years. In 1945 and during the war, the mandate for daylight-savings time was put into place in '42 and then repealed in 1945, and it was left up to the states to choose their own preferences for continuing to use it or not. In my research, I have discovered a few things. One thing is that daylight-savings time and talking about it and introducing bills about it generates much conversation and (laughter) e-mails and press. And, you know, as I started to look at the issue and get ideas and comments from the general public, one idea was posed and which I tentatively supported, was the idea of remaining on daylight-savings time year round rather than just remaining with standard time. Unfortunately, after exploring the issue, I found out that the federal government only allows states to opt out of daylight-savings time, so you can't adopt it year round. That put a big chink in some of the positives that we have with daylight-savings time, in remaining on that. You know, the other issue that's always brought up is that people seem to be very concerned with being out of sync with neighboring states at those different times of the year when the time would change. In my district, the time zone change...or the time zone line runs right through the eastern side of my district. Many of my constituents deal with that time change on a daily basis. It's an issue that when you live close to the time zone change, you get very good at adding or subtracting that hour to figure out where you need to be. And in 40 years, I finally got to the point where I can do it all in my head. So, and this is part of the reason why I wanted to bring it to the committee's attention and have a discussion about it is because in our state, it's a large state, we have very diverse issues that run across it, and I think it's always good to bring those different issues and what people believe and think about them to others that may not have to deal with those same things. So rather than taking on the time zones, which is out of our jurisdiction, I'm attempting to make everyday living easier for the folks I represent in the Panhandle of Nebraska. And with that, I would be happy to try to answer any questions you might have. [LB101]

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SENATOR AVERY: Thank you, Senator Schilz. Questions from the committee? Senator Sullivan. [LB101]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Senator Schilz. I have to ask then, why do you think life is going to be easier doing this? [LB101]

SENATOR SCHILZ: Well, as I said, now that I've gotten very used to doing...or adding or subtracting that hour, for me it brings everybody up to that level, and (laugh) the only reason why I think it would be easier, and some of the other research that we've done, is that there are some...and the only way it would be easier is within the state of Nebraska. And the reason I say that is because there is some anecdotal evidence out there that changing the times, people having to get used to different times, different hours on the clock and things like that, there are some health issues that may be causing problems. There could also be some actual savings now instead of...as we put daylight-savings time into place before, a lot of the reason why that was, was a perceived energy savings. And I think that as I've looked at the information, they've never really been able to prove that and, more or less, if you just look within the state of Nebraska, consistency in time and not having to make certain changes. One thing that we did find out is that we could change either the Mountain time zone or the Central time zone so that the state of Nebraska would have one time throughout. So that is a possibility that we could do. Unfortunately, we couldn't have the same...I mean, we could adjust this so we'd have the same time all year. But I think then, again, you run into the same troubles and the same concerns that we've heard before. So really just trying to explore the options and see if there's some reasonableness of why we would want to do this. [LB101]

SENATOR SULLIVAN: Thank you. [LB101]

SENATOR AVERY: Any other questions? Senator Brasch. [LB101]

SENATOR BRASCH: Did you state which states are not using daylight central (sic)? There, what, four, five? [LB101]

SENATOR SCHILZ: Well, actually there's only two. [LB101]

SENATOR BRASCH: Oh, two. Okay. [LB101]

SENATOR SCHILZ: It's Arizona and Hawaii. Now, there's a province... [LB101]

SENATOR BRASCH: Indiana. Indiana, part of it. Oh, just part of it. [LB101]

SENATOR SCHILZ: They actually...I think that as I looked at it, Indiana had done that at times and they may still be there. [LB101]

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SENATOR BRASCH: And in my virtual occupation on the farm,... [LB101]

SENATOR SCHILZ: Um-hum. [LB101]

SENATOR BRASCH: ...I work in all time zones. [LB101]

SENATOR SCHILZ: Right. [LB101]

SENATOR BRASCH: Eastern time, Central time, Mountain time, Pacific time. Then you have daylight-savings time and it's difficult to determine which ones are and are not... [LB101]

SENATOR SCHILZ: Right. [LB101]

SENATOR BRASCH: ...and what time of year, so. [LB101]

SENATOR SCHILZ: Right, and the information that I have here, it says, you know, there's exceptions to it. And it says here the entire state of Indiana must also observe daylight-savings time where only certain areas did before. So I don't know if that's correct, but you may be right. The other areas that use it are all provinces: Puerto Rico, Guam, American Samoa. And you can understand that, in states like Hawaii, why that makes sense. I think that as you look at Arizona, there's some understanding there. First of all with Arizona, the population is mostly located within the center of the state. And then being a desert state, they actually looked at that and said, you know what, it doesn't make sense for us to have an extra hour of daylight to where we have to cool the buildings and things like that, so. [LB101]

SENATOR AVERY: Nothing to do in the desert anyway. [LB101]

SENATOR SCHILZ: Right. (Laughter) So that's why they are. [LB101]

SENATOR AVERY: Senator Schumacher. [LB101]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator, I want to compliment you on finding probably the single issue that everybody can disagree on and everybody can be right. (Laughter) [LB101]

SENATOR SCHILZ: Thank you, thank you. Well, and I will say I appreciate the comment/question and I really do think that at certain times it makes sense to bring up issues that everybody can have a say in, that everybody can become involved in, and everybody can understand on some level or another. I think it's a great way to entice people to become a part of the process. I think it's a great way to let people have that

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public discourse that's needed, and maybe some of those folks will start to become more involved in government and the process moving forward. So that would be one thing that maybe come out of this. [LB101]

SENATOR AVERY: Looking at my e-mail, I think everybody has weighed in on it. (Laughter) [LB101]

SENATOR SCHILZ: Yes, they have, yeah. [LB101]

SENATOR AVERY: I don't see any more questions. Do you plan to stay around to close? [LB101]

SENATOR SCHILZ: I can, yes. [LB101]

SENATOR AVERY: Okay. [LB101]

SENATOR SCHILZ: Thank you. [LB101]

SENATOR AVERY: All right. Proponent testimony. Anyone here to speak on behalf of LB101? Please come forward. [LB101]

LaVONNE DILLA: My name is LaVonne Dilla and I live here in Lincoln, Nebraska, and I would like to thank Senator Schilz for introducing this bill. [LB101]

SENATOR AVERY: Would you spell your name for the record, please? [LB101]

LaVONNE DILLA: Yes. L-a-V-o-n-n-e, Dilla, D-i-l-l-a. [LB101]

SENATOR AVERY: Thank you. [LB101]

LaVONNE DILLA: For many, many years, I have discussed this with many people and I find that we do have a lot of different opinions. But I have several reasons why I think we should just leave our time like it should be, which is the old-fashioned time. I'm a proponent of daylight savings. I think about our state as being a farming state. We're the breadbasket of this nation or part of the breadbasket. And an awful lot of our state are farmers. And I have never spoken to a farmer that loved daylight-savings time, quite the opposite. I think about the dairy farmer and his cattle that he has to take care of, has to change his schedule on that. His cows don't know the difference between one hour and the next. I think about the hospitals who are full of people that you have to change their schedule. We have care in nursing homes. The schoolchildren have to have two different schedules during each year, and their parents, to get them to school and back home. And I think that probably the folks that have jobs from 8:00 in the morning till 4:00 or 9:00 till 5:00 probably like daylight savings. The rest of us really don't like it. You're

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preparing your evening meal in the hottest part of the day. My house faces the west and I get sun all afternoon. And yard work, and this is strictly a selfish thing, but if you want to do your yard work, you have to wait an extra hour or more in the morning for the dew to get off of the grass so you can mow. And I know about the federal law that the Senator has talked about and I know about time difference in the eastern part of the state and Ogallala, which is one of my favorite parts of the state. I've had relatives out there and have visited many times and we deal with the hour difference as we go back and forth. But with all of that, I'm in favor of doing away with daylight savings. Thank you. [LB101]

SENATOR AVERY: Thank you, Ms. Dilla. Questions from the committee? Don't see any. Thank you for your testimony. (Laugh) Any other proponent testimony? Mr. Austin? [LB101]

JOHNNY AUSTIN: Yes, sir. [LB101]

SENATOR AVERY: Are you testifying on daylight-savings time or the veterans issue? [LB101]

JOHNNY AUSTIN: Daylight-savings time. [LB101]

SENATOR AVERY: Okay. [LB101]

JOHNNY AUSTIN: Are we about ready? [LB101]

SENATOR AVERY: Yes. [LB101]

JOHNNY AUSTIN: You know this is the first... [LB101]

SENATOR AVERY: Spell your name for the record, please. [LB101]

JOHNNY AUSTIN: I will. [LB101]

SENATOR AVERY: Okay. [LB101]

JOHNNY AUSTIN: I'll even spell it. [LB101]

SENATOR AVERY: Okay. [LB101]

JOHNNY AUSTIN: Johnny "Cash" Austin, A-u-s-t-i-n, is the last name, and the middle name is a nickname that I use. I registered with the state of Nebraska a long time ago as a trade name. Anyway let's get down to business. I've been to some of these committee meetings, mostly the judicial. This is the first time I've been with this

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committee. I think we should do away with this fast time. A friend of mine used to call it crackpot time. And every time they'd change it...I always carry two watches--one for the old time, one for the new time. I was born in the old time. I think it was the best of times. Now they say that some of these people like this daylight-savings time because they can go out and play what they call golf. Back in my day we called that cow pasture pool. (Laughter) Anyway it messes up everything. It messes up the animals, puts them off the schedule. Above all, it disturbs our children. It puts them off of balance a little bit because they have to get up a little earlier and it's dark. You know what I mean? And I think that's more important than anything else because the children are the future of this United States of America. And, well, that's about all I can say today about this. You got any questions? [LB101]

SENATOR AVERY: Thank you, Mr. Austin, for your testimony. Any other comments, questions from the committee? Okay. Senator Sullivan. [LB101]

SENATOR SULLIVAN: Do you have a hard time...thank you, Senator. Do you have a hard time adjusting when we make the time change? [LB101]

JOHNNY AUSTIN: Oh, yeah, for a while. But, you know, I get up with the chickens and go to bed with the chickens, so it really doesn't make no difference. If I have to stay up later, I'll stay up later because I gain my sleep whenever I can sometimes. That's the way I've always been, even when I was in the service. They were going to court-martial me for doing too much work in the service. Can you imagine that? But they never did. I got promoted. (Laughter) They made me a corporal. They told me if I'd extend my time they would make me a sergeant. I said, no thanks, I want to get home. I was classified seven different times and I was ready to go the first time, but I thank the Lord that I wasn't called up because it was really rough over in Korea at first. Thanks to the Russians and the Chinese and the North Koreans, we had to fight against our World War II land-lease equipment. We had M-1 rifles fighting tanks, the stuff that we leased to the Russians, and they sent that stuff over there and trained them people. So I got... [LB101]

SENATOR AVERY: Yeah. That's probably a conversation we can have off the microphone, Mr. Austin. (Laugh) [LB101]

JOHNNY AUSTIN: I kind of got carried away. (Laughter) You should have tapped your gavel and said, hey, you're getting out of order. [LB101]

SENATOR AVERY: Okay. Thank you. Thank you, Mr. Austin. [LB101]

JOHNNY AUSTIN: You're welcome. Thank you for being here. Thank you for introducing this bill. [LB101]

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SENATOR SCHILZ: You're welcome. Thank you. [LB101]

SENATOR AVERY: Anyone else wish to...are we on...you got me confused here because...(laughter) We're on proponents. Welcome. [LB101]

MARGARET MCGURK-KRAMER: Hello, Senator. I am Margaret McGurk-Kramer, and I'll spell that. Margaret is M-a-r-g-a-r-e-t, McGurk-Kramer is M-c-G-u-r-k-K-r-a-m-e-r. [LB101]

SENATOR AVERY: Thank you. [LB101]

MARGARET MCGURK-KRAMER: Okay. I'm from here in Lincoln, Nebraska, and I would like to eliminate daylight-savings time, so I'm in favor of this bill. I made simply a simple list. I'm not representing anybody but myself. And basically, I look at all of the things that families have to do. And one of the things that was brought up this last time we went through the time change was how much time it takes everybody within each individual household. Some people were counting up that they had to change between 40 and 50 time devices, either their microwaves or the DVD players and all of their electronic everything, and how long that was taking each individual family and different things around that. The other thing, and I'm a computer background. I was a computer analyst for 20 years. On computers, you have to lose productivity time because the computer in their logs the way they do things, quite simply you can't have two 2:00 hours in the same day. So when you fall back in the fall, you actually go through the 2:00 hour twice that morning. And so you either have to turn your computer off, which depending on the kind of computer, can take an hour, half hour to take it down, another half hour to bring it up again--to go around that time change or you just simply stop processing during that time. And so there's a loss of productivity there. The idea was mentioned about individuals and their body clocks. On average and in doing research on this, most people adjust to it within a couple of weeks, and that's about average. I don't though and I'm one of those people that it takes me one to two months. It usually...at least six weeks before my body can adjust again, and there are a lot of people like myself out there. At one point, just from my family personally, we looked at moving to the part of Indiana that did not have daylight-savings time. What they did at that time was that half the year they consider themselves on Eastern time zone and the other half they are on Central time zone because they are on the line. And personally, that's what I would like to see for here in Nebraska. I think it would be nice that we don't have to waste the time with changing our clocks and everything twice a year and that we can just stay on normal, regular time the whole time. So I thank the committee very much. [LB101]

SENATOR AVERY: Thank you. Thank you. Questions for the witness? Senator Schumacher. [LB101]

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SENATOR SCHUMACHER: Senator Avery. Really on your...when you talk about the computers, most of the computers now automatically adjust on the magic date. What do you have to do to disable that? Is that a big project? [LB101]

MARGARET McGURK-KRAMER: I would think that you just simply don't run the routine that makes that adjustment. Most... [LB101]

SENATOR SCHUMACHER: I think it's automatic. [LB101]

MARGARET McGURK-KRAMER: Well, there's something in the software that says, run this routine to make the adjustment. I've had to program it in, and so it would be a matter of not running that routine. Yeah, and how much that would take. On a PC computer, I don't think that would be too much but I've not done too much programming on PCs, most of mine has been mainframe and all. And we literally would just simply stop processing that weekend so that we didn't, you know... [LB101]

SENATOR AVERY: If I had to do that to my computer it would never adjust. (Laughter) [LB101]

MARGARET McGURK-KRAMER: Okay. [LB101]

SENATOR AVERY: Any other questions from the committee? Thank you for your testimony. [LB101]

MARGARET McGURK-KRAMER: Okay. Thank you. [LB101]

SENATOR AVERY: Any other proponent testimony? Anyone wish to speak in opposition to LB101? Nobody opposed, Senator Schilz. Anybody in the neutral capacity? Okay. You're recognized to close. [LB101]

SENATOR PRICE: Heck, this is a consent calendar. (Laughter) [LB101]

SENATOR SCHILZ: Thank you. Like I mentioned before, I introduced this bill to start a discussion about whether or not daylight-savings time is still useful for Nebraska. One of the things that I failed to address in my opening was that I've received actual e-mails in support of this bill from folks who are diabetic, who have hard times when the time changes because they set their schedule on when to eat, when to take insulin on the clock. And if you move that hour, it can really mess with their regimen. And so I've had people that have e-mailed me saying, you know, it becomes a huge issue those two times a year, and sometimes it can take quite a bit of energy and quite a bit of time to get that straightened out. And, you know, any time anybody is running blood sugar, it's taxing on their body and it's doing damage. So that's one of the things that those unintended consequences that the majority of folks don't really think about. But it's one

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of those things that really does have an effect on folks. And with that, I would just thank the committee for taking the time and giving me the opportunity to introduce this bill. Thank you. [LB101]

SENATOR AVERY: You're always welcome. [LB101]

SENATOR SCHILZ: Thank you very much. [LB101]

SENATOR AVERY: Before we close this hearing on LB101, I do have one e-mail that asked to be submitted into the record in opposition. (See Exhibits 3-4) So it's not quite unanimous. Thank you. [LB101]

SENATOR SCHILZ: Thank you. [LB101]

SENATOR AVERY: That ends the hearing on LB101. And we'll now move to the last item on the agenda, LB116. [LB101 LB116]

SENATOR PRICE: Good afternoon, Senator Avery. I guess this opens up our hearing on LB116 and I would ask that everybody be mindful of the Chairman's wishes that we ensure that our testimonies are not repetitive in nature and that we only add to commentary. And with that, Senator Avery, you are free to open on LB116. [LB116]

SENATOR AVERY: (Exhibit 1) Thank you, Mr. Vice Chair. This bill, you recall, is a product of the LR542 process. In our discussions on the budget process and what we can do to close the budget gap, we were charged with the task of looking at all of the laws from the various committees or from the various departments and commissions and boards that come under the subject matter jurisdiction of this committee. And one of the proposals that we had is the one that I will present to you now. And that is to present an option to the Appropriations Committee to transfer money from the Veterans' Aid Income Fund for use to maintain the new veteran cemetery system. LB116 allows funds from this Veterans' Aid Fund to be used for the administration, the maintenance, and operation of the cemetery system. Let me give you a little background. In 1921, the Legislature set up a trust that has come to be called the Veterans' Aid Fund. The trust generates income that is used to aid veterans in need. This was just after World War I. The Legislature set aside a sum of money and the money was...generated interest; the interest was used to help needy veterans. Currently, there are approximately \$31.5 million in this fund. In 2009, the fund generated close to \$1.7 million. In 2010, it generated a little bit over \$1.1 million. The money generated from this trust goes into, as I indicated, the Veterans' Aid Income Fund. For the last few years, not all this money, not all the interest that's gone into the fund, has been used for needy veterans. All of the requests for assistance have been met, but it seems that it is generating more money than is needed to cover the requests. For example, in 2009-10, there were \$1.15 million generated from the trust but only \$721,000 were used for needy veterans. At the same

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time, the State Veteran Cemetery was built in Box Butte, and there will be a cost to the General Fund that will accompany that new cemetery. The General Funds needed to maintain the cemetery have been estimated to be about \$280,000 per year. What this bill does is authorize the Appropriations Committee to transfer funds from the Veterans' Aid Fund to the veteran cemetery. The bill provides some flexibility for the Legislature to decide how we should allocate funds that aid veterans. I would argue that this is an extension of the Veterans' Aid Fund. I think in every way it is consistent with the original purpose of the fund because only veterans and their spouses are eligible to be buried in the cemetery. They are buried at no cost to the veteran or to the veteran's family. The state picks up the cost. There may be some assistance from the federal government, I'm not quite sure how much. So in these extraordinary budget times, we need flexibility in how we spend our money. This simply empowers the Appropriations Committee to move funds as necessary out of the Veterans' Aid Fund to the cemetery to maintain that cemetery. I would be happy to take any questions from you. [LB116]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions? Senator Sullivan. [LB116]

SENATOR SULLIVAN: Thank you. Senator Avery, what is the expected operating budget for the cemetery again? [LB116]

SENATOR AVERY: About \$280,000 per year. [LB116]

SENATOR SULLIVAN: And that goes to... [LB116]

SENATOR AVERY: Maintenance, administration, burial costs, things of that sort. [LB116]

SENATOR SULLIVAN: Are there any other funding sources? [LB116]

SENATOR AVERY: This is General Fund costs right now. [LB116]

SENATOR SULLIVAN: Okay. [LB116]

SENATOR AVERY: And there may be some assistance from the federal government, how much we don't know, I don't know. And rather than transfer a specific amount from the fund to the cemetery... [LB116]

SENATOR SULLIVAN: Uh-huh. [LB116]

SENATOR AVERY: ...we thought it would be better to simply authorize the Appropriations Committee to have the authority to do that. And maybe sometime it wouldn't be needed, General Funds can cover it, maybe other times it can't, and this will

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give them the flexibility to use it if needed. [LB116]

SENATOR SULLIVAN: Okay. Thank you. [LB116]

SENATOR PRICE: Senator Schumacher. [LB116]

SENATOR SCHUMACHER: Thank you, Senator Price. Senator Avery, just a point of clarification. I think you mentioned the fund balance was \$37 million, and if I'm reading this right, the fiscal note says it's \$3.7 million. Which is right? [LB116]

SENATOR AVERY: Actually, I think that's a typo here. Thirty-one point five was the number I gave. [LB116]

SENATOR SCHUMACHER: \$31.5 million? [LB116]

SENATOR AVERY: Yes. [LB116]

SENATOR SCHUMACHER: Okay. [LB116]

SENATOR PRICE: Are there any further... [LB116]

SENATOR AVERY: But it generates about \$1 million, \$1.2 million, \$1.1 million in interest. [LB116]

SENATOR SCHUMACHER: Okay. [LB116]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any other questions for Senator Avery? All right. Thank you, Senator Avery. Are you going to... [LB116]

SENATOR AVERY: No, no. [LB116]

SENATOR PRICE: ...stay out in the audience? [LB116]

SENATOR AVERY: I'm going to work back here. [LB116]

SENATOR PRICE: All right. Thank you very much. Can we have the first proponent for the bill? Mr. Curtis (sic). [LB116]

JOHNNY AUSTIN: Good afternoon again. I'll use my military name this time. It's Corporal Johnny L. Austin. [LB116]

SENATOR PRICE: Can you spell that last name for us? [LB116]

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JOHNNY AUSTIN: The same the capital of Texas, A-u-s-t-i-n. [LB116]

SENATOR PRICE: Thank you very much, sir. [LB116]

JOHNNY AUSTIN: Yes. I think it's a necessary thing. Our family was a military family. We represented World War I, World War II, and I was the end of it, the Korean. So now we don't have a cemetery here and it takes money to run a cemetery, so that's why we should use these funds. Because I think McPherson, Nebraska, is the closest one here to this...to Lincoln. Is that right, Senator? [LB116]

SENATOR AVERY: That's correct. [LB116]

JOHNNY AUSTIN: Well, I got something right today anyway. (Laughter) Anyway, we all can't be buried back in Washington, D.C. And I want to apologize for my little comments about the Korean War. That's yet to come. I got a letter from Washington. They want me to do a document on the Korean War, which I accepted. I'll be doing that. Well, there isn't much more to say. But maybe we could use some rich man's funds for this, too, you know, people that got so much money they don't know what to do with it and don't spend it on pool, (laugh) on golf, I mean. Any questions? [LB116]

SENATOR PRICE: Well, thank you, Mr. Austin. Are there any questions from the committee? Seeing none, thank you very much for your testimony, sir, and your service. [LB116]

JOHNNY AUSTIN: My pleasure, sirs. Thank you [LB116]

SENATOR PRICE: Do we have any other further proponents? Seeing none, do we have any opponents? Welcome, Mr. Hilgert. []

JOHN HILGERT: (Exhibit 2) Good afternoon, Senator, members of the committee. I am John Hilgert, J-o-h-n H-i-l-g-e-r-t, Director of the Nebraska Department of Veterans' Affairs. I'm testifying in opposition to LB116. I appreciate that LB116 has its genesis in LR542, which compelled committees of jurisdiction to investigate various ways to address the budget challenge that was projected in the summer of 2010. I thank the committee for its hard work in addressing the projected budget shortfall in a diligent and a detailed manner. Since that time that you explored the mechanism contained in LB116 to finance the state veteran cemetery system, the Governor has issued our biennial budget recommendation that does not require LB116 to be enacted. Even beyond the short term financial crunch that our state faces, I would like to take this opportunity to make the committee aware of long-term policy issues that should be considered in determining whether to pursue LB116. It has been the policy of this state for 90 years not to grant bonuses to its returning veterans, but rather to contribute to an aid fund which would be there for them in their time of emergency or need. Since 1921,

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the Nebraska Veterans' Aid Fund has been used for veterans who are experiencing a temporary unforeseen emergency. Since 1921, \$42.7 million of the \$46.3 million of interest available has gone to veterans in need. The fund assists with food, shelter, fuel, wearing apparel, medical, surgical, and funeral expenses. Routinely, the department does have unexpected interest...unexpended interest left over on an annual basis. This is reinvested back into the fund in the short-term investment pool and, thereby, grows the fund and allows for an additional interest to be used in the following year. Only the interest on the trust funds are used for aid payments to veterans. This is to ensure that the underlying trust funds continue to generate annual interest proceeds so that our state is never faced with requesting a new aid program for veterans' benefit payments. To the contrary, if all the interest were to be utilized, as is proposed in part by LB116, the fund would be only \$12 million instead of the \$34 million, approximately, that it is today. The Nebraska Veterans' Aid Fund has never been diverted or used for operations or any expense other than for the direct benefit aid payments to veterans. Be it in the Great Depression, the dark days of World War II, the hyperinflation of the 1970s, throughout it all, this fund has been kept focused right where we believe it should be--in a perpetual, revolving trust fund for aid payments to veterans. Here with me today is Deputy Director Dan Parker who has worked with the fund for over 34 years. He and I will be happy to answer any questions that you might have. And--if you can pass me a handout--I also provide to you an attachment to my prepared testimony, copies of helpful financial information and statistics regarding the aid fund. In conclusion, I would, again, thank Senator Avery and this committee for your leadership in attempting to find ways to fund the cemetery system operations without raising taxes. However, I respectfully suggest that the financing mechanism suggested in LB116 not be utilized. Thank you. [LB116]

SENATOR PRICE: Thank you, Mr. Hilgert. Are there questions from the committee? I would like to ask from you, Mr. Hilgert, looking at the numbers and expenditures and looking at Gulf War, too, Enduring Freedom, Iraqi Freedom, and everything we're doing now, do you foresee or see within claimants to the VA an increase, particularly when we talk about a traumatic brain injury, things of that nature, do we see an increase based on in these last few years on our returning members? [LB116]

JOHN HILGERT: Claims to the Nebraska Veterans' Aid Fund? [LB116]

SENATOR PRICE: Yes, to the aid fund and perhaps, you know, you probably look to the out-years to project how you're going to have to pay out or not pay but what you'd have available and the need to use all the money. [LB116]

JOHN HILGERT: Deputy Parker and I discussed this this morning, this very topic, Senator. Dan, Mr. Parker, used to tell me that he used to make predictions to our Veterans' Advisory Commission about how much we're probably going to spend next year. He said he's given up doing that. The months, as you review the 2009-2010, vary

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widely. Some are in the \$40,000s, some are in the \$80,000s. It's hard to project exactly what the need is going to be. We believe that, again, the policy is that this go to veterans in need, therefore, when we are comfortable in experiencing a sustained period whereby there is additional interest far beyond what we feel is needed to reinvest, the Veterans' Advisory Commission, who is appointed by the Governor not by my department, expands, if you will, some of the criteria, not eligibility but criteria of the fund. For example, the amount that we pay for a dental event increased in the last ten years. The amount we pay for a funeral has increased. This year alone, because of the recession, the Veterans' Advisory Commission has increased payments. We used to have a policy that you would only get two months of assistance because this is for temporary, unforeseen emergencies; it's not a long-term subsistence fund. Well, we would expand that if it was due to a plant closure, some sort of event that is attributed to the recession that we're currently experiencing. So the latitude ebbs and flows with the amount of money that we find ourselves in the fund, and ebbs and flows with the comfort level of the Veterans' Advisory Commission. But always whether we are restricting like I believe we did in 2004 or expanding because the need that we have due to the recession is always directed towards the veterans. So for me to project the need, yes, we are having more veterans return to Nebraska. Yes, we're in an economic downturn still that requires, that affects veterans as much as civilians and other people. And, third, I would project that the Veterans' Advisory Commission will probably expand or modify based on how much money is there. So in my own mind, I can't say that we're going to have a long-term surplus. [LB116]

SENATOR PRICE: Thank you very much because you actually answered the question better than I asked it and I appreciate that because... (laughter) but the nature of the volatility and where we see changes and how to adapt to those, so I appreciate that. Are there any further questions? Senator Sullivan. [LB116]

SENATOR SULLIVAN: Thank you, Senator. And thank you, John. [LB116]

JOHN HILGERT: Certainly. [LB116]

SENATOR SULLIVAN: I know how important some of these...the aid fund is to veterans in some parts of District 41, and yet I see some of the counties in my district don't have any amounts expended there at all. Is part of this...and your unexpended balance, part of that an unawareness of availability or just the fact that there are no veterans there that make themselves available to this or have then been denied for a number of reasons or what? [LB116]

JOHN HILGERT: Well, here's part of the explanation. And there will probably be others that can correct me if I'm wrong, (laugh) but part of it deals with how the county veteran service officers are organized in those areas. For example, I believe we have one county veteran service officer here today, Mr. Shuda, who represents not only Hall

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County but Sherman, Howard and Nance. Sometimes when we do the accounting, a county veteran service officer would submit the application from County A even though he represents County A, B, C, and D, and County A gets attributed those funds because that's where the county request came from. So I don't know this for certain, but, for example, Arthur and Keith County are both represented by one individual. It is very likely that the accounting for this is attributed to Keith County, which is the home position of that county veteran service officer. So it's really not the fact that Mr. Shuda or anyone else who has multiple counties is neglecting or failing to file applications for those counties, it's just that through our accounting system, which is all longhand (laugh) right now, is attributed to the main county that that officer represents. So it may be more of an accounting issue than an indication of a county's lack of applications. In some situations where counties are under stress, as the state, all government, and neither the counties nor the state can print their own money, they have very limited budgets for their county veteran service officers, they're limited as far as hours, the ability to train, etcetera. So it may be in some of those situations whereby the need wasn't there or the county's veteran service officer did not make application, but I think more likely than not it's because of multiple counties being served by one individual. [LB116]

SENATOR SULLIVAN: Okay. And then with respect to the cemetery. Do you...are there any other ways to reach out for funding other than the General Fund? [LB116]

JOHN HILGERT: Well, yes. In fact, I believe in the Governor's budget recommendation, the License Plate Cash Funds will start flowing this year into the cemetery, hardly the amount that we need to maintain our cemetery in Alliance to national shrine standards, but it's there nonetheless. It was difficult to project just how many burials we will anticipate a year. But our first burial...well, until October of next year...I believe it's October 12 is when it's projected to go up, we will be receiving a \$300 allowance from the federal government. Actually technically, it's actually through the deceased and flows to the cemetery, a \$300 benefit, if you will. So we will be getting...it'll be cash funds from the federal government, I believe, because technically it's not sent to the cemetery; it's because of the individual. So we will be getting support from the federal government through that benefit. And, again, cash funds, we've experienced lots of donations, etcetera. But the commitment to have this cemetery, the \$6 million approximate project, and the commitment that we made to the federal government to operate it by national shrine standards basically had to have a guarantee. Feds said, "If we're going to give you the money to build this cemetery, you got to operate it according to our standards, and we want you...and we want to see the guarantee." And the guarantee, frankly, was a commitment and the General Fund because we hadn't opened yet, but hopefully over time we'll migrate away. Now I made a reference to October 12. I believe that that may be going up to \$750 from \$300, so the cash funds, cash/federal funds, per burial benefit may be going up. Now I think many policies like that are being reviewed by the current Congress, so I can't bank on that, (laugh) no pun

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intended. But that would be the only other option. [LB116]

SENATOR SULLIVAN: Okay. Thank you. [LB116]

JOHN HILGERT: Thank you. [LB116]

SENATOR PRICE: Are there any further questions from the...? Seeing none, I guess, Senator Hilgert, you're off the hook. [LB116]

JOHN HILGERT: Thank you very much. [LB116]

SENATOR PRICE: Thank you. Are there other...Mr. Parker. I guess next proponent (sic), please. [LB116]

BURDETTE BURKHART: Thank you for allowing me to speak today. My name is Burdette Burkhart, first name, B-u-r-d-e-t-t-e, Burkhart, B-u-r-k-h-a-r-t. I am the secretary of the Nebraska Veterans Council. Our veterans council is an organization consisting of: the American Legion, the Veterans of Foreign Wars, Military Order of the Purple Heart, Vietnam Veterans of America, AmVets, Disabled American Veterans, and Paralyzed Veterans of America. We met during our regular meeting on January 18 and to review all of the legislative bills pertaining to veterans issue. After reviewing LB116 and after a lot of discussion, the Nebraska Veterans Council unanimously agreed not to support LB116. This particular bill, as you know, calls for aid to help support our veteran cemetery in Alliance. The main concern of our veterans council that once we start taking funds out of the Nebraska Aid Fund, it's only a matter of time before the fund will be depleted. We also have LB285 that wants to change the eligibility for assistance from the Nebraska Veterans' Aid Fund, and don't know really what impact, if passed, what this may have on the Nebraska Aid Fund. As stated earlier, this fund was established in 1921, some 90 years ago, by some very smart World War I veterans. We realize that the state of Nebraska has a shortfall in finance, but to take funds from the Veterans' Aid Fund isn't the answer, to take money away from our veterans in need. We want the Veterans' Aid Fund to be around another 90 years helping our veterans that need it. Thank you. [LB116]

SENATOR PRICE: Thank you very much, sir. Are there any questions from the committee? Seeing none, thank you for your testimony, Mr. Burkhart. [LB116]

BURDETTE BURKHART: Thank you. [LB116]

SENATOR PRICE: Next opponent. [LB116]

GREGORY HOLLOWAY: My name is Greg Holloway, last name H-o-l-l-o-w-a-y. I am the department commander for the Disabled American Veterans for the state of

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Nebraska, also past deputy director for the Lancaster County Veterans Service Center. So I'm an old county service officer. I haven't been that since '95, but. One thing you have to remember with the Nebraska Veterans' Aid Fund: It's for unforeseen emergencies, that's what it was set up for. One catastrophic tornado that hits the state of Nebraska or a flood could affect many veterans and they are eligible for that fund. So we'd need to always be wary in this state of how we expend those funds and keep them for the purpose they are needed to be for. I used the fund when I got out of the Army when I needed it and I also helped administrate the fund when I was a county veteran service officer. I know both sides of the desk. And when you need a couple of bucks to feed your family when times are bad, it's great to be a veteran in the state of Nebraska where you know you have someone that cares about what goes on. Any questions, I'll sure help you answer them. [LB116]

SENATOR PRICE: Thank you very much, Mr. Holloway. Are there any questions? Seeing none, thank you for your testimony, sir. [LB116]

GREGORY HOLLOWAY: Thank you. [LB116]

SENATOR PRICE: Any other opponents? [LB116]

DONALD SHUDA: (Exhibit 3) Good afternoon. My name is Don Shuda, D-o-n S-h-u-d-a. I am currently the Hall, Howard, Nance, and Sherman County veteran service officer. And I'm pleased to say that I've been allowed to be in this position. This is my 25th year, so I've been around the block a couple of times. And I'm sorry, I didn't give you that. I am also the legislative chair for the County Veterans Service Officers Association of Nebraska. And what you're being handed out currently is the position that the County Veterans Service Officers Association of Nebraska took on LB116, which was to oppose it. I know I won't go over any of the comments made earlier. I think Mr. Hilgert, John Hilgert our state director, did an excellent job. The only other comment I might add is that if the fund is reduced or depleted in any way, this would come back to the counties. There is a county veterans' aid program as there is the Nebraska Veterans' Aid program. And if there isn't sufficient funds to use through the Nebraska Veterans' Aid program, we would all of us county veterans service officers go to our county boards and say, we need more money. The veteran, by state statute, has a right to expect assistance. It was created for that purpose, the assistance programs. So in reality, if the fund is reduced, in a sense as the association has indicated, this would cause an unfunded mandate back to the counties. Again, I've been doing this for 24...over, years. I think the NVA fund has been there for its purpose. It's an excellent program. And just would like to say, as an association, we opposed it. [LB116]

SENATOR PRICE: Thank you very much, Mr. Shuda. Are there any questions from the committee? Seeing none, thank you very much for your testimony and your service, sir. [LB116]

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DONALD SHUDA: Thank you. [LB116]

SENATOR PRICE: Do we have another opponent? [LB116]

PAMELA LANCASTER: Got to be a record, twice in one day. (Laugh) My name is Pamela Lancaster, P-a-m-e-l-a, Lancaster, L-a-n-c-a-s-t-e-r. I'm Hall County supervisor. I'm the immediate past-president of NACO, the Nebraska Association of County Officials. And in this particular situation, I'd like to mention the fact that I am vice chair of a national task force regarding veterans, military, and their families. Thank you, again, for allowing us to speak to you all in behalf of this bill, and I do oppose it. I want to sift through my remarks. Many of the remarks were already said and I don't want to bore you with those because I think everyone thus far has done a very good job. But let me say that I do see definitely a need for the state veterans cemetery, and I think that's important to mention here. We have far too many of our young men and women coming home and needing a place of final rest, and whatever we can do to help their families ease this pain I think is vital. So it's not the cemetery itself; it's how it's being funded that is the concern. These funds were made and declared and established for the living, and I think that that's an important issue to be brought forward. True enough over the years the funds grow, we've established that, but that's been very, very careful management and wise expenditures. And so I think that that needs to be stated. These are difficult times and it's tempting to rob wherever there's money. We do it because the money is there, I understand that. But like the social security fund that we did so many years ago at the federal level, now look at the situation we're in there. There was money there; people robbed it for purposes other than what it was intended for, and very likely it will not be there when some folks down the line need it. So that's a concern as well of ours. Obviously, the interest rates that have helped this fund expand aren't at the level that they've been during the years when it was expanded. And so no pot of money that I can see will most likely grow at the present rate of interest. So unless things turn around, we're going to start depleting some of these funds. So, again, I think Senator Sullivan asked where will the money come from, and I'm sure there are people much more capable than I am to decide that. But I think it's important that you know also that besides the money that is there for veterans to be buried, counties are responsible for indigent burials. And so I don't know that this has been addressed at all of the county levels, but I don't see why there would...there's never been a decision made on the county's part about where a particular person was buried, simply that we cover those costs. So in that case, I feel that it would fall on the counties, and we would be responsible for that. I want you all to know that in my new capacity, which I really am enjoying or feel rewarded in being able to serve at that level, we know that there are veterans and armed service men and women coming home with very, very serious injuries. I read a statistic and I looked for it to bring to you today and couldn't find it, but I read a statistic that mentioned that from the Iraq and Afghani war, the people returning, we have lost more men and women to suicide than we have in actual combat situations.

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So it's a different type of war. We're fighting a different situation and people returning...not that they haven't in the past, and I'm a long line of grateful. My grandfathers were both veterans, my father was a veteran, and my husband is a Vietnam War veteran, so we come from a long line of grateful as well. And so there were injuries all along but I think this is a different type. And what we are attempting to do at the federal level is, what's been established is that these people coming back are just so glad to be back they don't want anything more to do with us, so they're not reporting, as you mentioned, they're not coming in, and we're not as connected as we ought to be. There are ways to assist folks. We have things in place, but we're not well enough connected nor are we getting them in always to see the folks that could help them or assist them. So we're working on that. And there are three states in the entire United States that have a very good connect. We're attempting to use those as a model. And I'm hoping that you'll hear more about this in the future because I'm hoping we're successful at doing that in Nebraska, but it will take some time. So with that, I just want to be sure to remind you that these funds were intended for the living. Certainly I have no bad feeling about the cemetery. I think it's a great thing that we have established, but I think that there are other places that these funds can be found, I think \$250,000...I learned a lot today. I didn't realize the level to which we had to keep the cemetery. That sounded like an awful lot of money to me. But with those, if you have questions, I doubt I can answer very many of them but I'd try. [LB116]

SENATOR PRICE: Thank you very much, Ms. Lancaster. Are there any questions from the committee? Senator Schumacher. [LB116]

SENATOR SCHUMACHER: Thank you, Senator Price. A couple of questions, and I don't know if you're the person to answer them or not. But what is the interest rate that this fund is getting? [LB116]

PAMELA LANCASTER: I have no idea. [LB116]

SENATOR SCHUMACHER: Okay. And I take it no one has yet been buried in this cemetery. [LB116]

PAMELA LANCASTER: I actually don't know that either. [LB116]

SENATOR SCHUMACHER: Okay. [LB116]

PAMELA LANCASTER: Sorry, I guess I'm the wrong person to ask. [LB116]

SENATOR SCHUMACHER: And you don't--yeah--know what commitments we made to go ahead with the cemetery, whether we could just put it on ice right now if nobody was buried there yet? [LB116]

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PAMELA LANCASTER: Well, I would guess there would be some level of maintenance, but I'm sure there are people that can speak to that and much more knowledgeably than I. [LB116]

SENATOR SCHUMACHER: Okay. I perhaps should have asked those questions of someone earlier. [LB116]

SENATOR PRICE: Thank you, Senator Schumacher. Any other questions? Seeing none, thank you very much for your testimony, ma'am. [LB116]

PAMELA LANCASTER: Thank you. [LB116]

SENATOR PRICE: Do we have any further opponents? [LB116]

BILL SMITH: Good afternoon. [LB116]

SENATOR PRICE: Good afternoon, sir. [LB116]

BILL SMITH: I appreciate this opportunity. I'm Billy Smith. I'm the chairman for the Veterans' Advisory Commission, appointed by the Governor. There are five of us on that commission, and all of us oppose any spending, of course. A little history. They're right. Nineteen twenty-one, gentleman by the name of Jimmy Van Zandt, he was commander and chief of the Veterans of Foreign Wars, come in. He was from Pennsylvania. He come in to Nebraska and he said, don't give these veterans any money for a bonus. He said, you take that money, you put it away, you put it towards a fund for the Nebraska veterans and their families. This is how that come about. Soon after that, the American Legion picked up on this program and they carried it on until 1947. World War I, they gave us...the Legislature gave us \$2 million. In World War II, it was \$8 million. In Korea, it was \$2 million. In Vietnam, it was \$2 million. Since that time we haven't received any money. And I don't think this money should ever be spent other than what it's designed for. If it is, it's going to be gone because it's going to start picking away a little at a time. So Dan Parker has all the stats; he's got a complete history of everything. This money was not designed for anything other than what it's being used. So I'm in opposition and I'll take any questions. [LB116]

SENATOR PRICE: Thank you very much, Mr. Smith. Are there any questions? [LB116]

BILL SMITH: Thank you. [LB116]

SENATOR PRICE: Thank you, sir, for your testimony. Do we have any further opponents? Anybody would like to testify in the neutral? Seeing none, Senator Avery for closing. [LB116]

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SENATOR AVERY: Sorry to take your additional time, but I don't disagree with the previous comments from other testifiers about the importance of this fund. I know it's important. But let me say that the bill that we were talking about today is not a callous and heartless raid on the fund. We are simply authorizing the Appropriations Committee in extraordinary budgetary times to use that fund to replace General Fund money that may not be available to maintain it. It is not a mandate to spend it. We're not requiring the transfer of any of this money. We're simply authorizing the committee. I believe that we have an Appropriations Committee now, and probably will in the future, that is very prudent and careful in its use of money, and that they would not transfer money from this fund to the cemetery unless it was absolutely necessary. I would remind you that this option received unanimous support in this committee. Of course, the committee was different at the time, but we did not take that decision lightly. It was extensively discussed. The Governor's budget, by Mr. Hilgert's own admission, does not cover all the expected costs of the cemetery. And I would also point out that the Governor's budget does expect to transfer money from another existing cash fund over to the cemetery. And the budget that the Governor has presented illustrates the need for this authority. Again, I stress that it's an authority, not a mandate, to make the transfer. To answer Senator Schumacher's questions, we have already a funeral scheduled for tomorrow in the cemetery. It's the funeral of the murdered soldier in Missouri last week. There's another one scheduled in February, I believe, and there are a number of cremated remains waiting for burial. So we are going to incur expenses very soon. So I think this is...it's something that we need. And, again, I would be the last person to sit here and ask for any damage to be done to the Veterans' Aid Fund. I believe that what we're asking you to do is to authorize the Appropriations Committee to use it when necessary. And I believe that that is entirely consistent with the original intent of this fund. Thank you. [LB116]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions from the committee? Seeing none, that would close the hearing for today on LB116 and will close today's session. Thank you very much for participating in your government. [LB116]