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Executive Board Committee
February 10, 2014

[LR400 LR424]

The Executive Board of the Legislative Council met at 12:00 p.m. on Monday, February 10, 2014, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR400 and LR424. Senators present: John Wightman, Chairperson; Bob Krist, Vice Chairperson; Greg Adams; Bill Avery; Kathy Campbell; Ernie Chambers, Mark Christensen; Russ Karpisek; Steve Lathrop; and Heath Mello. Senators absent: None.

SENATOR WIGHTMAN: Welcome to the Executive Board committee hearings. My name is John Wightman. I'm from Lexington, District 36. We will take up the bills this noon in the order posted on the agenda. To better facilitate today's hearings, I ask that you follow these procedures. One, please turn off cell phones or silence them. The order of testimony will be introducer, proponents, opponents, neutral testimony, and then an optional closing by the introducer. Testifiers must fill out the sign-in sheet and then hand it to the committee page when you come up to speak. Please spell your name for the record before you begin your testimony. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand any exhibits you have to the page for distribution to the committee members and staff. If you have written testimony but do not have the needed 13 copies, please raise your hand now so that the page can make additional copies for you. If you do not wish to testify but would like your position to be part of the record, you can sign the form found at the testifier's table by the testifier sign-in sheet. By way of introduction, to my immediate right is committee counsel, Janice Satra. To my left is committee clerk, Natalie Schunk. The Executive Board members with us today, beginning...I'll go ahead and have them do self-introduction and beginning at my far left.

SENATOR AVERY: That would be me.

SENATOR WIGHTMAN: That would be you.

SENATOR AVERY: Yes, Bill Avery, District 28.

SENATOR CHRISTENSEN: Mark Christensen, District 44.

SENATOR LATHROP: Steve Lathrop, District 12.

SENATOR KARPISEK: Russ Karpisek, District 32.

SENATOR WIGHTMAN: And then we'll begin with Senator Chambers to my immediate right.

SENATOR CHAMBERS: Ernie Chambers, District 11.

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SENATOR ADAMS: Greg Adams, District 24.

SENATOR CAMPBELL: Kathy Campbell, District 25.

SENATOR MELLO: Heath Mello, District 5.

SENATOR WIGHTMAN: And I apologize for my vision. I didn't see the one to my immediate right, but he did talk to me so I know he's here. Go ahead.

SENATOR KRIST: Bob Krist, District 10.

SENATOR WIGHTMAN: Thank you. With that, our page today is Scott. And if you need copies made, he will work with you on that. With that, we'll take up the bills today in the following order: And it would be LR400. We don't have any bills today. We have two legislative resolutions. Senator Avery, did you have your hand up for something?

SENATOR AVERY: I was getting the page.

SENATOR WIGHTMAN: Oh, okay. Thank you. Now today and we don't usually do this, but it looks like we have a lot of people and so I'm going to ask for a show of hands on who intends to testify on either LR400 or LR424. Looks like quite a few. We are going to limit it today to three minutes and the red light will go on when you reach three minutes; the yellow light at two minutes; the red light at three minutes. At any rate, as soon as you can finish your testimony at that point. So we'll start first with LR400, Senator Dubas.

SENATOR DUBAS: Good afternoon, members of the Executive Board. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s. I represent Legislative District 34. I bring to you today LR400, which will create an investigative committee to take an in-depth look at ACCESSNebraska, which is an on-line application process to apply for state assistance. The program timetable goes back to about May of 2008 when the department really began getting this program off and running. The Web site was unveiled I think in about September of 2008, but really since its inception this program has been plagued with problems. The Health and Human Services along with myself and other senators have spent an inordinate amount of time trying to get this program back on track. There have been multiple hearings and bills introduced. Something that was supposed to have saved the state millions of dollars has ended up really costing, costing our citizens in lost dollars through inefficiencies and their valuable time. It's created a work atmosphere among employees of fear and frustration to the point that for some it's impacting their physical health. As I said, there have been multiple hearings, interim studies, and finally a performance audit of ACCESSNebraska. A great deal of attention has been paid to the amount of time that clients are spending on the phone before they obtain results, but

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the problems go so much farther and deeper than just call times. Inability to answer questions and help with applications, lost paperwork, work tasks that put staff in very difficult positions are just a few of the more serious problems that we continue to face with ACCESSNebraska. Oftentimes we can introduce legislation that will help rectify problems with programs. I introduced LB825 several years ago which was intended to improve clients' access to caseworkers, provided an additional \$3 million in funding, and hopefully the department would have worked on contractual arrangements with community-based organizations which would have helped them aid in outreach and assistance. The performance audit indicated deficiencies with the implementation of that legislation. Similar to LR37 that dealt with correcting the direction we took with privatizing our child welfare system and the Beatrice State Developmental Committee, this program needs a very comprehensive look to determine where we are at and what we need to do at multiple levels to take corrective action. And I really want to stress that. As I said, there's been a lot of focus and attention on call wait times. I think that's just a symptom of much greater and much deeper problems that are going on within ACCESS. Legislation that simply nibbles around the edges of this problem will not help us get it back on track in a timely fashion. I believe this committee as set up will need to take an in-depth look at the basic structure of the program. What programs fall under the purview of ACCESS? What federal guidelines govern many of those programs? How many clients are we talking about through those various programs? Where are they located across the state? How do we deal with the more complex issues? What's working in other states and what is working in our system? Other states who have gone to this more on-line type of system have kind of reverted back and gone back and reworked it to a hybrid system where they're taking advantage of technology but they're also keeping that human component where there's caseworkers and other managers in place to help with different situations. Another thing I believe the committee would need to look at is how are employees being treated. Is there adequate staffing and in the right places? What have been the turnover rates since the inception of ACCESSNebraska? What type of training is provided? Do we need some type of a mentoring program? What are the educational requirements? How have we incorporated experienced workers into this system? And then finally looking at the technology. How are we storing, tracking, and retrieving data as it's sent in? As I mentioned earlier, there has been an extreme amount of lost documentation. What were we seeking when we wrote the RFP for this system? Do we have adequate call center software and other information technology and then an access to a database for that data matching? When you look at cost savings versus cost increases, what has this cost individual clients as far as lost time and work, time on the phone, and lapses in payments? Or has the cost been to the state in overtime, employee turnover, additional training of work force, loss of experienced workers, and penalties? And really at the end of the day, what should this program look like and what is the mission of ACCESS? I understand that you are on a very short time line today, but it would have been very easy to fill this room to overflowing with not only clients but others who have been impacted by ACCESSNebraska and the problems. I respectfully requested them not to and we're

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going to try to make the points that we need to make with limited testimony. But my office and the Ombudsman's Office has been in regular contact with employees who are beyond frustrated with how this program is working. But they're also very fearful about speaking out. They fear for their jobs. We've done a lot of reporting. We've required the department to present lots of reports, and I have several of those reports here. And I think they give us some good indication of what's going on, but what are we doing with the reports to rectify the problems? What are we doing with that information that's been presented in the reports to help ACCESS? In one of the recent reports, it shows the number of hours and the number of days when call center responses are at their maximum and that clients will receive a busy signal. There are approximately 299 lines so anytime the numbers reach 295 the caller will likely receive a busy signal. You look at the report dated between July and September of last year that occurrence happened almost every day of the work week between the hours of 8 to 5. So I know there's been some improvements and now we have the division between Medicaid and the rest of the program so there are two separate programs working here. And the hope and the thought is that maybe with that split that will address some of the problems going on with ACCESS. But I really do not want us to be simply focused on if we get call wait times down we've solved all the problems because I believe they go much deeper and they're much more systemic throughout the entire program. So with that, I'd be happy to answer any questions you may have. And I know that there are testifiers behind me who will kind of help make some of the points that I've outlined today. [LR400]

SENATOR WIGHTMAN: Thank you, Senator Dubas. Senator Adams. [LR400]

SENATOR ADAMS: Thank you, Mr. Chair. Senator Dubas, can you tell me why you feel like either the work of the performance audit or interim study process through HHS would not get you the same results that caused you to go this route instead of one of those two routes? [LR400]

SENATOR DUBAS: Because I think the Performance Audit Committee took us a long way down the road, but they were still very limited on what we had asked them to look at. We were asking them basically to look at LB825 and how that has been implemented. And I think that audit showed us that there are other problems in other areas but just because of the scope of the audit or the time they didn't go that direction. The interim hearings that have been held I think because of the vastness of the problems I think we need a very concerted effort that's not just looking at call times or just not looking at lost documentation. But that, as I said, really takes...it's just really to be able to be focused on the entirety of the program so that we can determine where are the real problems, what's working, what's not, and come back with recommendations so that this Legislature...upcoming Legislature could take more than just a bill here or a bill there to try to fix the problem. I think it takes more than just some random bills being introduced. [LR400]

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SENATOR WIGHTMAN: Thank you. Do you have more questions, Senator Adams?
Senator Avery. [LR400]

SENATOR AVERY: Thank you, Mr. Chair. Do you have any idea what this will cost?
[LR400]

SENATOR DUBAS: Not necessarily. I mean we would use current staff that we have available to us in the Legislature, using the senators who are on that, rely on their staff to help us as well. And we would have access to hiring outside counsel or others if we need be. But if I'm remembering right, you know, what the Beatrice...and I think maybe Senator Lathrop might be able to help with this a little bit more, what it ended up costing probably wasn't as high as they had initially thought. I think we would rely very heavily on our own staff and what we have available to us in the Legislature to help with the work. [LR400]

SENATOR AVERY: Thank you. [LR400]

SENATOR WIGHTMAN: Thank you. Yes. [LR400]

SENATOR CAMPBELL: Thank you, Chairman. Senator Dubas, do you see this bill as a...the resolution as a companion as a performance audit bill because Health and Human Services just heard that bill last week? And you kind of said that the rest of the senators kind of know how they would fit together. [LR400]

SENATOR DUBAS: Sure. And one of the recommendations from the performance audit was for that additional reporting requiring a lot more specific information in that reporting. But again, I think they can work in tandem. But again, what that reporting is going to require versus really being able to take a look at everything much farther than just getting a report, okay, we have a report. Now what do we do with it, you know? What is the department going to do with it? What is the Legislature going to do with it? So I think there can be some complementary things going on between them. But this resolution really goes farther than that bill. [LR400]

SENATOR CAMPBELL: Thank you. [LR400]

SENATOR WIGHTMAN: Thank you, Senator Campbell. Anyone else? If not, thank you. Welcome. [LR400]

JAMES GODDARD: (Exhibits 1, 2) Thank you. Good afternoon. My name is James Goddard, that's J-a-m-e-s G-o-d-d-a-r-d, and I'm the director of the economic justice and healthcare access programs at Nebraska Appleseed, here today to testify in support of LR400 on behalf of Appleseed as well as AARP, Community Action of Nebraska, and Voices for Children. As we've already heard, the Department of Health

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and Human Services is responsible for managing public benefit programs in our state, that means providing services to clients and verifying their eligibility for those programs. Starting in 2008, the department took steps to modernize service delivery through an initiative known as ACCESSNebraska. Just for a little context, this meant sweeping changes to the way things had been done up and to that point. It meant fewer local offices. It meant eliminating individual caseworkers, moving to a call center model, and a heavy reliance on technology. The initiative had serious problems from the start, including long call wait times, lost client paperwork, erroneous benefit terminations, and application processing lags. In response to these issues, the Legislature has taken an active interest. There have been several hearings on the subject. There have been several bills introduced, and at least two of those proposals have passed. Unfortunately, we still see that problems persist. And in order to fully understand the root causes of those problems and how to remedy them, additional study and evaluation is needed, and that's why LR400 is so important. It would create a committee of seven senators and other staff to assess the system and issue a report with recommendations at the end of the study. It's our belief that LR400 represents the best approach to improve the ACCESSNebraska system and to ensure that it's efficient and effective for everyone in the future. With that, I'd urge the committee to support LR400. I've also handed out a statement of principles signed by 14 organizations that was released in December, giving some thoughts on potential improvements to the system. Thank you. [LR400]

SENATOR WIGHTMAN: Thank you, Mr. Goddard. Any questions from the committee? Seeing none, thank you. [LR400]

JAMES GODDARD: Thank you. [LR400]

MIKE MARVIN: (Exhibit 3) Good afternoon, Chairman Wightman and members of the committee. My name is Mike Marvin, that's M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees, NAPE. NAPE is the public sector union representing most of the employees in HHS as well as many other state employees. We're here today to support LR400. Since its inception, ACCESSNebraska has been plagued with problems. Much of these were avoidable. We asked that we would be a part of designing things and the changes. That did not happen. They just came in and without real solid worker input implemented their problems. This is not unusual. We've had these issues through child welfare, through Beatrice State Developmental Center, and just about every other program that's come out of HHS in the last few years. The Legislature has looked at this issue several occasions. It's clear that this program does not work. NAPE would urge you to pass this resolution. NAPE would also urge you as part of your ongoing oversight to make yourselves available to the state employees who have valuable input. We need to involve them. Many of them are afraid to come forward because they are afraid of retaliation in the workplace. It needs to be made clear to the agencies that retaliation would not be tolerated and that you welcome the input of the employees. NAPE would like to thank Senator Campbell,

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her committee for all the work that they have done on this to this date. We'd like to thank Senator Dubas for bringing this forward. And we would love to be a partner with this and help in any way that we can. And with that, I make myself available for any questions you would have. [LR400]

SENATOR WIGHTMAN: Thank you, Mr. Marvin. Do we have anyone with questions? Seeing none... [LR400]

MIKE MARVIN: All right, thank you. [LR400]

SENATOR WIGHTMAN: ...you apparently answered everything we would have had. [LR400]

LEE CARR: Hi. I'm Lee Carr, last name C-a-r-r, first name Lee, L-e-e. I'm here to testify again. A year and a half ago I testified at the Health and Human Services Committee with the exact same issues that go on today. Now I have a caseworker and no longer have these problems to the most...most of the time. But I am helping a young lady who has processed four applications before they finally approved it seven weeks later, which was pregnant, was a victim of domestic assault and sexual assault. There was a signature sheet so I could help her advocate on her behalf that was put into a file. About two weeks later, it was lost and no one seems to know what happened to it. We've had numerous employees at ACCESSNebraska telling her that her food stamp and her ADC was on the exact same card, which we know it's not, and also her WIC would go through that, which we know that the state of Nebraska and WIC are not in the same division. They have also promised her to pay rent as well as telling the landlord they would for one month as a one-time-only benefit. That was supposed to be paid in January. And for some reason we found out Friday that it was terminated. No one knows really why. And I talked to a senior supervisor at that time, and the comment that was made to me, which was very personal, is this girl is 19 years old, actually she's 20, and she has a baby. Why can't she take care of this on her own? And I was appalled by it because I said, you know, this young lady has been through a lot. And obviously when you've been on calls with these people and they lose paperwork time after time, that's a comment that's not necessary in anybody's book. Just Friday we were put on hold on ACCESSNebraska for 42 minutes. That's happened five times within the last two months. She's currently going to be homeless again with an infant, and it happens to be my daughter. You know, I just pray you guys do something for these kids out here. That's all I have to say. [LR400]

SENATOR WIGHTMAN: Thank you, Mr. Carr. Any questions? Seeing none, thank you. [LR400]

LEE CARR: Yep. [LR400]

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CONNIE COOPER: (Exhibit 4) Good afternoon, Senator Wightman and members of the committee. My name is Connie Cooper, C-o-n-n-i-e C-o-o-p-e-r, and I'm the director of the Northeast Nebraska Area Agency on Aging, and I'm speaking on behalf of the Nebraska Association of Area Agencies on Aging. The Area Agencies on Aging provide a continuum of services to meet the needs of older Nebraskans. The Area Agencies on Aging support LR400. Despite the efforts by the Nebraska Department of Health and Human Services and Community Partners, further work is needed for ACCESSNebraska. The Legislative Performance Audit Committee's report on ACCESSNebraska noted the problems and concerns of the program. We agree with the report and the information. We see firsthand that ACCESSNebraska is, and to quote Senator Harms, "not meeting the needs of its clients." With the recent separation of the economic assistance programs from the Medicaid program, there are two applications, two interviews, two wait times for approval of services. Clients and their families are frustrated and do not understand why the information cannot be shared in the same state. A quick example for you: A daughter of a client completed the on-line application only to find it was the wrong application because there are five choices. Another application was completed on-line which never showed that it had been completed. The daughter left multiple messages with the caseworker which were never returned. Finally the daughter printed the application and faxed it in. This daughter is a director of nursing in a nursing facility and struggled with this process. It is difficult to see the anguish and worry, the anger and tears from older Nebraskans to try to navigate this process. The Nebraska Area Agencies on Aging ask you to approve LR400 on behalf of our older adults and their families. We welcome the recommendations from the report to create an effective and efficient system. And we thank you for your time and attention in this matter. [LR400]

SENATOR WIGHTMAN: Thank you, Ms. Cooper. Any questions? Thank you for being here. [LR400]

CONNIE COOPER: Thank you. [LR400]

SENATOR WIGHTMAN: Welcome. [LR400]

NICK FAUSTMAN: (Exhibit 5) Good afternoon. I'm Nick Faustman, N-i-c-k F-a-u-s-t-m-a-n. I'm with the Nebraska Health Care Association, which I'll refer to as NHCA. It is the parent association to a family of entities including the state's largest association for nursing facilities, which is the Nebraska Nursing Facility Association, otherwise known as NNFA; and the state's only association dedicated specifically to assisted living facilities, the Nebraska Assisted Living Association or NALA. Both NNFA and NALA represent nonproprietary, proprietary, and governmental long-term care facilities. NNFA and NALA both support LR400. LR400 would create the ACCESSNebraska Special Investigative Committee of the Legislature. It also authorizes the committee to study the adequacy of technology, staffing, and training of employees

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and the overall effectiveness of ACCESSNebraska. As you know, a resident's enrollment in Medicaid is absolutely critical for long-term care. Nebraska's nursing facilities and assisted living facilities have once experienced the same frustrations that others have had with ACCESSNebraska. It was not unusual for facility staff to experience a wait of 30 minutes or more. Residents often had longer waiting times. Staff would receive conflicting input from different department staff, and families and patients experienced difficulty getting information regarding interview arrangements which led them to missing interviews. In addition, facilities had experienced delays in processing of reimbursement. In response to the troubles experienced, however, Department of Health and Human Services, under the guidance of Director Chaumont, assigned caseworkers from the local offices to work directly with the facilities and the patients they serve. This change made by the department has greatly helped our members with eligibility, renewal, and reimbursement. Generally speaking, our membership feels that ACCESSNebraska is improving, but the process of evaluation created by LR400 is another step in the right direction, particularly at a time when the state is facing a change in administration. And the looming prospect of managed care for long-term services and supports is coming quickly. So thank you for considering this important proposal. We urge the Executive Board to advance LR400 to General File. [LR400]

SENATOR WIGHTMAN: Thank you, Mr. Faustman. Any questions? Thank you for being here. [LR400]

NICK FAUSTMAN: Thank you. [LR400]

SENATOR WIGHTMAN: Next proponent. Seeing none, do we have anyone who wishes to speak in opposition to LR400? Seeing none, anyone who would like to address us in a neutral capacity? Welcome. [LR400]

THOMAS PRISTOW: (Exhibit 6) Good afternoon, Senator Wightman, members of the Executive Board. I am Thomas Pristow, T-h-o-m-a-s P-r-i-s-t-o-w, and I'm the director of Children and Family Services for DHHS. I'm here testifying in a neutral position for LR400. This past September, the service delivery of economic assistance and Medicaid benefits through ACCESSNebraska was changed. Medicaid and Long-Term Care staff and Children and Family Services staff began performing only the work respective to their particular areas. One improvement that has been achieved as a result of this split is a significant decrease in wait time for time clients who are contacting ACCESSNebraska. The average wait time for the month of January for CFS is 12 minutes and 31 seconds. Work task numbers have also decreased in the past few months. From this past January to February 3, we had a 48 percent drop in work task from 59,000 to 25,000. Continuous quality improvement has been integrated into ACCESSNebraska and is an important goal for both divisions. The Division of Children and Family Services has created an interdivisional team that is dedicated to the evaluation of data necessary to improve the quality of service in process for economic

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assistance benefits. In addition to the internal work the department Division of Children and Family Services is working with a consultant through the United States Department of Agriculture Food and Nutrition Services at no cost to the division. The consultant has been on-site twice since November 2013 and will be working with us over the next 18 months. The consultant's objective is to help the division identify more efficiencies in our daily work as well as to estimate the average time it takes workers to perform certain tasks during the day. This will help the division get continued goals for average wait times and realistic work task numbers. The department appreciates the dedication of this board and Legislature to the services provided to citizens of Nebraska. The experiences of our citizens in ACCESSNebraska delivery system for the past few years has been inconsistent and the interest of the Legislature has been deservedly understandable. However, I would like to highlight the improvements that have been made in recent months. Firmly believe the department will continue to make improvements to service delivery in the coming months, and we are committed to do that through this Legislature and through our operations. And I'd be glad to answer any questions you may have. [LR400]

SENATOR WIGHTMAN: Thank you. Any questions? Yes, Senator Campbell. [LR400]

SENATOR CAMPBELL: Thank you. Director Pristow, you testified obviously at the Health and Human Services Committee on the Performance Audit bill. And one of the questions that we talked about that might be helpful for the senators here is that in last year's budget the Appropriations Committee gave a significant amount of money to increase the FTEs to be prepared for the ACA for Medicaid. And those employees, you indicated some of them have been directed to the economic assistance part of that. [LR400]

THOMAS PRISTOW: Correct. We got about 23 additional FTEs this year to help us with our operational cost for call centers and both in the field. [LR400]

SENATOR CAMPBELL: But the rest of the employees were left with the Medicaid Division. [LR400]

THOMAS PRISTOW: Yes, ma'am. Yes, Senator. [LR400]

SENATOR CAMPBELL: So if you call in ACCESSNebraska, it's really got two...are there two separate phone numbers at this point? [LR400]

THOMAS PRISTOW: Yes, Senator, there is two separate phone numbers, two separate tracking systems; obviously one for Medicaid and one for food stamps and energy assistance and economic benefits. [LR400]

SENATOR CAMPBELL: The consultant that's working with you from the Agriculture

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Department, will they provide an evaluation or a report? [LR400]

THOMAS PRISTOW: Right. They're going to be working with us for a year and a half and some testifiers here talked about getting in-depth, getting down to the weeds about what is the system issues. And we are committed to going that route with them and with absolutely no resistance from the department. [LR400]

SENATOR CAMPBELL: And just so the senators know that in the Performance Audit bill it requires quarterly reports. Is that correct? [LR400]

THOMAS PRISTOW: Yes, Senator, quarterly reports. [LR400]

SENATOR CAMPBELL: And the Health and Human Services Committee indicated that they would maybe not hold a briefing, a public hearing type every quarter, but certainly every six months in order to... [LR400]

THOMAS PRISTOW: We had talked about every six months, yes. And I would be happy to come in front of this group or any other group that senators may have to talk about ACCESSNebraska and how we're doing and the issues we face. [LR400]

SENATOR CAMPBELL: Thank you, Director. [LR400]

SENATOR WIGHTMAN: Thank you, Senator Campbell. Thank you for being here, Director. [LR400]

THOMAS PRISTOW: Thank you. [LR400]

SENATOR WIGHTMAN: (Exhibit 7) Anyone else wishing to speak in a neutral capacity? If not, let the record show that we have a letter written to the Executive Board by Nebraska Legislative Advocacy Committee which we'll make a part of the record. Do you wish to close? [LR400]

SENATOR DUBAS: I will be brief. Thank you, committee, for your attention. I believe the department is working really hard to try to get this back on track as well, but it's just the problems have just gotten to the point where they're so big. To make it happen it's going to take time and effort and energy, not only on the part of the department but I think on the part of the Legislature as well. I think there's an opportunity here for the Legislature to work with the department, take advantage of the consultant that they have coming in, and then broaden that out more as to what is it that the Legislature needs to do to support this effort. I really hope that you will see value in this legislative resolution. I think involving the employees in this discussion as well is very, very important. As I said, the Ombudsman's Office has been involved with many employees as well as my office. I think they have some good things to bring into this discussion. So

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I think through this legislative resolution and the committee that will form and the work that's being done within the department I think we can make ACCESSNebraska the kind of program that was originally envisioned as being efficient and effective and serving the people that it was meant to serve. [LR400]

SENATOR WIGHTMAN: Thank you, Senator Dubas. Yes. [LR400]

SENATOR MELLO: Thank you, Chairman Wightman, and thank you, Senator Dubas, for bringing LR400. And it's maybe a point of clarification from the Speaker's question earlier in regards to how this is different from the Performance Audit Committee report. In prior conversations myself and you have had as well as a conversation with the Legislative Fiscal Office, part of LR400 really is to give almost an independent fiscal analysis of the program as much as anything else in regards to how money is currently being spent within the department, aside from what we set in the Performance Audit Committee since that was not really detailed at length in that report. Is that a recollection you had? [LR400]

SENATOR DUBAS: That's true. That's true. Again, with Performance Audit we have to kind of limit that scope and what we're asking them to do. And I think what the information that came forward from that report showed us that there is much more that we need to be looking at, and that independent analysis is really important. [LR400]

SENATOR MELLO: Okay. Thank you. [LR400]

SENATOR WIGHTMAN: Thank you, Senator Mello, Senator Dubas. Does anyone have further questions of Senator Dubas? If not, thank you. We'll close the public hearing on LR400, open the public hearing on LR424. Senator Lathrop. We'll give you a second or two to not fight the crowd. [LR400]

SENATOR LATHROP: Good afternoon, Mr. Chairman and members of the Exec Board. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator for District 12 in Omaha/Ralston area. I'm here today to present LR424 and I ask for your support. LR424 basically requests that we establish a special investigative committee to determine the circumstances of Nikko Jenkins' incarceration and his release as well as to determine what systemic problems would allow an individual like Mr. Jenkins to be released into the community, given the things that he has said while incarcerated. Specifically, after Mr. Jenkins was released and is alleged to have committed four separate homicides subsequent to his release, the Ombudsman did a report. And the report detailed Mr. Jenkins' incarceration, the circumstances of his incarceration, and his release. And I hope you've all had an opportunity or taken an opportunity to read that report in its entirety because it is maybe second only to the BSDC report from the Department of Justice the worst thing I've read since I've been here about government, state government. This guy is in prison telling people he's going to get out and kill. And

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before he's released, he's asking for a commitment to the regional center where he can get some help and promises to kill people and we turned him loose and did not commit him. And, of course, he got out and he's now alleged to have killed four...been involved in four different homicides. Why do we need a special investigative committee? Because there are systemic problems in Corrections that have to do with overcrowding, the absence of programming, the absence of mental health care. I think understanding Nikko Jenkins' incarceration and his release as well as the systemic problems that would allow someone to promise that he's going to get out and kill and we do nothing about it; and for him to ask for mental health care and a commitment that would have kept him institutionalized longer and we ignored that. And so I think that is the proper subject of a special investigative committee. And I'm going to add this because I was involved in the or I have been involved in what we generally refer to as the BSDC Special Investigative Committee and now you have two of these before you today. And I would say this about special investigative committees. Remember that there is a balance of power with three separate branches of government, and our role is to provide oversight of the executive branch of government. There's nothing wrong with having special investigative committees nor is there anything wrong with the Legislature providing oversight for the executive branch. But here's the benefit I think I found in the BSDC Committee. Instead of the Health Committee, which did great work on child welfare, but instead of just one committee looking at an issue, when you have members from a variety of different committees participating in the special investigative committee, it doesn't...the knowledge and the information and the benefit isn't limited to a committee. And so in the case of the BSDC Committee, we had Senator Harms there--we had a number of good people--the Speaker was there at the time. But Senator Harms was able to participate in the process and then go into Appropriations and advocate for the things that the developmental disability community needed. So I would ask for your support of LR424 and be happy to answer any questions. [LR424]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Wightman; and thank you, Senator Lathrop, for bringing LR424. It's maybe more of a point of discussion and clarification a little bit. Section 3 of LR424, the very last page, page 4 goes over other subject matters that you would like to see the special investigative committee look at. Have you had a conversation at all with Senator Harms, who is the Chair of the Performance Audit Committee, in respects to the committee's priority of doing a performance audit on the programming and the utilization and administrative use of good time policies and seeing...making sure there's no overlap in regards to what you want to accomplish in respects to where the Performance Audit Committee is already kind of moving on that issue? [LR424]

SENATOR LATHROP: Yes. I did talk to John and I understand that the Performance Audit Committee is going to be looking at that. And just in a general sort of off under the

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balcony kind of conversation what we agreed to do is if we can get this committee up and running that we would cooperate with one another, assuming that I even get on the committee. That would be something this Exec Board would have to decide. But, no, there would be cooperation between the Performance Audit and what this committee would be involved in. [LR424]

SENATOR MELLO: Perfect. Thank you. [LR424]

SENATOR WIGHTMAN: Thank you, Senator Mello. Senator Chambers. [LR424]

SENATOR CHAMBERS: Just very briefly, I definitely support the establishment of this committee. I think it can be in a position to pull in all of the information from all of the sources of that information and put it in one report so we in the Legislature will have access to it. Corrections is the department that handles probably a greater number of what you might call dysfunctional, antisocial people. And it's our responsibility as the Legislature which creates crimes, which establishes punishments, which deals with matters such as good time. We've written statutes that deal with the type of mental health approaches that should be taken toward people in Corrections. We establish standards. We provide funding. The ultimate responsibility for how the Corrections Department functions will be ours as the Legislature even though it falls within the purview of the executive branch. When there are failures in that branch, the pieces are going to be picked up by us in the Legislature. And in order that we can discharge our responsibilities and develop information that we can place reliance on, I think a committee like this is essential. And it's too bad that a catastrophe had to occur before it could be done. Had steps been taken down through the years that would coordinate various actions by the Legislature with the way the Department of Corrections has to operate, some of the issues could be avoided. For example, when there are knee-jerk reactions by the Legislature based on political considerations, which in turn will be based on a high-profile act that might be repulsive to everybody, create statewide revulsion so we become what is called hard on crime, that leads to mandatory minimum sentences, excessively long sentences, overcrowding in the prisons. And our statutes create problems that endure long after we who enacted those statutes are gone. There are people still languishing in prison as a result of earlier days of getting tough on crime, and those people should not be in prison. But because of the laws, they cannot be released. When you look at good time, anybody sentenced to prison has good time figured on the basis of the good time law in effect at that time. As good time laws change down through the years as they have done, you have a multiplicity of standards relative to good time. And it's a bookkeeping and accounting nightmare. So I think when we have this committee, even those of us who are not on it will have access to the members of the committee. Whatever we can offer that will be helpful can be done without that initial adversarial, defensive attitude you encounter, as I even have encountered it on occasion, when you go to Department of Corrections or people in various elements of the executive branch. I'm trying to say everything that I want to say

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as succinctly as possible one time around so I won't drag this out. But it all boils down to being very strongly in favor of the organization and establishment of this committee. [LR424]

SENATOR WIGHTMAN: Thank you, Senator Chambers. Any other questions? Senator Campbell. [LR424]

SENATOR CAMPBELL: Thank you, Senator Wightman. I, too, support the resolution. There's no question about that. Senator Lathrop, do you think the committee will need some resources to carry out what... [LR424]

SENATOR LATHROP: You know, I thought about that when we were asking Senator Dubas. When we did the BSDC Committee, we were concerned that we were going to need legal counsel and maybe an investigator and all that. We didn't in the end. We had Matt from the Speaker's Office as legal counsel that helped a lot, Matt Boever, and then we just used staff that's around the Capitol. And so I would expect that that probably can be done here because much of that gets done during the interim when it's sort of downtime for a lot of the staff. And I wouldn't expect that we would go out and hire a lawyer, for example, unless we got into some kind of a dispute over getting things from the executive branch. [LR424]

SENATOR CAMPBELL: And I just think that the Exec Board needs to be aware that at some point some special committee is going to come back and say, we need some resources. You know, on LR37 we used the Health Care Cash Fund. In the LB603 Committee, Senator Avery was on that, we had really no resources and it was just who got the Chair and all of a sudden you're the person that's expending it. At some point I see the value of these without a doubt and advocate for them. It's just we might need to be prepared for giving them resources should they need it. And the second thing that we should start taking a look at is if there are outside groups, foundations that might be willing to help us, we do not have a mechanism really to collect outside money. And we had that situation last summer on LR22 where we had a foundation that wanted to underwrite a lot of it, and really we don't have a mechanism to do that. We don't have a mechanism to take and have a partnership with people who may want to really be of help to the Legislature. And so I'm really raising two questions here. We should be prepared to give money if we need it. And we should look at how do we accept outside money for studies such as this because I believe it's there and could help us if we need it. We ran into it one summer... [LR424]

SENATOR LATHROP: You know what? I'm thinking out loud. I'm going to think out loud in response to that. I don't know if we want outside money when it comes to a special investigative committee. It is the job of this branch of government to provide oversight. And I don't know if the report would have the same...if it would be subject to impeachment just by virtue of the fact that it had been financed by a group that has a

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particular agenda, not that I wouldn't appreciate the fact that people are offering money to help get to the bottom of some early childhood education issue, for example. But I do think that that's part of our role as the legislative branch. [LR424]

SENATOR CAMPBELL: And I'm just raising it as the Exec Board would be the filter to do that. But in this case, there might be some national justice funding that would really want to replicate some studies. It's just...I'm thinking out loud, too, Senator Lathrop. [LR424]

SENATOR LATHROP: Sure. [LR424]

SENATOR CAMPBELL: But I just think that the Exec Board at some point may need to look at what is the mechanism if we would choose to do that. And I think this is the appropriate body to filter any of that. [LR424]

SENATOR WIGHTMAN: Thank you, Senator Campbell and Senator Lathrop. Yes, Senator Avery. [LR424]

SENATOR AVERY: Thank you, Mr. Chair. What if, and I'm thinking out loud too, what if we conduct this investigation and uncover serious misconduct. What would be the next step? And would we at that point maybe need outside counsel? [LR424]

SENATOR LATHROP: We might. I'm trying to think back to my experience with the BSDC Committee because there were some things that we sort of drilled down and got to the bottom of and said, oh my gosh, this is awful. But if we were talking about misconduct somewhere in the executive branch, then I'm not sure what that next step is to be honest with you. I suppose it would depend on who it is and... [LR424]

SENATOR AVERY: ...how serious the misconduct. [LR424]

SENATOR LATHROP: How serious it is and that sort of thing. Yeah, I don't know. I don't know the law in that area, but I think we have enough lawyers around. [LR424]

SENATOR AVERY: We don't need to answer that question now in order to do what you are proposing. [LR424]

SENATOR LATHROP: No, I don't think we do. I don't think we do. At some point if we get into this and there is something to suggest that there was somebody's judgment, that there is something that may have some legal implications then I think we can bring in some lawyers. [LR424]

SENATOR WIGHTMAN: There's certainly some power under the resolution to do that. [LR424]

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SENATOR LATHROP: Yes. [LR424]

SENATOR WIGHTMAN: Now if you get into a big expenditure, I think that we might have to come back. [LR424]

SENATOR LATHROP: Yes, there is. [LR424]

SENATOR WIGHTMAN: And I'm not here to define what big is. [LR424]

SENATOR LATHROP: Right. [LR424]

SENATOR WIGHTMAN: Thank you, Senator Avery and Senator Lathrop. Any other questions? Thank you. Do we have other persons who want to speak in...on behalf of the resolution? Welcome. [LR424]

MARSHALL LUX: Good afternoon, Senators. My name is Marshall Lux, M-a-r-s-h-a-l-l L-u-x. I'm the Ombudsman, and I want to speak in support of this resolution. I'll make three quick points. One, as you are aware, our office did a report on the involvement of Mr. Jenkins in the mental health system at the Department of Correctional Services. This is what that report looks like. It's over 60 pages long. It's full of observations and recommendations that we made to the department in regard to Mr. Jenkins' case. We submitted that report to the Department of Corrections before it was released and asked for their response. This is the response that we got back. It's three sentences long. What this tells me is that there are a lot of unanswered questions still with regard to this issue and how the Department of Corrections performed. And I think that Senator Lathrop's committee or the committee that he is proposing could go a long way to getting answers to those questions. Point number two is that our report actually only scratches the surface with regard to what could be learned about our system from Mr. Jenkins' case. The truth of the matter is that he was involved in the child welfare and juvenile justice systems as well as the adult system, going back to when he was seven years old. And so I think that what we're likely to find out through the work of the committee that's being proposed here is that there were failures as well in the juvenile justice system and in the child welfare system in addressing this young man's issues. And his case is not unique. I think that that is something that we...those are lessons we need to learn because there are going to be other troubled young people as well in the future and we need to figure out ways for our system to deal with them more effectively. Final point is this: I completely agree with what Senator Lathrop has said about the value of these kinds of committees with respect to providing legislative oversight. I've worked for this institution for more than 30 years. Early in my history with the Legislature I felt that the Legislature really was not meeting its responsibilities with regard to providing legislative oversight. That has changed. It's evolved more in the last few decades. The Performance Audit Office I believe in...was created in 1992. It was an

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idea of Senator Warner's as I recall. That was a good move. And the work that the Health and Human Services Committee did with respect to LR37, that was a good addition. And certainly the BSDC Committee was another win in terms of the Legislature doing a better job with regard to legislative oversight. So I think that this is a good idea, and I would encourage the committee to support this resolution. [LR424]

SENATOR WIGHTMAN: Thank you, Marshall. Yes, Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Wightman; and thank you, Marshall, for your testimony. It's more than...more simply a thank you and an appreciation to the Ombudsman's Office for the work that you've been doing I would say throughout the last session as well as this summer and fall in regards to collecting information regarding prison overcrowding and Corrections issue. And obviously the report you released earlier this year was something the Legislature needed to see, the public needed to see. And I for one appreciate the hard work that you and your staff did to compile it so thank you. [LR424]

MARSHALL LUX: Thank you, Senator. [LR424]

SENATOR WIGHTMAN: Thank you, Senator Mello. Senator Chambers. [LR424]

SENATOR CHAMBERS: Did you have your hand up first? [LR424]

SENATOR KRIST: No, go ahead. I'll wait. [LR424]

SENATOR CHAMBERS: Just briefly, another value in having this hearing in addition to my supporting what Mr. Lux said, down through the years we've worked together, he held up that response that was given to that fact-based report. Those of you who have served with me in the Legislature know that sometimes I can be seen as a stickler for detail, documentation, and so forth. I respect that report. And whereas we're singling out Mr. Lux because he's here, the staff in that office have done work down through the years. But that response shows for the record the dismissive attitude of the executive branch of government. This report that the Ombudsman's Office did is not an attack, gotcha type of document. To dismiss it with two sentences shows a brushing aside and a minimization of the seriousness of what it is we're dealing with. It shows the necessity of the Legislature doing something because after allowing these problems to fester and grow and finally explode in the way they have indicates that the executive department, whoever is in charge, cannot be trusted. And it also gives grist for the Judiciary Committee's mill when a person who is recommended by the Governor to be the new director comes before us. It would have been just wise common sense in play for that director to be able to show that he has taken seriously what has happened because he was there in another capacity the whole time. If we don't strike this iron while it's hot, then the federal government could act either through the Justice Department by way of

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federal court intervention, the embarrassment that could come to the state, as it should, but we can avoid some of that. And speaking of the federal government, if a report should be produced by this committee and wrongdoing is discovered, it would be state action. And if the state itself refuses to act, I as a member of the Legislature or a citizen can file a document with U.S. Department of Justice, the U.S. Attorney's Office in Omaha as I've done before to show that we're dealing with state action. There is no instrumentality in the state to address it. People's constitutional rights are being violated so federal questions have been unearthed and the federal government ought to intervene. I am trying at least today to speak with great restraint because a positive approach is being fashioned. And when that is done, there's no need for me to come with a battering ram. The door is open, somebody saying come right in. And I know how to behave when I have a guest who is civilized and polite and welcoming. I can be civilized, polite, and accepting. Now to wind up what I wanted to say. I don't want any of those who are considered employees of the Legislature to feel that we are going to put them out on a limb, let that limb be cut off or somebody make them walk the plank over shark-infested ocean and we just sit back and allow it to happen. We owe something to our employees, not just because they're our employees. But when they have discharged in such an exemplary fashion the charge that the Ombudsman's Office was given, we have an obligation to pick up the ball because that's all that they can do. Now action must be forthcoming, and this committee is a way for us to give the follow-up that's needed. And that's all that I have. Thank you, Mr. Lux, again. [LR424]

MARSHALL LUX: Thank you. [LR424]

SENATOR WIGHTMAN: Thank you. Thank you, Senator Chambers. Senator Krist. [LR424]

SENATOR KRIST: Senator Chambers said everything that I would hope to say or could never say as well except one word. [LR424]

SENATOR WIGHTMAN: Well, maybe we should have let you go first. [LR424]

SENATOR KRIST: No, except I'd add one word and that one word is disrespect. And I don't like being disrespected so thank you for what you do and this is a great idea. Thank you, Senator Lathrop, for bringing it forward. [LR424]

SENATOR WIGHTMAN: Thank you, Senator Krist. Thank you for being here. Any other questions? Thank you. Do we have anyone else that wishes to speak in the affirmative? Do we have anyone that wishes to speak in opposition? Is there anyone here that would want to speak in a neutral capacity? Do you wish to close? [LR424]

SENATOR LATHROP: I'll waive closing. [LR424]