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Government, Military and Veterans Affairs Committee
January 23, 2013

[LB41 LB56 LB144 LR12CA]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 23, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB41, LB56, LB144, and LR12CA. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; John Murante; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: We're going to get started here. You may sit--please do. I see our committee members are arriving. Welcome to the first hearing of the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I chair the committee. This is the first hearing of the First Session of the One Hundred Third Congress (sic)--or Legislature (laugh)--and we have a pretty large number of bills to hear over the course of the next several weeks. We will start today with the agenda as posted outside the room, starting with LB46, then moving to LB56, on to LB144, and then LR12CA. Before we start with LB41, let me introduce the members of the committee. We have some new members joining the committee this year and some new members joining the Legislature this year. A person who fits both of those categories is Senator John Murante from Gretna; and next to him is Senator Dave Bloomfield, who is new to the committee but not new to the Legislature; and next to him is Senator Scott Lautenbaugh, not exactly new to the committee but has been here before, left, and decided he missed us and came back.

SENATOR LAUTENBAUGH: It's like coming home.

SENATOR AVERY: (Laugh) Senator Lautenbaugh is from Omaha and Washington County. The Vice Chair of the committee is Senator Scott Price from Bellevue, and next to him is the committee counsel, Christy Abraham. Soon to join us is Senator Russ Karpisek from Wilber, and next to him is Senator Norm Wallman from Cortland. And then the last one here is a new member of the Legislature and a new member of this committee, Senator Jim Scheer from Norfolk. At the far end is Sherry Shaffer, who is the committee clerk. We have two new pages, Will--or William--Rahjes from Elwood, Nebraska; Cicely Batie from Lexington, Nebraska. They will be helping us throughout the course of this session. If you have material that you would like for the committee to see, hand that to the committee clerk, Sherry Shaffer, and she will have the pages distribute them. We like to have 15 copies of any material you wish to hand out. If you do not have those, get that to the pages and we'll get copies made for you. If you plan to testify then we're going to ask you to fill out the green sheet of paper. This takes a while, doesn't it, Senator Cook?

SENATOR COOK: Only when you're nervous. Even though you're all wonderful colleagues, it does feel longer when you're sitting here.

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: (Laugh) We ask that you print the requested information on the green sheet and hand this to Sherry, the clerk. If you wish to record your support for or opposition to any of these bills but do not wish to testify, we ask that you sign this. These forms are available at each entrance to the room. The green one, please remember, this is only for people who wish to testify, and we ask that you print on all of these. Introducers will make initial statements, and they will be followed by proponents; the proponents then will be followed by opponents; and if anyone is here that wishes to testify in a neutral position, well, you'll be given an opportunity to do that. Closing remarks are reserved for the introducing senator only. We do use the light system in the committee. The red...the green light is a four-minute time. You should be able to get most of what you want to say said in four minutes. That's followed by a one-minute, amber light. And then when that time is up, the red light comes on and you should be finished. It is...it goes against my nature to limit debate in that manner, but we have found that that is the best way to handle the testifying in a fair way. We have, sometimes, bills that fill the hearing room and overflow, and it takes a long time to get through. We do try to give everybody an opportunity to speak who wishes to. And we will treat you with the utmost respect because we believe that that is essential to the good work of this Legislature, that is, public involvement in the process. Try not to be repetitive, if you listen carefully to prior testimony, so that you don't repeat what has already been said. We don't want to get into a situation where everything has been said but not everybody has said it. And you've seen that happen before, so please try to help us out with that. If you have a cell phone, turn it off, please; and if you have any electronic device that makes noise, silence it, please. With that, I will ask Senator Wallman to turn his phone down, (laugh) and we will start with Senator Cook. Welcome. You're our very first guest, so let us hear from you about LB41. [LB41]

SENATOR COOK: Thank you very much, Mr. Chairman. Honorable members of the Government, Military and Veterans Affairs Committee, I am Senator Tanya Cook, T-a-n-y-a C-o-o-k. I am the Nebraska state senator representing Legislative District 13 and the introducer of LB41. LB41 establishes a duty for election commissioners and county clerks to maintain a permanent early voting request list and outlines procedures for the administration of the permanent early voting request list. LB41 also makes it clear that a vote-by-mail ballot that was not returned through the mail can be delivered by hand to the registered voter's designated polling place on election day. A permanent early voting request list works in the following way: A registered voter, when applying for an early vote-by-mail ballot, could request to be placed on a permanent early vote request list. The voter would do this by merely checking a box on the application. Election commissioners or county clerks would maintain a list of voters wishing to be on the permanent early vote list. Prior to each election, the election commissioner or county clerk would mail an application to request a ballot for early voting. Again, they mail an application to request a ballot for early voting, not a ballot itself. The voter would need to fill out the application to request a ballot for early voting in that election. LB41

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

Government, Military and Veterans Affairs Committee
January 23, 2013

serves to strengthen and preserve our democracy by increasing voter turnout. Voter turnout is dismally low for most elections. A policy that creates a permanent, automatic early voter request list will increase voter turnout. Also, early voting by mail is vital to the continued participation of Nebraska's elderly population. My district has a growing elderly population, and it is my belief that creating a permanent early voting request list will help these Nebraskans continue their engagement with our democracy. Additionally, LB41 allows for active military servicepersons serving overseas to request placement on the permanent early voting list. This provision will ensure that servicemen and women are afforded this additional opportunity and convenience to remain vibrant citizens of our state. A permanent early voting request list will lead to increased voter turnout in off-cycle elections. Historically, primary elections and nonpresidential-year general elections have lower turnout. Because applications for vote-by-mail ballots will be delivered for every election, a permanent early voting request list will facilitate continued engagement in any and all elections. Not only does LB41 encourage greater voter participation, but the legislation will also lead to greater accuracy of Nebraska's voter roles. Because addresses are verified each election, changes of addresses for participants of an early voter request list will be constantly updated. This will lessen confusion at the polls and the need for provisional ballots in many cases. These ongoing verifications will create a more accurate voter role for Nebraska's election commissioners and county clerks. This legislation includes an additional component. LB41 contains a provision that allows vote-by-mail ballots to be dropped off at the registered voter's designated polling place on election day. Currently, if a voter misses the deadline for their ballot reaching their election official prior to election day, that person may not exercise her right to vote, her right to be heard in that election. To avoid this, registered voters should be able to return their ballot to their polling place on election day. These are the reasons for the legislation and the practical effect that its passage will encourage. I appreciate your consideration and support for the advancement of LB41. Thank you. [LB41]

SENATOR AVERY: Thank you, Senator Cook. Questions from the committee? Senator Murante. [LB41]

SENATOR MURANTE: I have two questions for you, Senator Cook. First, I'm trying to wrap my mind around the concept of returning an early voting ballot to a polling place on election day, and I'm wondering, do you have...have you given any sort of thought or consideration as to what percentage of people who request to vote early you would anticipate returning their ballots to a polling place on election day? [LB41]

SENATOR COOK: I've not. But now that you've asked the question I could speculate. [LB41]

SENATOR MURANTE: Okay, go ahead. [LB41]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR COOK: My perception would be that the vast majority of people who request, even now, who request early voting intend to follow through with the early voting aspect. [LB41]

SENATOR MURANTE: Um-hum. [LB41]

SENATOR COOK: So my perception would be that it would be a relatively low percentage of people who, oh, I accidentally forgot I had a doctor's appointment and happened to miss that deadline, but here I am, I'm a registered voter, and it's election day, and I'm going to return my completed ballot to an official polling place. So relatively small would be my perception of the percentage. [LB41]

SENATOR MURANTE: Okay. And second, it seems perfectly logical that we are trying to increase the ability of people to vote early by mail, which will increase turnout, as your testimony said. I'm wondering, why don't we just go to all vote by mail? [LB41]

SENATOR COOK: Okay, why don't we? This proposal isn't about all vote by mail. [LB41]

SENATOR MURANTE: Sure. [LB41]

SENATOR COOK: I am in philosophical support of legislation or policies that would encourage and open up the opportunity for people to exercise their constitutional right to vote. [LB41]

SENATOR MURANTE: Okay. [LB41]

SENATOR AVERY: Any other questions? Let me ask you about Lancaster County. I know that Lancaster County already provides this permanent early voting list. [LB41]

SENATOR COOK: That's my understanding. [LB41]

SENATOR AVERY: Do you have any information about how that has worked in the Lancaster, whether they've had difficulty with it? Has it increased turnout? [LB41]

SENATOR COOK: I've not heard any direct report in response to that; I've not had a report from them that says, oh, we really have experienced a change one way or the other. [LB41]

SENATOR AVERY: Um-hum. [LB41]

SENATOR COOK: One of the other aspects of a proposal like this...my perception is that it would spread out the workload, that there might not be as many spikes in demand

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

Government, Military and Veterans Affairs Committee
January 23, 2013

for ballots or services among the election commissioners. [LB41]

SENATOR AVERY: We may have somebody here who can address that later; I'm not sure. [LB41]

SENATOR COOK: My suspicion is that, yes, we may have somebody who can speak to that more factually. [LB41]

SENATOR AVERY: Okay. Senator Scheer. [LB41]

SENATOR SCHEER: And you may have stated it and I missed it, so I apologize if I did. But part of the legislation, if they don't return the card then they're not going to receive a ballot, I understand that. But for those that may have put themselves on the permanent list and they either move out of state or perhaps their life has ended, how do we clean that permanent list of those names? [LB41]

SENATOR COOK: I did not speak to that, and the legislation does not consider what the person administering the list might do to purge the list of names for people who do not return that request for the application, yes. [LB41]

SENATOR SCHEER: So there's...you hadn't thought of like if you send out three or four... [LB41]

SENATOR COOK: This current form does not contemplate what the election commissioner or the county clerk would do. [LB41]

SENATOR SCHEER: Okay. Okay, so you're leaving it up to local decision on how they would purge those. [LB41]

SENATOR COOK: That...I'm...my imagination tells me that it is currently a...done through their own administrative channels and their own decisions. [LB41]

SENATOR SCHEER: Okay, thank you. [LB41]

SENATOR AVERY: Any other questions? I don't see any. Are you going to stay to close? [LB41]

SENATOR COOK: Yes, I will. [LB41]

SENATOR AVERY: Okay. [LB41]

SENATOR COOK: Thank you. [LB41]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: All right, the committee will now receive proponent testimony, those who wish to speak in support of LB41. [LB41]

ADAM MORFELD: (Exhibit 1) Good afternoon, Chairman Avery, members of the committee. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, and I'm the executive director and founder of Nebraskans for Civic Reform. We are a nonpartisan, nonprofit organization dedicated to protecting voting rights and increasing K-12 civic engagement in our schools. Nebraskans for Civic Reform supports LB41 for several reasons. First, maintaining a permanent vote-by-mail list is a proven method of conducting early voting in Nebraska. Lancaster County has administered a permanent vote-by-mail system since 1998, according to testimony on the similar bill a few years ago. After traveling around the state and meeting with over 40 county clerks and election administrators, many noted that they maintain their own system currently. In addition, as outlined in the memo prepared for you, seven other states have a similar system where voters can request to be put on a permanent vote-by-mail list. In addition, several other states require that severely disabled and the elderly have the option to be on such a list if they so request. Second, a permanent vote-by-mail system results in increased accuracy of the voting rules. LB41 would require that a VBM request card be sent to the address of the registered voter who has requested to vote by mail in the past. This confirms the voter's address, if they are still a resident, or indicates to the election officer or office if their information must be updated or they are not at that address. Third, LB41 streamlines the election process. Permanent vote-by-mail lists increase the number of voters voting by mail and, thus, reduces congestion at the polls while simultaneously creating a more predictable vote-by-mail workflow for election offices. Fourth, permanent vote-by-mail lists would likely increase voter turnout. While this is not an all vote-by-mail election bill, it...these types of elections, where people automatically receive the ballots, have been seen to increase turnout in elections, particularly smaller elections and not general ones. A permanent vote-by-mail list would only increase the accessibility of voting and serve as an additional reminder to voters of an impending election. Finally, the provision allowing for drop-off ballots received by mail at the voter's polling location allows for the voter who received the ballot by mail but failed to mail it to the main election office to drop it off at their designated polling location. We found this to be an issue with many voters that were...that they faced on election day in this last election in both urban and rural areas. In conclusion, increased accessibility to elections and enhanced accuracy of the voter rules should always be a priority. Increased accessibility leads to increased participation, and increased participation results in a more representative and vibrant democracy. I urge you to support this legislation and would be more than happy to answer any questions. Thank you. [LB41]

SENATOR AVERY: Questions from the committee? Don't see any. [LB41]

ADAM MORFELD: Thank you. [LB41]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Thank you, Mr. Morfeld. Any other proponent testimony? [LB41]

KRIS PIERCE: Good afternoon. [LB41]

SENATOR AVERY: Good afternoon. Welcome. [LB41]

KRIS PIERCE: My name is Kris Pierce, K-r-i-s, Pierce, P-i-e-r-c-e. Fortunately, I will be much shorter because a lot of the good points that were brought up have already been covered. My current...I am currently the Douglas County Democratic Party chairman, but I think this is a very nonpartisan issue because this affects all voters. I can't agree with these two proposals more if we are...one of our goals is to increase the exercise of people voting and becoming involved. But this also, if a voter is allowed to drop off their early ballot to any polling place, would actually help them bypass the postage that is required to return a ballot. In November that cost was \$1.10 in Douglas County to return their vote by mail. One thing I would say is I would like to see, eventually, an expansion. Rather than being required to just go to your polling place that you would normally vote, that the option of taking your ballot to any polling place on election day should be available. Every poll worker that's at a polling place is an agent of the election commissioner. And currently in Douglas County there are already drop-off boxes around the county, starting when early voting starts, so that you can go and just drop it off at a secured box. I would correlate that with being able to drop it off at any polling location, just as you would at any drop-off box prior to the election. As Mr. Morfeld said, seven states currently do this, including Arizona, California, Colorado, Hawaii, Montana, New Jersey, and Utah, so it's a plethora of big and small states that take advantage of this policy. And, as he also said, there are other states that have different variances of a permanent list. Again, I would support both of these if one of our goals is to increase the participation of the electorate, to be involved in the government process, and kind of how our government is ran and those that represent us. I'm available for any questions. [LB41]

SENATOR AVERY: Thank you, Mr. Pierce. Any questions from the committee? [LB41]

KRIS PIERCE: Thank you very much. [LB41]

SENATOR AVERY: Don't see any, thank you. Any other proponent testimony? Okay, seeing none, we'll move to opponent testimony. Now we have somebody to talk about Lancaster. (Laugh) Welcome. [LB41]

DAVID SHIVELY: Thank you. Thank you, Senator Avery and members of the Government Committee. My name is David Shively, D-a-v-i-d S-h-i-v-e-l-y. I am the Lancaster County Election Commissioner. I am here today in opposition to LB41, which would require counties to provide a permanent early voter request form list and allow for

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

Government, Military and Veterans Affairs Committee
January 23, 2013

early voting ballots to be returned to polling locations on election day. As was indicated earlier, Lancaster County has had a permanent absentee ballot request form list since about 1998. It started with around 800 names on the list and has now grown to over 22,000 names. It costs Lancaster County approximately \$8,000 to \$10,000 per election to mail to this list. Our turnout has remained similar to statewide average, even though we have had this permanent request form list. Turnout doesn't depend on mechanisms; it depends on issues and competitive races. I feel it should be an administrative decision by local officials if their counties should do this and not a mandate from the state--we know our counties and we know our voters. Regarding the returning of early voter ballots to the polling locations, we currently do have a mechanism for people that are listed on the voter file or on the voter list at the polling locations to be able to vote if they have requested an absentee ballot. They can vote at their polling locations. They would vote what we call a provisional ballot. They cannot return their absentee ballot though. The law says that all absentee ballots now have to be returned, and so they are in the possession of the election commissioner no later than 8:00 on election night. I was actually on the task force in 2001 and 2002 when we made that recommendation to change the procedure of when absentee ballots had to be returned. Prior to that, absentee ballots could be returned as long as it was postmarked by election day and received by the Thursday following. We made that change, recommended that change, and the Legislature agreed with that change after that task force met. As was indicated earlier, the three largest counties now do have drop boxes for their early voting ballots. That has been effective for all of us in getting ballots returned, and it's something that has worked for us. Procedures for poll workers are complicated enough. Adding an additional requirement for them to do something like this will just add additional confusion for poll workers, and I think that would be a bad idea. Cost of early voting mailing keeps going up. We've already paid for that ballot to go out to that voter. It just...you know, the cost is very clearly. If they can show up to the polling site to drop their ballot off on election day, they'd just as well vote at their polling location. The last thing I'd like to talk about is delay in results. If we...depending on what the percent of these would be returned, they would be locked up on election night and probably wouldn't be open and counted until the day after the election depending on...especially if a county, large counties like Lancaster, Douglas, and Sarpy. With that, I would encourage you to not advance this to the floor of the Legislature, and I'd be happy to answer any questions. [LB41]

SENATOR AVERY: Thank you. Any questions from the committee? Senator Bloomfield. [LB41]

SENATOR BLOOMFIELD: Thank you. Mr. Shively, did I understand you to say that it was not a sizeable increase in the number of votes cast using this? [LB41]

DAVID SHIVELY: Our turnout is about the same as what the state average has been on statewide elections, so there hasn't been an increase as I have seen. It's always been

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

Government, Military and Veterans Affairs Committee
January 23, 2013

about the...our average...our turnout has about been the same as what the state average has within a point or two. [LB41]

SENATOR BLOOMFIELD: And your cost has gone up exponentially? [LB41]

DAVID SHIVELY: Well, the cost to mail the list out each time, that has gone up as our...the number of people that have been put on that list keeps going up, that goes up. And as postage cost goes up, of course that increases as well. [LB41]

SENATOR BLOOMFIELD: Has there been an offsetting savings anywhere else? [LB41]

DAVID SHIVELY: The one thing that was mentioned earlier, the one thing it does provide in my office to do, and again this is...again I go back to the...as it's a local office decision and a management-style position for us. It has allowed us to get our absentee ballot. We send that request form out about six weeks prior. We get a lot of our absentee ballot requests...ballots out in the mail earlier, and it kind of helps us work our workflow a little bit easier. [LB41]

SENATOR BLOOMFIELD: Okay, thank you, sir. [LB41]

SENATOR AVERY: Let me ask you...you mentioned that Lancaster adopted this permanent list about 1998. Did that come about because of some study or a response to voter interest, do you know? [LB41]

DAVID SHIVELY: It was actually started prior to my being election commissioner. My predecessor started this list. From what I understand, she wanted to have an automatic list where we should automatically mail ballots out, and that was not allowed according to state law. And so she asked the Secretary of State's Office at the time if she could do the permanent absentee ballot request form list and that was approved, and so we've continued that since that time. [LB41]

SENATOR AVERY: And despite the fact that you're testifying in opposition and you have the authority as election commissioner in Lancaster, you decided not to end this practice? [LB41]

DAVID SHIVELY: It's worked well for us and, again, it gets the...I think it's a local office decision, and that's where I wouldn't want to force this onto any other office if they wouldn't want to do it. But I...it works for us, and it's worked well for us. I can't say it's going to work well for everybody. [LB41]

SENATOR AVERY: Okay. Senator Scheer. [LB41]

SENATOR SCHEER: Quick question. You just stated that it was started before you got

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

Government, Military and Veterans Affairs Committee
January 23, 2013

there. But was this something instituted exclusively by the election official, or was this by the county's supervisors or commission or commissioner vote, or how as this... [LB41]

DAVID SHIVELY: It's my understanding that the commissioner made that decision on her own. [LB41]

SENATOR SCHEER: Okay. [LB41]

DAVID SHIVELY: And it would have to have been an approved budgetary item as well if the board didn't want to do that, but it was part of her budget. [LB41]

SENATOR SCHEER: Okay. [LB41]

SENATOR AVERY: Senator Karpisek. [LB41]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Shively. You said that you're still running about the state average. But did it increase your voting numbers? [LB41]

DAVID SHIVELY: I don't think that it really increased our numbers. I think what it's probably done, it's made more people consistent voters. They...we probably have more 100 percent voters, people that vote every election. Now maybe that's helped turnout a little bit; maybe it stopped the decline and we've maintained where we were at. I can't tell you, you know, exactly what would have happened. But I do know that we maintain about the state average. We're following about the state average. And, matter of fact, we're also, in the number of people that request absentee ballots from us, if you look at the state average it's been around...this last cycle I think it was 23 to 25 percent of ballots cast were cast early. That was about the same percentage that we had in Lancaster County. [LB41]

SENATOR KARPISEK: Okay. And then you said it's just worked well for you. Can you...like, what has worked well? [LB41]

DAVID SHIVELY: For us, it helps manage our workflow. We actually get it...we get the requests in early and get our ballots out earlier. You know, what happens a lot of times in elections is that the political parties or the candidates will also mail out absentee ballot request forms to voters, and all of a sudden you get those in and you have to get those out to your voters. We get a lot of that taken care of earlier, so it manages our workflow better. Whether that would be the same in other counties, I don't know. [LB41]

SENATOR KARPISEK: Great. Thank you. Thank you, Senator Avery. [LB41]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Senator Scheer. [LB41]

SENATOR SCHEER: Thank you, Senator. Of the folks that are on the permanent list, what percentage of those would have requested the absentee ballot versus...you said that you're running about 23 percent, which would be the state average. But is it a much higher average of those that are on that permanent list? [LB41]

DAVID SHIVELY: I would say that would be the case; the vast majority of our absentee ballots are people that are...people that have requested absentee ballots are on the permanent list, yes. [LB41]

SENATOR SCHEER: Okay. [LB41]

DAVID SHIVELY: We had about 20...we have now I believe it's around 22,000 that are on our list. For the presidential election we had...I believe we had requests for about 33,000. Of course, in a presidential year the numbers of everything go up and...but that's my recollection. I'd have to double-check those numbers, but that seems like that would be about right. [LB41]

SENATOR SCHEER: Okay. Thank you, Senator Avery. [LB41]

SENATOR AVERY: I don't see any more questions. Thank you, Mr. Shively. [LB41]

DAVID SHIVELY: Thank you. [LB41]

SENATOR AVERY: Anyone else wish to testify in opposition? Welcome, sir. [LB41]

WAYNE BENA: Chairman Avery, members of the Government Committee, my name is Wayne Bena, W-a-y-n-e B-e-n-a, and I serve as Sarpy County's Election Commissioner--the smallest county, however, the third largest in population. I'm here to testify in opposition to LB41, and I will try my best not to overstep the comments by Commissioner Shively; however, I do agree with everything that he said. First of all, in regards to the permanent absentee list, I am not necessarily opposed to a permanent absentee list. What I am opposed to is the mandate to require every county to be able to have a permanent absentee list. It should be the decision of the county election official and the county board if they have the means and the resources available to house such a program. It's something that I have considered, but I need to weigh the costs of this program with what my budget is and what was the overall county financial impact it would have within my county. You know, as there is no A bill to this, the fiscal note said, no fiscal impact; and while there might not be a fiscal impact to the state there is fiscal impact to our offices. I have estimated that such a list would cost me approximately \$0.50 per voter, \$0.50 to \$0.60, which might not sound a lot. But I have 99,000 registered voters, and even if 30 percent vote early those are significant costs to

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

Government, Military and Veterans Affairs Committee
January 23, 2013

me. I will say this: Even though I am in opposition, in a question, Senator, you brought up there actually is a provision within the bill to remove people from the absentee list in the same normal fashion that would allow, if we find out if someone died, we would take them out of our system and, thus, we would take them off that list. So that provision is in that bill, so that is covered. But I think it's a local control issue to determine. Some counties, it might not be a problem; some counties, it might be a problem. But mandating it without any financial resources to back it up is a little bit difficult for me to swallow. In regards to dropping off an absentee ballot, there's four reasons I want to bring up to this committee of why this is...why I am in opposition to it, and those are: There is already an option for voters to vote at their polling site if they've not returned their absentee ballot; such legislation would cause costs to increase within our counties; such legislation would significantly delay election results in our counties; and, as well, it goes against the entire principle of why we have early voting in the first place. First of all, there's already an option for voters who have not returned their provisional ballots. If...on our rosters, that we generate out of the system, if a person has requested an absentee ballot, then the signature line has been blocked off on the roster saying that...early vote/vote provisionally. There are many different reasons why a person might come to their polling site that they never got their ballot. Someone might have requested a ballot for them and they didn't know it, and that has happened in my county before. The dog ate the ballot. We had a woman come in, and I still have this envelope to this day. She picked...when she was in front of her stove she had it ready to go, and she had one of those burners on the stove with the coils and it burned the ballot. So I actually had a burned ballot come back to a polling site. In those instances a person can vote provisionally. And what that provisional ballot does is that they vote...they fill out the...you go through the entire provisional process, they vote their ballot, and it comes back to our office. We determine during the provisional process that that early ballot did not come back to our office by 8:00 p.m. And if that ballot did not come back by 8:00 p.m., then we count that provisional ballot. And in the case of my county, in the last election 43 people came to their polling site, had already requested a ballot, and all...every one of those ballots was accepted. We had two folks that actually had returned their ballot and voted provisionally at their polling site. One woman didn't realize that she voted; the other one didn't remember if she returned it or not. Second, such legislation would cause increases. Like I said before, we send ballots out at a significant cost. And if they...we want them to come back to our office, not the polling site, because that defeats the purpose of why we have the polling sites to begin with. And such legislation would significantly delay election results. I believe Senator Cook said something relatively small. Well, what is small? Is it 10 percent? Is it 5 percent? If it's 10 percent of the overall people that have returned a ballot in my county, if it's 10 percent it would be 2,700 people that would do this; 5 percent, you know, it would be in the 1,100 range. Voters expect election results fast, probably too fast than I would like. And so if we would have to take those ballots out of the polling sites that don't come back to our offices until 8:30/9:00, we have to process those and get those. And I would say in many counties you would not have full election results on election night like you

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Government, Military and Veterans Affairs Committee
January 23, 2013

do right now if such balloting would occur. If I could just close by saying over 95 percent of the voters in my county do return their ballots by election day, so this is a very small amount of people that this would affect. But it would cause costs and possibly some confusion at polling sites. And with that I would welcome any questions that any of you would have. And, please, I welcome questions. [LB41]

SENATOR AVERY: Thank you. Questions from the committee? Now you and Mr. Shively made the same point that this should be left up to the discretion of various counties. This committee, and the Legislature, of course, have the responsibility to make election law. And you wouldn't go so far as to say that we should make it all optional, all election law be up to the discretion of election commissioners, would you? [LB41]

WAYNE BENA: Absolutely not. There are certain parts of election law that are in regards to actually running an election but also the administration of an election, and I would say this is the administration of an election. There's many things that I do right now that aren't required of me. And while it works for me I wouldn't necessarily say it would work for another county. For example, I'm not required to have a drop box outside my office. I chose to do that because I believe it was a option that my voters would like. And the increase of the voters returning their ballot went from 80 percent to the high 90s when I had that drop box. Again, you could require that of all voters, but what's good for me in Sarpy County might not be good in Dawes County or Buffalo County or what have you. And I'm just saying, in regards to matters of administration and how we spend our money to conduct the election, it should be a local issue in matters of administration. But if you...there is election law which determines how we should conduct an actual election or what should be on a ballot or what have you, that's the public policy that this committee is involved with. [LB41]

SENATOR AVERY: Yeah. [LB41]

WAYNE BENA: And I would say if this bill was forwarded to the floor and it was to pass, I'll do it. Like I said, I'm not against the permanent absentee list; it's just I want my board to be able to say whether or not I should be able to do this list. So I wouldn't outlaw it; it just should be a local control issue. [LB41]

SENATOR AVERY: Thank you. Anyone else? Senator Karpisek. [LB41]

SENATOR KARPISEK: Thank you, Senator Avery. So again, back to local control you feel is the main issue behind... [LB41]

WAYNE BENA: I know where you're going with this. But in regards to this administrative aspect, yes. [LB41]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR KARPISEK: Okay. (Laughter) [LB41]

WAYNE BENA: If I know where you're going with this, I won't be testifying on those bills because I don't think it's my purview to. [LB41]

SENATOR KARPISEK: And I agree with you on that, and I appreciate that. [LB41]

WAYNE BENA: And I didn't last year, so. [LB41]

SENATOR KARPISEK: No, you did not, and I appreciate that too. Thank you for being here for this though; you explained it very well. [LB41]

WAYNE BENA: Thank you. [LB41]

SENATOR AVERY: I appreciate that. Thank you. Any more? I don't see any. [LB41]

WAYNE BENA: Yeah, thank you. [LB41]

SENATOR AVERY: Thank you for your testimony. Any more opponent testimony? Welcome back. [LB41]

DIANE OLMER: (Exhibit 2) Well, here I am the first day. (Laugh) Good afternoon, committee members and Senator Avery and everyone else. My name is Diane Olmer, D-i-a-n-e O-l-m-e-r, and I am the Platte County Election Commissioner, Columbus, Nebraska. I'm also representing the election law committee for Nebraska Association of County Clerks, Election Commissioners, and Register of Deeds. And I'm here in opposition of LB41, and I will try not to repeat what's already been said. But I'm one of the...not the smallest county in the state but smaller than Lancaster and Sarpy. And currently, as far as the permanent early voting list, we do not have one, but without it we had the same turnout as far as absentee voters. We had 23 percent of our voters in this last election voted the absentee method. So I am saying that...will it increase? It might change the way people apply to me, but I don't think it necessarily guarantees an increase. I suspect that when you send those applications out in a primary election and you send the same, maybe, number out in the primaries in general, I still suspect you're going to get less ballots back because most people in the primary election would probably look at the ballot, there's not much there, I'm not going to drive, or I'm not going to spend the postage. So I don't think that guarantees a bigger turnout. Another thing about this list is right now the federal government has certain rules for us concerning military and overseas voters. And with the Help America Vote Act a military or overseas voter could fill out what's called a federal postcard application, or FPCA. And what used to be, until a couple years ago, was that application to register and receive a ballot was good for two federal elections. So that meant if they applied before the 2010 election we had to keep it on file from 2010 through the elections in 2012. And

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 23, 2013

as we did that a lot of election commissioners across the country, when they do surveys after each election, different federal agencies do, we noted or kind of complained about how the military and overseas were not that great at getting address changes to us. So we were floating ballots out there in space, and they weren't getting returned because the person had moved and hadn't notified us. So then they passed the MOVE Act, which is Military Overseas Voting (sic)--I forget what the "E" means--just recently, last couple years, and they changed the time frame on that FPCA to only be good for a calendar year. And I think they're doing that, recognizing that these people do move a lot, and if they don't tell us then we have this problem with ballots floating out there and everything. And I realize I'm talking about sending a ballot instead of an application. But by the federal government changing that law, one part of this LB41 allows these same people to be on this permanent application list. My question would be: Where do I send that application to? Do I send it to their Platte County address? Do I send it to their last Afghanistan address? It becomes a list that's hard to maintain, as far as keeping addresses current. Right now we live in a very mobile society. When people move from Lancaster County to Platte County I really don't think the top thing on their list is to tell that Lancaster County person that, now I'm in Platte County, don't, you know, take me off the list, until they actually reregister to vote, and then it takes care of itself. But if they move out of state it's not top of their list either, let the election commissioner know I left. So maintaining that list becomes a problem. We do have a process right now that we are mandated to do by federal government, and it's called doing a national change of address mailing. We just did one this January. We do it every six months. The Secretary of State takes our voter list and matches it up with postal addresses, and then we get matches back. And we actually sent a postcard to these people and asked them, do you live at this same address, did you move within the county, or do you live out of the county? And then they sign and date it, and that lets us either remove them, change their address, or whatever. And we're already doing that to maintain our voter registration lists, and so anything that results there would also affect this permanent list. So I don't see there would be extra maintenance there, but I'm saying if people, when we send out these NCOA cards...right now I sent out 409 of them a week ago. The last couple years, if we get 50 percent back we are doing good. And the thing is they're not coming back undeliverable. They got them; they just don't want to reply or take the time. We even put postage on there for them. So I'm saying, as you have a permanent list, worse than a year list that the federal government mandates for, say, UOCAVA voters, we're just increasing the work in the office. And it's not cleaning up our lists. We're doing the maintenance every six months or whatever no matter what, if we have that list or not. So I don't think that list is necessary. But if somebody wants to do it, you know, a county, then more power to them. My job is also...I'm talking about now the returning the ballots to the polls. My job as the election commissioner is totally take care of early voters. And when they want a ballot we get it to them, so they have to send me an application or come in the office. A lot of them like to vote in the office or an agent comes and gets it and to bring it back to me. [LB41]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Could you sum up now? Because your light has been on for a while. [LB41]

DIANE OLMER: Okay. So it's my job to take care of those voters. The polling place workers, it's their job to take care of the ballots they took out that day and they return to me. It's not their job to take care of the ballots that I distributed. And when they're letting voters sign that same book, I guarantee there probably will be confusion. The other thing about everybody saying "drop a ballot off at the polls," it's not going to be that easy the way this law is written. They're going to have to stand in line, sign in, or the agent has to sign an oath. It's not going to be walk in, drop the ballot off. It won't be any faster than doing a provisional, which we already have a process for. So I'm just saying it won't be as pretty as it sounds, and I would welcome any questions. [LB41]

SENATOR AVERY: Thank you. Thank you very much. Questions from the committee? Senator Karpisek. [LB41]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Ms. Olmer. When you send these out now, and... [LB41]

DIANE OLMER: Are you talking the ballot? [LB41]

SENATOR KARPISEK: Oh, I'm sorry. Yeah, the checks. [LB41]

DIANE OLMER: The cards that ask about address? [LB41]

SENATOR KARPISEK: Yes, the... [LB41]

DIANE OLMER: Yes. [LB41]

SENATOR KARPISEK: Sorry. [LB41]

DIANE OLMER: Okay. [LB41]

SENATOR KARPISEK: ...and they come back undeliverable, then do you take those off your list? [LB41]

DIANE OLMER: There is a process. They're put in a status of...in NVRA, which means it's a process where Nebraska voter...or National Voter Registration Association (sic), it's the rules by that law. And so on our voter list people are listed as active or in NVRA, meaning they've been sent some kind of mail and either they didn't respond or we got it back undeliverable. And when it comes back undeliverable we mark our voter list as such. And then when people come to vote even the poll worker can see that they're in that status. But we can't take them off until two federal elections have passed, and the

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

Government, Military and Veterans Affairs Committee
January 23, 2013

Secretary of State takes care of this maintenance. And I think Neal Erickson is here; he might address this more correctly than I could. And after a certain amount of time then they may be taken off. But just because they return...one wasn't returned or undeliverable, we don't get to take them off that soon. It's hard to get a voter off the list unless they actually sign a form saying, I moved out of your county. [LB41]

SENATOR KARPISEK: And so a returned undeliverable or not returned at all is the same kind of a... [LB41]

DIANE OLMER: They're still in the same status, yes. We get very few undeliverables back. It's mostly they got it and don't want to take the time to fill out the card. [LB41]

SENATOR KARPISEK: Interesting. Thank you. [LB41]

DIANE OLMER: Yeah. [LB41]

SENATOR AVERY: Any more questions? I don't see any. Thank you, Ms. Olmer. [LB41]

DIANE OLMER: You bet. [LB41]

SENATOR AVERY: Any other opponent testimony? This is opponent, not neutral. [LB41]

NEAL ERICKSON: It is opponent. (Laughter) Senator Avery, members of the committee, for the record my name is Neal Erickson. I'm Deputy Secretary of State for Elections, here on behalf of Secretary of State, John Gale, to testify in opposition to LB41. And yes, Senator, you are correct: We did testify in support of this...of the first portion of this bill, at least, last year. And there were a couple of factors that, oh, caused us to change our position on this. Number one was kind of being taken to the wood shed by the local officials about why you're putting a mandate on us that may not fit for a lot of counties, and I think that is a true statement. And I'm not sure it's necessarily...this is the best time to be establishing a mandate that does cost them resources, both time and money. The second portion of that, and this is kind of what's been happening out in the election process...and we've seen candidates' campaigns, political parties, and even third-party interest groups have become very aggressive with sending out absentee or early voting request forms. And it seems like everybody that has something to say is now sending these things out, so I'm not sure that the population is not being served by not being able to get an early voting request form from someplace. In addition, we have on our Web site...all you have to do is make a phone call. In fact, even under the law, you don't even have to use the form as long as you send something in writing that has the information required on it; they will honor that. So that deals with the first part of LB41, and I would concur with everything that Ms. Olmer,

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 23, 2013

Mr. Shively, and Mr. Bena have said as well. The second part of this proposal deals with early voting ballots being delivered to the polling site. And a couple problems that we see, at least with the green version of it. It requires a sign-in process for anybody that is dropping that off. And, you know, what that's going to do, the effect of that is going to be delay the line. You're going to have at least some number of people...I don't think anybody can give you a real good guess about how many are going to take advantage of that. Will it be people that just simply forgot and want to drop it off? Or will this become more of a concerted effort and everybody decides, well, I'll just get the early voting ballot and then I'll just drop it off on election day? It kind of defeats or goes contrary to what the purpose of early voting was, and the concept of early voting was to allow people that were not able to make it to the polling place on election day an opportunity to cast their ballots. And so now we've got people that are taking advantage of early voting competing for the time of those poll workers with people that chose to vote in the more traditional way. One other consideration, as we were discussing this, that caused a bit of concern is if you do have people returning these absentee ballots, and even if they say they're sealed, I mean, I don't think this...the bill is particularly clear that it has to be sealed, it has to be in the identification envelope, but I think that maybe we can read it that way. But let's say you do have this sealed envelope that is delivered to the polling place and, you know, somebody signs in that they've put that in the box. What we've done now is introduce something that comes from outside the polling place into the ballot box that only contains things that were generated inside the polling place. And while that may be a relatively low risk at this point in time, it is something you may want to consider as well is we're taking something outside, and we don't know what the contents of that envelope is that's being placed with other ballots that have come any...other pieces of paper that are in there, whether it be a provisional envelope, a regularly cast ballot, etcetera, were all generated inside the polling place. So we'd hope that would be something you would give consideration to. And so overall we are in opposition to LB41; we'd encourage you not to advance it from committee. And with that I'd answer any questions you might have. I know, Senator Karpisek, you have some questions about list maintenance and how that works. I don't know if you want to continue with those or not. [LB41]

SENATOR AVERY: Well, we'll see. Questions from the committee? Senator Karpisek, you feel obligated. [LB41]

SENATOR KARPISEK: I do feel obligated. And since Mr. Erickson is here, we might as well talk about it, yeah. [LB41]

NEAL ERICKSON: Okay. [LB41]

SENATOR KARPISEK: Can you tell us a little bit about that? [LB41]

NEAL ERICKSON: Yeah. To explain the way list maintenance, the list maintenance can

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

Government, Military and Veterans Affairs Committee
January 23, 2013

do a variety of ways. But probably the largest tool we use, and this actually comes from federal law and then corresponding state law, and it's the National Voter Registration Act from 1993, and some of the rules they had in there is that you cannot eliminate a voter from your voting list for simply not voting. And what they did was set up this procedure that says, okay, if you receive third-hand information from somebody else, not the voter, that they may have moved--and that's what we use the National Change of Address System for--then what you do is you send them a particular type of notice, and I think Ms. Olmer described that. It's basically got three questions on there. And it says, you know, we think you moved, (a) do you....your information is incorrect; (b) your information is correct, my new address is whatever; and then the third one is I've moved outside your jurisdiction, please, you know, please remove me from your list. And they actually sign that, it is postage paid, and it is returned. Once we have that, then we have firsthand information from the voter, and we can alter their voter registration record. Now the federal law doesn't say, okay, well, we think these people have moved or you're going to have to keep them on forever. What it says is, okay, once you think they moved, you've got third-hand information, you send them this notice. If they fail to return it and, in addition, fail to vote at the next two federal general elections, then you're off. If they vote sometimes during that time, then they are taken back to an active status. And we do have those people that do that, that receive those cards, never respond to them, and then do show up at the polls. It runs about 9,000/10,000 voters a year--or per election cycle, so. I know you were asking what time it was and I told you how the watch worked, but... [LB41]

SENATOR KARPISEK: Well, yeah. Well, thank you. I just...I find all that interesting, so thank you, Mr. Erickson. Thank you, Senator Avery. [LB41]

SENATOR AVERY: Any other questions? Senator Murante. [LB41]

SENATOR MURANTE: So we've heard kind of two competing opinions today about the impact of this bill on voter turnout. On the one hand, the proponents argue that if we pass it we're going to see an influx of turnout; on the other hand, we've heard Commissioner Shively say that he's been doing this and he's not seeing any major differences from the other counties and the states that don't do it. I'm wondering what your perspective is. [LB41]

NEAL ERICKSON: Well, and I hope you don't think I'm kind of ducking this question, Senator Murante... [LB41]

SENATOR MURANTE: I would never think that. [LB41]

NEAL ERICKSON: ...but I will tell you, you know, I have heard, over the years I've been doing this job, any law, any changes made, oh, it's going to do this. And I can tell you something about elections. There are no two that are exactly the same. You can have,

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

Government, Military and Veterans Affairs Committee
January 23, 2013

you know, the exact same offices up, but a lot of it depends on the resources that are put on there by candidates, campaigns, etcetera, in terms of what turnout is going to be. I remember we were doing the satellite voting project in 2006, and I had someone who I consider a very knowledgeable political consultant, well, if you do this you're just handing the election to Tom Osborne. And, you know, I kind of looked at him and said, how do you know that, you know, what do you have to back that up? And from your standpoint, you know, you can choose to believe what you want to and, you know, take a look at the evidence out there and what is backing that up. One thing I've found a lot with election statistics is that you will see them extrapolated from another number. Well, yeah, 15 percent have voted here, and then we've got another study over here that says half of them do it this way, so now we're down to 7.5 percent, which isn't necessarily good math, let's put it that way. It's not a good, statistically valid analysis of it. Bottom line is we don't know, and it's very hard to isolate a specific change like this and say, this automatically resulted in something else happening. So, like I said, I hope you don't, you know, take that as ducking this, but I just would caution you to take a look at some of those, oh, I guess, claims and see what kind of lies behind them. [LB41]

SENATOR AVERY: I believe Mr. Shively said that he didn't see any significant change in Lancaster County in the deviation from the statewide norm or statewide average turnout, but he didn't have information about, specifically, changes over time from previous numbers in actual vote-by-mail turnout, right? [LB41]

NEAL ERICKSON: And I think that's exactly accurate, and I think the way he's stating it is exactly accurate. Yeah, we're looking at the outcome. The outcome is the turnout is about the same. [LB41]

SENATOR AVERY: Um-hum. [LB41]

NEAL ERICKSON: Is that because we have this program or because we don't have this program? You can't really get to that conclusion from those numbers. [LB41]

SENATOR AVERY: Senator Scheer has a question. [LB41]

SENATOR SCHEER: Thank you, Senator Avery. Actually, just a comment, and it's an aside to this. But you talk about the letter that you send out requesting, are you still there, have you changed your address. [LB41]

NEAL ERICKSON: Um-hum. [LB41]

SENATOR SCHEER: I had two calls before I ever took office after the last election. And they both had filled those out, but they assumed that when they filled it out with a new address they would be registered to vote in their new location. So you might think about putting on the postcard, as a reminder, that if you have you do need to reregister to

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

Government, Military and Veterans Affairs Committee
January 23, 2013

vote, because both of them thought by filling that out they had essentially reregistered to vote in the new location. [LB41]

NEAL ERICKSON: And actually, if they move within the jurisdiction, within the county,... [LB41]

SENATOR SCHEER: That's the problem: two different counties. [LB41]

NEAL ERICKSON: ...they will stay. Once you move outside, that's correct. [LB41]

SENATOR SCHEER: Yeah. [LB41]

SENATOR AVERY: Any other questions? We're all happy. Thank you. [LB41]

NEAL ERICKSON: Thank you. [LB41]

SENATOR AVERY: Anyone else wish to testify in opposition to LB41? You're poised there, Mr. Dix, like you want to do neutral. [LB41]

LARRY DIX: Yeah. [LB41]

SENATOR AVERY: All right, neutral testimony. (Laughter) Welcome. [LB41]

LARRY DIX: Good afternoon, Senator Avery, members of the committee, my name is Larry Dix. I'm executive director of Nebraska Association of County Officials and felt that I should at least inform the committee of our neutral position at this point in time, and it is because our legislative board has not met to take positions at this point in time. They will do that on Friday; after that time I will certainly be sending a letter to the committee to notify them of NACO's official position, although I do realize that when the committee statement comes out we will show up in the...in a neutral capacity. But I had notified Senator Cook that I will notify her also of what position that NACO takes. And so with that I'm happy to answer any questions, but I did want to clarify that. [LB41]

SENATOR AVERY: Are we moving too fast here, or are you guys just moving a little slowly? [LB41]

LARRY DIX: This happens to us really every year. It's always about these first two days that we get caught in this. And in some years we'll have bills that are, you know, brought forward that we just haven't met yet. So that's really it. I don't know that anybody is moving too fast or too slow, but I will take full blame and say we're probably moving too slow. (Laughter) [LB41]

SENATOR AVERY: That's what I was thinking. (Laugh) Any questions from the

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

Government, Military and Veterans Affairs Committee
January 23, 2013

committee? Thank you, Mr. Dix. Any other neutral testimony? All right, don't see any. Senator Cook, you can close. [LB41]

SENATOR COOK: Thank you, Mr. Chairman. Members of the committee, I thank you for your attention to the consideration of this proposal. I am still in enthusiastic philosophical support of getting advanced from this committee in its current form or including a committee amendment that you might decide upon, as is your prerogative. I would like to address some of the opposition testimony. There was some testimony entered that a permanent early vote request list would lead to increased costs for election commissioners or county clerks due to the postage, and I would contend that by maintaining that permanent early vote request list it's more...leads to a more predictable workload. And Election Commissioner Shively offered that, as I recall, in his testimony that it indeed is helpful, especially as more candidates and committees and outside groups put money toward mailing out mailings that make reference to requesting an early ballot. Another point that I would like to address is...or a question that I ask myself ever since this hearing two years ago was that, as Lancaster is the only county that participates in it currently, they've got the administrative license to stop, yet they continue the practice. So whether the committee needs to make a decision about their general position at this point about presenting it to the other 92 counties as a requirement. But I've always found that somewhat ironic that two years ago the only opposition, in terms of local officials, it seems as though they've talked to each other over the last two years and kind of engaged one another and "whooped" up on the SOS Office. That would have been nice to have known in advance. It seems as though they've become engaged and, all of a sudden, extremely opposed, as opposed to two years ago when there was only one--ironically, the only election commissioner who, once again, continues to do it in his office, of his own volition. One final point related to testimony offered earlier: The turnout increase, what I understood when you posed the question to Commissioner Shively, was...the response said that the turnout was not increased as an analyzed relationship to the state average. I also understood Mr. Shively to say that it perhaps has provided voters a record of voting more consistently; there are more 100 percent voters perhaps, and that would be in the transcript. To me those are good things and, once again, this bill is introduced to encourage participation and to remove barriers to people who were...are unable to get to the poll or follow through with the return of their early ballot. Ultimately, we as policymakers should ask ourselves whether greater engagement in our great state's democracy is worth the time and the effort, the workload. My...that's all I want to say about it at this time. (Laugh) I obviously have...am in favor of my proposal and would continually encourage you to advance LB41 to the floor for full debate. Thank you. [LB41]

SENATOR AVERY: (Exhibits 3 and 4) Thank you, Senator Cook. All right, I...before we close the hearing on LB41, I have two letters of opposition: one from Washington County Clerk, Merry Truhlsen; and another from the Cedar County Clerk, David Dowling. [LB41]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR COOK: How about that? [LB41]

SENATOR AVERY: How about that? (Laugh) Thank you very much. [LB41]

SENATOR COOK: Thank you very much. [LB41]

SENATOR AVERY: That closes the hearing on LB41. We'll now move to LB56 and invite Senator Larson to the desk to open. Welcome, Senator. [LB41]

SENATOR LARSON: Good afternoon, Senator Avery, members of the Government Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I represent the 40th Legislative District from O'Neill. And I am here today introducing LB56. LB56 would allow for candidates properly filed for nomination for county officer positions to be declared nominated if the number of candidates for those county officer positions does not exceed two for each position. Those candidates' names would not appear on the primary election ballots, allowing them to automatically advance to the general election. The idea for this bill was brought to me by one of my constituents who ran for the county officer position in Knox County. He ran as a Republican candidate against one other person who also happened to be a Republican. Two issues related...resulted which created a lot of confusion with both parties. First, those voting for the Republican ballot had to select only one of those two candidates to advance to the general election. This resulted in the Republican primary voters selecting the winner of the general election in a primary race as one candidate was selected to advance on the other...on the Republican ballot, and there just so happened to be no Democrat who was selected in the general election...as the...selected as his general election opponent. The second issue that resulted from this race was the confusion created among the Democratic primary ballot. The Democrats thought there was something wrong because this particular race was not listed on their ballots. In addition, Democrats were not given a choice which Republican to vote for in the general election as the Republican primary voters had already made that decision for them. LB56 is an attempt to cure a problem like this from arising in county officer elections. If only two candidates are nominated, regardless of party, they will automatically move to the general election and bypass the primary process altogether. The statute this bill seeks to change already allows for candidates running for various other positions to advance to the general election if there are only two candidates in those races. Candidates running for director of natural resources districts positions, the director of public power district position, or a member of an airport authority board, among other positions listed in the statute, are automatically...are allowed to automatically advance to the general election if they are facing one opponent of either party in the primary election. All this bill does is add county officer positions to that list. In addition to cutting back on any confusion similar to what occurred in my example, this bill would also help county election commissioners cut cost, eliminating the need for a primary when only two candidates have been

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 23, 2013

nominated. It saves ballot space, which results in savings on printing and paper costs. Not only will this bill help save counties money, but it also helps ensure that everyone has an opportunity to vote in these races. Thank you, and I can try to answer any questions if you'd like. [LB56]

SENATOR AVERY: Thank you. This would preclude write-in candidates, right? [LB56]

SENATOR LARSON: They could still petition on in the general ballot should they choose to. [LB56]

SENATOR AVERY: But this would eliminate them...their opportunity to run in the primary. [LB56]

SENATOR LARSON: In the primary, yes. [LB56]

SENATOR AVERY: And county races are generally partisan races? [LB56]

SENATOR LARSON: County races, to my knowledge, in all 93 counties are partisan races. [LB56]

SENATOR AVERY: And right now, I believe, we do have automatic advancement, but it's in nonpartisan races. [LB56]

SENATOR LARSON: Yes, is my understanding. [LB56]

SENATOR AVERY: Okay. Senator Karpisek has a question. [LB56]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Larson. I see the problem. What if we just changed these to nonpartisan races? [LB56]

SENATOR LARSON: That would be up to the Government Committee and the Legislature as a whole. I know that a lot of people in my neck of the woods, as this issue was discussed, that option was brought about. I think a lot of people, whether they be in Knox County or Holt County, Douglas, or Saline, so be it, use the party label to define themselves to those that end up voting for them. I know...I have a county sheriff in one of my counties that, that issue, we talked about it and he said, you know, I like people to know that, yeah, maybe...I may only be the county sheriff, but I would...you know, I'm conservative and I want to...that I follow by those principles. And I think it's important to a lot of people, but at the same time I understand the nonpartisan nature of county...you know. My father-in-law was elected county clerk in Chase County as a Democrat for three terms, so I think, you know, the best person ends up winning, regardless of party, either way. [LB56]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR KARPISEK: Well, I appreciate the thought. I mean, just for me, of course, trying not to be very partisan myself, I'd like to get rid of all those labels. But thank you for answering that. [LB56]

SENATOR LARSON: Yeah. [LB56]

SENATOR KARPISEK: Thank you, Senator Avery. [LB56]

SENATOR AVERY: Any other questions from the committee? [LB56]

SENATOR LARSON: Thank you. [LB56]

SENATOR AVERY: Thank you. All right, we now will move to proponent testimony on LB56. Welcome back, Mr. Bena. [LB56]

WAYNE BENA: Thank you, Mr. Chairman Avery. Members of the Government Committee, my name is Wayne Bena, W-a-y-n-e B-e-n-a, and I am the election commissioner for Sarpy County. I am here in my capacity as election commissioner in a very limited fashion in support of this bill. And the reason why I say "limited," to be consistent with prior testimony and questions that you have sent to me or asked of me, Chairman Avery, I believe there are issues, public policy issues, that my position should not get involved with. And it's the job of this committee to determine those public policy decisions, and we follow accordingly. For example, in this instance I believe it's a public policy decision whether or not you take these offices off the ballot and add them to the races that we don't have on the ballot if there's not enough people in the primary; I think that's a public policy decision. I don't want to get involved in that. How, in ten months, if I seek reappointment, how I get that job again, that's not my purview and that's why I would not. But in conversations with Senator Larson in regards to this bill and why I am here, I do believe that it is important for you to understand the impact on election commissioners if this bill...if you decide this bill, in one form or another, is to pass or not. So I want to be supportive of legislation that helps lower our costs, because costs for elections are going up, county budgets are going down, and for every dime, every penny that I'm taking from...in our county budgets it's one penny going away from something else that is probably as equal. However, at least in my county, elections are taken very seriously, and I'm given what I need to be able to get the job done. So if you were to pass this bill, what impact would it have on my county? In the 2010 general election we have had 20 races on the Democrat and Republican ballot that were county races. Of those races there were no Democrats that ran for any county offices in our county, thus, I would be able to remove those ten races. Specifically, I had ordered 13,550 Democratic ballots in the primary. Of those, 5,630 I would not have gone to a back page because...if this legislation was enacted. Every back page costs me \$0.03. On the Republican side, I had ten races that were of county nature. Of those races, seven did not have an opponent. Two of the races just had two, which would be the

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

Government, Military and Veterans Affairs Committee
January 23, 2013

effect of this, that the two Republicans, since there was not any Democrat, could be removed. And we had only one race that had three, so it would have to go on the primary regardless. In the Republican side I ordered 21,100 ballots. Of those, I would have been able to remove the backs of 11,680 ballots. The total number of ballots, 17,310, times \$0.03 a ballot is \$519.30. Adding that to some of the costs in regards to coding the actual race onto the ballot as well as the costs for coding a disk to be put into the AutoMARKs, which is the device that allows the hearing...or the blind and other people with disabilities to be able to vote, which is also a significant cost. So I would say in the 2010 primary, roughly, we probably would have saved \$2,000 to \$3,000 if this legislation was enacted. Times that by ten if that said...if those races ended up making my ballot go to a second page because a second page doubles the costs. But again, you're not going to know what's going to happen in any given election, if you're going to go to a second page or, let alone, a first page, but I would submit, at least in my county, that if there's not any people running, most of my races will be on one page. So again, this legislation would result in significant cost savings, which I support. However, the decision whether or not to do this is up to you, and I don't have a position whether or not the public policy of taking the people off the ballot, if they don't have an opponent or especially if there's just two on one side and none on the other, that's for this committee to decide. But I thought it was important to support legislation that lowers our costs because anything that I can do to lower costs helps the bottom line countywide. So with that I would take any questions on that limited portion of the financial impact. [LB56]

SENATOR AVERY: Senator Lautenbaugh. [LB56]

SENATOR LAUTENBAUGH: Thank you, Senator Avery, and thank you, Mr. Commissioner. Are...how are election costs allocated among the political subdivisions? [LB56]

WAYNE BENA: We do it by...we have the hard costs, such as your ballots, your poll worker fees, postage, anything that would do the election, and we allocate that by the total number of ballot inches that the entire ballots take, divided by the number of inches each political subdivision takes in regards to that. We...of course, any county race I don't get any...I get a budget to run those races, so I don't charge the county. I'm not allowed to charge the federal government for any races that I'm put on the ballot, nor any time that you guys want to have a constitutional amendment does the state have anything on that ballot or a state officer. So the only thing that I can recoup from are the cities, school boards, NRDs, MUDs, OPPDs of the world. [LB56]

SENATOR LAUTENBAUGH: Okay, thank you. [LB56]

SENATOR AVERY: Any other questions? Senator Bloomfield. [LB56]

SENATOR BLOOMFIELD: Thank you, Senator Avery. I'm having difficulty framing my

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

Government, Military and Veterans Affairs Committee
January 23, 2013

question, Mr. Bena. If you have two people running and neither name appears on the primary ballot, are we not possibly keeping the people that would be voting in the general election also from becoming familiar with those names? [LB56]

WAYNE BENA: To answer your question I would say if we remove...in the instances in which you have the opportunity to remove them, they would not be on a primary ballot for those that go to the primary that would see them on a general election, they don't vote in the general election too. As you can imagine, everybody that votes in the general doesn't vote in the primary, so you've got that segment. [LB56]

SENATOR BLOOMFIELD: Right. [LB56]

WAYNE BENA: Having said that, as I said before, this committee and the committees before it have the public policy that certain races are off the ballot, such as NRDs, airport authorities, school boards, your city...local...my city council races, my mayors' races, they're off the ballot. So there's a specific public policy set by this Legislature saying it's okay in those instances. [LB56]

SENATOR BLOOMFIELD: In those... [LB56]

WAYNE BENA: It's this committee's determination whether or not you add this to those. But I would agree with you in principle that if their names are not on the ballot then their names would not be seen by the primary voters, thus, the first time they would see them is on the general election ballot. [LB56]

SENATOR BLOOMFIELD: Thank you. [LB56]

SENATOR AVERY: Any other questions? I don't see any. Thank you, sir. [LB56]

WAYNE BENA: Thank you. [LB56]

SENATOR AVERY: Any other testimony in support? Okay, seeing none, any opponent testimony? [LB56]

KRIS PIERCE: My foot went to sleep. (Laughter) [LB56]

SENATOR MURANTE: Been there. [LB56]

KRIS PIERCE: Senator Avery, thank you again for allowing me this opportunity. My name is Kris Pierce of Douglas County Democratic Party. I stand in opposition, which I think... [LB56]

SENATOR AVERY: Would you spell your name? [LB56]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

KRIS PIERCE: Pierce, P-i-e-r-c-e, K-r-i-s. I think it may shock some people that I may be in opposition to this, but I have four reasons for that. First of all, we hear about costs and costs and costs. And I think that's an unfortunate thing to say is that we need to save cost over the people's right to choose who they want as their elected officials. I understand that, you know, budgetary, taxes, I understand all that. But let's not take away choice in lieu of saving money. The second thing, and in Douglas County we have the same scenario where we may not have a Democrat run for an office or we may not have a Republican run for an office. Well, that's not the fault of the voters; that's the fault of the parties not to be able to recruit the candidates needed. So because of the fault of myself as chair, why should the voters suffer when either, as stated before, not being informed who ends up on the general ballot or, you know, if it's only Republicans, then the Democrats don't get a choice. I think the general election is that silicification of choice, whether it be Republican or Democrat. The third, and I think most important, is that candidate has earned that right to be on a general ballot, to run for a general election, and to be voted for. They've went through all that painstaking of shaking hands, kissing babies. If they won their primary, if they don't have an opponent on the other side, they still have earned that right to be on the general ballot, to celebrate that victory, because it is. They will win the general election, but you can't win an election if you're not on the ballot. Finally, you also take away the ability to write in a candidate during the general election, which is provided for. It's meeting a certain criteria. But if we completely take that office off the general ballot because there's not a two-party participation, then you take away, again, that choice of the voter to vote either for or, in this case, against that person on the ballot, or to write in a candidate of their choice. So I would like to caution the committee and urge you not to pass this out of the committee onto the floor because what's more important is choice and making sure every voter has a choice. And I think what we talked about is, yes, there are far more voters in the general election than in the primary election; I think we all know that. But let's say my good friend, Senator Lautenbaugh, who happens to be my state senator, if there is no Democrat running in his race for reelection, he has earned the right to be on that general ballot, and I have earned the right to either vote for or against. And by passing this bill, you have taken my choice away from me on the general election. I'm now...appreciate any questions you may have. [LB56]

SENATOR AVERY: Thank you. Senator Murante. [LB56]

SENATOR MURANTE: I've got a couple questions. First, as I read this bill, it applies exclusively to partisan primaries for county offices, so I'm not seeing where in the bill we even deal with general elections. [LB56]

KRIS PIERCE: Well, we've talked about if there are two Republicans in the primary election, then they could be removed from the general ballot. [LB56]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR MURANTE: It would be removed from the primary ballot and automatically included on the general ballot, as I understand this bill. [LB56]

KRIS PIERCE: Correct. But again, what you're asking...and this is my interpretation of the bill, and be far for me to be quite left field or right field. But by doing that, it is a partisan race. [LB56]

SENATOR MURANTE: Right. [LB56]

KRIS PIERCE: The definition of partisan is difference. You can't...if you're going to allow that, then you will no longer have a partisan race, which is not in this bill. This bill is not asking that we no longer have partisan races. It's saying, in these instances we will allow this. Well, then that's not a partisan because a Democrat could do a write-in candidacy during the general election and, therefore, have a Democrat and a Republican in the general election. [LB56]

SENATOR MURANTE: Sure, and I think that last part that you said I'm with you, and that's kind of the public policy that we're deciding. Do we want partisan general elections with either two Republicans or two Democrats on the general election ballot, and does that make a lot of sense? I think that's what we're talking about. But the other question I had was you had framed your testimony as a competition between cost versus choice, and what I'm... [LB56]

KRIS PIERCE: Well, I think what's...I hope that cost doesn't get in the way of ensuring that the voter has choice. [LB56]

SENATOR MURANTE: Okay. And again, as I read the bill, this is basically only applicable to when there's either nobody on the ballot or everybody on the ballot advances no matter what, so there's not really a choice to begin with. It's just everybody is coasting through or the race is...there's nobody on the ballot to begin with. [LB56]

KRIS PIERCE: Right. And I understand that, Senator. But again, I guess I go back to the definition of this is a partisan race. [LB56]

SENATOR MURANTE: Um-hum. [LB56]

KRIS PIERCE: And that's why we have political party primaries. I think, to the point that was made earlier, if there are two Republicans, the Democrats will have no voice until they get to the general election, but at least they'd be able to pick from a Republican and then nobody else. You're asking me to pick between two Republicans. And that's why we have partisan politics where we have parties, is there is a representative from both in the general. [LB56]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR MURANTE: Um-hum. [LB56]

KRIS PIERCE: And my...as you said, the understanding is...what would happen is both those Republicans would go straight to the general. [LB56]

SENATOR MURANTE: Um-hum. [LB56]

KRIS PIERCE: That's not a partisan race. That just becomes because either I didn't do my job or there wasn't someone running from another party. I think what's more important is stay with, in my opinion, with that partisan in those races...I mean, fortunately with Nebraska we have a lot of nonpartisan races that work out the way we talk, you know, multiple Republicans in the race, and that's fine. But I think it's important to stay with that true partisan race on those countywide races, and to do that you would have people of different parties in the general election, which would vacate why you would have two Republicans. [LB56]

SENATOR MURANTE: Okay. [LB56]

SENATOR AVERY: Senator Price. [LB56]

SENATOR PRICE: Chairman Avery, thank you. Thank you for your testimony. [LB56]

KRIS PIERCE: Thank you, Senator. [LB56]

SENATOR PRICE: I noticed in your testimony you said having the opportunity to vote against a candidate, I don't recall seeing a vote against a candidate. You either vote for someone or you don't vote at all. [LB56]

KRIS PIERCE: Well, you could vote against the candidate if you were to write in Mickey Mouse. I'm using that example...many friends have said, I just wrote in Mickey Mouse. That, in itself, is voting against the person that is on the ballot. [LB56]

SENATOR PRICE: I just wanted to be sure that we clarify with people listening. [LB56]

KRIS PIERCE: Um-hum. [LB56]

SENATOR PRICE: There's no circle you can look for to say, no, I am voting against the person. [LB56]

KRIS PIERCE: Correct. [LB56]

SENATOR PRICE: I just wanted to make sure that we clarified. Thank you. [LB56]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Senator Scheer. [LB56]

SENATOR SCHEER: Thank you, Senator Avery. Just to clarify, from my perspective of what you've said, is that you are a believer of the partisan system in so that, if you are a Republican or a Democrat and there are only two of that particular person in a party that are running, those two people are running for the privilege of representing that party,... [LB56]

KRIS PIERCE: Yes, Senator. [LB56]

SENATOR SCHEER: ...not that district or that area but that party in that whole race. And so, by virtue of maintaining that, you may only have one person that moves forward, but he's still moving forward as the representative of that particular political party. Am I following that... [LB56]

KRIS PIERCE: Yes, because the statute allows for a representative per party, whichever...whatever parties happen to be recognized within Nebraska, a representative from those parties can be...can fill a slot. But there is only one that can be filled on these partisan races. So if we forward this bill and it passes, what we're saying is, "Yes, except when." And then, to me, then why not do statewide races that way? What's the difference, in my train of thought, because statewide offices are also partisan? So what if we have two Republican gubernatorial candidates? There's always (inaudible) precedents of doing it this way when this happens, and my party, you know, is one of those ones that's hard to get sometimes on statewide races. And that's the fault of this party; it's why it's a partisan responsibility. But I would absolutely agree those general ballot slots are privileged few. You must earn those in a primary if you're challenged within your party. You gain that, you've earned that, and then you've also earned the general election. [LB56]

SENATOR SCHEER: Thank you, Senator. [LB56]

SENATOR AVERY: Any other questions? I don't see any. [LB56]

KRIS PIERCE: Thank you very much. [LB56]

SENATOR AVERY: Thank you. Okay, opposition? Any more opposition testimony on LB56? Okay, we'll move now to neutral testimony. All right, Senator Larson, you can close. [LB56]

SENATOR LARSON: Thank you, Senator Avery, members of the Government Committee. And I'm sure this bill might take new forms as we move along. One thing to clear up in the one opponent that spoke to this is I can understand his want for partisan politics in the state of Nebraska. But one thing that he said was, you know, he doesn't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 23, 2013

want the vote taken away from anybody. And the bill, as is, would actually give either his party or the Republicans, if there was two Democrats, an actual voice. Right now, as happened in my example in Knox County, the Democrats in Knox County had absolutely no choice in who would be their county commissioner, zero. The Republicans chose who the county commissioner would be, they sent him to the general election, and everybody else in that commissioner's district just had to choose. And yes, I guess he could...the Democrats could have written or had a vote against that man and wrote Mickey Mouse. But I would assume that they probably would have preferred to choose who the actual commissioner would be. But, as I said, this might take a new life, and we'll continue to work with it. But I appreciate the committee's work. [LB56]

SENATOR AVERY: Thank you. Have a question on closing? [LB56]

SENATOR LAUTENBAUGH: Hmm? [LB56]

SENATOR AVERY: A question on closing? [LB56]

SENATOR LARSON: That's fine. I'll take it from Scott. (Laughter) [LB56]

SENATOR AVERY: Okay, Senator Lautenbaugh. [LB56]

SENATOR LAUTENBAUGH: And I'd...it actually led that. I just want to make sure I understand what you're saying. So if--the hypothetical again--there's two Republicans in the primary and nobody else, they both advance to the general, and you're saying that increases the opportunity for Democrats to vote for someone; they're at least choosing between two people. [LB56]

SENATOR LARSON: They would at least be choosing between two people instead of whoever the...or if there's two Democrats in the primary both of them would move if there's no Republican that...mind you, you have to be very...it's not you just move on no matter what. If there's only two people in the race, if there's, you know, two Democrats and no Republicans, the two Democrats would move on, and then the Republicans would get an actual vote in who would represent them instead of just letting the Democrats choose. So I think we're actually expanding the vote in...as the bill is written here, expanding people's opportunities to elect those people that want to represent them. [LB56]

SENATOR LAUTENBAUGH: Thank you. [LB56]

SENATOR AVERY: You've sparked more questions there. Senator Bloomfield. [LB56]

SENATOR BLOOMFIELD: And thank you, and I normally don't like to ask questions on closing either. But I do see, Senator Larson, a possibility of...if we advance, and I'm

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

Government, Military and Veterans Affairs Committee
January 23, 2013

going to use the Republicans again, two Republicans to the general election, that it would discourage a Democrat from mounting a write-in. Do you see that as a possibility? [LB56]

SENATOR LARSON: Any Democrat or anybody can still mount a write-in, in a petition capacity, and I think that's why we have the election process. And if they do petition on the ballot or try a write-in campaign, if they are the best candidate, that's why we have something called "democracy." If they can go out and they can knock on every door like you and I and every member of this committee did to get elected, then they're the ones that deserve to be out there. We do have filing deadlines as well that most people follow and realize that they need to file on a certain time if they want an office. And if they don't file at that certain time, I think they...every public should ask, you know, well, if they can't get their homework or they can't get their paperwork in on time, should they deserve to be in that office? That's another question. (Laugh) [LB56]

SENATOR BLOOMFIELD: Um-hum. We witnessed, in one of my home counties, two Republicans running for an office that happened to be county commissioner, and a third member ran as a write-in and beat both of them. [LB56]

SENATOR LARSON: Exactly. [LB56]

SENATOR BLOOMFIELD: So I... [LB56]

SENATOR LARSON: If the...and the... [LB56]

SENATOR BLOOMFIELD: I question if we're not diminishing the opposition's ability to mount a write-in campaign. [LB56]

SENATOR LARSON: No. I think they can run a write-in, in the general campaign, just as well as they can in the primary campaign. [LB56]

SENATOR BLOOMFIELD: Okay, thank you. [LB56]

SENATOR AVERY: I believe we did pass an amendment to an election law last year, LB449, that addressed the ability of a candidate to petition onto the general election ballot and set some restrictions on it. I'll have to go back and look at it again, but it could have some relevance to this debate. [LB56]

SENATOR LARSON: Could have relevance. Appreciate it. [LB56]

SENATOR AVERY: (Exhibit 1) I see no more questions. I think we're finished. Thank you. All right, I have one letter here of support from Rayder Swanson, Niobrara, Nebraska, read that into the record. With that, we will close the hearing on LB56, and

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

Government, Military and Veterans Affairs Committee
January 23, 2013

we'll move to LB144 and invite Senator Brasch up to present. Welcome, Senator. [LB56]

SENATOR BRASCH: (Exhibits 1 and 2) Thank you, thank you very much. Thank you, Chairman Avery, and good afternoon, members of the Government, Military and Veterans Affairs Committee. I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. You have some paperwork coming around here, some documents for you to look at. I am here to introduce LB144, which provides for the write-in candidacy of a candidate for a county, village, city, or school district office who is defeated in a tiebreaker in a primary election. Currently primary elections that result in a tie are decided by chance, usually by the flip of a coin or by the drawing from a deck of cards. This bill does not apply to federal, statewide, legislative, Board of Regents, or State Board of Education races. Under this bill a candidate who is tied in a primary election but who is determined the loser by lot would still be able to pursue election to the same office as a write-in candidate in a general election but only in a county, city, village, or school district race. The story of one of my constituents has repeated itself across Nebraska on a semiregular basis for decades in races for offices in subdivisions of government that contain smaller populations. Last year, Paul Richards bid for the Democratic nomination for District 4, Burt County Board of Supervisors, that resulted in a tied number of votes in the primary. He did not lose the primary election because his supporters failed to make it to the polls. He lost the primary election because of a flip of a coin that landed the other way. Subdivisions of government with small pools of voters abound in Nebraska. This means that local elections in Nebraska sometimes do result in ties. You will see a few examples from past several decades on a spreadsheet that I have shared with you. A comprehensive list is nearly impossible to provide because county and city records are not centrally maintained and they do not keep all of their records ongoing in an archive of election results. Occasionally, these small communities, the primary election does decide the winner of a general election. Take, for example, in the case of the 2010 Republican primary for sheriff in Morrill County. Milo Cardenas drew a nine of hearts to beat Travis Petersen's six of spades after the candidates tied with 379 votes in the primary; and in this case Milo Cardenas faced no opposition in the general election, and he became the next Morrill County Sheriff. It is our duty, and the duty as political caretakers of the political election process codified in the state statute, to build an election system that promotes civil involvement and fairness. Many of my constituents expressed shock at the method of drawing lots used to determine the winner of...in the case of a tie after they heard about the case in Burt County. Allowing an impasse to be decided by lot may be the most financially reasonable method to decide a winner. However, preventing the loser of a coin flip from continuing their candidacy seems unfair. In light of this scenario my office began to look for a way to move forward for the losing parties in such cases. While some states employ a runoff system to resolve ties, that is neither financially feasible or politically palatable for our cash-strapped counties. Allowing the losing candidate to continue as a write-in candidate seems to be reasonable and a fair solution and is one that will not have any fiscal impact. While it is not perfect, it is one that will not be burdensome for

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

Government, Military and Veterans Affairs Committee
January 23, 2013

the counties since current law allows other candidates who did not compete in the primary to put their name forward in the general election. If LB144 becomes law it will provide a way forward for candidates such as Mr. Richards, whose tied race was decided by lot. Our small communities have a limited number of leaders willing to be drawn upon, and it is my hope that providing another avenue forward encourages their continued civic involvement from those who have chosen to put their name forward. Being a candidate for a public office is not an easy thing, and our laws governing races for public office should promote public participation and not cynicism. Hopefully this legislation adds a way forward for those few candidates in these circumstances. Mr. Richards is here to testify today, and I thank him for doing so. I want to thank you for your time, and I would be happy to answer questions. [LB144]

SENATOR AVERY: Thank you, Senator Brasch. [LB144]

SENATOR BRASCH: Thank you, Chairman Avery. [LB144]

SENATOR AVERY: I'm fascinated by the handout here with all these old newspaper clippings. Here's Terry Moore as a young man, a labor leader in Omaha. He doesn't look like that anymore. (Laughter) Questions from the committee? Senator Bloomfield. [LB144]

SENATOR BLOOMFIELD: Thank you, Chair. Senator Brasch, there's nothing in your bill, is there, to prevent the flip of the coin to decide whose name goes on the ballot and whose name becomes the write-in. How do we handle that? [LB144]

SENATOR BRASCH: Whose name goes on...? [LB144]

SENATOR BLOOMFIELD: If we had the tie. [LB144]

SENATOR BRASCH: Okay. [LB144]

SENATOR BLOOMFIELD: Smith and Jones have tied. How do we decide which one gets to have his name on the ballot and which one becomes the write-in candidate? [LB144]

SENATOR BRASCH: That is a very good question, Senator Bloomfield. I would need to research that. [LB144]

SENATOR BLOOMFIELD: Okay, we will need to look at that a little bit. [LB144]

SENATOR BRASCH: We would need to look into that a little further and see how that would be handled. Thank you. [LB144]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR BLOOMFIELD: I also noticed over here, on your handout, I believe, if I understand this, that this deals only with the primaries. But 19 of these results over here came from general elections where they were decided by the coin toss or the card. [LB144]

SENATOR BRASCH: Yes. [LB144]

SENATOR BLOOMFIELD: And only eight of them were actually primaries. [LB144]

SENATOR BRASCH: Yes, that is correct. [LB144]

SENATOR BLOOMFIELD: Okay, so what is your...do you wish to change what we do at the end of the general election, or are you going to stay with the flip of the coin at the end of the general election if we have a tie? [LB144]

SENATOR BRASCH: At the end of the general election, sometimes there can be another...is it called a... [LB144]

SENATOR LAUTENBAUGH: Runoff. [LB144]

SENATOR BRASCH: ...runoff. Excuse...thank you, runoff election held in that case. And when it does there is...usually, in the general election, if there's a recount done, and within the 1 percent automatically, that that's done. These are in smaller elections. It... [LB144]

SENATOR BLOOMFIELD: I understand. But I see again that 19 of these were in general elections where that final decision was made by the coin flip. [LB144]

SENATOR BRASCH: That's a good point. [LB144]

SENATOR BLOOMFIELD: I'd be glad to work with you on this if we go on. [LB144]

SENATOR BRASCH: Okay. [LB144]

SENATOR BLOOMFIELD: And I know you will. [LB144]

SENATOR BRASCH: Okay. I would appreciate...those were good comments. Thank you. [LB144]

SENATOR BLOOMFIELD: Thank you. [LB144]

SENATOR AVERY: Senator Lautenbaugh. [LB144]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR LAUTENBAUGH: Thank you, Senator Avery. And thank you, Senator, for bringing this. And I wanted to make sure I understand what would happen here. I'm assuming if there was a tie in the primary and they did the coin flip, the person who won the coin flip would still go on. This would just allow the person who lost the coin flip to write on and be in the general. [LB144]

SENATOR BRASCH: To write in, correct, correct. [LB144]

SENATOR LAUTENBAUGH: So it really wouldn't change what happens if we just allow another avenue for the person who lost the coin toss, excuse me. [LB144]

SENATOR BRASCH: That's correct. So if that answers Senator Bloomfield's...it is. It would allow them to...currently they cannot be a write-in, and there...someone who was not even in the race to start with is eligible for a write-in where 50 percent of the people, you know, know the candidate and it was the coin toss loss. And for those people, you know, as you know, who spend the time, you know, working with candidates, they were completely dumbfounded that a coin flip disallowed them from moving forward at all. And in a smaller community it is...you know, you try to encourage good voter turnout and participation, and this is very disheartening. [LB144]

SENATOR LAUTENBAUGH: How do they decide if they're going to do a card draw or a coin flip, or do you know? [LB144]

SENATOR BRASCH: I heard they get to choose; they get to pick what lot they use. And that question did come up on this particular situation. I was called by this constituent and...in their disbelief that this was how, in this day and age, that we still handle things. I was speaking...when I was talking about introducing legislation, the Fremont Tribune reporter, he laughed when he heard that it was a coin flip and draw of the cards that...so, you know, with that said, we're hoping to give that...and these are only in the smaller races in smaller communities where...I believe this one was 50 votes to 50 votes or 25 votes to 25 votes. And, you know, how discouraging can that be when you're trying to recruit new leadership to come in and...on local government issues. [LB144]

SENATOR LAUTENBAUGH: I was going to suggest that maybe you amend this to say, instead of one card, it's like a "Texas Hold'em" hand, (laughter)... [LB144]

SENATOR BRASCH: There you go. [LB144]

SENATOR LAUTENBAUGH: ...so there's some skill involved and, actually, outcomes that address the issue. But I don't want to be flippant. [LB144]

SENATOR BRASCH: No. [LB144]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR LAUTENBAUGH: This is a serious problem. [LB144]

SENATOR BRASCH: It is. [LB144]

SENATOR LAUTENBAUGH: And it is kind of ridiculous if this is how we handle it, so... [LB144]

SENATOR BRASCH: It...absolutely. And Mr. Richards, you know, I do praise him for coming forward today and addressing you and telling you the serious of this. He, you know, thought long and hard before he ran in this race and has worked hard for many, many years to be a good civic leader. And it was very surprising to find out that a coin flip would determine a winner and a loser. [LB144]

SENATOR AVERY: I think Senator Bloomfield did identify a problem you don't address. You only address what you do in a primary when you have a tie. [LB144]

SENATOR BRASCH: Right. [LB144]

SENATOR AVERY: And he's suggesting that you could also have, as the evidence here shows, you could have a tie in the general election that would still beg the question, what do you do? And... [LB144]

SENATOR BRASCH: In a small race, and if it still is, you know... [LB144]

SENATOR AVERY: Well, it would apply to all races, wouldn't it? It wouldn't have to be small races. It's theoretically possible, but practically impossible, in a large race with lots of votes cast that you would have a tie, but you could. [LB144]

SENATOR BRASCH: And that is something we did not address. We were...yeah. [LB144]

SENATOR AVERY: We almost had one in 2000 statewide--I mean nationwide. [LB144]

SENATOR BRASCH: Okay. [LB144]

SENATOR AVERY: Something like 500,000 votes--sounds like a lot, but not given the number that were cast. Any other questions? These are things we can work out in committee hearings. [LB144]

SENATOR BRASCH: Oh, absolutely. I would appreciate working with everyone on the best solution. [LB144]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Okay, thank you. [LB144]

SENATOR BRASCH: Thank you, thank you. [LB144]

SENATOR AVERY: You're going to stay for closing? [LB144]

SENATOR BRASCH: I will stay. I wanted to hear testimony. [LB144]

SENATOR AVERY: Okay. [LB144]

SENATOR BRASCH: And I may waive closing, but it depends on what's up next. [LB144]

SENATOR AVERY: All right. All right, we'll move to proponent testimony now on LB144. [LB144]

PAUL RICHARDS: Good afternoon, Chairman. [LB144]

SENATOR AVERY: Good afternoon. [LB144]

PAUL RICHARDS: Committee members, I am Paul Richards, P-a-u-l R-i-c-h-a-r-d-s. I am from Decatur. I am the individual that got caught in the campaign and the tie. We went through the process of filing, the normal campaigning, putting out the signs, so on and so forth. We're all used to that. But what the part was that really got the voters is when they counted the votes, 54 to 54. And what do you do about it? Burt County Clerk, Marge Shumake, called the Secretary of State, and he explained to them exactly how you go about deciding who loses, who wins, and it's a game of lot. To me it's gambling, but it's how you do it. I guess it's better than dueling pistols--they're forever. But (laughter) anyway, so we had to go through the process of the election board had to count the votes again and then prepare a meeting for myself and the other individual that we tied with. We had to bear witness of all the votes being counted again in front of us. We had to sign affidavits that we did see this, we verified it, and then they come up with the three procedures of figuring out who was going to win. You have the draw of the cards, the flip of the coin, or you can put your name five times on a piece of paper, they put it in a mechanism, they tumble it kind of like a Bingo game, reach in, drag out a name, and that's how technical it is. And I knew, when I went in there, there was going to be a 50-50 chance of winning or losing. In my mind, when I went in there, that I would either win or lose then I would walk in to the county clerk, sign up as a write-in. When I did that, when I found out that I was not a winner, I walked into the county clerk and asked them to sign me up as a write-in for the general election. Again, we called the Secretary of State. They explained to her that the law reads, if you lose in the primary--that's all it says--you do not qualify for a write-in, in the general election. At that point, as Lydia explained, I really didn't lose in the primary by the votes. I lost in a game

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

Government, Military and Veterans Affairs Committee
January 23, 2013

of lot, and I lost the opportunity to be able to proceed to represent my voters of my district. So if you will consider changing just that part, where a loser of lot at the primary level could just be able to go as a write-in, in the general, it's real simple. So that's all I have to say. I thank you very much. [LB144]

SENATOR AVERY: Thank you. Questions? Senator Murante. [LB144]

SENATOR MURANTE: Thank you for coming and testifying. [LB144]

PAUL RICHARDS: Thank you. [LB144]

SENATOR MURANTE: I hadn't really given this issue much thought at all prior to reading this bill. A concern I have when reading the bill is that it seems to me that the candidate who ties and then loses by lot in a primary election, giving that person an opportunity to come back in the general election and then defeat the candidate that he or she tied in the primary, while having to do so by a write-in, is a daunting task to me. I don't know how often write-in candidates win or what their percentages are, but I imagine the record is pretty dismal. And I'm wondering, and perhaps if Senator Brasch is listening she could address it in her closing as well, if you would be...what you would think about also permitting them an opportunity to run by petition on the general election ballot and to petition on and not just have to defeat the candidate as a write-in? [LB144]

PAUL RICHARDS: Well, from my point of view, in my situation the biggest problem in our primary at that time was there was too many individuals that filed for the position that I filed for, all right? So, therefore, it spread the votes out. As far as a candidate and a person that would run for the county supervisor, I would do the write-in. I would go to the extra effort to go as a write-in, as an individual. That would not bother me. [LB144]

SENATOR MURANTE: Um-hum. Okay. [LB144]

SENATOR AVERY: Senator Wallman wanted to get in on it. I'll get to you in a minute. [LB144]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for testifying and coming down. I can see your dilemma, and I can hear...you know, see your dilemma here. But what, if it's just two of you in this, you know, the luck of the draw and you tie again, what would be your recommendation then? [LB144]

PAUL RICHARDS: The recommendation is you go back to the law that's already on the books as a tie. I don't know the law, per se, exactly what the number is, but I know the Secretary of State has it. [LB144]

SENATOR WALLMAN: Okay. [LB144]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

PAUL RICHARDS: But there again you would use that same flip of the coin. I don't have a problem with the flip of the coin, draw the names, or whatever. That is not the problem here. The problem here is denying that candidate of representing his voters of getting to a place where they could vote for him once again, and that would be through the write-in procedure. [LB144]

SENATOR WALLMAN: Thank you. [LB144]

PAUL RICHARDS: Thank you, sir. [LB144]

SENATOR AVERY: Now, Senator Bloomfield. [LB144]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Were you on a partisan ballot or a nonpartisan ballot? [LB144]

PAUL RICHARDS: I was on the Democratic ballot. [LB144]

SENATOR BLOOMFIELD: Okay. My question would then be: If you and a fellow Democrat tied and you came out as a write-in candidate, are you not affecting much, as we discussed in the last thing, your fellow Democrat's ability to defeat the Republican who may be on the other side of the ballot by splitting that Democratic vote? And are we then, in fact, being fair to the candidate that did win the flip of the coin, albeit that? [LB144]

PAUL RICHARDS: Yes, I can understand what you're saying there, sir. [LB144]

SENATOR BLOOMFIELD: So what I can see again, and I go back to my history up in Wayne County where two people really detested one another, and rather than to see one of them win he would split that vote and deny that party the victory. And I do see a possible issue there. [LB144]

PAUL RICHARDS: Well, it wasn't the case in our...in my situation. [LB144]

SENATOR BLOOMFIELD: I understand that, I understand that. [LB144]

PAUL RICHARDS: There was four of us. I knew every one of them, all the other three, very, very well. In a small community, you rub shoulders. I'm a business man. I've been in business there all my life, all my adult life. So I know these people, and there wasn't any hardship or anything such as that. [LB144]

SENATOR BLOOMFIELD: I just find myself wondering if that isn't the reason that we did this in the first place was to maintain the party or the victory of the party to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 23, 2013

stronger on the ballot. [LB144]

PAUL RICHARDS: Of the draw, of the tie, the original tie. [LB144]

SENATOR BLOOMFIELD: Yeah, yeah. I'll need to look at that a little further. Thank you. [LB144]

PAUL RICHARDS: That's good. I'd be interested in that, too, myself. [LB144]

SENATOR AVERY: Any other questions? Don't see any. Thank you for your testimony. [LB144]

PAUL RICHARDS: Thank you very much for the opportunity. [LB144]

SENATOR AVERY: Any other proponents? Anyone else wish to testify in support of LB144? Okay, we'll move to opponent testimony. Anyone wish to testify in opposition? Any neutral testimony? Welcome again, Mr. Dix. [LB144]

LARRY DIX: Welcome again, Senator Avery. My name is Larry Dix, spelled L-a-r-r-y D-i-x. I'm executive director of Nebraska Association of County Officials, today in a neutral capacity. As we had mentioned before, we hadn't taken a position. But a couple of things that I thought I would interject because this is one that, when I look at the bill, one of the things...and I know I'm not allowed to ask the questions. But one of the things I would bring up for the committee, as I read it, if there were a tie, a coin was flipped, the candidate comes back around as a write-in, if the committee would at least examine if that write-in candidate would then have to repay the filing fee. I think as it's written it looks like any candidate engaged in pursuing a write-in shall file an affidavit of his intent, and so on and so forth, and the filing fee. So I don't know what the committee's thought is on that. Not that we have a position, but we certainly would like to clarify that so that when that came around it's a point I think that should be discussed. And I would tell you that, in a number of races each year, it seems like, as I observe across the state for county board races and things like that, ties do occur. It's not necessarily such an anomaly. But in many of the small, small races they do occur. So with that I'll conclude my testimony. [LB144]

SENATOR AVERY: Thank you, Mr. Dix. [LB144]

LARRY DIX: Thank you. [LB144]

SENATOR AVERY: I don't see any questions. Thank you. Any other neutral testimony? All right, Senator Brasch, are you ready to close? [LB144]

SENATOR BRASCH: I did want to thank all of you today, and when you have questions

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

Government, Military and Veterans Affairs Committee
January 23, 2013

I am happy to address them, such as the write-in. And Mr. Dix had an excellent question about paying the filing fee for writing in. I think that's a valid question. And I especially want to thank Mr. Richards for coming here today from Decatur. It was not easy for him to pick up the phone and call me to discuss this. He had put his heart into this and his...the people who voted for him, you know, they say, you know, they turned out to vote. And for what? For a coin flip. So I'm hoping we can look at a solution for this and one that we find better fits today's culture and environment. And Mr. Richards, you know, he had a good point: At least it's not pistols. (Laughter) So thank you. Are there any questions for me? With that, I'm... [LB144]

SENATOR AVERY: Yes, Senator Lautenbaugh. [LB144]

SENATOR LAUTENBAUGH: Thank you, Senator. And this is an important issue. Have you...had you contemplated what Senator Murante raised about possibly letting it be by petition instead of by write-in, which is much easier, I guess, to be blunt about it. [LB144]

SENATOR BRASCH: I think that was a good suggestion, and we would look at that possibility. I...he had a very valid point, so this is... [LB144]

SENATOR AVERY: And extending it to the general. [LB144]

SENATOR BRASCH: We'll look at that too. Now that could get into some other good questions. But especially on these smaller community races, you know, the number of voters in the primary, as many of you know, has declined, you know. And if we continue to put on different, unusual circumstances, you know, are they going to go out and vote, you know? Why don't they just flip a coin, you know, and save some time from the very start, you know, or (laughter) time and money? [LB144]

SENATOR AVERY: Save all the... [LB144]

SENATOR BRASCH: Save all the...yes, that's right. [LB144]

SENATOR AVERY: ...fund raising and "lit drops." [LB144]

SENATOR BRASCH: There you go. But yes, we...I would like more discussion on this, and I ask for your favorable vote, that we can advance this out of committee and get it to the floor for some broader debate. Thank you. [LB144]

SENATOR AVERY: Thank you, thank you. Okay, that ends the hearing on LB144, and we now move to our last item for today, LR12CA, and invite Senator Harms up to the table. Welcome, Senator Harms. [LB144]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR HARMS: (Exhibits 1-6) Well, thank you very much, glad to be here. We have a number of handouts we're going to give you today, so give you a little reading in your spare time. Senator Avery and colleagues, my name is John N. Harms, H-a-r-m-s. I represent the 48th Legislative District. I am the introducer of LR12CA. LR12CA amends Article IX, Section 4 of the constitution by adding the form of county government in which the county officers may be appointed. But such form shall be optional with each county and shall occur in any county only upon adoption by a majority of those voting in the county. Senator Avery, when I first did this research--and some of this will be a repeat for some of those of you who were here a year ago in regard to this particular issue--I found that this wasn't really a new concept. I've had a lot of people talk to me about, isn't this a new idea for Nebraska, isn't this a new concept? And the answer is, simply, no, it's not; it's not true. And it might be helpful for you and your new committee members to give me the opportunity just to give you a little bit of history about the form of government, this kind of form of government that's been tried in Nebraska previously. In 1950 a report was prepared by a committee of the Legislative Council consisting of Senator William A. Metzger as Chair. And if any of you have any institutional knowledge that goes back that far, they also had Charlie (phonetic) Wilson, John P. McKnight, Hugh Carson, George Weborg, and Elliott Bohlke, also on that particular committee. From this report, Senator Avery, if I might, I would like to take just a few excerpts from it because the authorities in it say it a lot better than I can say it, and they narrow it down pretty rapidly and get right to the heart and to the point of what I think I'm trying to accomplish here. And I quote, there is an agreement among students of public administration to the effects that the functions of government should be arranged on a logical and consistent basis, and their corresponding powers and responsibilities should be assigned to clearly identifiable departments and officials. The county, however, represents many examples of illogical allocations of functions and a fusion of powers and responsibilities. The powers of the county government are divided among county commissioners or supervisors and a number of miscellaneous elective officers with little or no provision for coordinated leadership at the top or the responsibility to any common authority. In common, on the division of powers and responsibilities are recognized authorities on this subject have said that government structures established in counties of the United States, they resemble one or another in one important respect. They violate, almost without exception, every sound principle of organization. They are headless and they're formless. Authority is scattered among a large number of elected county officials and usually pursue their separate ways with little or no thought of effective coordination or cooperation. No one person corresponds to the mayor, the manager of a city, or the governor of a state exercise supreme executive power. No one person can be held responsible for the lack of coordinated administration. Even the so-called legislative body of the county has very limited legislative powers and can determine county policy only within just a very narrow, limited field. The same authorities and experts in the field denotes that the most obvious defect of organization of a county government is simply the lack of responsible executives. That's the end of quote. Many cities have adopted what is known as a "city manager" form of

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

Government, Military and Veterans Affairs Committee
January 23, 2013

government. Many authorities have suggested that counties should profit by their experience of cities adopting a county management form of government to meet the criticism that a county has no responsible executive. In 1933 the Nebraska Legislature passed an act which authorized any county in the state to adopt a county management form of government by popular vote. In 1933 Douglas County voted to adopt the county management plan of government. In 1935 Thomas J. O'Connor sought to file as a candidate for the register of deeds, but the election commissioner refused to accept this filing on the ground that the work of the register of deeds would be performed by or under the direction of a county manager and that the adoption of the management plan had suspended the election of this office. Mr. O'Connor turned to the courts, which said that the Legislature had no authority to authorize the county to adopt a management plan. In 1939 the Legislature amended Article IX, Section 4, to authorize the Legislature to provide for the option form of county government in which county officers might be either elected or appointed. At the general election in 1940 it failed. In the general election of 1944 it was back on the ballot, and it also failed. And, Senator Avery, I thought the interesting thing about this, because I enjoy history, and actually reviewing this I found that Senator L.B. Murphy from Scottsbluff, Nebraska, was the person who cosponsored both of these amendments. And later on in years Senator Joyce Hillman did the same thing: made two runs at it and failed. And I'm hoping that I change history, (laugh) because this is the second time I've been here and I'm hoping it comes out of committee. Senator Avery, my concern is that I think that a lot of people may very well view this proposal from a viewpoint that county government should be managed the way that it has always been done. The government needs to be managed. Times have changed. In private business, educated and qualified professionals are recruited, and they're employed based on a defined job description. Performance is measured based on well-defined criteria. Personnel management hiring by merit, based on job qualifications and implementing of efficient office procedures, is unlikely to occur when elected officials are required to possess little or no qualifications to hold such offices. County government today is truly big business, and I believe it needs to be treated as such. At the present time there is no one accountable in our county governments. And I think times have changed enough, with electronics and all the things that are occurring with us, all the issues we're having with taxes and the economy, it's time to make a change. It's time to give people an option to choose. It's time to give people the opportunity to decide what they would like to have. I have received correspondence from people all over this great state who have indicated to me, that are individual citizens just like we are, who have indicated that they agree with this concept. They think that they should have the right to choose. And they've also indicated to me that they want our state, as well as our local government, to be transparent, they want it to be efficient, and they want it to be effective, you know, and at the same time they want their property tax lowered. They would like a smaller local government structure, and this gives them the opportunity, as I have said before, to participate. This gives them the opportunity to make government more transparent for them. This gives them the opportunity to be a part of reorganizing what we presently have. I don't know when the

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

Government, Military and Veterans Affairs Committee
January 23, 2013

last time it was that we actually changed our county government structure. I don't know if it's been 50 years or 80 years. We still have the same concepts. And with the decline in the number of people living in our counties we're not very effective. So one of the benefits of a county management...let me just give you just a few of those, then I'll be happy to answer any questions. A professional manager is the one in charge of carrying out the policies established by the elected officials, delivering public services effectively, efficiently, and equitably. Elected officials then have more time to, quite frankly, concentrate on the future. How often have you ever heard that your county that is going into long-range planning, looking at the future, trying to decide what's the best pathway for our county, how are we going to fix some of the issues that we have? It's because they don't have time. The professional manager is educated, trained in current county management practices, state, and, you know, federal laws, of mandates, cost-effective services, delivery techniques. They can...they'll manage the day-to-day operations. A professional manager works in partnerships with elected officials to develop sound approaches to community challenges by bringing together resources to make the right things happen that produce results that truly matter to the public, to the citizens, and to the people who are paying our bills. The professional manager is an individual that was chosen by the county board whose duties are to enhance the responsibility to the citizens by centralizing administrative accountability. They bring technical knowledge and expertise. They'll bring some knowledge in economic development, some knowledge in dedication and commitment to public services. Out of all the literature that I've read and all the research that I've done, I think the one thing that caught my eye the most out of these responsibilities is that they promote an ethical government through ethical standards that go way beyond our current laws, and, to me, I think that's really important. I think, to me, that would elevate our county government structure. Senator Avery, this is just a few of the benefits, and I thank you for giving me the opportunity to come in and have this discussion again on LR12CA. I'd be happy to answer any questions. I'm sure there are people here who are here to testify either in favor or against this process. I would like to clarify for you in closing is that if, for example, this came out of committee, was approved by the body, and then was voted on, approved by the public, there will have to be a bill written to direct and to guide us in this process. All this does is just gives us the opportunity to do this. We do have and will have a bill drafted, and we're just...I just was looking at it before, a few minutes ago. We're just putting the finishing touches on it. I will give it to you. And if it comes out of committee, we'll give it to our colleagues so that you can kind of take a look at what might be, where we have to be, because I'm not going to be here when this comes up. I won't have the opportunity to introduce this or follow it up, so that's why I want to get the seed set so you can kind of take a look at it. You have a great opportunity to make some changes and could see what that law could look like or that bill could look like. I think that would be helpful for all of us. That was a question I was unable to answer last time I was here, and we have the answer for that now. And I think you can look at it and decide what you think, but you have the right to change it. As I said, I will not be here. So I'd be happy to answer any questions. [LR12CA]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Thank you, Senator Harms. [LR12CA]

SENATOR HARMS: You're welcome. [LR12CA]

SENATOR AVERY: Questions from the committee? Senator Scheer. [LR12CA]

SENATOR SCHEER: Thank you, Senator Avery. Are we assuming that this is going to be more cost effective, or what are your thoughts, Senator? [LR12CA]

SENATOR HARMS: Great question. Thank you very much, Senator, for asking that. Yes, I do. What I have...all the literature that I have read and the research I have found, what they have said to us--and I have experienced this, too, because I have merged at least four different organizations together in my previous world--is that...what you will find is that at the very beginning there may not be cost savings, but long term there is a cost savings. As you begin to bring this together, as it begins to mold itself together, there will be cost savings. Let me give you an example. In certain functions of county government there is really peak periods. And over here on the other side there is very little going on. But this side over here has to hire part-time people. We've never cross-trained these individuals over here to come across because that clerk doesn't want that to happen. I think all those things will go away. And the other thing I think you will find in the bill that we would present for consideration or for somebody to introduce in the future is that you could grandfather people in also, so the people that are in the office don't automatically just get jerked out. There's a lot of different ways you could put this together, and I think we've tried to put it together the best way that I think is possible. But that's a good question. Long term, the answer is yes. [LR12CA]

SENATOR SCHEER: And the other point I just wanted to clarify, because I've received several e-mails and so forth in regards to this, and they talked about not having anyone accountable locally for the county operations. But my assumption is that what you're talking about is similar to, for example, a school district where you would still have, perhaps, county commissioners or supervisors, whatever you would call them, and they would be the ones that would hire the administrator. [LR12CA]

SENATOR HARMS: Yeah, that's correct, um-hum. And you have two options if you choose to do it; that would be up to whoever introduces the legislation. You could appoint three commissioners or you could elect. The danger of the election side of it: You may not get the kind of qualifications that you want, the quality that you want. But there are a lot of different options. Did I answer your question? [LR12CA]

SENATOR SCHEER: I think so. [LR12CA]

SENATOR HARMS: You're sure? [LR12CA]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR SCHEER: Yeah. [LR12CA]

SENATOR HARMS: Okay. [LR12CA]

SENATOR SCHEER: Thank you. Thank you, Senator. [LR12CA]

SENATOR AVERY: Any other questions? Thank you. Senator Murante. [LR12CA]

SENATOR MURANTE: I'd like to expand a little bit on what Senator Scheer was talking about because...first of all, thank you very much for the testimony. [LR12CA]

SENATOR HARMS: You're welcome. [LR12CA]

SENATOR MURANTE: It was very informative. But I have received more e-mail correspondence on LR12CA than any other issue before the Legislature thus far. [LR12CA]

SENATOR HARMS: That's good. [LR12CA]

SENATOR MURANTE: And, well, yeah, absolutely, so it was a very thought-provoking proposal. But I think, as Senator Scheer said, the concern that people have, that I have read in my e-mail anyway, is the lack of accountability of this administrator. And I think of the challenges that we, in Gretna, faced over the last 12 months--that we had a mayor and a city administrator who engaged in unlawful activity. The next election we got rid of our...the mayor didn't get 10 percent of the vote in the primary, and the mayor was gone. [LR12CA]

SENATOR HARMS: Um-hum. [LR12CA]

SENATOR MURANTE: We couldn't do anything about the city administrator until the city administrator was arrested. I'd like you to just react to that and tell me if you think that's a concern with having such a model. [LR12CA]

SENATOR HARMS: No, I don't really think it is. I think because, if I understand your question right, you have a board, you have the commissioners. [LR12CA]

SENATOR MURANTE: Um-hum. [LR12CA]

SENATOR HARMS: And they're responsible for doing it, so a heck of a lot more difficult when you have someone that you want to remove to go through that whole process. [LR12CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR MURANTE: Um-hum. [LR12CA]

SENATOR HARMS: This is...it's clean, clear-cut. I think it's a lot better, and it will be easier and smoother to address that issue because they have a board. That way your commissioners or your supervisors, whatever term you use... [LR12CA]

SENATOR MURANTE: Um-hum. [LR12CA]

SENATOR HARMS: Did I answer your question, or would you like to go further? [LR12CA]

SENATOR MURANTE: No, I think so. It's...the concern I have and the concerns that were in the...we certainly would have a governing body that would have the authority. [LR12CA]

SENATOR HARMS: Absolutely, that's correct. [LR12CA]

SENATOR MURANTE: But I think the concern among the people is they don't have the ability to step in and say, you've done something wrong and you're fired. They don't have the ability to take that on themselves and exercise that authority. [LR12CA]

SENATOR HARMS: Well, they do because they have commissioners, and they elected those commissioners. And if the commissioners don't fulfill them you just don't reelect them. They do have a voice, and they can speak up. I'd like to ask, if I might, could I reverse just a thought for a second with you? [LR12CA]

SENATOR MURANTE: If the Chairman allows me to answer a question, I will. [LR12CA]

SENATOR HARMS: Yeah, I just want to ask a question, if I might? Are...is that okay? [LR12CA]

SENATOR AVERY: Senatorial privilege. (Laughter) [LR12CA]

SENATOR HARMS: Okay. The questions...the letters that you were getting, are they coming from county officials, or are they coming from the general public? [LR12CA]

SENATOR MURANTE: I believe it's from the general public. [LR12CA]

SENATOR HARMS: Good. I think that's great. [LR12CA]

SENATOR AVERY: I have some communications here I'll read into the record in a minute. [LR12CA]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR HARMS: Thank you. [LR12CA]

SENATOR AVERY: They're not all against you. [LR12CA]

SENATOR HARMS: We had...we got quite a bit of correspondence, and so I...we've given it to you so it can be read into the records, too, so thank you. [LR12CA]

SENATOR AVERY: Any other questions? Oh, Senator Scheer. [LR12CA]

SENATOR SCHEER: Thank you, Senator Avery, just a follow-up. And maybe I'm oversimplifying this, but the analogy that I'm thinking of is it would turn into...for example, in Norfolk we have a "weak mayor" form of government. So we have a council and a mayor, but we also have a city administrator. The city administrator is in charge of all personnel and directive and control of the city activities. [LR12CA]

SENATOR HARMS: Uh-huh. [LR12CA]

SENATOR SCHEER: So is what you're proposing for county government similar to that type of approach? [LR12CA]

SENATOR HARMS: You would have a manager, is what you'd have, that would do all the daily operations and making sure that people are working close together, making sure they're staying within their budgets and all those sort of things. You'd have...he would be the manager, answers directly to the board, the commissioners, supervisor, whatever term you want to use. That's the...that would be the organizational chart. [LR12CA]

SENATOR SCHEER: Okay. [LR12CA]

SENATOR HARMS: He would be at the peak. [LR12CA]

SENATOR SCHEER: Thank you. Thank you, Senator Avery. [LR12CA]

SENATOR AVERY: Any others? Thank you, Senator Harms. [LR12CA]

SENATOR HARMS: Well, you've been very kind. I would like the pleasure of closing, if I might. [LR12CA]

SENATOR AVERY: You will get that opportunity. [LR12CA]

SENATOR HARMS: Thank you. [LR12CA]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Just don't leave us. Proponent testimony? Welcome, sir. [LR12CA]

CHRIS ANDERSON: (Exhibit 7) Thank you. Senator Avery and members of the committee, my name is Chris Anderson, C-h-r-i-s A-n-d-e-r-s-o-n, and I'm the city administrator for the city of Central City, and I also have the opportunity to serve on the board of directors of the International City and County Management Association. ICMA is an organization with about 9,000 members from all around the world. We are nearly 100 years old and exist to promote professional local government, to provide support and continuing education for our members, and to enforce a code of ethics. If this form of government is approved, it will provide an effective option for some counties to consider. Today about 27 percent of the counties in the United States operate under some variation of this model. A city or county manager is intended to provide management expertise in a nonpartisan and professional manner. They are selected on the basis of their training and experience to effectively run the organization. A county manager is not a threat to the county board or to the ideals of democracy. We play a specific role with clear limitations. The ability to get rid of us at any time plays an important role in keeping those rules clear. I'm not here today to suggest that the county manager form is needed in every county or would be the best option in every county. There are great county officials across the state, and we respect their service. However, in cases where the system has great inefficiencies or where problems are encountered down the road, this could be a very helpful and effective option if it's available. What are some specific benefits to Nebraska counties if this was adopted, potentially? A county board would be able to work through one executive who would be accountable for implementing the policies that they decide on. If the manager fails to carry out their policy decisions, he or she is directly and individually accountable and removable. A county board's authority would increase as they would have direct control over the person making all of the personnel decisions for the county. A county manager might be able to better integrate the departments, combine duties, combine offices, or take other actions to improve the efficiency because they're not bound by the silo effect created when each elected department head essentially runs their own organization. This might be particularly helpful in a county that has experienced population decline. A manager could reorganize and "right-size" the organization without the constraints of having mandatory positions. This form could provide for better recruiting for the county. If a county treasurer, for example, is planning to retire, the pool of candidates is essentially limited to the residents of that county. A trained financial professional is not going to move into that county and hope to win an election to get the job. A county manager employing a traditional recruitment and hiring process could expand the pool of candidates and hire whoever is the best choice available in the market. The manager can prepare and present a budget that focuses on accomplishing specific tasks, and it reflects the priorities established by the county board. They can then hold the manager accountable for the efficient use of the funds and execution of their decisions. The manager serves as a technical advisor to the board and plays a role in looking at the big picture. He or she can provide some focus on strategic planning. A good manager will

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

Government, Military and Veterans Affairs Committee
January 23, 2013

always stay focused on highly ethical conduct, nonpartisan service, providing high-quality information to all board members equally, regardless of their personal likes or dislikes, all with a constant focus on results. In making a decision to adopt this form of government, the people could elect to keep certain positions separate, such as the county attorney or sheriff. I think that enabling legislation could provide the flexibility to create a solution that addresses specific issues facing each county. This form of government provides one key change that really affects the dynamics of how the county will operate. Currently you have a county organization where the governing body has a group of elected department heads. This puts the board in a weak position for controlling the operations of the county. The county manager form provides the structure for the county board to have full authority over all operations of the county through a professional manager who looks after the details. Again, there are places in Nebraska where the current system works fine, where competent officials work cooperatively with the boards. In places where the system is weaker or where it may break down in the future, the county manager form of government could provide a very effective alternative. And I thank you for hearing me. [LR12CA]

SENATOR AVERY: Thank you. Good timing. Questions from the committee? You must have satisfied everybody's curiosity. [LR12CA]

CHRIS ANDERSON: (Laugh) All right, thank you very much. [LR12CA]

SENATOR AVERY: Thank you, Mr. Anderson. Any other proponent testimony? Welcome. [LR12CA]

LINDA DUCKWORTH: Good afternoon. I am Linda Duckworth, president of the League of Women Voters of Nebraska. As Senator Harms indicated, this is a topic that is... [LR12CA]

SENATOR AVERY: Would you spell your name for the record? [LR12CA]

LINDA DUCKWORTH: Oh, I'm sorry. Linda, L-i-n-d-a, Duckworth, D-u-c-k-w-o-r-t-h. Since this is a topic that has come up over the years...as a matter of fact the League of Women Voters of Nebraska, in the 1970s, studied best practices in government options, and in 1977 came to consensus on the following: Members of the League of Women Voters of Nebraska advocate a county government structure that is representative, responsive and responsible, flexible, and accountable, that permits the separation of legislative and administrative functions and allows efficient and economical delivery of services with adequate funding. Major structural changes in each county government must be approved by a majority vote of the people in that county. It was adopted in 1977 and then reaffirmed in 1991. We have nine specific points in addition, but the two that pertain to LR12CA are: the right of a county to choose its own structure, including elective and appointive options; and the right of counties to appoint a county

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

Government, Military and Veterans Affairs Committee
January 23, 2013

administrator. We see this resolution as a step toward greater self-determination for citizens of counties, as well as greater flexibility in governing options. Something that hasn't been mentioned up until now, but I noticed, is the one thing I wanted to point out is that as technology makes so many functions more feasible, we should be prepared to take advantage of those possibilities. In other words, consider the fact that we are in the time period that we are, the century that we are, and think about how lightning-fast technology can help us make different choices and maybe do better governing with those considerations in mind. And that's all I have. Thank you. [LR12CA]

SENATOR AVERY: Thank you, Ms. Duckworth. Questions from the committee? I don't see any. Thank you very much. [LR12CA]

LINDA DUCKWORTH: Thank you. [LR12CA]

SENATOR AVERY: Other proponent testimony? Good afternoon. [LR12CA]

DUANE STOTT: (Exhibit 8) Good afternoon, Senator Avery, committee members. My name is Duane Stott, D-u-a-n-e S-t-o-t-t. I'm the Scotts Bluff County surveyor and also the geographic information system administrator. I've kind of got a unique perspective on this in that I am an elected official as well as an appointed one. The issues here primarily, from my point of view, deal around two key issues in which, number one, is that county officials are really not guided in any way by their political persuasion about what they do in their offices. Their offices' functions are pretty well defined by state statute, and they pretty much are administrators and expected to carry out that job. So I think that this proposal follows very closely to what was previously alluded to as far as city governments with a city manager type of government, and it pretty much mirrors exactly what those folks do in that position. The other part of my letter that I have submitted, and which I would like to read so that I don't inadvertently overlook something, is that the incorporation of digital technology, which the previous testimony mentioned, is involved in almost every facet of county government. The interaction of separate offices is much more closely knit by digital technology and, therefore, each office is more dependent on cooperation with each other in how they share data and operate with compatible equipment and programs. And this is a problem which we ran into in Scotts Bluff County very heavily. I was intimately involved in the development of the computer networking system in Scotts Bluff County, and everybody had their own idea about how things should work. And there was a lot of differences of opinion that simply, if left in place, would not allow the technology to develop. It's also a reality that various offices are headed by individuals, and in many cases they embrace the changes that computer technology has brought. But many, after all these years, and we're talking we're 25-30 years into this process, they're still determined to continue functioning as in the past. The other obstacle that has presented itself is a human tendency for personality conflict and turf preservation. One person can presently make decisions which will derail the implementation of a valuable resource. The passage of this

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

Government, Military and Veterans Affairs Committee
January 23, 2013

legislation would provide a means for decision makers to discuss, evaluate, and have the authority to require cooperation and the development of new technology resources as they become available. So in conclusion I just feel this is a more suitable means of bringing everybody onto the same page and being able to work together than presently. Each officeholder is independent and, quite frankly, many of the offices at present don't require any formal licensure or training other than they simply decide to run for the office. So this would bring more qualified individuals into the fold as far as county offices. That's all I have. [LR12CA]

SENATOR AVERY: Thank you, Mr. Stott. Questions from the committee? I don't see any. [LR12CA]

DUANE STOTT: Okay, thank you. [LR12CA]

SENATOR AVERY: Any other proponent testimony? How many more people wish to testify in support? One, two, three. Opposition? Okay. Proceed, sir. [LR12CA]

BRETT BAKER: All right, thank you, Senator Avery and Government Committee members. My name is Brett Baker. I think I know quite a few of you. I'm the current city administrator at the city of Seward, Nebraska, and also am the state president and representative for the Nebraska State City/County Management Association. And, as Mr. Anderson testified, he is one of our VPs for our national organization. I'm also a member of that and abide by the rules and ethical standards imposed upon us by the ICMA. Mr. Anderson alluded to the 9,000-plus members of ICMA. They're a highly professional bunch--group--for the most part, with the exception of--we probably can count on two hands--the Gretna examples. So, you know, I mean, we'll address...it's not...not everything is perfect, but I can assure you, from our 100-plus members of NCMA, the Nebraska City/County Management Association, we operate, you know, with integrity and to the best interest of the community that we serve, the mayors and city governments. Most professional managers through ICMA...and have contractual obligations that will address any type of wrongdoing, as has been brought up. It's a contractual obligation that usually is addressed through part of the hiring process. One example...and I wish to just exclude Sarpy and Douglas and Lancaster County because they do operate under...with a county manager, whether it be Mr. Eagan or Mr. Wayne or Kathleen Kelley over there. And they do a great job, and they...you can see that happen in day-to-day government through cooperation. They will come in, and you'll see joint projects that are done through city/counties and they're...I think you see progressive communities, progressive growth areas, such as some that you represent do have professional management at a county level. Moving to the Seward area, to the west, I got to go the opposite direction a little bit and found out that things were pretty much, at the courthouse, that they were there on their own. And, for one example, asked about a one- and six-year plan. The city of Seward is in Lincoln's MSA--stat area. We have quite a bit of growth. We have a lot of the stuff with Concordia University. But

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

Government, Military and Veterans Affairs Committee
January 23, 2013

we also have a need to talk and know what the county is doing, similar to the...an example would be the one- and six-year plan. Before it got there nobody ever asked the county for the one- and six-year plan. Two weeks from now we...our street engineer consultants will be presenting a one- and six-year plan, but it's going to include what the county is doing. And there is a lot of repetition projects that can save a lot of money. One thing that the senator brought up was, you know, what's the best contribution for professional management as far as the county structure, and I think there's a lot of values that have to be looked at. You know, he brought up the partnership. That's huge. You as senators know partnerships are huge if we're going to make things work. We can't usually do everything on our own. But if you bring a countywide perspective to different policies, discussions, we can about assure you that you'll connect, one way or another, on focusing on that project. So we think that is there. Mr. Anderson, well, I'll elaborate a little further on promote ethical government through a commitment to a set of ethical standards that go beyond the law. We also try to encourage inclusion and bill consensus among different interests, such as the county interest, and promote fairness, as I think you just heard the other gentleman bring up through his testimony and through his elected official, by ensuring services are distributed fairly and, I think most importantly, people are treated fairly. This can, you know, turn into develop sustainable organization. It can promote innovation that we've seen. Look at Sarpy again; look at Douglas; look at Lancaster. And I think that's...that closes the door for you on that. We would...it's not a one-size-fits-all that...I kind of say that a county manager or a city manager or a city administrator is kind of like a project manager. And if that project manager is not on site, you probably are going to see some diminishing returns. And I think the counties...some counties could really benefit from this concept, and we'd encourage you to possibly move this forward and thank you for your time. [LR12CA]

SENATOR AVERY: Thank you, Mr. Baker. Are you fairly new in your position?
[LR12CA]

BRETT BAKER: Yes. Well, yeah, new probably within the last year and a half, Senator.
[LR12CA]

SENATOR AVERY: Yeah, I thought so. [LR12CA]

BRETT BAKER: Yeah, um-hum. You came from Senator Wallman's district. [LR12CA]

SENATOR AVERY: We know your mayor, by the way. [LR12CA]

BRETT BAKER: Oh. (Laugh) [LR12CA]

SENATOR AVERY: He used to be my LA. [LR12CA]

BRETT BAKER: Okay. [LR12CA]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR AVERY: Any questions? [LR12CA]

SENATOR WALLMAN: Yes. [LR12CA]

SENATOR AVERY: Senator Wallman. [LR12CA]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming. Now you coordinate pretty good with county and city then? [LR12CA]

BRETT BAKER: Yes. We're starting the process over, as I said, to the west now. Before is...when we were down in your district with city of Hickman, I was involved with Lancaster County. [LR12CA]

SENATOR WALLMAN: Yeah. [LR12CA]

BRETT BAKER: It was a great relationship. I mean, we... [LR12CA]

SENATOR WALLMAN: Did Hickman make you mad or what? [LR12CA]

BRETT BAKER: What's that? [LR12CA]

SENATOR WALLMAN: Did Hickman make you mad or something? (Laugh) [LR12CA]

BRETT BAKER: No. That Mayor Eickmeier just is a pretty good salesman, I guess. He got me, you know, persuaded to move west, so it's been a good transition. There's a good community. [LR12CA]

SENATOR WALLMAN: Okay, thanks for coming. [LR12CA]

BRETT BAKER: Thanks, Senator. [LR12CA]

SENATOR AVERY: Thank you for your testimony. [LR12CA]

BRETT BAKER: Thank you. [LR12CA]

SENATOR AVERY: Any...we have three more proponent testifiers. Come on. Good afternoon. Welcome. [LR12CA]

JOHN BARTLE: (Exhibit 9) Good afternoon. Thank you. Mr. Chairman, members of the committee, my name is John Bartle, and I am a professor of public administration at the University of Nebraska at Omaha and also a fellow of the National Academy of Public Administration, which is a Congressionally chartered organization to provide

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

Government, Military and Veterans Affairs Committee
January 23, 2013

nonpartisan expert advice on government administration. I appear to you... [LR12CA]

SENATOR AVERY: Would you spell your name for us for the record? [LR12CA]

JOHN BARTLE: I'm sorry. John, J-o-h-n, Bartle, B-a-r-t-l-e. [LR12CA]

SENATOR AVERY: Thank you. [LR12CA]

JOHN BARTLE: I was excited. (Laughter) I appear here today as a private citizen and not as a representative of the University of Nebraska. I'm here to speak in support of a proposed constitutional amendment. I believe there are many advantages for allowing voters to choose this option, as others have testified. I'd like to focus my remarks on a specific issue, that is, a potential for greater efficiency with a county manager form of government. In a county manager form of government, the manager is a skilled professional with the knowledge and expertise to manage operations and to explore alternatives in service delivery to enhance efficiency and the quality of service. For example, county managers are well developed in using...developing and using performance measures to examine trends in service delivery performance. This can enhance accountability to citizens and also identify opportunities to redeploy resources to enhance efficiency. Skilled managers are also able to analyze the potential to use private providers in the production of public services such as contracts for services, public-private partnerships for capital projects, and innovative financing alternatives. These can be complex and require well-educated, experienced professionals with the ability to advise elected officials on the trade-offs. While some of our current local officials have these sorts of skills, all county managers should be well versed in these approaches. Recent research I have done and which is on the Web site of the Legislature's Web site under the Planning Committee's area finds that in some areas there are opportunities to provide the same services at lower cost by providing administrative services over a wider population, by further development of interlocal agreements, joint bidding, and sharing of equipment and staff, as Mr. Baker referred to. Determining which cases provide these best alternatives for a savings requires careful analysis. Further, these alternatives require coordination and negotiation among governments. Just as businesses analyze production costs with an eye to trim costs, to improve quality, so, too, do skilled public managers. Another area that has been mentioned is the area of information technology, and I'd just echo what has been said on that. So, in summary, the county manager form of government provides clear opportunities for improvements in the efficiency of government service delivery. It is not a panacea, but professional city and county managers have the skills and the experience necessary to develop and implement solutions that reduce costs and improve service delivery. I urge you to support this amendment to facilitate these opportunities, and I thank you for your time. [LR12CA]

SENATOR AVERY: Thank you, Professor. Questions from the committee? You've been

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 23, 2013

working with the Planning Committee, right? [LR12CA]

JOHN BARTLE: Yes, sir. [LR12CA]

SENATOR AVERY: Yeah. Good work--lots of good data. [LR12CA]

JOHN BARTLE: Thank you. [LR12CA]

SENATOR AVERY: And that is one of the main focuses of the last session we had, on the data you guys have been collecting? [LR12CA]

JOHN BARTLE: Right, the...what was presented there were some policy briefs that were informed by the trends that we had seen. The particular policy briefs that I reference here are...were done on...in the area of government, and in...one on city-county consolidation and the other on county mergers. And to me the evidence that came from both those two papers led, I think, fairly naturally to the conclusion that major legal reorganization, such as merging counties, is perhaps not the wisest thing to do, but that many of the same benefits can be achieved by, you know, counties working together, by a city and a county working together. When you have offices that do similar functions, you can achieve greater scale and, therefore, take your costs and spread them out over a wider population and reducing your costs. [LR12CA]

SENATOR AVERY: Questions from the committee? Don't see any. Thank you for your testimony. [LR12CA]

JOHN BARTLE: Thank you very much. [LR12CA]

SENATOR AVERY: Next proponent. Welcome, Ms. Rex. [LR12CA]

LYNN REX: (Exhibit 10) Thank you. Chairman Avery, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. Appreciate the opportunity to be here today, and I appreciate Senator Harms introducing this important measure. The league also worked with Senator Joyce Hillman when she was representing the Scotts Bluff area, and the reason for that simply was because at that time she was expressing great frustration with the fact that, at that time, the Scottsbluff City Board...I'm sorry, the Scotts Bluff County Board would not approve the expenses for one of the county election commissioners or one of the other independent elected officers. So that resulted in lawsuits--not one but, I believe, two. And her frustration was that the taxpayers of Scotts Bluff County were paying for both sides of that lawsuit, and she thought, there's got to be a better way here. And we started working with her on the development of legislation. And of course Senator Harms has done a great job outlining other efforts that have been done in the past. I want to underscore, I think, the most important element of LR12CA. This is simply an

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

Government, Military and Veterans Affairs Committee
January 23, 2013

option. This is, first and foremost, not self-executing. If you place this on the ballot the voters of Nebraska would be able to give the Legislature the option of whether or not to proceed with enabling legislation. It's simply an option. And then there's another option. You would be presenting counties then, in this, and citizens within counties with the option of whether or not they want to have something like this. And I would hope that that would include something that could be done by a petition effort as well as something that could be done by the county board itself and placing that before their voters in terms of how they would structure it. And I think it's already been stated that that could be done in a variety of ways. Perhaps you want to continue an elected sheriff to protect; perhaps you want to continue to elect a county clerk. That's something that each and every county could decide for itself or not at all. So the option is very important. I want to underscore for you just what I handed out, which is basically the examples of the...of what we do in the state of Nebraska as it applies to municipalities. The first page just simply outlines the ten municipalities in the state that have a county manager plan. And many of you talk about manager administrators. We use those terms almost synonymously. Senator Scheer, former Mayor Scheer, of Norfolk, Nebraska, one of, I think, the important things is exactly what you noted, which is that the model can be very much like Norfolk has or most of the cities in the state with professional management, which is a mayor-council form of government with the appointment of an administrator. The city council or village board determines, by ordinance, the amount of authority that they are going to authorize that individual to have. Many municipalities--Norfolk being one; there are others in the state--that basically have delegated to the city administrator, which is not an elected position, not a form of government, but have delegated to the city administrator more authority, in essence, than the State Legislature has granted to city manager-planned cities in Chapter 19, Article 6, to city managers. So the ten cities that you have here, the people in those cities voted for a county manager plan of government. Other cities, and I think Brett Baker, as city manager of...pardon me, as president of the Nebraska City-County Management Association testified, there were about 100 city manager/administrators in the state of Nebraska. So you've got about ten that are in an elected form of government, a county manager plan; the rest are not. With that, if you turn to the second page, this is the paradigm by which the State Legislature has set up, in Chapter 19, Article 6, how basically municipalities of the first class operate. You'll note that in a mayor-council form of government the mayor appoints with council approval, and basically the council removes...in a first-class city, basically, they approve the appointment, they approve the removal. This is what really is a "weak mayor" form of government, as Senator Scheer referenced. Secondly, in second-class cities, which you do not have in front of you, but in second-class cities and villages the way that it operates is that a mayor has to also basically get the consent of the council for the appointment of the city administrator. But the mayor also has the authority to dismiss a city administrator without council approval. That being said, there are all kinds of contractual issues that come into play, due process issues, and things of that nature. What you have on the next page is what happens in a city manager plan of government,

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 23, 2013

and that's Chapter 19, Article 6. And you'll note that basically you've got the council that plays a critical role in the appointment of the city manager, the clerk, the library board, the park board, the civil service commission, but you'll note the city manager appoints all those other primary positions, if you will. And what LR12CA is before you today to do is to say, listen, as a Legislature, you could place this on the ballot, we hope that you do, you could allow the Legislature itself, with Nebraska voter approval, to basically put before counties the option for them, as an option, if they choose to use it, to place before their voters in the county, here's the way we'd like to arrange the most efficient way in which our county could operate. So this is simply an option. We think this is a great thing for the Legislature to consider. And certainly, in light of what's happening not only with technology but the way in which Nebraska has changed since county government was first formed, we think this is a very important issue for your consideration, and we hope you advance it to the floor. I'd be happy to respond to any questions you might have. [LR12CA]

SENATOR AVERY: Thank you. Questions? I don't see any. [LR12CA]

LYNN REX: Thank you. [LR12CA]

SENATOR AVERY: Thank you, Ms. Rex. Next testifier. Good afternoon. [LR12CA]

MARK MASTERTON: Good afternoon, Senator Avery and members of the committee. My name is Mark Masterton, M-a-r-k M-a-s-t-e-r-t-o-n. In deference, I guess, to Senator Avery's admonition at the beginning of this, I don't want to repeat anything anybody else has said, and there's probably been more testimony on this than since I've been here at 1:30. Suffice it to say that I agree with everything that's been said so far. I guess I am the individual--I'm a county commissioner in Scotts Bluff County--and I'm the guy you're talking about. I'm the guy that would make those decisions that we're proposing. I've been chairman of the board for 14 years and first elected in 1983. So I've got a fair amount of experience on this. And I guess what I'd like to do is maybe give you some examples of things that have not worked maybe as well as they should have simply because of the structure that we have in the government right now. To bore you with details on how government works at the county level, as chairman of the board I could say, well, there's a snowstorm outside and we're going to close the county offices today or we're not going to close the county offices today. Register of Deeds would say, I don't care what the chairman says, we're closing anyway. So they would close the Register of Deeds office. The county attorney would remain open because the judges simply say, well, you're going to remain open. The county assessor would say, ah, I think we're going to go home at noon. Doesn't matter--there's no organization; there's no structure; there's nobody to say, you know, somebody's in charge, somebody's not in charge. That's one example. Another example came up three years ago with...I don't know if any of you are familiar with the TERC board, Tax Equalization and Review Committee (sic). If any of you have come from county government you understand protest hearings

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

Government, Military and Veterans Affairs Committee
January 23, 2013

and property values and so on and so forth. To shorten it up, the county board made the decision during the protest hearings in a particular classification: properties should be valued as such. The assessor disagreed with that and, unbeknownst to us, took the county board to TERC, to the TERC board. Now to represent the county board we would go to the county attorney. The county attorney couldn't represent us because we were against the county assessor. So the county assessor had to hire an attorney, the county board hired an attorney, and we fought it out. And no matter what the outcome of the process was, it would have been much easier if the county assessor had come to the county board and said, maybe we ought to think this over, maybe we ought to do it this way, or maybe we ought to do it that way. The outcome of the whole thing is it cost the county board \$17,000 to defend ourselves, and it cost the county assessor, I believe it was, \$19,000. So we're talking over \$30,000 that the county of Scotts Bluff spent to resolve an issue that could have been taken care of simply by saying, let's talk it over, no, we're going to do it this way, or whatever. It really doesn't matter what the outcome was, but the process cost the taxpayers a lot of money. Now those are two examples of things that happen in county government. And I could go on and on and on about how these things happen and why they happen and how inefficient county government can be when we have to deal with those items. Basically we're saying that we've got 15...well, 11 officials that are in charge of their own little kingdoms do not have to do anything that the county board says except follow the budget. And even state law, at that point in time, says, the county board cannot budget a particular office or cut their budget to the point where they can't operate. And that's a nebulous term. I mean, how much can you not operate on? As the state cuts back on our money, all we're asking for is the ability to govern ourselves and do it as efficiently as we possibly can. It isn't up to the state necessarily to tell us how to run our government, although we are essentially an extension of state government because we do a lot of what the...you know, the state's work. But we believe that we can run things more efficiently at better cost and more cooperation if we're allowed to choose for ourselves. This bill simply asks for the ability for the taxpayers in each individual county to say, yes, we would like to have a county manager form of government or no, we don't. It's simply up to each one of the counties to do that. I thank you for your time. If there's any questions I'd be happy to answer them. [LR12CA]

SENATOR AVERY: Thank you for coming all the way from Scottsbluff for this testimony. [LR12CA]

MARK MASTERTON: I had to leave yesterday. [LR12CA]

SENATOR AVERY: We do appreciate that. [LR12CA]

MARK MASTERTON: Appreciate that, sir. [LR12CA]

SENATOR AVERY: And we're not insensitive to the burden of travel that's placed on

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

Government, Military and Veterans Affairs Committee
January 23, 2013

people who want to participate. Questions from the committee? I don't see any. Thanks again. [LR12CA]

MARK MASTERTON: Thank you very much, sir. [LR12CA]

SENATOR AVERY: Any other proponent testimony? I didn't see any hands when I asked for opponent testimony, but I'll try again. Anybody wish to testify in opposition to LR12CA? Okay, I know we have one person that wants to testify in the neutral position. Mr. Cavanaugh, welcome to the committee. [LR12CA]

TOM CAVANAUGH: (Exhibit 11) Mr. Chairman, members of the Government Committee, Tom Cavanaugh, T-o-m C-a-v-a-n-a-u-g-h, Douglas County Clerk for the last 27 years next month. I'm also a graduate of Dr. Harms's, Senator Harms's. Forty years ago this spring I graduated from Northeastern Community College in your town there. [LR12CA]

SENATOR AVERY: You're dating both of you, you know. (Laughter) [LR12CA]

TOM CAVANAUGH: And he taught me well. If it hadn't been for Senator Harms I wouldn't be sitting here today. And I...there are days when I wish I would have taken up residency in Norfolk and stayed there. [LR12CA]

SENATOR SCHEER: Everyone says that. (Laughter) [LR12CA]

TOM CAVANAUGH: I am here in a neutral position because I have, for a long time, been a proponent of innovation and streamlining and changing county government. Every 100-150 years we should probably look at our governmental operations and see if we can do a better job. (Laughter) I support LR12CA with the provision that the position of professional administrator or county administrator/county manager would be elected. And the logic is that this body here will vote to decide whether or not to let the citizens vote next November on adopting this to their constitution. Let's say that is approved. This body and your colleagues will then draw up legislation as to how to proceed in allowing the citizens of each county to go vote and make that decision to choose that form of government or not. In doing so they should also have the right to choose who that administrator is going to be. I'll go quickly through some of the advantages and disadvantages of having an appointed versus elected position. And, Senator Price, for those members that are new to this committee, two years ago when this bill was before you, you said, what about accountability to the voters? And that's my main concern. I've been in office for 27 years. Each of you, and some of you that just were elected and reelected just recently, raised your hand and took an oath to abide by the laws of the state of Nebraska, the United States, and uphold the constitution. That's not done with appointed positions universally. Another thing that we do as elected officials is file our financial accountability disclosure on an annual basis to the citizens to take a look.

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

Government, Military and Veterans Affairs Committee
January 23, 2013

Look, I'm a public servant; I work for you; you're paying my salary; here are what my financial interests are. And if you see me making a decision that may conflict with that private interest, then you can call me on it and you can boot me out of office, either through recall or the next election. The other advantage of the "electeds" is that we have four-year contracts. If our bosses don't like what we're doing or how we're doing it...and I'm talking about the 500,000 citizens of Douglas County, and again I'm speaking only as...on behalf of myself as county clerk, not on behalf of Douglas County, and my remarks should pertain to Douglas County as far as having...if you have this go through, anyplace that there should be an elected position should be Douglas County, Nebraska, and again, accountability to the people. All due respect to the people that have spoken before, there is no...they have no...the professional appointed administrators do not have a corner on the market of ethics. You can find good ones, you can find bad ones, just like politicians. And the other thing is, before my time is up, is the difference in between the city structure and the county structure. I'm here sitting with the parents of counties. You're the parents of counties. I do nothing as county clerk that is outside the statute of what you say I do or don't do. The same with county boards. They are not a legislative body like cities. They do not create ordinances. They follow what you tell us to do. And that's a major difference in terms of having someone make policies for the county because you're the ones that make policies for the county. One final thing is that you write the rules for the counties, and you do a superb job when you put your mind to it, as far as what to do to make things more efficient. Fifteen years ago you merged the motor vehicle departments; and now, across Nebraska, instead of going to the clerk, the assessor, and the treasurer, you go to one office to get your business. That was not done by counties. That was done by the counties' parents. And I'd be more than happy to address any questions you may have. [LR12CA]

SENATOR AVERY: Thank you, son. [LR12CA]

TOM CAVANAUGH: Okay, thank you very much. [LR12CA]

SENATOR AVERY: I mean, Mr. Cavanaugh. (Laughter) No, you don't have to leave yet. We might have questions. [LR12CA]

TOM CAVANAUGH: Oh, okay. [LR12CA]

SENATOR MURANTE: Now you have to have... [LR12CA]

SENATOR AVERY: Now we have to have a question. (Laughter) Senator Scheer. [LR12CA]

TOM CAVANAUGH: Yes, Senator. [LR12CA]

SENATOR SCHEER: Would it make sense...I don't...I'm not necessarily adverse to an

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

Government, Military and Veterans Affairs Committee
January 23, 2013

elected county official as a county manager, per se, but the trouble I find is then if that person is elected and you have a governing body or board above them, who is he really responsible to? [LR12CA]

TOM CAVANAUGH: Well, I think the long-range plan, and part of this was inferred, was that you eventually take over some of the other--in Douglas County, nine--countywide elected offices. [LR12CA]

SENATOR SCHEER: Um-hum, right. [LR12CA]

TOM CAVANAUGH: If you're going to do that, then you want to have one person that is accountable for those operations as well. The county board would, as in this appointed position, remain as basically the budget authority, as they are now. And some of the stories about the conflicts in between the countywides and the county boards on budgets, you're going to have that politics, whether you have an appointed department head or not, but ultimately...so what I envision, to answer your question, would be the elected county administrator executive would oversee most of the rural offices and would be responsible for the cross-training and streamlining and efficiencies of when one office isn't busy the other office can help out and vice versa. [LR12CA]

SENATOR SCHEER: Um-hum. [LR12CA]

TOM CAVANAUGH: But if there's something wrong, if one of my staff ticks off, you know, the public or doesn't respond to the public, just as if you or your staff did not respond to the public, your contract would probably be limited. You would probably not be reelected next election cycle if that happened a lot, and that's the way it should be. There should be somebody accountable, ultimately. So the county board would oversee the finances of it which, by the way, I have to put in a plug for Douglas County that we, in last fiscal year, 2012, spent less money as a county than we did in 2009. So...and we're all elected, you know, so we're trying to respond to the pressures that are placed on us. But the executive administrator would oversee the operations and the efficiencies of doing it. It's just that if there was something wrong, then they would be able to take it out on the elected executive administrator, as opposed to having to figure out who is in charge. You know, if you're going to streamline, then don't put somebody in Douglas County's situation of, well, which commissioner do you talk to? Which commissioner is the one, or which of the four? You know, instead of 200,000 people selecting who is going to run the county, you limit it to four people. But in Douglas County we have civil service. The current county administrator is a civil service employee, not an at-will employee. In Sarpy County it's a contract employee, not an at-will employee. So while the appointment process sounds good and clean and slick, there are a lot of other factors. But my main factor, as to get back to Senator Price's question, what about accountability to the voters? And I think the best way to ensure that is I handed out a proposed amendment. It's two words: an elected county manager for the position as

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

Government, Military and Veterans Affairs Committee
January 23, 2013

opposed to just a county management situation. [LR12CA]

SENATOR SCHEER: And a follow-up though, I guess. Understanding how that might work well in Douglas County, in the more rural, less populated, one of the things that I heard some of the proponents talk about was the labor availability, of that person being available that had the attributes that would fill that position may not always reside within that area. And if that's the case, it might by necessity be an appointed position because you will not, I think this was sort of a reasonable assumption, that no one will move into a county assuming they'd be elected to that position. So, having said that, then perhaps the solution is that that person, that administrator may be an elected position rather than shall be. [LR12CA]

TOM CAVANAUGH: And that's true, Senator. Again, I have to emphasize I would...I'm making this recommendation that if you proceed with this, at least for counties of metropolitan class, that it be an elected position. [LR12CA]

SENATOR SCHEER: Differentiation between those two, okay. [LR12CA]

TOM CAVANAUGH: Right. And a hundred years ago, your predecessors in this body designated that the clerk of Douglas County shall also serve as the comptroller. And I serve as the only county comptroller in the state of Nebraska. In the other 92 counties their clerk is not the comptroller. And that was because of the unique, corrupt situation that existed in Douglas County to instill the check-and-balance system. But you made provisions, or your predecessors made provisions, that, okay, in this situation we're going to make a special note that there be an additional check and balance in Douglas County. And I guess, going along that line, that historical exception that if you proceed with this, make another exception, and that in counties of the metropolitan class, or whatever Douglas County may be legally described as today, would have an elected county administrator. [LR12CA]

SENATOR SCHEER: And we'd have an option for the rest then. [LR12CA]

TOM CAVANAUGH: For the rest, yes. [LR12CA]

SENATOR SCHEER: Okay. [LR12CA]

TOM CAVANAUGH: I'm...I...it's been so long since I've been to Madison County I don't even know how you operate anymore. (Laugh) [LR12CA]

SENATOR SCHEER: It's God's country--you should come back and visit sometime, spend a little money while you're up there though. (Laugh) [LR12CA]

_____ : All country is God's country. [LR12CA]

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

Government, Military and Veterans Affairs Committee
January 23, 2013

SENATOR SCHEER: Thank you very much. Thank you, Senator Avery. [LR12CA]

SENATOR AVERY: Any other questions? Thank you, Mr. Cavanaugh, for coming down here. [LR12CA]

TOM CAVANAUGH: Thank you. Have a good day. [LR12CA]

SENATOR AVERY: Do we have any more testimony? Mr. Dix. Neutral? [LR12CA]

LARRY DIX: (Exhibits 12 and 13) Absolutely. Senator Avery, members of the committee, for the record my name is Larry Dix, appearing today in a neutral capacity. As I explained before, in that capacity, due to the fact that our committee has not met, there are two things I just want to hand out. Senator Harms touched on it in...when he was talking about when Senator Hillman was here and proposed this legislation. At that point in time there was an Attorney General's Opinion that was requested, and I just want to make sure you...everybody has that. I think your legal counsel probably does have that but, if not, that's there for your reading enjoyment. The other one, as I was walking out the door, I noticed that I had an e-mail from some elected officials that sent for the hearing LR12CA to the Revenue Committee. And so my assumption is they wanted it to go to the Government Committee, so I'm just going to pass that along. Not that that's...has any indication of our position. It's just something I noticed in the e-mail. With that, certainly, as you can imagine, from a county perspective we're very, very interested in what moves forward on LR12CA. This has been something that I know has been discussed in previous years. Certainly, once our board meets, I will notify the committee of that position. I'll notify Senator Harms of that. And certainly, as you know, you all know how to get ahold of me and would be happy to answer any questions at that time or today. [LR12CA]

SENATOR AVERY: Thank you. [LR12CA]

LARRY DIX: Thank you. [LR12CA]

SENATOR AVERY: Questions? I don't see any. [LR12CA]

LARRY DIX: Thanks. [LR12CA]

SENATOR AVERY: Thank you, Larry. Any other testimony? Don't see any. Senator Harms. [LR12CA]

SENATOR HARMS: Well, thank you very much for giving me the opportunity to introduce this. I just...a couple things I just wanted you to keep in mind is, one, that however this ends up, if it gets out and we would approve it, it goes to the public. It's

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

Government, Military and Veterans Affairs Committee
January 23, 2013

going to be up to the public to decide exactly what kind of county government they want. It's up to the people, and I think that's really, extremely important that they do have the opportunity. Also, when you elect your supervisors or county commissioners, you know, they have their responsibility. They will have that responsibility to deal with a manager, so you will have that kind of input. And one of the things that I just want you to give some thought to is that sometimes what's good for urban America does not fit well for rural America. I think as you go through this you may want to make some options, I think, that Tom brought forward. There may be some things you...we might want to do a little bit differently. We can build us real options. And as I said previously, we're going to have to bring legislation forward if this was approved. You have the input; you can introduce the legislation because I don't think...I won't be here to do that, to design this exactly the way you want by giving the kinds of options that you think would be good for a metropolitan-class city and then our rural cities by...through the option side of it. So I think this...it's time for Nebraska to start to address the issue of county government. Where I live and the declining number of people living in some of our counties is just staggering, and it's not going to get any better. And it's going to be more difficult, more expensive in the future to be able to address this particular issue. And all the things we've identified through our Planning Committee, there's just...there's some things that aren't very positive that I think we're going to have to continue to look at. I think at least starting this process of giving people the option to look at how they're going to be governed is critical. So I would appreciate your support of it. And if there's anything that we can answer for you we'd be very happy to. We'll have...I think the legislation we have just has to be...put the final touches on that, and I will give it to you. It's something that somebody else probably might want to introduce or redo in the future if you decide to bring it out. So I thank you. You have any questions you'd like to ask? [LR12CA]

SENATOR AVERY: Thank you. Questions? [LR12CA]

SENATOR HARMS: Thank you. You've been very... [LR12CA]

SENATOR AVERY: There is one: Senator Murante. [LR12CA]

SENATOR MURANTE: I just...the issue of Sarpy County came up earlier, and we have a county administrator as well, a good person. He lives in my district; I know him very well. I think he's doing a great job. However, the people of Sarpy County are clearly not satisfied with county government. In the last two years, three of our five board members have lost reelection, and only one has retained...ran in a race where it was a competitive race and won his reelection. The people have thrown out their government in Sarpy County. But the county administrator remains, and just about everybody who wasn't...who was below that elected tier, there hadn't been any movement there. And that brings me back to my concern that unless the people are able to throw out county officials or government officials through election, they seem to stick around for a really long time no matter what the sentiments of the people are. I'm just wondering if you had

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

Government, Military and Veterans Affairs Committee
January 23, 2013

a comment to that. [LR12CA]

SENATOR HARMS: No, I don't. I guess it's really up...I go back. It's up to the people that fit and that you're representing. My views have always been that if you get county commissioners or supervisors, whatever term you're using, if they're not doing the job, then you need to get them out of there, and you need to address that issue. If you've got a manager that's not doing the job then they're failing, if that's who they answer to. And by putting pressure on the right people you should be able to get those things resolved. I'll tell you what, in urban Nebraska...I mean, in rural Nebraska they're pretty verbal. (Laugh) They're going to tell you pretty quickly what they think, and you're going to have to get with the program pretty quick or you won't be there either. That's kind of the way it works. Do you have any other questions? [LR12CA]

SENATOR AVERY: Any more questions? Thank you, Senator Harms. [LR12CA]

SENATOR HARMS: We'd be happy to answer any questions that you might have as you get into this. We would...I would be available for those. Thank you very much. [LR12CA]

SENATOR AVERY: (Exhibits 3-5, 14) Before we close this hearing I have some communications to the committee, some in support, one from Robert Kinsey at Scottsbluff; a letter of support from Susan Weideman, marketing director of Panhandle Cooperative, Scottsbluff; a call from the mayor of Lexington in support. We have two letters in opposition, one from James Moudry, Bellevue, Nebraska, and one from Vera Dulaney, Scotts Bluff County Clerk. With that, this ends the hearing on LR12CA and the hearings for today. Thank you very much for participating. May...will...can I ask the committee to hang around for five minutes? That's all I will take. [LR12CA]