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Government, Military and Veterans Affairs Committee
February 06, 2013

[LB363 LB434 LB510 LB521]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 6, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB434, LB363, LB510, and LB521. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; John Murante; Jim Scheer; and Norm Wallman. Senators absent: Russ Karpisek and Scott Lautenbaugh.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. We're going to start our hearing now. We will take up the bills on today's agenda as presented outside the room beginning with LB434, moving to LB363, then LB510, and then LB521. Before we begin, I want to introduce the members of the committee starting with Senator John Murante from Gretna on the very end down there. And next to him is Senator Dave Bloomfield from Hoskins, and joining us later will be Senator Scott Lautenbaugh from Omaha. The Vice Chair of the committee, Senator Scott Price from Bellevue is sitting at the witness table. He is going to present the first bill today. And seated next to me on my right is Christy Abraham. She is the legal counsel of this committee. And I am Bill Avery from District 28 here in Lincoln, and I chair the committee. Next to me on my left will be Senator Russ Karpisek from Wilber and he arrives usually a little bit late, so he will be here. We'll...then next to him is Senator Norm Wallman from Cortland, and next to him is Senator Jim Scheer from Norfolk. The very end down there is Sherry Shaffer. She is the committee clerk. If you wish to testify for or against any of these bills, we ask that you pick up a green form. They are available at each entrance to the room. Please print all the requested information. When you arrive at the table to testify, we ask you to pronounce your name very clearly for the record and spell it so that we have an accurate recording of who appears before us. If you wish to be recorded for or against any of these bills but do not wish to testify, there is a white sheet of paper at each entrance for you to sign. And please print the requested information. I'm going to ask you if you have any electronics--cell phones, for example, anything that makes noise--please turn them off so as not to disrupt our proceedings. The...if you have any exhibits that you would like for us to examine, you will need 12 copies, and you give those copies to the clerk who will have the pages distribute them. If you do not have 12 copies, the pages can get them for you. Our pages are Will Rahjes from Elwood, Nebraska, and Cicely Batie from Lexington, Nebraska. Is Cicely there? Yes. We will use the light system. The green light is worth four minutes, and when the amber light comes on you have one more minute. We ask that you start to wind up your testimony then so that by the time the red light appears, you are finished. The order of business will be that the introducers will make initial statements, then we'll follow with proponents, followed by opponents, and neutral testifiers. Closing remarks are reserved for the introducing senators only. So listen carefully, try not to be repetitive, and please pay attention to the light system because it helps us proceed in an orderly manner. With that, welcome all of you to the committee.

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

Government, Military and Veterans Affairs Committee
February 06, 2013

And we'll start with our first bill, LB434. Oh, one more thing. If you notice some of us get up and leave for a period of time, most of us have bills that are being heard in other committees. I'm one of them today. So we manage to make that work, but we're not uninterested in your bills when we get up and leave. All right. Senator Price, welcome to the committee.

SENATOR PRICE: Thank you very much, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I appear before you today to introduce LB434 which was brought to me by NEMA. And, as you can tell from the notes provided by the committee and the green copy, this is a relatively small change but I'm sure there are plenty of things to be discussed here today. LB434 will allow emergency management agencies and public agencies to create registries which include persons with special needs for the purpose of planning for assistance to said person before, during, and after a disaster or an emergency. And information obtained for such purposes shall not be considered a public record. And therein lies the discussion for the day. We all understand the need for public records and I'm a large--well, I'm large about everything I do--but I'm a big proponent of it. However, in the past couple of years, recent years, we've had flooding, we've had fires, we've had numerous events that are beyond the scope of perhaps one political subdivision or municipality or even county. We've had statewide emergencies. As such, we have individual citizens who at times find themselves in need of some first-response support and perhaps it's unknown that they're there. Now there are going to be people behind me who will carry the bulk of the testimony for you and can answer your specific questions you may have, and I'll be more than happy to engage them. But again, some points to remember. The Americans with Disabilities Act has always covered planning for functional-needs citizens; but following Hurricane Katrina and the resulting Post-Katrina Emergency Management Reform Act of 2005, there has been a regulatory focus by both the DOJ and FEMA on the identification and planning for the functional-needs individuals. Functional-needs registries have become a popular and efficient way for local emergency management agents to gather needed data to support effective and efficient planning. But if you...and if you would imagine with me, we have this list and then somebody makes a public records request and now we have someone try to sell oxygen to them and carts. So we end up in that situation where we have to balance the needs of our citizens and how we're going to go forward. So I propose this, knowing full well that we'll debate this and we'll try to work it...and I will stand ready to work with all the committee members and all the entities involved to come to the best solution we can if we need to do more changes. There will be some discussion on the use of functional needs versus special needs, and we're wrestling and grappling with that. But I'll leave that to the experts behind me, Mr. Chairman. And with that, I would stand ready for questions. [LB434]

SENATOR AVERY: How many other states have adopted legislation like this, do you have any idea? [LB434]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

SENATOR PRICE: No, sir. [LB434]

SENATOR AVERY: I believe during Katrina, didn't they have some difficulty with the publication of these lists and people with criminal intent showing up at the homes of these vulnerable citizens? [LB434]

SENATOR PRICE: There has been...there was that, and I would even tell you that we can look no further than a few weeks back when we had people reporting registered gun owners and their homes being broken into or not being broke into because they didn't have a weapon. I mean, again, it's that balance between public need and the citizens' need that were in there. But I don't have the specificity, and we can get that for you. And I'm sure there may be those behind us that can address that, sir. [LB434]

SENATOR AVERY: It's not that big a deal. Questions from the committee? No questions. [LB434]

SENATOR PRICE: Thank you, sir. [LB434]

SENATOR AVERY: Thank you. Proponent testimony on LB434? Welcome. [LB434]

CINDY NEWSHAM: (Exhibit 1) Thank you. Good afternoon, Senator Avery and members of the committee, my name is Cindy Newsham, C-i-n-d-y N-e-w-s-h-a-m. I am the Administrative Assistant III for the Nebraska Emergency Management Agency. I am here today to testify in support of LB434. I've been with the agency for 25 years, starting my career as a nuclear attack planner, and I've also been the planning supervisor and the operations officer for the agency. My previous experience doing crisis relocation planning and response operations for the state has shown me the value of voluntary citizen registries and the ability to enhance the preparedness capabilities of local emergency management agencies. Emergency planning for disasters and emergencies has always had an emphasis on persons with special needs, and passage of this would enhance the ability of local emergency management agencies to plan, allocate resources, and respond effectively and efficiently during times of emergencies. Following Hurricane Katrina, Congress enacted the Post-Katrina Emergency Management Reform Act of 2005, which now guides emergency preparedness planning. The act aligns emergency planning with the Americans with Disabilities Act and places a regulatory focus on what's now identified as functional-needs planning, which includes planning for assistance to those with identified physical needs, language barriers, and transportation needs. Functional-need registries have a threefold purpose: the first is to aid and strongly encourage persons who are most vulnerable in a disaster or emergency to prepare in advance for emergencies, as all residents should; to aid emergency response agencies to anticipate and more fully plan for the needs of all residents; and to enable first responders to more quickly locate, assist, and connect

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

Government, Military and Veterans Affairs Committee
February 06, 2013

victims with needed support and care. At the local level, emergency management and public health officials are working with affiliated health organizations like the Area Office on Aging and home health clinics to encourage and assist their clients to register. Across the state, I know of 41 counties representing four public health districts, two Planning, Exercise and Training Regions, and two Emergency Planning Zones for the state's nuclear power plants have already initiated registries and are collecting information. What they are finding is that many citizens are reluctant to register due to the fear of becoming targeted, knowing their information is available and not protected from disclosures to anyone requesting the information showing that a person with functional needs lives in a specific house or apartment or by vendors soliciting products using phone numbers and e-mails gathered by a Freedom of Information request. While some medical information may be redacted from a Freedom of Information request, other information like addresses with Google mapping and street view so that entry points to a registrant's home can be assessed, are not protected currently in the state. FEMA is no longer using the term "special needs," preferring to use the term "functional needs." However, the Department of Justice, the enforcement entity for the Americans with Disability Act, is still using the term "special needs" in regulatory and guidance documents. Many FEMA documents also continue to use the term "special needs." To ensure that this bill harmonizes with the enforcement document as well as FEMA guidance, both terms are utilized in this bill. Questions have been asked about a definition for special or functional needs. We did research and identified 53 different definitions from a variety of federal agencies and entities. The definition from the National Response Framework seems to be the easiest to understand and the most inclusive. The definition from the glossary of the National Response Framework is, "Special Needs Populations: Populations whose members may have additional needs before, during, and after an incident in functional areas, including but not limited to maintaining independence, communications, transportation, supervision, and medical care. Individuals in need of additional response assistance...who live in institutional settings; who are elderly; who are children; who are from diverse cultures; who have limited English proficiency or are non-English speaking; or who are transportation disadvantaged." Passage of this bill would allow the Nebraska emergency management and public health officials the ability to assure citizens they can share their information for response planning and not fear the information can be requested and used for other purposes. Functional-needs registries are an efficient tool allowing for comprehensive and effective, efficient response when it's needed. [LB434]

SENATOR AVERY: Thank you. Thank you. Your red light is on. I think you finished though, didn't you? [LB434]

CINDY NEWSHAM: That was all I had anyway. [LB434]

SENATOR AVERY: Okay. Questions from the committee? Senator Wallman. [LB434]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, thank you for coming, Cindy. I used to be on a township, and EMTs wanted to know who were at risk in the rural areas. [LB434]

CINDY NEWSHAM: Uh-huh. [LB434]

SENATOR WALLMAN: And then also you got hit from insurance companies and all this stuff; so it has to be pretty secure. That's tough, isn't it? [LB434]

CINDY NEWSHAM: Yes. Most of the registries are a company or owned by a company, and the locals will purchase the use of that. And there are...there's only...there's one that is being used widely across the state, and then two counties, Sarpy County and Lancaster County, have their own. [LB434]

SENATOR WALLMAN: Yes. [LB434]

CINDY NEWSHAM: And the public power districts that have the two nuclear plants send out annual information, and that includes a postcard that people can fill out and send back. So that's how it's being done here. [LB434]

SENATOR WALLMAN: Okay. Thank you. [LB434]

SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. [LB434]

CINDY NEWSHAM: Uh-huh. [LB434]

SENATOR AVERY: Next proponent testimony. Welcome Mr. Stilmock. [LB434]

JERRY STILMOCK: Mr. Chairman, members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association in support of LB434. Our...my clients look at it as a tool to assist when they're called to an emergency scene that may last a half hour, it may last for an hour, it may last for ten days as we observed with the wildland fires this past summer. The one thing that I understood on the public side of it, that it was optional, that there's nobody going to be mandating that somebody register and supply this information. So many of the volunteer fire departments go out and they actually tour with manufacturing plants so they know, you know, where do you have gas stored; what are the hazardous chemicals that are on site? They go to the local schools and do the same thing so that they have a plan and preparedness and awareness of what is happening. My clients just look at this as another resource to assist them when that call goes out, when that flood occurs, so that they have some knowledge of the type of citizenry that they're

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

Government, Military and Veterans Affairs Committee
February 06, 2013

looking for. We all know examples from our own backgrounds of people that...you may look at me, but you may not know that I'm a diabetic--I'm not--but you looking at me, if I...and you wouldn't know. And you wouldn't know if I was having an episode. And you wouldn't know if I was just agreeing with you. Are you safe here? Do you feel safe? Yes, yes, yes, yes. And the point is, is I think the more information we have the better. Senators, thank you. [LB434]

SENATOR AVERY: Thank you. Questions? I don't see any. Thank you. [LB434]

JERRY STILMOCK: Thank you, sir. [LB434]

SENATOR AVERY: More proponent testimony? We're on LB434. All right, opponent testimony? Neutral testimony? Senator Price, you're going to waive? All right. We'll move now...that ends the hearing on LB434, and we'll move to LB363, which is mine, so I'm going to turn the chair over to the Vice Chair. (Also see Exhibit 2) [LB434]

SENATOR PRICE: Chairman Avery. [LB434]

SENATOR AVERY: Thank you, Mr. Vice Chair. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south-central Lincoln. I am bringing to you what I think is an important bill, LB363. Unlike a lot of bills that I bring, this one required a lot of work, a lot of work, and I will tell you why. Last summer my office received a number of complaints about public entities charging for public records. Public records are supposed to be free to the public for inspection. Citizens and members of the press report being charged hundreds, sometimes thousands, of dollars for copies of public records. Included in the fees charged are the actual cost of making copies, as well as the staff time needed to fulfill the public records request, including any attorney time needed to review the record. The concern with these large fees is that they are making the public records law virtually inoperable and making public records inaccessible to ordinary citizens. The purpose of the law, of course, is to allow for citizens to get access to public records so they can know what government is doing and they can hold government accountable. It's essential to the democratic process. The current law allows public entities to charge a fee that shall not exceed--I'm quoting here--that shall not exceed the actual cost of making the copies available. In 2000 a bill was passed into law that removed language prohibiting agencies from charging staff time for public record requests. So since that time the Attorney General has interpreted the statute to allow agencies to charge for staff time while filling a public records request, including time for attorneys to review the records. And, of course, if you're charging for a clerk's staff time, that's a whole lot less money than if you're charging for attorney fees. After receiving these complaints, my office decided to take action by first holding a series of meetings to discuss the issue in more detail with the public entities involved and with the groups that were interested in this legislation. When I first met with the public entities that were fulfilling these public records requests, they reported concerns about

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

Government, Military and Veterans Affairs Committee
February 06, 2013

voluminous requests for information, such as requests for every e-mail ever sent from the office. Well, obviously, that's outrageous; that's excessive. So we recognized that the public entities, first of all, they had a problem. These large public records requests often take staff away from their regular duties and, in some cases, effectively shut down the daily work of some of these offices, or at least threaten to do so. When my office first started drafting LB363 we met with several groups to try to balance the need of the public to have access to public records with the concern from these public entities that are subject of large requests that can be burdensome for their offices. We're talking here about any number of public entities, but cities in particular, some cases counties, the Attorney General's Office, and others. We worked with the League of Nebraska Municipalities, the Nebraska Association of County Officials, the ACLU-Nebraska, Media of Nebraska, and the University of Nebraska to see if we could come to some meeting of the minds. Now if you reflect on the list of entities that I just mentioned, you can imagine that it was not easy to come to a meeting of the minds. And after laborious, detailed discussions we did manage to come to some agreement. We also worked with the Attorney General on some additional compromise language which is not yet ready for the committee, but it will be later. I believe it's with the Bill Drafters now, so we'll be able to see this during the Executive Session later. LB363 clarifies that a public entity may charge a fee for making copies, but a fee cannot exceed the amount of the reasonably calculated actual added cost--now I underscore added--added cost which may include the cost of supplies such as paper, toner, and equipment. The cost may also include additional payments for contractors to complete the request, including computer services. The actual added cost used to calculate the fee for records will not include any charge for the existing salary of staff persons and employees and officers with respect to the first six hours of searching, identifying, and copying these records. That was a contentious point in the negotiations, and one where I had to give a lot of ground. But you've heard me say this many times before in this Legislature, that if you want to get something you have to give up something. And that's the nature of compromise, and then this product here does represent a lot of compromise. A special service charge reflecting labor cost may be included for time required beyond those six hours. The provision was put into a compromise deal with the public entities concerned about these very large requests. If the request is going to take more than six hours to complete, staff time may be charged. It's not required, but you may charge it. But it has to be actual staff time; you can't throw in huge amounts of charges for that staff time. The fee for records will not include any charge by the public entity to review the records in order to find a legal basis or search for a legal basis to withhold the public record. Let me repeat that because this is a rather significant complaint that we received from requestors of public records. The fee for records will not include any charge by the public entity to review the records seeking a legal basis to withhold those public records. So the requestor should not be charged a fee for the legal entity, the public entity, to go look for a reason not to give the record. The requestor will have ten days to review the estimated cost of the request, to negotiate with the custodian of those papers, to narrow the request to something reasonable, or to withdraw the request altogether. So, if you're

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

Government, Military and Veterans Affairs Committee
February 06, 2013

a requestor, you have ten days to review what the public entity is saying it will cost you to get these records. If the requestor does not respond in those ten days, the public entity will not be required to fulfill the request. The bill also provides that if a public record is available on the public entity's Web site, then the custodian of those records does not have to provide the copy but must provide the location of the record on the Web site. If you...someone comes and says, I'd like to have an agenda of the next meeting of the county board, then the clerk can say, that's available on this Web site and here is how you find it. Now if the requestor doesn't have access to the Web site or to a computer, for example, then the custodian has to produce the copies. Finally, the Attorney General may review whether the fees estimated or charged by the custodian are actual added costs or special service charges. If they are special service charges, then presumably the AG would rule that the requests are...the estimate is unreasonable. I want to mention the fiscal note on this bill, if you've looked at it yet. The State Historical Society estimates they will need an additional 2.5 FTEs to fulfill the extra public records requests that they believe they will receive. I am told that Mr. Mike Smith is here to address this, so I will not attempt to do that myself, since I'm sure he is more than capable of doing so. There are other testifiers who will follow me who will tell you more about the experiences they have had in obtaining public records. I suspect that we'll hear also from some of the public entities about some very difficult issues they've encountered with the voluminous requests. So with that I would be happy to take any of your questions and ask that you give serious consideration to this bill for General File. [LB363]

SENATOR PRICE: Thank you, Senator Avery. Are there...Senator Bloomfield. [LB363]

SENATOR BLOOMFIELD: Thank you, Senator Price. Senator Avery, this six hours that you mentioned, is that a clock-total time, or is that man-hours? If you have two people searching in...are they done in three hours, or where does that break down? [LB363]

SENATOR AVERY: You know, I don't think we address multiple personnel working on the same project. We were assuming that it would be one staff person and a total of six hours. But you could have one staff work on it for two hours, another staff person for four. We actually had tried at first...first off, when it was ten hours, and got a considerable amount of pushback from the public entities on that. [LB363]

SENATOR BLOOMFIELD: I would imagine. [LB363]

SENATOR AVERY: So we then came back with six. That was not exactly well received either. But after bumping heads with each other for a while, we finally settled on it. [LB363]

SENATOR BLOOMFIELD: How's your head feeling? Can we bump it a little more? [LB363]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

SENATOR AVERY: I've had a headache ever since. (Laughter) [LB363]

SENATOR BLOOMFIELD: Okay, thank you, sir. [LB363]

SENATOR AVERY: It's like pulling teeth without novocaine. [LB363]

SENATOR PRICE: Thank you. Are there any other questions from the committee? Seeing none, thank you. [LB363]

SENATOR AVERY: Thank you. [LB363]

SENATOR PRICE: And we will now move to the first proponent for the bill. First proponent. Welcome, sir. [LB363]

JACK GOULD: Senator Price, members of the committee, my name is Jack Gould. I am here representing Common Cause Nebraska. I jumped up first just because I wanted to get it over with. (Laugh) I wanted to just say that we started out some time ago looking at agencies of government and calling and just trying to find out what the standard charge was. And I...it was very difficult because most agencies don't have a standard charge. You call and get the operator or a secretary, and then they refer you to somebody. And no one is really clear on what the price would be, what the regulations would be. So I know that the state of Connecticut designates someone in every department. They don't hire somebody; they designate somebody as the public records person. And when they get a call from the public about public records they have someone who can answer the questions about how much and how many pages, that kind of thing. I would recommend that as something to consider in this whole process. In calling and checking...and there were a wide range of prices that we did get on public records, and I thought there were three examples that kind of showed the span of what it can cost. Accountability and Disclosure Commission, if you ask for a public record it's \$0.15 a copy. That includes a secretarial fee. And if you ask for it electronically it's free. If you deal with the Department of Education...they were one that had a...they had a plan. And when you called it was, simply, the first ten pages free, anything after that \$0.25 a page, electronic copies were free. The University of Nebraska, I had an unusual incident there, and so I'll maybe go into a little bit more detail. But I wanted to get a copy of the agenda...an agenda item that went before the regents. And I called...well, first I tried to find it, and it was a 200-page document. I live in an area where I don't have high-speed service, so downloading a 200-page document is not easy. So I decided I would stop at Varner Hall and ask. And I went to Varner Hall. I asked to see the agenda. A secretary, very nice, came out, 200-page document. We sat down. I started looking through it. I couldn't...I didn't have the item number, so I couldn't find it, to be quite honest. So I...after some time the secretary went and got her boss, Ms. Maurer, who I believe is the associate general counsel for the university. She came to the doorway

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

Government, Military and Veterans Affairs Committee
February 06, 2013

and said, Mr. Gould, you're going to have to file a public records request. I thought that was a little out of line. I said, I have the document here, all I want to know is where is it in here that we're dealing with raises for public...for the chancellor and for the president. And I was particularly concerned about the supplemental funds coming from the private foundation. When you have private money going to public officials it raises some questions. She said, I would have to pay \$1.00 a page for any document that I wanted and, therefore, I left and said, I will file a public records request. I asked if I could get it electronically and she said, we prefer paper. But when I filled out the public records request I said, I'd rather have it electronically. And Mr. William Lynch, who is in charge of...the director of university public records sent me an e-mail. He also sent me the copies that I wanted. I wasn't clear enough in my request because I got 40 pages, and it was \$0.25 a page for the electronic copies, and then I had an \$8 secretarial fee attached to that. I think, again, the whole idea of \$1 a page is a little out of proportion to what you're seeing at the Accountability and Disclosure Commission or even with the Department of Education. And I guess I really like the bill primarily because it provides some uniformity, and it addresses the needs of the public. And I want to thank Senator Avery for bringing this bill and going through...I didn't realize he had as much in the way of meetings that he had, but I really appreciate his work on the bill. Thank you. [LB363]

SENATOR PRICE: Thank you very much, sir. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB363]

JACK GOULD: Thank you. [LB363]

SENATOR PRICE: Can we have the next proponent for LB363? Good afternoon. [LB363]

ROBERT McEWEN: (Exhibit 1) Good afternoon, Senator Price, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n, and I'm a staff attorney at the child welfare program at Nebraska Appleseed. On behalf of Nebraska Appleseed I am here to testify in support of LB363. As Senator Avery mentioned in his opening, the open records act is intended to be a mechanism for members of the public to request and examine records from public institutions, including counties and state agencies. The act has been a way for ordinary citizens to ensure governmental transparency and accountability in our state government. I'm here today to share two specific examples of our experience at Appleseed in submitting open records requests. I'd like to preface those statements by saying that we've often received prompt, clear, and fair open records act responses from various administrative entities. However, we have also experienced instances where a governmental entity has failed to produce records for inspection, has estimated that the production of documents would cost a substantial amount of money, and situations where there is confusion over what must be paid for under the act. As a law firm, we have found these situations to be very frustrating and, honestly, confusing. And

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

Government, Military and Veterans Affairs Committee
February 06, 2013

we're concerned that members of the general public feel the same way, if not more frustrated and concerned. The first instance I will speak about occurred recently when we submitted an open records act request to the Department of Health and Human Services seeking data about the number of denials and authorizations for mental health services for children at different service levels. The department informed us that it would cost \$1,000 to respond to our request and, after some negotiation about which documents would be released, the department informed us that they would be responsive to roughly 80 percent of our request. When we remitted the \$1,000 payment, some of the records we received, but we felt that they were not responsive to the elements that we had previously negotiated and discussed. While some of those documents were helpful, we felt that many of the essential documents that we specifically had negotiated for were not in the request, and we asked for the return of our \$1,000 deposit. At that time DHHS informed us that the \$1,000 was the cost of determining whether those documents actually existed but not the production of the documents, so we never received the documents that we asked for. In another case, Appleseed sought documents related to Medicaid's methodology for determining eligibility for certain mental health services. Specifically, we sought documents that Magellan Behavioral Health relied upon in the implementation of Medicaid's policy to deny behavioral health services. We believe that Magellan kept these types of documents in the regular course of business. And, although our request was arguably broad, we found DHHS's response that it would cost \$126,000 to respond to our request to be quite unreasonable. Therefore, we support the provisions in LB363 that exempt payment for the first six hours of searching for documents and time spent analyzing the legality of disclosing those documents, thus, these would reduce the unnecessary administrative costs that could discourage the disclosure of public records. In turn, we also believe that the provision allowing the Attorney General to review whether or not fees are added or are special costs will lead to more transparent and accountable government action. We also support the provision prohibiting the custodian of documents from automatically filling a request without being specifically directed to by the requestor. This will reduce any confusion over what a person can be charged for and when they can be charged for it, and it will allow time to clarify any confusion over what those charges are. So at this time we'd like to thank Senator Avery and the members of this committee for your dedication to ensuring accountability and transparency in Nebraska's government, and we respectfully request that you vote to advance LB363. And if anybody has any questions I will do my best to answer them right now. [LB363]

SENATOR PRICE: Thank you very much. Do we have any questions from the committee? Seeing no questions, thank you for your testimony today, sir. [LB363]

ROBERT McEWEN: Thank you, Senator Price. [LB363]

SENATOR PRICE: Are there any other proponents for the bill LB363? Good afternoon,

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

Government, Military and Veterans Affairs Committee
February 06, 2013

ma'am. [LB363]

TRACY OVERSTREET: (Exhibit 2) Hello. Thank you for your time today. I appreciate it. Senator Avery, Senator Price, and committee members, my name is Tracy Overstreet, T-r-a-c-y O-v-e-r-s-t-r-e-e-t. I am a reporter with the Grand Island Independent, a daily newspaper in Grand Island, Nebraska. We have a circulation of about 20,000. We are the third-largest newspaper in the state. I have been a full-time reporter in the state of Nebraska for 22 years. Never, never have I seen the types of bills and fees being charged for public records that I have in the last two years. For that reason, I am here today in support of LB363 and, particularly, for its definition of actual added cost as it pertains to fees charged for public records. In June of 2011, the Independent requested e-mails that were sent by city staff and the public over one month to all ten of the Grand Island City Council members. That request led to a bill of \$1,283. Of that \$1,283, a total of \$725 was for photocopying cost. The remaining \$558 was for computer run time, programming, and what a private attorney who was hired by the city to address this matter referred to as analysis. We were able to negotiate a lower rate and paid \$559.24 for those records. In August of 2012, the Independent made a similar request for e-mails sent by staff and the public to the full city council and e-mails between the mayor and city administrator over a one-week period of time. The city said it would cost \$895 for those records, of which \$545 was for photocopying costs, \$350 was for data analysis and programming. We negotiated a lower rate and paid \$150 for those records. I think what these two incidents show are a couple of things. First of all, the volume of electronic communication that is occurring on a routine basis between government staff, the public, and elected officials. There were 2,901 documents in our first request; there were 2,180 in the second. Second, this shows how the public has no access to these documents, to this communication, without making requests that then lead to very costly fees. There is no public access computer; there is no public access portal in which to research and view these items. Therefore, the public must rely, must rely, on government staff to find this data. Our records request uncovered an offer from the EPA to pay for water connections in Grand Island for almost 50 homeowners who were on private wells and were living above a contaminated groundwater area. This type of documentation is vital for the public to know about. While we have no doubt that there is staff time and effort that goes into finding these public documents requested, the fees that are attached to them currently are prohibitive to the general public which, by and large, are already taxpaying citizens paying the salaries for these public servants. LB363 would help put limits on such fees. LB363 would also help clear up currently what has been very vague, unknown charges--nonstandardized is what you heard from earlier testimony. In our case, there was no itemization of what the analysis was, not the amount of programming or computer run time, or even what the rates for that type of service would be. While governments with ever-tightening budgets may raise concerns about the costs of providing these public documents, it's crucial to remember that providing these documents is less about research and more about retrieval of the daily work product. It's also crucial to realize that these fees are less about recouping

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Transcriber's Office

Government, Military and Veterans Affairs Committee
February 06, 2013

expenses and raising revenues, but, in my view, they are being used and are more about creating an end around to Nebraska's public records law. Any truly open and transparent government should already be building in the cost of document retrieval to its citizenry. The Legislature is the checks and balances and where the proverbial buck should stop. If you fail to address these prohibitive fees on public documents that are being exercised across the state now, then you have, in effect, allowed a toll booth to be put on the front door of every city hall, on the front door of every county courthouse, and on the front door of every school district across the entire state. Taxpayers have paid for the government buildings, they have paid for the staff in them, for the equipment in them, and now they're only being allowed to see that daily paperwork and work product by paying an additional copying fee, plus research fee, computer fee, run time, analysis, attorney time, and any other fees that will be dreamt up in the future to tack on. Prohibitive fees will become the norm in the state of hardworking Nebraskans who were used to promises that are sealed only with a handshake. LB363 would help return fair access of public documents to the public. We urge the committee to support this bill in the name of open and transparent government. Thank you. [LB363]

SENATOR PRICE: Thank you very much, ma'am. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB363]

TRACY OVERSTREET: Thank you. [LB363]

SENATOR PRICE: The next proponent, please. [LB363]

CHRIS DUNKER: Good afternoon, Senator Avery, Senator Price, members of the committee, and thank you for the opportunity to speak in support of LB363. My name is Chris Dunker, C-h-r-i-s D-u-n-k-e-r, and I'm the assistant editor at the Beatrice Daily Sun. And I've been in a fight over the cost of public records before. Last summer I made a public records request, under the Freedom of Information Act, for copies of two months of e-mail conversations between the Gage County Board of Supervisors and the former medical director for the county following his abrupt resignation in late May. My reason for making the request was very simple. The medical director, who had been a controversial figure in Gage County and was working for the county taxpayers' dollar, had resigned through an e-mail to several board members. Naturally, I wondered if there were e-mails prior to that which would provide a greater context for a sudden departure. What happened next was evidentiary of the need for stronger public records laws in our state. First, the county board denied my request, saying the e-mails were composed by the supervisors on private e-mail accounts and, as such, were not public records. The Daily Sun disagreed with that position and asked the Attorney General's Office for its Opinion. That office ruled in our favor on July 2, but the records were still not turned over. For the next ten weeks I waited patiently for that public records request to be filled. It never was. In late July, I overheard the county attorney tell the supervisors, at the end of a public meeting, that they needed to turn over the public

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

Government, Military and Veterans Affairs Committee
February 06, 2013

records to him for inspection before they would be given to the Daily Sun. Two weeks later, in early August, more than a month after the Attorney General had said my request for public records was within the boundaries of the law and the elected officials included in the request must turn over the documents I requested, I was told that a \$210 deposit would be required before the records would be turned over. The deposit, as I was told, would pay the supervisors \$20 an hour for their time looking through their personal e-mail accounts for the records. It estimated the time of the county attorney, in reviewing those e-mails for any sensitive material, at \$40 an hour, plus \$0.50 per copy, and the time of the secretary to copy whatever e-mails were there, which was estimated around 60. There was no mention whether or not the requests had actually been completed. Needless to say, several months after filing the request I was skeptical at their intent to fulfill my public records request. Now I was being asked to pay for an unknown amount of records and some extraneous costs associated with completing a request public officials, to my understanding, are required to complete. I did not sit idly during this time. On a weekly basis, I wrote about the blatant abuse of public records laws by our elected officials. I didn't even care what the records said anymore; I just wanted our elected leaders, the people we hold in high esteem to set policy for taxpayers, to follow the policy guiding their own conduct. Finally, on September 19, the county board had had enough. Prior to a public meeting, several supervisors slipped an item on the agenda, under the guise of a discussion of waiving the costs of fulfilling the public records, indicating the Daily Sun had requested receiving the records for free. The thing was, neither I nor anyone else from my office had made any such request. I even offered to pay the \$210 out of my own pocket when and if the public records request was ever fulfilled. So I sat quietly during the county board and county attorney's ambush, taking notes about why they felt the state's public records laws do not apply to them and why citizens do not have a right to hold their elected leaders accountable. At one point the discussion actually turned to whether or not they would waive \$210 if any citizen walked in off the street and made a request, and then my request, as a member of the local media, shouldn't hold any special place. I never felt it should; I just wanted them to follow the law. Finally, the discussion fizzled out, and the board decided to simply charge me the cost of the copies alone. The 60 e-mails turned out to be 6, between four committee members and the medical director. They even copied the same batch of e-mails four times, just for good measure. In all it was 42 pages. I paid \$21, which I felt was fair, and at the end of it all we didn't even write a story about the real reason about the county medical director's resignation. Any news value had gone rancid on the shelf. We uncovered a more startling truth, however, that public officials have no problem holding public records hostage if they feel like it. The problem last summer, and I am sure countless times across the state, as you've heard in previous testimony, was that the public records statutes have no teeth. There is nothing to compel public officials to follow through with the requests. You now have the opportunity to improve a great tool for all citizens participating in our democracy. I urge you give it to them, and thank you for your time. [LB363]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

SENATOR PRICE: Thank you, Mr. Dunker, for your testimony. Are there any questions from the committee? Senator Wallman. [LB363]

SENATOR WALLMAN: Thank you, Senator Price. Thanks, Chris, for coming down. And do you feel this is a statewide trend to withhold records? [LB363]

CHRIS DUNKER: I really hadn't paid much attention to it until last summer. But the more that I've looked into it and paid attention, it seems to be a growing problem, especially as more and more stuff is done on-line and through e-mails and...as you heard previously. [LB363]

SENATOR WALLMAN: Well, thanks for what you do. [LB363]

CHRIS DUNKER: Yeah, thank you. Happy birthday. [LB363]

SENATOR PRICE: Thank you, Senator Wallman. (Laughter) Are there any other questions? Seeing none, thank you. And our next proponent, please. Welcome, sir. [LB363]

SHAWN RENNER: Good afternoon, Senator Price, members of the committee. My name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer with the Cline Williams law firm here in Lincoln. I am also a registered lobbyist. I appear today on behalf of Media of Nebraska, Inc. Media of Nebraska is a nonprofit corporation that is comprised of representatives of both the print and broadcast news media throughout the state. In addition to Media of Nebraska, I also represent both the Nebraska Press Association and the Nebraska Broadcasters Association, so I think I can supply at least a little bit of background with regard to the statewide issues that you just raised, Senator Wallman. Mr. Dunker's testimony was pretty strong. I do not share his view that this is all venality. I don't believe that's what's going on. I was involved in his situation. I was, frankly, a little bit shocked by the way that all played out. My sense is that one of the current defects in our public records statutes that leads us to where we are today with some of these complaints is that there is not much clarity about what costs can be charged and what costs can't be charged. And in that regard I think LB363 does a very good thing, and that is to provide at least some parameters about what you can charge, what you can't charge. There's a six-hour time limit that, if the bill were to pass, would amount to free time, or at least not be able to charge for time. I understand that there are objections by some public bodies, and I don't minimize those objections. I don't doubt that some public record requests do, in fact, take a fair amount of time. I do doubt though that the ordinary public records request takes a whole lot of time, and I think we shouldn't lose sight of that. I am aware that some of the largest requests in the state, particularly to state agencies, occur during election cycles and, in fact, are made by either the Republican or Democrat parties for purposes of politics. Nothing wrong with that; they're entitled to get public records like everybody else is. But if those entities are driving

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

Government, Military and Veterans Affairs Committee
February 06, 2013

concerns of public entities about cost, that's a problem because those are not the day-to-day consumers of our public records. My clients, the news media, are. That's how they get the information they report. I can't give you percentages, but the vast majority of information that any newspaper reports is what's happening with the constituency of that paper and its government and how do those two interact. And that's the standard diet of newspapers, so my clients are consumers of public records by definition. And I won't tell you that it never happens that a large request is made. There are certainly investigative pieces where you might want every scrap of paper on a particular topic from a particular agency. I believe those instances are relatively few and far between. And again, I don't want to minimize the importance of them. But that's not what happens on a day-to-day basis throughout this state. In addition to my clients, I believe, as Mr. Gould testified, that many citizens of Nebraska actually utilize our public records as well, and they do it for entirely legitimate purposes. The only way our democracy can function is if we have participation by all the people that are subject to the governance of you folks and the other branches of government. And they can't have that knowledge unless they have access to what's going on. And our law has long provided a means of getting that access: our public records statutes, our open meeting statutes. Those structural components are the only way that this government can operate effectively, I believe. And if we have a situation where the ability to charge is without any meaningful definition or restraint, it will happen that some entities will use that circumstance as a means to thwart records requests. And you can judge for yourselves whether that was what was going on with the last two examples you just heard. For whatever it's worth, I'm convinced it happens on occasion. I am also convinced that that's not always what's going on. More often than not, I suspect, it's a function of we don't know what we can legitimately charge and what we can't, and we are devoting some resources to providing information; let's charge whatever we're able to. While I can understand that sentiment, I think that is really counterproductive in the context of how you run a democracy, and I think it's really shortsighted on our part if we allow that to drive how the democracy works as well. I see my time is about up. You've heard some specific examples. I believe that LB363 will go a long ways towards minimizing some of the problems that you've just heard about, and I urge the committee to advance it to the full Legislature. I'd be happy to take questions. [LB363]

SENATOR PRICE: Thank you, Mr. Renner. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB363]

SHAWN RENNER: Thank you very much. [LB363]

SENATOR PRICE: Are there any further proponents? [LB363]

ALAN PETERSON: Senator Price,... [LB363]

SENATOR PRICE: Good afternoon. [LB363]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

ALAN PETERSON: ...Senator Avery, and members of the Government Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, and I am the lobbyist for ACLU-Nebraska. That organization tries to uphold the Bill of Rights. It's not a political organization. It's not partisan. It gets involved when the board or the members or other people complain that they think their civil rights, under the U.S. Constitution or the Nebraska Constitution, are being violated. Public records is partly constitutionally protected under the First Amendment but not very much. Not very many cases uphold it as a regular First Amendment free speech right. The right to see what the government is doing is a little bit of a First Amendment right. But our main interest, I believe, is that if ACLU is to find out if the government is somehow infringing on somebody's First Amendment, Second, Third, Fourth, Fifth, Sixth, Eighth Amendment rights, equal protection under the Fourteenth Amendment or whatever, looking at the public records is how we find out whether the accusations are true or false sometimes. So I'm part of what may be fairly called the "old guard" on public records. I was involved very much in the drafting of the law back in 1978 and '79, along with attorneys for the State Patrol and some others, and I've been involved with many of the changes. Two main principles of the public records law for the people. Number one, they can look at them free. The law has always been clear, even before the 1970s, that people have the right to examine them, and I think it...the old language, it says, and make abstracts from them, take notes. They can look at them and not pay for them. That's always been the law. Let's not change that. LB363 does not; it continues to protect that. The second principle has been that if they want copies, they can have them at cost. In about 2000 or 2001, a bill called LB628 was passed to try to make it even clearer that you're not supposed to charge people to look at their public records more than what it really costs to make those copies. But it did leave a lot of ambiguity. As previous witnesses have said, what about the cost of the person who goes and finds the records to the city or county or state? Should that be part of the cost charged? And, number two, should the efforts by the attorney for the public custodian be able to examine those records for a few hours to try to find one of the exceptions so they don't have to turn them over? Should that attorney's fee be charged? Well, that issue has boiled and boiled around, and we're trying to get it clarified. And the result is a compromise. LB363, number one, protects free access to take a look. And you can take along your camera, or I guess the younger folks take their cell phone. You can copy them; that's free, no charge. But as far as what does it mean that you can charge for their cost, we try to clarify. Number one, we understand that occasionally a huge request might come in. Senator Bloomfield, to one of the towns or villages in your district, say, gets a monster request that takes two or three people in the county or city clerk's office to fulfill it. Can they charge? What we ended up saying was, look, we understand if it takes more than six hours of time--one person times six or two times three--yeah, that may be a disruption, and you can add a special service charge. That is the compromise that all these meetings Senator Avery mentioned finally resulted in, and I think we all were sufficiently unhappy that we thought that was a good compromise. And I know legislation is sometimes made that way. That's the

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

Government, Military and Veterans Affairs Committee
February 06, 2013

compromise. The other thing, on attorneys fees, we don't think the attorneys fees for looking for an exception ought to be charged to the requestor. There might be cases, as the Attorney General's Office has reminded us, where they might get a monster request, and they actually have to use attorneys just to find the records. I'm not talking about that as being prohibitive. If that goes over the six hours, yeah, they might be able to include that. That would be very rare, but it might happen. It's okay. May I just finish the paragraph, Senator? [LB363]

SENATOR PRICE: Please. [LB363]

ALAN PETERSON: I appreciate that. So some language is being prepared to make that clear, that there really might be that exceptional situation where even an attorney's fee for finding the records is okay to charge. We're working on that. Finally, I guess I'd say, the law contains and will continue to contain some flex so that where there's disputes about what is or isn't a record, what it should cost, what things should go into the fee for the records, you can go to the Attorney General under this law and get advice. We have always had the wonderful boon in this state of an Attorney General's Office that has been pro public record, pro open meetings, pro transparency. Much appreciated. And so we think this is a good compromise bill. We ask the committee to advance it. [LB363]

SENATOR PRICE: Thank you. Are there questions from the committee? Well, I would ask a question then. [LB363]

ALAN PETERSON: Yes, Senator. [LB363]

SENATOR PRICE: So if a citizen says they want to come in and they want to review a record and that record is already an electronic record like an e-mail,... [LB363]

ALAN PETERSON: Yes, yes. [LB363]

SENATOR PRICE: ...and they decide that they're not going to go through the process of having to have it printed,... [LB363]

ALAN PETERSON: Huh. [LB363]

SENATOR PRICE: ...how much research has to go into seeing that document? Because...in other words, it's already electronic, one, it's already a public document on that e-mail if it's an interoffice-type e-mail,... [LB363]

ALAN PETERSON: Um-hum. [LB363]

SENATOR PRICE: ...and they want to go in and see it. Is there going to be an opportunity for, well, we had to use an attorney to do a database search for e-mails, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

that...I want to make...I'm not perfectly clear of how we handle it because paper, it sounds very succinct. [LB363]

ALAN PETERSON: Yeah, I don't know. [LB363]

SENATOR PRICE: But in the electronic records, and as we move further and further into electronic records, it's a little less succinct. [LB363]

ALAN PETERSON: Right, it's a little less clear, and this bill does take a shot at clarifying it a bit. This bill is really an advance into this century in that it says, if somebody wants a record that's on computer, electronically stored, all the custodian has to do is say, hey, that's on our Web site or that's on such and such a place, go look it up yourself. Then, if they don't know how to do that, they're supposed to be told and given some help. As far as the charge, if they just want to look at it and not have the custodian make a copy, no charge. No charge, unless it takes over six hours, and then they could charge. [LB363]

SENATOR PRICE: But in the event that the person wants to see e-mails, they just can't walk in and see e-mails. [LB363]

ALAN PETERSON: No. [LB363]

SENATOR PRICE: The attorney would look over to make sure that the e-mail is pertinent to the request. [LB363]

ALAN PETERSON: Yes. [LB363]

SENATOR PRICE: Okay, that's what I wanted to clarify. [LB363]

ALAN PETERSON: That's right. Sometimes an attorney would be needed just to see if it really fills the request. The attorneys fees we're worried about is reviewing it to find a way not to give it. That shouldn't be charged. [LB363]

SENATOR PRICE: Is there a duty for...on the part of an attorney to protect his client, the city, that would...so, in other words, I mean, I know of a situation in Bellevue where it was a \$600-plus fee that resulted in 14 pieces of paper because they wanted...and it was the attorney fees that drove it because they have a duty to protect their client. And so the question...I mean, are we taking that consideration in that we're not sideways with one another? [LB363]

ALAN PETERSON: We are...and that was part of the discussions with the AG's Office, and they were respectful and, I hope, constructive. There might be a case where the attorney does have to look, and that's what he or she is paid for. That's not real often, but that's...they're already paid a salary. Now if the county had to hire somebody else to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

pull the records, that could be part of the charge. But the review to find a reason not to turn over, whether it's attorney-client privilege or maybe if they've got Social Security numbers in it, we don't think the public should pay those attorneys fees. [LB363]

SENATOR PRICE: Thank you very much. [LB363]

ALAN PETERSON: Yes. [LB363]

SENATOR PRICE: Any other comments, questions, queries? Seeing none, thank you for your testimony. [LB363]

ALAN PETERSON: Thank you, sir. [LB363]

SENATOR PRICE: And we have the next proponent, please, to LB363. Good afternoon, sir. [LB363]

GARY KRUMLAND: Good afternoon. Senator Price, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. We were one of the groups that were involved with the many meetings that resulted in this compromise, and so I won't repeat anything that's been said. But I do want to thank Senator Avery for his willingness to listen to us and work with us. And I just want to recognize Christy Abraham for all of the many, many meetings that she had to attend to work on this and make (inaudible) us all of the compromise, so. Other than that, I'll be happy to answer any questions. [LB363]

SENATOR PRICE: Thank you. Are there any questions? Seeing none, thank you for your testimony. Next proponent, please. [LB363]

JON EDWARDS: Good afternoon, Vice Chair Price,... [LB363]

SENATOR PRICE: Good afternoon and welcome. [LB363]

JON EDWARDS: ...members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing the Nebraska Association of County Officials. We're here today in support of the changes proposed by Senator Avery in LB363. This has certainly been, as you've heard all the testimony, kind of a long, ongoing process with lots of different discussions and a lot of different moving parts. As related to the clarifications it makes, proposed within the bill as it's written right now, we can support those changes, and so we are here today to support LB363. [LB363]

SENATOR PRICE: Thank you, Mr. Edwards. Any questions? Seeing none, thank you for your testimony. [LB363]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

JON EDWARDS: Thank you. [LB363]

SENATOR PRICE: Do we have any other further proponents for LB363? Proponents? Seeing none, we'll move now to opponents. Are there opponents for LB363? Seeing none, would anybody like to testify in the neutral? Plenty of seats up front. Good afternoon, sir. [LB363]

RON WITHEM: Thank you, Senator Price. Members of the Government Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m, representing the University of Nebraska, here in a neutral capacity on LB363. We do recommend...we do recognize that this bill does represent a number of improvements in the situation for both people seeking public records and for those that are custodians of public records. We appreciate the work of this committee on this over the summer. We do believe the public records are the property of the public and should be accessible to the public. We also believe that, in certain instances, filling these requests for access to public records can be a burden on the public bodies and can interfere with the public bodies providing those services that the public demands. I'll comment on a couple of specifics in the bill that we appreciate. We do like the recognition that, at a certain level, fulfilling public requests can be burdensome and that there is a need for requestors to pay the amount beyond that particular level. The bill that the negotiators on this have settled on is six hours. I know there are states that have fewer than that. I have a good friend who is an election commissioner in Maryland, and she was visiting over the holidays and indicated that they have a two-hour standard. Anything first two hours is free to the requestor, and beyond that they have to pay for it. We also appreciate the fact that there's a recognition that many records exist on the Web site, and it's permissible to direct requestors to those sites rather than furnishing printed copies. The main reason we can't give wholehearted endorsement to this bill is what we refer to as the any-and-all request, which is becoming more and more current. Individuals want to see public records. They won't specify a particular subject. They'll say, I'd like to see any and all e-mails between the chancellor of the University of Nebraska-Lincoln and the president of the University of Nebraska between such-and-such date. That becomes very voluminous, time-consuming, and we would like something in here that could lead to a narrowing of the request and have the individual making the request be a little more specific. I know that you've attempted to do that and have not found the way home to get that done quite yet. But we would like to see that. The other point I'd like to make, and I think it may be a little unfairly represented here in Mr. Peterson's testimony and others, that when you have an attorney review the records before they're made public, that the purpose of that attorney is looking for a reason not to distribute those particular records. I don't believe that is the case. I believe the attorney is looking at those records to make sure something that is not supposed to be divulged is not divulged. There is a whole set of documents that the public entity maintains. Section 84-712.05 lists the exceptions to the public records. The general assumption is that if there's a record it's maintained by the public, it is a public record, and people have access to it. But there's certain ones that

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

Government, Military and Veterans Affairs Committee
February 06, 2013

aren't--medical records, for instance, trade secrets, labor negotiation documents, personnel records, a whole series of other ones--and we believe that it's an important part of this process to make sure that, in recognizing the public access rights of an individual, we don't jeopardize somebody else's rights, their medical records, for instance. So it's possible, particularly when we have an any-and-all request that I referred to before, that maybe, in that set of conversations between the chancellor and the president, there may have been one of these other types of documents that should not be reviewed. So we think that's a part of this that there shouldn't be an ability to review. With that, again, I'd like to thank everybody that worked on this legislation. It is, by and large, an improvement. And I think, with those two additional exceptions, this would be an excellent bill. [LB363]

SENATOR PRICE: Thank you, sir. Are there any questions from the committee? Seeing none, thank you for your testimony today. [LB363]

RON WITHEM: Thank you. [LB363]

SENATOR PRICE: Nest testifier, please. [LB363]

MICHAEL SMITH: (Exhibit 3) Good afternoon, Mr. Price--Senator Price--Senator Avery, members of the committee. I'm Michael Smith, M-i-c-h-a-e-l S-m-i-t-h. I'm director/CEO of the Nebraska State Historical Society, which we call NSHS, an agency of the state of Nebraska. I'm here to testify in a neutral position. I wish to emphasize that we are in no way neutral in the matter of public access to the historic public records that we hold at Nebraska State Archives on behalf of the people of Nebraska. We support full and timely access to those records. Any person who comes to our State Archives at 15th and R Streets in Lincoln or to the K Street records facility in Lincoln has a right to access those records, and our staff does all that they can to ensure that access is timely and that those patrons are accorded every courtesy and all assistance. On Tuesday, I submitted, by e-mail, a concern with LB363 that stems from the status of the annual appropriation to the Nebraska State Historical Society for the operation of the State Archives. Today, as for a number of years, a General Fund appropriation funds the salaries and benefits the NSHS staff working in that division of the agency. In the 2012-13 fiscal year that was approximately 90 percent of the budget applicable to this service. The remaining 10 percent of that budget is authorized in our cash fund appropriation; that includes approximately \$70,000 which is derived from fees for sales and services that we provide to those who access our records collections. I would emphasize two points. Anyone who comes to our facilities in Lincoln receives free reference services. We pull records, offer insights into the collection, suggest possible related areas where they can search, etcetera. In short, we do whatever it takes. There's no fee charged for that service other than copy costs which are, at present, \$0.50 a sheet. Anyone who sends us a request by a telephone, letter, or an electronic format that requires in-depth searching is asked to submit an up-front fee, typically \$10,

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

Government, Military and Veterans Affairs Committee
February 06, 2013

plus applicable sales tax. We also charge those individuals for copies and, of course, charge them for postage required to mail them the results of our search. These search fees and copy/postage costs are applied to the cash portion of our budget for the State Archives. We are concerned as to the impact of the language included in LB363 may have on that budgetary model--General Funds appropriation for personnel and cash funds appropriation for operating costs. In particular, we are unsure as to the meaning of the phrase, quote, actual added cost, close quotes, as used in the bill. We understand that the primary purpose of LB363 is to ensure that taxpayer-funded salaries in this area of governmental services are not duplicated by charges made for reference or retrieval service. Nebraska State Historical Society does not do that and it will not do that. However, we would very much like the language of the bill to be more specific as to the matter of, quote, actual added costs. We believe the bill, in this regard, is not as clear, as specific as it could be, and ask that the committee seek to clarify that portion of its language. If that is not done and if it were later interpreted that we could only charge the cost for operating the copy machine to make the specific copy or copies required and not such related costs as utilities to operate that machine or the machine maintenance, it appears that we would run into a deficit budget--excuse me--a deficit funding situation in this portion of our cash budget. Thank you for that opportunity to speak. And I would speak to Senator Avery's point about the 2.5...and I'm going to back off of that statement. My staff, I think, got somewhat excited about the number of people they thought would be lining up because they could get six hours of free service from the state. So I am not prepared to pursue that particular point and it really, I don't think, is applicable. I might come back in a year or two and say we actually have a records rush, so to speak. But I'm not in a position to...but I am in a position to talk about the cash...the funding model that we have for the operation of the State Archives and to what impact this may and, I would say, may not have on that. That's a question that's open. I thought it was important today to come and make that information to the committee with the idea that, obviously, some further time down the road we'll see exactly where that goes. [LB363]

SENATOR PRICE: Thank you very much for your testimony, sir. Are there any questions from the committee? Seeing none, thank you for your testimony today, sir. [LB363]

MICHAEL SMITH: Thank you for the opportunity, and thank you for the work on the bill. It's important to the history of the state. [LB363]

SENATOR PRICE: May we have the next testifier, please. [LB363]

DAVID COOKSON: Mr. Vice Chairman, members of the committee, my name is David Cookson, D-a-v-i-d C-o-o-k-s-o-n. I'm Chief Deputy Attorney General. I would like to beg the indulgence of the committee and combine Mr. Comer and my time so that we can provide you our testimony in a context that will make sense. So I'd like to introduce Mr.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

Comer so that the committee understands his background, and then I will follow up after he provides the current state of the law, and hopefully we can do it within our combined time. First, I want to thank Senator Avery and Committee Counsel Christy and Mr. Peterson for their very cordial and productive discussion that we've had about our concerns with the bill, which is why we're here in a neutral capacity today. Dale Comer has been with the Attorney General's Office for 34 years. He's served five different Attorneys General. He has been, in the past 25 years, been the primary enforcer of the state public records and open meetings law. He is the person that deserves the credit that Mr. Peterson was talking about, more so than any of the rest of us in the office. Dale has worked on any number of the public records bills; but more importantly, he's worked to educate public entities about the importance of providing that. Our office, as Mr. Peterson said, is very much committed to open records and open meetings. That said, we do have some concerns about the bill in current form. What I'd like to do now is have Dale speak to you just generally about what we do and how we have addressed some of the situations you've heard described by proponents today. [LB363]

SENATOR PRICE: And if I could have you spell your name for the record that would be great. [LB363]

DALE COMER: I would be happy to do so. [LB363]

SENATOR PRICE: Thank you. [LB363]

DALE COMER: Mr. Vice Chairman, members of the committee, Senators, my name is Dale Comer, D-a-l-e C-o-m-e-r, and I am an Assistant Attorney General with the Nebraska Department of Justice. I want to start by saying that we do have, currently, under these statutes, enforcement authority. The Attorney General is given enforcement authority under the public records law. Citizens who are denied access to public records or who dispute the charges that are imposed upon them for access to public records can petition our office. We have the authority to review the situation; we have the authority, under the statute, to order the public entity to give up the records or to amend the charges that they are asking for copies of records. I'm always a little uncomfortable ordering folks to do something, because I'm not a judge; but we do have that authority under statute. I will tell you, unequivocally, that we are committed to transparency in government and to enforcing the public records law. I work in this area along with open meetings. I have two attorneys in my bureau that work with me, so we have three attorneys that work on open meetings and public records issues. On average we get somewhere between 20 to 25 public records petitions a year, and we get another 20 to 25 open meetings complaints. These are formal petitions where our office is asked to review denial of access to records or to the nature of the propriety of charges that are imposed. We also get somewhere in the neighborhood of probably around 250 to 300 contacts, either by e-mail, telephone, carrier pigeon, whatever, during the year from citizens, public officials, and so forth, about questions under the Open Meetings Act or

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

Government, Military and Veterans Affairs Committee
February 06, 2013

the public records law. So we're talking to people, working in these issues constantly. We also have a Web site where we have extensive outlines into the public records law and the Open Meetings Act, and I usually go out and speak anywhere from five to six times a year to public officials about the parameters of these statutes. So again, we are committed to enforcing these statutes, and we have authority to do so. And we will continue to enforce them vigorously, as necessary, when we're asked to by citizens that petition our office. I would make one final point, just an observation from my 25 years of looking at these statutes. And as these complaints have come across my desk, the nature of the complaints that we have seen have changed dramatically, in my view, over that period of time. The first complaints that I used to see were kind of the classic citizen coming in and saying, I can't get copies of the county board's agenda; or I can't get copies of some payroll warrants that were issued by the school district or whatever. What we're seeing, increasingly now, are voluminous public records requests that, for those of us attorneys that litigate, they look like discovery requests. As the gentleman from the university said, we want any and all records that pertain to or relate to these 15 topics from 1867 to the present, including all the e-mails, electronic communications, and so forth. They're huge, and we're seeing more and more and more of those directed to public entities. And I'm going to ask Chief Deputy Cookson to speak to what we're dealing with now with those particular types of requests. Thank you. [LB363]

DAVID COOKSON: Again I thank the committee for your indulgence. Specifically, our concerns do deal...are twofold. One is the voluminous requests, and I'll provide a few examples. But the second is more parochial to our kind of unique situation. As a state entity we are the only state law firm, if you will, that is actually...our sole job is to provide the legal services to all of the state agencies, boards, and commissions and to the Legislature. And so when we are asked for a public records request, as Mr. Peterson pointed out, there isn't anyone else who can look for this information. It's the lawyers who have the files, so our attorneys have to look. So we believe we've reached, or we're close to reaching, an accommodation with Senator Avery, who has been very gracious to work with us on this, and with committee counsel. The second is the voluminous, and what we want to offer is a cautionary tale as you consider what you're doing, to keep this in the back of your mind. We actually...the six-hour rule is consistent with our practice. We typically, if we're only going to spend that amount of time or less, we don't charge. Sometimes we don't even charge for the actual cost of the copies if we're not going to incur anything more than a de minimis charge. But, as Mr. Renner pointed out, we sometimes get...find ourselves involved in the political arena. And when we do, what is normally, for us...we get 40 public records requests directed to our office a year. And again, all of our attorneys have to look to see if they have records that are responsive. Generally they're not very large. In 2011, we got 119 separate public records requests, and some of them were exceptionally large. For instance, we got a request from a national organization funded by a billionaire. And I'm not even going to use the different party labels because it will happen on both sides. The nature of politics today is, on a national scale, there are billionaires on both sides who don't have anything better to do

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

Government, Military and Veterans Affairs Committee
February 06, 2013

with their money than to fund groups to go out and harass public officials. So we got a request for every settlement in our office since 2003, and it was the any-and-all language, any and all documents related to settlements since 2003. Well, we open, on average, about 2,000, 2,500 files a year. So we figured out, in the time period asked for, we'd opened 21,500 files. We expected that it would take an average of two hours for the attorneys to retrieve those files and to look for material responsive to see if, in fact, this file contained a settlement that would fall within the purview of the request. Now we use that average because, downstairs in our vault, we have about a quarter of the records that our office generates. In the state records facility on K Street, there is about the other three-fourths of the records, and then there's a limited amount of records that we keep in our office just because we don't have space. A very large water case that we're involved in now contains more than 3 million pages. We have two or three other cases where we have more than 3 million pages of documents. Those, obviously, would have taken considerably more than two hours. So, as we figured it out, it would take about 43,000 hours, we estimated, to review the...just to pull the documents for the request, this 1 request of 119. Forty-three thousand hours, divided by the 60 attorneys in our office, comes out to roughly about 716 hours per attorney, which, if you divide by 40, comes out to 17.9 weeks. So, in essence, we could have stopped doing the legal business of the state, using all of our attorneys for four months, to comply with 1 of 119 requests we received in 2011. Obviously, neither the taxpayers nor this body has appropriated us the money to ignore the state's legal business for four months. But let's use a simpler example: the number of e-mails provided by the city of Grand Island to the Grand Island Independent, 2,900 e-mails. If you were just to say it takes 15 seconds to review your e-mail to decide whether or not it's responsive, that comes out, basically, to roughly 12 hours of time to provide 2,900 e-mails. It's...when you get to the nuts and bolts, the practical application, there's a lot of time that can be involved in some of these requests. And unfortunately, when they ask for state financial data, what you'll find out is the state accounting system has changed six times in the past eight years. So you can't plug in a term. If you wanted to find out everything I've been paid or my monthly statement, you can't just plug in my name and get eight years or...I guess I've been here now 13 years. You can't get the 13 years of records. You have to go and pull the paper records because we've switched computer systems six times just in the last eight years. So what we caution is, if we can reach an agreement we like the bill. Obviously it's going to save us some work having to do the initial arbitration of time and fees. We appreciate Senator Avery's efforts. We think this is very much a step in the right direction. We just urge you to be cautious because there is the potential for abuse on both sides. [LB363]

SENATOR PRICE: Thank you. [LB363]

DAVID COOKSON: And with that, I'm happy to answer any questions. [LB363]

SENATOR PRICE: Are there any questions from the committee? Yes, Senator

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

Government, Military and Veterans Affairs Committee
February 06, 2013

Bloomfield. [LB363]

SENATOR BLOOMFIELD: Thank you, Senator Price. Mr. Cookson, you probably can't answer this, and maybe we can get to it more in Exec. But I wonder, if we have the same group--let's use our friends from the ACLU--make repeated requests throughout the year, is there anything that limits that? Or can they come in and request something six hours every three days? [LB363]

DAVID COOKSON: Potentially they could. But I would say, on both sides of the issues...and we haven't had the abuse of issues with the media. In fact, I think, if you go back and look at how we've arbitrated disputes with the media, they're generally reasonable. And if their request is a little broad, if you talk to them you can get it worked out. But there are...there could be situations where that occurs, but generally I don't think that's the issue. I think the practical reality is it does take time to pull records when the requests get to a certain size. And the fact is none of us have money budgeted for that. [LB363]

SENATOR BLOOMFIELD: Do you think that's something we ought to maybe incorporate into the bill as to protect against that, or are you confident that this won't happen down the road? [LB363]

DAVID COOKSON: Well, I...based on our history and as we've seen it, we've not seen...maybe I can think of one or two occasions where that's happened, and we have actually sided with the public entity where it was clear that they...it was just some disgruntled person who was harassing the office. But generally, all of these groups, regardless of what they want the records for, have generally been pretty good. There's just the potential that sometimes they don't understand how large a request they're making; and having this clarification, I think, is...will be helpful. [LB363]

SENATOR BLOOMFIELD: Okay, thank you. [LB363]

SENATOR PRICE: Thank you, Senator Bloomfield. Are there any other questions? Seeing none, thank you for your testimony, both of you. [LB363]

DAVID COOKSON: Yeah. [LB363]

SENATOR PRICE: Is there any further neutral testimony? Seeing none, Senator Avery. [LB363]

SENATOR AVERY: Many of you in here have heard me describe compromise as a situation where, when you leave the table, everybody is a little bit unhappy but nobody is completely unhappy. And I think that you can...if you look at this bill and you look at the history we've described of how we got from where we were to where we want to go,

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

Government, Military and Veterans Affairs Committee
February 06, 2013

the fact that we had a number of people in the neutral position, nobody in opposition, probably indicates that a lot of compromising went on. They gave up certain things that they wanted; we gave up things that we wanted. In the end everybody left the table a little unhappy, but nobody was completely unhappy. That's the nature of a good compromise. I think this is one of those. I believe it's good public policy, and I urge that you advance it to General File. Thank you. [LB363]

SENATOR PRICE: Are there any comments? No. Thank you very much, Senator Avery. And that will close the hearing today on LB363, and we will move forward to the next agenda on the item...or the next item on the agenda, thank you very much, LB510. [LB363]

SENATOR SCHEER: Thank you, Senator Avery and fellow members of the Government Committee. Good afternoon. My name is Jim Scheer, S-c-h-e-e-r, and I represent the 19th Legislative District in the Nebraska Legislature. I certainly hope mine is much shorter and concise than the previous ones, because I'd like to get done early, as well, this afternoon. LB510, which I'm introducing today, is a fairly simplistic bill. It is really accomplishing two things. It is amending Section 2 and Section 3 of Section 84-1411 relating to the Open Meetings Act. First of all, it includes the Educational Service Unit Coordinating Council, which is a new item that was established several years ago, and because it was not in the statute was not technically covered under that statute; so it will be including that body so that it can also meet via teleconference. And the only other item that it does, the original bill showed a maximum length of the time for the meeting of one hour. And there's been a request by several organizations that that be expanded to two, for time-saving and cost-saving for all the different entities. It's...those are the only two changes: changing one to two; and adding the ESU Coordinating Council as an entity to be able to utilize it. I'd be happy to answer any questions. If it's technical, I won't be able to answer it but there might be people behind me that would. [LB510]

SENATOR AVERY: Thank you, Senator Scheer. It looks like it's just Senator Bloomfield and me. [LB510]

SENATOR SCHEER: Well, that's okay. Less to worry about then. [LB510]

SENATOR AVERY: I don't have any questions. I can just say that you are aware that we have tended to favor legislation like this in this committee. Senator Bloomfield, do you have...? All right. Thank you. [LB510]

SENATOR SCHEER: Okay. Thank you. [LB510]

SENATOR AVERY: Any proponent testimony on LB510? Mr. Nolan, welcome back. [LB510]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

MICHAEL NOLAN: (Exhibit 1) Thank you, Senator Avery. Senator Avery, members of the committee, my name is Michael Nolan. I am the...you spell the name N-o-l-a-n. I am the executive director of the League Association of Risk Management which is a public agency organized under the interlocal Risk Act that provides risk management and insurance coverage services for the Nebraska municipalities that wish to affiliate with it. The reason that we support Senator Scheer's proposal is because for the last couple of years we've been doing some significant reorganization of our agency. We went through an interval where we were rewriting the bylaws for the agency, and we did run into conflicts that were caused by the one-hour restriction. This is a kind of a depiction of where our board members reside. We try to provide geographic distribution across the state, and getting all of those folks together for meetings is a little bit difficult. We're required by our bylaws to have four...minimally, four meetings a year where we all are face-to-face. But when you have a specialized kind of problem like rewriting your bylaws or what we're going to be having going forward, which is a rewrite of the coverage document, we need to have a little more flexibility because, quite frankly, when you try to get all of those people together...and I have one board member who lives in Scottsbluff, soon to have another one, I think, who will be from a neighboring community. And you can see where some of the others were: Imperial, North Platte, Holdrege. Having those folks repeatedly give up a day of time to come to a meeting is a very, very onerous impact on them. So if we could just have an extra hour under the open meetings statute authorization, it would really make it a lot more flexible. A lot of the other problems, of course, is when you get into something like a coverage document--a coverage document which may have 100 pages in it by the time you review it--and you have a discussion on one controversial item, you could burn up an hour pretty easily. So that would be our rationale for this. We would hope that you'd find this bill acceptable, and we'd ask you to support it. If you have any questions... [LB510]

SENATOR AVERY: So two hours you think would be fine? That would be enough? [LB510]

MICHAEL NOLAN: Two hours would be certainly an improvement over what we've got. [LB510]

SENATOR AVERY: Okay. Any questions from the committee? Thank you, Mr. Nolan. [LB510]

MICHAEL NOLAN: Thank you. [LB510]

SENATOR AVERY: Additional proponent testimony? Welcome, sir. [LB510]

MATT BLOMSTEDT: (Exhibit 2) Hi, Senator Avery and the other members of the committee, my name is Matt Blomstedt, last name is B-l-o-m-s-t-e-d-t. And I do want to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

thank Senator Scheer for introducing this bill and his efficiency of doing so. He combined two different requests for a bill, and that's appreciated probably today. I am the executive director of the ESU Coordinating Council. I am just...I brought some information just to give you a little bit of background about what the council is, how it was formed, what it does. But essentially in a nutshell our Coordinating Council was created in statute. All 17 of our ESUs participate in that, and their administrators serve on the council. Over the years that was brought together actually, in many parts, due to open meetings law and they were managing several different statewide projects. And at the time, the Legislature thought it was appropriate to form a council to be able to administer those types of programs. And so that's all brought together. We meet roughly about six times a year. There's...what we found out was we actually have distance education as one of our charges. But what we actually, in reviewing the statutes, we weren't permitted to meet via videoconference which is a technology readily available to us. And it would certainly help us be able to meet more efficiently, I guess, more effectively under the Open Meetings Act with videoconferencing. So I'd ask your consideration of the bill. [LB510]

SENATOR AVERY: Thank you, Dr. Blomstedt. [LB510]

MATT BLOMSTEDT: Almost Dr. Blomstedt. I'm getting closer. [LB510]

SENATOR AVERY: I know you're very close. Questions from the committee? [LB510]

MATT BLOMSTEDT: Thank you. [LB510]

SENATOR AVERY: Other proponent testimony? We're on LB510. Okay. Any opponent testimony? Any neutral testimony? Senator Scheer waives closing. That then ends the hearing on LB510, and we'll move now to LB521. And send the page after Senator Christensen. Is he here? [LB510]

_____: His staff just went to get him. [LB510]

SENATOR AVERY: Okay. Welcome, Senator Christensen. We're opening the hearing now on LB521. [LB510]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman, members of the Government, Military and Veterans Affairs Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n, I represent the 44th Legislative District. I'm here to introduce LB521. LB521 amends Section 18-131 to require, in addition to the current publishing requirements, all classes of cities and villages who have an official Web site to publish their ordinances on such Web site. This would go into effect January 1, 2014. This bill would also amend Section 84-1411 to require, in addition to the current notice, an agenda requirement to all public bodies who have an official Web site to publish their

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

meeting notices and agendas on such Web site. LB521 seeks to provide greater access to the local government their actions for the residents of Nebraska. Thank you for your consideration of LB521, and I ask it be advanced to the floor. [LB521]

SENATOR AVERY: Thank you, Senator. Any questions from the committee? I don't see any. Do you want to...oh, yes, I do. Almost. Senator Bloomfield. [LB521]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Christensen, the cities that currently have a Web site that just says what's going on in town, is this who you're talking about? They are going to have to go back and put all their regulations from time immemorial on the Web site? [LB521]

SENATOR CHRISTENSEN: Yes, it would affect them. The situation that made me to go thinking about this, just my own hometown that is doing a lot of, let's say, updates to their ordinances, statutes. People are having trouble keeping up with it. They...you got to go to the city office, either take off work during work or whatever, to go get them; and where we've got so far along with technology now, why not just have it available? It's not hard to get a link to it and have it easily available for the public. That's all I'm after here, is make it easy to go see what's going on. [LB521]

SENATOR BLOOMFIELD: So I have two cities in my district that are celebrating 125 years this year. Are they going to have to go back 125 years and have somebody put that on the Web site? [LB521]

SENATOR CHRISTENSEN: Well, I...the... [LB521]

SENATOR BLOOMFIELD: And if so, are we going to help fund that effort? [LB521]

SENATOR CHRISTENSEN: Well, the situation is, if you want your people informed and knowing what's going on then it should be easily accessible. Thing is, yeah, you'd be going back and putting everything there but once you're linked to it...yeah, there's going to be a cost to doing that. There always is when you're updating. Everyone of us, any time we've run a business or we have set up anything have incurred the expense of doing these things. So I guess I don't see that as a huge deal because the technology we have today to scan and do things, it's not that difficult process no more. [LB521]

SENATOR BLOOMFIELD: Depends on where you're at, but thank you. [LB521]

SENATOR AVERY: Senator Price. [LB521]

SENATOR PRICE: Thank you, Senator Avery. Senator Christensen, would it be acceptable to say that you would tell the public where they're housed, and then anything that goes forward or anything currently already available in electronic medium be done?

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

Government, Military and Veterans Affairs Committee
February 06, 2013

That way you get to a point where we're not recreating...if it's a deed from 125 years ago stuck in a moldy box in the basement. I know we talk about ordinances, but once we begin this, once we open this envelope up, it goes through. And so I'm just asking you, is it not feasible, conceivable to say...they can say, hey, if you want to see it, we've got them over here at the county courthouse? And anything we have available electronic, right now, we do. Going forward? [LB521]

SENATOR CHRISTENSEN: And I'm sure amenable to working with you. I understand going back that far and pulling that type of stuff. But, you know, I think basically the ones that approached me about it are concerned about the upcoming changes that's been proposed, and that's what they're wanting to deal with because that's what's impacting them. [LB521]

SENATOR PRICE: Thank you. And I would agree with you that if you're writing them up today, you're probably not doing it on a hand typewriter, so thank you. [LB521]

SENATOR AVERY: Senator Bloomfield. [LB521]

SENATOR BLOOMFIELD: Thank you. And I don't see it in this bill, Senator Christensen, but would your intent be at some point to go back and include the counties in this so that their courthouses would have to put everything on? [LB521]

SENATOR CHRISTENSEN: Well, they feel like they're included because of the phrase down here, if the public body maintains an official Web site; and a lot of counties do. But I, again, with what Senator Price and I talked about, that might make it more favorable to them. [LB521]

SENATOR BLOOMFIELD: It would make it a little more palatable, yeah. [LB521]

SENATOR CHRISTENSEN: I'm sure that part of it would. And I really believe that would amend or take care of the number of constituents that have come forward to me. I understand that there's a lot of old things that might have to be drug up if we don't make it that way. [LB521]

SENATOR BLOOMFIELD: I could even see going back five years or ten years and bringing that forward. When you start going back 100 years, I think we're going to have issues. [LB521]

SENATOR CHRISTENSEN: I understand that part. [LB521]

SENATOR BLOOMFIELD: Thank you. [LB521]

SENATOR AVERY: Senator Scheer. [LB521]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

SENATOR SCHEER: Thank you, Senator Avery. Senator Christensen, I have a similar concern as Senator Bloomfield and Senator Price to the extent that being in a rural area like yourself, there are small communities that don't have really city government per se. They have a part-time city clerk and that may work three hours, three days a week type deal. And yeah, technology has changed and you've got a scanner and so forth, but just physically having someone take the time to input all that and the training and so forth, for a long period back, and even five or ten years, that's a fairly daunting task for a single person, part-time office. So that was where I was heading. I don't have a problem with providing that at some point in the near past, making that a starting point and moving forward. And maybe, you know, every community may do it differently as time permits, trying to go back and push back a little bit as their allotment of labor provides them. But I'm just concerned with the amount of time. It's not a minimal amount of time for a lot of these little communities that have been around for a long time. And as well, some of the records, you know, we're talking about scanning. Some of these records I'm going to guess would be somewhat fragile because they probably haven't been stored in the best facilities. They're probably in the basement of all these places that have had flooding and everything else and heat, and probably aren't in the best condition. Even if they were scanned, may not be legible to begin with. So I applaud the legislation; I think it's good. It's great transparency. My concern with it is just simply going backwards and how far we go backwards as a requirement for those small communities that have the part-time clerk and having the available labor and time commitment to put a lot of that in the back. So as long as you're amendable to something other than forever, I think that might be a workable situation. [LB521]

SENATOR CHRISTENSEN: I guess I was never looking to go back hundreds of years. I was more looking at, you know, the ordinances that are passing now and the basic minutes and things that they're doing just so people are better informed, know what's going on. [LB521]

SENATOR SCHEER: Well, then would you entertain an amendment to put a start date of, even right now, of January 1 of this year, which only...if...once it's passed and signed and it goes into effect July, that's really only going back and picking up six, seven months. And just like Senator Price or Bloomfield noted, just saying that they're available at, you know, this phone number for previous ones? [LB521]

SENATOR CHRISTENSEN: Yeah, I'm very amenable to that. I'm just trying basically get people informed on what they're doing now. Classic example in Imperial is the fact that they've changed their nuisance law and they are requiring a bunch of people to clean up things and do things that they need to do. I don't have a problem with what they're doing, but there's a number of people that have pretty extensive jobs they just can't walk away from. And yet they're on a nuisance list and they want to get...don't know exactly what they want to do, and they would love to study at night and things that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

way. That's part of the group that's talked to me. And others just wanting to be able to read the minutes and know what the agenda is so they know on a quick glance when they need to go in, because some of them don't get the papers. You know, paper readership is down and some don't get it so they don't have the official notice, and that's just a direction they've looked at. [LB521]

SENATOR SCHEER: Okay. Thank you, Senator. Thank you, Senator Avery. [LB521]

SENATOR AVERY: Thank you. I think maybe you answered part of the question I was going to ask. I'm interested in the aspect of the bill that addresses the public meeting statutes requiring notice of meetings and the agenda of those meetings on the Web site. And that would be a requirement, right? [LB521]

SENATOR CHRISTENSEN: Yeah. [LB521]

SENATOR AVERY: All right. [LB521]

SENATOR CHRISTENSEN: If they have the Web site, then they would post... [LB521]

SENATOR AVERY: But they don't have to develop a Web site if they don't already have one? [LB521]

SENATOR CHRISTENSEN: Correct. [LB521]

SENATOR AVERY: How do they notify the public now? [LB521]

SENATOR CHRISTENSEN: Well, it's always done through the...legal notice now is given in newspapers. [LB521]

SENATOR AVERY: All right. Where are the newspaper people today, because the last time we tried to do this we almost got crucified. [LB521]

SENATOR CHRISTENSEN: Well, I have been contacted. And I've said I have no intent of changing notice. And I was very clear with them. If that comes into it, I'll kill my own bill. I'm not going down that road, that fight. I'm trying to help the public get better access to information. [LB521]

SENATOR AVERY: I still have the tracks on my back. [LB521]

SENATOR CHRISTENSEN: Yeah, I knew where it come from. But that was my intent, and I've made it very clear to them that if anybody tried to amend it that way, I'll kill my own bill. If it would pass, I'd kill my own bill because... [LB521]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

SENATOR AVERY: Okay. [LB521]

SENATOR CHRISTENSEN: ...that's not what I'm doing. I'm not going to say one thing and end up doing another. [LB521]

SENATOR AVERY: Senator Bloomfield. [LB521]

SENATOR BLOOMFIELD: I'm back again. The language says, if the public body maintains an official Web site. Our tiny little American Legion has a guy that has volunteered to set up a Web site for the American Legion. Are we suddenly going to have to put the minutes in? We use it when we're looking for Color Guard and such things. Is the American Legion a public body? [LB521]

SENATOR CHRISTENSEN: I don't know. I'm seeing heads shake no. [LB521]

SENATOR BLOOMFIELD: So am I. [LB521]

SENATOR CHRISTENSEN: But I can't answer that question by knowledge. [LB521]

SENATOR BLOOMFIELD: Okay. Thank you. We'll find out. [LB521]

SENATOR CHRISTENSEN: Okay. [LB521]

SENATOR AVERY: I don't think they are. Any other questions? I don't see any. Thank you, Senator Christensen. Proponent testimony? Welcome back. [LB521]

ALAN PETERSON: (Exhibit 1) Thank you, Senator Avery. Alan Peterson; I represent ACLU Nebraska. For a long time I did represent the news media also on issues like this. I appear to support this bill. It has a very good principle behind it. It might need some modification or some longer time deadlines available for people to comply...for towns or cities to comply. I noticed that the time now set in it is January of next year, 2014. That may be enough. I now run a one-man law office. First thing I bought was a combination copier, scanner, and fax. About \$286, something like that. I can scan anything, which means take a picture of it onto that printer and then that picture can be put--easily with the click of a button--onto my computer. And I can send that, I can put it in a different format--in other words, different print or paragraphing or whatever--and I can put it into a compendium. I could put it into a code if I were a little town with a little scanner. The technology has advanced to where, yeah, it's still going to be a burden and some time for people just to gather the dusty old ordinances and bring them in one place. Hire somebody to scan them. It's not very technical, and I'm the proof of that. I can do it. Due process is a phrase you hear all the time. And you know, what it really means is for people to get notice of what they're supposed to do--or supposed not to do--and what the penalty is if they disobey, and then an opportunity to defend themselves if they get

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

Government, Military and Veterans Affairs Committee
February 06, 2013

in trouble over that law or ordinance. For every person in a small town to know what the ordinances prohibit--whether it's weeds over 18 inches or more than three cats or what have you--if they might get punished for violating it, you'd think it ought to be easy to find out, well, what are the rules? Where are the lines? It's just due process. That's part of what we call a bill of rights. I have a letter which will say in maybe four minutes all the main points I have to tell you. But I included three examples of what's going on right now that Senator Christensen has taken a good shot at. Three different people either in trouble or trying to stay out of trouble in a small town. One of them got notice of a violation. I think it was a weed violation or something. But three of them, separate towns across our state, go into the clerk of the town or village and say, such and such an ordinance I need to look at, could I please have a copy of it; I'm just trying to stay out of trouble. And these are actual complaints to the ACLU and some of them we took a little action on. Usually a phone call takes care of them. Three answers. One of them was, well, no, you can't see the ordinances; that's not for the public citizens. Another one says, well, yeah, you can look at them; but no, you can't have a copy; you can't take one with you. The third one--and you'll see the details and facts and stuff in there--said, those are only for attorneys to look at. You're kidding. Oh, come on. Now those are extreme but, you know, and it may not all be arrogance of power because there's not much power there we're talking about. It's probably ignorance that people need to know, right? Taking a shot at letting people know what the rules are and the laws are if they've got a Web site, it wouldn't be that hard to comply with, and it would help solve this problem. It's a good start and it may need some modification, but it's a good-hearted bill and it's a good government bill. And this is the Government Committee, and I know you look for good government in here. And I congratulate Senator Christensen for working on it. He may have had an experience that led to this or friends or constituents of his, and so have we all. We all need to know what the law is so we don't break it. It's just about that simple. And if I can scan ordinances and put them into a code in my office, which frankly I've done, so could somebody in a small town. Maybe they'd need a little more time, but it's a darned good idea and I appreciate the bill being introduced. Thank you. [LB521]

SENATOR AVERY: Thank you, sir. Senator Bloomfield. [LB521]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Just a quick question. Is the ACLU a public body? [LB521]

ALAN PETERSON: No. It's a nonprofit. Very nonprofit, I should say. And the Legion, I'm just sure, is not part of government, by the way. So the public meetings and records laws would not apply to the Legion; only to governmental bodies. [LB521]

SENATOR BLOOMFIELD: What about fire departments? [LB521]

ALAN PETERSON: Closer question on the volunteer fire departments. But the ones that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

are part of a city, yes, they are. They're part of the government. The volunteers are kind of a hybrid of citizens with some government cooperation. [LB521]

SENATOR BLOOMFIELD: Okay. Thank you. [LB521]

ALAN PETERSON: Yes, sir. [LB521]

SENATOR AVERY: Anybody else? No other questions? Thank you, Mr. Peterson. [LB521]

ALAN PETERSON: Thank you, Senator. [LB521]

SENATOR AVERY: Any other proponent testimony to LB521? Any opponent testimony? Welcome, Mr. Krumland. [LB521]

GARY KRUMLAND: Senator Avery, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities and appearing in opposition to LB521. There are, at least from our records, over 180 cities and villages right now who have Web sites. A whole lot of them have their agendas, their minutes on the Web sites right now. Many of them have their municipal code, and then maybe that's what problem...by calling them ordinances, does that mean the ordinance that was adopted in its original form in 1925 or are we looking at the municipal code that is...sort of like the difference of a legislative bill versus the statute books. And for cities, laws don't take effect for 15 days after they're passed, so seven days may be a problem. The real problem with the bill, though, I think is dealing with the various sizes of cities. As you know, there are various classes--five classes of cities plus villages. Out of the 520 cities and villages, over 370 of them are villages which are population 800 or less. Several of them have Web sites right now but a lot of them were done by a group, like Nebraska Public Power District a few years ago went around and helped some of these small communities develop a Web site. And they're useful in that they have information on phone numbers and names and things like that. But there's nobody on staff--or the one or the half-time person--who works for the village to keep up the Web site. If this bill would pass, I would guess a lot of those communities would just drop their Web site because it would be too time consuming, too expensive for them to deal with it. There's discussion, oh, it's only going to cost \$200 here, several hundred dollars here; but when you only have a staff of one or even a part-time staff, that does become very significant in order to do that. So I mean, we're not opposed to getting out this information. It's just that you're not just dealing with large cities who have large staff and keep the Web sites up every day. You're dealing with all sizes of cities and villages, and so those are what our concerns would be about this bill. [LB521]

SENATOR AVERY: Sounds like an argument for consolidation. [LB521]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

GARY KRUMLAND: Well, it's kind of hard to consolidate a village when you're 20 miles away from something. [LB521]

SENATOR AVERY: Questions from the committee? Senator Bloomfield. [LB521]

SENATOR BLOOMFIELD: Thank you. Several of the towns in my district, Hubbard, Dakota City, had the Web site to advertise their Cottonwood Days in Dakota City... [LB521]

GARY KRUMLAND: Uh-huh. [LB521]

SENATOR BLOOMFIELD: ...Hoot Owl Days in Hubbard. I really have some problems with this. I guess I really don't have so much as a question as to say that I'm going to agree with you. I think we may be putting a burden on those little communities. [LB521]

GARY KRUMLAND: Uh-huh. [LB521]

SENATOR BLOOMFIELD: They can't deal with... [LB521]

GARY KRUMLAND: Well, I went on several Web sites, you know in preparation, to see what they do. And I was surprised that some of the smaller communities do put their minutes and agendas on. Some of them had ordinances but not as many. Most of them are just kind of a community notebook and if you have a problem, call here, or here's a list of the phone numbers to call the city or the village clerk. [LB521]

SENATOR BLOOMFIELD: If we were to amend this to cities of 500 or greater or 300 or greater, would your issue maybe go away? [LB521]

GARY KRUMLAND: I would have to...it...well, a village is a classification of municipality and that's 800 or less. I don't know. You'd probably still have cities who may or may not maintain a Web site if they've had to do this, you know. [LB521]

SENATOR BLOOMFIELD: Yeah. It's... [LB521]

GARY KRUMLAND: I mean, and I don't know if that's a benefit if they just drop their Web site. [LB521]

SENATOR AVERY: Any other questions? Don't see any. Thank you. [LB521]

GARY KRUMLAND: Okay. Uh-huh. [LB521]

SENATOR AVERY: Any other opponent testimony? Good afternoon. [LB521]

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

Government, Military and Veterans Affairs Committee
February 06, 2013

JACK CHELOHA: Good afternoon, Chairman Avery and members of the committee. My name is Jack Cheloha, and the first name is spelled J-a-c-k, the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. Thank you for allowing me to testify today. I want to register the city of Omaha's opposition to LB521. First and foremost, in the interest of transparency and good government, etcetera, we've worked long and hard at the city of Omaha to get into the twenty-first century and publicize and have a Web site and to do things electronically and even allow...we're moving forward even to allow people to apply for building permits, etcetera, on-line, and just to keep up with technology and make government more efficient and fast-moving to be responsive to the citizens. However, LB521, as drafted, we do have some problems with and concerns with. First of all, Omaha was incorporated as a city in 1857. So we just had our--I shouldn't say we just had--but we had our 150th anniversary celebration not too long ago, so we've been around a long time. With that, our city clerk informs me that we probably have--through the years now--over 40,000 ordinances that have been passed. We do have a Web site. We do publish our weekly city council meeting agenda on there, and any accompanying documents are seen as an attachment which can be opened up by the public. However though, you know, these are proposals. And then once they are passed and the current, you know, times we're in, we get our code out there and have that available as well. So the question is, first of all, you know, what's an ordinance versus your city code? Our clerk also informs me that we are trying to go back in time in terms of ordinances that we have passed throughout history. And so he has a staff, roughly, of eight people. And as time allows, he has them scan into--as some of the other witnesses talked about--scan into previously passed ordinances. And eventually we will get them on-line, if you will. But there's kind of a two-step process. There's (1) to scan; and then (2) to get it actually available as a electronic document on-line. So we're working to get that done. I think he says now their goal is to get back to 1945, so that's a good chunk of time, and they're working at it. And I can't tell you with specificity how far they are though. He just mentioned that year and time to me. So I wanted you to be aware of that as well. So just in summary, I just wanted to let you know there's a question of city code versus ordinance. We think the time line to be in compliance with this law as written would be problematic to have everything done by January 1, 2014, because of, you know, the sheer volume--40,000 plus. And with the history of Omaha to go back all the way back to 1857, that could be a problem as well. And then, finally, within seven days of passage is problematic for us because, as another witness pointed out, our ordinance may pass but it will not become law or part of a code until 15 days. That's the sitting time, kind of like the state has various time lines to follow. And so for those reasons, we're opposed to the bill, and I just wanted to make the record today. I'll try to answer questions. [LB521]

SENATOR AVERY: Thank you, sir. Senator Bloomfield. [LB521]

SENATOR BLOOMFIELD: Thank you, Senator Avery. The introducer of the bill has already said that he would be willing to look at amendments to not go back even as far

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2013

as 1945. If we did away with that requirement, would you be more amenable to the bill?
[LB521]

JACK CHELOHA: Yeah, absolutely. We'd be willing to work with Senator Christensen and this committee as well. And I'd be happy to go back to my clerk and find out at what date and time did we start publishing our agenda and records forward on the city Web site. And I think once I found that out, that might be a good date and time. I'm not sure how far back we could go. It may be, you know, from this day forward or it could be ten years back. I'm not sure, but I'd have to get back to you. [LB521]

SENATOR BLOOMFIELD: Okay. Thank you. [LB521]

SENATOR AVERY: Any other questions? I don't see any. Thank you. [LB521]

JACK CHELOHA: Thank you. [LB521]

SENATOR AVERY: Any other opponent testimony? Any neutral testimony? Good afternoon. [LB521]

KRISTEN GOTTSCHALK: Senator Avery, members of the committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association. And much of my testimony was handled either in questions that the committee asked or in some of the opposition testimony, but I do still feel like there's a couple of points I want to make. The actual position that my association took was in opposition to this bill but not because of the intent of the bill. So I felt my comments were more appropriately handled here in the neutral testimony. One of our biggest concerns is, what is an official Web site? Mr. Krumland identified the problem with many municipalities, villages may have had the assistance from an organization like NPPD to create a Web site to give them a Web presence. And we live in a Google world. If you want to find out something about something, you Google it, and if there's not a Web site out there it's almost as if it doesn't exist anymore. And so we want to encourage these. Even though they're not readily maintained and managed Web sites, they're still important Web sites for these small communities. And we'd hate to put something in statute that inadvertently--and didn't intend to, it's meant to bring about more information--but inadvertently created a situation where they could no longer maintain a Web site because they couldn't comply with the law. And that's a concern. In fact, many of my member systems--and we're trying very carefully to drag our members, kicking and screaming, really just into the twentieth century. And if someday we get them to the twenty-first century, I'll be really happy as well. But some of our members also have their Web sites maintained by somebody else so that they have a Web presence and so they don't have someone dedicated to making changes. So in those lights, you know, if there's a definition of "official Web site," that might clarify a lot of this problem. If you maintain and regularly

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

Government, Military and Veterans Affairs Committee
February 06, 2013

update your Web site maybe that's different than if you host your Web site with another entity. And the other issue is when it comes to providing meeting notice. It's my understanding the bill would not eliminate the current required notices, which you have time frames that you have to comply with. And if by chance a meeting notice went up late on your Web site, would you then be in violation of that? It's not clear that those two things are actually directly tied together. With that, we appreciate the efforts to make information more readily available. My members appreciate that. But the concerns that the committee has addressed and the previous testifiers addressed, I think really need to be discussed before advancing legislation. [LB521]

SENATOR AVERY: Thank you. Questions? I don't see any. [LB521]

KRISTEN GOTTSCHALK: Thank you. [LB521]

SENATOR AVERY: Thank you. Any other neutral testimony? All right. Senator Christensen. [LB521]

SENATOR CHRISTENSEN: Again, thank you for your time and the questions. I really think this is, in hearing the opposition and hearing the concerns that have been shared, we can probably amend this to some point in time even if it's first of this year or first of 2014 going forward that they've got to put new amended ordinances or city codes or however you want. I suppose city codes would probably be the better term. But I'd be more than glad to work with the committee and all those that have testified to work out the language. And again, if we want...if villages...leaving villages out--800 and under--is the choice of the committee. I don't want to see people take down their Web sites; that was never the intent. And if that's something that we feel would be beneficial there, you know, we'll just have to defend it on the floor. But I think we can do that as we'd clearly say certain people would lift them if not. I'm more than amenable to work on that. I would like to see the information be out there and would look forward to working with you on an amendment that would be satisfactory for you guys, and then try to get it moved to the floor. [LB521]

SENATOR AVERY: You would be willing to have your staff work on that amendment... [LB521]

SENATOR CHRISTENSEN: Sure. [LB521]

SENATOR AVERY: ...with legal counsel of the committee? [LB521]

SENATOR CHRISTENSEN: I would do that. [LB521]

SENATOR AVERY: (Exhibit 2) Okay. All right. Questions for him? Before we end the hearing on LB521, there is a letter here I need to read into the record from Larry Dix of

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

Government, Military and Veterans Affairs Committee
February 06, 2013

the Nebraska Association of County Officials in opposition. Thank you, Senator. [LB521]

SENATOR CHRISTENSEN: Yes, thank you. [LB521]

SENATOR AVERY: That ends the hearing on LB521 and the hearings for today. Thank you very much for your participation in today's hearings. [LB521]