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Government, Military and Veterans Affairs Committee
February 22, 2013

[LB294 LB364 LB448]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, February 22, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB294, LB364, and LB448. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; John Murante; Jim Scheer; and Norm Wallman. Senators absent: Scott Lautenbaugh.

SENATOR AVERY: Good afternoon. Welcome to the Government, Military and Veterans Affairs Committee. We will be hearing three bills today only. We were anticipating bad weather when we made up this schedule. We will hear the following bills in the order read and as posted on the agenda outside the room: LB294, LB364, and LB448. Before we start, let me introduce the members of the committee and go over a few items of procedural business. The members of the committee starting on the end down here on my right is Senator John Murante from Gretna. Next to him is Senator David Bloomfield from Hoskins. Senator Scott Lautenbaugh from Omaha will not be with us today, but next to him or would have been next to him but not next to him is Senator Scott Price from Bellevue, who is Vice Chair of the committee. And to my immediate right is Christy Abraham, the legal counsel for the committee. Senator Karpisek who sits here on my left will be here, and he is from Wilber. Next to him is Senator Norm Wallman from Cortland. Next to him is Senator Jim Scheer from Norfolk. Sherry Shaffer on the very far left there is our committee clerk, and she will be handling these forms that I will be talking about now. If you want to testify for or against any of these bills, we ask that you fill out the green form. This form is available at the entrance to the room, each entrance to the room. Please print clearly the information requested and when you arrive at the witness table, please hand this to the clerk for the permanent record. If you are interested in expressing an opinion for or against any of these bills without testimony, you can sign this form and provide the requested information, printing clearly. And these, too, are available at the entrance to the room. If you have anything that you want us to see such as a copy of your testimony or any exhibits, please provide 12 copies. If you do not have 12 copies, we have two very capable pages who will help you with that, and they are Will Rahjes from Elwood and Cicely Batie from Lexington. And you give this to the clerk and she'll make sure that they are taken care of. If you have a cell phone, and I presume that most of you do, please turn it off. Any electronic devices that make noise, we do not allow those to be on while you're in the room. We also ask you not to take photographs or videotapes, things of that sort. We will be using the light system. The light system is a five-minute light system. The green light is worth four minutes, the amber light is worth one. When you get to the amber light, you should be winding down your testimony so that when the red light comes on, you can conclude. The introducers will be allowed to make initial statements, followed by proponents, who will then be followed by opponents and neutral testifiers. Closing remarks are reserved for introducing senators only. So I think that

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concludes the introductory instructions and we will now happily welcome a former member of this committee, Senator Les Seiler, to introduce LB294. Welcome, Senator.

SENATOR SEILER: (Exhibit 1) Thank you, Mr. Chairman. My name is Les Seiler, L-e-s S-e-i-l-e-r, I'm a senator from District 33, and I bring you this bill as a work in progress because as we spoke as late as this morning, there has been some changes going to be proposed. This bill basically is a definition of campaign and what it means for public officials and public employees to present information to the public without running afoul of interfering with the campaign. We're mostly dealing with campaign definitions, and it mirrors--though they use a different language in the federal government--it mirrors 2 U.S.C. 434(f)(3), electioneering communications. And we're trying to tighten this bill up now so that employees of the public do not accidentally walk into a problem. You will hear probably testimony that two officials from an electric company did walk into a problem last year, and they got fined \$2,000 by the commission, and that's being appealed to the district court. But we're hoping that when we get done with this definition section that people will fully understand where we're at. The LB294 was completely gutted by AM313, and there will be some further changes which the witnesses will testify about as they work together trying to get this communication well done. It's really basically a definition of campaign, candidate status, ballot question, and public resources; what constitutes resources and what doesn't, and how those fit together so that we don't have any unintended consequences. I believe the witnesses will fill out this bare-bones skeleton that I just gave you and you'll have a better understanding of where we're trying to get to. It's a very narrow issue, it's not a big broad, big-based one, but it's going to be for the public employees' protection. Any questions? [LB294]

SENATOR AVERY: Thank you, Senator Seiler. You were not here, I believe, when we passed the latest version of a bill like this that defined the use of public resources for political purposes. We had to pass it over the Governor's veto, and we did pass it. A lot of work went into that bill as I recall. And I haven't had a chance to study your amendment, but apparently your amendment moves away from defining what is public resource, and instead defines what is campaigning. [LB294]

SENATOR SEILER: It kind of keeps the same language from the old bill as to public resource, but it...and what is not a public resource. But hopefully it'll be clarified so that people won't stumble into it accidentally. [LB294]

SENATOR AVERY: And this is not a bill that was prompted by someone who broke the law and now wants to see the law changed? [LB294]

SENATOR SEILER: No, it's prompted by the electrical company whose employees did break the law, and it's supported by the rest of the rural electric people. And so...but it's got far ranging...one of the issues that Frank Daley brought up was, could it apply to a

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student newspaper or could it apply to a paper put out by a school board as informational, and how we stay within the rules if there's an election or a bond issue going on. Those are what we're trying to work out, some of those definitions. Now the witnesses will testify how they're approaching it. [LB294]

SENATOR AVERY: But they...you don't have an amendment to reflect that negotiation yet? [LB294]

SENATOR SEILER: No. I just got handed some minutes on that a few seconds ago. [LB294]

SENATOR AVERY: Okay. Questions from the committee? This is a work in progress... [LB294]

SENATOR SEILER: Yes, it is a work in progress. [LB294]

SENATOR AVERY: ...and you will be consulting with the committee's counsel on this? [LB294]

SENATOR SEILER: Absolutely. [LB294]

SENATOR AVERY: Okay. I don't see any more questions. Thank you. [LB294]

SENATOR SEILER: Thank you. [LB294]

SENATOR AVERY: You going to stay around for closing? [LB294]

SENATOR SEILER: I will. [LB294]

SENATOR AVERY: Okay. All right, proponent testimony on LB294. Good afternoon. [LB294]

DAVID JARECKE: (Exhibit 2) Good afternoon, Mr. Chairman, members of the committee. Thank you for this opportunity to testify again in support of LB294, which more specifically is AM313 at this point. And being distributed to you is not only a copy of my testimony, but is...to the last page attached...that are the most recent amendments discussed between Frank Daley and myself. I am not suggesting Mr. Daley is in support of this, but he had a hand in creating those words. Mr. Chairman, I might address your question first since it seems like a logical place to start. Public resource: that definition which is included within Section 49 or Chapter 49--is not being modified, by this amendment. In fact, there's one very minor change to clarify that. Again, it is public resources that's really at the heart of this bill. Public resources cannot be used by any political subdivision, your legislative office, or any other governmental

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office as a part of any campaign effort. That theme is not modified by this proposed amendment. The intention and the sole intention of this legislation is to clarify and to provide a definition for the term "campaigning." The courts have struggled with that definition, the feds have struggled with that definition, obviously through federal cases as well, and provided a definition which is also attached in terms of electioneering communications. And so this bill attempts to utilize that federal definition, identify the term "campaign" and "campaigning," so that again, in instances such as the facts of the Northwest Rural Public Power District, that communications by a district with their constituents are not in any way confused or suggested to be about campaigning. And let me provide a simple example. If it becomes the position of someone who's running for a board, seat, or any other elective office, but as it relates to the rural electric industry that, you know, all these OSHA rules, they cost us too much money, and they're just frustrating, we shouldn't have to follow them. And that's their campaign platform. If the public power district--which it does on a very routine basis--is putting out safety information that this is, you know, stay away from the lines or here are some of the various safety guidelines. I'm sure you've heard those on the radio, they're in various public newspapers repeatedly. Under the facts in that recent case in front of the commission, that would be opposed to this candidate's platform and, therefore, campaigning. That's the kind of consequences we'd seek to avoid. We need and must...and again it's not in any way narrowly drafted by public power or just strictly for public power districts, but all government agencies. But again, when we're communicating information to that wide body as to a topic, we want to make sure that a candidate can't say, hey, this is my platform, so hands off; and then again, that could be a variety of topics. In this particular case, it happened to be relevant to wind power, economic development, and the other issues tied to that. And again, as that particular public power district disseminated information without identifying the candidate but wanted to provide information clarity that these are the facts, in that particular instance the commission found that to be campaigning. Again, that's on appeal; ultimately a court will decide. But I want to be perfectly clear that this legislation is not intended to impact that case. It won't; it has no retroactive ability. But this amendment is solely defined to provide a bright-line rule not only as to members of the Legislature and your staff and public power districts but again, I think frankly, to the commission itself. So the commission and ultimately the courts will know what is campaigning, what isn't campaigning; and accordingly, this statute will define that. The latest little insertions, and I apologize again that it may look sloppy, those insertions are intended to avoid unintended consequences. For example, public power district sends out a newsletter and here's a picture of its chairman at a ribbon-cutting ceremony. That would be...and if he happens to be running for office, that would be a candidate and that would be a communication. We want to make sure that type of communication isn't prohibited, and that's why we said it must be offering support or opposition for the candidate. The red light is on. I would certainly be open to any questions. [LB294]

SENATOR AVERY: Thank you. Questions from the committee? Senator Murante.

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[LB294]

SENATOR MURANTE: So what activity in your...regardless of where we land on the language, what activity do you want...what sorts of activities do you want public employees to be able to participate in and what do you want them to be prohibited from doing? [LB294]

DAVID JARECKE: Ultimately, what Chapter 49 addresses, Senator, is the expenditure of public funds. So, of course, that public employee can privately do whatever they wish. But if they're going to utilize public funds to support or oppose any candidate or any ballot issue, the bright-line rule is, they may not. [LB294]

SENATOR MURANTE: Okay. [LB294]

DAVID JARECKE: What this statute clarifies is if that public employee is communicating or addressing a topic--and let's use wind energy as the topic--and providing factual information as to wind energy, again whatever side of the issue you might be on there, that because that's a candidate's platform, that communication is not campaigning. Again, it can't oppose or support the candidate, but I want to make sure he can disseminate information. [LB294]

SENATOR MURANTE: With public dollars? [LB294]

DAVID JARECKE: With public dollars. [LB294]

SENATOR MURANTE: Okay. [LB294]

DAVID JARECKE: Again, and I'm going to provide one other example, if I may. The gun topic is going to an issue before the schools. There will be candidates on either side of that issue. If a superintendent put out information these are the...if we wanted to have secure entrances at every entrance to the school or armed guards, this is what it would cost. Just information, not support or opposition. I could see the candidate saying you did that to oppose my candidacy. [LB294]

SENATOR MURANTE: And is it your intention to allow the superintendent to be able to list those facts? [LB294]

DAVID JARECKE: Yes, that's exactly what this definition is intended to accomplish. [LB294]

SENATOR PRICE: Thank you, Senator Murante. Are there any other questions from the committee? Seeing none, thank you for your testimony, sir. [LB294]

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DAVID JARECKE: Thank you, Senator. [LB294]

SENATOR PRICE: We will move on with proponent testimony, please. Good afternoon. [LB294]

TIM TEXEL: Hello. Mr. Vice Chairman, members of the committee, my name is Tim Texel, first name is T-i-m, last name is T-e-x-e-l, and I am the executive director and general counsel for the Nebraska Power Review Board. I need to clarify first that I'm here in my own personal capacity. I am not representing the board or any board member's position on this. The board, as an agency, is officially neutral so I'm here on my own personal views on this topic as a public official. I am familiar with the basic background facts that led...my understanding has led to the introduction of LB294, and I've read the decision that the Accountability and Disclosure Commission had. And that decision...the background facts and the appeal are obviously not what I'm here to talk about at all. But the impact of the commission's decision in this instance on case 10-15, 10-16. I wanted to testify about my concerns regarding the impact I believe the decision might possibly have if not addressed through LB294 or some other means. I have no doubt the commission's decision was based on the particular facts in that instance, and I strongly suspect it involved some personality conflicts on other issues. But I think it has broader impacts on people like me. And its decision was explained already about what happened in that case. In that instance, I believe the district's employees purchased radio ads, so it was very clear that public resources were being expended, and as I said, the background facts aren't what I'm here to talk about. I believe that the commission's decision could have a chilling effect on public statements made by any public official aware of that ruling. I'm concerned the commission's decision could be read as standing for the proposition that any public official that makes a statement that contradicts a statement made by a candidate for any public office is, therefore, engaged in campaigning and thereby subjects themselves to civil penalties. That concerns me as a public official. In this particular situation if I made a statement about wind power or about electric rates in my official capacity and I was at a conference or seminar and I was on state time and I had reimbursement for the mileage, am I there for campaigning if I make a statement that contradicts, knowingly or unknowingly, what somebody said as a candidate for office on wind power or electric rates. And I don't want to be in that situation. I certainly don't want to and shouldn't be advocating for or against any particular candidate, any office, any ballot issue. I would never do that and use public resources, but I'm worried the breadth of this decision, as I read it, could catch somebody like me or a board member in that, inadvertently, by making a contradictory statement. And that is the concern that I have. And I'm concerned that out of prudence then, me or my board members or people in my position might want to not make statements. At this point I'm not sure when in the year wouldn't have a candidate announced for some office out there, so I don't know if there's any season that I would have to be careful of. I think, in general, I'd have to be careful of statements made all year, and that's one of my concerns about this. As I said, I would like to clarify that I

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absolutely agree that public officials should not be expending public funds, public resources, or advocate for or against any particular candidate. As I said, I'm worried more about the inadvertent effect of catching somebody who makes a statement that either knowingly or unknowingly contradicts what a candidate for some office says. And for an official like me that has statewide jurisdiction, that's a concern because there's a lot of candidates for a lot of public offices out there that make a lot of statements. And wind power and electric rates are some of them that I could be involved in, in that specific example. I think this was mentioned--it's a moving target. I have not seen what was brought up today, as Senator Seiler mentioned. I think the AM313 addresses my concerns. I'd have to see what the changes were today to know about them, but I mostly wanted my testimony to convey I think it's legitimate concerns based on the Accountability and Disclosure Commission's decisions that this does have an impact potentially on public officials like me. And that would conclude my testimony. Thank you. [LB294]

SENATOR PRICE: Thank you, Mr. Texel. Are there any questions from the committee? Seeing none, thank you for your testimony today. [LB294]

TIM TEXEL: Thank you. [LB294]

SENATOR PRICE: We will move on to the next proponent, please. Welcome. [LB294]

ELAINE MENZEL: Thank you. Vice Chair Price and members of the Government and Military Veterans...the committee. I apologize...one of the longer names of the committees. I don't intend to take the full five minutes that I'm allotted, but I just essentially state that my name is Elaine Menzel, it's M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials, and I just want to record our support in favor of LB294. I have seen the referenced AM313; we don't have concerns at this point on that one. I've not seen the subsequent provisions but I'm certainly willing to work with...we had been strongly involved in the past on the public resources language and would continue to hold an interest in this, so any questions? I would be glad to try to answer them. [LB294]

SENATOR PRICE: Thank you, ma'am. Are there any questions? Seeing none, I'm going to turn the committee back over to Chairman Avery for further proponent testimony. [LB294]

SENATOR AVERY: Thank you. Additional proponent testimony? We're still on LB294. Okay. We'll move to opponent testimony. Welcome, sir. [LB294]

FRANK DALEY: Thank you very much, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y, I serve as the executive director of the Nebraska Accountability and

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Disclosure Commission, and I'm here today to express the commission's opposition to LB294. And, by the way, I have seen AM313 and so I'm aware of that and I'm including that in my testimony as well. In my view, the bill and the amendment that come before you are introduced with the best of motives, the highest of motives. Current law prohibits public officials and public employees from using public resources, funds, or personnel for the purpose of supporting or opposing the nomination or election of candidates or the qualification or passage of ballot questions. I think the intent of this bill and the amendment is to ensure that public officials and public employees know what sort of conduct would be prohibited by this provision of law. The approach that AM313 takes is that it attempts to define campaigning. And so if your conduct falls within the definition of campaigning, it's prohibited by the statute. And if it falls outside of the definition of campaigning, it's not. The basic problem is that human ingenuity is such that the way people campaign changes on a regular basis. If you...as soon as you form a definition of campaigning, there's going to be certain types of activity which fall outside of that definition which we would all understand as campaigning. The other problem is that it could include activity which we would not normally think of as campaigning into the definition, and I'll give you two examples. One is, I think, is likely addressed by the latest proposal which is not currently part of AM313. And that is, AM313 says that you can't in printed material or broadcast or things like that use public resources that make a reference to a ballot question. Yet, on the other hand, a school district might very well send out a regular newsletter and in one edition it would say, "Reminder to patrons, the school bond issue is up for election on such and such a date. Express your opinion on this issue by voting." I don't think most of us would consider that to be campaigning for or against a ballot question; it's just a notification of the ballot question is before the voters. But under AM313, that would be considered campaigning; it fits the definition. The other factor is, sometimes the purpose of the actor matters. Let me give you an example there. If I'm a deputy sheriff and it's an election year and the sheriff has said in his next term he's going to appoint me the chief deputy, and I'm on duty in uniform and driving my patrol car and I see the sign, the campaign sign for my boss's opponent, if I get out of the car, pull the sign out of the ground, and throw that in the trunk of the patrol car, some of us may consider that to be opposing the nomination or election of a candidate because we're trying to help our boss get elected and oppose the opponent in getting elected. Under AM313, that's not campaigning, but we would all see that as a misuse of public resources in that, in uniform, in a patrol car, on duty, I'm doing something that's campaign related. But what if the reason I'm pulling out the sign is not to oppose the election of my boss's opponent? What if I'm just pulling out the sign because it's on the state right-of-way and, therefore, it's illegally placed? So the point is, sometimes the purpose for which you do things makes it campaigning or not campaigning. Let me say that the amendments help. I think that we've been moving closer and closer to something that's workable. However, at the current stage, based upon what's before you, the commission is still opposing LB294. Finally, I do want to thank Senator Seiler and his staff for their courtesy during this process. They've been very good about talking with me. I want to thank Dave Jarecke for also chatting with me

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and listening to the concerns of the commission and so forth. And I appreciate the opportunity to appear before you today. [LB294]

SENATOR AVERY: Thank you, Mr. Daley. Questions from the committee? You helped us--I forget what year it was--a couple of years ago, correct the bill on use of public resources by public officials, and you remember the arduous task that was. [LB294]

FRANK DALEY: I do remember. [LB294]

SENATOR AVERY: I mean, we went for many, many months talking to many, many different people. Do you see this proposed legislation in any way undermining the law that now exists on the books? [LB294]

FRANK DALEY: In its current form and with the specific amendment, yes, because again I think that, number one, under the amendment that's before you--AM313--it would prohibit some things which I think folks would not consider campaigning and don't support or oppose a ballot question. There can be some tweaks to that, that could help, but I think that's probably the latest version that you have before you. The other problem is that it deals strictly with communications and the definition of campaigning, and there might be some other types of actions, such as our county sheriff situation, which would not be included but which we would see as campaign activity. So it could. But I don't think that's the intent. I think that the intent is a very laudable intent. [LB294]

SENATOR AVERY: Well, let me ask you a related question. If we were to work with Senator Seiler on meeting some of the issues you've raised, would it still be a bill that would compete with and perhaps undermine portions of existing law? [LB294]

FRANK DALEY: I think there's some possibilities for accomplishing things here. [LB294]

SENATOR AVERY: Sounds like a lawyer. [LB294]

FRANK DALEY: Thanks. [LB294]

SENATOR AVERY: No questions from the committee? All right. Thank you, Mr. Daley. [LB294]

FRANK DALEY: Thank you very much. [LB294]

SENATOR AVERY: Any other opponent testimony? We're on LB294. All right, any neutral testimony? Senator Seiler do you wish to close? [LB294]

SENATOR SEILER: Thank you, Mr. Chairman, members of the committee. I will assure you, we will be working with Frank to get this bill in as good a shape as we possibly can

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to compromise that. I was a little concerned there that he has some inside information when he was talking about people picking up signs, because one morning I went to Silver Lake to teach government and saw all my signs along Highway 6, and three hours later I came back by there and there wasn't a single sign there. And you could see the tire tracks that somebody had driven a pickup right down along there and picked every one of them up. I thought he was going to tell me who it was. Thank you very much. And again, if you have any questions I'll be...and if something comes up and you want to give me a call, give me a call. But we will be working with the commission and getting this language straight. [LB294]

SENATOR AVERY: All right. Thank you. [LB294]

SENATOR SEILER: Thank you. [LB294]

SENATOR AVERY: Thank you. That ends the hearing on LB294. We'll now move to the next item on the agenda, LB364, which is mine. [LB364]

SENATOR PRICE: Senator Avery. [LB364]

SENATOR AVERY: Thank you, Senator Price. Pardon me for having all this paper with me, but I left an Executive Session and didn't have time to sort it out. Okay. My name is Bill Avery, B-i-l-l A-v-e-r-y, I represent District 28 here in Lincoln. I am bringing to you a bill that was requested of me by the city of Lincoln. It allows a government body to prohibit contracts over a specific dollar amount in which a public official or a public employee of such body may have an interest. Currently, public officials and employees may enter into contracts with their governing body if the contract is valued at less than \$2,000. If the contract is awarded through an open and public process, a public employee or official may have a contract valued over \$2,000. This bill would allow a governing body to set a stricter standard for the body's employees or officials when entering into contracts with the body. The Nebraska Political Accountability and Disclosure Act treats contracts with elected officials differently than contracts with public employees or officials. Under the current laws in the state of Nebraska, a governing body is allowed to prohibit contracts over a specific dollar amount when an elected official of the governing body may have an interest. This bill adds similar language when dealing with public employees and officials. That is, the governing body can determine the dollar amount it thinks is appropriate for contracts between its officials, its employees, and the governing body. It makes sense, I think, to allow local political subdivisions to be able to decide how they want to handle contracts not only their elected officials but also their public employees. And that's what this would do and I'd be happy to answer any questions. [LB364]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions from the committee? I would ask one question, Senator Avery, in that when talking and thinking

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about public purpose, if we set...if a political subdivision sets a threshold and the best value happens to belong...the best-value bid belongs to someone and it exceeds that, is the public being served? I mean, if I have to choose a substandard or one that is less than optimal because I've isolated that individual's business? [LB364]

SENATOR AVERY: And that's a question that comes up often, and a related question is, well, is this really discriminatory against private enterprise, private business? The public interest, in my opinion, is better served by making sure that there is not even the appearance of a conflict of interest. Where, for example, let's say you have a person sitting on the county commission but one who also has a construction firm. Maybe that construction firm submits the lowest bid and the law would allow that contract to be let with that person, but if the...if you have...if that were allowed, then there could come time when perhaps there was nonperformance on that contract, you've got a person sitting on the county commission that has the authority and certainly has the ability to persuade people on the commission in a way that might go against the public interest in order to promote the private interests of that individual sitting on that county commission. That's the kind of thing that is possible. And I'm not saying it would happen in Lincoln or anywhere else, but it can. You want to avoid situations where that might develop, and you want to avoid the appearance of favoritism, say, to a public official who might also have a financial interest in the business of political entity. [LB364]

SENATOR PRICE: Okay, thank you very much for clarifying, Senator Avery. Senator Wallman. [LB364]

SENATOR WALLMAN: Thank you, Vice Chairman. Senator Avery, what brought this figure \$2,000? [LB364]

SENATOR AVERY: That's already in current law, \$2,000, and we didn't see any need to change that but thought that it would be appropriate to allow public entities to include public employees under this law. [LB364]

SENATOR WALLMAN: Thank you. [LB364]

SENATOR AVERY: And they're not now covered. [LB364]

SENATOR PRICE: Thank you, Senator Wallman. Any other questions? Seeing none, we will move to the proponent testimony. [LB364]

SENATOR AVERY: Do you mind if I leave this here since I'm going to use that in my next testimony? [LB364]

SENATOR PRICE: I do not mind at all. Would you mind to push it up to the side? Welcome, sir. [LB364]

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JEFF KIRKPATRICK: Thank you, Chairman Price. Members of the committee, my name is Jeff Kirkpatrick, J-e-f K-i-r-k-p-a-t-r-i-c-k. I am an assistant city attorney for the city of Lincoln as well as being a registered lobbyist for the city of Lincoln. I'd like to begin by thanking Senator Avery for bringing this bill on behalf of the city of Lincoln. What prompted this particular piece of legislation...and it is timely because on Monday the Lincoln City Council will be considering putting before the people of Lincoln a change in our city charter that would allow the city council to place a limitation on both elected officials and also employees as to whether they can contract with the city of Lincoln or not and possibly put prohibitions on that. As we were preparing for that proposed charter amendment, our reading of the state law was that we could limit elected officials as far as a conflict of interest. However, as we looked at the state law as it had to do with employees, the Accountability and Disclosure Act lays out guidelines and says any employee can accept a contract or bid for a contract of less than \$2,000 and for contracts above \$2,000. As long as it's an open and public process, those city employees can do so. And our reading of that state law is we can make city ordinances in areas that are not covered by state law. But in areas that are covered by state law, for example this had to do with city employees, we could not raise that standard higher even if we wanted to. So we asked Senator Avery to bring this piece of legislation forward to allow the city of Lincoln and other municipalities, if they chose to, to have a higher standard as far as this conflict of interest, only as it applies to employees. Because there's a different provision as to elected officials, we would have that freedom to have a higher standard for elected officials. And I want to be clear that we don't have a current controversy with any of our employees and we haven't in the recent past. And it would be in the interest of certainly Mayor Beutler not to apply this necessarily to all employees, but specifically he wanted to look at directors. And the reason why he wanted to look at conflict of interest for directors is because of the influence and authority they have within city government. And so you might have a fire chief or the director of public works who's someone with authority over a lot of employees that could have a side business get a bid with the city and then because of their position it would be perceived that that contract was not being enforced the same way it would be with another bidder. And because of that position of authority, Mayor Beutler felt like we should have guidelines that would say because of your authority, because of your position of influence, you should not have the ability to contract with the city of Lincoln. That's his goal, and as we looked at the state statutes, we realized we could not, in our mind, achieve that goal without a change in the state statutes. And so with that, I would take any questions. [LB364]

SENATOR PRICE: Well, thank you very much. Are there any questions from the committee? Well, I would ask a question, sir. In looking at it, would this essentially bar that same business entity from doing business with other political subdivisions, or only the one in which they serve as a director? [LB364]

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JEFF KIRKPATRICK: Only the one that they served as a director or as an employee. So if you had a director that had a side business and had written some software, for example, and worked for the city of Lincoln, they could sell it to the city of Omaha, and that would not be a conflict at all because they have no influence over the city government in Omaha. And likewise, we understand that it's not a one size fits all situation. We feel that the city of Lincoln is large enough that we could say we don't want a conflict of interest from our directors and that we would be in a position not to suffer. We have enough competition for city services that that wouldn't be a problem. But we also recognize that if you're in the village of Long Pine, for example, that the best electrician in the city of Long Pine might also work for the city and if they didn't feel like they needed to have that conflict of interest standard, that the state would not need to impose that on them, that they could make their own decision. Just like the city of Lincoln, we expect our voters to make that decision as to where that bar should be. [LB364]

SENATOR PRICE: Thank you very much. Seeing no further questions, thank you for your testimony today. [LB364]

JEFF KIRKPATRICK: Thank you, Chair. Thank you, committee. [LB364]

SENATOR PRICE: We will move to the next proponent testifier. Welcome, Mr. Gould. [LB364]

JACK GOULD: Thank you. Senator Price, members of the committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d, and I'm here representing Common Cause Nebraska. I think that the bill...there are three things that I think we would just want to emphasize, and one is the fact that the bill provides some level of uniformity across the state that's a standard. I think also the goal of this bill is to deal with the question of conflicts of interest, which is something that happens in small towns, big cities, everywhere, and it better defines what a conflict of interest is. And I think one of the best parts of the bill is that it has that level of flexibility in it so that the government entities can set the standard, whatever the contract amount that they choose to be the threshold, they can do that. And it doesn't mean that what fits Lincoln is going to have to fit Valparaiso. So I...with that, I think I can take any questions. [LB364]

SENATOR PRICE: Thank you very much, Mr. Gould. Are there any questions? Seeing none, thank you for your testimony. [LB364]

JACK GOULD: Thank you. [LB364]

SENATOR PRICE: Are there any further proponents? Good afternoon, Mr. Krumland. [LB364]

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GARY KRUMLAND: 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 in support of the bill. As you've heard, this clarifies the law on conflict of interest and makes it very clear that the authority that local governments have, are ready to prohibit local elected officials from having contracts with the entity, also applies to public employees. We do think it's important that it's a local decision to do that. It makes it very clear that they can create a stricter standard than is in the law. And as has been mentioned, in these situations one size does not fit all, but it lets the local elected officials make that decision. So we do support the bill. [LB364]

SENATOR PRICE: Thank you very much. Any questions from the committee? Seeing none, thank you for your time. Any further proponents? Welcome back, Mr. Daley. [LB364]

FRANK DALEY: Thank you, Vice Chairman Price and members of the committee. My name is Frank Daley, D-a-l-e-y, serving as the executive director of the Nebraska Accountability and Disclosure Commission. The commission supports LB364. And maybe by way of explanation, currently there are two provisions in the Accountability and Disclosure Act which deal with an interest in a contract. One I call the specific statute because it deals with specific elected officials of political subdivisions; it lists the categories of people that are covered. The other one I call the general provision, and it applies to all other public officials and public employees. The specific provision essentially says that these folks that are covered can't have an interest in a contract with a governing body unless they jump through certain hoops. And those hoops are: must be an open and public process, there must be disclosure of their interest, they can't vote on the matter of granting the contract, they can't vote on the matter of making any payment under the contract. Within the statutes, there is a corresponding provision that says anyone subject to the specific statute, the governing body has the authority to regulate whether or not they even may have an interest. So in other words, the governing body can say those folks in the specific statute, you can't have an interest of more than \$1,000 or you can't have an interest in a contract of more than \$100 or, presumably, you can't have an interest in a contract of more than \$0, meaning no interest. So that's pretty well regulated. What I see LB364 doing is that it makes a provision which is almost precisely the same which is applicable to other categories of public officials in the general statute. So it's clarifying in a sense and it matches pretty much what's in Section 49-14,103.05, which applies to the specific folks. So that's kind of what the provision does. Senator Price, you asked the question about the public interest and how that works if the best bid or the lowest bid is from the public official or public employee. And let me just express the thought that probably the public interest is best served if the transaction is truly an arm's length transaction. That is, the government folks are truly watching out for government and the person who is contracting with government is completely looking out for his own business, and so there's not a mix of interests in there, because I think that leads maybe to a better

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result. In many states, there's an absolute prohibition against a public official or public employee having an interest in a contract with the governing body that they serve. However, in Nebraska where so much of the state is rural, the sources of goods and services are often kind of limited, and there's a desire to keep the money at home. And so that's why there's some exceptions built in that public officials can have an interest in a contract because, again, the electrician in Long Pine example is pretty good. Maybe the only source of goods or services that's local, it happens to be that someone serves on the city council or the village board or the school board. And if we don't buy from that person, we go 100 miles to the next source of those goods or services. So Nebraska law generally takes the philosophy that you can have an interest as long as you jump through certain hoops that tend to put the matter on top of the table, and very public, and build in some safeguards. Thanks for the opportunity to testify today. [LB364]

SENATOR PRICE: Thank you, Mr. Daley. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB364]

FRANK DALEY: Thank you very much. [LB364]

SENATOR PRICE: (Exhibit 1) Are there any further proponents for the bill? Seeing none, I'd like to read into the record a letter from the League of Women Voters of Lincoln/Lancaster County that is in support of LB364. And with that, we'll now move to opposition. Is there any opposition to the bill? Seeing none, would anybody like to testify in a neutral capacity for the bill? Seeing none, Senator Avery waives closing on the bill. And we will move...that will close the hearing on LB364. We will now move to LB448, Senator Avery. [LB364]

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 LB448. I know you've all been waiting for this one. This bill is designed to address a long-existing practice of lobbyist fund-raising for senators and legislative candidates when the Legislature is in session, when the Legislature is, in fact, conducting business on issues that directly affect the very same people who are writing the checks. There's a very close connection there. Last year, at least two dozen fund-raisers were hosted during the session in lobbyist-only breakfasts and lunches where thousands of dollars were collected. This activity occurred at the time when we were doing business on matters that mattered to those contributors. This activity, I think, presents an image that is corrosive to the Legislature, that it undermines public trust and confidence in what we do and how we do it. Let me be clear, I am not accusing anyone of corruption or illegal activity. Wrongdoing is not really the issue. The essential issue is that this practice creates the public impression that we are too cozy with lobbyists, that we serve them and their clients' interests instead of the public interest. This bill, by the way, does not prohibit contributions from lobbyists and principals when the Legislature is not in session. Also, it does not apply to a gift if it is not reportable as a contribution as

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provided in current law. This means that things like food and beverages for immediate consumption and transportation within the state are not included in this prohibition. Currently, over half the states...at the last count I had, it was 29 states have some sort of prohibition on contributions to legislators during the legislative session. In some states the ban applies only to contributions by lobbyists, principals, and political committees. In fact, I...there's an oversight in the green copy. We do not have, in the green copy, language to include political action committees. And I think that that would be an amendment that I would like to see added to the bill, because I had one lobbyist say to me very gleefully: Well, it won't bother me; I'll just use my PAC to make the contributions during the session. One state actually bars lobbyists' contributions at any time; it doesn't matter whether the Legislature is in session or not. I'm not trying to make it impossible for candidates and office holders to raise money for legitimate purposes, not at all. What I'm trying to do is to put a little distance between lobbyists and senators when we're in session and doing business that matters to the very people they represent. And I think that's something that the people of the state expect. Again, this bill only bans contributions from lobbyists and principals while the Legislature is in session; it does not ban individual contributions from non-lobbyists or non-principals. So with that, I would be happy to answer any questions. [LB448]

SENATOR PRICE: Thank you very much, Senator Avery. Are there questions from the committee? Senator Murante. [LB448]

SENATOR MURANTE: Senator Avery, I've got a couple questions for you. First, I at least understand the logic behind not permitting members of the Legislature to have these sorts of events and contributions. What I don't understand is the logic behind people who are not members of the Legislature being prohibited. [LB448]

SENATOR AVERY: That's a good question. [LB448]

SENATOR MURANTE: What possible influence could a lobbyist have over a person? [LB448]

SENATOR AVERY: When the news story came out the other day on this, one of the first questions I got from a sitting member of the Legislature was: What about my opponent? And I said, your opponent can't raise money either. And that, I think, is important. If you are a candidate for the Legislature, you are potentially going to be in the Legislature. So there are two reasons, then, for including candidates. One, you can be a contender for the senate (sic) and you can be elected, but you could be heavily influenced during the session while you're a candidate; you may not be here yet, but you can be heavily influenced by the lobby. And the other reason is to not put incumbents at a disadvantage; where you are an incumbent, you are barred from raising funds from lobbyists during the session, but your opponent is out there raising money hand over fist from those individuals and you're just sitting there with your hands

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tied. I think this is a fairness issue. [LB448]

SENATOR MURANTE: So then is it your suggestion that candidates for the Legislature are more influenced by contributions from lobbyists when the Legislature, of which they're not even a member at that point, is in session, versus when they're not in session? Because you're not looking to ban it entirely. [LB448]

SENATOR AVERY: No, I'm not thinking...I don't really think the candidate is necessarily more susceptible to influence, but the lobbyist might be more motivated... [LB448]

SENATOR MURANTE: Okay. [LB448]

SENATOR AVERY: ...thinking that "I'm going to get my hooks in now while this person is a candidate because I think this person has got a good chance to win; and I don't want to be restricted when the Legislature is in session and all the discussion is about the current bills and one of those happens to be my client's bill.. [LB448]

SENATOR MURANTE: Okay. [LB448]

SENATOR AVERY: ...you know, I want to talk to that person about this bill and I want to be able to deliver a check too." [LB448]

SENATOR MURANTE: And then with respect to the issue of public trust, at the moment we have fairly restrictive laws on what we have to report, in terms of candidates and members of the Legislature, in contributions that we receive. Voters can observe how we run our campaigns and where our money comes from, and they can make a judgment and they can vote for us or against us. Why isn't that sufficient to satisfying the public trust? We give them the knowledge; they make a decision; it's a free country. Why isn't that good enough? [LB448]

SENATOR AVERY: I'm glad to hear you support LB79. (Laugh) [LB448]

SENATOR MURANTE: We already have restrictive laws...(laughter). [LB448]

SENATOR AVERY: Actually, there are...a lot of what you say is true, you know, we have disclosure, and disclosure goes a long way toward creating public confidence. I believe, though, that a significant offset to that public-confidence-building activity of reporting is the ability of candidates and senators right now to raise money during the session. Most states, 29, have viewed this as something that either is a real problem or at least it presents the image that somehow you're not doing this right. And I think that any time we can pass laws that inspire confidence or improve public trust, that we should do it, because it's hard enough already for us to convince the public that we are doing things right, that this institution conducts itself in the most proper manner, and that

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what we do is most appropriate. That creates not only public trust but support for what we do; people are more likely to accept the outcomes of our legislation. And that creates legitimacy in the institution in how the public views it. The public views this Legislature as the most appropriate way of making laws, and if we mess that up, then that trust is undermined. [LB448]

SENATOR MURANTE: I'll be having a conversation with you after this public hearing about how to apply those principles to our learning community law, but... [LB448]

SENATOR AVERY: Yeah. (Laugh) [LB448]

SENATOR MURANTE: ...we'll save that for later. [LB448]

SENATOR PRICE: Thank you very much for saving us, Senator Murante. (Laughter) [LB448]

SENATOR AVERY: I knew I was going to get something on that. [LB448]

SENATOR PRICE: Are there any further questions from the committee? Seeing none, thank you, Senator Avery. And we will move to proponent testimony. Welcome back, Mr. Gould. [LB448]

JACK GOULD: Thank you. Senator Price, members of the committee, my name is Jack Gould; that's J-a-c-k G-o-u-l-d. And seeing Walt Radcliffe in the audience back there, I am a little nervous, but I will go on with my testimony. First of all, you know, I think you have to take a good look at the size of the lobbying force here in Nebraska. I mean, our records show that about \$14 million is spent yearly on trying to influence government here in Nebraska. And I think the National Institute on Money in State Politics has reported that in 2012 approximately \$3.3 million in campaign contributions went to 31 candidates for the Legislature. So, I mean, we're talking about considerable amounts of money here. My greatest concern is the fact that when we're in session there are a lot of cases where these fund-raisers tend to be very invisible. I mean, we tracked last year, I think, 24 in-session fund-raisers. In each case, again, an estimate of about \$7,000 is raised at a fund-raiser. And you guys would know better than I do if that's accurate, but that's what we estimate. The problem is that most of that money tends to show up as cash. In other words, only contributions over \$250 are going to show up on the normal records that you file. As a result, \$100 at the door is the standard charge for the lobbyists who are invited. And senators, of course, are invited with a complimentary pass. I think the fact that that takes place makes it a closed meeting. I mean, the average citizen is not going; I haven't been invited yet. We really don't know how many checks change hands. We know it's \$100 at the door, but we believe there's very likely other checks being passed along. So it's a concern about a closed meeting; it's also a concern about invisible money. And when we try to track campaign contributions as a

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whole, it comes back to LB79 again, this disclosure question. As long as the disclosure limit is at \$250, it's extremely difficult to tell how much money is going because the fund-raisers usually are reported in the form of cash. Now, legally, the checks from corporations or from lobbyists, if they're under \$250, should be recorded, and the cumulative figures should be reported. But it's hard to tell that. And from what we can tell, unless we get better recordkeeping, it would appear that most of that money just simply shows up as cash. And if we're talking \$7,000 with 24 breakfast fund-raisers, we're looking at considerable money. We have 28 states now that prohibit in-session fund-raising. And I think that Nebraska is a state that should look into this. I mean, that is the trend: more and more states are looking at this. And the reason they're looking at it is because here we are sitting at the Capitol: we have the people who are going to be making the laws, we have lobbyists who are wanting to influence those laws, and we're having breakfasts and lunches taking place within an hour before the senators are going onto the floor to vote or to debate. And this is giving closed access to the lobby to get to the senators and talk about the issues. And this is not necessarily corruption, but what it is, is a question mark in the eyes of the public. Why should we allow this? It seems like we should be completely open with where our money comes from. And at the same time we should have complete access by the public if there's money changing hands. So with that, I'll be glad to take any questions. And I'm pleased that you've allowed me to come and speak. [LB448]

SENATOR PRICE: Well, thank you very much, Mr. Gould. Are there questions from the...? Senator Bloomfield. [LB448]

SENATOR BLOOMFIELD: Thank you. At these fund-raisers that we're picking on right now, we have both sides of the lobbies there most of the time. You know, they're each going to, maybe, drop the \$100 check in the kitty. But, you know, you're not being influenced by one lobbyist over the other. If they both drop \$100 in there and you talk to both of them at the same time, you get information that we don't have easy access to. Is there a...are we, by eliminating this, depriving the public of some information that we could have? [LB448]

JACK GOULD: Well, you know, in our view, I think what's going on is that the lobby is buying access that the public doesn't have. And I've had cases where this... [LB448]

SENATOR BLOOMFIELD: The public can come in and talk to me for... [LB448]

JACK GOULD: Well, they can't come to that...they can't come...they... [LB448]

SENATOR BLOOMFIELD: No, but they can come to my office anytime they want. [LB448]

JACK GOULD: Well, that's exactly right. I mean, they could come to your office. I mean,

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I've had cases where I've been in the office with senators and I have had lobbyists come in the door at lunchtime, and I've had an appointment. And the senator has said to me, "Sorry, Mr. Gould, I have a lunch engagement." And they leave. And I know that we can't...our organization can't take you to lunch, and the public shouldn't be expected to take you to lunch. But at the same time, the lobby has access to that ability, and they use it. And the in-session fund-raisers are an example of how they use that access. Now, if the public was at that same meeting where the lobbyists are talking to you and had the same access, there might not be an argument on my part; but this is a closed meeting. The invitations are printed by a lobby; the letters asking to reserve the dates are sent to the Clerk of the Legislature; they're placed on the calendar, with a senator's name on it. This is, you know, very much a structured institution here in Nebraska. And it's one that, I think, you need to pay attention to. [LB448]

SENATOR BLOOMFIELD: Okay, thank you. [LB448]

SENATOR PRICE: Thank you, Senator Bloomfield. Are there any other questions from the committee? Seeing none, thank you for your testimony today. [LB448]

JACK GOULD: Thank you. [LB448]

SENATOR PRICE: (Exhibit 1) Are there any further proponents for the bill? I'd like to read into the record something rather incredible, but Americans for Prosperity has a letter of support for LB448. Let the record reflect that. With that...and with that, we will move on to... [LB448]

SENATOR MURANTE: Common Cause and Americans for Prosperity. [LB448]

SENATOR PRICE: ...opposition testimony. Would anybody like to oppose...in opposition to LB448? Seeing none, would anybody like to testify in the neutral for LB448? Seeing none, Senator Avery, for our closing. [LB448]

SENATOR AVERY: Just for the record, that's not the first time that Americans for Prosperity has endorsed one of my bills, and I was just trying to think which one was it. It was a lobbying bill; it dealt with the...putting lobbying fees on the "needs" category for school funding: so you're using taxpayer money to help encourage the spending on lobbying fees. Well, that is not what we're talking about here now. This bill is not directed at anybody, any individual, certainly not. It's not directed at any single lobbyist. I think it tries to address a practice of long standing in our state that probably hasn't been looked at carefully enough with an eye toward asking the question, "Is this good for the public process? Is this contributing to building public trust for this institution? Is this what we ought to be doing?" A lot of other states have decided that it is not something they ought to be doing, and they have stopped it. A lot of states have gone even further than what we are proposing here. This is not a drastic action. It's not saying you can't take

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any more money from special interests. It's just saying, when we're doing the business of the state, when we're trying to develop good public policy, let's not give the lobby another advantage, let's not create the impression that they have access to us in ways that others don't, and let's not put ourselves in a situation where we're being influenced by the contributions. I have always believed that campaign contributions in the amounts that we're talking about in these fund-raisers is really influence money. And it ought to be seen as influence money because it has influence as its purpose. And I can tell you that the givers expect something in return. When I participated in a filibuster a couple of years ago, I was running for reelection and I had a fund-raiser in which we carefully went through the list and said lobbyists would not be invited. And I got some kickback from that, kickback in the form of pushback, some lobbyists saying, "I'm offended that you specifically excluded me from this fund-raiser." And I said, "Look, I'm not going to raise money from the lobby during the session." And one of the...when I did have a fund-raiser later on in which lobbyists were permitted--it was after the session was over--I got a letter from a principal involved in that filibuster, not a senator but a principal, that is to say, an interest, saying, "For obvious reasons, please take my name off your list because I do not intend to be giving you any more money." Now that said to me: I thought my \$1,000 check was influence money; and you didn't vote the way I wanted you to vote, so you won't get any more money from me. That's fine with me. But the idea that this is: I'm giving you this money out of the generosity of my heart because I like you; that's not what it's about, folks. It's influence money. And we ought not to be that close to the source of influence money while we're doing business in this body. With that, I will end, and you can ask me more questions if you choose. [LB448]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions? Senator Karpisek. [LB448]

SENATOR KARPISEK: Thank you, Senator Price. Senator Avery, what about during the interim where bills are held over? [LB448]

SENATOR AVERY: This bill does not address that. It does not. [LB448]

SENATOR KARPISEK: So that... [LB448]

SENATOR AVERY: And, you know, I know that occasionally bills do come back in the next session, but they certainly aren't my bills. My bills die before...(laugh). [LB448]

SENATOR KARPISEK: Yeah, I know mine are always dead. [LB448]

SENATOR AVERY: But I'd say that most bills that are carried over probably are carried over for a reason, and that's usually sufficient for them not to be resurrected later on. But, still, the connection between the contribution and doing the business of the lawmaking at the same time, that's really, I think, a little bit too close a connection.

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[LB448]

SENATOR KARPISEK: Thank you. Thank you, Senator Price. [LB448]

SENATOR PRICE: Thank you, Senator Karpisek. Are there any other questions for Senator Avery? Seeing none, that will close the hearing today on LB448. And thank you for participating in your government. [LB448]