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Government, Military and Veterans Affairs Committee  
March 06, 2013

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[LB382 LB534 LB588 LB632]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 6, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB632, LB588, LB534, and LB382. 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: Welcome to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I represent District 28 here in south-central Lincoln and I am Chair of this committee. It is a pleasure to have you here. We will take up four bills today in the order as posted on the agenda outside the room. That means that we will take up first LB632, followed by LB588, followed by LB534, and then finally LB382. Before we go to the agenda, I want to introduce the members of the committee. On the end down here, I often say on my far right, is Senator John Murante from Gretna. Next to him, soon to join us, is Senator Dave Bloomfield from Hoskins. Next to him, Senator Scott Lautenbaugh who I think has a doctor's appointment today and may not be with us. He is from Omaha. And next is Senator Scott Price, the Vice Chair of the committee, from Bellevue. Seated to my immediate right is Christy Abraham who is the legal counsel for this committee and keeps us in line. The chronically late Senator Russ Karpisek from Wilber will be here; he does come. And next to him is Senator Norm Wallman from Cortland, and Senator Jim Scheer from Norfolk. On the far end down there is Sherry Shaffer, who is the committee clerk. She will be the person to whom you will give this white or this green piece of paper. This is for all the testifiers to record information that we need for the record. We ask that you provide all the information requested and that you print clearly. Also when you arrive at the table to testify, we need you to state your name clearly and also spell it so that there is no question as to who you are, and we will put that in the permanent record. Also if you have an interest in these bills and you want to record your opposition to or support for any of them, you can...but you don't want to testify, you can do that on this white form and provide the information requested. Please print, if you can. These forms are available at the tables at each entrance to the room. We will follow the following procedure in testimony. The introducer goes first with initial statements outlining the terms of the bill proposed, followed by proponents, and then opponents, and neutral testifiers. Closing remarks are reserved for the introducing senator only. We ask that you address us, not other people in the audience. And we ask that you observe our tradition of responding to questions, not questioning us. This is a hearing in which we are trying to discover information that's pertinent to these bills and will help us make the proper decisions. We have two pages who will assist you. The pages are Will Rahjes from Elwood and Cicely Batie from Lexington. If you have any material that you want us to see, you need 12 copies. If you do not have 12 copies, give your original to the clerk. She will have the pages get copies for you and they will be distributed to us. If you have a written copy of your

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testimony, we'd like to see that as well. Please, if you have a cell phone, turn the cell phones off. Silence all electronics that make noise so as not to disrupt our proceedings. We also do not allow displays of approval or disapproval of anything that is being said by any testifiers. So if you feel motivated to do that, we need you to take it outside because it does disturb the decorum of these proceedings. So with that, I would invite Senator Kate Bolz to come forward and introduce LB632. Welcome, Senator.

SENATOR BOLZ: (Exhibits 1, 2) Thank you. Good afternoon. I am, in fact, Senator Kate Bolz, representing District 29 in south Lincoln. That's K-a-t-e B-o-l-z. And I appear before you to introduce LB632, a bill that would eliminate the statutory requirements that requires counties to provide and/or cover the cost of rent for space utilized by the Department of Health and Human Services. I introduce the bill at the request of the Lancaster County Board of Commissioners. I was interested in this bill because it was designed to provide fairness in all counties across the state of Nebraska and to provide transparency and accountability within the Department of Health and Human Services. First, this is an issue of fairness. The Nebraska Department of Health and Human Services has the responsibility for administering programs such as Aid to the Aged, Blind, and Disabled program. However, they require counties to pay the rent for the services provided in their county. And the counties bear this burden because the state has recently removed state aid to counties. Further, different counties have different responsibilities. I will provide the committee with a handout that includes a list of all counties across Nebraska and indicates which ones provide space for the Department of Health and Human Services, which ones do not, and the programs which are located in these county-paid facilities. As you will see from the list, there are numerous programs located in counties that are utilized not only by individuals in these counties in which the program is located, but across the region and sometimes across the state. I need not tell this committee that there are very few resources available to counties to generate revenue, and it appears to me that there are individuals in adjoining counties who benefit from services yet don't pay any property tax in the county providing the services. Is this fair to the taxpayer? Further, Lancaster County pays 74 percent of the total rent paid to HHS for the administrative office space but certainly does not contain 74 percent of the state's population. While I acknowledge that other counties make up this obligation in other ways, the lack of ability to manage these services or make decisions about programs creates an imbalanced burden for some counties. I do want to express that I feel these services are important and that we should not cut corners when it comes to meeting the needs of our citizens. However, these services are ultimately the responsibility of the state. Second, as it relates to accountability and transparency, I was concerned about some of the correspondence which I was provided between representatives of Lancaster County and the Department of Health and Human Services which indicated that the department had some challenges in providing--at Lancaster County's request--what specific services were being covered by Lancaster County's payment of rent for DHHS services located within the Gold's Building. This is not a small amount of money. It is nearly \$300,000 per year in payment. And each year

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these rental costs increase, yet the department is unclear as to which space the county is paying for. As a Lancaster County senator, this is of concern. The Department of Health and Human Services utilizes space paid for by counties for a variety of services and should be responsible for payment as well as the use of the space. I will note for the committee that there is a significant fiscal note attached to this bill. I recognize that; and my staff and the Lancaster County Board of Commissioners has discussed some options that might be available to ratchet down that note somewhat, and I'm happy to discuss those as the committee proceeds this afternoon. Following me in testimony today will be Kerry Eagan, the chief administrative officer of Lancaster County. I invite you to ask him any questions you might have about the history or the provision we are seeking to change under LB632 or efforts made by Lancaster County to obtain information from HHS. Thank you for your attention, and happy to answer your questions. [LB632]

SENATOR AVERY: Thank you, Senator. Questions from the committee? You must have answered them. Oh, you had one? All right. Senator Karpisek. [LB632]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Bolz. Does every county have space for HHS? [LB632]

SENATOR BOLZ: That's a very good question. It's my understanding that some counties don't. The handouts that we'll provide for you details that further. [LB632]

SENATOR KARPISEK: Okay. Thank you. Thank you, Senator Avery. [LB632]

SENATOR AVERY: Anyone else? Thank you. Are you going to stay to close? Okay, thank you. All right. The committee will now accept proponent testimony on LB632. Welcome, Mr. Eagan. Welcome. [LB632]

KERRY EAGAN: (Exhibits 3, 4) Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Kerry Eagan. That is spelled K-e-r-r-y, Eagan, E-a-g-a-n. I am the chief administrative officer for the Lancaster County Board of Commissioners. I would like to thank Senator Bolz for introducing LB632, and I'm here to testify in support of this bill. Nebraska Revised Statute Section 68-130 was originally passed in 1982 following the transfer of Medicaid administration from the counties to the state. The transfer of Medicaid was authorized under Nebraska law in 1982, LB522. Ironically, the language for this law, 68-130, was added as a last-minute amendment to another bill also introduced in 1982, which is LB602. So that language wasn't in the original transfer bill in LB522. The purpose of LB602 was to transfer to the state the county responsibility for providing care to the medically indigent individuals who did not qualify for Medicaid. So Medicaid essentially is your categorical aid programs: Aid to Families, Dependent Children, and other similar programs. There are a number of individuals who don't qualify for those programs and

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was still a county responsibility, generally under general assistance, to cover these individuals who would be medically indigent. In its final form, however, LB602 left the responsibility for the medically indigent to the counties. And in subsequent legislation there were numerous standards that were developed that became the modern general assistance guidelines. Also, as the cost of LB...or an amendment that provided for 68-130 was added at the last minute, so we not only didn't get the transfer under LB602, but we got these additional costs under 68-130--literally, an amendment added on Select File with no debate, no fiscal note, really no input at all. It was just a last-minute amendment. At the time of the transfer, services were provided through county-owned or county-controlled facilities. So to help guarantee a smooth transition for clients and providers, it probably made sense at the time to continue providing these services in as many of the same facilities as possible. Also requiring counties to maintain these facilities at no cost to the state softened the financial burden to the state during this major transition of services. There was a large fiscal note attached to that process when the state assumed it. However, the conditions have changed substantially since 1983. The state Department of Public Welfare grew and became the Department of Social Services, which was later merged into the all-encompassing Department of Health and Human Services. And as the role of HHS expanded, the manner in which services were provided became more centralized. HHS facilities in many counties have either been eliminated or reduced in size, and services are being provided to the entire state through call centers and larger facilities located in more populous areas. If you look at the information provided by Senator Bolz, you'll see that many counties no longer provide facilities for HHS and other counties have questioned the payment of rent for facilities that either do not exist or were reduced in size. In response, in 2011, LB234 was introduced to address these problems. Today the financial burden placed on counties by Section 68-130 is not being shared equally by property taxpayers from one county to another. In fact, again from the list provided by Senator Bolz, you'll see that 27 counties are neither providing facilities nor paying rent to HHS even though their citizens continue to receive services from HHS. This not only raises a question of fundamental fairness, but also a question of whether it is appropriate to use real property tax to support state operations. The answer to these questions indicates it is now time to relieve all counties of the burden of supporting a state department with property tax dollars. It is clearly unfair to the taxpayers in some counties to provide facilities or rent payments for the benefit of HHS which serves the entire state while the taxpayers in other counties are not. In Lancaster County, the situation may be even more unfair. Since many HHS services have been consolidated into our county, it is possible services are being provided to residents of other counties using facilities for which Lancaster County pays rent. We tried to ascertain the answer to this question. And I've submitted a letter from Gary Chalupa which explains his experiences in trying to obtain this information. Simply, we don't know the answer. Maybe there is an answer to it but based on our attempt to find it, we do not know. So I'd ask you to review the letter from Gary Chalupa in that regard. Finally, it is difficult to justify the continued use of property tax to support the operations of HHS following the state's elimination of

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county aid and the prisoner reimbursement program. In Lancaster County, we lost \$3 million worth of property tax relief when these programs were eliminated, putting additional pressure on the property tax to provide mandated services. Under these circumstances, Lancaster County board feels it's appropriate to eliminate this outdated form of county aid to the state. And thank you, and I'd be happy to answer any questions. [LB632]

SENATOR AVERY: Thank you, Mr. Eagan. Before we go to questions, let me explain the light system. I failed to do that earlier. The light system facilitates a commitment we have to giving everybody a fair chance to have their say and to distribute the time equally. The green light is a four-minute light; the amber light is a one-minute light. So the total amount of time that you have is five minutes. When the red light comes on, we want you to be terminating your testimony. So... [LB632]

KERRY EAGAN: Okay. I apologize for that. With my reading glasses on, I can see what's in front of me, and I didn't see the lights. I'm sorry. [LB632]

SENATOR AVERY: You didn't violate the rule too badly. So we'll now take questions from the committee. [LB632]

KERRY EAGAN: Okay. I do apologize. [LB632]

SENATOR AVERY: Senator Price. [LB632]

SENATOR PRICE: Thank you, Chairman Avery. Sir, thank you for testifying today and bringing forth good, hard evidence for us to look at here. Is it your contention then, that it's rather onerous for one county to pay a burden where other counties are receiving a service? [LB632]

KERRY EAGAN: Well, we think it's unfair. Generally, counties take care of their own residents and they pay property tax for purposes that relate to county purposes. When you're paying property tax for a purpose that benefits the entire state or residents of other counties who are not paying property tax for that same service, we think that's fundamentally unfair. [LB632]

SENATOR PRICE: Well, sir, I'd have to say I was in violent agreement with you because we have a Learning Community that was foisted on Sarpy County, and our dollars go to...go off. So I'm in violent support of your concept. Thank you. [LB632]

KERRY EAGAN: Thank you. [LB632]

SENATOR AVERY: And you're editorializing on another bill. Any questions from the rest of the committee? We don't see any. Thank you, Mr. Eagan. [LB632]

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KERRY EAGAN: Okay. Thank you, Senator. [LB632]

SENATOR AVERY: Any other proponent testimony on LB632? [LB632]

LARRY DIX: Good afternoon, Senator Avery and members of the committee. For the record, my name is Larry Dix, L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials, appearing today in support of LB632. And certainly we appreciate Senator Bolz bringing this bill forward. It is one that over the years, NACO, we realize and support the efforts to define county responsibilities for providing office space, and for 30 years now, the counties have honored their obligation to provide space to HHS. But after 30 years, we believe it's time that we take a real serious policy look at this. And certainly Mr. Eagan covered what is going on. We do have counties that have HHS offices in them. Some of those offices have been consolidated. And I think in the past we have had conversations with HHS about the rent and the office space. And those conversations have been both sides, and what has happened is in many cases HHS has decided through probably their rightful decision that they needed to consolidate or regionalize those offices. And certainly what has happened in that time, if you go back 30 years ago when all of these offices were located inside the courthouse, it was pretty easy for the counties to somewhat control that space. And it isn't like we're going to pay rent to ourselves. But since that time, these offices have been moved out of the courthouse. Sometimes they have been moved in the county but out of the county seat. And then there is a requirement for the counties to pay rent at whatever rate that HHS negotiates and we simply pay the bill for the amount of space. And so it isn't necessarily that we, as counties, are involved in negotiating the rate. We simply are there to pay the bill based on the square footage. And when we look at this, you know, we would just ask, is it really a good policy for the counties to continue to rent space for HHS? Should we, even if they are in our courthouse or at all? And there's been a number of counties that this has been an issue. This also has been an issue in front of the Legislature. Senator Coordsen brought forth an amendment in 2001 and that was brought forth on the floor. And what it was, it said if HHS, in essence, moves outside of the county courthouse, then the county should be relieved from their responsibility for paying rent. And that, at that point in time, made some sense but wasn't passed on the floor of the Legislature. In 1996, Senator Bohlke had talked about the reorganization efforts made and the district offices and the closure of some offices impacted counties disproportionately. And that is really the issue that Mr. Eagan had brought forth. And so you know, now after 30 years I think it's really time that we should address this. It is...everybody out there is clamoring for property tax relief. I would tell you this would be some property tax relief. It certainly...somebody has to pay for it. We know the services need to be provided. It's not that we're saying that we do not need to provide those services or the state doesn't; they're all our citizens. It's just a matter of where do we pay for it? And is it a good policy any longer, 30 years down the road? And we all know 30 years ago this probably made some good sense to a number of folks.

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Thirty years later, we're thinking this probably isn't the best policy that we could have. So with that, I'd be happy to answer any questions anybody would have. Thank you. [LB632]

SENATOR AVERY: Thank you, Mr. Dix. I noticed that you didn't mention in your testimony that the Legislature had ended the practice of providing aid to counties. [LB632]

LARRY DIX: And that is true. The Legislature, of course, did end state aid to counties a number of years ago, which when that happens, of course, that puts more additional burden on property tax. The state aid, of course, that money coming from the state is a result of state income tax and sales tax that goes into that pool to be moved along. And so it all adds up. And that is exactly right, that did happen. And if nothing else at that point in time, unfortunately we didn't have a bill in front of the Legislature. But this should have probably been rolled into the loss of state aid at that point of time and said, when you get rid of state aid, also get rid of the requirements that the counties still have to pay some of the bill. [LB632]

SENATOR AVERY: And I would point out that that bill was reported out by this committee. So we're guilty. [LB632]

LARRY DIX: And as I am guilty also. [LB632]

SENATOR AVERY: Senator Scheer. [LB632]

SENATOR WALLMAN: Thank you. Go ahead. [LB632]

SENATOR SCHEER: All right, go ahead. [LB632]

SENATOR AVERY: I recognized Senator Scheer, I'm sorry. [LB632]

SENATOR WALLMAN: Yes, Senator Scheer. [LB632]

SENATOR SCHEER: Thank you, Senator Avery. Just looking perhaps on the other side of the venue as well, you have state employees that are officed either in a office building in a community or in the courthouse. You would have to admit there is some economic impact from those people being in the area to a certain extent, would you not? [LB632]

LARRY DIX: There is some economic... [LB632]

SENATOR SCHEER: I mean, because they're providing services throughout the counties. But to a certain extent, they're providing the direct economic impact of themselves--the 1 to 30 or whatever it is--to that community. And so I guess I'm

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wondering then if we do this, then are we essentially opening the door then to even a different modification of the services to the extent that the Health and Human Services could say, well, we're going to have six, five regional offices, places can bid for that employment and so we turn into sort of a bidding war that's not necessarily to anybody's benefit? And quite honestly, probably part of that might be offering free rent because you've got the facility anyhow just to maintain the employment base, especially in the more rural areas. So sort of a Catch-22. [LB632]

LARRY DIX: Yeah. Some of the counties would say it's unfair already because Health and Human Services is not in their county. I would tell you Hooker County would say, bring them back. We'll give you free space. The problem is, Health and Human Services has made the decision to regionalize. And again, it probably was a logical decision. So if we do that, I think Health and Human Services could do it today. And I think they have over these 30 years done exactly what you're saying. And some of the smaller counties would say, hold it. What about us? We have space in our courthouse. And what's happened is Health and Human Services have gone to areas where...regionalized where they're...the county has said, we have space in our courthouse. But they said, no, no, no. We don't want the space in your courthouse, we want the space across the street over here down the block. And so then they went down the block. Then we end up having to pay the rent because we have lost control of it. But there are some courthouses that would have space if they'd want to go into the courthouse. [LB632]

SENATOR SCHEER: Well, in some areas though, if this is for a client or residence services, sometimes the courthouse is not necessarily located in the city of the highest population or in necessarily the most convenient spot for those services to be. So to a certain extent, I can see not necessarily having to utilize those facilities for a distribution center for services. [LB632]

LARRY DIX: Yeah. And Senator Scheer, you represent one of those counties which is a classic example of that where Madison, where the courthouse is located, certainly does not contain the population which is in Norfolk. And I think that's exactly what has happened in your county where Health and Human Services have located in Norfolk as opposed to Madison in the courthouse. And it makes all the sense in the world. [LB632]

SENATOR SCHEER: Okay, thank you. Thank you, Senator Avery. [LB632]

SENATOR AVERY: Senator Wallman. [LB632]

SENATOR WALLMAN: Thank you, Chairman Avery. Hi, Larry, thanks for coming. But as it is right now, you know, the state owns some buildings. Doesn't each agency have to pay state rent to the state building for the buildings? [LB632]

LARRY DIX: I don't think the...a number of these buildings the state does not own the

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building. I don't think they're...a number of cases they're not moving into a state-owned building. They may be moving into a building that is just leased by the state and then they select that building and then the county pays a share of the lease based on however many square feet were in the county in 1983. And if in 1983--when I look around here there's, other than maybe myself that's been involved with county government, there isn't anybody here that can sort of remember--but if you had a county that at that point in time was very generous with their space and at that point in time they said, we really want to have Health and Human Services there, so we're going to give you a lot of space to try to entice them. Now they're being penalized down the road because they gave up so much space in 1983 because now they're locked into the number of square foot that they gave back in 1983. [LB632]

SENATOR AVERY: Any other questions? Senator Murante. [LB632]

SENATOR MURANTE: Thanks for coming, Larry. [LB632]

LARRY DIX: Yes. [LB632]

SENATOR MURANTE: I like the logic employed in this bill. I think we have talked about this general subject matter as it pertains to elections. It's pretty clear that in years past, it's been far too easy for the Legislature to come up with an idea that they think is really important and then make the counties pay for it. But my question to you and to the county organizations is, if we do this and we take a comprehensive look at all of the great ideas that we've come up with over the years that we've made the counties pay for and we assume the financial burden of paying for all of these ideas, are the counties willing to go over to Senator Hadley's office and ask them to lower your county levy lid in conjunction with the spending that you no longer have the burden for? [LB632]

LARRY DIX: I would tell you that the county levy lid is a constitutional lid. And so we could ask Senator Hadley but, unfortunately, that would be a vote of the people. And I think you'd be surprised at how many square feet in a courthouse is occupied by state government. I mean when you think about that, you know, somebody says, well, how much could it really be? Well, you start adding up courts. That's the big, heavy hitter that you have as far as space. And you do look at other states and many times the county courthouse is county functions and there are state sections that are state functions. So when you look at it, I think it's something that it has to be looked at sort of step by step and said, okay, where is that defined difference? I would think for years you would say state and county have been a great partnership; they've walked hand in hand. And state has abided by the agreements until they sort of said, we're out of money so we're not going to pay for jail reimbursement anymore. And you erode the trust, and you start to beat down on the counties the amount of trust that used to be there. And then we come back and we eliminate state aid. And so at the same point in time everybody says, counties, what are you doing about property tax? Well, here's some of what we're doing

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about property tax. So that's...like I said, that doesn't answer specifically your question. Although, if we go to Senator Hadley it still becomes a constitutional amendment. [LB632]

SENATOR MURANTE: I think if we put before the people a constitutional amendment to lower the property taxes, they'll probably vote yes. That would be my guess. [LB632]

LARRY DIX: That's always been our problem when we think if we would put before the people, if they would raise it, they would probably vote no. [LB632]

SENATOR MURANTE: Thank you. [LB632]

SENATOR AVERY: Senator Price. [LB632]

SENATOR PRICE: Thank you, Senator Avery. Mr. Dix, my question would be, is there any way that we could find out what the percentage of this is in the total of the county government? So in other words, of all the property and assets a county has, is this a less than 1 percent of their total? [LB632]

LARRY DIX: Sure. [LB632]

SENATOR PRICE: I mean, to make sure that we're fully understanding because when we talk about the disparate impacts on some counties... [LB632]

LARRY DIX: Yeah. [LB632]

SENATOR PRICE: ...versus others, like Lancaster where regionalization...but there's also other economies as I think Senator Scheer was alluding to. So knowing what that percentage is would be a nice understanding. [LB632]

LARRY DIX: Yeah. The amount, we could start to try to define that. I would tell you, there's a number of counties...I can tell you right now, it's zero simply because Health and Human Services have moved their division out of the county so it becomes zero. So, you know, those you would say it isn't. The other...you know, typically whenever we start to look at this, it's one of those situations where you say, well, how much is it? If it's 1 percent is it that big a deal? Well, no, maybe not. But you start adding the 1 percent, 1 percent, 1 percent. It becomes a big deal. And so for us to say, you know, how big is it? It may not be that large, but it all adds up. And when you're talking about property tax dollars, I always get a kick out of the people that say, you know, we used to levy and we used to carry out the levy two places. Now we carry it out four and some places five. And it doesn't become a big deal if it's out five, but to the taxpayer it does become a big deal. It may be a small amount, but it becomes a big deal. [LB632]

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SENATOR PRICE: Well, thank you, Mr. Dix. I just think it would also go toward the conversation notwithstanding what we're trying to do in the legislation about apportionment across those counties receiving services without payment to the base. [LB632]

LARRY DIX: Sure. Thank you. [LB632]

SENATOR PRICE: Thank you. [LB632]

SENATOR AVERY: Thank you, Senator. Senator Karpisek. [LB632]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Dix. To try to get to the easiest way to think of this and see if I'm thinking of it right, if HHS is in the courthouse, they're in the courthouse. But if they're in a different building somewhere else, then the county has to pay for that rental space. [LB632]

LARRY DIX: Yeah. In 1983, if HHS was in the courthouse and they occupied 1,000 square feet--say a room in the courthouse--and now they are on main street in a leased piece of real estate, the county--and say it's now 3,000 square feet--the county is paying for 1,000 square feet and HHS is paying for 2,000 square feet. And so that's really what we're talking about. [LB632]

SENATOR KARPISEK: So some of that may be because they outgrew that space? [LB632]

LARRY DIX: Some of it may be because they outgrew it, some of it may be because they regionalized and pulled out of other counties and so now they need more space. And so if the...and I can't remember what the fiscal note is. But if the \$1.4 million is that big of a deal to the state if we look at the total state budget--which I don't know what the total dollar is--but if you take the total state budget and you say this is \$1.4 million or \$3.3 million, is it more than 1 percent or .5 percent to the state? And you know, certainly you may want to say, well, we're going to move this a couple of years down the road and have it take effect--just like we did now in 1983--we're going to say, okay, from 2015, from that point on, HHS pays. That relieves us from this year's budget problem and moves it two years down the...so, an option. It could be an option. [LB632]

SENATOR KARPISEK: All right, thank you. [LB632]

LARRY DIX: Thank you. [LB632]

SENATOR KARPISEK: Thank you, Senator Avery. [LB632]

SENATOR AVERY: Any other questions? Thank you, Mr. Dix, for your testimony.

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[LB632]

LARRY DIX: Thank you. [LB632]

SENATOR AVERY: We're still on proponent testimony to LB632. Any other proponents? Okay, we'll now accept opponent testimony. Welcome. [LB632]

KERRY WINTERER: (Exhibit 5) Thank you. Afternoon everybody. Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Kerry Winterer, that's spelled K-e-r-r-y, last name is Winterer, W-i-n-t-e-r-e-r. I have the pleasure to be the CEO of the Department of Health and Human Services. I am here to testify in opposition to LB632. LB632 requires the state to pay counties the cost for office and service facilities used for the administration of public assistance programs. Currently, counties are required to maintain office and service facilities, as you've heard earlier, used for public assistance programs as they existed on April 1, 1983. Prior to July 1, 1983, county boards had responsibility for the county departments of public welfare, including costs for building space, equipment, employees, and some program costs including about 14 percent of the cost of the Medicaid program at that time which was about a \$20 million burden to the local property tax. That same 14 percent, if the counties had to continue to pay that this year, would amount to about \$200 million that the counties would have to shoulder as far as their responsibility for that program. Several pieces of legislation in 1982 and 1983 authorize the transition to state administration of the 89 county welfare offices and some 1,200 county employees. Also transitioning to the state was all office space, equipment, and some program costs, including the Medicaid costs that we talked about earlier. Legislation later allowed counties to keep the office space but to maintain it for public assistance programs as it existed on April 1, 1983. LB234 in 2011, which some of you may recall, modified this requirement to allow counties to adjust office space if the department reduces its presence and notifies the county that it is vacating a particular facility. As it is today, counties provide about 185,000 square feet of either county-owned space or leased space for the department. Since 1983, as you might imagine, the department's space needs have continually evolved through federal and state statute policy changes and agency mergers. A recent example is LB825 in 2012 that required the department to provide 25 staffed offices to accommodate a face-to-face application process for public assistance. The Department of Health and Human Services is committed to helping people live better lives wherever they reside. While we continue to improve access to public assistance programs through efficiencies such as automation, we are also committed to having a presence and being available to people across the state. Indeed, the Legislature itself, through such bills as LB825, has expressed its policy that the department continue to have a presence in local offices across the state. This bill would seem to conflict with that policy. LB632 would make space unavailable or it would increase department costs significantly. Our estimate, if you look at our fiscal note and that from your own Fiscal Office, shows that it would cost

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the department about something over \$3 million to replace the space that we currently are being provided by the counties. This may lead to the department being physically located in fewer counties leading to fewer locally provided direct services. And then I just want to make a comment or two about previous testimony. There has been testimony from counties previously in terms of our dealing with them or not being responsive. I'm unaware of a particular circumstance. If there's something going on with Lancaster County, I'm unaware of that. But I can guarantee that when I get back to my office we'll find out to what extent we've not been cooperative to the extent that we have in trying to resolve their issue. I want to assure you that we have corresponded with numerous counties in the last two or three years to try to resolve any concerns they have about office space. And I think we have gone out of our way to, in fact, do deals with the counties to make it more palatable and give up space where we found that it wasn't necessary that we retain that space. On that note, I would be happy to entertain questions. [LB632]

SENATOR AVERY: Thank you, Mr. Winterer. And thank you for observing the light. You're right on time. Any questions? [LB632]

KERRY WINTERER: I practiced that. [LB632]

SENATOR AVERY: Any questions from the committee? Senator Scheer. [LB632]

SENATOR SCHEER: Thank you, Senator Avery. Mr. Winterer, just so that I'm understanding the general gist here, in the third paragraph when you talk about 1983 where the counties were responsible for the public welfare--and maybe I'm assuming something that didn't happen--but was it somewhat of a trade-off then for the counties and the state will take over that program, all we ask is for the space? And so at this point in time the state has assumed over \$200 million worth of expenses and the counties have absorbed \$3 million worth of rent. So essentially, instead of 14 percent, they're down less than 1 percent of those expenditures if it all had remained equal? [LB632]

KERRY WINTERER: Yeah, that's basically the point. The point is the deal at that time was we would take over all the expense of running the aid program as long as...as well as the operational expense. And in return, the counties would continue to provide the space that they were providing for their own operations up to that period of time. Obviously, the expense of providing the Medicaid benefits have increased exponentially since 1983. [LB632]

SENATOR SCHEER: Okay. Thank you very much. Thank you, Senator Avery. [LB632]

SENATOR AVERY: Was this agreement in writing or was it just an understanding? [LB632]

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KERRY WINTERER: Well, that's a little bit before my time, but the current budget administrator is in the room and I think would be happy to respond to questions, because he was, in fact, responsible for implementing this back in 1983. So to the extent you want specific questions answered relative to how that worked and what the deal was, I think he'd be happy to respond to those questions. [LB632]

SENATOR AVERY: Thank you. Senator Murante. [LB632]

SENATOR MURANTE: Hi, Kerry. Thanks for coming. I have a question for you on the fiscal note. So as I understand this bill, basically what Senator Bolz is proposing to do is to take \$3.1 million, \$3.2 million that the counties are currently spending and have it become a state proposition. Is that generally... [LB632]

KERRY WINTERER: The fiscal note is based on what it would cost us to replace the 211,000 square feet that the counties are obligated to provide. Keep in mind, they're not providing that. They're only providing at this point in time 185,000. But if you go back and look at what their commitment was, it's 211,000 square feet. We're not using all that space at this point... [LB632]

SENATOR MURANTE: Sure. [LB632]

KERRY WINTERER: ...nor are we charging the counties for any space we're not occupying. The fiscal note is based on 211,000 square feet, which is what the counties' obligation is. And you multiply that by, in this case, \$15 which we think would cover rent and all the other expenses in connection with that. And that's how you come up with this fiscal note of \$3.1 million. [LB632]

SENATOR MURANTE: Okay. [LB632]

KERRY WINTERER: In other words, if we were to replace and pay for the space that the counties are now providing us, this is what it would take to replace the 211,000 square feet in terms of dollars and an impact to the department's budget. [LB632]

SENATOR MURANTE: And is it your contention that if this bill passes that essentially the state of Nebraska and its political subdivisions will be providing the exact same services as we did before the bill passed, but it would cost more? [LB632]

KERRY WINTERER: Well, what it would do is it would cost...and part of the question here is to what extent if, in fact, the bill passes, where does that leave the department in terms of a presence in all these counties? Absent some additional funds--namely, \$3.1 million to cover the 211,000 square feet--we don't have dollars to maintain that presence in the counties. So one of the questions for the Legislature is going to be,

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okay, who pays? The fundamental question is, who pays? If the counties are no longer going to pay, then it seems to me the Legislature is going to have to provide the department funds in order to provide and replace that office space. The other thing that I think is important to keep in mind is, because we do have this obligation on the part of the counties, provides us a lot of flexibility to have one- and two-member or employee offices in some of these counties. And we would really have to ask the question, does it make economic sense for us to go out and sign a lease for a one- and two-person office? Right now we have flexibility because we know that these counties do have space that we can use. And over a period of time, our use of space in different counties has changed. You heard a testifier earlier say, well, they're not using space in such and such and such a county. Well, we may not be doing that right now, but who knows what we will need in two, three, four, five years from now? And we may be back in a period of time in which we're going to call on that county to provide the space. [LB632]

SENATOR MURANTE: Okay, thank you. [LB632]

SENATOR AVERY: Senator Price. [LB632]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Winterer. My question goes to what I think you were getting to at the end. What's the last time you audited your space against your needs? [LB632]

KERRY WINTERER: Well, we really do that on an ongoing basis, partly as a result of requests from the counties, because we will routinely get a request from counties who will want to know, you know, we're providing 1,200 feet. You only have three people in this office. Can we look to see if you need to continue to use that 1,200 feet? The programs will be looking at their utilization of staff in each of these areas. That isn't to say that we routinely look at every office every month. But I think we're doing a good job in terms of responding to counties and their concerns and evaluating where we need to have staff and what's required. [LB632]

SENATOR PRICE: So is that to say that you're looking at your utilization rates and then you're reallocating based on what type of parameter...because I'm thinking that as you move from...if you move from a...to a more of a consolidation basis, then the square footage if you continue that trend...obviously, you're allowed to consolidate. So could you consolidate to a smaller footprint and have a cost savings? So in other words, it's not necessarily that you can lay out a linear argument saying, I need this number of feet now. Well, do you really need that number of feet? Can you get it done on 80,000 square foot in two regional offices? [LB632]

KERRY WINTERER: Yeah, and I think we've done a lot of that. And ACCESSNebraska represents a lot of that in terms of consolidating the services in the call centers. But I go back to one of the things I said earlier, and that is that it seems to me a fairly clear

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message from the Legislature that they want a greater presence out in the field and in the counties than a lesser presence. Now to the extent we may have gone to more and more consolidation of offices and abandoning some of those smaller offices, it seems to me the Legislature's clear message is they don't want that. You don't want that. What you want is more of a presence in those county offices which now has caused us to reevaluate and probably keep some of those offices open and staff some of those offices which...where, in fact, we might have gone the other direction absent the Legislature's action. [LB632]

SENATOR PRICE: So you want your cake and eat it too. Okay, thank you very much. [LB632]

SENATOR AVERY: Senator... [LB632]

SENATOR BLOOMFIELD: Thank you, Senator Avery. [LB632]

SENATOR AVERY: I'm sorry. I had previously promised him. I'll get back to you. [LB632]

SENATOR BLOOMFIELD: Oh, okay. That's fine. That's fine. [LB632]

SENATOR AVERY: Senator Scheer. [LB632]

SENATOR SCHEER: Thank you, Senator Avery. Mr. Winterer, just one further question. I'm not necessarily trying to pick on anybody, just they happened to testify. As far as Lancaster, could you tell me what under the 14 percent, what Lancaster would be paying for their public service? [LB632]

KERRY WINTERER: No, I couldn't. I mean, we could easily do the math based on their population and such. But it would be a function of their enrollment of Medicaid at this point and in the dollars that the 14 percent would translate into. We could easily do that math. [LB632]

SENATOR SCHEER: If you could, I would appreciate that. [LB632]

KERRY WINTERER: Sure. [LB632]

SENATOR SCHEER: Thank you. [LB632]

SENATOR AVERY: Senator Bloomfield. [LB632]

SENATOR BLOOMFIELD: Thank you. Mr. Winterer, it's probably just my lack of understanding. But if we have consolidated and we use county A and B--so I'm not

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picking on anybody--if we have consolidated everything into county B, county A is no longer paying anything. Is county B paying everything? [LB632]

KERRY WINTERER: Well... [LB632]

SENATOR BLOOMFIELD: And if that is the case, is there any way we can go back and maybe have county A pay part of county B's? [LB632]

KERRY WINTERER: If we have vacated space in county A--let's assume they had an obligation to provide 1,000 feet or something--if we're vacating the space in county A and no longer occupying the space, county A is not paying for that space. I mean, that would be their arrangement. If it's in the courthouse, obviously they're paying for it. If there was some other lease space, they're no longer required to undergo that expense. As far as county B goes, if we consolidated--and let's assume that county B had an obligation to provide us 2,000 square feet--if we consolidate and our need then becomes 4,000 square feet, county B is only providing 2,000 square feet. They are in no case providing more than was the original agreement. To the extent we're now occupying 4,000 feet, we're paying for that additional 2,000 feet. [LB632]

SENATOR BLOOMFIELD: But if county B was originally obligated to 2,000 square feet... [LB632]

KERRY WINTERER: Right. [LB632]

SENATOR BLOOMFIELD: ...you have moved from A; B is doing everything and A is doing nothing. Is there any way that you can see that we could make A pay for part of what B is having to provide? [LB632]

KERRY WINTERER: Well, I don't know how we can do that under this particular statute because all this statute really requires is the county provide a certain amount of square feet... [LB632]

SENATOR BLOOMFIELD: Space. [LB632]

KERRY WINTERER: ...or equivalent value. So I don't know how we could do that under this. Maybe there's some other way to do it, but I don't know. [LB632]

SENATOR BLOOMFIELD: Okay, thank you. [LB632]

SENATOR AVERY: Senator Price. [LB632]

SENATOR PRICE: Thank you, Chairman Avery and Mr. Winterer. And, Senator Bloomfield, thank you because now...maybe...I don't know, modern math and myself

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aren't the greatest. But if we're saying that the obligation for A county or, in this case, B county, if the obligation remains the same then that if you have incurred the need for greater space as borne by the department, then the Lancaster amount is still the same they had regardless because they're paying...so in other words, if you said that...if I have to grow my space... [LB632]

KERRY WINTERER: Uh-huh. [LB632]

SENATOR PRICE: ...and that's really what we're talking about, space dollars. Correct? Rental space dollars. [LB632]

KERRY WINTERER: Space or dollars equivalent. [LB632]

SENATOR PRICE: Okay. So if Lancaster County has always had to provide 4,000 square feet or 8,000 square feet and we regionalize and it's 10,000, they're still paying the same load for their...originally. They're not paying an additional burden for space? [LB632]

KERRY WINTERER: No. No one...no county is paying for space or providing more space than they were for this program back in 1983. There's nothing here that says they have to do more or provide more space or pay a greater charge, for that matter. [LB632]

SENATOR PRICE: Okay. And that doesn't address the idea that there are services being rendered. I mean, if you consolidated... [LB632]

KERRY WINTERER: Sure. [LB632]

SENATOR PRICE: ...for multiple counties and utilize the same amount of space, you'd be providing service to more people but you're not...there's no greater incurred burden for that county. [LB632]

KERRY WINTERER: Correct. [LB632]

SENATOR PRICE: Okay. Thank you. [LB632]

SENATOR AVERY: Senator Bloomfield. [LB632]

SENATOR BLOOMFIELD: Thank you. I'm going back to county A and B again, trying to get my mind wrapped around this. Okay, we said county B was obligated to provide 2,000 feet. [LB632]

KERRY WINTERER: Yes. [LB632]

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SENATOR BLOOMFIELD: Historically, they had only been providing 1,000 feet, so they were only being billed for that amount. County B closed down everything because you consolidated, and you are now requiring county B to provide the 2,000 feet they were originally obligated to. [LB632]

KERRY WINTERER: Yes. [LB632]

SENATOR BLOOMFIELD: We have raised the cost to county B, we have let county A off the hook entirely. And to me, there's an issue of fairness there somewhere. [LB632]

KERRY WINTERER: That could be the result. I'm not saying that that's necessarily happening in any circumstance. But in theory, at least, that could be the result. But again, county B is not paying anything more than they were obligated to back in 1983. [LB632]

SENATOR BLOOMFIELD: Okay, thank you. [LB632]

SENATOR AVERY: In 2011, the Legislature passed the bill that addressed this section of law and this very same subject, LB234, that allowed the county boards to request of your office... [LB632]

KERRY WINTERER: Right. [LB632]

SENATOR AVERY: ...a review of service and facilities and that they could, in fact, ask perhaps for a reduction in the size and, therefore, get a savings. How has that law worked? I mean, do you have much experience with it? It's not been on the books very long. [LB632]

KERRY WINTERER: No, it's not been on the books very long. It has occasioned, I think, more contact and correspondence, if you will, between us and the counties relative to those issues. I don't get involved in it myself so I can't tell you how many cases. I mean if you were interested in that, I could provide, you know, kind of a summary of what's been the result of that. As I... [LB632]

SENATOR AVERY: But there has been some cooperation... [LB632]

KERRY WINTERER: Oh, yes. [LB632]

SENATOR AVERY: ...between your office and the counties that seek to relieve this burden. [LB632]

KERRY WINTERER: My administrator, who's responsible for managing the space, has been out over the course of the last 18 months or 2 years. And I would venture to say

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he's been out to 25 or 30 counties himself, looking at the space and talking with county administration relative to what we need, what they can provide, and so on. And so I would tell you, I think the department has done a very good job in terms of being responsive and going out and physically visiting these counties. And I'm sure there's at least 25 or 30 of the counties that he has personally visited to look at the space. [LB632]

SENATOR AVERY: Any other questions? Thank you, Mr. Winterer. [LB632]

KERRY WINTERER: Thank you. [LB632]

SENATOR AVERY: We're still on opponent testimony, LB632. Any other opponent testimony? Welcome, sir. [LB632]

GERRY OLIGMUELLER: Senator Avery and members of the committee, my name is Gerry Oligmueller. It's spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I'm the state budget administrator, and Kerry referenced my involvement from a historical perspective. And I thought I would make myself available to answer questions since I did have responsibility in 1983 to actually implement this law passed by the Legislature. And I'd probably indicate first off in response to Senator Avery's question, this was an agreement written in law. The counties got a good deal. We're currently looking at potential expansion or at least the Legislature is considering expansion of the Medicaid program currently. At the time, I believe the counties were providing approximately 14 percent of the share of the Medicaid program. It's a pretty good deal if you can contrast the cost at that percentage to the total Medicaid program vis-a-vis the fiscal note that scored for this particular legislation which suggests that the state pay for that space. It was kind of a confluence of ideas and philosophies at that time in 1983 that centered, in part, around providing property-tax relief in effect by the state assuming the costs...county costs of Medicaid and some concern about the disruption that would occur in a change from county administration of social services in 1983 to state administration of social services. And to preclude that disruption by having the counties continue to provide the office and service facilities for a smooth transition from a management perspective and service-delivery perspective of county...what was termed county welfare programs at that time. Subsequently termed social services, the Department of Public Welfare's name changed to the Department of Social Services as a forerunner to the current Department of Health and Human Services. But with that, I guess I'd see if there is any questions. I know Senator Scheer had a question. I think Kerry's response was...the question was dead-on and Kerry's response was dead-on to the question. It was...the direct exchange there was a direct relief for counties in terms of carrying the load or a percent of the load of financing Medicaid in exchange for continuing to provide office facilities for a smooth transition in program delivery at the time. [LB632]

SENATOR AVERY: Any other questions? Senator Price. [LB632]

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SENATOR PRICE: Thank you very much, Chairman Avery. Thank you, sir, for testifying. Mine would just be kind of the question of, if everything stays the way it is now, maybe counties should start their own economic development and recruit the state office away from that county if they have extra space. You know, Cass County or another county could just go ahead and recruit away from the bigger counties because they have extra space. And maybe they'll have a windfall for their counties. I mean... [LB632]

GERRY OLIGMUELLER: Well, you know, the experience in 1983, you know, even cut through some of those issues. I would say it was...the experience at that time county by county was different. In Kearney County, they actually expanded the courthouse physically, added on to it. And of course, the state in effect ended up paying the county rent to house employees in that additional space constructed by a county as an addition to the courthouse. And other counties, you know--over time, and certainly Kerry has the current history on that--but from the period of time in 1983 through about 1995, the years of my employment with the Department of Social Services, it's kind of a county-by-county situation. Some counties, the staff relocated in a nearby county as Senator Bloomfield was, you know, postulating. The county space being vacated, you know, was put to use...other uses by the county in which that space was vacated. Some counties expressed an interest in having the state leave that space for whatever reason. I mean, they had reasons and intentions or plans to use that space for other purposes themselves. And the department at the time located sometimes elsewhere within that community or it might have been a situation where there was some consolidation of staff and services in a nearby county. So those decisions usually occurred--and I suspect they still do to this day--to address real needs that are attempting to be addressed by the department in those communities, you know, in the most efficient manner possible. [LB632]

SENATOR PRICE: Thank you. [LB632]

SENATOR AVERY: I asked a question earlier of Mr. Winterer about LB234. Are you familiar with that? We passed it in 2011 where the county can request that...of DHHS, a reduction in space? [LB632]

GERRY OLIGMUELLER: I'm just familiar that that legislation was introduced and enacted as, what I thought, an accommodation to continuing that relationship with county government statewide. [LB632]

SENATOR AVERY: But you don't know the history? [LB632]

GERRY OLIGMUELLER: I don't know the details on that one, no. [LB632]

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SENATOR AVERY: Okay. Senator Scheer. [LB632]

SENATOR SCHEER: Thank you, Senator Avery. Going back--and I think something that I heard and I just want to make sure that in my own mind I'm clear--the commitments for square footage back in '83 were if Douglas County committed to 30,000 square feet, if Health and Human Services has facilities that are equal to 50,000 square feet, that Douglas County is not paying for the 50,000. They would only be reimbursed or responsible for the first 30,000 based on that agreement. So then the state or Health and Human Services would be paying for the additional 20,000 if there were more in Douglas County? I don't know that there is or there isn't, but... [LB632]

GERRY OLIGMUELLER: Well, certainly during my tenure, there was no expectation that a county would take on the responsibility for any increase or additional space. [LB632]

SENATOR SCHEER: Okay. So the counties are just responsible for the space dictated in the 1983 agreement as far as the square footage? [LB632]

GERRY OLIGMUELLER: Space and service facilities, which at the time might have involved use of a copy machine or something to that effect. [LB632]

SENATOR SCHEER: Sure. Sure. [LB632]

GERRY OLIGMUELLER: Another aspect of the law actually required for the employees to transfer into the employment of the state, so on July 1 there was no wholesale disruption, again, of the service-delivery structure that was in place. And there was a guarantee of continued employment on the part of county employees with the state of Nebraska. And so the county employees became state employees July 1. [LB632]

SENATOR SCHEER: So then did they assume state employee benefits as well, as far as the health and so forth? [LB632]

GERRY OLIGMUELLER: Correct. [LB632]

SENATOR SCHEER: Which would have been reduced off the county as well. [LB632]

GERRY OLIGMUELLER: Yes. [LB632]

SENATOR SCHEER: Okay. Thank you. Thank you, Senator Price. [LB632]

SENATOR PRICE: Thank you, Senator Scheer. Are there any other questions from the committee? Seeing none, thank you for your testimony today. Do we have any other further opponents for the bill? Seeing no other opponents, do we have anybody who

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would like to testify in the neutral? No one testifying neutral? Senator Bolz, you are welcome to close on your bill. [LB632]

SENATOR BOLZ: Thank you, committee, for the dialogue today. I have three brief points in closing. The first is that things have changed, I think for the better, in the last 30 years. I think our Enrollment and Review Committee Chairman might agree. But some of the things that have changed for counties may not have been for the better. And while the obligation to provide space may be the same in terms of space in terms of square feet since 1983, there are two important distinctions that I would make there. One is that the Department of Health and Human Services does have the authority to require the counties to move to a higher rent space. So while 1,000 square feet might be the same as it was in 1983, they may be purchasing a much more expensive area of the community for the provision of those services. Second, I think because of the consolidation of county A to county B, while we may be still talking about that 1,000 square feet of space, what we don't see there is county B has lost funding because they could have reduced the size of their space. They could have created savings through that reduction. But because of their obligation to provide regional services, they remain at a higher level than they would have for their own particular county's needs. Second, I want to articulate a few thoughts about service provision under the Department of Health and Human Services in a universal caseload model and in counties and regions across the state. As Director Winterer pointed out, the Department of Health and Human Services has created some effective and smart efficiencies by going to a universal caseload model, by going to a model where we're using call centers and on-line applications rather than having a local office in every county. I think that's smart, but I think we can balance the presence in the counties and the accessibility with responsibilities and obligations of the Department of Health and Human Services to continue to administer those programs. Finally, I would just reiterate that I am eager to work with the committee to find options to make this legislation work and to make it as fiscally responsible as possible, whether that's delaying implementation or making a distinction between court and noncourt rental space or any other option that this committee is considering. So with that, I'll let you ask me any final questions and close my comments. [LB632]

SENATOR PRICE: Thank you very much, Senator Bolz. Senator Scheer. [LB632]

SENATOR SCHEER: Thank you, Senator Price. Senator Bolz, from my perspective it sort of still goes back to the 1983 agreement. And correct me if I'm wrong, but part of that agreement goes back to the extent that the state said, we'll take over this program, the funding of the entire program, as long as you provide us, again, not dollars of rents but square footage of space. Everybody agreed to it. We're now 30 years later, and from my perspective the counties got an awfully good deal over the last several years, including this last year, if the numbers are correct, to the extent that you're...at best, would be \$3 million and that's if all the space is being utilized and it's...as far as I can

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tell, it's not. Maybe 80 percent of it, but we'll still use the \$3 million figure. The counties' portion of the 14 percent of just \$200 million--I think it was a little over \$200 million--but at \$200 million is almost \$30 million. So, I mean, you're working on a dime on a dollar and we're sort of wanting to void your side of the--not your side--the counties' side of the agreement made in 1983 or 1989 to replace the services with space. So that's where I'm having the difficulty trying to correlate the two. [LB632]

SENATOR BOLZ: I see where you're coming from certainly, and I have two thoughts in response. The first is, it's my understanding that the obligation to provide space was not actually in the original bill. And we'll pull the legislative history and get to the bottom of that so that we know for sure what those original agreements were. But it's my understanding that it was not in the original bill. The second is, I would say, whose dime and whose dollar? Whose responsibility is the administration of these programs in 2013? And I would argue, in a lot of ways we've turned that responsibility to the state. And if they would like the discretion to utilize their systems and their services and create efficiencies and develop those systems in the way that makes most sense from a state perspective, the responsibilities come along as well. [LB632]

SENATOR SCHEER: But aren't we all part of the state? [LB632]

SENATOR BOLZ: Oh, certainly. And I think that there are opportunities to create partnerships between the counties and the state. I think some of the space utilization in courthouses is a great example of that. But I don't think it's fair to ask one county to do more than their fair share. [LB632]

SENATOR SCHEER: Okay, thank you. Thank you, Senator Price, Senator Avery. [LB632]

SENATOR AVERY: Senator Bloomfield. [LB632]

SENATOR BLOOMFIELD: Thank you. You and I spoke on the floor briefly this morning, and you told me there was one of the counties that was housing a call center, I believe. Can you tell me again what county that was just so I can look at it on here? [LB632]

SENATOR BOLZ: Richardson County is paying rent for space to house a call center. And my office has put some calls in to try to better understand exactly what that call center is and what kind of service is provided. But if that is, say, one of the 1-800-number call centers that respond to concerns about our aging population, then that 1-800 number is a statewide service. And then Richardson County is providing that for the rest of the state. And we appreciate them for that, but we should also be fair to them. But it is unclear, and we have not yet understood the details of exactly what call center is located there. [LB632]

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SENATOR BLOOMFIELD: Okay. I'm looking at this county obligation here. And for Richardson County, I see 1,630. Is that...I assume is dollars and not 16,000 or anything like that? So... [LB632]

SENATOR BOLZ: I don't see what you see in front of me, but I'm sure your interpretation is correct. [LB632]

SENATOR BLOOMFIELD: Okay. I thought this came from you, but apparently it did not. It just shows that Richardson County at Falls City has an obligation of \$1,630. [LB632]

SENATOR BOLZ: Okay. [LB632]

SENATOR BLOOMFIELD: I don't believe that's too bad. Thank you. [LB632]

SENATOR AVERY: Thank you, Senator. I don't see any more questions. Thank you very much. [LB632]

SENATOR BOLZ: Thanks for your time. [LB632]

SENATOR AVERY: That ends the hearing on LB632. And we now will go to LB588 and welcome Senator Dan Watermeier to the Government Committee. Welcome, Senator. [LB632]

SENATOR WATERMEIER: (Exhibit 1) Thank you. [LB588]

SENATOR AVERY: Start when you are ready, sir. [LB588]

SENATOR WATERMEIER: All right. All right. Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I am Senator Dan Watermeier, spelled D-a-n, Watermeier, W-a-t-e-r-m-e-i-e-r, representing District 1, covering the southeast corner of the state. I am here today to introduce LB588. As introduced, LB588 would establish the Veterans Preference Act, updating current statutes pertaining to veterans' preference when seeking employment. Under the bill, veterans would be given preference for initial employment and positions with the state or its governmental subdivisions if the veteran is competent to perform the services. This language was taken from the legislation passed in Kansas. The intent of LB588 is to create awareness of the current program that we have in statute allowing veterans to be granted preference when job searching. Current statutes state that a preference shall be given to eligible veterans when seeking employment with the state or its governmental subdivisions. Veterans who obtain passing scores on all parts of an examination shall have 5 percent added to their score if a claim for such a preference is made on the application. An additional 5 percent is added to the passing score of a disabled veteran. The current program was put in place more than 40 years ago. The

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hiring process has significantly changed during that time. When enacted, the use of civil service exams was common and the additional point system was applicable. Since the bill was introduced, I have met with the Governor's Policy Research Office, State Personnel, and the Department of Veterans' Affairs. Based on our discussions, I have drafted an amendment that I'm offering today. The amendment strikes the bill as introduced and uses language taken from the Classified System Personnel Rules which were developed to indicate how veterans' preference is assessed within the State Personnel System. It expands the examination language to also include numerical scoring when applying the additional 5 percent for a veteran. If an examination or numerical scoring is not used, preference will be granted to the qualifying veteran if there are two or more equally qualified candidates for a vacant position. LB588 would also allow spouses of veterans with a 100 percent service-connected disability to receive the veterans' preference. The legislation requires that the necessary documentation to prove veteran status and disability status be submitted to the hiring authority. Finally, the bill requires that all notices and applications must state that the position is subject to a veterans' preference and requires that veterans be notified if not hired within 30 days of the position being filled. When a veteran serves our country, not only are they placed in potential danger, they also must be away from their home and family for extended periods of time, creating many hardships. When they return, veterans should not be penalized for their time away and lack of jobs experience or education during the time they served. LB588 updates current statutes by placing State Personnel Rules into law for consistency among all political subdivisions. It also strengthens the application process and places a notification requirement in statute if a veteran is not hired. I feel that our state needs to do what we can to assist our veterans who have given unselfishly of themselves for our country. Updating the veterans' preference statutes to make them more applicable, functional, and accessible is one simple step we can take. I encourage you to look favorably on LB588. If you do have questions, I'd be glad to answer them. But I do think there's going to be better testimony behind me and some proven, documented cases. So thank you to the committee.  
[LB588]

SENATOR AVERY: Thank you, Senator. Do you have copies of the amendment?  
[LB588]

SENATOR WATERMEIER: I do. The amendment I have with me here. I apologize, I should have turned that in. [LB588]

SENATOR AVERY: I think we have a question from Senator Price. [LB588]

SENATOR PRICE: Senator Watermeier, thank you very much for bringing the legislation. Obviously, as a cosponsor I have a great interest in the subject matter, not just being a veteran, but in that I have a great number of veterans in my community. But when people came forward with me--and I'll ask the question to you--do you know if

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there's any veterans' preference currently in state law? [LB588]

SENATOR WATERMEIER: Well, there is as a personnel statute. And I'm going to defer to the comments that maybe come up behind me and we can talk about it further maybe in closing. But there is in statute already. What you... [LB588]

SENATOR PRICE: Thank you. And I wanted to make sure that people understood that. This is not a new concept, it's a concept we actually already have that's not actually being adhered to. And that perhaps it isn't because it's written loose enough to not have to be adhered to. But, again, thank you very much for bringing it forward and answering the question. [LB588]

SENATOR WATERMEIER: You bet. [LB588]

SENATOR AVERY: Isn't it true that a new provision in your bill and the amendment is the awarding of preferences to the spouses of 100 percent disabled veteran? [LB588]

SENATOR WATERMEIER: I think it is, yes. [LB588]

SENATOR AVERY: Yeah. Any other questions? Are you going to stay around for closing? [LB588]

SENATOR WATERMEIER: I will. I'd like to stick around and watch. Yep. [LB588]

SENATOR AVERY: Okay. All right, we will now accept proponent testimony on LB588. Welcome, sir. [LB588]

BO BOTELHO: Thank you, Senator Avery. Good morning. My name is Bo Botelho. My first name is spelled B-o, last name is spelled B-o-t-e-l-h-o. I am the legal counsel for the Department of Administrative Services. I want to thank the committee and Senator Avery for this opportunity to speak. The Department of Administrative Services takes no formal position at this time in reference to LB588 as it's currently written, but does appear here today to testify in support of the bill as it will be amended. The bill as amended brings the current state statute and the veterans' preference system and application process currently used by the State Classified Personnel System more in line with each other. It would also extend the preference to spouses of veterans who are 100 percent disabled and provide enhanced notice to veterans seeking employment. Perhaps most importantly, it will help to increase consistency and standardization of how veteran hiring preferences are requested and applied at both the state and the political subdivision levels. We are currently working with Senator Watermeier on this bill. The bill, as it will be amended, will simplify and help to demystify the process of veterans seeking a preference while facilitating the return of veterans to the civilian work force. Increased standardization across the state will also improve governmental

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efficiency, effectiveness, and transparency. DAS, the Department of Veterans' Affairs, and the Governor's Office are working with Senator Watermeier in developing a mutually agreeable amendment. We look forward to continuing that cooperation with the Senator and this committee. I'm happy to answer any questions that you may have. [LB588]

SENATOR AVERY: Thank you, sir. Questions? Senator Price. [LB588]

SENATOR PRICE: Thank you, Senator Avery. Thank you for testifying. Do you have this amendment in front of you at all? [LB588]

BO BOTELHO: I believe I do. [LB588]

SENATOR PRICE: AM540? [LB588]

BO BOTELHO: I have two versions of AM540. [LB588]

SENATOR PRICE: Well, let's take a shot in the dark here and think that you have exactly the same thing. On page 3, paragraph 2, line 7, there is...we used the word "vacant"..."being considered for a vacant position." And my question is on the definition of vacancy because, you know, oftentimes you'll have a planned retirement or something like that so you know it's going to come open. Is the state system set up in such a way that you can't put out a requisition for a position until it's absolutely vacant or can a position document or an opening be opened while it's still being occupied but planned to be vacant at a point in the future? Because it sounds like here, you'd have to wait until it's absolutely no one sitting in the seat before you could apply it. So I didn't know, is that being too nitpicky, but... [LB588]

BO BOTELHO: I don't know if you are being too nitpicky, Senator. I'm not sure the exact answer for that. I don't recall a position ever being advertised that wasn't vacant, although I'm not sure about that. I think the bill is for initial employment. So any time a veteran would apply for a position, as long as the veteran is not at that time an employee of the state, the preference would apply. [LB588]

SENATOR PRICE: Okay, because then in the next paragraph it says "all notices of open positions." So there we use a notice of an "open position" and the other one you use "vacant." And I've tripped over enough tripwires to be wary of that. [LB588]

BO BOTELHO: I think they're saying the same thing. I think that's a matter of semantics, but I think the intent is to say the same thing. [LB588]

SENATOR PRICE: Okay. Thank you. [LB588]

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BO BOTELHO: An open position is a vacant position, as I understand it. [LB588]

SENATOR PRICE: Regardless of whether there's someone in there right now, it's the hiring authority to appoint in the future? [LB588]

BO BOTELHO: I would believe so, yes, on that. [LB588]

SENATOR PRICE: Thank you. [LB588]

SENATOR AVERY: Senator Bloomfield. [LB588]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Is this, in fact, the amendment you were involved in? [LB588]

BO BOTELHO: Yes. [LB588]

SENATOR BLOOMFIELD: Okay. Let's go back to page 2, line 3, where we're talking about the spouse of a veteran. I hesitate to bring this up but I feel I must. Given what we have set out to do federally, where the gay community where you may not be a spouse but you may be connected to another veteran or if you were a live-in, I think we may be opening a can of worms there that would be better if we stay away from. [LB588]

BO BOTELHO: Well, I think the senators addressed that in the documentation requirement for a spouse. The spouse would have to show proof of marriage. And of course, that marriage would have to be one that's lawfully recognized in the state of Nebraska. So if you're referring to a same-sex couple that may be married in a state that allows that marriage, that marriage is not recognized in the law in Nebraska. So I don't think that would be applied. [LB588]

SENATOR BLOOMFIELD: I understand that, but what I'm afraid we're going to run into is possible federal litigation against us for trying to do something that we perceive as good here. [LB588]

BO BOTELHO: I'm unsure if that would be a possibility, Senator. We'll have to consider that. [LB588]

SENATOR BLOOMFIELD: It's just a scab I think we need to pick before we go too far forward with this. [LB588]

SENATOR AVERY: Any other questions? Thank you, Mr. Botelho. [LB588]

BO BOTELHO: Thank you, Senator. [LB588]

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SENATOR AVERY: Any other proponent testimony? Good afternoon and welcome.  
[LB588]

NICK BUSSEY: (Exhibit 2) Good afternoon. Members of the committee, my name is Nick Bussey--last name spelled B-u-s-s-e-y--testifying on behalf of myself in support of LB588. First I would like to thank Senator Watermeier for sponsoring this important legislation. According to an August 2012 report by the Joint Economic Committee of the U.S. Congress, post-9/11 veterans in Nebraska have an 11 percent unemployment rate, which is more than two and a half times the statewide average. I'm a third-year law student at the Nebraska College of Law and an Iraq veteran. Myself and another law student, Ryan McIntosh, were looking for ways to help address the issue of high unemployment among post-9/11 veterans in Nebraska. Specifically, we're looking for ways to make the current laws more effective. Our attention was soon focused on the area of veterans' preference in state employment. In 1969, the original introducer of the veterans' preference bill, Senator Carpenter, stated that the purpose of the legislation was to put these veterans back to work after they have been honorably discharged from service to their country, and to clarify who had the ultimate responsibility for taking them back. Unlike previous conflicts, the state of Nebraska has played an active role in deploying its National Guard units over the last 12 years heightening the state's interest in this area. Given the high rate of unemployment among young veterans, the need for such legislation is as important today as it was in 1969. Under the current structure of the statute, Section 48-226 provides that "a preference shall be given to preference eligibles seeking employment with the State of Nebraska or its governmental subdivisions." Section 48-227 would carry out this preference by adding to the passing examination of a veteran or a disabled veteran. Unfortunately, this method for granting preference has not kept up with modern employment practices. Since the early 1980s, state and governmental subdivisions no longer utilize a Merit System of competitive examinations. And in the few places where examinations remain, they're substantively different than those anticipated by 48-226. Sections 48-225 to 48-231, the current veterans' preference statutes, are silent as to how to grant preference when no examination is given. When we first tried to address this issue, we looked to see if other states had encountered similar problems. What we found is that most states in the region had recently updated their veterans' preference statutes, with Kansas, Iowa, and Minnesota amending their statutes in 2009, and South Dakota as recently as 2011. All of these states now address the issue of how to grant preference when no examination is given. The green version of the bill was modeled after Kansas' 2009 Veterans' Preference Act, with several modifications. However, I'll focus the remainder of my time on the amended version of the bill which was a compromise to address the concerns raised by the state and other interested parties. The amended LB588 makes three changes. First, it provides a uniform standard when no examination is given. Second, it increases transparency in the process. And finally, it allows the spouse of a 100 percent disabled veteran to utilize the preference. The first change provides that when no examination is given, preference shall be given to the veteran if two or more equally

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qualified candidates are being considered. This equally qualified standard currently applies to state agencies of the State Personnel System, but this would make its application uniform across the state. The second set of changes will help to increase transparency in the process by making sure that notices of vacant positions state whether they are subject to the preference and requiring agencies to inform veterans by e-mail or other means within 30 days if they are not hired. It is essentially a codification of best practices that lets veterans know that they are entitled to a preference and recognizes that since veterans have to take additional steps to verify their status by providing documentation, that they'll be informed if they are not hired. I expect that you will hear testimony later that veterans often do not hear back after providing additional documents for an application, which leads to frustration with the process. Lastly, LB588 would expand the class of veterans to include the spouse of a 100 percent disabled veteran. This recognizes that such spouses often become the primary wage earner and allows them to take advantage of the preference that their spouse is unable to use. Similar provisions are currently contained in both federal veterans' preference law and many other states that have looked at the issue, including Kansas and South Dakota. The current veterans' preference statute has not kept up with modern employment practices. While these changes will not alleviate the problem of high unemployment among young veterans, it will ensure that they encounter a process that is both uniform and transparent. And I'd be happy to address any questions that you might have. [LB588]

SENATOR AVERY: Thank you. Let me start by making an observation. A veteran can be rated 100 percent disabled but still be able to work. [LB588]

NICK BUSSEY: That is correct. [LB588]

SENATOR AVERY: And is it your understanding of this amendment that the spouse would also get the preference and the veteran get the preference? [LB588]

NICK BUSSEY: I think that's currently...first of all, I would state that it's a very small class of persons who are rated 100 percent disabled. This approach has an ease of use. Other states, for instance South Dakota, they use a standard where if a disabled veteran is unable to use their preference, then the spouse can use it. But that becomes very administratively difficult to determine whether or not the spouse can or cannot, in fact, you know, utilize their preference to take a position. So this would allow for...I would think it would allow for both the spouse and the veteran to use the preference. But it's administratively easy to determine whether or not there is a 100 percent disability, whether or not they are the spouse. And the class of persons that that would apply to is relatively small. So I think your observation would be correct. It wouldn't prohibit that. It could be amended to prohibit it, but... [LB588]

SENATOR AVERY: Thank you. Questions? Senator Price. [LB588]

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SENATOR PRICE: Thank you, Senator Avery, I know it comes as a surprise. Mr. Bussey, thank you for your continued service to veterans. Senator Avery asked part of the question I had about the dual usage, but this doesn't talk about the difference between a permanent and total versus...and TDIU versus temporary because you could be 100 percent disabled for six months after having a heart attack and not have a full...so I think perhaps would it be value-added to make sure P&T and TDIU? [LB588]

NICK BUSSEY: Yeah. The language initially said "100 percent service-connected disability" and they took that language out and just have it, I think, as 100 percent disabled veteran. And so it kind of...it doesn't define that any further. I think your point is also correct that this system is, I guess, more layered and more complicated than what the current language would encompass. [LB588]

SENATOR PRICE: I think I understand what you're saying there. [LB588]

NICK BUSSEY: So they have...it has it more broad by just saying 100 percent disabled veteran. It doesn't define whether or not that would be...and that could be, you know, defined later by state regulation or, you know, the Department of Labor would have to adjudicate any ultimate claim that would make its way up. But they've only had two really appeals to their agency currently ongoing after 10, 12 years of war and a huge expansion in the class of veterans. And so thinking that there's going...you know, the law has to think of that, but it just comes to is the standard easily identifiable, easy to apply versus making it more specific on...and redefining it, if the committee wanted to redefine it as a permanent, total disability, I think that would be within the means. [LB588]

SENATOR PRICE: And the reason I say that is because the TDIU, total disability in lieu of unemployability....so you can't have one and have the other. So that makes for a sticky wicket. And then we're also saying when it's service connected, we're saying if you're a veteran, you get a veterans' preference. If you're a veteran who's been disabled because of your service, we're adding consideration. But if you're disabled because you had a chopping firewood incident subsequent to your service, I don't know that that rises to the same... [LB588]

NICK BUSSEY: Yeah. And it does have "as determined by the United States Department of Veterans Affairs" in there. So that's still...it is not just anybody who happens to be a veteran then also happens to be 100 percent...it's as defined by the Department of Veterans Affairs. So... [LB588]

SENATOR PRICE: Does this amendment address the issue that you and I spoke of before about having a process for a veteran to find out why they weren't selected, because we talked about it. Veterans apply for jobs and then it goes into some deep,

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dark, black hole, and they never hear back why they weren't selected. There's no...and the original bill had a process by which you could go back and clarify why it wasn't selected. [LB588]

NICK BUSSEY: Yes. And I think that in order to address the state's concern, they didn't want to adopt a new standard if no examination was there. So by adopting the state's current framework, it's going to make it uniform. So, you know, the veteran is going to know the standard by which they're being judged. And so that's going to give them more transparency. And then on the flip side, they're going to get a notification if they don't get a job. And then they have their administrative rights currently in the statute to bring an appeal to the Department of Labor, the Commissioner of Labor. And so there should be more ability to do that now. Would they know specifically why they weren't selected or the factors that the agency used? They're not required to keep those, but I would expect that there...from hearing the state Personnel Director talk about their process they go through, they're engaged in a process, and I think a veteran that said, hey, you know, I wasn't selected for this job, can I understand a little bit of your process? I think that the state would be willing to give that to the veteran. And, you know, requiring them to keep those documents I think would maybe put a fiscal note on it. You know, the green copy of the bill did have a fiscal note which basically was related to adopting a new standard for when no examination is given. And since we're going to get away from that and use the state's current standard, I expect the fiscal note will go away. And that's certainly within our intent, we don't want a fiscal note attached to this one. [LB588]

SENATOR PRICE: Thank you. [LB588]

SENATOR AVERY: I just have a comment. It seems to me that the purpose of this legislation is to facilitate the ability of veterans to get employed. So I don't think we ought to be making them jump through additional hoops that aren't necessary in order to qualify for the program. [LB588]

NICK BUSSEY: Uh-huh. [LB588]

SENATOR AVERY: Make it as easy as you can. That would be my approach. [LB588]

NICK BUSSEY: Certainly, Senator. And now a veteran... [LB588]

SENATOR AVERY: They have to submit their DD214, that's their discharge paper. And if you qualify there, you get the 5 percent at least. [LB588]

NICK BUSSEY: Uh-huh. And it's really unclear how an agency defines it now because they're really free...it's clear that they have to provide a preference in employment under 48-226. But what standard they use will vary between each governmental subdivision. So the state, for its agencies, utilizes this equally qualified standard. But state

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constitutional agencies are free to do what they want. Every...and so from the veterans' perspective, you have no idea what standard you're being judged on. If they give you an interview, arguably they've given you a preference. And so you have no basis to really know whether or not you've received a preference. And this will help to give a uniform standard for a veteran, I think. [LB588]

SENATOR AVERY: Any other questions? Don't see any. Thank you... [LB588]

NICK BUSSEY: Thank you. [LB588]

SENATOR AVERY: ...for your testimony; very helpful. Additional proponent testimony on LB588? Welcome, sir. [LB588]

GREG HOLLOWAY: Senator Avery... [LB588]

SENATOR AVERY: I think you have been before us before. [LB588]

GREG HOLLOWAY: ...and this committee, I've sat in front of you before. My name is Greg Holloway, G-r-e-g, last name, H-o-l-l-o-w-a-y. And I would be remiss to not thank you for your diligence and your assistance in the successful passage of LB180, which will assist many veterans and their dependents in their educational desires to help them get that better job, you know. I represent...I'm the immediate past commander for the Department of Nebraska Disabled American Veterans and I have been asked by the department commander in that organization to represent them on the veterans' legislation issues. So I'm here to speak on behalf of this bill and the desire for the Disabled American Veterans to see that it's easier for our veterans out there to gain employment that will add a quality to life, especially 100 percent service-connected disabled veterans being able to...it's a quality of life issue with the spouse of that veteran being able to earn a little bit better job and provide for their families a little bit more, especially with the younger veterans that are coming back from Iraq. And the injuries that they have received in this conflict are debilitating to the point where a spouse really has to step up to see that their children are taken care of the best they can. So the only issues I have with this whole bill is some of the terminology, and I've discussed it. I don't like their definition of veteran. I like, myself, as a federalized active duty for purposes other than parading, is far as I'm concerned the best definition of a veteran. There's some language in the bill that states wartime dates, wartime era or...and I would like to see wartime dates eliminated completely in all legislation. Once a veteran, always a veteran. We've been in wartime dates since 1990 right now, but they could end tomorrow. There have been gaps in the wartime dates. Hopefully, we'll not be considered wartime period the rest of our lives. And that's what we're seeking to accommodate. This world is just stop this kind of nonsense sooner or later even though odds are it might not happen. But we would penalize the veteran that joined the military the day after the wartime dates happen, which happened after World War II, Korea,

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during World War II, Korea, between Korea and Vietnam, there's some dates in there. I worked on eliminating the wartime dates in the 1990s when I was a county veteran service officer for Lancaster County to make sure than Panama, Grenada, and Lebanon were considered wartime dates for state benefit purposes. I'm also vice president of the Veterans' Home Board. We worked diligently and eliminated the requirements for wartime dates for entrance into the Nebraska veterans' homes to make Nebraska out forward in taking care of its veterans. And we do it very well. So that's what I'm here for today, is support this bill. Any help we can get, we'll take it. The spouses, I agree with 100 percent. And it's pretty...I would think, pretty easy to find the definition of a spouse is if they are considered a dependent of the veteran. You might just get rid of spouses. And I have a 26-year-old daughter that is a dependent because she is deemed to have some medical issues. And so we might just get rid of the spouses and put dependents recognized by the DoD; it might simplify it. I like to work on the KISS system--I talked about it yesterday, the other day--Keep It Simple Stupid. It works best for us old guys. So if you have any questions, I'll sure try to answer them for you. I've been up and down this road a couple of times and I want to make sure our veterans are looked after. [LB588]

SENATOR AVERY: Thank you, Mr. Holloway. I'm looking at the amendment. The amendment actually becomes the bill. The green copy is replaced by the amendment. I don't see any reference to war dates in the amendment, so that may already be eliminated. [LB588]

GREG HOLLOWAY: That would be good. I visited with Senator Price's office the other day, and I visited with the senator, the introducer this morning about it a little bit. Maybe...but that's...I'd like to get rid of those. I don't like them. [LB588]

SENATOR AVERY: Your last statement though, I found intriguing. You think that it would be better if we were to further amend this to allow for all qualified dependents of the veteran who is 100 percent disabled to also get the preference, not just the spouse? [LB588]

GREG HOLLOWAY: I don't see why not, because there are lot of...especially, on a lot of the benefits afforded to veterans with the extended families...you know, waiver of tuition is afforded to the stepchildren that are recognized veterans' dependents. I'm on my third wife, so I've got a couple of them around. So there's...I've got some more dependents than I like once in a while. And...but I don't see it would be a bad idea because there are adult dependents of veterans that are 100 percent service-connected disabled. I have one myself. [LB588]

SENATOR AVERY: But I think the reason for having the language in here about the spouse is because the spouse may become the major breadwinner for the family. But another dependent, son or daughter, may not. [LB588]

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GREG HOLLOWAY: That's true. That's true. That's true, and then they would be considered a provider for the family, yeah. [LB588]

SENATOR AVERY: Any other questions? Senator Wallman. [LB588]

SENATOR WALLMAN: Thank you, Chairman. And thank you, Mr. Holloway, for being here. Did that canteen thing ever get fixed over there at the...you know, the Veterans' Affairs thing? [LB588]

GREG HOLLOWAY: The what? [LB588]

SENATOR WALLMAN: Canteen, they had trouble with canteen issues there. [LB588]

GREG HOLLOWAY: Oh, at the veterans' hospital? [LB588]

SENATOR WALLMAN: Yeah. [LB588]

GREG HOLLOWAY: Oh, they've kind of got a sandwich shop in there now that comes in there every now and then. And so, you know, I'd like to see somebody come in there and fix that right and do that right there at the veterans' hospitals. [LB588]

SENATOR WALLMAN: Okay. [LB588]

GREG HOLLOWAY: They're working on it. [LB588]

SENATOR WALLMAN: Thank you. [LB588]

SENATOR AVERY: I have written a letter to Senator Johanns on behalf of this committee supporting that. [LB588]

GREG HOLLOWAY: Thank you, thank you, thank you. [LB588]

SENATOR AVERY: Thank you for your testimony. [LB588]

GREG HOLLOWAY: Thank you. And thank you, again, for your hard work looking after our veterans in the state of Nebraska. [LB588]

SENATOR AVERY: We are still on proponent testimony on LB588. Welcome. [LB588]

RYAN McINTOSH: (Exhibit 3) Thank you, Senator Avery. Committee, my name is Ryan McIntosh, R-y-a-n M-c-l-n-t-o-s-h. I'm here to testify in support of LB588 as well as the amendment, AM540. I'm a member of the Nebraska Guard Association...the National

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Guard Association of Nebraska, rather. I'm representing our membership which includes all commissioned officers and warrant officers of the Nebraska Army and Air National Guard and a large number of retired officers as well. At their request, I'm also representing the Enlisted Association of the Nebraska National Guard, whose membership includes a large number of current and retired enlisted members. Today the Nebraska National Guard is nearly 5,000 members strong. Additionally, the Veterans of Foreign Wars Department of Nebraska has asked that I voice their commitment in support to LB588 as well, although they could not send anyone to testify today. This process all began in recognizing friends of mine and my colleagues within the National Guard as they're coming back from deployment seeking preference, seeking out jobs, and having high unemployment rates. There have been a lot of complaints about...and feelings that they were not receiving the preference given to them, that the process was complicated, that it wasn't uniform between state positions, between city police departments, county sheriff's departments. So we began researching and arrived with something that looked like what LB588 is in its green form. The amendment, as Nick Bussey said, came through a compromise between Senator Watermeier and me and state agencies. I think that's a very fair compromise and it accomplishes many of the goals that we set out with initially. Post-9/11 veteran unemployment is a serious issue in Nebraska. While our state maintains a relatively low unemployment rate, the unemployment rate for post-9/11 veterans is 11 percent within the state. As thousands of veterans return to Nebraska, whether returning home from active duty or coming home from National Guard or Reserve deployments, the issue demands our attention. It is my opinion that the current statutes are outdated and difficult to enforce. I won't go through a whole lot of what the current bill does or what the current statute has to say to save time. But I do believe it is necessary to add clarification and transparency to our current law and ensure the veterans are getting the preference that our state has decided is due to them. This is not a new law, this merely fixes a law that isn't working properly and adds transparency to the process. And by putting what the Administrative Code that the State Personnel System uses into statute, the state is making clear how to assess a preference when no examination or numerical scoring is used and to provide uniformity across the state. LB588 as amended would also extend veterans' preference benefits to the spouse of 100 percent disabled veterans. I believe that this is an important component of the bill, even though it applies to only a very small class of people. This is a practice that nearly every other state in the Midwest as well as the federal veterans' preference laws already do. Additionally, there are many problems with the current law that need cleared up as well. Presently, there's no way to...there's no standard, uniform way for a veteran to claim preference. This bill as amended would make the DD214 the standard. That's what the State Personnel System already uses and I'm sure many counties and cities use as well. But again, there's no clear, setout standard and this would make that. Overall the intent of the bill is to add clarification and transparency. Right now there are two different standards and no guidance on application of the preference when there is no examination. The transparency aspect comes with requiring jobs to note on applications of veterans that

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may claim preference and notifying veterans who have claimed preference upon someone else being hired. As I stated initially, I have many friends that have returned and have applied to positions and never heard back. To address a few things that came up: The notification applications of a disabled veteran, those were initially pulled from Iowa and Kansas. In 2011 there was a Kansas legislative study to assess how the new veterans' preference law came up with, and it revealed no huge issues other than Kansas requires certified mail for the notification so they complained about cost. So this addresses that aspect of it. Also for the last testifier, to address that, the definition of veteran as used in the current statute has not changed at all. So this bill just uses the current definition of veteran. The only addition is the 100 percent disabled veteran spouse. Thank you. [LB588]

SENATOR AVERY: Thank you, Mr. McIntosh. How about questions? Don't see any. Thank you for your testimony. [LB588]

RYAN McINTOSH: All right. Thank you very much. [LB588]

SENATOR AVERY: Additional proponent testimony? Welcome, sir. [LB588]

JONATHAN TERRY: Good afternoon. My name is Jonathan Terry, J-o-n-a-t-h-a-n, last name, T-e-r-r-y. I pretty much came here today to give you current testimony as to the things that veterans are seeing right now as far as trying to gain employment. A brief background on myself is I have 11 years service in the Nebraska National Guard. Twenty-two months of that was spent in Iraq, another one year in Afghanistan. And I have over two years of schools' experience as far as leadership courses are concerned, technical courses to provide services as far as computer systems and things of that nature. So the military, itself, has provided me with some technical experience and guidance that I was hoping to actually be able to bring forth to the civilian sector. On top of that, I am educated. I have two degrees, one in medical science and the other in business. Due to this, I also thought that I was going to be very marketable to the civilian sector. And by civilian sector I mean civilian jobs within the government whether that be state, county, or city. Also on top of that, my duties during my period of service have gone from everything to...everything with leading a quality-assurance team on a multimillion dollar construction project. And basically my duties there were to oversee contractual obligations by subcontracting groups. I actually applied for one...actually two different positions within the state that had to do with something of that nature and, unfortunately, never was told that I had veterans' preference. It took months for a response and, therefore, I moved on to other endeavors. I also have had training in logistical management, and during my time I've been accountable for millions of dollars' worth of equipment overseas and currently within the state. Due to all this, it was my belief that I was going to be marketable. But, unfortunately, I found myself coming back from Afghanistan and being unemployed for approximately one month over a year, so about 13 months. In that time frame, I incurred a tremendous amount of financial debt

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and that was to include taking the time to take state tests in order to maybe get other jobs. And as maybe some of you are aware, those are not sometimes cheap, and they do require us to pay for them ourselves. Now as far as the claiming the preference is concerned, the process isn't too difficult when it comes to my thinking. You know, applying for something that says I need to submit my DD214 is valid and completely within the realm and scope of requirements in my opinion. And I was more than happy to do so, along with my disability as well. However, the problem was a lot of the city and state jobs that I did apply for didn't have anything on there for me to claim that. So when I went into the hiring process and submitted my applications and whatnot, I was apprehensive at first because I didn't know if I was even going to be considered due to the fact that they maybe weren't considering military experience as far as working experience. On top of that, I was never notified that I had received preference. So when it came to how I sat amongst the rest of the field of people trying to apply for the job, I was unaware of where I stood to begin with at all. And it was very discouraging. I ended up quitting my endeavors to gain a government job after about six months of repetitive letdowns. So...and as far as being contacted, there were times that I was contacted. It was by computer-generated e-mails and no contact furthermore after that. And it did not specify a number I could call to maybe ask about, you know, certain things as far as the process was or the process entailed. So that concludes my actual testimony, if you have any questions. [LB588]

SENATOR AVERY: Thank you. Thank you. Senator Wallman. [LB588]

SENATOR WALLMAN: Thank you, Chairman Avery. Thanks for your service, sir. And do you believe...you know, I used to be in the Guard myself. You think all these deployments the employers are reluctant to hire people? [LB588]

JONATHAN TERRY: Now just speaking from my own opinion, yes. I feel that sometimes it does hinder the employment process for myself and others. My beliefs on it come from a lot of talk in amongst my peers. I do remember a statistic someone gave to me once that in corporate America as it stands today, they are teaching...having teachings within seminars that employing a veteran, as of now, they will only typically receive about a third to a quarter of good employment time due to our, you know, our current rate of deployments. However, that is now on a downturn, so... [LB588]

SENATOR WALLMAN: Good. Thank you. [LB588]

SENATOR AVERY: Any other questions? Thank you for your testimony. [LB588]

JONATHAN TERRY: Thank you. [LB588]

SENATOR AVERY: Any other proponent testimony on LB588? Okay, we'll accept opponent testimony. Any opponent testimony? Any neutral testimony? Don't see any.

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Senator Watermeier, do you want to close? [LB588]

SENATOR WATERMEIER: Sure. Thanks again to the committee. I appreciate your time and effort. I just wanted to maybe address two questions that had come up. Senator Price had asked the question about the position being open and vacant. And I visited with the State Personnel briefly after that and, no guarantees, but it sounded as if it would certainly be the intention that if the position was vacant or open but yet still being served, that it would be eligible for the preference. And the other note that I did not address in my address earlier was what Mr. Bussey had talked about on the fiscal note. And certainly we won't know that until it comes out of committee on the floor and then amended at that point. But it would be my intention that this fiscal note would be very low, if not zero. So that would be my hope. In summary, the amended version of LB588 places State Personnel Rules into statute, adds spouses of 100 percent service-connected disabled veterans, enhances the application process, and places a notification requirement in our veterans' preference statutes. This bill is a necessary first step in updating our veterans' preference statutes. I would be willing to work on additional revisions to these statutes in the future in an effort to show our gratitude to the veterans who have served us. Thank you for your time. [LB588]

SENATOR AVERY: Thank you, sir. Any more questions? I don't see any. Thanks for coming. That ends the hearing on LB588, and we'll now move to the next item on the agenda, LB534. [LB588]

SENATOR PRICE: Senator Avery, that would be you. [LB534]

SENATOR AVERY: And that would be me. [LB534]

SENATOR PRICE: Whenever you're ready, Senator Avery. [LB534]

SENATOR AVERY: (Exhibit 1) 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 bring to you LB534. And let me give you a little bit of the history on how this bill came about. Last December this committee held a public hearing on an interim study dealing with state procurement. And during that hearing, you will recall that the Auditor of Public Accounts appeared and testified about many challenges that he had faced trying to get information from public entities on a timely basis. He testified that at times he waits weeks, sometimes months to receive information that he needs to do an audit. To address those concerns and to add clarity to the statute, LB534 requires agencies to provide to the Auditor of Public Accounts and the Legislative Performance Audit Section access to any information or records as soon as practicable and without delay but not more than seven business days after receipt of the written request or they must provide reasons why the agency is not complying. That is, put in simple words, they have seven business days to reply to the Auditor. That doesn't mean that they have to have

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completely assembled all those records within seven days, but they at least have to reply after receipt of a written request and provide reasons why they cannot produce them right away or if they can't produce them at all, they have to explain that as well. If the entire request cannot be fulfilled within seven business days due to difficulty or the extensiveness of the request, then the explanation has to be given. No delay due to significant difficulty or extensiveness of the request will exceed three calendar weeks after receipt of the written request unless a longer period is agreed upon between the state agency and the Auditor of Public Accounts. Any information requested by the Auditor of Public Accounts or the Legislative Performance Audit Section will be provided without any fees or costs. They have to be provided promptly and without charge. My office also heard a number of complaints and concerns raised by various entities who are being audited by the State Auditor. Generally, these entities have raised concerns that the Auditor frequently asks for information that is beyond what is needed for him to complete a financial audit. The agencies are concerned that the Auditor is requesting information that is more applicable to a performance audit, not a financial audit. As you know, the State Auditor is allowed in statute to conduct performance audits of political subdivisions, but needs permission from the Legislative Performance Audit Section to do a performance audit of a state agency. That is the responsibility of the legislative branch. To address these concerns, the bill provides that the Auditor has access to all records of any public entity required during a financial audit or a attestation engagement or a financial audit or performance audit of a political subdivision. So let me state that again. This is a point of contention and you'll hear about this in subsequent testimony, and it's important. The bill provides that the Auditor has access to all records of any public entity required during a financial audit or during an attestation engagement or a performance audit of a political subdivision. Those are the areas where the Auditor has auditing authority. The Auditor has statutory authority to perform audits, attestation agreements or engagements, and certain performance audits. So this bill provides that the Auditor will have access to all the records needed to complete those. Finally, my office was also contacted by the state colleges which raised concerns about when the Auditor is authorized to conduct their federal, single audit. This audit is required under federal law for those entities receiving federal funds. There was an informal Attorney General's Opinion in 2012 that dealt with the issue of when the University of Nebraska is authorized to hire and pay an outside auditing firm to conduct the annual single audit required of the university under federal law. In the past, the State Auditor has performed the single audit for agencies in state government. The informal AG's Opinion stated that the State Auditor does not have exclusive authority to conduct an audit of state agencies required by and for the federal government. The Attorney General wrote that the university may use either the State Auditor or an outside auditor for this federal single audit. The State Auditor has the authority to conduct a federal single audit when asked to do so but unless there is a contractual arrangement for payment, the university has no obligation to pay the Auditor. To clarify in statute the issues raised by the Attorney General's Opinion, the bill adds language providing that an audit of federal funds will only be conducted when there is a contractual agreement between the Auditor

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and the agency. I have met with the University of Nebraska representatives. I have met at least twice with the State Auditor. I have met with the state colleges regarding this bill. And I can tell you at this point, I can't tell if anybody is happy. I might be the most unpopular person in state government, at least right at this time. Now that might mean that the bill is a pretty good compromise. As you've heard me say before, that when everybody leaves the table a little bit unhappy but nobody is completely unhappy, you've got a pretty good deal because something is in there for everybody. I have also met with the Legislative Performance Audit Section, and I believe that they support the bill. The committee has received a letter, I think, confirming that. I have an amendment that I am going to have the page distribute. This amendment, AM514, came out of a meeting with the State Auditor earlier last week or maybe it was earlier this week. He suggested that there should be a mechanism to resolve disputes regarding access to records and information. With this amendment, the Auditor or the Performance Audit Section may petition the Attorney General to review the matter to determine whether the public entity has failed to provide the necessary information in a timely manner. So I think that's a good amendment, and I appreciate the Auditor bringing that to our attention. Let me just wrap up by saying that this bill seeks to meet the concerns of two very strongly opposed forces in state auditing. It defines and clarifies statutes, it seeks to reduce the tension now existing between these opposing forces. It's not perfect perhaps, but let's not let perfection be the enemy of good. With that, I would ask you to strongly consider advancing this bill. Thank you. [LB534]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions from the committee? Well, the only question I would ask and perhaps someone following you can answer it is, are there elements of an audit that are similar to elements of a performance audit so it would be tough...I mean, if someone said, I don't want...you mention about some agency saying, oh, you're doing a performance audit instead of just a financial audit. I mean, is that clearly delineated? [LB534]

SENATOR AVERY: I...it's my understanding that it's pretty easy to tell when you're doing a financial audit versus a performance audit. The kind of information you need is different. You will hear testimony from the Auditor that will probably counter what I just said. He is of the opinion that he should be given access to all records because he believes that he can sometimes find evidence of where there may be irregularities that lead to financial discovery that he would not be able to get if he didn't have access to all records. The concern, of course, is that "all records" is a pretty expansive definition of what you need for a financial audit, which is the primary responsibility of his office. I am not seeking to pick a fight with anybody, I'm just trying to put this bill in a position where it can maybe resolve some of the tension that is currently going on. And I can tell you that it's palpable. You get in a room with these forces--and they don't have to be in the same room together--but you can be in the room just with a representative of the university or the state colleges and there's a lot of unhappiness going on. And maybe the unhappiness is embedded in the resistance to just being audited, I don't know. But I

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think that this is something that is important to the smooth functioning of government and the open accountability of government. And we need to be involved in it. [LB534]

SENATOR PRICE: Thank you, Senator Avery. Seeing no other questions, we will move to proponent testimony for the bill here. Proponent testimony for LB534. [LB534]

STAN CARPENTER: Just for the record, I'm happy. Members of the committee and Vice Chairman Price, I'm Stan Carpenter, S-t-a-n C-a-r-p-e-n-t-e-r. And I'm the Chancellor of the Nebraska State College System, and I'm here today to speak in favor of LB534. The statement of intent that Senator Avery filed with his bill says, and I'll just quote that "an audit of federal funds will only be conducted when there is a contractual agreement between the auditor and the agency." And that language is very important to the State College System. The recent AG's Opinion that the senator referred to was provided to the university but it applies to us as well. And so that makes it clear that our board of trustees has the authority to hire an independent, outside auditor to conduct our federal A-133 audit. Let me say up front, however, that it is our belief that the Auditor has the right to look at all of our financial records, including those of our federal programs. However, any such review of our federal programs should not be couched as an A-133 or a single audit if we have not contracted with him to do that, particularly if we've contracted with a third party to perform that audit as we did for our audit at the ending of June 30, 2012. We, in fact, contracted with a third-party auditor at a private auditing firm to conduct our federal A-133 audit. And that was done by the board of trustees at an open meeting and the Auditor was at that meeting and was completely aware of the board's action. Yet the Auditor chose to perform his own A-133 duplicate audit of our federal funds. And we complied and cooperated fully with the Auditor in that exercise. The rub came for us when that exercise was over and the Auditor told us that we needed to sign an A-133 representation letter. That's part of the process if you've hired an auditor and you have...make certain representations. But we hadn't hired the Auditor to do that audit. We had concerns about that because we were afraid that it would be confusing to the feds if we had two representation letters out there to the Department of Education because we have to file our A-133 audit with the federal Department of Education along with our basic financial audit. We expressed that concern to the Auditor. And basically, the Auditor said if you don't sign the representation letter, you're going to get a qualified audit not only on your A-133, but on your basic financials. Now that's a bad thing to get a qualified audit. It's a bad thing for the state colleges, it's a bad thing for the state of Nebraska. And it's a very bad thing for our students because they could potentially lose all of their federal financial aid in the form of Pell Grants and/or student loans. So we were forced to sign that A-133 audit. And then we had to face some other issues because the Auditor contacted the U.S. Department of Education and raised concerns about our filing our A-133 audit performed by the private auditing firm. And he wanted to file his own A-133 audit. The Department of Ed said you can't do that, you can only file one. But that led to confusion and some additional scrutiny by the department that, again, could lead to some potential

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damage not only to us but to our students as well. So we are supportive of this bill, particularly as it relates to the question of the A-133 audit. However, I do want to say that--and we've had conversations with Senator Avery about this--that we think the language could actually be stronger and could be clearer so that the intent of this bill would be quite obvious in the statute. And we think it could be in another place in the statute to give it more strength as well. I have another concern and some other concerns, but I understand the university is going to testify in a bit. And if our past conversations with them hold, then we would be generally in support of what they say. And I think that maybe some of those issues may be addressed as well. But let me, in closing, address one other serious concern that I have about the access to information that this bill has and the senator is concerned about, because it says that the Auditor has access to all these records during the financial audit or attestation agreement. And it is to be there with no cost to the Auditor for us to find and provide those kinds of records. And that language says "without charging fees of any kind for any costs associated with gathering, processing, or production of such information or records." I don't know what the word "production" means there. Does that mean we have to go out and make new records if asked? Do we have to bring other things together and turn that into a record? I have no problem with providing all the records that are readily accessible at the colleges or in the system office. But I do have a concern if the request is going to require us to have significant reprogramming of our computing system or our software or if it deals with an outside vendor. And let me...I know I'm over time, but let me give you just one brief example of an issue that we faced last year. And that's when the Auditor was conducting a performance audit for the LPAS and he requested insureds on all of our health insurance claims for our employees--and we use Blue Cross Blue Shield as our health insurer cover. We don't have access to those records, nor should we because we are buying insurance, we pay a premium, and we buy a fully-insured product from Blue Cross Blue Shield. There was a discussion at one point with them about the production of those records over which we had no care or custody or control. And it appeared to be a discussion that was getting to a potential significant cost to the Nebraska State College System that I felt was not reasonable for us to assume since we didn't have the records. As I understand it, the Auditor and Blue Cross Blue Shield eventually worked that out between them. But we were facing a difficult issue when the Auditor wanted those records and we didn't have them, nor did we have the money to support the payment for those records. So let me say that I'm here strongly supporting LB534. I think that the language in the bill relating to the A-133 audit is important and it's crucial to us. We think it can be strengthened. We think it can be placed in another place that will strengthen that and clarify for the Legislature what that language means. And I hope that you will think about some reasonableness language in terms of production of records, particularly if we don't have them or we have to go out and revise our entire software system. With that, I'd be happy to answer any questions you might have. [LB534]

SENATOR PRICE: Thank you, Mr. Carpenter. We do have to stay on schedule here, so

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on the lights if we can keep an eye on that. My question to you is, have you seen the amendment? Are you in agreement with the amendment? [LB534]

STAN CARPENTER: I have not seen the amendment, Senator. [LB534]

SENATOR PRICE: All right, thank you. Are there any questions? Senator Scheer. [LB534]

SENATOR SCHEER: Thank you, Senator Price. Clarification--when the State Auditor does an audit, is the state college charged? [LB534]

STAN CARPENTER: For our basic financial audit, no. For the A-133, yes. [LB534]

SENATOR SCHEER: Okay. And is there a significant difference between what the State Auditor would charge versus a private entity? [LB534]

STAN CARPENTER: When we eventually went out to bid for our A-133 last year, it was not significantly less, but it was less. [LB534]

SENATOR SCHEER: Okay. And yet there's relatively no difference in the two. And that again could be questionable. Why wouldn't you just allow the state to do that audit rather than go outside? [LB534]

STAN CARPENTER: Well, Senator, there's a couple of reasons for that. Number one, we use outside auditors for other audits of programs that we have, for our revenue bond program and for our facilities corporation program. And so to tie an A-133 into that can make that perhaps even more efficient and economical when we put those three together. Second, what we found in the course of the past couple of years was that the Auditor was holding up our A-133 audit. And we came very close to having to hire an auditing firm at the last minute to perform that audit so that we could comply with the timing regulations of the federal Department of Education. From our perspective, there was absolutely no reason to have that audit held up. It was part of another issue that we were arguing with the Auditor about that we couldn't get that audit out of him to file. And so we were very concerned, as I said, about the loss of federal financial aid for our students. [LB534]

SENATOR SCHEER: Okay, well... [LB534]

STAN CARPENTER: And so we don't want to be in that position again. [LB534]

SENATOR SCHEER: I understand. And I guess I'll wait with interest to listen...I mean, every story has the two sides. [LB534]

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STAN CARPENTER: You bet. [LB534]

SENATOR SCHEER: So I listened very intently to yours and so then I can sort of see the other's and then try to make an adjustment from there. [LB534]

STAN CARPENTER: Sure. [LB534]

SENATOR SCHEER: Thank you very much. [LB534]

STAN CARPENTER: You bet. [LB534]

SENATOR SCHEER: Thank you, Senator Price. [LB534]

SENATOR PRICE: Thank you, Senator Scheer. One question I had, was there any material difference between the A-133 study done by your contracted agent and the Auditor, the findings? [LB534]

STAN CARPENTER: No. We...well, this year, in fact, the private, independent auditing firm, in fact, said that two of our programs raised to the level...came to the level of having to be audited. And so they performed that audit and the APA did not. But other than that, there were no issues...no significant issues in those audits performed by either the APA or our private auditing firm. [LB534]

SENATOR PRICE: And would there be any historical data to suggest that it would be very different? [LB534]

STAN CARPENTER: I'm not certain I understand that question, but... [LB534]

SENATOR PRICE: In other words, have you had this before where the Auditor did one and you had a contractor do one? [LB534]

STAN CARPENTER: This is our first time. [LB534]

SENATOR PRICE: Okay. [LB534]

STAN CARPENTER: This was in last May, I believe it was, when the board contracted to have the A-133 audit done. So this was the first time we've had the duplication by the Auditor of our federal audit that we hired done. [LB534]

SENATOR PRICE: Thank you very much. Senator Scheer. [LB534]

SENATOR SCHEER: Just something that struck me. You were talking about the cost of the A-133 being less because you tied it into two other audits that were being done. Can

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the state do those other two audits to where it would be as competitive or less than what you're doing? [LB534]

STAN CARPENTER: No, Senator, because the...particularly in the revenue bond area--and whenever we do bonds and the facilities corporation as well--one of the covenants, one of the restrictive covenants we talked about yesterday as you may recall talks about an audit being performed by an auditing firm of national reputation. So that would not apply to the APA. [LB534]

SENATOR SCHEER: Okay. Thank you. [LB534]

STAN CARPENTER: You bet. [LB534]

SENATOR SCHEER: Thank you, Senator Price. [LB534]

SENATOR PRICE: Thank you, Senator Scheer. Any other questions? Seeing none, thank you for your testimony today, Mr. Carpenter. [LB534]

STAN CARPENTER: Thank you very much. [LB534]

SENATOR PRICE: (Exhibit 2) And we will move to the next proponent testifying on LB534. Any further proponents? Seeing no other proponents, I will read into the record a letter of support from the Legislative Performance Audit Committee. With that, we will now move on to opponents. Are there any opponents to LB534? Seeing no opponents, we will now...well, now we're going to get one. We move quick. It's not an auction, but we don't dally. Welcome, Mr. Foley. [LB534]

MIKE FOLEY: Thank you, Senator Price and members of the committee. For the record, my name is Mike Foley. That's F-o-l-e-y, the Auditor of Public Accounts testifying today in opposition to LB534. I've testified on a lot of bills over my many years working in this building, and typically I begin my testimony by thanking the sponsoring senator for bringing forth the legislation. Today I'll thank Senator Avery for his interest in the issue, but I'm afraid I can't thank him for the bill. And he knows that, and we've...Senator Avery and I have had two very long, very spirited, and I think, quite constructive conversations about the bill. And there's nothing I'm going to say today that would surprise him in any way. The intent of this bill it seems to me is an effort to redefine the authority of the State Auditor's Office and transfer that authority from the Auditor--who, after all, was duly elected by the people of the state--and cede his authority to state government agencies. That seems to be the underlying theme of the bill. Let me explain a little bit how the audit process works. Generally, either I or one of my senior managers will contact an agency and notify them that it's their turn, so to speak. And we'll work with them. If they say we're really busy the next two weeks, can you put it off a third week? Yeah, we can do that, and we do. And we try to be flexible

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and schedule things that are mutually convenient. But anyway, the point of it is it's the Auditor who decides when it's time to audit a given agency of government. It's not the state agency that decides they want to be audited. If that were the case, I think I'd be a pretty lonely office because they wouldn't be calling very much asking for audits, naturally. Anyway, that process happens about a hundred times a year, and I've been Auditor now for six years. That's over 600 audit reports, and most of those audit reports have gone off like clockwork, no big problem, no big controversy. But with all of those audits, with the exception of the state lottery which by statute must be audited every year, it's the Auditor who decided it was time to do the audit. For all intents and purposes, virtually every government agency--with a few exceptions--but virtually every government agency has federal funds. So when you do an audit of the agency, you're going to be looking at federal expenditures as well as state government expenditures. That's just the nature of the federal government today. Its reach is extraordinary and extends down into the lowest levels of government. The smallest political subdivision is probably getting some federal funds somehow. The bill provides that we can't do an audit of federal funds unless we first negotiate a contract with that government agency. So if I'm looking at a small little village and want to audit them, I can't do it until I first negotiate a contract with them. Same thing with the University of Nebraska or State Colleges or HHS. I've got to stop, negotiate a contract for a federal funds audit, and then proceed. Well, what if they don't want to contract with the State Auditor? What then? We just shut down the audit and they get to handpick their CPA firm? I think that's a very, very dangerous public policy. We should not be moving in that direction, allowing state agencies or local government for that matter to handpick their CPA and, in effect, block the State Auditor from doing his job. Another concern of the bill is access to records. The bill provides that the Performance Audit Section shall have access to any and all information, confidential or otherwise. And naturally, they filed a letter in support of that bill as it relates to that section. But they have not addressed the other sections of the bill. And I've...by the way, I've had a conversation with Senator Harms and other members of the Performance Audit Committee. They are very, very supportive of my office. We've worked closely together and collaborated on a major audit last year of the health insurance program, which was a performance audit duly authorized by the Performance Audit Committee. So it's not fair to say this is all about trying to keep the Auditor out of performance auditing. No, they've encouraged me to get into that area, and we've worked with them on that. There's another problem with...I see we're just about out of time so I'm going to kind of summarize here. But the...there's a problem with the amount of time that's allowed for the agencies to provide records. Right now, we're under the public records statute. A man on the street who might be making a frivolous request must have his request honored within four days. But the State Auditor who is trying to discharge the duties of his office must wait seven days or three weeks if the request is more extensive. And the bill provides for no remedy if the agency does not provide the records. Now I understand there's an amendment, but the amendment doesn't fix the problem. All the amendment says is go to the Attorney General and get an Opinion if you want one. I'm out of time, I'm sorry. I'll stop there and we'll see if there

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are questions. [LB534]

SENATOR PRICE: Thank you, Mr. Foley. Are there any questions from the committee so far? [LB534]

SENATOR BLOOMFIELD: Yes, sir. [LB534]

SENATOR PRICE: Thank you, Senator Bloomfield. [LB534]

SENATOR BLOOMFIELD: This is one of the things we get to do Senator--well, Senator also, I guess--Mr. Foley. [LB534]

MIKE FOLEY: I've been there. [LB534]

SENATOR BLOOMFIELD: As senators in here I get to ask, are there more comments you would like to make? [LB534]

MIKE FOLEY: Well, thank you, and I want to respect your time. But as I mentioned earlier, my office has published a hundred audit reports a year. I've been here for six years plus. That's over...that's something like 650 audit reports. I challenge my critics, show me the audit that was not in the public interest. Show me the audit that should not have been performed. I don't think it's there. And I asked Senator Avery about that and he says, they've never come forward and showed an audit or pointed to an audit that shouldn't have been done or that wasn't in the public interest. Last month my office published a report on an accounting glitch, we'll call it that, at the Department of Health and Human Services--\$1.8 million. Would you prefer not to know about that? Would you prefer that the public not know about that? I don't think so. I think you want to know about those kinds of problems. And I bring them to you when I find them. I think that serves the public interest. And I think HHS...I'm sure they will. They'll learn from that, and they won't do that again because, quite frankly, somebody got embarrassed over that. And those kind of things have to happen. If you hire a CPA firm, you control that firm. And I have great concerns that some of the things that my auditors find--who are very, very thorough and professional--will not come to light if we start allowing state agencies to handpick CPA firms and pay them out of public funds. I think that's a terrible public policy blunder. Well, let me stop there. I don't want to take up...you've given me more time, and I thank you, Senator. But let me just stop there out of respect for your time. [LB534]

SENATOR PRICE: Thank you, Auditor Foley. Senator Scheer. [LB534]

SENATOR SCHEER: Thank you, Senator Price. Auditor Foley, two questions. When the State Colleges were testifying earlier, they alluded to perhaps some unreasonable withholding of an audit on the part of your office. Do you recollect or do you know what

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they may have been discussing? [LB534]

MIKE FOLEY: Yes. [LB534]

SENATOR SCHEER: And I would appreciate sort of the other side of that. [LB534]

MIKE FOLEY: Thank you, Senator. The A-133 audit must be filed with the federal government by March 31. My audit was completed on February 28. I think that's quite timely enough to get it filed. And I did get it filed timely, and we were aware of the deadline. We weren't going to cause students to lose out on their Pell Grants. Good grief, of course we weren't going to do that. We finished the report on February 28. They had another full month to get it filed, and they got it filed. [LB534]

SENATOR SCHEER: Okay. Thank you. And the second question and discussion of having a private firm do an audit. And I'm not familiar with the allegiance of the auditing firm, I can only speak from personal basis. If I hire an accountant, he's working for me. That information is going to go exclusively to me. My assumption would be if they were doing an audit, for example, of a revenue bonding-type deal where you have a bond issuance, those reports would as well have to go to the bonding authority for their inspection. But in other than a revenue audit, if a Deloitte Touche or whoever would do that audit of national scope, if they were hired by either state college or the university or whoever else would leave open in this area, if they are paying them, then the state of Nebraska is no longer the client. If I would understand the relationship correctly, it would be either the state college or the university or Department of Education or whoever it might be that you were auditing under the federal portion. And the report goes exclusively to that department and is not necessarily public to the rest without, you know... [LB534]

MIKE FOLEY: Well, the A-133 audits are filed with something called the Federal Clearinghouse. And that's a public filing process. [LB534]

SENATOR SCHEER: I'm not talking about the A-133 anymore. I'm just talking about you're doing an audit that would include federal funds. And based on this statute... [LB534]

MIKE FOLEY: Yes. I see. Yes. [LB534]

SENATOR SCHEER: ...they're excluding only by permission and letter do you get to look at federal funds. And I guess I sort of have to agree because I don't know many departments that do not receive some type of federal funds within that agency. So it would seem to me it would be impossible for you to do an audit only using state funds and where they're intermingled with federal funds do you get to follow the federal funds into the...or the state funds into the federal funds or at some point in time are they

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finitely severed. I find that a very awkward situation, so can you expand on that?  
[LB534]

MIKE FOLEY: No, I think you put your finger on the problem that I was trying to address earlier, Senator. That's exactly the problem. When you're trying to do an audit of an agency, at what point do you say, well, this invoice is partially paid by state funds so I get to look at it. But wait a minute, the agency might say, no, no, no, no, that's partially funded by state dollars and we haven't negotiated a contract so you can't look at that. And that's the kind of a problem we're going to have. If this bill goes forward it's going to create all manner of confusion and all manner of all...just one more set of excuses for agencies to say, here's something you can't look at because you haven't negotiated a contract with us; we've contracted with somebody else. And that's not clear in the bill how you're going to resolve that. And there's no mechanism for resolving those disputes other than what's been suggested by counsel which is take it to the AG. We've been down that road, and that can be a very frustrating road to go down. You may wait a year or more for an AG Opinion or you may never get the Opinion. [LB534]

SENATOR SCHEER: I don't know that that literally would be in the public's interest, but I appreciate your answers. Thank you. Thank you, Senator Price. Go ahead, if you had something. [LB534]

MIKE FOLEY: Well, if I could follow up. One of the points that I thought you were getting to and you may be getting to is this question of why would we go in and do an audit after an entity has already been audited by an outside CPA firm? That actually happens all the time. I would cite...I could cite many examples. But one right here locally right here in Lincoln is the Wyuka Cemetery. Every single year Wyuka Cemetery, which is owned by the state, was audited by an outside CPA firm. And every single year they got a clean, unqualified opinion, which is what you want. Well, then a former employee of Wyuka came to me and said, you better get down there because that CPA firm is getting the wool pulled over their eyes. And sure enough, they were. We went in there and found the bank records completely falsified. The chief accountant, where every single dollar in the cemetery crossed his desk, was embezzling the cemetery and went off to prison for having done so. I'm very proud of my auditors, they do a great job, they're very thorough. And we go in behind private CPA firms all the time and find problems that they should have found. And I don't want to paint with too broad a brush here because there are many outstanding private CPAs out there, no question about it. But, unfortunately, some of them see government as an easy paycheck where you build a relationship with a government agency, you give them the kind of report that they want to see, and you're not very thorough. And if you find things, you kind of overlook them. And that does happen, unquestionably. [LB534]

SENATOR SCHEER: Thank you. Thank you, Senator Price. [LB534]

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SENATOR PRICE: Thank you, Senator Scheer. I have two questions, so to speak. The first one I think is the shorter one of the two, so I'll start with that. What would happen under this bill if you're mandated by a federal law to audit, like the Affordable Health Care Act. You know, there's some federal dollars that come down but yet you're required to do some auditing. You'd have to have a contract, but it's already stipulated that you have to audit. Would that be problematic? [LB534]

MIKE FOLEY: I don't know if I have an answer for you, Senator. I'd have to research that further. I'm not... [LB534]

SENATOR PRICE: We'll just let that stick to the table and we'll talk to you about it later. [LB534]

MIKE FOLEY: Yeah. Yeah. [LB534]

SENATOR PRICE: The second part is, I'd like to give you an opportunity to respond to what could be characterized as an allegation of levying a different audit if your requests weren't complied with. I think we heard testimony... [LB534]

MIKE FOLEY: Yeah. Well, what Chancellor Carpenter was alluding to was the fact that he wrote us a letter saying that he would not represent to us that he had given us accurate numbers and a complete set of numbers. He signed a letter saying that. Well, when you get a letter about that when you're about to complete an audit, you cannot--under auditing standards--you cannot give a clean, unqualified opinion. He eventually wrote another letter saying he did give us all the numbers, and we gave him the clean, unqualified opinion. But we're just simply following auditing standards, which we must do under statute. [LB534]

SENATOR PRICE: All right. Thank you very much. Are there any other questions from the committee? Seeing none, thank you very much for your testimony today. [LB534]

MIKE FOLEY: Thank you very much. [LB534]

SENATOR PRICE: We will continue on with opposition testimony. I'm looking to see if anybody is popping up. Seeing none, we'll move to neutral testimony. Good afternoon, sir. [LB534]

JOEL PEDERSEN: (Exhibit 3) Good afternoon. My name is Joel Pedersen, it's J-o-e-l P-e-d-e-r-s-e-n. I am general counsel for the University of Nebraska. And I am here today in a neutral capacity on LB534. First, I want to thank Senator Avery and this committee, the Legislative Performance Audit Section, the supporters, and the Auditor for their testimony today. I also would like to acknowledge that the university respects and supports the section and the Auditor in their respective roles to report to the

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Governor, Legislature, and the citizens of Nebraska on the fiscal condition of the state of Nebraska and, in particular, the University of Nebraska. I'd also acknowledge at least in part we may be here today due to the legitimate concerns that developed around the health insurance audits. Again, with our respect to the section and the Auditor, throughout the health insurance audit I will say the Auditor was straightforward and clear when we were working through some contentious issues. He made his position and his expectations known as things continued to evolve and revolve especially around protected health insurance. And I just wanted to acknowledge and thank him for that, that was very helpful. We talked a lot and understood one another is what I'm saying. The university also respects and understands Senator Avery's efforts to bring this bill forward, and this committee's task to try and write down a better way forward and to clarify some things about federal funds audit and to avoid delay in the prosecution of important work of the section and the Auditor, all the while still respecting that there are legal concerns that develop about such things as protected health information and other sensitive and nonpublic records that need to be reviewed during the course of the audit. I am here in a neutral capacity, as the university especially supports one concept that you're talking about today, and that's the auditee selecting its own provider for the federal funds audit. We believe that's the law today. And I think that Attorney General Opinion that was referenced I think answers that question. I have some recommended language to share that I think would clarify that. Again, I think this is the law today. And if we need to write it down in statute, I suggest it be as clear as we can make it. In other respects, there is some natural tension. I think Senator Avery referred to that about this bill. On one hand, LB534 is attempting to capture in the law some clarifications and lessons learned, particularly around the health insurance audits; in a sense, writing into law how the parties work through some tough issues around protected health information and some other issues. On the other hand, we all respond to the notion that this really shouldn't be that hard. After all, haven't these constitutional officers, state agencies, and state entities been around for more than 135 years? To that end, there may be a solid argument to not write down the one-size-fits-all solution, especially the deadlines that do appear to sort of be one size fits all. In conclusion, the university is here in the spirit of cooperation and respect for both the section and the Auditor and we also have some recommended language about a couple, three tweaks that we might suggest. I have shared those with Senator Avery and the legislative counsel, and they're on testimony that I've attached for you today for your consideration. If there's any questions, I'd be happy to answer them. [LB534]

SENATOR PRICE: Thank you, Mr. Pedersen. Are there any questions from the committee? Senator Scheer. [LB534]

SENATOR SCHEER: Thank you, Senator Price. If I'm understanding your testimony, which I may not be, so please correct me if I have not. When you're talking about the federal audit, are you talking about the infamous 133 audit again? [LB534]

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JOEL PEDERSEN: Correct. [LB534]

SENATOR SCHEER: And do you perceive, then, there not to be any conflict in relationship to an audit of the university funds in relationship to where federal dollars may flow into the university via grants or other items that would be needed in the term of a normal audit of the university? Not necessarily the 133, but the state audit as he looks at the use of state funds that may be commingled with federal funds at such point in time? [LB534]

JOEL PEDERSEN: Sure. And it's a great clarification. We did this last year. We hired an outside audit firm. We don't handpick them, they operate under the same yellow book standards that the Auditor of Public Accounts does. We cannot control their reporting. If we do, they're subject to penalty and losing their licensure, so the concern that they're handpicked I think is overstated by the Auditor. But the real issue you're getting to, can he look at federal funds? Yes. There isn't...and we went through this just this past year, in particular. The State Auditor did the financial audit. We had an outside do the A-133. It worked fine. We, of course, were worried there might be some duplication but, you know, that's really the Auditor's call, not ours. So we provided him access to federal funds to the extent he needed that for his financial audit. We didn't try and restrict access at all. So yes, there's some potential overlap there. But it is good business practice, as well, to rotate auditors so you don't have the same auditors looking at the same financial records year over year. Our colleagues in the Big Ten, for example, it's hit and miss, even the public sector ones. Some use state auditors, some use outside auditors. We find that the national-level experience gives us some risk management capabilities and some abilities to have conversations that the State Auditor might not have experience on. So a national firm that's auditing other universities like us can bring us best practices. They can talk about what their other clients are doing. [LB534]

SENATOR SCHEER: Would it make sense then, per your clarifications, what we're really talking about is the federal audit, the 134, 131, whatever the numerals... [LB534]

JOEL PEDERSEN: One thirty-three. [LB534]

SENATOR SCHEER: One thirty-three, I about hit it. If that is the point of contention as far as having an independent audit do that, having the language of that more specific and the availability of the Auditor to look at not only the state funding sources, but as they intermix with any other either private donations that go into those funds or federal funds that are commixed that would make it attainable and reasonable for the Auditor to look at those, have access to those, does that make sense? [LB534]

JOEL PEDERSEN: Sure. It does. And you know, I...again, I think we're okay under the law today. We've done it. Prior to this Auditor, the university routinely did the A-133 federal single audit outside of the State Auditor's office. So that's not an issue. I think

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the law is clear today. If we want to write it down, I'm not opposed to that. I just want to make it clear. [LB534]

SENATOR SCHEER: Well, my concern is the bill talks about having not access to federal funds. And so it does not specify in relationship to your 133, correct? [LB534]

JOEL PEDERSEN: That's correct. [LB534]

SENATOR SCHEER: Thank you. One thirty-three audit, and so I'm really more trying to maybe reach some type of compromise that allows then the Auditor to have access to the whatever commingled funds that may exist during his auditing process. [LB534]

JOEL PEDERSEN: And maybe I'm over answering or under answering, but he has access to those. So... [LB534]

SENATOR SCHEER: I understand. But we've...evidently they have a problem somewhere that both sides don't quite necessarily agree to what those accesses are. So that's what I'm just trying... [LB534]

JOEL PEDERSEN: And that may be partly why I'm neutral here today because... [LB534]

SENATOR SCHEER: I understand, and I appreciate that. [LB534]

JOEL PEDERSEN: Yeah. There's two sides to all of this, as you pointed out. But I don't think in the instance on access there's been a question. [LB534]

SENATOR SCHEER: And I'm not trying to imply that there is. I'm just trying to find some common ground as far as language if we're doing something here that would facilitate both sides' interests on a long-term basis. So... [LB534]

JOEL PEDERSEN: And I hope by appearing neutral I'm emphasizing we don't view ourselves as averse to the section or the Auditor. [LB534]

SENATOR SCHEER: Understood. Understood. [LB534]

JOEL PEDERSEN: We are fully cooperative with their role and want to support that as best we can. [LB534]

SENATOR SCHEER: Understood. Thank you, Senator Price. [LB534]

SENATOR PRICE: (Exhibit 4) Thank you, Senator Scheer. Are there any other comments? Seeing none, thank you for your testimony today, sir. Are there any others

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who would like to testify in a neutral capacity on the bill, LB534? Seeing none, I'd like to read into the record a neutral letter from the city of Lincoln, Nebraska. With that, we'll move to closing testimony. Senator Avery. [LB534]

SENATOR AVERY: You should now understand how difficult this issue has been for my office. The Auditor of Public Accounts spent quite a bit of time in my office twice and never showed much interest in helping work out a compromise on the bill. I was hoping that we could get suggestions from him that would be helpful because he made it very clear that he understands this process of auditing and that perhaps I was not smart enough to get it. Maybe so, but the fact is that we worked hard to bring about some reconciliation of the different opinions and different positions on this. Let me just say that I agree with the Auditor that public entities must not have the ability to decide whether they get audited. There's nothing in this bill that allows that--nothing. The bill requires cooperation by way of reply within seven days and records have to be produced within three weeks. Now perhaps I should have put some language in there that requires the Auditor to have a speedy process for producing the audit and communicate with the people being audited. We didn't do that. And, in fact, I understand in the instances involving the University of Nebraska that a large part of the reason for those 277 days when the information was not produced for the Auditor, it was because the Auditor was slow in getting the papers processed. This bill requires cooperation within seven days. You...at least you have to respond within seven days, and then you have three weeks to produce the documents. That's caused heartburn among a lot of the people who get audited, and I've been asked to change that. I'm not inclined to do so. But I do think that you can never come into an issue this cluttered with emotional involvement and emotional feelings and tension. You can never come into that with the attitude, I ain't got the right answer. And this is the only way you can view this is the way I see it. That's the only way you can do this. Nobody in this room has discovered truth with a capital T. Nobody in this room has the right to be so certain they're right and everybody else is wrong. And, frankly, that's what I encountered. There is nothing in this bill that prohibits the Auditor from exercising his duties. What he might be objecting to is a restriction on his ability to rummage around in files that have nothing to do with financial matters--and I wasn't planning to say that, but now I feel like I have to--looking for who knows what. Maybe embarrassing and titillating information but unrelated to financials. For example, a big issue between the Auditor and the Department of Administrative Services back in 2011 was the Auditor's insistence on private and personal information from state employees' confidential medical records. And this continued until even after the Department of Administrative Services offered compromise that would give the Auditor access to records necessary to complete the financial audit of the state's health insurers without disclosing personal and private information. Now that's the kind of stuff I've had to deal with, folks. It's not been fun. And, by the way, I'm not stupid. I do get it. Thank you. [LB534]

SENATOR PRICE: Okay. I was waiting for some closure there. Thank you, Senator

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Avery. I guess there are no comments or questions or queries. That will close the hearing on LB534, and we will proceed to LB382. And I will turn the committee back over to Senator Avery. [LB534]

SENATOR AVERY: Now the one we've all be waiting for. We'll now open the hearing on LB382 and welcome Senator Charlie Janssen back to your old committee. [LB382]

SENATOR JANSSEN: This is...yes, indeed. Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I am Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent the 15th Legislative District which is Fremont and all of Dodge County and North Bend, for legal counsel's purposes. I would like to appear before the Chairman and remind him that he has a heart condition before he gets riled up that much in these hearings. So we'll try to bring things down a little bit for you. LB382 reinstates the "winner take all" system for electing presidential and vice presidential candidates, awarding all electoral votes to the candidates who receive the highest number of votes in the state. We would join the 48 other states and the District of Columbia who now allocate their electoral college votes in a "winner take all" manner. When Nebraska changed from "winner take all" to our present system, there were claims that Nebraska would see an influx of presidential candidates and campaigns. Claims were also made that voter turnout would markedly increase. Those claims have not been realized in any great measure. What we have done is diminish our clout in a national election by potentially going from the ability to guarantee five electoral votes to a scenario where Nebraska might offer only four or even three electoral votes to candidates. I'm also troubled by the phenomena that the district allocation, by its nature, increases the incentive if gerrymandering Congressional districts to magnify the effects of gerrymandering. Nebraska is not unique or innovative in, in my opinion, ill-advised policy for awarding electoral votes. Throughout the history of our country, various states have allocated their electoral votes by special presidential electoral districts, regional districts, counties, Congressional districts, and combinations of the previously mentioned systems. States have gone back and forth. And I think it's telling that 48 states have chosen a "winner take all" system. I think it's healthy that we have this debate regularly. After the 2000 presidential election, 29 states considered changing the way they award electoral votes. Since 2000, a total of 35 states have considered changing their allocation system. None adopted a Congressional district plan like we have. Here's the bottom line. When we choose a Governor or a U.S. Senator in Nebraska, we speak with one voice across the state. The same standard should be applied to our choice for president. I thank you for your consideration of this legislation. [LB382]

SENATOR AVERY: Thank you, Senator Janssen. Are you aware that several states are currently examining and, in fact, working toward legislation similar to what we have already in statute? Pennsylvania, for example. [LB382]

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SENATOR JANSSEN: As you mentioned...as I mentioned in my opening, several states oftentimes bring this forward. I guess we would be one that's also a state that's looking at changing the way we do it. So we would be thrown into that, but just the opposite way. But as we've seen over and over, in California, for instance...you know, before, you know, we talk about this, a lot of times this gets brought up as a partisan issue and perhaps it is, but it changes from state to state. In California, for instance, it was more of Democrats that were opposing a system like we have here. So it's kind of a...I don't know, it's a slippery one to kind of get a handle on, I guess. [LB382]

SENATOR AVERY: It is laden with overtones of partisanship. What were some of the arguments that were being made in Pennsylvania, if you know? [LB382]

SENATOR JANSSEN: I'm not familiar with the Pennsylvania legislation that they had, that they brought forward. I would imagine they were very similar to the arguments that we have here. You know in California, for instance, the majority of people that generally votes Democrat and I think that's...they want to keep it the way it is because the majority rules, except in Nebraska evidently. [LB382]

SENATOR AVERY: And Maine. [LB382]

SENATOR JANSSEN: And in Maine...of how that goes down. I can't imagine that the arguments would be much different than what we have here on either side of the issue. It just seems that the teams are drawn up a little bit differently state by state whether it's...if you want to talk partisan, Republican or Democrat. [LB382]

SENATOR AVERY: Questions? Senator Bloomfield. [LB382]

SENATOR BLOOMFIELD: Senator Janssen, as I recall this one, when we went to this process it was hoped that all the states would do this and a more fair thing would break out. And unfortunately, I don't think we've seen that. I'm not opposed, necessarily, to the idea of splitting the states up. But when we're the only one doing it, it would appear to me that we are giving away our little bit of authority and leaving states like California with more power yet. Could you... [LB382]

SENATOR JANSSEN: You know, it...well, certainly in the case of California. Of course, we can't forget we are a state that has five electoral votes. So I mean, we can't really change...we're not really cutting up a whole lot here per se. You know, I think on legislation like this passed, you know, we hear oftentimes about 2008. President Obama did get one delegate out of Omaha. And the reason I brought this bill and sponsored a bill this year is because it's really not a sour grapes issue now. I mean, President Obama won in 2008. He won again, as we're all aware, in '12, and he didn't carry that district. All five of our votes went to the nominee in the Republican Party, Mitt Romney. So there was an argument made that this would create an influx of candidates. You

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know, President Obama did not visit Nebraska this last election cycle. Mitt Romney did, but that was more of a fund-raising event, I believe, than a campaign event. And I think it bears taking a look at. If you can get all five, maybe you'll come here. But in reality, we've got five electoral votes and I think most of the advertising we see in the presidential election is targeted at Iowa and it spills over to us here in Nebraska. That's my opinion, but... [LB382]

SENATOR AVERY: Questions? Senator Scheer. [LB382]

SENATOR SCHEER: Thank you, Senator Avery. Senator Janssen, can you...a guy gave me an analogy the other day, and I'll just ask you to sort of respond to it. That splitting the electoral votes as we do unilaterally--and granted, Maine as well--is sort of like the state instituting term limits on all of our federal legislators. Great idea perhaps but if no one else does it, is it at the detriment of our state? [LB382]

SENATOR JANSSEN: Those are certainly unintended consequences in both of those scenarios, Senator Scheer. I think I wouldn't be here before you today if I thought the way we were doing it is the best way to do it, you know, term limits aside. I think we do look at other states. Of course, we're the only state that has a Unicameral and we could argue that other states are doing it better or worse. We like to think we're doing it better here. But that doesn't necessarily always hold water. And we hear it, I know you hear it, and I hear it day in and day out. We should take a look at this because this many states are doing it and they've had this success with it. So that's...it's six and one half...I mean, however you go with it. I hope that answered your questions or... [LB382]

SENATOR SCHEER: Oh, no. I mean, I guess personally I don't necessarily think splitting those votes up is necessarily a bad thing. I think the person I was talking to was trying to reiterate that it's a good thing, but it's only a good thing if everybody else, all other states, share in that process. [LB382]

SENATOR JANSSEN: I agree with you there. [LB382]

SENATOR SCHEER: And so, you know...and his analogy of the term limits, you know, if you agree with term limits, it may be a great idea. But if you are the only state that institutes that on your representatives they would never get seniority or anything else on a federal basis. So you know again, whatever state that might be would be set apart and it may be a good thing for those people that voted for it. But again, it isolates that state versus the rest of the United States. And so when we have such a small amount that are doing it, you know, only two from the vantage point of the split electoral votes, the fact that I agree with it--I look at the bigger picture--is that necessarily in the best interest of the state to do it that way? [LB382]

SENATOR JANSSEN: Well, I certainly don't think so. And I think if we look at it from a

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nationwide perspective...and this is something that I don't know if...I was here, but I can't remember if Senator McCoy brought it up. But after going through redistricting just recently, which your particular district changed somewhat, it did...gerrymandering did become kind of an issue that could come up if we did all go to a district, you know, district-by-district system. Boundaries in states really don't change. And they, for the most part, they just don't change, so that's set in stone. If we do it that way, at least it's more uniform and I think 48 other states have agreed, and the District of Columbia, that that is a more uniform and effective way to do it. [LB382]

SENATOR SCHEER: Okay. Thank you. Thank you, Senator Avery. [LB382]

SENATOR AVERY: Senator Wallman. [LB382]

SENATOR WALLMAN: Thank you. Thank you, Chairman Avery. Welcome, Charlie. How are you? [LB382]

SENATOR JANSSEN: Good to be back. [LB382]

SENATOR WALLMAN: You know, I hear lots of constituents that want to do away with electoral college period, because the last president didn't get the popular vote. And so that's my party's side, probably. And so this is kind of interesting, but do you think we need the electoral college in today's society? [LB382]

SENATOR JANSSEN: Well, I'm certainly not here advocating one way or the other on the electoral college today. I didn't really research that for this particular legislation, but I'd be happy to discuss that with you over a cup of coffee some day. [LB382]

SENATOR WALLMAN: Sure, we will. Thank you. [LB382]

SENATOR AVERY: Senator Karpisek. Oh, I'm sorry. [LB382]

SENATOR KARPISEK: That's fine. [LB382]

SENATOR AVERY: I had promised this one. Senator Murante. [LB382]

SENATOR MURANTE: Thank you for coming, Senator Janssen. I recall an interview that for some reason just stuck with me from the Pennsylvania case that was discussed earlier. And it was governor--the now former Governor Ed Rendell, articulating his opposition to Pennsylvania going to a by-Congressional-district election. And his argument was that going by Congressional districts particularly damaged racial minorities. And his argument was that in Congressional districts in Pennsylvania you would have one Congressional district that would go overwhelmingly to one candidate, and another Congressional district that would go 1 percent to the opposite candidate,

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and they would both get one electoral vote. And I've thought about that, and I've tried to apply that same logic to Nebraska. And it seems that there is a rough parallel insofar as I think most people would acknowledge that the 3rd Congressional District is consistently going to go one direction overwhelmingly, and no matter what happens, the 2nd Congressional District is going to be a competitive Congressional district. Do you think that the way that we allocate our electoral votes right now is fair to the 3rd Congressional District in light of the fact that both sides of a state, both Congressional districts will get one electoral vote depending on who wins, but one candidate is going to win by substantially more? [LB382]

SENATOR JANSSEN: Right. I don't think it's fair not only to the 3rd District, but the 1st District and the 2nd District, for that matter. We're all coming together to make a decision on the president. As I said, we choose our Governor that way, we choose our U.S. Senators that way. And so, no, if you're asking me if I think that's fair to them, it's not. And that's part of the reason I'm here today. And I thank you for bringing up the Pennsylvania...because you're probably more familiar with the Pennsylvania case than I am. So I thank you for bringing that up. But again we open ourselves up. We really open ourselves up to gerrymandering if we continue down the path that Nebraska and Maine have went on. [LB382]

SENATOR AVERY: Any other questions? Senator Karpisek. [LB382]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Janssen. I was trying to sit this one out in my office, but your mention of gerrymandering drug me out. [LB382]

SENATOR JANSSEN: Uh-oh. [LB382]

SENATOR KARPISEK: And well, because I mean I think in my opinion we saw a fine case of it here in Nebraska, and I fought against that and I'm still very unhappy with those results. And if anyone can really look themselves in the mirror and say it wasn't, I don't know how they can do that. Anyway, my point on all of this is I think the people of a particular thought process should have the ability to not just get thrown in with everything else. You make good points, you make good arguments. I, for one, am proud of the way that we do it a little differently. We always talk about the only Unicameral and all those sort of things. I hadn't thought about the part about, well, we'll get rid of gerrymandering that way. But there will be something else to make maps on, as we seem to like to do around here; there are cartographers in the group. But could you tell me the...I don't even...I don't want to set you up here. [LB382]

SENATOR JANSSEN: I appreciate that. [LB382]

SENATOR KARPISEK: Yeah. I'm not...that I'm not trying to do, I'm just still frustrated.

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But how can we do it in such a way as to the groups of people who are like-minded do have their vote count or feel that it counts if it's just spread over everyone? I'm going kind of with what Senator Wallman said. Well, what about electoral college? Why don't we just go with popular vote, which that's not our decision here? But anyway, I'll let you...I expounded. I'll let you go off a little bit. [LB382]

SENATOR JANSSEN: I'm just happy I drug you out of your office, Senator Karpisek. [LB382]

SENATOR KARPISEK: I'll probably go hide again. [LB382]

SENATOR JANSSEN: What I would say to that is probably more of a broad, sweeping answer because I know what you're talking about the other part. And I'm not going to get into the gerrymandering in that specific case that you're speaking to, but...and I would point out that my district didn't change at all, by the way. So... [LB382]

SENATOR KARPISEK: Your Congressional district. [LB382]

SENATOR JANSSEN: Well, that it did. Yeah, that's the thing that got you going. I would say, though, I voted this last presidential election and I would say that my vote did count. My vote was--I know this will surprise you--it was for Mitt Romney. So my vote I felt did count. But he lost, he's not the president. And it still counted. So we've got to get past this my vote doesn't count. You know, I went out, campaigned, I donated money to that particular presidential nominee. And that's how I tried to affect the election and my guy lost, but I still feel my vote counted. And that would be the same in either system, in reality. [LB382]

SENATOR KARPISEK: Senator Janssen, thank you for bringing it. I know that it's a tough subject, and I appreciate the talk because it does rankle everyone up. [LB382]

SENATOR JANSSEN: I just wanted to pick the one day when we were done in Revenue Committee by 3:00 and I had to stay here for Government until now. [LB382]

SENATOR KARPISEK: Well, good. [LB382]

SENATOR AVERY: We're very pleased to inconvenience you. [LB382]

SENATOR JANSSEN: Thank you. [LB382]

SENATOR AVERY: Are you going to stay to close? [LB382]

SENATOR JANSSEN: Probably not. You guys enjoy it though. [LB382]

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SENATOR AVERY: All right. We'll have proponent testimony on LB382. Welcome, Mr. Secretary. [LB382]

JOHN GALE: (Exhibit 1) Thank you, Mr. Chairman. Chairman Avery and members of the Government, Military and Veterans Affairs Committee, I'm John Gale, J-o-h-n G-a-l-e, Secretary of State and chief election officer for the state of Nebraska. I'm appearing here in support of LB382 as introduced by Senator Janssen just as I did when the same bill was introduced by Senator McCoy in 2011. The U.S. Constitution leaves the method of distributing electoral votes up to each state. And currently, as Senator Janssen explained, only Maine and Nebraska distribute a share of their electoral votes by Congressional district. Forty-eight of the states follow the "winner take all" method of distribution. The reasons I support the bill are somewhat different than the testimony of Senator Janssen, but they go to the same point. When I first became Secretary of State, I thought that it was a very unique system of distribution of electoral votes and thought it made sense. And it existed for some period of time since 1991. Nebraska likes to be unique and different with our public power system, our Unicameral, our nonpartisan Legislature, and other things that do create a very unique state for us. But as time went along and I studied the issue closer and closer and had my staff work with me on whether or not it really made sense on two levels--one, does it make sense nationally for our country, is it good for our country; number two, does it make sense for our state--no matter how unique it may be or how proud it may make of us for being unique, those two issues are the issues that dominated my thinking. And as we studied the issue of distribution by Congressional district, we found that if every state were to adopt the same system that Nebraska and Maine have, it would be highly unlikely in most circumstances that either candidate of either major party would get the 270 electoral votes they need. The "winner take all" system gives us a high assurance of a preponderance of electoral votes for one candidate or the other and eliminates the problem of a cumbersome deadlock and unlimited consumption of time that will occur for the selection of a president if you do not have a majority gained in the electoral college. This would be true whether the distribution was by Congressional district or was a distribution by proportionality, as has been discussed in Pennsylvania and in some other states. And as has been discussed by some Republican leadership over the past presidential election as to whether or not, if electoral votes were distributed proportionality--meaning who got what percentage of vote in the state--or by Congressional district, would Mitt Romney have won the election as opposed to Barack Obama? Well, that's not my issue. My issue is that it makes it extremely difficult for a major candidate to assure themselves a majority of electoral votes if you start splitting up the major states like Florida, California, Texas, New York, Michigan, where the other party gets their share of Congressional districts and it makes it less likely that either candidate will prevail. The other problem nationally is this: Once you start allowing proportional distribution of votes in a state or distribution by Congressional district, you are inviting the blossoming of third-party interests who will seek to be a party in a particular district or another where they have some weight, and gain one or two

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Congressional district electoral votes wherever they can or proportionate in a state. In other words, it creates a blossoming, a flowering of third parties which will collectively gain a sufficient share--whether it's a George Wallace party or it's a Ross Perot party--enough shares that it will, again, throw the electoral college into the House of Representatives. Well, how does that work? If it goes to the House of Representatives, each state has one vote. So the entire Congressional delegation of each state has to come to some consensus as to how they're going to cast their vote for president. This could be--as we've seen Congressional operation--this could be a long and extended process before we'd have a president of the United States. So for those reasons, I've gone from feeling proud of a unique system to being very alarmed at what would happen if this became a nationwide process that prevented a selection of a president. And for our own state, I think it's important for us as a small state to influence our process of selecting a president as much as possible. Our two senators give us the same number of electoral votes as California and New York. Small states have a disproportionate influence. They should exercise it to the fullest extent by a "winner take all" system. Thank you, Mr. Chairman. [LB382]

SENATOR AVERY: Thank you, Mr. Secretary. Questions? Senator Murante. [LB382]

SENATOR MURANTE: Secretary Gale, thank you for coming. I'm very glad you testified today because I want to ask you a question for the perspective of our chief election officer of the state of Nebraska. We're the Government Committee who are sort of the first line of defense when talking about creating new election laws in Nebraska. And coming off the campaign when I was out just knocking on doors and talking to voters, I came to a belief, and I think that belief has been confirmed by public polling that I've seen, that the average rank-and-file Republican in this country genuinely in their heart of hearts believes that the establishment of the Democratic Party--we'll just say cheats--that they have to cheat to win elections. And that the average Democrat genuinely believes that Republicans are trying to suppress votes to win elections. And when you ask either side about the other one, they'll say, well, we're doing nothing wrong. It's the other side that's doing all the malfeasance, and there is a significant lack of trust. And when we're in here creating laws, we're attempting to--no matter what happens at the outcome of an election--ensure that everyone genuinely believes that everyone's vote was counted and that the person who received the most votes actually won. And we're not there, I don't think, as a country right now. And my question to you with respect to this bill is, with respect to that public trust of ensuring confidence in our election process, do you believe that this bill helps in that cause of making sure that the outcome of elections are what they should be? [LB382]

JOHN GALE: Well, I didn't come here to get into a partisan discussion one way or the other. [LB382]

SENATOR MURANTE: No. I'm not saying... [LB382]

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JOHN GALE: But I do agree with you that the two parties view each other on the national level with extreme distrust. And when you realize that really those two voices don't represent all Americans at all--you have 50 state parties, you have two national parties, you have two Senate campaign committees for each party, you have two Congressional campaign committees for each party, you have 435 Congressional district parties for each party because they each try to elect their own congressman, you have 100 Senate parties that try to elect their own senators--so you have 600 or 700 parties. And so they don't speak in a united voice at all across the country. But there is, at least through the media, the eyes of the media, there is an extreme distrust on the national level between the two parties. I don't think adopting LB382 in any way creates additional distrust between the parties in the state of Nebraska. Each Congressional district is really focused on trying to elect their congressman. It's not just the electoral vote. Electoral vote in many ways is secondary to what most activists pursue in their Congressional district. They're pursuing the election of their congressman, they're pursuing the election of their city councilman, of their mayor. Those are the elections that really are the grass-roots elections that they're trying to influence. The electoral college is somewhat of a secondary thing. But I think we all agree that the smaller states...when the Great Compromise was created by our forefathers in the Constitutional Convention, it was attempting to balance the big states against the small states. And they gave us an edge as small states. They gave us two senators equal to each of the large states, and that gives us two electoral votes. And when you work out the percentages, the smaller states in the Great Plains have a significantly higher voice, because of those Senate electoral votes, than do Michigan or Pennsylvania or New York. And if we use them correctly, we have a strong voice for agriculture, we have a strong voice for transportation, we have a strong voice for what impacts us in the Great Plains. And I think it should be used that way. If 48 of the states, including all the big states, think "winner take all" is the answer for them, it should be the answer for us in the Great Plains as well, that we consolidate our agricultural, rural America voice in a way that helps us the best. And I think LB382 helps accomplish that. [LB382]

SENATOR MURANTE: Thank you. [LB382]

SENATOR AVERY: Senator Wallman. [LB382]

SENATOR WALLMAN: Thank you, Chairman. Yeah, "winner take all." I heard that. Then why have electoral college? You know, it was set up so the minority could win, have more advantage like you said. But in today's society, we're splitting it up by doing it this way, don't you feel? We're the United States. [LB382]

JOHN GALE: Well, Senator Wallman... [LB382]

SENATOR WALLMAN: I still think... [LB382]

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JOHN GALE: ...I would totally oppose the idea of popular election simply because our forefathers who created that constitution realized that larger states can certainly dominate smaller states unless there's some kind of a balance. And that balance comes through having an equality in the United States Senate and an equality of that voice in the electoral college. Certainly it favors the smaller states, but that was the Great Compromise. To go to a system of popular election of a president destroys the whole sense of a federal government, a balance between federal government and state governments with rights that are reserved under the Tenth Amendment to the states. It eliminates boundaries totally. Every candidate is going to focus on those metropolitan areas that are five or ten million people and say boundaries will mean nothing. And I think that we need to preserve the integrity of our federal system which is reflected in the electoral college and the United States Senate. You could also argue the United States Senate is not fair. It should be one man, one vote, proportional just like the House of Representatives. But that destroys the entire integrity of what our founders put together 230 years ago. [LB382]

SENATOR WALLMAN: I can understand why they did that back then. But today I think we have a more, you know, educated citizens. And also the last president from, you know, a small populous state was Harry Truman. You know, before they used to come from Kentucky and those places like that, but that hasn't happened for a long time--Texas, some of the big states. [LB382]

JOHN GALE: Well, Senator Clinton came from Arkansas. That's not exactly a large state. [LB382]

SENATOR WALLMAN: Yeah. No, that's not. That's right, Clinton. Thank you. [LB382]

JOHN GALE: Thank you, Senator. [LB382]

SENATOR AVERY: Any other questions from the committee? Senator Karpisek. [LB382]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Secretary Gale. If we're looking at Texas and California, which we're not, my thought is then let's just go home. Why are we even here? Let's just see what they're going to do and we do it. I mean... [LB382]

JOHN GALE: Well, the constitution gives us the right to express our own voice on how we want to distribute our electoral votes. As you know, there was a bill that was introduced a couple of years ago that would say, that if it passed, that our electoral votes would go to whoever received the popular vote on a national level. Now if you want to create distrust and heartburn in your citizens, it would be a state like Nebraska

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which is a strongly Republican state--a growing Democratic Party but a Republican state predominantly--and we would say all of our electoral votes would go to whoever wins the popular vote. And so a Democratic candidate Barack Obama wins the popular vote, all of our electoral votes then go for that candidate. Is that an expression of the will of the people? Is that an expression of a majority vote? [LB382]

SENATOR KARPISEK: No. And that didn't even leave this committee. [LB382]

JOHN GALE: So that doesn't work. But... [LB382]

SENATOR KARPISEK: That didn't leave this committee. [LB382]

JOHN GALE: ...that's what some people were proposing. [LB382]

SENATOR KARPISEK: Okay. But that's still not talking about Texas and California and that we should do it how they do it, which is what you said. [LB382]

JOHN GALE: Well, I'm saying 48 states do it that way. It's not just Texas and California. [LB382]

SENATOR KARPISEK: And they don't have a one-house system either, and they don't have a lot of other things. You talked about there would be a lot of third-party people popping up. Have we seen that in 19 years in Nebraska? [LB382]

JOHN GALE: Well, in one of my elections I had five parties running against me. So we do see parties like the Nebraska Party or the Constitution Party or the Green Party. We do see small parties try to gain their 5 percent and get their feet on the ground. [LB382]

SENATOR KARPISEK: But they haven't won anything, have they? [LB382]

JOHN GALE: Well, they try to. [LB382]

SENATOR KARPISEK: Well, of course they try to. [LB382]

JOHN GALE: And that's what I'm saying. On a national level when you talk about distributing electoral votes by Congressional district, there are Congressional districts that would maybe be very strongly inclined to be a Green district or one that's very inclined to be a Libertarian district maybe in Montana or Wyoming. So that if a party wanted to go out and claim enough...put enough money invested in key districts where they might gain a voice, that's pulling those electoral votes away from the two major parties. Our system is really based upon two major parties. And you look at what Ross Perot...I mean, Ross Perot got 20 percent of the vote. And you have too many small parties like that gaining momentum, and you're never going to have 270 electoral votes.

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[LB382]

SENATOR KARPISEK: I guess my point is that we're not talking about Montana or anywhere else. We're talking about Nebraska and it hasn't happened here. [LB382]

JOHN GALE: And this is a public policy decision for your committee and the Legislature; you've looked at this many times before. I'm simply saying, from my point of view after we looked at this and studied this, we've used it for 19 years. It's only made one difference in one election--one electoral vote. And it's probably time for us to recognize the reality that it's better for the state, I think--my opinion--that we have a "winner take all." But obviously, that's your decision and not mine. [LB382]

SENATOR KARPISEK: And obviously I do respect your opinion; I'm glad that you came to share it. But you made my point too. It's only happened once in 19 years, so why change it? So thank you... [LB382]

JOHN GALE: Thank you, Senator. [LB382]

SENATOR KARPISEK: ...for being here. [LB382]

JOHN GALE: Thank you, Senator. [LB382]

SENATOR AVERY: Any more questions from the committee? Thank you for taking time to come down, Mr. Secretary. [LB382]

JOHN GALE: Thank you, Mr. Chairman. Thank you. [LB382]

SENATOR AVERY: Any other proponent testimony on LB382? All right. We will now move to opponent testimony. Good afternoon. Welcome to your former committee. [LB382]

DiANNA SCHIMEK: (Exhibits 2, 3, 4, 5) Thank you very much, Mr. Chairman. And good afternoon, members of the committee. I'm delighted to be here. I'm not so delighted to follow John Gale with whom I worked over the years a number of times, and he's been great to work with. And I actually agree with some of the things he talked about. He raised some very good points, but I don't agree with his conclusion; so let me try to convince you. I'm not going to go into the history of the electoral college but, as you know, Article II of the United States Constitution does say... [LB382]

SENATOR AVERY: We know who you are, but would you spell your name? [LB382]

DiANNA SCHIMEK: Oh, I am so sorry. Yes. I am DiAnna Schimek. That is, first name is D-i-A-n-n-a, last name, S-c-h-i-m-e-k. Thank you. But the U.S. Constitution does say:

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each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress. In other words, if we were to go to a popular vote, we'd have to change the U.S. Constitution. Not we the Legislature, or you the Legislature, but Congress and the people. These electors were chosen in a number of ways over the years, including by district in earlier years. In some cases in the early years, electors were chosen by state legislatures, not by the people. So this has been an evolving situation or system, I should say. And I would like to call your attention at this point to this Marquette University Law School faculty blog which I thought had some interesting things in it. And I would like you, at some point, to be able to take a look at it. But particularly I would like to mention that we keep talking about 48 states that do it one way, and we do it the other way. There's actually eight states that only have three electoral votes, so they can't divide their votes. They're kind of locked in where they are. So it's not a totality maybe like we think it is. I introduced LB115 in 1991, which established our current system of allocating electoral votes, because I believed that a more proportional representation would be fairer. My cosponsors at the time were politically divided, two Democrats and two Republicans. As a past student of government and a teacher of civics and history, I believe strongly in the one person, one vote concept. At the time, there was a lot of talk about dispensing with the electoral college and changing to a popular vote. Because there was a strong opposition to such change, I thought the system devised by LB115 would be a nice compromise between doing away with the electoral college and continuing with the "winner take all" system. And even though the popular vote option was and is very appealing--I think it's very appealing--I worried about court fights over contests in individual states and how that could tie up the electoral process for months. And we caught a whiff of that in 2000 with Florida. I also believed that a change in the electoral system might prevent the unfortunate results of someone winning the popular vote but losing the election in the electoral college. In '76, Hayes-Tilden; '88...1888, that is...Harrison and Cleveland; 2000, Bush-Gore. Or of a close election in the popular vote but a landslide in the electoral college, which gives an incoming president a false sense of support. At the time, there was a movement to encourage more states to introduce bills like LB115. Some came close, but the votes were never successful in both houses. Sometimes they'd pass one but not the other. There were other reasons for introducing the bill. Nebraska had lost its advantage in the presidential campaigns in the primaries. We were no longer one of the very few states holding primaries, and we were late in the process. With the possibility of contests in one or two districts in the general election, the hope was that more candidates would come to Nebraska and more candidates would establish campaign organizations in our state. And that did happen in 2008. One side effect of the activity was a modest economic impact. And again, I've given you a handout that, truthfully, I put together when the last bill was introduced in this committee, and it's not inclusive. There's a lot of things that aren't included in that. But there was an economic impact. Another was that, on election night, commentators were watching to see what might happen in Nebraska. Another positive feature of LB115 was

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that there was language in the bill that indicated electors would not have free will. They would have to vote the way the majority of people in the Congressional districts voted. That was an important change. But the most important reason--and I kept saying this over and over on the floor--for enacting the bill, the reason we should not undo the provisions of LB115, is that it encourages grass-roots activity, and it encourages more people to vote, and that it's very, very important in this era of the depersonalization of politics. It is critical that citizens know their votes count. It... [LB382]

SENATOR AVERY: Senator. [LB382]

DiANNA SCHIMEK: Yes. [LB382]

SENATOR AVERY: Your red light has been on for a while. [LB382]

DIANNE SCHIMEK: I'm sorry. I will stop. [LB382]

SENATOR AVERY: Thank you for... [LB382]

DiANNA SCHIMEK: You have my prepared testimony in front of you anyway, and I would be happy to take questions. [LB382]

SENATOR AVERY: Yes, we do. And you gave us a handout that lists all the multiple attempts to change the law back to "winner take all"... [LB382]

DiANNA SCHIMEK: Yes. [LB382]

SENATOR AVERY: ...and what happened to them. [LB382]

DiANNA SCHIMEK: And you'll notice I got lazy this year. I just handwrote the last two bills on there. I wasn't going to type it over because I didn't have the original. So... [LB382]

SENATOR AVERY: But it didn't make it onto the photocopy. [LB382]

DiANNA SCHIMEK: Oh, it didn't. I'm sorry. [LB382]

SENATOR AVERY: Questions from the committee? Senator Scheer. [LB382]

SENATOR SCHEER: Thank you, Senator Avery. Not really a question, but in fairness because you provided the information to us as part of the record, your "Economic Impact for 2008," most of that as I can tell, has to do with the primary and the Democratic Party switching to the caucuses. Well, the information is all... [LB382]

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DiANNA SCHIMEK: Some of it is on caucuses, but most of it is on the general election. [LB382]

SENATOR SCHEER: Well, as I'm looking at the expenditures, the vast majority of the expenditures were based on the primary. But as far as your first one where you talk about staffers and so forth and the \$128,000, that has to do with the majority of that would be the primary and the caucuses. The visits later were somewhat minimal compared to those in the primary, and understandable. They're...if we go back historically, that was still a point when the presidential nomination was certainly undecided on the Democratic stand. So not diminishing that. But I guess out of fairness, that really had nothing to do with the legislation that is in place now. It had to do with the presidential nomination of the Democratic Party. And I think, fair enough. [LB382]

DiANNA SCHIMEK: Point taken. I understand what you're trying to say or what you are saying. And I didn't break it down that way. But I would also add that I suspect that some of those people who did come in came in because they knew that there might be a chance in the general election for a contest, and so...especially in the 2nd District. But I... [LB382]

SENATOR SCHEER: In fairness, I'm not going to dispute the fact that... [LB382]

DiANNA SCHIMEK: Yes. [LB382]

SENATOR SCHEER: ...the 2nd District was maybe obviously available at that point in time. But the real impetus of all the attention earlier in the campaign was more exclusive to the Democratic nomination... [LB382]

DiANNA SCHIMEK: Yes. [LB382]

SENATOR SCHEER: ...not necessarily the general election. [LB382]

DiANNA SCHIMEK: Yeah, you are absolutely right. Thank you for pointing that out. [LB382]

SENATOR SCHEER: Uh-huh. Not a...I just... [LB382]

DiANNA SCHIMEK: And I think I did say, too, that this is not an exhaustive list. It was put together...there aren't any really good sources to go to, to get these figures. [LB382]

SENATOR SCHEER: I understand. [LB382]

DiANNA SCHIMEK: It's what I could verify. [LB382]

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SENATOR SCHEER: Appreciate your indulgence. [LB382]

SENATOR AVERY: Senator Bloomfield. [LB382]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Ms. Schimek... [LB382]

DiANNA SCHIMEK: Yes. [LB382]

SENATOR BLOOMFIELD: ...going back to the election we all just came through, I think perhaps Ron Paul would have had enough impetus to destroy our electoral college system had he gone someplace and just put all of his efforts into winning 10 or 12 electoral votes which would have caused chaos. It would have thrown it into the House where my side would have got to make that decision. I think we need to go away from this. I understand your intentions when you brought it, but I agree with Secretary Gale that there is a lot of room for mischief here that I think we can avoid by getting away from this. [LB382]

DiANNA SCHIMEK: Well, I'm glad that you mentioned that and brought up that topic, because in one sense I do agree with the Secretary on that particular point. It could be...if every state adopted this system, it could be a potentially difficult situation. I don't think it's ever going to happen. When I introduced this bill originally, I thought it would. I thought it was so great that I couldn't...you know, I thought everybody would do it. [LB382]

SENATOR BLOOMFIELD: I thought it was a good idea at the time. [LB382]

DiANNA SCHIMEK: But I have come to understand over the years that the big states, the large states, are not going to do this. And I don't think...I doubt it could happen. But I really doubt that it will happen in Pennsylvania, and so that would be a precedent-setting situation. [LB382]

SENATOR BLOOMFIELD: I think even with our one little vote out of our possible five, had this election been as close as the prognosticators thought it was going to be, it could have swung the vote there. [LB382]

DiANNA SCHIMEK: Yeah, that would probably be an unreal situation, but it's not impossible. But I do think that for us, it's a really good thing. And, you know, I think Senator Janssen mentioned all the states that have introduced this kind of bill. The same thing is true about the Unicameral. I can't tell you how many states have looked at switching to a unicameral over the years. We had a study team down here at one point from Minnesota, and they were bound and determined...I think it was their governor who wanted to...Jesse...what was his name? [LB382]

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\_\_\_\_\_: Oh, Ventura. Jesse. [LB382]

DiANNA SCHIMEK: Yes, Ventura. He wanted the unicameral, and so they...the legislature came down here. And in the end, they weren't going to adopt a unicameral. That's very difficult to do when you have people who are sitting voting to give up their seats. It almost has to be done by petition like we did it in Nebraska. And, of course, not all states have initiative. So I think 22 states have initiative in the referendum, so that makes it difficult in those other states. But I think Secretary Gale's point was well taken. And I would have concerns if everybody went that direction, yes. [LB382]

SENATOR BLOOMFIELD: Okay. Thank you. [LB382]

SENATOR AVERY: Other questions? Senator Scheer. [LB382]

SENATOR SCHEER: Thank you, Senator Avery. Point of clarification. We thank a lot of people that come on and testify in front of us, and I do want to acknowledge your past service to the state as a legislator. You did an excellent job. You were very, very effective, and I paid attention even back then. And I want to thank you for the time and the effort that you put into this body because it certainly has far-reaching effects as we are looking at today with one of your legislative pieces. So on behalf of myself...and I will be also quick to say that I probably may have disagreed with some of your political determinations at that point in time, but that doesn't take away from the fact of your skill and your desire as a legislator. So I wanted to thank you. [LB382]

DiANNA SCHIMEK: Thank you very much. It was a privilege. And enjoy every minute while you have it down here. [LB382]

SENATOR AVERY: I now serve in the State-Tribal Relations Committee that you formed. [LB382]

DiANNA SCHIMEK: Yes. I was happy recently to see that that was kind of up and going and functioning. [LB382]

SENATOR AVERY: Uh-huh. Any other questions? I don't see any. Thank you for coming. [LB382]

DiANNA SCHIMEK: Thank you very much for your time. [LB382]

SENATOR AVERY: All right, we are on opponent testimony to LB382. Additional opponents? Good afternoon or early evening. [LB382]

CHARLENE LIGON: (Exhibit 6) Good afternoon. It's a pleasure to come before this committee. This is I think my third time, so maybe I'm getting the hang of it now. My

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name is Charlene, C-h-a-r-l-e-n-e, Ligon, L-i-g-o-n. And first, ideal voting is one person, one vote, and ensuring that every vote counts. With our modern technology, this is not only possible but easily achievable in a timely manner. The concept of "winner take all" electoral votes within the states--that is, all electoral votes are given to the winner of the presidential race--has been adopted by most states. The practice, however, has little basis as to reflecting the one person, one vote ideal. Nineteen years ago, the state of Nebraska Constitution was revised to allow a split of electoral college votes. Rather than awarding all electoral votes to the winner of the popular vote statewide, two electoral votes reflect the statewide popular vote. The remaining electoral votes are allocated based on the winner of the popular presidential vote within the Congressional districts. This step, similar to that of the state of Maine, was a progressive step toward a more equitable reflection of the desires of the voters within the Congressional district. Nebraska and Maine are unique in the United States. The bill now under discussion, LB382, seeks to reverse this electoral split. The allocation of the U.S. congressional delegation is adjusted based on the results of the U.S. Census every ten years. The state legislatures then attempt to adjust boundaries of the U.S. House of Representatives delegation to reflect the population of the state. This is where part of the process breaks down. In many states, the practice of gerrymandering the boundaries of the Congressional districts has become a privilege of the controlling political party of the legislature and does not reflect the desires of all voters within the Congressional district. This has been a problem for many years in many states; and due to both public oversights, outcries, and legal challenge, the practice has diminished in scope but still exists. Realignment should be directed on the basis of commonality such as geographical proximity, interests of the local population, employment, schools, shared services, and desires of local taxing issues. Here in Nebraska, we have a recent example of political gerrymandering by the adjustment of CD boundaries within Sarpy County. The normal tests of reasonable commonalities were not met when the CD boundaries between CD1 and CD2 were realigned. The outcome of this realignment was evident in the last two presidential elections. It is not a stretch of one's imagination that the last CD2 congressional race would have resulted in a Democratic congressman if Bellevue and surrounding areas had not been realigned into CD1. Only 1.5 percent of the vote separated the results of the vote. A swing of just over half of these votes would have provided a different result. The results of the presidential race in 2012 did not change the electoral vote, but the 2008 race rightly reflected the electoral intent of the voters in the Congressional district. The electoral college is outdated but still exists in the U.S. Constitution. Unfortunately, it would take an amendment to the constitution to change to an ideal, direct, popular vote. Both major political parties are at fault for not attempting even to discuss this. The big issue is the erosion of power of the controlling party. Again, this power has little to do with what is right. Perhaps when there are more than two major parties in the U.S., this will take place. So we have to deal with what we have and work incrementally over time toward the ideal. If there is a compelling reason to change other than political leverage, then there should be a "no" vote on the bill. The only apparent rationale for a change is that Nebraska and Maine are unique. This is not

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a reason for change. The change would be a step backward in reflecting the ideal vote. It is interesting that several other states, Pennsylvania and Michigan among these, are currently considering the split electoral vote concept. What is strange is the sponsors of LB382 are in direct conflict with others in the same political party in states considering a change to their state's electoral process. In summary, there appears to be no compelling reason to change the current split electoral vote as proposed by LB382. I recommend a "no" vote to drop the bill from further consideration. [LB382]

SENATOR AVERY: Thank you. [LB382]

CHARLENE LIGON: Thank you, and I'm sorry I went over a little bit there. [LB382]

SENATOR AVERY: Questions. Senator Murante. [LB382]

SENATOR MURANTE: Thank you for coming. It's always great to see Sarpy County folks down at the Legislature. So welcome to the Government, Military and Veterans Affairs Committee. The question I have for you is you dedicated, so far as I could tell, at least three paragraphs in your testimony to the redistricting process. You seemed to take extreme exception to the way that our current Congressional districts are constructed. You say that it causes public outcries and legal challenges. And my question to you is, if you have so much consternation with the Congressional districts in the state of Nebraska, why on God's earth do you want to elect the president of the United States based on those lines? [LB382]

CHARLENE LIGON: Well, you know, I did speak out, but it's not only Nebraska that does the gerrymandering. As you know, it's states...probably most states. I have a problem with changing this when we find out that someone has the opportunity to...it appears to me that it wasn't an issue until '08. A real issue, a burning issue it became because at that time one electoral vote was gotten out of CD2. But if you had been involved in the election and realized how much energy...and I think Senator Scheer had a question about how much revenue it brought into the state. Well, it did, even after the caucus. But that was a big, exciting thing, no doubt about that. I just...you know, I wonder why would you want to change now? You know, we didn't get it in 2012. [LB382]

SENATOR MURANTE: But do you see what I'm saying right there? If you came to this committee and you said, our Congressional districts are sacrosanct, they're just the way you'd have drawn them if you had the pen and drew it yourself. And so you think we should be electing the president of the United States based on those lines. I would find that to be--I might not agree with you--but I would certainly find it to be a logical argument. But to me, you're saying on one hand our Congressional districts are corrupt,... [LB382]

CHARLENE LIGON: Uh-huh. [LB382]

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SENATOR MURANTE: ...and on the other hand we should elect the president of the United States based on those corrupt lines. [LB382]

CHARLENE LIGON: Well, you know we have to deal with those Congressional districts no matter what. Right? You aren't about to change those districts. Right? So we work with what we have. So under those districts, we still...there's still a possibility that we're going to have...it's a huge possibility in the next five years, I will say, that we're going to have competition within CD1. So it's not going to really go away, it's just going to shift. But it just...to me, it reeks of being partisan to even to try to change it back the other way. You know, that's my opinion. [LB382]

SENATOR MURANTE: Okay, thank you. [LB382]

SENATOR AVERY: Senator Price. [LB382]

SENATOR PRICE: Thank you, Chairman Avery. Welcome. My question to you would be, do you know how many electoral votes would have been cast either way if all the other states who have "winner take all" did it our way? [LB382]

CHARLENE LIGON: No, but I'm not suggesting that all the states do it our way. I'm suggesting that for almost 20 years Nebraska has done it this way, and then we're going to change. Why change? [LB382]

SENATOR PRICE: And I understand that and can respect that point of view. But I would contend that without the "winner take all" on a national basis... [LB382]

CHARLENE LIGON: Uh-huh. [LB382]

SENATOR PRICE: ...most elections would be well over before they started because of the "winner take all" wipes out a lot of different votes, not just one like we have here that we saw in CD2. But I would also proffer to you that--and I'm sure you understand this... [LB382]

CHARLENE LIGON: Uh-huh. [LB382]

SENATOR PRICE: ...but we redraw the lines on the districts we're mandated to when we have population shifts. They have to be redone. We can't write a law...we cannot put a district and leave it alone when the census comes by. Now... [LB382]

CHARLENE LIGON: But we were...you know, the question wasn't why we had to redraw...do redistricting. The question was how the lines were drawn. [LB382]

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SENATOR PRICE: Thank you. [LB382]

SENATOR AVERY: Any more? I don't see any more questions. Thank you very much for your testimony. [LB382]

CHARLENE LIGON: Uh-huh. [LB382]

SENATOR AVERY: We're on opposition testimony. Come forward. [LB382]

SENATOR KARPISEK: He's neutral. [LB382]

MICHAEL KELLY: If I might introduce myself... [LB382]

SENATOR AVERY: Wait. Are you neutral? [LB382]

MICHAEL KELLY: Yes. [LB382]

SENATOR AVERY: Let me finish with...is there any more opposition testimony? Okay, we'd now move to neutral testimony. [LB382]

MICHAEL KELLY: All right. Senators, my name is Michael Kelly, M-i-c-h-a-e-l K-e-l-l-y. I'm a retired American government teacher. At the time that the former senator introduced the bill, I was elated. I'd worked with students for years on what could we do to make an electoral system that was a constitutional construct work. I thought our Nebraska method was going to work. To be quite honest, I'm a Democrat. So for the first time in my 67 years, a vote I cast in 2008 was actually, you know, technically--as I've always taught my students--used to elect the president of the United States. I didn't feel guilty because the percentage of vote in Nebraska was far more for President Obama than our one out of five votes indicated. I thought it was fair. But then immediately after that election, there was such outrage in the state that some kind of system had to be worked out that this would never happen again. And so what happened? We were redistricted. Now I know, Senator Price, it's on population, but also population lines can be drawn that are fair. I've lived in this district, the 2nd Congressional District, for 35 of my 37 years. Yet because Bellevue and Omaha have so much in common, because we vote in a lot of ways and so much in common, we were alike. I live in the--now--in the 1st District. But where I live, I'm in the Omaha Public School district, all my utilities are Omaha, my interests, my history, all of it go back to I am an eastern Nebraskan. I'm a fourth-generation Nebraskan, all from this--what was--the 2nd Congressional District. But it was artfully carved out so that I will no longer have that opportunity--because I'm a Democrat--to vote and have that vote counted. Now I'm also represented by competent men in the United States House, but it's from the 1st District, a person interested in 1st District issues. I lived in the 2nd District until artful gerrymandering was done. And so the system that Senator Schimek had worked

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out should have worked. And if it had been honored in its...you know, in good faith, those lines wouldn't have been drawn that way. But the payment was this, we had the audacity to vote Democratic. I'm a fourth-generation Democrat too...Nebraska Democrat. We had the audacity to vote that way and so, therefore, the system can work it around to where that mistake will never happen again. So no system works unless there's fairness, and this fairness was taken away. Now I liked the whole concept that Senator Schimek laid out. I liked proportional. "Winner take all" is fine when you have one candidate. You can't cut the person in half, but you can cut up five electoral votes so that 30 to 40 percent of the Democratic vote would at least get you one of those electoral votes. Now Senator Janssen says let's go back to the old way, and let's be like everybody else and not regard our Nebraska history. We're innovative. We're the ones that went back to the Unicameral and it works for Nebraska because of our size, and it's an efficient legislative organization. But all I ask for is fairness in future census distribution. Please, look to where people live not to what political party can slice out a piece of the pie and deny those people a chance to have a vote count and put them in a legislative district that is so foreign to them that it really doesn't represent our interests. Thank you, Senators. [LB382]

SENATOR AVERY: Thank you. I just have to tell you, sir, you being a government teacher, you know this. Redistricting is the most partisan activity of any legislature. [LB382]

MICHAEL KELLY: I realize it's not easy. And I realize, you know, but I just wanted to point out that, you know, there's commonality that should be looked at and not, you know...and I'm sorry, sir, I disagree. It's hard but it can be fair. [LB382]

SENATOR AVERY: Well, it depends on which party you're in. [LB382]

MICHAEL KELLY: I beg pardon. [LB382]

SENATOR AVERY: It depends which party you're in. [LB382]

MICHAEL KELLY: Okay. I'll see that; but it shouldn't be, you know. And this is why I wouldn't recommend the Nebraska system for everybody if this is the kind of chicanery that will go on. Otherwise, I agree with Secretary Gale that it would be chaos for the overall general election if gerrymandering and all of that kind of stuff is going to be, you know, the rule of the day for all the states. Then our elections would be chaos and the leveling effect of the electoral college, you know, will be taken away. [LB382]

SENATOR AVERY: Questions from the committee? Senator Wallman. [LB382]

SENATOR WALLMAN: Thank you, Chairman Avery. Thanks for coming down. You know your neighboring state to the east, they redistrict by private treaty, don't they?

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[LB382]

MICHAEL KELLY: I would suggest redistricting by, you know, some kind of way other than a political way if there's some way of having a neutral, you know, come in and do it. It has to be done fairly by one man, one vote. But, you know, if you look at the gerrymandered districts...and it was called gerrymander because it looked like a salamander. You know, Gerry was in there--I believe he was a senator in early days of our country--carved it out to make sure that his Massachusetts district would vote the way he wanted it to vote. [LB382]

SENATOR WALLMAN: I went from 1 to 3. [LB382]

MICHAEL KELLY: Beg pardon. [LB382]

SENATOR WALLMAN: I went from District 1 to District 3. [LB382]

MICHAEL KELLY: How did you like that? No, I'm not supposed to ask questions. [LB382]

SENATOR AVERY: Senator Karpisek is happy with the outcome. Any other questions? Thank you for joining us. [LB382]

MICHAEL KELLY: Thank you. [LB382]

SENATOR AVERY: Any other neutral testimony? Okay. Senator Janssen has left. Did he empower you, Mr. Keetle, to close for him? All right, Senator Janssen waives closing. That ends the hearing on LB382 and our hearings for today. Thank you all for participating. (See also Exhibit 7) [LB382]