

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

Government, Military and Veterans Affairs Committee  
November 01, 2013

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[LR167 LR202 LR223 LR341]

The Committee on Government, Military and Veterans Affairs met at 9:00 a.m. on Friday, November 1, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR167, LR223, and LR202. Senators present: Bill Avery, Chairperson; Dave Bloomfield; Russ Karpisek; John Murante; and Norm Wallman. Senators absent: Scott Lautenbaugh, and Jim Scheer.

SENATOR AVERY: We have as many people as we're going to get up here for a while, so let me go ahead and start. This is the first of several hearings that we will have over the next two weeks of this committee dealing with legislative resolutions on interim studies. Before I get started this morning, I want to introduce the people who are here on the committee: Senator Murante from Gretna is on my right; Senator Bloomfield here from Hoskins also on my right; and seated immediately next to me on my right is Christy Abraham, who is the legal counsel for the committee. Several people can't be here today because of competing obligations, but we do expect Senator Karpisek and Senator Wallman to arrive soon, we hope. The order of business this morning is to take up LR167, followed by LR223, followed by the last item of business this morning, will be LR202. These are resolutions for interim studies. We will have sign-in sheets available at both entrances and we ask that if you plan to testify that you fill these out and that you print clearly so that we can get this into the record. And when you take the seat in front of us here, we want you to spell your name for the record, even if it's a simple name. We do have to have an accurate reporting of all that we do. When you come to the table to testify, please give the clerk--the clerk is Sherry Shaffer, here on the end of the table--please give her the testifier sheet so that we can have it for our records. Each of the introducers of these resolutions will be asked to make opening statements. I'm not going to call for a specific order of testimony after the introducers have had their period of time to speak. So we're not going to go pro and con, supporters and opponents; just whoever wants to speak. And I'm not going to use the light system. We don't seem to have a lot of people here. People are not normally interested in what Senator Mello and I have to say anyway. So we will take any exhibits you might have, any prepared testimony. You can give it to us or give it to Sherry for the record. We need ten copies. If you don't have ten copies, the page will get them for you. Our page is Nate Funk from Norfolk, and he is there. We have now been joined by Senator Karpisek from Wilber...

SENATOR KARPISEK: With an E.

SENATOR AVERY: ...with an E, (laughter) and Senator Norm Wallman from Cortland. We will not use the light system, so you can go until you have exhausted yourself and us. And if you go too long, I might have to ask you to end it. Please, if you have a cell phone, one of these, turn them off or put them on silent so that you don't disrupt the proceedings. And I have to do the same thing and sometimes I'm not very good at this.

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Okay. Senator Mello, LR167. [LR167]

SENATOR MELLO: (Exhibit 1) Good morning, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. Like every interim, it's always great to come to my other favorite committee, besides Appropriations, which is the Government Committee. With coverage earlier this year of domestic spying programs being operated by the federal government, an increasing amount of attention has been placed on the collection of personal identifying information by government agencies as well as private businesses. It was reported in The New York Times just yesterday, amid growing public concern about the collection and trade of personal data, state legislatures around the country are taking significant action to address the privacy concerns of their citizens. While state agencies and private businesses collect Nebraskans' personal information for a wide variety of valid and beneficial reasons, Nebraska is not among the 29 states that have passed what is commonly referred to as a data disposal law. These laws, which vary widely in their scope and application from state to state, generally require that institutions which acquire personally identifying information, properly dispose of or destroy the information that have been collected after a specified length of time or when it is determined that the data no longer needs to be maintained. Data disposal laws generally take one of two forms, with some state statutes specifically enumerating the method of disposal while others simply mandate the use of a disposal system that meets a reasonableness standard. You'll see from the handout that was just passed around that 22 of the states which have a data disposal law utilize the first method, listing one or more acceptable means of destroying records. Most of these statutes typically use some variation of the following language: "Businesses or state agencies must take all reasonable steps to destroy records by shredding, erasing, or otherwise modifying the personal information to make it unreadable or undecipherable." In those states which utilize the second type of data disposal law, statutory language generally provides that institutions maintain "reasonable security procedures and practices appropriate to the nature of the information to protect from unauthorized access, destruction, use, modification, or disclosure." Of the 29 states with data disposal laws on the books, 12 have statutes which apply to government agencies, while all of them, except Illinois, have statutes that apply to specific types of businesses. While these vary from state to state, the most commonly affected businesses are healthcare providers, financial institutions, and tax preparers. In addition, for an example, any business or individual that utilizes a consumer credit report for business purposes is subject to the disposal rule under the Fair and Accurate Credit Transactions Act of 2003, otherwise known as FACTA, while healthcare providers and financial institutions have additional obligations to destroy consumer information under the Health Insurance Portability and Accountability Act, HIPAA. The reason I bring those two up is because those two specifically fall under existing federal laws, and it's something that they fall under federal laws on top of the existing state laws in their respective states. Data retention and disposal at the state

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level is generally governed by the Nebraska Records Management Act, which is enforced by the Secretary of State's Office. The Records Management Act is meant to provide for the systematic and centrally correlated management of state and local records, safeguarding essential data while protecting the privacy of individuals. Each agency has one or more record retention schedules that governs when they can dispose of the records. These schedules generally do not specify how they can dispose of the records. As those testifying behind me will note, there is some concern that failure to specify a method of disposal in some cases could lead the state to inadvertently disclosing personally identifying information. In addition to businesses involved in the information destruction industry, I've also invited representatives of the healthcare industry to testify today and my office has been contacted by a number of business groups that are looking at these issues and may wish to testify this morning. At this time, I appreciate the ability to present information and would be happy to answer any questions you may have. [LR167]

SENATOR AVERY: Thank you, Senator Mello. Questions from the committee? Thank you. [LR167]

SENATOR MELLO: Thank you. [LR167]

SENATOR AVERY: Anyone wish to testify on LR167? Come forward. All we need is for you to state your name, spell it clearly for the record. [LR167]

BRIAN GUBBELS: Okay. I'll try and do that. [LR167]

SENATOR AVERY: Okay. [LR167]

BRIAN GUBBELS: Brian Gubbels, B-r-i-a-n G-u-b-b-e-l-s. Thanks. The...my voice is a little rusty. I was at a high school football game last night, Wilber versus Arlington, and Wilber won by one point, so. [LR167]

SENATOR KARPISEK: I'm a little hoarse too. [LR167]

BRIAN GUBBELS: You were at the game? (Laughter) [LR167]

SENATOR KARPISEK: Yeah. [LR167]

BRIAN GUBBELS: My brother is the head coach of Arlington, so. [LR167]

SENATOR KARPISEK: Well, I'm sorry, but he's a little lighter in the pocket with those referees, I bet this morning. (Laughter) [LR167]

BRIAN GUBBELS: I think I was going to accuse you of the same thing, (laughter) but

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that was a lot of flags. [LR167]

SENATOR KARPISEK: It was. [LR167]

BRIAN GUBBELS: Well, hey, thank you for listening to the subject matter this morning and, Senator Avery and the members of the Government, Military and Veterans Affairs Committee, for the opportunity to present my arguments requiring all public and private organizations to destroy personally identifying information--I'll refer to that as PII--prior to disposal. While I speak for myself and my business, I have enlisted the help of our nonprofit industry, trade organization, the National Association for Information Destruction, to help formulate my comments. NAID has been instrumental in helping other states, the federal government, and international governments assess and understand the importance of proper information disposal. We are all aware of the epidemic growth of identity fraud and terrible consequences to its victims. Identity fraud includes child identity fraud, financial identity theft, and medical identity theft, and the latter which is growing dramatically and actually puts lives at risk. In 2013, identity fraud reports released in February by the Javelin Strategy and Research reported that in 2012 identity fraud incidents increased nationally by more than 1 million victims with more than \$21 billion stolen, which is the highest amount since 2009. The study also found 12.6 million victims of identity fraud in the United States in the past year, which equates to one victim every three seconds. In Nebraska, 5 percent of the population was victimized by some form of identity theft in 2012, according to the U.S. Department of Justice. It is likely considered irrational that Nebraska businesses' owners would not be compelled to take every reasonable measure to prevent it. Contrary to popular belief, high-profile electronic attacks are not the leading cause of identity fraud. In 2011, a study by Travelers showed that the access to hard copy records from a stolen or misplaced wallet or from sorting through trash for bank statements are more common causes. Consumers have no choice but to share information with a wide array of organizations, financial institutions, healthcare providers, government offices, and a recent one, I was just filling an application for an apartment building as one that came to my attention yesterday, requires PII to provide those services. Beyond that, times are such that virtually any organization has some occasion to obtain or eventually discard personal information, even if it is limited to information about employees. I think we can all agree that consumers have the right to expect their personal information will be protected at all times, including when it is discarded, a time when it is most vulnerable to predators. Another common misperception is that federal government has laws to prevent the casual, unprotected disposal of personal information. Except for one very limited law, that is not true. While the Fair and Accurate Credit Transaction Act of 2005 included the final disposal rule, the law only required the destruction of discarded information as produced by a credit reporting agency. Strictly defined, this is a very limited segment of all discarded information. And while the Health Insurance Portability and Accountability Act of 1996 and the Financial Services Modernization Act of 1999, referred to as Gramm-Leach-Bliley Act, requires healthcare and financial institutions to

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prevent unauthorized access to medical and personal information, they do not require such information to be destroyed prior to disposal. In effect, if these organizations casually discard personal information and subsequent unauthorized access goes undetected, there are no consequences to a careless business owner when consumers are harmed. Putting undestroyed material in the trash becomes a violation if the law is properly written to require destruction prior to disposal. Detecting and providing unauthorized access is no longer the threshold for a violation. Improper disposal of undestroyed information is a violation in and of itself. Bob Johnson, the CEO of NAID International, shared this true story that dramatically emphasized the importance of specific data destruction requirements. He shared with me that in 2003, shortly after the state of Georgia became the first state to pass a meaningful law around information disposal, he received a phone call from a large national insurance company. The caller was the head of operations for the company and asked for a list of all the service providers in Georgia so that the firm could comply with the new law. When he pointed out that he could provide a list of services across the entire country, the insurance company executive responded, "That's not necessary; the other states don't have destruction requirements." So here we are ten years later from that time, 29 of the states have passed similar laws requiring destruction of discarded information. So it is my case that it is time for Nebraska to provide the same protection to its citizens by outlawing the practice of casually discarding undestroyed paper or electronic information. As an industry largely made up of small service providers, we understand it's important to assess the burden of such regulation. The preceding examples demonstrate that the nonprescriptive requirements allow organizations to determine how they best comply with the requirement and minimize any burden. Further, history has shown that real penalties and effective enforcement are crucial to such a law being taken seriously. I appreciate the opportunity to express my opinion on this matter and offer my services, as well as those in NAID, for crafting a reasonable requirement that will provide meaningful protection for the citizens of Nebraska. Thank you. [LR167]

SENATOR AVERY: Thank you, sir. Any questions from the committee? Senator, Norm. [LR167]

SENATOR WALLMAN: Thank you, Chairman Avery. [LR167]

BRIAN GUBBELS: Yeah. [LR167]

SENATOR WALLMAN: Yes, do you have any state that you liked their plan the best? [LR167]

BRIAN GUBBELS: You know, I was combing through them and I, you know, I think a reasonable clause...you know, the answer is I don't know. I mean there's pieces of all of them that are kind of good, and I think what we have is we have a smorgasbord to be able to pick and choose from. You know, Kansas has one, Georgia has one, Illinois.

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You might know the other ones. But really, it's something...I think it's fairly simple. I think a reasonable clause that you take all necessary to make sure it's unreadable. That's a key thing, is unreadable. And that you have, you know, a fact that it's just a \$1,000 penalty for every consumer that you lose their information on. And when you consider that, you know, one out of four of us in the United States now have our identity stolen, I had mine stolen twice, my credit card information, and you know the amount of time it takes for you individually to recover that, you know, so I think even a \$500 fine would be...for every consumer that you lose would begin to dictate. And I'm not a big believer in handing out fines for stuff, but there has to be some teeth in fact, because right now there's a lot of casual disposal of people's personal information in the state of Nebraska. And I get told all the time, hey, in the state of Nebraska we're not required to do anything about it. [LR167]

SENATOR WALLMAN: Thank you. [LR167]

BRIAN GUBBELS: Yeah, you bet. [LR167]

SENATOR AVERY: Any other questions? Yeah, Senator Karpisek. [LR167]

SENATOR KARPISEK: Thank you, Senator Avery. Thanks for... [LR167]

BRIAN GUBBELS: Yeah. [LR167]

SENATOR KARPISEK: When we say "unreadable,"... [LR167]

BRIAN GUBBELS: Yeah. [LR167]

SENATOR KARPISEK: ...is there somehow, though, somebody could come around and make it readable again? [LR167]

BRIAN GUBBELS: Well, that's a very good question. You know, the...a lot of...you know, we are a company and I'll just tell you when I got into this industry, it was an electronic recycling business, that I bought a few of those, and I saw companies handing over computers with all the information on it, because they just thought it was going to be destroyed. And there is no standard to that practice. And so we declared that we were going to be the first company that will not resell hard drives, period, because there's no way to eliminate information. There's QSA companies in both Lincoln and Omaha that I know of that you give them a hard drive that you've just erased and they'll hand you back information that you didn't get. So the word "unreadable" is, you know, it depends upon the media that you're using. And the reasonable clause with "unreadable," you know, at least puts people beginning to think, say: Hey, listen, you know what, maybe we should do our due diligence on a group here. Is there an incentive just to get scrap paper for the recycling operation? Is there

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incentive just to get a computer so they can resell it? And now, with the advent of phones, how many phone companies do you hear of say, hey, just hand us back your phone, we'll give you a \$100 credit? What are the verifications that when they're taking these phones back in the state of Nebraska that they're actually destroying the information on it? There's none. There's \$10-an-hour employees that might be there today and gone tomorrow, and then quickly plug in that phone and they have all your personal information, and there's no standard to stop this. So anyway,... [LR167]

SENATOR KARPISEK: Thank you. [LR167]

BRIAN GUBBELS: ...sorry, probably more than you wanted but... [LR167]

SENATOR KARPISEK: No. No, not at all. I think you made it clear that that is a big how do we do it. And I kind of...I don't like fines and things either, but kind of like you said,... [LR167]

BRIAN GUBBELS: Absolutely. [LR167]

SENATOR KARPISEK: ...they maybe have to self-regulate on that. [LR167]

BRIAN GUBBELS: Yeah. Well, again, I mean the thing is that...and you know, I was talking to somebody this morning, why isn't this taking place already? And the thing is that dumpster diving, there's a group in Tulsa, Oklahoma, that was arrested in April that admitted they'd come through Omaha and they were dumpster diving, taking recyclables from the curb, going outside of a business, gathering information. People put shredded paper outside their...you know, they have the personal shredders. Well, there's nothing that tells a bad guy that this is apparently valuable information more than a bag of shredded material that's strip shredded. Well, there's software readily available that you just lay it out and it reassembles it back together. So dumpster diving, when you have medical records, they can get on the black market right now is \$3 for your Social Security number, \$3; Social Security number with your name is worth a few more dollars; medical records, worth \$50. Why are they worth \$50? If you're a pharmaceutical company and you have...you sell arthritis medicine, wouldn't you like to know specifically who has arthritis medicine? So dumpster diving is the easiest way to steal information and it's taking place. And there's nobody advocating for this because nobody knows that's how they lost their information. They would never have thought, oh, I got my identity stolen, I don't know how it happened. They didn't think back to, well, it was outside my surgical center that they just disposed of documents. So anyway, I can go on. My apology. [LR167]

SENATOR KARPISEK: Thank you. No, don't apologize. I appreciate it. Thank you. Thank you, Senator Avery. [LR167]

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SENATOR AVERY: You mentioned strip... [LR167]

BRIAN GUBBELS: Strip shredding, yes,... [LR167]

SENATOR AVERY: Yeah. [LR167]

BRIAN GUBBELS: ...where, yeah, you know, how you... [LR167]

SENATOR AVERY: That's where you just...straight through the paper, right? [LR167]

BRIAN GUBBELS: Right. Right. Exactly, yeah. Yep. [LR167]

SENATOR AVERY: I think that's how I do it. [LR167]

BRIAN GUBBELS: Yeah. (Laughter) Hey, listen, you and...you know, it's a step better, without a doubt. It's better than just throwing it away. [LR167]

SENATOR AVERY: Yeah. [LR167]

BRIAN GUBBELS: But the problem is the fact that, you know again, when there's so much money on the back of trying to steal information, there is...we will never get ahead of information theft. The reason why is that there are state-sponsored organizations in eastern Europe, Africa, and North Korea that are making lots of money by stealing information from small businesses in the United States because they have the richest amount of information with the least amount of defenses. And so there's a lot of money around this industry. Go ahead. [LR167]

SENATOR AVERY: Senator Bloomfield. [LR167]

BRIAN GUBBELS: Yeah. [LR167]

SENATOR BLOOMFIELD: Thank you, Senator Avery. I hate to be the first to go there but I'm going to have to. [LR167]

BRIAN GUBBELS: Yeah. [LR167]

SENATOR BLOOMFIELD: With everything we see coming down from the federal level,... [LR167]

BRIAN GUBBELS: Yeah. [LR167]

SENATOR BLOOMFIELD: ...how much are we going to gain by protecting...you know, by making a law in Nebraska? [LR167]



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BRIAN GUBBELS: Well, I am a big believer that local governments should take care of themselves. And the more we can take care of ourselves, the more we can defend ourselves from these national laws that come down that are kind of one-size-fits-all, in my opinion. So I think that I don't see anything, with all the federal agendas out there around just getting healthcare, I'm not certain that this is really, there's going...I don't know of anything on the books right now, being presented. And I just talked to the CEO of NAID about this. Go ahead. Did I answer your question? [LR167]

SENATOR BLOOMFIELD: No, I'm a little concerned about how susceptible we're going to be to having our information raided off of the Web sites that we're going to be forced to go on to on a federal level versus... [LR167]

BRIAN GUBBELS: Well, I don't know that much about that but... [LR167]

SENATOR BLOOMFIELD: ...versus the little bit we're going to save here in Nebraska. [LR167]

BRIAN GUBBELS: Yeah. Yeah. Well, all right, so the fact that we're giving more and more of our personal information to the federal government. Yeah, if I could make my testimony in front of the Congress right now (laugh), I'd probably have a few strong words around that. But, yeah, so I guess I'm, you know, not sure how that relates on what we're...this one. But I think it's a step in the right direction, at least protect ourselves. One of the things is that if...right now if you are a credit card company in, let's just say, Connecticut and you have customers in Georgia and in Nebraska, there is a specific method...or, let's say, California, there's a specific method of how they have to handle the notification of the loss of that person's information in California and those standards do not exist in the state of Nebraska. So they can say, yeah, you know what, we don't have to tell them; we don't have...there's no breach notification rules. And I don't know the specifics of how that works, but I just know the fact is that we are leaving our people, when they do business with businesses in other states, vulnerable because we don't have those protection methods, so. [LR167]

SENATOR AVERY: Have you seen this exhibit that we have? [LR167]

BRIAN GUBBELS: I don't think so, no. [LR167]

SENATOR AVERY: It lists states that have data disposal laws. [LR167]

BRIAN GUBBELS: Okay. [LR167]

SENATOR AVERY: And it refers to "Government," I suppose that's government data; "Business" data; and then it has a column "Method." [LR167]

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BRIAN GUBBELS: Okay. [LR167]

SENATOR AVERY: So that would be the method of disposal, the method of what? [LR167]

BRIAN GUBBELS: Can you help me out on this one? [LR167]

SENATOR MELLO: Outdated version of (inaudible). [LR167]

BRIAN GUBBELS: Okay. [LR167]

SENATOR AVERY: Well, this is not fair to you. If you're not... [LR167]

BRIAN GUBBELS: No, it's all right. You know, I'll try and at least ad-lib a little bit and see what I can...at least shed some light on it. Specific disposal method, yeah, is that some of them have a specific requirement. Let's say Texas here, Texas, Texas, for example, had an incident where CVS Pharmacy had on the pill bottles, which, by the way, takes place all the time in Nebraska. I see it happening. They're difficult to shred. They take the pill bottles back when they gather, you know, return it, you return it back, get a refill. They just throw them in a dumpster in the back. CVS Pharmacy was fined in the state of Texas. State of Texas put in some laws I think in relation to that incident. You know, they received a \$300,000 fine in the state of Texas. So they said, you know, to...they did have some recommendations, is what I recall, either to burn it or to pulverize it or something like that. And I do think that when we craft a bill around this I think we need to consider the most recent information around destroying it, because inside of our phones today and inside of our computers today, they're being built smaller with a solid-state device versus a rotating hard drive. And because it's a solid-state device, you have to pulverize it into powder before technically you can't make it readable. So again, the...one of the ways also if you...is to have a third-party verification or someway to verify that you've actually destroyed the information. It is very tempting for state organizations, for businesses to just say, hey, we're going to wipe the computers and resell it and get an extra 20, 40 bucks out of that computer. And today there's no standards that they have to adhere to. So to say that the hard drive has to be pulverized or shred might be something to consider on that. [LR167]

SENATOR AVERY: Yeah. Thank you. [LR167]

BRIAN GUBBELS: Yeah, you bet. [LR167]

SENATOR AVERY: Any other questions? [LR167]

SENATOR KARPISEK: Just real quick. [LR167]

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SENATOR AVERY: Senator Karpisek. [LR167]

SENATOR KARPISEK: Thank you, Senator Avery. I'm looking at this list, as you mentioned Texas, government doesn't have anything but businesses do, so. [LR167]

BRIAN GUBBELS: Oh really? [LR167]

SENATOR KARPISEK: Yeah. A lot of those... [LR167]

BRIAN GUBBELS: Okay. [LR167]

SENATOR KARPISEK: ...the government doesn't, and I hope anything that we do, we include the government and at least some of what Senator Bloomfield is... [LR167]

BRIAN GUBBELS: Well, it's kind of like healthcare. We can roll it out for everybody else but (inaudible). (Laugh) [LR167]

SENATOR KARPISEK: Right, kind of like Senator Bloomfield saying, hey, let's do what... [LR167]

BRIAN GUBBELS: Right. [LR167]

SENATOR KARPISEK: ...what we make everyone else do, we do. So,... [LR167]

BRIAN GUBBELS: Yeah. Yeah. [LR167]

SENATOR KARPISEK: ...interesting. Illinois, though, it says government, yes, and business, no. So that's (laugh)...of course, we know about Illinois government, don't we? (Laughter) [LR167]

BRIAN GUBBELS: That's right. [LR167]

SENATOR KARPISEK: Thank you. [LR167]

BRIAN GUBBELS: That's right. All right. Anything else? [LR167]

SENATOR AVERY: Any other insightful questions? [LR167]

BRIAN GUBBELS: All right. Well, I'll leave my information. If you guys have any additional questions or thoughts, whatever, feel free to reach out to me. And I greatly appreciate the opportunity, so. [LR167]

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SENATOR AVERY: Thank you very much. [LR167]

BRIAN GUBBELS: All right. And keep winning. [LR167]

SENATOR KARPISEK: We'll try. Tell your brother, good game. [LR167]

BRIAN GUBBELS: All right, I will. [LR167]

SENATOR KARPISEK: He must be a good coach. [LR167]

SENATOR AVERY: Anyone else wish to address LR167? Good morning. Welcome. [LR167]

KEVIN CONWAY: (Exhibit 2) Good morning, committee members, Chair. My name is Kevin Conway, K-e-v-i-n C-o-n-w-a-y. I'm vice president of health information from the Nebraska Hospital Association. I appreciate the opportunity to come this morning and provide comments on LR167, data destruction. Senator Mello referred to HIPAA. The Health Insurance Portability and Accountability Act actually had two provisions in it, security rules and privacy rules, that were actually finalized in regulations in, basically, the 2003-2005 time period. That required what they called covered entities to protect a patient's private information. Covered entities really were hospitals, physicians, clearinghouses, insurance companies. You probably have seen your doctor within the last ten years. They should have given you something called the notice of privacy practice and have you sign a document. That's what that was all related to. The HITECH Act, which was in 2009, as part of the stimulus bill in 2009, actually modified the privacy and security regulations of HIPAA. Two significant modifications were it applied to what they call business associates or companies that do business with those covered entities. So it could be a software supplier, it could be a hardware vendor or anybody like that, that's working with a hospital is now covered also by the privacy and security rules of HIPAA. It also included a breach notification component. The final rules have never been published but there were interim final rules that all the healthcare providers and insurance companies are operating underneath. Those health...those breach notification rules do provide requirements for hospitals, physicians, etcetera, if there is a breach, to follow a certain course of action. If it's under 500 names that they breach, there's one course of action; if it's over 500 names, they have to follow another course. And we have seen that recently in Lincoln where someone lost a USB off their necklace, a little USB drive that had patient information on it. They made a public announcement in the paper. They were providing remedial remediation services for those individuals affected to see if there's any credit damage to them. There are significant penalties, maybe \$100 per violation. If it's underneath willful neglect--you know you shouldn't have been doing what you were doing, and you just weren't doing what you...what should be done--it's up to \$500,000...or \$50,000 per violation. But if you lose 1,000 names on a drive, that could be \$50,000 per each one of those names. So

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they're significant. And all you need to do is research the breach notifications and you can see there's multimillion dollar fines being leveled by the Office of Civil Rights against healthcare providers that have not been doing what they need to do. A lot of healthcare providers...HIPAA is not prescriptive. That doesn't say you do it this way. HIPAA uses the word "reasonable" quite often in their regulations: It must be reasonable for your situation. A lot of healthcare providers follow what's called the NIST 800-88 special publication. It talks about data destruction. It talks about shredding. Strip shredding is probably not appropriate. They specify that should be one millimeter by five millimeter shredding, cross shredding. Talk about data destruction, if you're going to take a drive that had sensitive information on it, is wiping it, degaussing it appropriate anymore? Five years ago that may have been considered but now shredding or physically destroying that drive may be appropriate. But I hate to see a really prescriptive approach being taken, especially like data drive destruction. With "virtualization" and cloud computing, the drive in itself is not necessarily the issue. It's control, maintenance of that information. So as long as the life of that data is in whatever state it is in, you need to take proper security and protections to make sure that data is not accessed. It's accessed by people that only have the authority to access and it's always protected. And there's another group out there called HITRUST. HITRUST has taken what they call a common security framework, the best practices: here's how you protect information like this, you have to do this, you have to do that. You should have some intrusion protection. You should have security log in. You should have file monitoring, who's accessing files, those type of components. Nebraska also does have a breach notification law and, if I remember the title, it's Financial Data Protection and Consumer Notification Act, LB876, passed in 2006. That is, to me, is centered on Social Security number, but it does include other personal identifiable information. If an entity, hospital and company, anybody who's using Social Security number has your information breached, they have to follow the same breach notification criteria, notifying the individuals with a letter or communicating with them somehow, public notification in the paper or some public site that their information has been breached, offering remediation services in case the person's identity is used for unlawful purposes. Again, I, you know, I think a data destruction law, the healthcare providers are following data destruction processes as outlined by HITRUST in this. But I hate to see something that's really prescriptive, you do it this way, because as computing technology, information technology evolves over the next, you know, decade, what seems reasonable today may not even exist in two to three years. So with that, I'd be happy to respond to any questions or concerns from the committee members. [LR167]

SENATOR AVERY: So what would be your recommendation then if you want to keep it flexible for hospitals, right? [LR167]

KEVIN CONWAY: You know, I think it's Kansas is very simple, one paragraph that said the entity must assure that the data is properly destroyed of, and very generic. I don't remember the actual text. It's probably about three sentences and all in one paragraph,

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says as the entity that has that information, they just must assure that it's actually protected and not used, and properly destroyed. [LR167]

SENATOR AVERY: Questions from the committee? Senator Norm Wallman. [LR167]

SENATOR WALLMAN: Thank you, Chairman Avery. Some people think...do not agree necessarily with HIPAA because of counseling or family members, you know, might have mental problems. So you can't divulge any of that, can you? [LR167]

KEVIN CONWAY: In certain circumstances, if they have legal guardianship, yes, you can. But if it's just a family member and you're just a concerned brother or sister, no. That's their... [LR167]

SENATOR WALLMAN: I have a person in the military, you know, and so it's kind of frustrating to us. [LR167]

KEVIN CONWAY: Yeah. You know, there are both sides to the argument of HIPAA, whether it's too prescriptive or not prescriptive enough, as far as protecting information. There are individuals on both sides at the federal level who argue that. And again, it's not whether the data is protected or not protected that's in question. It's once it is considered protected data, you have to follow proper procedures to make sure that data stays protected and is confidential and secure. [LR167]

SENATOR WALLMAN: And your hospitals are doing a good job, I think. [LR167]

KEVIN CONWAY: I think they are. [LR167]

SENATOR AVERY: It seems that the law is much more directed to...what laws exist are directed toward your industry than other industries. Is that correct? [LR167]

KEVIN CONWAY: You know, HIPAA definitely is directed towards our industry, but all we have to do is turn over the payment card industry regulations and start reading those. The data security standards, or DSS, are in my mind just as prescriptive as HIPAA as far as protecting security, so. [LR167]

SENATOR AVERY: But you're not saying that we don't need new laws, are you? [LR167]

KEVIN CONWAY: I would like to...I would not like to see anything that's "overprescriptive" on top of HIPAA, new regulations. [LR167]

SENATOR AVERY: I don't see any more questions. [LR167]

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KEVIN CONWAY: All right. Thank you. [LR167]

SENATOR AVERY: Thank you. Okay, anyone else wish to address LR167? Senator Mello. [LR167]

SENATOR MELLO: Just more of a point of clarification, Senator Avery. I think the question was asked. The handout specifies disposal method essentially, that if they, in statute, specify how you have to dispose of the language. As you just heard from the Hospital Association, Kansas' law and statute doesn't give any dictation of how they have to dispose it, just that it has to remain protected. And just for full disclosure of this committee, as we prepared for this hearing and realized the way we drafted the interim study, depending upon how we would move forward with a legislative bill, the likelihood is that affecting businesses with data disposal laws would go to the Banking, Insurance, Commerce Committee, not so much to the Government Committee, even though government data would be, obviously, fall under your jurisdiction. That's something that we realized after we started moving forward. But we are still very appreciative that the Government Committee decided to hear this interim study because one way or another we envision at least government data needs to be disposed of properly, at a minimum, as we move forward, and looking at businesses as well that handle sensitive data. So with that, I'd take any questions anyone has. [LR167]

SENATOR AVERY: Any questions? Thank you, Senator. [LR167]

SENATOR MELLO: Thank you. [LR167]

SENATOR AVERY: Might as well stay there. That ends the hearing on LR167, and we'll now move to item number 2, LR223. Senator Mello. [LR167 LR223]

SENATOR MELLO: (Exhibits 1 and 2) Thank you, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. The primary purpose of LR223 is to look at government transparency issues and government data in a very different way. Where the Freedom of Information Act and Nebraska's open records statutes look at public information in a reactive manner, information is made available only after someone asks for it. The concept of an open data policy differs in that public information is proactively made available on-line and in open formats. While much of the work currently being done on open data is at the local level, in this past year several states have adopted new open data policies or amended existing data policy statutes to make public data more accessible. For an example, the state of New Hampshire now mandates that state agencies use open source software in most cases. And while the state of Hawaii launched an open data site, [data.Hawaii.gov](http://data.Hawaii.gov), where state agencies and departments make data sets available for public consumption, the [Nebraska.gov](http://Nebraska.gov) Web site contains a similar clearinghouse of sorts. But

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the number of data sets on our site pales in comparison to that of Hawaii's or similar local efforts around the country. Earlier this year, a government transparency think tank called the Sunlight Foundation launched an initiative to look at municipal data disclosure and related state issues. As part of that initiative, they developed a set of open data policy guidelines which I've distributed to the committee. Among these guidelines are: setting the default position on data to open, appropriately safeguarding sensitive or confidential information; mandating open formats for government data; and creating or appointing an oversight authority to ensure future compliance with open data policies by agencies. Of course, central to the concept of an open data policy is not just that information be available on-line but also that data is readily accessible by the general public. If the government Web site is difficult to navigate or if the data is published in an obscure or hard-to-use format, then it becomes questionable whether that data is truly open. Last year, I helped sponsor Hack Omaha, a one-day programming competition that looked at the use of government data. As part of that competition, teams of designers, Web developers, and software engineers were given existing city and county data sets and challenge to create a program or application that would be useful to businesses, entrepreneurs, or the general public. While the competition led to some truly innovative ideas for utilizing public data, it was clear to me that Nebraska's state and local governments still have a lot of operations that are far from open. One of the primary goals of Hack Omaha and other open data initiatives is not just simply transparency for transparency's sake, however, it's focussing on economic development. Making government data available in open formats can encourage entrepreneurs and new businesses, help create new products and services, and even supplant existing products. For example, open data from the United States National Weather Service currently supports a weather industry estimated to worth \$1.5 billion. And academic research on open data in Europe found that the direct impact of open data was more than \$32 billion Euros in 2010. Open data initiatives can also help save valuable taxpayer dollars by exposing duplicative and redundant expenditures, improving service efficiency, and reducing transactional to state and local governments. At the request of my office, the Legislative Research Office contacted a number of state agencies to determine what existing data policies they had in place and whether any had implemented open data policies in some area. A copy of the memo summarizing state data policies has been handed out to the committee and my office will provide the committee staff with electronic copies of more than 50 separate data policies that were provided by state agencies. Despite the fact that many state agencies have thorough and detailed data policies, most state agencies tend to rely on the basic policies and procedures adopted by the Office of the Chief Information Officer and the Records Management Division in the Nebraska Secretary of State's Office. While I find it unfortunate that few agencies are currently exploring open data policies on their own, I do believe that the relatively centralized nature of our current data policies creates an environment that would make implementing open data policies at the state level relatively easy. Ultimately when we talk about government data, it's important to remember that it doesn't belong to one agency or one branch of government. The



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government data is the people's data. As Nebraskans demand more on-line services from their state and local governments, we should keep in mind that oftentimes unless government data is readily made available, members of the public may be unaware of its existence or of its potentially beneficial uses. Simply put, it's the public's data and the public may just know how to use it better than their government. Thank you for your time and I'd be happy to answer any questions you may have. [LR223]

SENATOR AVERY: Thank you, Senator Mello. Questions from the committee? No questions. [LR223]

SENATOR MELLO: All right. Thank you. [LR223]

SENATOR AVERY: Anyone wish to address LR223? Welcome. [LR223]

GAVIN GEIS: (Exhibit 3) Chairman Avery, members of the committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s. I'm here representing Common Cause Nebraska. Thank you for opening this discussion today. It's one we think is very important and we're incited to join in on. I've prepared a statement and I've also passed out some resources. I was also going to pass out the Sunlight Foundation guidelines, but Senator Mello beat me to the punch on that. I might mimic a little bit of what he was saying, so if it seems redundant, I apologize as well. We have a lot of the same thoughts on this. Open data is a topic that's just beginning to find its way through state legislatures and city councils. In fact, I'm really proud that we're kind of at the forefront of this issue in terms of states that are starting the discussion. It appears in a lot of different forms, some are broader and more inclusive than others. It can also be easy to look at the subject from a purely technical standpoint in terms of what kind of a Web site would we build or what kind of distribution or formats that we would want to distribute the data in. I can't really speak on that. I'm not a Web developer. They'd be much better at giving you that sort of information. What I am here to talk about is where the topic of open data comes from and why Common Cause thinks that opening this discussion is so important for Nebraska. As the Government Committee, I know you are very well aware of our state sunshine laws, particularly open meetings and public records. These sorts of laws spawn from an era of government abuse, but today we really don't look at them in that light. No one says we only have open records laws because of Watergate. Instead we view them as essential elements of a healthy representative democracy, and that's for a lot of different reasons. But key among those reasons is the fact that the government can't hide behind closed doors and is genuinely accountable to citizens. It has to be up-front, honest, and transparent. That's healthy when you're talking about a government created by voters where citizens are responsible for the form the government takes, at least in one form or another. An informed electorate only leads to a healthier system. So where does open data fit into that? It's really just the next step in terms of opening a government up to its citizens. If we truly believe that transparency in government matters, then it only makes sense to continue to increase access. On top of

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that what we're talking about is data that belongs to the citizens not just the government. By further opening data, we increase both the chances of citizen participation with its government and the possibility of private development, which many states have seen once they open up data. Since open data mean not just access to government information--we already have that; we have public records and those sorts of requests--but access to the data itself, what it's composed of, it can be used in countless ways and individuals can interact with it in very unique ways that we won't plan on or be able to predict when we start talking about this. Furthermore, we already have the tools to accomplish this, as Senator Mello said. Most Nebraskans have access to the Internet in at least some form, and we have a public records act that we can build from. There will always have to be restrictions on what can be released. But because we already built those guidelines into public records, it won't be difficult to determine what needs to be withheld when we start talking about open data. To put it simply, open data is a subject that will continue to grow and it's one that we should take very seriously as a state. Be happy to answer any questions, otherwise that's all I have. [LR223]

SENATOR AVERY: Thank you. Any questions? Senator Murante. [LR223]

GAVIN GEIS: Yeah. [LR223]

SENATOR MURANTE: I have a question. And, Senator Mello, maybe when you close if you could kind of comment on this question as well. Reading over the Sunlight Foundation's open data policy... [LR223]

GAVIN GEIS: Yes. [LR223]

SENATOR MURANTE: ...a concept that I really support and like as a general concept is the first point, which is that the default should be set to open... [LR223]

GAVIN GEIS: Right. [LR223]

SENATOR MURANTE: ...that generally speaking we should start with saying that the data is open. [LR223]

GAVIN GEIS: Right. [LR223]

SENATOR MURANTE: And then either the Legislature or some political subdivision comes in and kind of item by item and says, well, this one for whatever reason shouldn't be... [LR223]

GAVIN GEIS: Right, doesn't fit that. Yeah. [LR223]

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SENATOR MURANTE: And I'm wondering not in the ways of specific examples but more... [LR223]

GAVIN GEIS: No, that's fine. [LR223]

SENATOR MURANTE: ...a 30,000-foot... [LR223]

GAVIN GEIS: Okay. [LR223]

SENATOR MURANTE: ...principle philosophical examples of when the Legislature ought to be or a political subdivision ought to be saying this information should be withheld. So I'm wondering what your concept on that is. [LR223]

GAVIN GEIS: Right. I mean, I think that...like I said, I think our public records act should act as our initial guidelines in terms of that. We should start at that point. If we're going to build a statewide open data policy, we can talk about that more broadly. But I think we at least have to start where we're already working from and go from there. There's going to be other examples along the way. [LR223]

SENATOR MURANTE: Okay. [LR223]

GAVIN GEIS: But I think that's definitely the best place to start. [LR223]

SENATOR MURANTE: Okay. [LR223]

SENATOR AVERY: Any other questions? Senator Wallman. [LR223]

SENATOR WALLMAN: Thank you, Chairman Avery. Thank you for you coming and appreciate what you guys do. And as far as economic development incentives, we're told that some of this has to be...because it's a bidding war between states nowadays. [LR223]

GAVIN GEIS: Yeah, in many ways. [LR223]

SENATOR WALLMAN: And so how do you think this would pertain to that? [LR223]

GAVIN GEIS: I think in a lot of ways as we see more tech development, in specifically Omaha and Lincoln we see a lot of new tech firms either developing out of the grass roots sort of Nebraska individuals or drawing in other tech's firms, I think that having open government data can only encourage that. I don't think that when a company will be looking at moving either to Iowa or Nebraska or somewhere in the middle of the United States--we're continuing to be a more attractive area--having this sort of data available and easily accessible and usable by tech firms is just never a bad idea.

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[LR223]

SENATOR WALLMAN: Thank you. [LR223]

SENATOR AVERY: Any other questions? Thank you for your testimony. [LR223]

GAVIN GEIS: Thank you. [LR223]

SENATOR AVERY: Anyone else wish to address LR223? Mr. Peterson. Welcome.  
[LR223]

ALAN PETERSON: Thank you, Chairman Avery. [LR223]

SENATOR AVERY: Thought you might have some opinion on this. (Laughter) [LR223]

ALAN PETERSON: I am Alan Peterson. I'm the lobbyist of, sometimes a lawyer, for ACLU Nebraska. The resolution and the discussion here makes me feel I should speak up a little bit about it. The government of Nebraska is governed by our public records/Public Meetings Act, the Criminal History Information Act, too, which is kind of a public records act for criminal records in our state. And I had the opportunity to be involved in the drafting of all of those at one time or another. I'm a little bit concerned that as you may work on legislation in this area, there are two big values that might conflict. And without a lot of care, you could change the balance. Transparency, open government, it is all of our common cause. And I appreciate the work that Mr. Geis, Mr. Gould, have always done to keep government open. But, you know, when the public records act and the Criminal History Information Act were passed back in the seventies and I think early eighties, there was a great deal of care to draft usable and fairly clear exceptions to the idea that all government records are open because they belong to the people. And with the change we have technologically now of huge amounts of data being compiled by government and the drive here, for example, to make more of them more easily available, I simply think that the competing concern of personal privacy and occasionally governmental privacy need to be taken into account. Public records act in this state has something like 20 exceptions that are written out, and the basic premise of the law is everything the government has is public and available except if you can find a statute that says it's not. Those exceptions are written in this way. It says the government, the state, or the public body, may withhold these items. It doesn't have to. So let's say you found some really juicy information the government has and an exception applied so the government could withhold it, doesn't have to. And the reason I mention that is because our open government public records, Public Meetings, Criminal History Information Act, they are written for some human involvement in decision making, and it's important. There are some borderline records, you know, you probably never thought you'd never hear this from me, that the government ought to decide to withhold. I wonder a little bit, as databases as large as the government has might be

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made more easily accessible, whether that point where human intelligent involvement and discretion gets diminished, gets almost ignored. And so...and we haven't a specific statute or bill yet to look at, but as it does come in, from ACLU's standpoint, we love open government. We also think that personal privacy is under huge attack in our country. Senator Dave Bloomfield a while ago mentioned we work on Nebraska records issues, what about the NSA and what's going on nationwide. Can we do anything? What about ACA, the Affordable Care Act's Web site? I'm just saying let's be very, very careful, and I'll try to help wherever I can, to look at a balanced transparency law that remembers we still have to make decisions on some of these borderline records. And so I just thought I'd mention that. I believe it's a wonderful idea in general, but let's not use the human intelligence discretion, sometimes even compassion, that might be involved in deciding whether to release a government record or not. One other comment is that the Criminal History Information Act has a provision in it, and this is in Chapter 29, but it has a provision in it that basically says there's all these rules about the criminal history information records that should not be released. There are exceptions in it just like the public records law. But, weirdly enough, they don't apply to the government. That's something that ought to be looked at. In other words, now nobody can have these criminal history information, whatever, probation records, some of that stuff, but it doesn't apply so that...to the government so that different agencies, different parts of the government, may trade it around with impunity. It's always bugged me a lot. That's not fair. So just thoughts, miscellaneous perhaps at this point, but we'll sure be looking at legislation on those ideas. Thanks. [LR223]

SENATOR AVERY: Your opinion is always appreciated on these subjects. [LR223]

ALAN PETERSON: Thank you, Senator Avery. I enjoy testifying here. It's a good place. [LR223]

SENATOR AVERY: Any questions? [LR223]

ALAN PETERSON: And thank you. [LR223]

SENATOR AVERY: All right. Thank you. Anyone else wish to address LR223? [LR223]

MIKE BATTERSHELL: Good morning. [LR223]

SENATOR AVERY: Good morning. Welcome. [LR223]

MIKE BATTERSHELL: My name is Mike Battershell, M-i-k-e B-a-t-t-e-r-s-h-e-l-l. I reside at 3404 South 94th Street in Omaha. Good morning, Senators. I'm going to kind of go off my script for a minute, and then I'm going to go on script, then I'm going to go off script and answer some questions maybe or address some weird facts as we go through this. So bear with me because I was told five minutes and I ramble, so we'll go

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ahead and see how that works out. (Laughter) Good morning, Senators, and thank you for taking the time to host this study focused on how open data can create a more engaged citizenry. Opening data improves the quality of life, specifically in Nebraska, and supports democracy. Having quality information and ready access to information means Nebraskans are equipped to make better decisions. It also allows local information to support businesses and nonprofits in their efforts to expand their goals. I should start by mentioning I'm not a "techie." I'm a typical "gen Xer." I'm fully enmeshed in the Internet applications and software almost my entire waking life. I have led Omaha neighborhoods specifically in south Omaha until recently elected chair of the United Neighborhood Alliances of Omaha. Data is critical in my efforts to strengthen the neighborhoods. I'm a cofounder of a group called Open Nebraska. Based on models that exist in other states, Open Nebraska is a civic innovation organization that leads the development of tools to solve problems in Nebraska communities. Its goal is to help citizens interact with local government by providing information needed to make better decisions. We host an event in Omaha called Hack Omaha--developer talents, designers, data sets, and a weekend where they use their skills to solve problems through innovative app development. This form of volunteerism is different but no less valuable than serving in a soup kitchen, painting fences, picking up trash in a park, and just maximizes a different skill set for the common good. These developers will give up 24 to 72 hours, depending on the type of event, and address a data problem through software design, tweaking, and user experience development. Our biggest obstacle currently to making these events more successful is access to meaningful data. We appreciate the efforts that have started in the last few years through [Nebraska.gov](http://Nebraska.gov) and agencies like the Douglas County Treasurer, but believe there are a few key changes to policies that may help further the available good data in our communities. Most importantly, it's the understanding that a PDF is not good data. It is the presentation of data and is information in an accessible format to read but not to reinterpret. So if you take one thing from everything I'm going to say, that's the key--a PDF is not good data. As a matter of fact, a PDF is often detrimental to the efforts to present the data more effectively or develop an app or improve an experience because the process to convert that PDF back to something usable by a nonprofit or a business actually takes longer and is more expensive for the business or for the nonprofit to extract the data that they need from that PDF. It technically meets the letter of the current law if I were to make a records request for an agency to supply me with a PDF. And we run into walls all the time whether we're asking for basic things like salary requests or we're asking for...where they'll send us a PDF. The agency has to create that PDF, so they're spending time and resources to create a static PDF that then they send to us that then we have to undo their work and hope that our systems of doing that don't change it. So we can save and create efficiencies and save money if we were to allow a native file or comma-separated Excel-style file were made available. Providing data in this file type would allow better parsing and interpretation of data and allow requesters to be more efficient with their efforts. It should be available at no additional cost to the agency and can be set up to automatically update via a link or a holding location on a Web site. This

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can be created in many ways. We'd encourage you to kind of explore that. One specific example of how that works now is Metro bus in Omaha recently partnered with Google. Google provides free transit and map information, if you've ever used Google maps. In Omaha now, Metro area bus provides their bus routes to Google and it automatically updates Google maps with the bus routes. So if you need to know if a bus route goes where you're going, that is done automatically. Metro pushes to a link, Google grabs that link and automatically updates their maps on Saturday nights or Monday mornings. But where it becomes...the disconnect for agencies comes in, in that natural resources district has the same file that has trails in it and has what we would...NDOR has files that will talk about safe highway routes where you could ride your bike. If we're going to create a multimodal conversation within Omaha, we need to take those two data sets and we need someone to marry them. And we're not going to ask government to do that because there are open-source platforms through [github.gov](http://github.gov) and other national organizations that will allow these developers in our Hack Omaha type events to create those opportunities. So we actually just finished conversations with Metro bus where they've provided us that same link. So we now have the same link they provide Google, and now we have the NRD...because NRD's trail maps are pretty static. We're not drastically changing our trail system as a state. So we're now in the process of allowing these people with the skill sets who want to volunteer for their community and make it better are now taking all of this open source code, which I don't understand, and taking all these data sets, which I don't understand, and putting them into something that will be usable for me on a Saturday morning when I wake up and want to decide where to go that I'll have an app to do that. That can become profitable. That can become job creating. That can increase the...our communities. There are lots of benefits to that sort of very specific use of data sets. I think that I'll skip off notes and just open it up to questions. I will say, the last thing that we find frustrating with closed data and we talk about open meeting laws, minutes and agendas, is that the record-creating policy creates PDFs and then posts them on-line. And your own Nebraska Information Technology Commission make it extremely difficult for the average citizen to engage in the political process. The PDFs are difficult to read. You have to understand the language. You have to understand how to search for what you want, even what is LR223 when I'm trying to find it on the state Web site. That's not your fault and no one is...and I'm not even asking you to fix that. But what we know is that organizations like [openstates.org](http://openstates.org), one of the most frustrating things for me in the last few years has been that I can't figure out how my senator formerly...Senator Mello now, I don't know, Senator Ashford until next...I could never figure out how he voted. Well, because of the way you transmit data as a voting body makes it difficult for me to figure out just what his record is on voting. [Openstates.org](http://Openstates.org) takes all that data for the nation, compiles it, and spits it out. And I can now look up Senator Mello at no charge and figure out how he voted on almost any issue. That is as a result of them working hard to parse the data. And we'll work on that issue later. So any questions about kind of my rambling? [LR223]

SENATOR AVERY: Thank you for your testimony. You said you don't understand some

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of this stuff, but that surprises me because you (laughter) seem to understand a lot more than we do. (Laughter) [LR223]

MIKE BATTERSHELL: I don't understand the technical how it works. I just know how I want what I want when it's done. (Laughter) [LR223]

SENATOR AVERY: And when you want it. [LR223]

SENATOR MURANTE: You should run for the Legislature. (Laughter) [LR223]

SENATOR AVERY: Any questions from the committee? [LR223]

MIKE BATTERSHELL: Thank you. [LR223]

SENATOR AVERY: We're completely befuddled. (Laughter) Thank you. Anyone else wish to address LR223? Senator Mello. [LR223]

SENATOR MELLO: I'll try to answer...I think the gentleman from Common Cause answered Senator Murante's question, which is as we're looking at...very few states have really developed hard...new statutes, so to speak, in regards to dealing with open data policies. But I share a very similar view that it's better to start open more and then be constrictive moving forward. In utilizing our open records laws, that's kind of the basis and foundation of where to go. So I don't have any real disagreement of where we would consider as a starting point moving forward in regards to the open records law as kind of the foundation. But I can appreciate the concern and sensitivity the ACLU also shares in regards to as my previous, to some extent, interim study dealt with personal/private information, this one focusses on opening up more government data. I think Mr. Battershell's point can't really...I want to reiterate as much as anything else, which is some data is currently available. It's just a matter of trying to get access to it and having state agencies being able to publish that data in a usable format. The Legislature last year passed a bill that creates a new quality rating system for all childcare facilities in the state moving forward who accept any kind of public money from the state. When that database gets created in the next couple of years, it would be nice for those of us who utilize smartphone technology to be able to get an app that would be able to draw that data from the state and be able to determine what is the quality rating system for our local childcare facilities in our neighborhoods. Right now we don't know if that data is going to be publicly available or not in a usable format for someone to develop that kind of application. And that's essentially the, kind of, the genesis in part of the issue that we're trying to get at is we know some data is already available. It's making it more user friendly for those in I would say the IT world to be able to utilize that data and to make it more usable format for the general public. The likelihood is this policy will come to this Government Committee as we move forward. It's more a matter, though, of trying to fine tune a policy that works both for the state



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level as well as we have the state Information Technology Commission that we need to finesse a little bit, I would say, in regards to not intruding too much on their territory overseeing IT work for the rest of the state. But I look forward the committee over the upcoming session on this policy area. [LR223]

SENATOR AVERY: Thank you. Any other questions? Senator Murante. [LR223]

SENATOR MURANTE: It's more of a thought than a question. It seems...I like the concept of starting with everything is open until we close off information. It seems to me that...what has me sort of...has my mind churning is what's the standard. What...I'd like to be able to go back to Gretna and say, we are closing off information because of this reason and this is the standard we are using across the board. And that's more of a...like a philosophical question I guess than an in-the-weeds, specific question. So coming up with something like that would be very helpful for me. And the second thing I like about where you're going with it is it seems to me like right now records policies are driven by somebody somewhere in the state of Nebraska requesting records, hitting a brick wall, and then coming to the Legislature and saying fix it. I think Senator Avery had a bill, dealt with the costs of procuring open records and political subdivisions charging exorbitant fees to get it, making it cost prohibitive. So I like that. It's just the standard and the philosophy behind closing records and what that standard should be. And I don't know if you have a concept in your mind beyond just the data, the open records law that we have now, or... [LR223]

SENATOR MELLO: I think...Senator Murante, I think that's a good question and I probably don't have a very...I would say, a definitive clear answer today in part because I look at this...I look at the policy area itself in kind of two different areas. One is the actual information that would be available. The other component is the...how that information is presentable. And part of my interest in this area is that coming from the Appropriations Committee perspective, we know there is a considerable amount of data existing in our state government that's available, that you can find it one way or another without having to do a public records request. The challenge is it's just not usable though. And I think Mr. Battershell's comment in regards to PDFs being a document or a medium of choice is a perfect example of that, in part because I've been...they wanted to know as part of I think last year's competition with Hack Omaha, wanted to know why is the Legislative Journal put in a PDF document where you can't find out how senators vote on certain bills and certain amendments. You have to read the PDF, and to be able to extract the information from a PDF is very difficult and very time consuming. And that was part of the issue, is it's not so much the data itself or what the information is; it's how it's being currently presented and how that could be changed. But the bigger point is, there is some data that, like I say, I would defer to members. Senator Avery I know has worked on the open records law considerably longer than I have. Using that I think is the foundation for where we start from current existing open records law in data that's currently available. That I think provides the good foundation. Where we build from

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there at the state level is a lot different. Now however political subdivisions choose to operate, I've been envisioning this policy moving forward of starting at the state level first, not with political subdivisions, not cities, counties, public power districts, anyone else, to see how we can manage it at the state level first of making our data that we currently generate a usable, open-source format so that anyone can get access to it and utilize it the way they want. But if you're interested in having that conversation further in regards to what the actual data itself is and how it's available, I'd more than entertain future conversations about that. [LR223]

SENATOR AVERY: Any other comments, questions? Thank you very much. [LR223]

SENATOR MELLO: Thank you. [LR223]

SENATOR AVERY: Are you late for your next meeting? [LR223]

SENATOR MELLO: Slightly, so I'll... [LR223]

SENATOR AVERY: All right. We're going to move now to LR202 and I'm going to turn the chair over to Senator Karpisek. [LR223]

DAVID LOYALL: What about one more piece of testimony about open data? My name is Dave Loyall. [LR223]

SENATOR AVERY: We gave plenty of opportunity. Where were you? [LR223]

DAVID LOYALL: Sitting right here. Missed the boat. Sorry about that. Do you have five minutes? [LR223]

SENATOR AVERY: Sure. [LR223]

SENATOR KARPISEK: Welcome. [LR223]

DAVID LOYALL: Thank you. My name is Dave Loyall, D-a-v-e L-o-y-a-l...L-o-y-a-l-l. And when I heard Mike speak about data formats, I came up with an allegory which I think you might find useful. Everybody...in your heater in your home you have an air filter and it has a certain size and shape and you can go down to any hardware store and pick up a replacement. And it's possible for you...for hardware stores to provide this replacement filter to you because the people that manufacture heating and air conditioning systems made the system have a slot in it that's a certain size and shape and generally there are some numbers written on it and you can look at it, go get your replacement filter. Data that's on state Web sites is not like that. If the data that is on state of Nebraska Web sites were an air filter, it would be like somebody just took a big wad of wool and shoved it in there. And it makes...from a strictly technical viewpoint, it

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makes it...it makes the state look incompetent, if I may be so bold as to use that phrase. People my age who grew up with computers, who grew up loading files and know about all the details of PDFs and things, they're...let's say they're like air conditioner repairmen. You know, when we see a ball of wool shoved into the air conditioner for the...where a filter is supposed to go, we can tell right off that it's not right, that there's a better way to do it. And probably the person who shoved that in there either had very limited resources or very limited experience. I would like to see the state of Nebraska start using legitimate types of data. I'd also like...my recommendation is that you guys separate the question of what data to release from the question of how to release it. If you guys only want to release one file a year that's fine, but let it be a nice, pretty, square file and not something foolish. If you successfully separate that question, then you can have nonpolitical, technical folk like me just, you know, adequately describe the form of the data and let the computer guys get it just right, and then still have the option of, like...like the gentleman said, sometimes there's a compassionate reason to not release some data. You should keep that. Data...there...in the military we call it keeping a man in the loop. You want that but you...after the decision has been made to release the data, you want to release it in a standard, modern format that citizens can use to build things. You know, that's why we're here. There are people that are taking the PDFs, even those balls of wool, and trimming them to size so that we can use them in little apps in our smartphone. Your current data, people are going and dealing with it even though it's hard because we want to build things. And that's why we want open data. Thank you. Any questions for me? [LR223]

SENATOR AVERY: Questions from the committee? Thank you. [LR223]

SENATOR KARPISEK: Welcome, Senator Avery. And you can present LR202 whenever you're ready. [LR202]

SENATOR AVERY: Thank you, Senator Karpisek. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south-central Lincoln. Since I've been in the Legislature, most of you know that I've been committed to ensuring that voting is as easy as we can make it for all Nebraskans and that, in order to make it as easy as possible, we need to remove all unnecessary barriers to voting. And that is why I have brought this LR interim study to examine election-day registration. This election-day registration, often referred to as EDR, removes the unnecessary barrier of requiring a citizen to register to vote ten...at least ten days before the election. Consistently we find study after study showing that states with election-day registration experience voter turnout that is considerably greater than turnout that we find in non-EDR states. In fact, EDR states, on average, achieve a 10 percent edge in voter turnout over states that do not have election-day registration. In the 2008 presidential election, EDR states had a 7 percent higher voter turnout. And in 2012, four of the top five states in voter turnout in the presidential election all offered election-day registration. Average voter turnout in 2012 was over 10 percentage points higher in EDR states than in other states. Just a

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little bit of history on this particular form of election reform: EDR was started by Maine and Minnesota and Wisconsin in the early to mid-1970s. Eleven additional states and the District of Columbia have now enacted EDR. That includes California, Connecticut, Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin, and Wyoming. So we have two of our neighboring states that have already adopted this legislation. The experience in EDR states has been to experience an increase in turnout among young adults, in particular. Young adults are in a group that historically has had low voter turnout around the country. Also, young adults move more frequently, making it more difficult for them to keep their voter registration current. This is particularly true for college students. Research has shown that allowing young people to register to vote on election day, it's something...I've often referred to this as kind of one-shop voting or one-stop voting. When you look at the research, those states that allow young people to register to vote on election day, this is correlated with a turnout of about 14 percentage points more than you get without this particular legislation. Nebraska already has a high percentage of citizens who are registered to vote. We...but there...if there is another tool that could increase these numbers, I think we ought to explore that. It should be the goal of government to encourage as many citizens as possible to participate in the election process and EDR accomplishes that. And I would be happy to take questions. Thank you. [LR202]

SENATOR KARPISEK: Thank you, Senator Avery. Any questions? Senator Murante. [LR202]

SENATOR MURANTE: Thank you for proposing this, Senator Avery. As you're probably aware, I'm not all that keen on this idea that you have here. But I'm not going to debate you on it today, maybe during session. But my question to you is more...I'm looking at what this Legislature has done as far as rules and regulations when it comes to voter registration and voting. And from my perspective, this state has gone out of its way to make registering to vote as open and as easy as possible. I mean, we have voter registration forms in phone books, you can download it off a Web site, you can call an election office and they'll mail you a form. It's just redundancy after redundancy to make it as easy as possible for people to register to vote. Now I contrast that with another constitutional right that people have, the first right reserved to the people, which is the petition initiative process. And on that front, this Legislature has made it as difficult as possible to participate in a constitutional right. You cannot go to your election office and sign a petition. You cannot go to the Secretary of State's Office and sign a petition. You have to be lucky enough to stumble upon a registered, certified circulator. And if you happen to live in a county that doesn't have one of those or you don't stumble upon one, you don't get to sign. There is no Web site that you can go to. So I'm wondering what the legitimate public policy purpose is of having one constitutional right where the state basically opens the door wide open and the only thing we're asking of the people is to walk through and on the other one, where we place an enormous albatross around the necks of our voters which makes participating in government about as difficult as we

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can make it. I think the last estimate that I heard was, in order to get a petition initiative on the ballot, you're going to need a million dollars. And that makes it prohibitive to just about every Nebraskan in the state of Nebraska. [LR202]

SENATOR AVERY: I personally have grown increasingly uncomfortable with the obstacles that we've put into place or in front of petition...the process. I really think that we have gotten a little bit too strict on that. But I understand why. I mean, Legislatures are very reluctant to give up its authority and its prerogatives in legislation. We don't like to say we're going to hand off a major part of what we do to the people. And essentially, the way the law is written today, to those people with deep pockets, you have access to the ballot through the petition process. And most people don't. I mean, that's how it works today. You make a good point. I think, though, that the two are separate issues, obviously. And the issue of registration and making it easier for people to get qualified to vote is something we can do. We might also be able to liberalize the petition process and change that. I believe there is a court case pending that would deal with that. I don't know if I'm right about that or not but I think I am. So I think that there are a lot of things we could be doing to make voting easier. Registration right now is, as you observed, properly so, that we do a pretty good job in this state of making voting registration accessible to everybody. But we could do more. I may have a bill next session that would ask the Legislature to allow for registration on-line. We don't do that. Why not? I mean, it's so easy. Easier than this, frankly. [LR202]

SENATOR MURANTE: Uh-huh. [LR202]

SENATOR AVERY: So I guess what I'm...my objective here is to open up the discussion. I did have a bill on this once that didn't go anywhere. In fact, I don't think it even got more than one vote in the committee and that was mine. But I'd be happy to extend this conversation if you're interested in joining me in an effort to... [LR202]

SENATOR MURANTE: Uh-huh. Well, Senator Avery, if you can combine your on-line voter registration with Senator Schumacher's on-line petition signatures, you might have yourself a cosponsor. [LR202]

SENATOR AVERY: Maybe two. [LR202]

SENATOR MURANTE: That would make three votes. [LR202]

SENATOR KARPISEK: Still not enough to get it out of committee. (Laughter) Senator Bloomfield. [LR202]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. Senator Avery, I know this was to open up discussion. But of the three items we were going to study, number two, what type of identification is necessary? What would you have in mind for identification

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if you were to have same-day registration and voting? [LR202]

SENATOR AVERY: I think we have adequate law now to...for people who wish to register on election day to prove their identity. I know we do have some election commissioners in the audience. I expect we'll hear from them. We have Adam Morfeld here, I expect we'll hear from him too. And they could address that. But I don't know that that would be a huge problem. [LR202]

SENATOR BLOOMFIELD: Okay. Thank you. [LR202]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Anyone else? Seeing none, thank you, Senator Avery. Mr. Morfeld, welcome. [LR202]

ADAM MORFELD: (Exhibit 1) Thank you. Senator Karpisek, members of the committee, my name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, and I'm the executive director of Nebraskans for Civic Reform. And I won't belabor a lot of the things that...as far as the introductory comments that Senator Avery had. But I do want to talk a little bit about my experiences, particularly working with students at the university and working with people that move around a lot. And as an assistant residence director during the 2008 election, I saw no fewer than eight potential first-time voters unable to vote because of arbitrary registration deadlines. Half were already registered in their home counties and the other half missed the registration deadlines and were unable to vote because they had been registered somewhere else or because they had not been registered anywhere else. As a poll worker in the 2010 midterm election, I worked with the City Campus Union precinct and turned away no fewer than 25 students because they were registered elsewhere in the state, not because they weren't registered but because they were registered elsewhere in the state. And many of them were first-time voters who didn't realize that they had to reregister once they'd moved from one county to the next--something that's common sense to us but not common sense to first-time voters. Election-day registration not only benefits students and young professionals, but also an increasingly mobile population of professionals and workers who are often already registered in a different county. And by the time they realize this, it is too late. In addition, there are often first-time voters with little experience or knowledge about registration, such as the students that I just mentioned. Now as a person who testifies before this committee often--and I know that usually less is more--but I do want to go through some of the arguments that I'm sure you'll hear from behind me today. First, election-day registration is not a foreign concept. As Senator Avery noted, it's currently conducted in a total of 12 states, including the District of Columbia. It should also be noted that North Dakota requires no registration. In all these states, election-day registration is operated smoothly and has enfranchised over 1 million voters during the 2008 presidential election alone. It is also important to note that democracy and election systems have not collapsed in any of these states since the implementation of EDR. It is true that Nebraska has an unusual amount of political subdivisions and, thus, different

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ballot spaces or splits. This is a common argument against election-day registration, particularly in Nebraska. This complicates the process in which the right ballot could be given to the right voter, is the argument. However, this issue is easily resolved by requiring the county election official to print off a list of all physical addresses in that precinct where the correct...with the correct ballot style. This is something that our current software and election system is capable of. Election officials already have the ability to do this. In fact, I worked with two counties and they tested it out with their current system and it's actually quite easy. It requires a little bit of paper. One of the many benefits to a statewide voter registration system is that the (inaudible) file and the ability of the system to accurately and automatically assign voters to the correct precinct. The system also identifies the correct ballot style for each address. In addition, precinct workers across Nebraska currently work with a large number of ballot splits and regularly made determinations on which ballot style the voter should receive when a voter must vote provisionally. It is also important to note that election-day registration almost completely eliminates provisional ballots in most election-day registration states, saving a lot of time and energy after the election. But this determination of which ballot goes to who is an important part of their job. Despite the record turnout of voters in the 2008 general election and corresponding turnout in the 2012 general election, there were no major problems. And Nebraska poll workers demonstrated they can determine which ballots go where competently. Next, in 2010, the Secretary of State testified that approximately 90 percent of eligible Nebraska voters were already registered. This, unfortunately, has very little bearing on EDR...what EDR is trying to accomplish. For instance, during the 2008 general election, 50 percent of Iowa voters--a state that has election-day registration--50 percent of Iowa voters that utilize EDR were already registered in the state of Iowa but had moved from one county to the next. Many voters who utilize election-day registration are already registered but moved and did not realize that they had to reregister after they'd moved from one county to the next, much like the students that I had encountered at the polling location. The statistics don't lie. Election-day registration promotes turnout, despite the fact that the Secretary of State has stated in the past that he believes that it's issues that increase turnout, not registration processes and systems. However, in states that have election-day registration, turnout--as Senator Avery noted--is anywhere in the 7 percent to 10 percent range higher than states that don't. In 2010, the Lancaster County Election Commissioner testified against EDR by noting that Nebraska allows provisional ballots, which ensures that eligible voters get the proper ballot. This is not a solution to election-day registration. During the November 2008 general election, 60 percent of the ballots in Lancaster County were thrown out for voters who were not registered. That is 425 ballots out of 714. During the November 2006 general election, 82 percent of provisional ballots were thrown out in Lancaster County for the same reason. That's 98 ballots out of 120. This is significant. Provisional ballots clearly do not provide the same remedy that election-day registration provides. And I should note that those ballots--I think I may have misspoke there--that those ballots that were thrown out, they were thrown out for voters who were registered somewhere in the state but had not

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reregistered within Lancaster County. So they were already registered somewhere in the state but not where they were voting that day. In election-day registration states, they would have been able to reregister and vote that day and their ballot would not have been thrown out. Another common misconception is that the voter who utilizes election-day registration is either lazy or uninformed. If registration deadlines is the litmus test on whether or not someone is too lazy or uninformed to vote and you decide as legislators that the state has a responsibility to ensure informed voters by limiting voting only to informed voters, then what about individuals who have been registered in the same precinct for 20 or 30 years, never had to reregister, and just show up to the polls every election? Are they suddenly more informed than the person who just registered ten days before the registration deadlines or came in with all the information necessary to register to vote on that day? Finally, election-day registration does not promote voter fraud. In fact, it requires individuals to register in person in front of an election official with proof of residency. Now you could decide differently on what kind of proof they require. But in most states, including Iowa, Minnesota, and Wisconsin, it's the same information that they are required to register to vote for the first time within a state to present if they did not put down their Social Security number or driver's license number on the registration form for the first time. So there's a list of documents that are acceptable forms of proof of residency. One of those is a utility bill that's no more than 30 days old with their current address that they're registering at, and other state and government documents. In conclusion, election-day registration minimizes eligible voters from being disenfranchised by arbitrary deadlines in an accessible and secure manner. Nebraska has the necessary resources and tools available to administer election-day registration and now all we require is the political will. Now will election-day registration require more time and energy for election administrators and the Secretary of State? Absolutely. But I believe that it should be this committee's ultimate goal and our state's ultimate goal to provide secure...proven secure and accessible voting practices for all Nebraskans. Election-day registration is one of those practices. And I also want to note that, in response to Senator Murante's comments, I mean, first, in order to sign a petition, you have to be registered. So I mean, I think that it's important that we make registration as easy and as accessible as possible. Not only do you have to be registered, you're supposed to be registered in the right location, as well. And what election-day registration does is, it increases the accuracy of our rolls, which will increase the accuracy of our petition process and the ability for people to participate in the petition process, as well. And, Senator Bloomfield, I think I already addressed your identification question. In most states they do require some kind of utility bill or some kind of other form of proof of residency in order to register on election day. So you don't just show up and say, yeah, I just want to vote. You have to show something. With that, I'd be more than happy to answer any questions. And I appreciate you guys taking a little bit of time to listen to my counterarguments to the arguments that haven't already been made. [LR202]

SENATOR KARPISEK: Thank you. Senator Murante. [LR202]



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SENATOR MURANTE: All right, couple of questions. First of all, you finished with an accuracy of the petition process and I'm not quite following you on that one. So a person goes to the polls on election day, registers to vote. How...the petition deadline had passed four months prior. How does that increase the accuracy of the petition rolls? [LR202]

ADAM MORFELD: Well, I don't deal with the petition process as much. So maybe I spoke where I don't have a lot of information. But I do know that you're supposed to be registered in the right place. And for the petition process to work correctly, you have to get so many petitions from each county to get on a ballot and all that. So in order for that to be accurate, you have to ensure that people are accurately registered where they're supposed to be because they base that signature for that petition based on where you live in those counties. And then they base whether or not there's enough signatures from each county on where those people are registered. So that was the point that I was trying to make is that more accurate registration rolls also benefits the petition process. [LR202]

SENATOR MURANTE: Okay. So my next question to you is, as far as I understand--and counsel can correct me if I'm wrong--but I believe that the only time right now in the state of Nebraska that voters are required to show identification is if they registered to vote by mail and if they're voting at their polling place for the first time. And if they do that, then they have to show some sort of ID at the polling place all the way down to utility bills or something like that. [LR202]

ADAM MORFELD: Uh-huh. [LR202]

SENATOR MURANTE: Do you find that standard to be overly burdensome? [LR202]

ADAM MORFELD: I don't find it to be overly burdensome if they're a first-time voter. My understanding is, if you're a first-time voter in the state... [LR202]

SENATOR MURANTE: Uh-huh. [LR202]

ADAM MORFELD: ...and you register by mail and you don't provide the number or photocopy ID or whatever the case may be, then you have to show that. And it's a very long list of different documentation. That, I think, is fine. That's something that Congress has enacted. I don't have a problem with that. [LR202]

SENATOR MURANTE: Okay. And then, finally, was your point about being registered in other counties. And I...from my perspective, I think it's an argument against same-day registration because, for example, I was a student at the University of Nebraska. I was from Omaha when I was in college and I chose to remain registered to vote in Omaha

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because state law pretty much says you can register at the university or you can register where you went to high school and vote there. It really doesn't matter. [LR202]

ADAM MORFELD: Sure. [LR202]

SENATOR MURANTE: But at some point, political subdivisions...it's not so much an issue in statewide elections but we have political subdivisions which have elections. And those elections are decided by the voters within that political subdivision. And at some point, the voters have to pick a lane. If you're a student at the University of Nebraska, you have to either say, I'm going to vote in Lincoln or I'm going to vote in Omaha. But at some point, that universe has to be decided. And it's that group of people who are going to be determining who's running the political subdivisions of the state of Nebraska. And I'm concerned that if we have those sort of fluid, never really gelled, or cemented population bases, it's impossible for candidates to go communicate with those people. And it's difficult for the people who have lived there to express their will. I think it's more difficult for the people within those political subdivisions. Do you have any comment on that? [LR202]

ADAM MORFELD: Yeah, I guess, other than I disagree with you on that. I mean, you know... [LR202]

SENATOR MURANTE: I'm used to it at this point. [LR202]

ADAM MORFELD: I get used to it, too, especially this committee. But, you know, in any case, you know, I think that, you know, particularly students, for instance, they're spending a lot of money into the Lincoln economy, into, you know, the area surrounding downtown where they elect their representatives or decide their representatives. And I think that they can have the decision whether or not they...I mean, particularly students, you know, as they're a more mobile population. You should be able to decide where you live as long as it's within the parameters of residency. You know, there's people that, for instance, are, you know, they go down to Arizona, my grandfather included. He has a house here, he pays taxes here. He also goes down to Arizona and spends a lot of money there. He has to pick, in those elections, which one he can be in. He decides to pick, you know, his state that he's from. But, I mean, it's up to him where he wants to express his political will, particularly when he meets the residency requirements. And I think that, you know, we're not Iowa and we're not Minnesota. But candidates out there...I have not heard any complaints when I visit those states saying, hey, you know, we have a really hard time connecting with the people in our population because we have election-day registration. They simply shift their tools and their resources to adapt to that type of system. And that type of system is a system that's more representative of their democracy because they have more people turning out. So for me, I don't think that that's actually...that should be a barrier. I think that if, you know, a student has a parent's home and they follow politics and they're really passionate about, you know,

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Omaha politics and that's where they want to consider their residency, then I think they should be able to decide to vote there. If they decide that they are more engaged and involved and informed on the issues and passionate about them in Lincoln, Nebraska, and they live here and they have residency here, then they should be able to vote here as well. Not at the same time, but in one place or the other. [LR202]

SENATOR KARPISEK: Thank you, Senator Murante. Any other questions? Seeing none, thank you. [LR202]

ADAM MORFELD: Thank you. [LR202]

SENATOR KARPISEK: Does anyone want to... [LR202]

SANDRA STELLING: Good morning. [LR202]

SENATOR KARPISEK: Good morning. [LR202]

SANDRA STELLING: I'm Sandra Stelling, S-a-n-d-r-a S-t-e-l-l-i-n-g, Jefferson County Clerk and also the cochair of our legislative committee for the clerks, register of deeds, and election commissioners. We've all heard this. I'm not here to argue. I still do just want to bring up the fact that I think we are willing to listen to what has to be said and what can be come up, what can be worked out. We have come in, we have opposed the legislation in previous years. As to some of the notes that I wrote down, we are constantly working on our voter registrations. We do this every day if somebody comes in to change their address or whatever. We do these every day. If we know somebody moved, we send them a confirmation. So we try to get that information out there. If somebody is deceased, we go through our papers. The state has a database that we can go through to get those people off of our records so they're as clean as possible. I guess, the same-day voter registration to me really kind of says that I want to make sure that my election workers out there get the correct ballot. And where we have so many splits...Nebraska is extremely unique in this. And the national association which I have been involved in on elections, a lot of people did not understand that Nebraska has so many splits on election day. And they said, well, you can't do that. Well, we do, do that. And I think this would be one hindrance. But there again, if we have provisions that say they have to show this, they'll do a provisional ballot, or whatever, I'm not going to say that I'm not going to work with Senator Avery or anybody else on the committee to get something that we'll be willing to work with. So I guess that's really all I just wanted to say, that we are willing to work and that if it's just same-day voter registration, we probably will oppose again, so. [LR202]

SENATOR MURANTE: All right. Thank you very much. Are there any questions? Seeing none, thank you very much for your testimony. [LR202]

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SANDRA STELLING: Thank you. [LR202]

SENATOR MURANTE: And it looks like we have another testifier. Welcome back.  
[LR202]

JACK GOULD: (Exhibit 2) Thank you. It's always nice to hear that. Senator Murante, members of the committee, my name is Jack Gould, I'm here...that's J-a-c-k G-o-u-l-d. And I'm here representing Common Cause Nebraska. I have some prepared testimony but I'm going to just kind of paraphrase some of the things that have been said because I know that a lot of it's duplication, so. First of all, I wanted to address Senator Murante's question about the petition efforts. And I...you know, we very much agree with you that the petition process has been taken out of the hands of the public and we're in a situation where only those who can afford it. And I don't know whether we coined the term "a million dollars" but that's what...we've been using that term, too, in order to get something on a ballot. I remember when it first came into play. I think the argument before the Legislature was the fact that this is a representative body and, therefore, if you have a petition process you kind of take the issues out of the hands of the Legislature and put it into the hands of people. That sounded like a good idea to us. But at the same time, you know, I understand the argument. And that would carry today. Also in terms of the identification issue that you raised, Senator Bloomfield, there...it really varies from state to state. Every state accepts a driver's license. All of the SDR states accept a driver's license. After that, it really varies. And it's up to you to decide, if we put this in place, what you would require for identification. That isn't something that's fixed in stone or anything of that sort. In terms of the states that already have it, I think Senator Avery mentioned the fact that there were ten states that have it in place, the District of Columbia has it in place. The only thing that might not have been mentioned is the fact that California, in 2012, passed same-day registration. And they have also...they are in the process of implementing it. So it's often not included in the list of states but you should be aware of the fact that it will be listed as a state that's practicing SDR. The requirements for identification is one that I think is important. Every state is looking for, not only personal identification, but also identification of your residence. Those are the two things that carry over in terms of having to register. There's also...I think the thing that a lot of people realize is that in a case of same-day registration, that you're in a situation where you are face to face with an election official and that there should be a reminder that any violation of voting law is a federal offense and often results in a felony conviction. Now that should be clear to people. And we ought to make that clear in whatever we do that, if you're going to mess with the law, you're going to pay a price. I think voter fraud has been touched on by both Adam and Senator Avery. And I will testify that Adam's grandfather has not tried to vote in both states. I wanted to be sure that's...the voter fraud issue is one that I think everyone is concerned about. But, you know, in the states that have had SDR--in other words, we're talking about six states that have had it prior to 2005 or 2006--there were only ten real cases investigated of legitimate voter fraud. And none of those ten cases really involved same-day

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registration. The most interesting case was where there were 93 voters who were disqualified. The problem was, they had used the same address for registration. And it was a gentleman's club. And apparently the owner of the gentleman's club was under attack by the mayor and so he recruited 93 people. But they used the same address and none of them got to vote. So that was the most numerous violation, 93 people. Some of the benefits that I think are important is the fact that, you know, I think Senator Avery mentioned that in the top states that had the most turnout, four of the five were SDR states. So we're pretty well convinced that SDR does increase voting participation and by as much as 10 percent which is, I think, a very important point. It also eliminates the effect of the arbitrary deadlines, as had been mentioned. I mean, there are a lot of people on the move in our society today, much more mobile than it was 20 years ago. And so it's important that we have a flexible system that can register people. And same-day registration appears to be not only safe but a reliable way of doing that. I think it's also important, and I don't think this has been mentioned, is the fact that it reduces the need for provisional votes. I think we've seen a reduction in some of those states from 15,000 provisional votes to as few as 5,000. And that's a lot of work for election commissioners when they're in a situation where, instead of having to go with a provisional ballot, you can actually register the person there at that time. And it also makes the voting rolls more accurate because you have that person there and the credentials are as good as they're going to have to be in order to register anyway. So with that, I would say, thank you very much for hearing me and I'll entertain any questions if there are any. [LR202]

SENATOR MURANTE: Thank you very much. Are there any questions? Seeing none, thank you very much. [LR202]

JACK GOULD: Thank you. [LR202]

SENATOR MURANTE: Are there additional testifiers? [LR202]

WAYNE BENA: Good morning, members of the committee. My name is Wayne Bena, W-a-y-n-e B-e-n-a, and I am currently the election commissioner for Sarpy County, Nebraska, Nebraska's third largest county. First of all let me say, I have no official position on election-day registration. And I want to be available as a resource for this committee as they work through the process. So, Senator Avery, my commitment to you is, use me as a resource to talk through scenarios through this process. Ultimately, it's a public policy decision. And I've gone on record many a times in this committee that, while I will testify and approve or disapprove on election administration issues, public policy is up to this body. And my job is to follow the law. However, I believe I can be a resource to talk through the scenarios of the actual implementation of this public policy and how it affects election administration. And so I'm ultimately here to answer any questions. So my remarks will be short, which I'm sure Senator Avery is very surprised with. I guess my...as listening to Adam, I guess I have to give some arguments so his

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counterarguments make sense. And ultimately, you know, I'm not going to address everything that was brought up. But the main reason why I came here today is that, not only talking about this legislation and other legislation, is that one of the biggest frustrations I have as an election official is the perception and comments made to the media that election fraud doesn't exist and that any policy that's trying to prevent election fraud is just masking something else because it really doesn't exist. And what I can tell you as a person who is in the trenches, as a person that does this every day and loves every day of it, election fraud does happen in every election in, possibly, every county in this state. Is it fraud? No. But is it fraud? Yes. To me, something as simple as someone getting the wrong ballot means that they voted for someone that they shouldn't have or they didn't vote in a race they should have. And that, ultimately, to me, even as small as an issue, is a problem. One of the reasons why you don't see a whole lot of election fraud in the newspaper is because you need investigators willing to investigate. And once you investigate it, you need to have a prosecutor willing to prosecute. And it is very hard for election officials to get all that way to a prosecution they can hold up and say, don't do this in my county, look what's going to happen to you, because for every person that gets away with it is a person that tells someone else how they got away with it. And it spreads like a virus. I'm also the jury commissioner. My judges have a hard time prosecuting someone or bringing them in if they don't show up for jury duty. So it's hard for me to get them to come to jury duty or if they don't show up at all. Well, when that person doesn't show up for jury duty they tell their friends, well, you just don't have to show up, nothing is going to happen to you. Same thing with voting: Look what I got away with. And it continues to happen. So ultimately, in the administration of an election-day registration system, ultimately, one, it's not going to get rid of provisionals because, provisionals, we still have them in cases of early voters who don't early vote and go to their polling site because they lost their ballot. So you're still going to have provisional voting. Now what I like about provisional voting is, regardless if we accept the ballot or not accept the ballot, then their registration, we process it regardless of if we count the ballot or not. And they're registered to vote there from here to kingdom come. And then we have time to know whether or not that person lives there. Ultimately from a fraud issue, I want to know...how do we know...I can...if you're giving me an address, I can tell you what ballot to give you. That's easy. There are many resources. How do I prove that you live there? Do I think you're impersonating that person, someone else that lives at that address? No. Can it happen? Yes. Ultimately, how do you prove that you live at that address? And the people behind me said, well, there's many things that you can do now. And we touched upon ID. And that's a dirty word, voter ID. And ultimately, if we had...there's another policy discussion, should everyone show ID? If we think it's okay in this instance for these same-day election day registrations to show an ID, you have some class of people in line that don't have to show an ID and some that do. And the main complaint that I get, I have had voters call after the election and say, I was in line. I saw someone hold up an ID--even though I tell my people not to show an ID--people want to just shove that ID in our poll worker's face. They were so upset that they had the perception that they were showing

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ID, they left the polling site and were mad because they assumed we were asking for ID. Yes, we do have to ask an ID in that one instance. But if you continue to open up other avenues as an ID or a bill or something else, you're creating in line some people, you have to do this, some people that you don't have to do this. The argument that it lowers provisional voting, yes. But I would probably make the argument the same amount of time that we're doing in a provisional ballot as we're going to have to spend with that same person getting them registered to vote for the first time because, ultimately, one of the those things that we do in the provisional process is give them an absentee ballot or give them a voter registration form, excuse me. Also, we...then...and I will agree with Adam that the number one reason that Sarpy County would reject a provisional ballot is because most likely they came from Douglas County and did not reregister. And as I tell my poll workers, we have a lot of people that move into Sarpy from Douglas, and why not, because we're Sarpy County, it's awesome. But ultimately, if we put...if we allow them to register to vote and vote, also think about the question is, they're still in the polling book in their polling site in Douglas County or whatever, wherever they're at. So does it open up the possibility that you could vote in both places? Yes. Have I seen it occur? Possibly. And again, I'm not an investigator. I have to take my cases and I have to have a sheriff's office willing to investigate and a prosecutor willing to prosecute. I have a situation right now that, due to the cross-state match and working with other states, I have someone that requested an absentee ballot and voted in my county. But it also looks like they voted at a polling site in a different state. Do I know it's that person? Could it have been a family member or relative? I'm working my way out through that process. Ultimately, it might not be anything. But ultimately, what I'm here to tell you is, is that fraud does happen. We just need to get it investigated and prosecuted. And through this implementation of election-day registration, I want to work through the scenarios that I see. You know, one of the benefits they talk about is young people move around a lot. Well, when you move around a lot you should be able to change your license, too, because that's our requirement by law. But again, does everybody do it? No. But if you would go in and change your license, you can register to vote right there. So for all these people that move, when you move, you're supposed to change your driver's license and so you have that opportunity. We do have a lot of opportunity to register to vote here in Nebraska. I just want just to work through every scenario to make sure, ultimately, that you are who you are, you are supposed to be where you are supposed to be, and that, ultimately, we give you the right ballot. And that has to be the ultimate goal so there is no question about the integrity of our elections in Nebraska. So with that, I will answer any questions we have during...about this process. [LR202]

SENATOR KARPISEK: Senator Bloomfield. [LR202]

SENATOR BLOOMFIELD: Thank you. You hit around the edges of it pretty well. Senator Murante had said earlier that he lived in Omaha, went to college here. What are the odds of him getting caught if he voted in Omaha, drove over here, and reregistered

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as a Lincoln student, giving his address here, and voted again? [LR202]

WAYNE BENA: The chances of being...it would be caught after the fact so the damage has been done. What would most likely happen is, is that that person would have been given voter history in their county. And then when they voted provisionally here, we would have processed that registration and not accepted that ballot. We would not have...under the current system, we wouldn't have accepted that ballot because they were registered to vote somewhere else. So theoretically, you could vote provisionally here, that ballot is not going to count, and you could vote in your other county. But that ballot is going to count because you're in the book. Under that system, the ballot wouldn't count but you tried to vote in two places. So theoretically, yes, you could have that prosecuted. Ultimately to me, I don't want that ballot getting into the ballot box. So anything that prevents that ballot from getting into the ballot box...because once that happened, we can prosecute them, but the damage has been done, so. [LR202]

SENATOR BLOOMFIELD: But under the same-day registration, he could live there in the morning and over here in the afternoon. [LR202]

WAYNE BENA: And again, it's about the implementation of how this would work. Do you segregate that ballot like you do provisionally so you can figure that out after the fact? And I don't know what happens in these other states or how this legislation will be drafted. If you do everything that you're supposed to do and prove everything, do you get a live ballot? And does that live ballot go unsegregated into the ballot box? Because if it doesn't, then, theoretically, you could vote in both places. And while we can prosecute you, the vote is already in there. [LR202]

SENATOR BLOOMFIELD: And the chances of you actually finding it, can that happen? [LR202]

WAYNE BENA: Well, you can't find the ballot. You can never find the ballot. [LR202]

SENATOR BLOOMFIELD: No, that you...that that actually happened, that you would find that he voted in Douglas County and again in Lancaster County? [LR202]

WAYNE BENA: It would happen at the point that when we register them and it comes back to the office and we transfer their registration file from their other county. We would know if they have been given voter history at the time of their...so there could be a gap if that county hasn't applied voter history to that voter before such time that we transfer them back into our county, we may or may not see it. [LR202]

SENATOR BLOOMFIELD: Okay. Thank you. [LR202]

SENATOR KARPSEK: Thank you, Senator Bloomfield. Senator Murante. [LR202]



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SENATOR MURANTE: I've got two questions for you. The first is...it kind of deals a little bit with what Senator Bloomfield was talking about. So as I understand it, your office and every election office in the state of Nebraska has a list of every registered voter, including what are sometimes I think called inactive voters where you have some sort of information that that person has moved or doesn't live where they are presently registered to vote. Is that correct? [LR202]

WAYNE BENA: Correct. [LR202]

SENATOR MURANTE: Okay. And that information is readily available to any Nebraskan who requests it, is that correct? [LR202]

WAYNE BENA: Correct. [LR202]

SENATOR MURANTE: Okay. So you have a list that is readily accessible to every Nebraskan, listing people who are eligible to vote at a polling place in Sarpy County, but who the Sarpy County Election Office acknowledges doesn't live there? [LR202]

WAYNE BENA: We don't know if they live there. [LR202]

SENATOR MURANTE: You don't know if they live there. Okay. [LR202]

WAYNE BENA: They are still eligible. But in order to vote at their polling site, they need to confirm that they live where they live. And I'll answer the question but, you know, that brings up another interesting point about those type of voters and the fraud that possibly exists there. [LR202]

SENATOR MURANTE: Okay. So my question is...since Senator Bloomfield accused me of voter fraud, I will do the same in return. If Senator Bloomfield gets one of those lists and goes to a polling place in Wayne County--where he has a list of people who don't live where they say they live so they're most likely not showing up on election day--is there any way, if he goes and votes saying he's that person, that you would ever know about it unless the election worker at the polling place knows either Senator Bloomfield or the person he is purporting to be? [LR202]

WAYNE BENA: We would only find it out...we would find it out after the fact but we wouldn't know it was Senator Bloomfield. What would happen is, is that we would come back to our office. Their file would be activated again. They go from inactive to active status, which means it triggers a voter registration confirmation we would send that to that person he claimed to be at that address. More likely than not, they don't live there anymore. It comes back. And then, again, the clock starts again for inactive status and we start this process all over again. So unless the poll worker challenges it or someone

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in line can challenge it as well, which goes to a segregated ballot-type process, there is no way of knowing, no, under the current system. [LR202]

SENATOR MURANTE: Okay. Under the current system. Okay. [LR202]

SENATOR BLOOMFIELD: So I got away with it and you didn't. [LR202]

SENATOR MURANTE: Well, that's how it works, unfortunately. And so my second question was a point that you brought up relative to a length of wait in lines if we do this. So is it your perception that if we have a line on a presidential general election, a polling place, that having someone go through the process of voter registration at that polling place on election day will lengthen the overall time that an average person has to wait in line? [LR202]

WAYNE BENA: I don't think it will shorten it. [LR202]

SENATOR MURANTE: Okay. [LR202]

WAYNE BENA: Could it lengthen it? Possibly, yes, because under the provisional process, you have an envelope. The person fills out the envelope, the outside of the envelope, and they also fill out a voter registration form. [LR202]

SENATOR MURANTE: Okay. [LR202]

WAYNE BENA: They also fill out a PIN number and also the election worker calls the office to find out the address at that...where that person lives, what ballot style that they get, and go through all that process. So depending upon if you have the street file, as Adam talked about, at the polling site, looking through versus calling our office, you're going to have to go through this book. So ultimately, all the processes that have to go in place to figure out which ballot is almost about the same than this election-day registration as is done in the provisional process. The only difference is, from my understanding is, if the ballot isn't segregated, this ballot is going to count right there versus a provisional ballot, we'd have ten days to verify that...verify all the information that's supposed to be in there. Ultimately, how do we know where the person lives because in any other scenario, we send out a postcard and it comes back? And then that, to us, triggers something, an extra question or a poll worker on the next election, please confirm where you live. And again, that's all they have to do is confirm their address, state it to us. If it matches, they become active again. Ultimately to this is, are you are who you say you are, you live where you say you live, and we give you the right ballot. So all of this is taken care of beforehand. Ultimately, if...any bad ballot that gets in there taints the election process to me and we can't catch it till after the fact. And great that we can prosecute it--if we can--but the damage has already been done. [LR202]

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SENATOR MURANTE: Thank you. [LR202]

SENATOR KARPISEK: Thank you, Senator Murante. Well, I'd hate for you to come all this way and me not ask you something. [LR202]

WAYNE BENA: No, I kept under time so I didn't have to have (inaudible), so. [LR202]

SENATOR KARPISEK: Well, yeah, yeah. I appreciate what you're saying about the process because we often hear on a lot of these bills, oh, it's just going to take too long and you don't understand this process and it's just going to throw it all off. I really didn't hear that out of you. [LR202]

WAYNE BENA: I don't know what the process is going to be, Senator, quite honestly. [LR202]

SENATOR KARPISEK: Right. [LR202]

WAYNE BENA: But I could come back here and, once I find out what the process is in Senator Avery's bill, I'll tell you what it's going to be. But ultimately, the process is different from the public policy decision. I want to be a part of the administration. Your job is to figure out the policy. [LR202]

SENATOR KARPISEK: Yeah. And I just want to say, I appreciate that. About the lines, couldn't it, technically, you have a line over here that says "EDR" or "if you haven't voted recently"? [LR202]

WAYNE BENA: Yes, which probably is going to mean more poll workers, which means more money. And you guys don't give me money. So ultimately, again, I have to figure out the best...you know, one option is, I have a table of people that just handles that... [LR202]

SENATOR KARPISEK: Uh-huh. [LR202]

WAYNE BENA: ...or redirect someone else that does that. Yes, theoretically, that could happen. Again, my budget is different from Cherry County. And again, more people are going to do this in Douglas, Lancaster, and Sarpy, I think, than in Cherry County. So if you have that extra person or require that extra person, what are the costs of having that person? [LR202]

SENATOR KARPISEK: Yeah. [LR202]

WAYNE BENA: And does this happen quite a bit? I mean, we currently handle the

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system already with provisional ballots. We get, you know, we come right close to the ten-day deadline afterwards after a presidential. But that happens in those elections more than what's going to happen this coming May. [LR202]

SENATOR KARPISEK: Well, and you made my next point about, yeah, your whole operation compared to Cherry County is, I'm sure, completely different. So again, you talked about, yeah, if you tell me where you live, I can tell you right which ballot. Well, you have probably all the new, better, newer things. It might be a lot harder out there, so. Another question I was going to ask, we seem to be getting hung up on new voters and people who are already registered but in the wrong place. And as a way of compromise--and you don't have to answer right away--but what if we would open it up to say, hey, if you've already registered, you're just at the wrong place, you could reregister that day but not if you've never registered at all? And I shouldn't even make you answer that but it's just something to think about. [LR202]

WAYNE BENA: Give me the...give me the scenario...a different, I mean, a different county voter? [LR202]

SENATOR KARPISEK: Yeah. Yeah, the person from Omaha that moved to Sarpy because they're smarter and...like...well, that's what you said. And... [LR202]

SENATOR MURANTE: I mean, it's true, but... [LR202]

WAYNE BENA: We're going to use you on the tourism commercial, Senator. [LR202]

SENATOR KARPISEK: So, yeah, they moved but they've been registered in Omaha. They moved, they didn't...they just didn't get it done, if we could do it for them but not the whoever, first-time voter that just didn't know. [LR202]

WAYNE BENA: Same thing applies. How do I know you live there? How do I know that you actually do? And I'll use this scenario. I just held a special election in Bellevue and I had a...and I'm waiting for this all to play out. It was an interesting phone conversation. The person called our office and said, am I registered to vote? And so we looked them up and they were registered to vote but not in that specific ward in Bellevue. And they said, well, okay, well, that's where I used to live, how about this address? Well, that address isn't in the ward. Oh, well, what about this address? And (inaudible) about three. Well, I've lived in different places. And so, I mean, he was trying to...I don't know, you know, maybe he just didn't know exactly the address he was trying to...you know, what have you. He finally found an address that went and figured he went and voted provisionally. Because he was registered within the county, he was allowed to cast a provisional ballot. It counted. We now send a voter registration form. I'm waiting for that one to come back. And if it comes back, that one's going to my sheriff because, I mean, it's just...it sounded fishy. Now again, nothing...this guy could be living from house to

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house and he just couldn't remember the exact...maybe it was 105 instead of 106. You know, there's a million and one different reasons. But ultimately to me, how do you know that they live there? And so that's what this committee is going to have to figure out. Do you accept ID? Do you accept their bank...the Secretary of State doesn't like the utility bill aspect of it because it can be copied somehow. You know, do you go to ID? Well, you open ID for this, how many other things are you going to open up ID for? Again, that's a public policy decision. But, you know, that's the things that need to be thought about during each one of these processes. Ultimately to me, could we do that? Yes. It's the same thing as anything else. But again, they're still in the book in Douglas County and they could go to vote in Douglas County without any question and then vote in some...is that going to happen? Does that happen a lot? Probably not. Ultimately, I'm worried about: Do you live there; should you be voting there; or are you just making up an address and we're giving you a ballot when you probably shouldn't? [LR202]

SENATOR KARPISEK: I think as we get further into technology, too, some of this might be solved, worrying about things like that--as soon as you vote, it says "he voted."  
[LR202]

WAYNE BENA: Well, if you want to give me appropriations for that type of system, feel free. Or if the state wants to pay for the elections we hold at no cost to you guys, I'd be happy to bill you. [LR202]

SENATOR KARPISEK: Right. I understand your argument there. I guess just one final thing. We're so worried about this person, where they live, but yet we hold vote-by-mail elections. [LR202]

WAYNE BENA: Uh-huh. [LR202]

SENATOR KARPISEK: We send that out. You don't know who filled that thing out and you send it in. So... [LR202]

WAYNE BENA: I would say is, that we make the very best effort because it has to come back in the envelope provided that has your name on it and then you sign it. And I'm going through an election right now in the Springfield Platteview school bond issue. We go through every signature. And we have your signature on your voter registration and we match it up with what we see. If we don't like it, then it goes to, I'll call it a suspense. And we try to contact the voter, if we can, to see is this you. I mean, we have some signatures that doctors would blush, they're so bad. I mean, it's just a squiggle. I mean, now...and so they just maybe didn't take the time. So at least in my office's perspective, we do everything that we can before the...before we canvass the vote to see if we can take this ballot. And then, ultimately, our canvass board decides if that ballot, ultimately, is going to be rejected. But we do everything we can to make sure the integrity of that process is upheld. [LR202]

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SENATOR KARPISEK: We just had one in Crete, a school bond by mail. And oh, boy, is that...that's a hot subject around home. [LR202]

WAYNE BENA: And we're finding a lot of...we find a lot of stuff. You know, we have to remind voters that one, you have to sign it. We have a lot of people that are signing each other's, the husband and wife are signing each other's and, you know, we call. Or my favorite one is, they use one envelope, put both ballots inside, and they both sign one envelope. You know, and so you see... [LR202]

SENATOR KARPISEK: Saving a stamp. [LR202]

WAYNE BENA: Save that stamp. So you see it all. But I do think...right now I'm thinking...I haven't checked the mail today but I'm sitting on a 20 percent turnout with 11 days to go. And I'll tell you, that's a lot higher than the 3 percent or 6 percent we saw in bond issues in the OPS elections that were poll site. So ultimately, it does have...these do have an impact. [LR202]

SENATOR KARPISEK: Oh, yeah. [LR202]

WAYNE BENA: And I've gone on record, I'd love to see all elections go by mail. But again, that's something down the line as we work through that, so. [LR202]

SENATOR KARPISEK: Yeah. Well, I just worry about if mom or grandma is, yeah, she signs it and somebody else fills it out. That's a whole different situation. [LR202]

WAYNE BENA: It happens. We catch it the best we can. [LR202]

SENATOR KARPISEK: Yeah. And I appreciate you coming in and talking this out. Any other questions? Seeing none, thank you. Anyone else on LR202? Seeing none, Senator Avery. [LR202]

SENATOR AVERY: Thank you, Senator Karpisek. I want to quote that famous political philosopher, Lyndon Johnson. He used to say, "Come, let us reason together." And I would point out that this hearing today on this subject is different from any other hearing we've had on this subject and we've had them before. This is encouraging to me because there is a willingness to talk, a willingness to work together. Lyndon Johnson also said, however, that in politics, you got to keep your head down because you never know when you're going to be a target. Thank you. [LR202]

SENATOR KARPISEK: I think you're always a target but that's different. Thank you, Senator Avery. We will break and be back at... [LR202]

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SENATOR AVERY: Yes. At 1:30 today we will have a hearing by teleconference. And it will be in this room? [LR341]

\_\_\_\_\_ : Yes. [LR341]

SENATOR AVERY: It will be in this room. And we'll take up Senator Davis' interim study proposal to examine the powers and duties of the Nebraska Emergency Management Agency. This deals with wildfires out in his (inaudible) part of the country. So thank you for coming today. We'll see you this afternoon. [LR341]

BREAK

SENATOR AVERY: Good afternoon. Welcome to the Government, Military and Veterans Affairs Committee. Please turn off your cell phones. (Laughter) The...we have...we're doing this by teleconference in two sites other than here. Those are Ainsworth and Chadron. In Ainsworth, we have Ms. Kristin Olson. Will you wave at me if you can hear me. Good. And in Chadron, we have Mr. Stacy Swinney. Mr. Swinney? Oh, there you are; raise your hand. Yes, thank you. We...I'm going to do this in a way...conduct this hearing in a way that everybody gets the chance to speak. But before I talk about the actual procedure, I need to know from each of the satellite locations, how many people do you have there who wish to speak? Would you, please, Mr. Swinney, would you, please, tell us how many people you have, first. [LR341]

SENATOR WALLMAN: No hurry. [LR341]

CHUCK HUBKA: You're not going to be able to hear them; they're going to have to tell you by fingers. [LR341]

SENATOR AVERY: All right. Hold up the fingers. [LR341]

SENATOR DAVIS: He counted six off. [LR341]

SENATOR AVERY: Six? [LR341]

SENATOR BLOOMFIELD: Seven. [LR341]

CHRISTY ABRAHAM: Seven. [LR341]

SENATOR DAVIS: Looks like seven. [LR341]

SENATOR AVERY: Seven. Okay. We've got it. All right, Ainsworth, how many? Hold up your fingers. Two. Okay. Okay. We're going to start with Lincoln. How many people here in Lincoln do we have wishing to speak? Four, five, six, seven. All right, we're going

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to...in order to make sure everybody gets a fair chance to speak, we're going to start here in Lincoln with Senator Al Davis, who will have an opening statement on his legislative resolution. And then we will hear from some of the people here in Lincoln. But we're only going to have the video capability for two hours. So we're going to do 30 minutes in Lincoln. Then we'll go to Ainsworth. We'll do 30 minutes there, 30 minutes in Chadron. Then we come back. And we rotate again for 10 minutes each. So I'm going to ask all of the coordinators at the sites to take charge of determining how many people get to testify during that 30 minutes, the first round, and then 10 minutes on the next round, so everybody gets equal opportunity to speak. So the coordinators at the various sites will need to be aware of how many people are going to speak. If you want to have everybody speak, then you need to...you'll need to have some time limits, perhaps, imposed on them, if it looks like that you have more people speaking than we have time to cover it. I want to give every site 40 minutes' equal time to cover the subject. So, coordinators, get your timers out and be aware of where we are and help me out on that. We're going to also ask at each site that people who testify fill out a testifier sheet. This is generally a green sheet--I don't know if they're green in your possession--but a green sheet that asks for basic information about the individuals who are testifying. We're particularly interested in having your name clearly spelled out, because we have to have a permanent record of the proceedings. And when you take the witness stand, please state your name for the record and spell it so that we can have assurance that we're getting correct information. If you have any exhibits that you want to distribute, we have...you would need, in Ainsworth and Chadron, you need to give that to the site coordinator. And that person will forward those to us. If you have a written copy of your testimony, that's good for us to have as well. Give that to your site coordinator. Also, if you wish to record your presence and your position, for or against, or anything that you want us to see but you don't necessarily want to testify, that, too, needs to be given to the site coordinator so it can be forwarded to us. One final thing, when you are not actually live, speaking, we ask that you mute your audio so that we don't have a lot of background noise at the various sites. When the camera is on us here in Lincoln, we ask Ainsworth to mute your audio, Chadron mute your audio; we'll the do the same thing when we start rotating. With that said, I have three members of the committee here with me. For the record, I am Bill Avery, from District 28 here in Lincoln, Chair of the committee. On my left we have Senator Norm Wallman from Cortland. Next to him is Senator Russ Karpisek from Wilber. To my immediate right is the committee counsel, Christy Abraham; she keeps us informed on what is exactly the right thing to do. And next to her is Senator Bloomfield from Hoskins. We welcome all of you to this hearing. And to get things started, I'm going to call on Senator Al Davis, who is the principal introducer of LR341. Welcome, Senator Davis. [LR341]

SENATOR DAVIS: Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I am Al Davis, D-a-v-i-s, and I represent the 43rd Legislative District. I am here this afternoon to introduce LR341. The decision to ask this committee to review NEMA's powers and duties resulted from field reports



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received during work this year on LB634, the Wildfire Control Act. The wildfires of 2012 revealed many strengths in NEMA's actions as well as some weaknesses and problems with our state's emergency response efforts. With unprecedented flooding in 2011 and explosive wildland fires in 2012 fresh in our memories and other emergency events that could happen at any time in the future, now is the time to examine the authority we have vested with our state's emergency response officials to determine if new or alternative response efforts should be developed to improve the actions of NEMA. Emergency response needs to be rapid, effective, dependable, and well coordinated. Saving people and property needs to have a higher level of priority than protecting the state budget. I would remind you that last year Nebraska experienced the worst wildland fires in its history, with nearly 500,000 acres burned, 65 structures lost, and at least \$12 million in suppression costs. Higher temperatures, intense drought, increased forest fuel loads, and the spread of eastern red cedar created an explosive potential for very large wildfires across the state. These megafires are difficult to control, overwhelm local suppression capacity, cost enormous amounts of money, and put lives and property of residents, visitors, and emergency response personnel at great risk. After General File debate on LB634 began, an amendment was offered to reflect agreements made with Lieutenant Governor Heidemann and the staff of the Nebraska Emergency Management Agency. The amendment was adopted, so the Nebraska Forest Service and NEMA would share responsibility for the provisions of the Wildfire Control Act to enable our state to react to the spread of wildfires more rapidly and effectively. The number of single-engine air tankers was reduced from two to one, and the responsibility for contracting for the plane was moved from the Nebraska Forest Service to NEMA. NEMA already provides oversight for dispatching National Guard helicopters and SEATs from other states. NEMA, in cooperation with local emergency managers, already provides guidance for incident command for wildfire response. Under the agreement reached with Lieutenant Governor Heidemann and NEMA, dispatch of Nebraska's SEAT will be made through the Great Plains Interagency Dispatch Center in Rapid City, South Dakota. Intent language was added to LB634 directing NEMA to deploy the SEAT quickly and without delay. After first-round debate on the bill started, research and discussion uncovered examples of delays in rapid aerial attacks last year, due to lack of available aircraft from out of state, absence of SEATs in Nebraska, problems with radio communication, equipment failures with National Guard helicopter support, and slow authorization from NEMA to request deployment of SEATs from outside of Nebraska. The intent language was added to LB634 to instill in NEMA a sense of urgency and state in a clear and positive way that deployment delays could compromise the efforts of volunteer firefighters to combat wildfires, create unnecessary risks to lives and property, and cost the state millions of dollars. NEMA is now required to submit an annual report or use request, deployment and denial of use of this SEAT to the Governor and to the Legislature. Placing a SEAT in Nebraska for the first time means we are venturing into new territory. The annual reporting of SEAT use to the administration and to the Legislature will ensure that tax dollars are used in a prudent manner and provide valuable information about the state's management of aerial

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attacks to fight wildfires. Finally, I want to make a personal comment on my own observations as a volunteer at the fires in the Niobrara valley in 2012. I spent one day in the area and volunteered to drive a Neligh crew from Johnstown to Norden, Nebraska. The crew was sent to relieve a crew from Long Pine which had been on the ground for over 14 hours. After reaching Norden and not finding our crew, we headed east and met several other crews waiting on the road. Our crew was unable to reach the Long Pine crew since they were in the canes below the highways on which we stood. Many firemen were standing on that road that day waiting for instructions because radio communication was fragmented and sporadic. And most were relying on cellular phones to make contact with others in the area. It seems obvious to me that communication is extremely important and that our local departments must have a means of communication which is complete and dependable. Valuable time was lost on the road waiting for others to report in. Whether a local or a state issue, it is imperative that communication issues be resolved, because lives are at stake in these situations. I hope we will hear many positive things about the way Nebraska handles its statewide emergency response, but I also hope to hear about weaknesses which need to be addressed to strengthen the response, to save property, and, most of all, to save lives in handling the job which NEMA is entrusted to perform. Thank you. [LR341]

SENATOR AVERY: Thank you, Senator Davis. Any questions from the committee? I don't see any. If I may, I have a request from NEMA to go next in the queue because they have a training session coming up and need to get their testimony done now. Is that correct, Mr. Berndt? Oh, okay. And... [LR341]

CINDY NEWSHAM: (Exhibit 1) Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. I am Cindy Newsham, C-i-n-d-y N-e-w-s-h-a-m, with the Nebraska Emergency Management Agency. I appear today to present testimony on LR341 on behalf of General Daryl Bohac, the adjutant general and director of the Nebraska Emergency Management Agency, or NEMA. NEMA is a state agency within the Military Department to administer the State Emergency Operations Plan and related programs at both the state and federal level. During times of emergency and disaster declarations, the agency operates the state emergency operations centers and coordinates all state agencies in support of the response. In this role, the agency administers the Governor's emergency program and supports local-level operations. "All disasters are local" is a major planning tenet within emergency management since the first response to a disaster is at the local level. When local capabilities are surpassed, the state is then the next level of assistance and support. As such, NEMA monitors, plans for, activates, and assists local counties and communities at such time local elected officials declare a state of emergency and when the Governor authorizes assistance. As with a federal disaster, state assistance is available when both the capabilities and costs of local responses have surpassed established thresholds for assistance. Coordination and cooperation among state agencies is a key component of the state-level disaster and emergency response.

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During emergency operations center operations, personnel designated within state agencies act as emergency support coordinators. And under a Governor's declaration, a state policy team is established and led by the Lieutenant Governor--that is comprised of state agency directors--which makes and administers state operations. When authorized, NEMA and our state agency partners provide a unified and cohesive state response, whether it is to a tornado, a flood, a wildfire, or another event. As LR341 examines the adequacy and timeliness of NEMA's support to local and regional emergency disasters over the over the past few years, I will briefly summarize the three disasters that were identified in the study. The Missouri and Platte River floods of 2011 started in April of 2011 as a planning process involving meetings between the state of Nebraska, including the Department of Natural Resources and NEMA; Wyoming; Colorado; North and South Dakota; the U.S. Army Corps of Engineers; and the Bureau of Reclamation. Ultimately, this planning effort would lead to the state disaster response and then federal disaster declarations of DR4013 and DR4014. Two years later NEMA is still working with the local communities recovering from the effects of that flooding. The wildfires of 2012 were all local fires that exceeded the capacity and capability of local authorities to manage. While NEMA stayed in touch with local incident commanders, it was when the local authorities informed us of the need for assistance that NEMA came into play, with state resources, incident management teams, and other response organizations. [LR341]

SENATOR KARPISEK: Get her some water. [LR341]

CINDY NEWSHAM: Sorry. [LR341]

SENATOR AVERY: We're getting you some water. [LR341]

CINDY NEWSHAM: Okay, thank you. Fires, like all disasters, are complex, multifaceted, and fluid operations...thank you very much. [LR341]

SENATOR AVERY: While you are hesitating there, let me explain. You have almost six full pages of single-spaced testimony, don't have time for all of that. So I'm going to have to ask you to try to limit your testimony to the most important points... [LR341]

CINDY NEWSHAM: Okay. [LR341]

SENATOR AVERY: ...in this document. And we'll give you a little bit more than five minutes, but not too much more, because we have other people who are here and want to testify. All right? [LR341]

CINDY NEWSHAM: Absolutely. [LR341]

SENATOR AVERY: Thank you. [LR341]

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CINDY NEWSHAM: What we attempted to do in this was to respond to each section of the LR that was in there. So...and you'll have it to read, so I'll go ahead. I think one of the...the whole idea of local...of incidents beginning at the local...and NEMA comes into action when requested, but we don't preempt local authorities or override their assessment of their capability to fight a fire. After a hazardous incident in Stapleton in 2011, we recognized that the authority that we had under the statute took too long to get hazardous material response. And we worked with Senator Price and this committee to enact LB766, which stated that if aerial fire suppression or hazardous materials is immediately required, the adjutant general may make expenditures of up to \$10,000 per event without an emergency proclamation from the Governor. In terms of aerial suppression, the system as currently set up under the "Governor's Guide" gave flexibility to local incident commanders to call in fire suppression first and then notify NEMA. Since 2000, there has not been one incident of aerial suppression where the cost exceeded that \$10,000. And we have a year-by-year account in there: 2006, combined aerial suppression was \$19,732; 2007, \$2,788; 2008, we had no fire costs; 2009, \$266; 2010, \$33,688; 2011, \$23,395; and 2012, \$90,861, of which about \$47,500 was expended after a Governor's emergency. We did contract for a SEAT this year, and there were no activations of the SEAT in Nebraska this year. We have a training and exercise program. And I believe Senator Avery has a more extensive list of all of the training that was given. [LR341]

SENATOR AVERY: Okay, you've already gone over eight minutes. [LR341]

CINDY NEWSHAM: Okay, and there...talking about radio coordination. The interoperability is available through...communications through programs with the Office of the Chief Information Officer and the Division of Communications. We've helped coordinate through writing these technical, called TICP, plans at the local level that talk about what...how the interoperability would work within their area and what has to be programmed into the radios. That, however, has to be done at the local level. The building of the Type III team...we have tried to do that for many years. There's about 15 positions that have to have special training. And then those positions would have to be two deep; they would have to have a certain amount of continuing education. And so far the expense of that has just been beyond what we can do besides the fact that those personnel would have to come from other agencies that do not feel they have the people that they could give to that purpose. In...Public Law 110-79 created the Great Plains Interstate Forest Fire Compact. We have recommended not joining that, due to the fact that we belong to the Emergency Management Assistance Compact that we have used for many years to do the same thing, and there are more, actually, more assets available through that program. There's also much better capability of tracking for financial management than there is in the other one. We also belong to the Great Plains zone board of directors' charter, which includes the states in the Great Plains area. And we maintain an interagency cooperative fire management between the state

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of Nebraska and the federal agencies that have firefighting capability. [LR341]

SENATOR AVERY: I'm going to have to ask you to summarize here because... [LR341]

CINDY NEWSHAM: Sure. And that's really about the end of it. The very last point is the benefit of a department or a division that is solely over fire management. And we recommend that if that is done, that it come under the direct authority of the Governor because of the Governor's responsibilities through the statute and through the State Emergency Operations Plan. [LR341]

SENATOR AVERY: Is that a part of your formal testimony? [LR341]

CINDY NEWSHAM: Yep. That's the last paragraph. [LR341]

SENATOR AVERY: Okay. Thank you. Any questions? Senator Wallman. [LR341]

SENATOR WALLMAN: Thank you, Chairman Avery. Being...a knowledge about radio frequencies and that, how many frequencies...the police and the fire and all these things, do not we have the capability to integrate all that together? [LR341]

CINDY NEWSHAM: Yes. But it takes a certain amount of work at each area. And that I tell you, when you say me knowing about the radio, I really am not a very good person to ask. I, basically, ask them what button to push. But there are people in the room that do know that. [LR341]

SENATOR WALLMAN: Okay. [LR341]

CINDY NEWSHAM: But the way the system is built out, there are regional interoperable capabilities in those radios, but they have to be programmed. And what they found OUT in the fire is that a certain amount of the departments and areas had not programmed their radios, and so they were not able to use them. [LR341]

SENATOR AVERY: I have one quick question. [LR341]

CINDY NEWSHAM: Sure. [LR341]

SENATOR AVERY: What are the protocols that you follow when you get a request from out of state for airplane use? [LR341]

CINDY NEWSHAM: For us to send an airplane? [LR341]

SENATOR AVERY: Right. [LR341]

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CINDY NEWSHAM: Under the EMAC system, the emergency management compact, it comes in as three parts. They send out an e-mail to all of the points of contact, to all of the states in the Union. Or if they have someone specific, they just send it to them. For example, we had helicopters in Colorado this year. And they say, we need this many helicopters or whatever; we e-mail back that this is what we have available, and this is what it would cost you, you know, for...to do it. And they come back and say, we're going to get it from somewhere else; or, yes, we want yours; and that paperwork takes maybe half a day. And then we put the, like, the National Guard, or we've sent Lincoln police to Cedar Rapids, Iowa, during their big flooding. We put the point of contact in the requesting state in contact with that person or agency that we're going to send, and they make the...and the EMAC is always reimbursable. That's 100 percent...we put in for...the state does. [LR341]

SENATOR AVERY: Senator Bloomfield. [LR341]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Did I just understand you to say that if the state of South Dakota called down and said that we had an immediate need for an airplane, the paperwork takes a half a day? [LR341]

CINDY NEWSHAM: It doesn't necessarily take the half a day to get them going, but it's...if you go through EMAC, it's all through faxing back and forth. And it can be done...the half a day is the longest that it's ever taken, and that was getting the information from the people... [LR341]

SENATOR BLOOMFIELD: That's entirely too long. [LR341]

CINDY NEWSHAM: Yeah. [LR341]

SENATOR BLOOMFIELD: Thank you. [LR341]

CINDY NEWSHAM: Uh-huh. [LR341]

SENATOR AVERY: I'm going to have to stop here and find out if Ainsworth can hear us. Kristin Olson, can you hear us? You can. Good. We were having some... [LR341]

CHUCK HUBKA: Ask her to actually talk to us. [LR341]

SENATOR AVERY: Speak. (Laughter) You can go off mute for a moment. What is your name? [LR341]

CHUCK HUBKA: No, we can't hear her. Or, I mean, she can hear us, but we can't hear her. [LR341]

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SENATOR AVERY: We cannot hear you, so we're going to work on it. But you can hear us, is that correct? Okay. Fix it. (Laughter) [LR341]

\_\_\_\_\_ : We're trying. [LR341]

SENATOR KARPISEK: Fix it, Chuck. [LR341]

SENATOR AVERY: All right, I don't see any more questions. I'm sorry that it went so... [LR341]

CINDY NEWSHAM: Oh, that's fine. [LR341]

SENATOR AVERY: ...badly for you, but... [LR341]

CINDY NEWSHAM: But you have it all in... [LR341]

SENATOR AVERY: We do. [LR341]

CINDY NEWSHAM: ...on that. [LR341]

SENATOR AVERY: All right. [LR341]

CINDY NEWSHAM: And if you have any questions, you can always get ahold of us. [LR341]

SENATOR AVERY: All right. Thank you very much. [LR341]

CINDY NEWSHAM: Thank you. [LR341]

SENATOR AVERY: Senator Krist, come on up. [LR341]

SENATOR KRIST: Senator Avery, my name is Bob Krist, and I represent District 10 in the Legislature. I'm here today with, oh, a vast amount of experience in emergency management. My last tour on active duty was as an advisor to the adjutant general of the state of Nebraska and to then-Governor Nelson. One of the issues that came up under my watch was the '98 ice storm and the cleanup that happened afterwards and the activation of the Guard to help out with that process as well as no power in the area. My immediate experience comes from the floods and my experience also with the Corps of Engineers and flying their airplane. I would make two observations. Number one, the current NEMA system is not proactive; it is waiting for someone to call them and ask a question for help. That is dependent, usually, on a couple of things. The ego on the other side of the phone: are they willing to give up jurisdiction and ask for help? And, number two, what I think is a lack of proactive effort on the part of NEMA. We're

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not in a vacuum; we see the news every day. Part of Nebraska is burning; there should be someone from NEMA on site to help the locals work through the process. The second thing I would offer you today, and I'll be very brief, is that I don't honestly believe that the declaration of an emergency, and leading up to it, should be so political. I think that the adjutant general, General Bohac, should have almost complete authority, to a certain point. And I that's a problem within the system as it exists today. He is given some authority, on an automatic, up to a certain dollar amount. But that's where it needs to be. I have total confidence in our Guard; I have total confidence in General Bohac's ability to find out where his limits are and when to disengage. But to put the director of NEMA directly under the Governor and bypass the Military Department, I think, is one of the problems we have with communication within the state. Lastly, communication is an issue. We've known this for a long time. We lost some good people when they stood up and said, the communication process is not working in this state. It's not working, and we need to fix it. So with that, I'll be very brief and say, thank you for the opportunity. [LR341]

SENATOR AVERY: Thank you. Questions? [LR341]

SENATOR WALLMAN: Thank you, Chairman Avery. Welcome. [LR341]

SENATOR KRIST: Thank you. [LR341]

SENATOR WALLMAN: You know, I used to be in the military, too, and communication...do you think the Midwest ought to have a separate frequency for emergency? Because most of your military radios you can get a lot of different frequencies. [LR341]

SENATOR KRIST: I was taught to always exercise like you would actually go to war. And I think there's a lot of equipment out there that belonged to other activities that can be brought together in one network. We cannot stay on a single network in different areas because we can't communicate with each other. I think bank robberies and communication have proven that in history in the state of Nebraska. So that is number one; and there's no question, good communication. And I think...I think our current adjutant general, General Bohac, given that opportunity and a little bit of help financially from us, could solve that problem. [LR341]

SENATOR WALLMAN: Good. Thanks. [LR341]

SENATOR KRIST: Thank you for the question. [LR341]

SENATOR AVERY: Any other questions? Senator Karpisek. [LR341]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Krist. Welcome



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back to the committee. [LR341]

SENATOR KRIST: Thank you. [LR341]

SENATOR KARPISEK: Can you explain a little bit of the FEMA/NEMA connection. Does one work with the other? [LR341]

SENATOR KRIST: Absolutely. So, locally if you have an issue, you need to bring it to the local emergency management folks; they would elevate that request to NEMA, to the Nebraska Emergency Management Agency. And then, if need be, it would go FEMA. So it's a stairstep approach. Now, being proactive, I'm suggesting that NEMA might go into the individual areas and help or assist or be there right away rather than waiting for someone to ask for their help. [LR341]

SENATOR KARPISEK: I just am curious, the Hallam tornado also did a lot of damage in Wilber, and trying to get FEMA or anyone there was just...it just didn't happen; and the ball was absolutely dropped, and I don't want that to happen again. And I've said I knew there was trouble with FEMA before any hurricane (laugh), because it was very bad, but... [LR341]

SENATOR KRIST: I would tell you that one of the problems we had with Omaha during the ice storm of '98...(music playing) they're coming to take us away. During the ice storm of '98 it was... [LR341]

SENATOR KARPISEK: It's the yellow helicopter (inaudible). [LR341]

SENATOR AVERY: Sounds like a funeral dirge. [LR341]

SENATOR KRIST: It is; that's why...(laughter). One of the problems we had with Omaha was they were either unwilling or uneducated in terms of asking for help. So if you don't know, you don't know how to get it, so...yes, sir. [LR341]

SENATOR KARPISEK: Well, they sure sent...they ended up in Hallam real quick...and whatever. And I understand they had a more immediate need. However, we had people, too, with houses on top of them and things, and nobody came around, so. [LR341]

SENATOR KRIST: Right. [LR341]

SENATOR KARPISEK: Thank you, Senator. [LR341]

SENATOR KRIST: Thank you, Senator. [LR341]

SENATOR KARPISEK: Thank you, Senator Avery. [LR341]

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SENATOR AVERY: I don't see any more questions. Thank you for your testimony, sir. [LR341]

SENATOR KRIST: Thank you. You bet. [LR341]

SENATOR AVERY: We will take one more very, very brief testimony, and then we're going to have to go to Ainsworth. [LR341]

\_\_\_\_\_: You're not going to be able to hear Ainsworth yet; they haven't fixed the problem. [LR341]

SENATOR AVERY: All right. [LR341]

\_\_\_\_\_: (Inaudible) Chadron is the same way. You're going to have to stay here until they get the issue fixed. [LR341]

SENATOR AVERY: All right. I just have been informed by our technician here that we have more time to stay at this location because we have technical difficulties in our satellite locations. So I'm sorry we had to cut you off earlier... [LR341]

CINDY NEWSHAM: That's okay. [LR341]

SENATOR AVERY: ...but we did not anticipate this. Proceed, sir. [LR341]

AL SCHOEMAKER: (Exhibit 2) Thank you, Mr. Chairman and members of the committee. My name is Al Schoemaker, S-c-h-o-e-m-a-k-e-r. I'm the director of public works for the city of Blair, Nebraska. And I appear before you here today to offer you testimony regarding the LR341. The city of Blair has experienced three presidentially declared natural disasters in three years running. And they were Disaster 1878, the winter storm of December of 2009; Disaster 1924, the 2010 flooding; and the most recent, Disaster 4013, the 2011 Missouri River flooding. During each of these disasters I have worked closely with federal emergency management staff as well as the Nebraska emergency management staff. The disasters all presented unique challenges for the city of Blair and myself, but one constant in all these disasters was the reliability of the NEMA staff. They provided quality information and were very helpful to provide guidance to myself and Blair through the FEMA rules and regulations for submitting disaster claims. However, one issued that has proved to be a challenge was the small size of the NEMA staff versus the workload that they are expected to undertake. There have been many instances that...when I have had to wait on NEMA staff to respond to my questions, as they are not reasonably available to answer questions or give directions or guidance. One time in particular I called NEMA staff to ask questions regarding the FEMA claims that I was submitting on...and was informed that all the

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NEMA staff were in western Nebraska working on the wildfires and that we would not be able to get any response to those questions until they returned some days later. In 2012, the city submitted a 404 mitigation application to FEMA, through NEMA, in response to the 2011 Missouri River flooding with hopes to provide permanent flood protection to the city's treatment plants. The application sat on a NEMA staff member's desk for one year after it was submitted while that staff member worked on buyouts of flood-damaged properties from the Missouri River flooding. NEMA employs only one staff person to work on all FEMA mitigation programs. This has delayed our recovery from Disaster 4013, which is still not complete to this day. To date, they're still awaiting the final answer from FEMA regarding the mitigation application, which is now two full years after the flooding event concluded. Many citizens within the community are frustrated and do not understand why it is such a lengthy process recovering from a disaster. The city staff is finding it difficult to explain to the citizenry why we have to wait until we receive approvals from NEMA and FEMA for the claims that we have submitted because they do not have the staff to accomplish all the workload expected of them, and we cannot proceed with many of the recovery projects for fear of jeopardizing our funding from FEMA. Another concern is the closing out of the past disasters by NEMA staff. NEMA has many outstanding disasters that have yet to be closed out. Some of these disasters happened over five years ago. Disaster 1924, the 2010 flooding event in Blair, has not been closed out by NEMA staff even though the recovery work has all been completed over a year ago. NEMA was able to close out Disaster 1878, the 2009 winter storm, in August of 2013, just this year. My last concern is regarding the amount of time it takes to receive funds from FEMA-approved claims. Claims from disasters take approximately one year from submittal to payment for our community. This puts a serious hardship on the city's finances for our small city. For Disaster 4013, we submitted claims to FEMA totaling \$3.2 million. The city had to pay out almost \$1 million to provide protection for the city's treatment plants during flooding. Blair received payment almost one year to the date from the claim submittal. This required the city to borrow money to pay for the expenses resulting from the disaster. The city of Blair would like to ask this committee that you recommend to the Nebraska Legislature to increase NEMA's funding that would allow this state agency to adequately provide staff to meet the many challenges of natural disasters that are...that occur within our state. [LR341]

SENATOR AVERY: Thank you, Mr. Schoemaker. Questions from the committee? I don't see any. Thank you. [LR341]

AL SCHOEMAKER: Thank you. [LR341]

SENATOR AVERY: I'm going to have to try one more time to make contact...aural contact with our neighbors out in Ainsworth. Can you hear me? All right, now I want you to speak to me. All right, thank you. We're still not getting your audio. Chadron? Chadron, can you hear me? We have the best and brightest working on this. All right,

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we'll stay in Lincoln and continue testimony on LR341. [LR341]

\_\_\_\_\_: They must be on the phone with China. [LR341]

FRANK KRAMER: Good afternoon, ladies and gentlemen. [LR341]

\_\_\_\_\_: I've got it almost cranked all the way up. [LR341]

\_\_\_\_\_: Sir, one second here. [LR341]

\_\_\_\_\_: Go ahead. [LR341]

\_\_\_\_\_: Would you ask Ainsworth to talk again. [LR341]

SENATOR AVERY: Ainsworth, can you tell me your name. [LR341]

\_\_\_\_\_: Yeah, we're not hearing anything. [LR341]

SENATOR AVERY: Yeah, I'm sorry that we're still having trouble. We're getting paid by the hour, though. [LR341]

SENATOR KARPISEK: (Laugh) [LR341]

\_\_\_\_\_: Go ahead. Thanks. [LR341]

\_\_\_\_\_: Okay. [LR341]

SENATOR KARPISEK: Fifty cents. [LR341]

FRANK KRAMER: Afternoon, my name is Frank Kramer, common spelling, last name K-r-a-m-e-r. I'm the fire chief out of Stapleton. I'm also the president of the Mid-Plains Mutual Aid Association and a member of the Sandhills Mutual Aid Association. I come down to talk about some of our personal experiences that we've had with NEMA and some of the stuff that does not work. Like the NEMA lady spoke earlier, I was one of the reasons that we changed a little bit of the wording and stuff on the hazardous materials incident. We tried to do what we were trained to do. We had a deal at our local co-op. And, anyway, a long story short, we called the proper channels, and it took three and a half hours to get the hazmat truck out of North Platte to help us. And then we've had...we've had several large fires out in that end of the state that...which I'm sure everybody is aware of. We had the harvest fire, and, basically, it was 20,000 acres, and it burned up to and around 22 structures, and we only lost 1. And then last year we had a rash of fires like everyone else did. And I guess I'd like to address some of the problems that we can see on our side of it, is, everybody out our way is afraid of getting

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stuck with the bill if you do something wrong, don't make the proper channels and stuff. So, you know, when you do call NEMA...or what we were kind of trained to do, it takes so much time to get somebody out there to help, you know, what they exactly want to do, all the things, all the steps, because nobody wants to miss a step. And so by the time...we were talking on the way down, you know, by the time you get somebody from the office down here in a car out to Stapleton, you're talking four or five hours. Well, if the fire starts at 2:00 in the afternoon and it's raging from 2:00 till Mother Nature helps us out at dark, you're losing a lot of ground there. The other thing is the aircraft. The aircraft falls under that \$10,000 deal. And I would like to suggest that maybe you could up that. The reason I say that is because that's kind of the fire chief's, the incident commander's way of getting some of the stuff done. We call in airplanes and we're allowed a certain amount of money, and then we're supposed to call back down to Lincoln to get approved for more funding to continue our operations. The reason I say you need to up it is because the forestry is started up, and the rates to the planes, what they actually pay the planes to drop a load of water. And they're getting to the point now that where you've...within a matter of five to six loads--it depends on how big a plane it is--you're going to run out of funding. And then some of the other stuff I'd like to address is the SEAT. I personally believe the SEAT is a waste of money. And the reason I say that is, is because everything that we're being told about it, I do not think it's going to benefit for what you guys are spending. The money that can be spent on the SEAT could fund a lot of other things: they could help improve communications; they could help improve gear in the fire department. And the reason I say the SEAT I don't think is going to justify in what you guys are spending for it, because we're being told that when we call that in, that plane takes priority. We've got to go through the forestry to talk to it, and we've got to put up with when it comes in, all of our other planes have got to be out of the area. So if we've got two or three local spray planes in there, they've got to clear out for this plane. And then not to mention, we still have no verification of whether it's helping another state, whether it's helping...how they're going to rank where it fits in for your disaster or size you've got going. And so that's some of the areas that we address out there. The communication, though, is a problem. I myself have been in charge of 50 fire departments at one time. And when I say that, I use the term loosely. There's no way I was in charge of all of them. It's hard to communicate with them; you've got to do the best you can. And the communication, as far as the radios and stuff, the money getting spent on that statewide radio system, this microwave stuff that's going to be a fix-all for every state agency and fire department in the state, is...it's...it's, I don't know, it's just money wasted. It's all equipment that local fire departments couldn't afford in the first place. We're all on VHF, or UHF radios. Our deal out there, we're dispatched out of Ogallala; that's our 911 center. And I think they've got seven or nine counties that they dispatch for. And we all get together and write grants for ourselves and get radios that kind of tie of us all together. And we have great communications with towns like Mullen, North Platte, Arnold, Broken Bow. And if you guys are going to put money toward communications, I guess I'd suggest trying to tie more of what's already in place together, instead of going to this stuff that nobody can afford. But, with that in mind,

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I'd...I...if you guys have any questions, I'll try to answer your questions. [LR341]

SENATOR AVERY: All right, thank you, Mr. Kramer. Questions from the committee? [LR341]

SENATOR WALLMAN: No. [LR341]

SENATOR AVERY: Don't see any. [LR341]

FRANK KRAMER: Thank you for your time. [LR341]

SENATOR AVERY: Thank you. [LR341]

CHUCK HUBKA: Would you try and talk to Ainsworth again. [LR341]

SENATOR AVERY: Kristin, can you speak to me again. Yeah, we still don't have audio. So I'm going to continue with testimony here in Lincoln until we establish audio from there. Welcome sir. [LR341]

DAN DALY: Welcome. Thank you. My name is Dan Daly. I'm the fire chief in Mullen, Nebraska. Spelling the last name, D-a-l-y. I'm, like I said, the fire chief in Mullen. I belong to the Sandhills Mutual Aid; I'm president of the Cherry County Mutual Aid. A few of the points I would like to bring up. NEMA, here a few years ago, like from '99, our big fire we had up there in '99, we burned 75,000 acres; it was 32 hours from the time it started till we had it under control. We had three planes the second day. NEMA, about the only thing we had them do was okay to go over. And the teams you're talking about, like the Type III teams, mostly what we need out there...we have the WIRAT team already. That's a state agency of state fire marshals. They are people that train firefighters to fight fire. They are also on what they call the WIRAT team; they will come out and help us track the airplanes, how many loads were going. So when we get...like Frank said on that \$10,000. Kind of what that is, is the process on that is, is if we call planes to help fight a fire, we call NEMA...or dispatch does, whoever, we've got to make a phone call to NEMA, tell them we've got planes in the air. When we...we need to track that, know how many loads. When we get close to that \$10,000, we have to send a declaration of emergency from our county commissioners to NEMA to get okayed to go over that. And like Frank says, anymore these rates are getting high enough that it doesn't take long to hit that. So, in my opinion, we should raise that limit higher so we have more time to, you know, get things organized. And then, you know, the declaration is, you know, that's a process where you know how to deal with it, we can do it. Planes' availability...we're losing spray applicators that want to fight fires because of the red-tape paperwork that NEMA requires them to go through. If they could take some of this money, like for that SEAT or whatever, and direct it toward somebody even just to go talk to these people and say, okay, you sign it, we'll fill it out; all you've got to do is

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agree to fly the airplanes, because we've got a yellow book that we go by on available planes, and it's getting less every year. And, basically, we talk to them, and that's what they're saying, is the paperwork is, we don't want to hassle with it. Some of them will fly for us and don't even charge us. The...and when we do call NEMA for other stuff, like if we get more where we need the helicopters, where we need the hazmat truck, whoever is on duty at that desk should have the authority to say yes or no, instead of saying, well, I have got to call Al, I've got to call somebody, I've got to get okay from somebody else, because that's wasting our time. Like Frank said, we're five to six hours away. You know, if they want to do something, they jump in the helicopter, fly up, get beside us, and help us do it that way. The Type III team, I don't think it's needed, because we already have the WIRAT team; we already have the...NEMA. As we're out there commanding a scene on a large fire, we don't need more people out there, you know, trying to take over or take control or whatever. If we get them in there to assist us, get us equipment, that's what we need, more resources. The communications, our mutual aids, like Frank said, we've got grants and everything. In our mutual aid, we have radios. Each department has their own frequency; we have their frequencies in our radios. So if we go to their fire, we switch over to their channel and we can talk to them. But we have the other channels in there so that we can talk to each other and not clutter up the main channel. And that's...like in '99, we was back in the old low-band days, and everybody was on the same channel. And nobody could talk to anybody because it was just so congested that you...yeah, nobody could communicate. I think that's all the points I need to make. [LR341]

SENATOR AVERY: Okay. Thank you. Questions from the committee, those remaining? Don't see any. Thank you, sir. [LR341]

DAN DALY: Thank you. [LR341]

SENATOR AVERY: I don't think we're ready yet to go to Chadron or Ainsworth. I will take another testifier. Do you have audio in Ainsworth? Can't hear you? I'm sorry. You can hear me. All right. We're going to continue here until we get it established. And we will not be coming back to Lincoln; we'll go to you, and you will get your time if...as much as we have. All right. [LR341]

SCOTT JOSIAH: Okay. [LR341]

SENATOR AVERY: Welcome, sir. [LR341]

SCOTT JOSIAH: (Exhibit 3) Good afternoon. My name is Dr. Scott Josiah, S-c-o-t-t J-o-s-i-a-h; and I am the state forester and director of the Nebraska Forest Service, which is part of the University of Nebraska. Senator Avery, members of the Government, Military and Veterans Affairs Committee, Senator Davis, and colleagues, thank you very much for this opportunity today to present testimony on LR341. At the

outset I'd like to state that NEMA and many in the emergency management community are strong partners of the Nebraska Forest Service. They have many dedicated employees that manage many diverse emergencies, just one of which is wildland fire. But NEMA is structured and mandated to be an emergency management agency, not a response agency, a rapid response agency. They handle lots of events, like severe weather events, flooding, etcetera. And they do that very well, with coordinating assistance that rolls out over days or weeks. But NEMA does not currently have the capability nor the mandate to provide or manage an initial or sustained suppression response to rapidly escalating wildfire emergencies. Nebraska does not maintain any state-level wildland suppression capacity and instead depends wholly on the volunteer fire districts for initial attack and sustained attack. The catastrophic wildfires of 2012 and the increasing frequency of very large, intense wildfires exposed substantial weaknesses in Nebraska's initial and sustained suppression response capability. The volunteer fire districts did an outstanding job, no question. But the long duration of these very large fires and their repeated occurrence over nearly five months exhausted both the financial and human resources of the volunteer fire districts. After a few days of suppressing a large and expanding wildfire, volunteer firefighters are exhausted, the mutual aid system is severely stretched, and the capacity to continually effectively and safely fight a growing wildfire with existing resources is diminished. Most replacement volunteer or National Guard firefighters have little or no training or experience in wildland fire suppression, especially up in the Pine Ridge and the Wildcat Hills and the Niobrara valley. Other than calling in expensive help, such as a Type I or Type II incident command team--and they cost about \$1 million a day--there is no backup capability within the state to provide additional assets or on-the-ground firefighters for sustained firefighting. To address these critical gaps in wildland fire suppression, the Legislature took an important first step in passing the Wildfire Control Act of 2013, which improved initial attack capabilities, so we can keep fires small. But extended suppression efforts require additional trained firefighters and resources on the ground. So we propose a three-part comprehensive solution to address these gaps. Number one: Nebraska needs to join the Great Plains Interstate Forest Fire Compact. This would enable rapid sharing of and expanded array of firefighting assets, equipment and people, to and from nearby states. Nebraska needs to...it would also improve the speed of resource deployment on rapidly intensifying wildfires, where every minute counts, and reduce costs of obtaining suppression assets. Enabling legislation would be required to make this happen. Secondly, develop and provide state support for a Nebraska-based Type III Incident Management Team. This would use in-state expertise, at far less cost than out-of-state teams, to provide on-site wildland fire incident management on growing wildfires. Building on the state's current WIRAT, Wildland Incident Response Assistance Team, a Type III team could be organized and led by NEMA, drawing on additional members from multiple agencies, and requiring expanded training for all members. The team would need to achieve formal certification and would need to shift from providing assistance to actually managing larger wildfire incidents under a unified command arrangement. And, finally, establish highly trained state fire suppression



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assets to support volunteer fire districts and provide backup resources on rapidly growing wildfires. State forestry agencies nationwide, with their sole programmatic focus on wildland fire, nearly always house such fire suppression assets and crews as part of their wildland fire suppression programs. Nebraska is one of the few states that does not have state fire suppression assets. The Nebraska Forest Service is willing to serve in this role and has been doing this, supporting wildland fire programming, for the last 50 years. The adjutant general's \$10,000 cap, or spending authority, for aerial assets: we believe that, given the increased rates for aerial applicators, it's highly likely that the \$10,000 spending limit will be reached much faster, potentially resulting in suspension of aerial support until they get authorization. So we think that cap should be higher. And it simply requires a phone call to NEMA and authorization from NEMA, but it needs...it needs to be higher, because we run up against that cap in no time. We were extremely fortunate during the 2012 fires not to experience any major injuries or loss of life of emergency personnel. As we saw in Arizona with the deaths of 19 members of a hotshot crew this past summer, even the best trained firefighters are at considerable risk during wildfires. Given the increased frequency of very large and intense fires and a rapidly increasing forest fuel load statewide in Nebraska, we must improve the state's capacity for effective and safe wildland fire suppression. Thank you very much for this opportunity to share our thoughts and ideas on building wildland fire suppression capability in Nebraska. And I'll be glad to answer any questions. [LR341]

SENATOR AVERY: Thank you. We are going to give up on the video portion of this teleconference, and we're going to go to an audio format where we will be able to communicate with the people in Ainsworth and Chadron. Before we do that, though, I'm going to give the committee an opportunity to ask you any questions. [LR341]

SCOTT JOSIAH: Sure. [LR341]

SENATOR AVERY: No questions. Thank you, sir,... [LR341]

SCOTT JOSIAH: Thank you. [LR341]

SENATOR AVERY: ...very much. Did you... [LR341]

\_\_\_\_\_: You were going to take one more from Lincoln and then take Jerry's guy? Or you want to do Jerry's guy now? [LR341]

SENATOR AVERY: I want to do Jerry's guy now. [LR341]

\_\_\_\_\_: Chadron is ready. [LR341]

SENATOR AVERY: Okay. [LR341]

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\_\_\_\_\_: Just have him call that number and talk to him. [LR341]

SENATOR AVERY: All right, we're going to go to an audio format, no video. I apologize to you in Ainsworth and Chadron. But we will imagine what you look like when you're asking questions. All right, I think...I am told that there is a person in Chadron that wishes to address us. [LR341]

\_\_\_\_\_: It will be just a second here, Senator. We've got to get him on the phone, and then he's got to call in. [LR341]

SENATOR AVERY: Okay. So we'll stand down for just about two minutes. [LR341]

SENATOR WALLMAN: I can put it on speaker phone. (Laugh) [LR341]

\_\_\_\_\_: Just ask him to talk. He should be on; I don't know what kind of phone he's on. [LR341]

SENATOR AVERY: What is his name? [LR341]

\_\_\_\_\_: Joe Lowe. [LR341]

SENATOR AVERY: Joe Lowe, can you hear me? This is Senator Avery. Joe in Chadron, this is Senator Avery. [LR341]

\_\_\_\_\_: Talk; ask him...(inaudible). [LR341]

SENATOR AVERY: Hello, Joe? [LR341]

JOE LOWE: Hello, can you hear me? Can you hear me? [LR341]

SENATOR AVERY: Yes, we can hear you. This is Senator Bill Avery in Lincoln. To whom am I speaking? [LR341]

JOE LOWE: My name is Joe, J-o-e, Lowe, L-o-w-e. [LR341]

SENATOR AVERY: All right, Joe, it's your turn. Go to it. [LR341]

JOE LOWE: Okay, I'm the former division director for the South Dakota Division of Wildland Fire, the fire chief for that state. I'm a Type II incident commander. I managed the Region 23 complex, one of 33 teams in the nation that goes to large fire responses. We managed...we saw your flooding going on, we were managing 80 miles of river from Yankton to Dakota Dunes. And I'm a subject matter expert on ICS--I did the national rollout for the current NIMS curriculum--and an international author on wildland fire. I

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want to talk a couple...a little bit about the...some of that, the information that was given you guys a minute ago. I am the father of the Great Plains Interstate Fire Compact; I got that started in 2006. And, first of all, I want to address the EMAC request. And one of your members of your committee said it quite well, eloquently: It takes too much time. And historically in the United States fire resources are not moved through the EMAC process. It's a five-step process. It requires the governor of the state to declare of the state requesting the resources to declare a disaster declaration. And then a form...the agency that's going to send the resources has to fill out a Rec A, and it's a form where you're bidding what you're going to send there. And by the time you get that done, you've wasted half a day. Wildland fire incidents are very dynamic in nature, and the best way to control a wildland fire is a rapid and sustained initial attack on a wildland fire. The Great Plains Interstate Fire Compact, we were looking at that; we looked at EMAC; we went to a national EMAC meeting; we went to the compact meeting. We decided, as a state, that the best vehicle to get resources was, for us, was through the Interstate Fire Compact. And there's going to be...right now Nebraska, if you don't join, will be an island in the middle of the United States, because the Canadian province of Saskatchewan just asked to join; North Dakota is a member; Wyoming is a member; Colorado is a member; and so is South Dakota; and New Mexico just asked to join. There's a heck of a lot of resources that are available by just a phone call, no governor's declaration required and no Rec A required. So it requires a phone call with the compact administrator, and that starts the ball; resources will...would...are on the way. Okay? So I, really, I respectfully disagree with the NEMA representative that just proposed that you use EMAC. And orders for aircraft, you're not going to get aircraft in a timely manner at all through an EMAC request, because one of those stages, in the activation phase, an event has to be opened in the EMAC operations system, and somebody has got to pick it up. So it doesn't...it's not a quick way, if you're wanting to do business that way. I will truly support and like to see and have tried for years to have the state of Nebraska become a partner in the Great Plains Interstate Fire Compact. It costs nothing; none of the partner states have increased their manpower to do this; and it's a success. We had...one year we had wildland fires in South Dakota where we weren't getting resources through the federal system, and we opened up the interstate fire compact and we got immediate resources from the state of Wyoming, one of our compact partners. The next thing, when we talk...I want to address real quick is...when the state of South Dakota, when we came in and there was the creation of the South Dakota Division of Wildland Fire, that was basically created by Governor Bill Janklow at that point. And he felt that you have to have a central point that controls and responds and is a response agency of wildland fires. You have to have a response agency in charge of it. And so the state of South Dakota developed the South Dakota Division of Wildland Fire Suppression. It is one of the strongest fire agencies within the region, for a state. We have 34 permanent people and 60 seasonals. They work for us. Most of those dollars on the 60 side are just National Fire Plan grants for fuel dollars; those are the hand crews that do work. The...the air assets, if I need a National Guard helicopter, we don't have to (inaudible) somebody in emergency management. That authority was

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given the Division of Wildland Fire Suppression to make the call to the Air Guard facilities, through Great Plains, and it's done. And that...I can't emphasize the importance of that rapid and sustained initial attack on a fire. That is one of the most important things that we have done well. Eighty percent of our fires in South Dakota are picked up because of a rapid and sustained initial attack on fires. Large fires cost dollars. When you get a Type II incident management team in a national team, it costs you about \$1 million a day. Your fire in the Region 23 Complex was 88,000 acres, and it went on, I think, almost 14 days. The other thing that I was hearing testimony on is creation of Type II and Type III teams. I think it's very important to have a...establish...we did...we started out as a Type III team within the state of South Dakota. And we looked through...all through state government, we looked at the National Guard. For instance, we picked a logistics section chief out of the National Guard; if he can move resources around the world during a war effort, we feel that he could be a member of a team. And that team will go in on site and takes...and works with the folks and becomes...and take...is the command function on an (inaudible). EOC is, really, a support and coordination function for (inaudible), and that was per national guidance when we wrote the information. Communications, and then I'll leave it there for you. Communications, that's going to be a tough one, but you have tremendous capabilities. The state of South Dakota, the state of Nebraska, all of you have an ACLU-1000, which is a...and emergency management agencies have those; that's an interoperability device that can communicate between analog users and digital users. In addition to that, our state...I'm just saying what our state did when Bill Janklow was governor, is we purchased radios for all the volunteer fire departments, which was 360, in the state, in an effort to improve communications within the state, because we felt that that was one of the things that was causing firefighter death and would improve the response capabilities of agencies, if everybody can talk to each other. And so those are just some thoughts of mine. I don't want to...I'm most certainly not here to say that we've done anything better; I'm just here to say that those are some of my very strong opinions. I've got a little skin in the game, because you've got some damn good firefighters down here in the Chadron area, the ones that I worked with in western South Dakota...I mean western Nebraska. And so I think they need some support. And I think, right now, they're not getting the kind of response that they need on a wildland fire. So those are my opinions, and I thank you, honorable members of the committee, for me being able to testify. [LR341]

SENATOR AVERY: Thank you, Mr. Lowe. I'm going to ask you to stay there for a moment so we can ask questions. And also, when you finish answering our questions, do not hang up the phone... [LR341]

JOE LOWE: Okay. [LR341]

SENATOR AVERY: ...because we finally have both audio and visual, or we did, but now we're back to Ainsworth. But if you will simply pass the phone to the next testifier in the

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same seat where you were... [LR341]

JOE LOWE: Absolutely. [LR341]

SENATOR AVERY: ...where you are right there. That's...we have a good video of you now, and we have adequate audio. So let me ask you a question before we move on. Currently, Nebraska is not a part of the Great Plains compact, correct? [LR341]

JOE LOWE: That's correct. [LR341]

SENATOR AVERY: All right. So we don't have a fire suppression force except for whatever volunteers we can patch together? [LR341]

JOE LOWE: That's correct, sir. And in addition to that, I just will draw an analogy. The state of South Dakota, during responses, the state fire agency Wildland Fire Suppression Division has agreement with 113 volunteer fire departments currently to back up the state response. Those people, when they come under the...a fire in our jurisdiction, what happens is, is they are paid by the state of South Dakota out of the fire fund. In addition to that, to sign a contract, they have to meet a certain training requirement and, in addition to that, provide workmen's comp...show proof of workmen's comp and insurance on their vehicles. [LR341]

SENATOR AVERY: All right, thank you. Any questions from the committee? [LR341]

SENATOR BLOOMFIELD: No. [LR341]

SENATOR AVERY: All right, before you pass that on to the next person, make sure that...make sure they come up and take your seat. [LR341]

JOE LOWE: I will do that. Thank you, sir. [LR341]

\_\_\_\_\_: It sounds like they have their audio working. I don't know if you want to do it over their system or not. [LR341]

SENATOR AVERY: Welcome, sir; identify yourself, please. [LR341]

PAT GOULD: My name is Pat Gould; that's P-a-t G-o-u-l-d. And I'm with the Chadron Volunteer Fire Department. [LR341]

SENATOR AVERY: Welcome. [LR341]

PAT GOULD: Thank you. We were talking about NEMA's response to the wildfires. NEMA has been responding to wildfires out here since 1989, when the Fort Robinson

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and the Belmont fires were here. In 2000, they come out during the (inaudible) fire, and they worked very closely with that Type II incident manager at the time to watch the purse strings for the state of Nebraska. They did an excellent job. In 2006, when we had the wildfires out here in Dawes and Sioux County, I personally had a phone call with the Region 23 director and Al Berndt on Thursday evening at about 8:00. And by Friday morning at 8:00 NEMA was in Chadron, along with two Black Hawk helicopters and a Chinook helicopter, and we put them to work, both up in Sioux County and in Dawes. In 2012, the Sioux-Dawes County Complex...NEMA was here on Wednesday because there was a meeting with the Type II team that Wednesday afternoon, and they were already present. Also, in June of 2012, we had the Cottonwood fire, which didn't go to a statewide disaster, whatever you want to call it. But I was on the phone with NEMA, particularly Al Berndt, that Sunday afternoon around 3:00, and by 7:00 that evening we had two SEAT planes that were on scene, from Jeffco Airport out of Colorado. And they dropped...each of them dropped one load to stop the fire from going across Cottonwood Road and getting onto federal property. So the big thing is, is keeping NEMA informed as to what's going on. If we're in a high wildfire activity out in this area, we're on the phone with them and we're keeping them advised of what's going on. And so, you know, a lot of the declaration stuff is already being handled. As far as, you know, once NEMA is here, they're staying here. They do the damage assessments; they sign the agreements, the cost-share agreements, between the federal level and the local levels and the state. And so they are very well aware of what they're doing. And they have people, maybe not enough, but they have people to run that EOC, and they have people to come out on scene and help the local ICs run the incident. As far as a Type III management team, I believe they're working on an all-hazards team, which I think is very important. If we went with an all-hazards team and then a wildfire team...management team, you're going to be paying twice the cost. And I think we've got people both within state government and local resources, with local fire departments, that have the knowledge, that they can assist that Type III team and be a part of it. As far as the Great Plains compact, if the state decides to join the Great Plains compact, and I think it's a good idea, but NEMA has to be the controlling point. They have the EOC; they have the reason to dispatch; they have the funding mechanisms to receive dollars for payment and to expend dollars for payment when those agencies come across state borders. So I like that on the compact; I think NEMA has to be the compact controller, if they decide to do that. As far as a statewide fire suppression team, I don't believe that's necessary. We're in a time when everybody is cutting state budgets and agencies are being taken off the...not being able to hire personnel, things like that. And now you want to create another one? I don't think you've actually seen the cost on what that is, and how you're going to manage that, how you're going to house them, and all that. So I would rather see, on something like that, the advancement of LB62, which puts funding authority back to rural fire protection districts, and increase some of that funding. Some of the equipment that I've seen last year on some of these wildfires--and I was in Ainsworth and up here at Chadron--you wouldn't use for a fencing pickup. And that's pretty poor. But along with that aspect, I think rural fire districts need

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to have some education in what their roles, their responsibilities, and the authorities that they have when they get appointed to that rural fire force. As far as the funding limit, the \$10,000, I think that needs to go to \$25,000, and you've heard testimony already on that. And that's for the aerial suppression costs. The other thing on aerial suppression is we include wildfire detection flights out here after a lightning storm goes through. And your local fire chief can call the emergency management office, the local emergency manager, and request a lightning detection flight, and that bill gets paid by NEMA, if there's one submitted from the pilot. And they worked very hard this year to get the CAP personnel, Civil Air Patrol, to do that to help some of the costs. So there's a lot of good things going into place. I don't think we need to create anything else, just fund what you have. But like I said earlier, I think if you do join the compact, that NEMA has to be the controller in that compact. Thank you. [LR341]

SENATOR AVERY: Thank you, Mr. Gould. Any other testifiers in Chadron? Welcome, sir. [LR341]

TROY SHOEMAKER: Thank you, Senator Avery and committee members. My name is Troy Shoemaker; that's T-r-o-y S-h-o-e-m-a-k-e-r. I'm the Alliance fire chief, also the immediate past president of the Nebraska Fire Chiefs Association and the current second vice president of the Nebraska State Volunteer Firefighters Association. I'm (inaudible) Wednesday of this week, I attended the Alliance of Forest Fire Compacts meeting in Denver. And it became quickly apparent to me as a Nebraska fire chief that there would be many benefits to the state of Nebraska if we should join the Great Plains Wildfire Compact. And you heard Joe Lowe, who is the father of the compact, talk about it, so I'm not going to go over those benefits. But the one thing I want to point out, though, is, is there's currently eight compacts representing 42 states and all of Canada, with the exception of one province and one territory. And you heard Joe say that Nebraska is an island in the middle of compacts; that's truly what we are. And one constant in life, and I think we all know this, is that change...and change is "inventable" and that we need to be able to have the ability to embrace change when change is needed. And joining the Great Plains Wildfire Compact is needed. And I urge us as a state to move forward and join the compact. It's adding additional resources to our state's toolbox. And at their meetings and in conversations that I've had with folks is that there seems to be the appearance that it's impossible for us to join this compact. And if you look at the word "impossible," it has the word "possible" in it. Nothing is impossible for us to accomplish as a state, and we don't need to "reincrate" the wheel to do that. So, again, my purpose today was to inform you that I did attend that Alliance of Forest Fire Compacts in Denver and it gave me a better understanding about how compacts operate and the benefits to which I think Nebraska should reap. So I still strongly encourage us as a state to look forward and move forward with enabling legislation to join the Great Plains Wildfire Compact. [LR341]

SENATOR AVERY: Thank you, Mr. Shoemaker. Any questions from the committee?

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[LR341]

SENATOR WALLMAN: No. [LR341]

SENATOR AVERY: All right, do not turn off the phone. We have time for one more person from Chadron, if there's one...if there's a person there that wishes to address us. Welcome, sir. [LR341]

JAY TEMPLAR: Jay Templar, J-a-y T-e-m-p-l-a-r, fire chief at Gering, Nebraska, and also the president of the Scotts Bluff County Mutual Aid Association. And here on behalf of all those people, I'd like to stress that we certainly do back the compact. I have lots of comments on some of the bullet points. I will submit those here. They can be sent to you; we won't spend any more time on that. But one of the things...one of the bullet points was, was policies and procedures used by NEMA to educate and train and staff at local agencies. I'm not exactly sure that this was meant in the bullet point, but I do know that we appreciate agencies, the Fire Marshal's Office, NEMA, and the Forest Service, that provide good-quality training from each agency. Now (inaudible) operate under the guidance of the Governor. I believe that the Governor needs to demand better cooperation between those agencies when it comes to us firefighters. Sometimes, when I get to see the stuff that goes on there, it just seems to be ridiculous that we should have to put up with that, when they're all agencies here to do the same...possibility of what we should try to accomplish together. The Type III incident management team I think is critical. This will go a long way to helping the communication issues that we have. I know that there's...the WIRAT team is an excellent resource, but that is a stepping-stone of what needs to be done. And we talked about that through NEMA and some of the things they bring in. And certainly we need to include non-state-governmental people in...(inaudible) with that. Myself...my city would encourage me to participate in these types of emergencies, go to the training, take that type of responsibility, because they see it as a benefit when it comes to back to the city of Gering if we respond to these emergencies, if those emergencies happen here. The compact is really important; we've been talking about this with Joe Lowe and his people since 2011. Unfortunately, we've only be able to discuss this between the western fire chiefs and some of the subordinates of those three agencies: the Fire Marshal's Office, NEMA, and the Forest Service. And yet have we had a meeting with any of those department heads, and I think that has created some difficulty in making this thing move forward (inaudible). I really think that we can make this thing work. There's really no expense to that compact until that decision by the Governor or NEMA to call in those state resources. And they've done this in the past; they will do it again; but we can make it an easier way to do that. Plus, the compact would allow all resources here in Nebraska to go across state lines to participate in their large fires, which only enhances our response and capability and our resources to bring back to Nebraska and be part of the Type III management team and to be able to respond to the fires in our communities here without having to go to extreme, but maybe some outside resources, once we



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bring the level of training up. Thank you very much. [LR341]

SENATOR AVERY: Thank you, Mr. Templar, right? [LR341]

JAY TEMPLAR: Yes. [LR341]

SENATOR AVERY: T-e-m-p-l-a-r? [LR341]

JAY TEMPLAR: Correct. [LR341]

SENATOR AVERY: Okay, I just want to get that on the record because it was a little bit indistinct when you first started. So hang on there for just a minute. Can you tell us a little bit about the "Red Card" certification, what that means? [LR341]

JAY TEMPLAR: Yeah, it's a national certification through the Nebraska...the National Wildfire Coordinating Group, and it's basically levels that everybody has to go through to get to a level they're competent enough to respond to these types of fires. Joe Lowe talked about that, that they would require their people that are going to sign up, to work in this compact, you would have to go through those levels, starting out with the basic class, the 130, 190, and the 180. You move on there to single resource, such as an engine boss, a crew boss, where you could manage these types of teams. You'd move from there to task force, strike team leaders. Those are part of that Type III management team that has to occur in Nebraska if we're going to continue to be able to manage and operate under these conditions, because management will increase the communication process and also improve on the resources that we have responding. We have great resources from the volunteer fire departments in Nebraska; I don't think that's at issue. It's the type of resource; it's a matter of some of the management process, how we need to get some (inaudible) there, plus, making sure we're bringing everybody up to the same level, so they can be confident when they get there to perform these types of activities on these megafires. [LR341]

SENATOR AVERY: What is the percentage, if you know, of volunteer firefighters that now have the Red Card certification? [LR341]

JAY TEMPLAR: Well, in Gering's case, that's all I could speak for, is, we have approximately 37 members, and I'm pretty sure we have at least 24 to 27 of those members that would be at least the Firefighter I and II capabilities; several are working on their engine boss capabilities. And we were trying to improve on that so that we're able to respond to these types of fires, under the guidance of the National Wildfire Coordinating Group. [LR341]

SENATOR AVERY: If we were to join the Great Plains compact, would these volunteers who are Red Card-certified, they would be available, then, to help out in neighboring

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states? [LR341]

JAY TEMPLAR: Absolutely. We've been trying to do this for the last two years. We've been called and asked to respond to stuff in the (inaudible) and could not get dispatched because we're not part of that compact or the Great Plains Dispatch out of Rapid City. Nebraska is not a partnering agency that allow these resources to be dispatched. Been working on it, been talking to them. We're working with the Forest Service, but we have not gained anything. We need to make more improvements in this area. [LR341]

SENATOR AVERY: I understand. Thank you. Questions... [LR341]

JAY TEMPLAR: Thank you. [LR341]

SENATOR AVERY: ...from the committee? Thank you for your testimony, Mr. Templar. We have time for one more Chadron testifier. And that...we only have about five more minutes in Chadron. Welcome, sir. [LR341]

STACEY SWINNEY: We have about a dozen and a half people here in attendance, but we have no more speakers today. [LR341]

SENATOR AVERY: Okay. We can use the extra five minutes. Thank you, sir, very much. I apologize to you and your audience there in Chadron for the technical difficulties. We promise not to mess it up so bad next time. [LR341]

STACEY SWINNEY: Thank you, sir. [LR341]

SENATOR AVERY: I'm termed out, so I won't be here to take the blame. All right, now we're going to switch to Ainsworth, and I'm going to ask the people in Ainsworth to call this...following number; take this down, Kristin: 402-471-2924. Call us, please. It's ringing, Kristin. [LR341]

\_\_\_\_\_: Pick the handset up. [LR341]

SENATOR AVERY: Try the handset, Kristin. [LR341]

KRISTIN OLSON: Can you hear us? [LR341]

SENATOR AVERY: Yes. [LR341]

KRISTIN OLSON: (Beeping sound) That is not our end. [LR341]

\_\_\_\_\_: Have her mute...have her mute her microphone in the room.

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[LR341]

SENATOR AVERY: Can you mute your microphone in the room? [LR341]

KRISTIN OLSON: It is. [LR341]

SENATOR AVERY: Okay. [LR341]

\_\_\_\_\_: There we go. [LR341]

KRISTIN OLSON: Is it better? [LR341]

SENATOR AVERY: You are clear now. You are a patient person, Kristin. [LR341]

KRISTIN OLSON: Oh, I'm so sorry for all the difficulty. [LR341]

SENATOR AVERY: No, it's our fault, not yours. We have the technicians. (Laugh)  
[LR341]

SENATOR BLOOMFIELD: (And this is the system we're going to use (inaudible)?  
(Laughter) [LR341]

ANN FIALA: Good afternoon, members of the committee. My name is Ann Fiala, A-n-n  
F-i-a-l-a (inaudible)... [LR341]

\_\_\_\_\_: Tell her to take it off the speaker phone and just talk into it.  
[LR341]

SENATOR AVERY: Take it...take the phone off the speaker phone and just talk into the  
speaker. [LR341]

ANN FIALA: There, is that better? [LR341]

SENATOR AVERY: That's better. Okay. [LR341]

ANN FIALA: Did you get my name? [LR341]

SENATOR AVERY: We didn't get your name, no. Try again. [LR341]

ANN FIALA: Okay, I'm Ann Fiala, A-n-n F-i-a-l-a. I'm sitting in for Brad Fiala, the fire  
chief, who had to leave. [LR341]

SENATOR AVERY: Did we chase him away? [LR341]

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ANN FIALA: No, he's also the volleyball coach, so he went to coach a team. [LR341]

SENATOR AVERY: (Laugh) All right, welcome to the committee. Proceed with your testimony. [LR341]

ANN FIALA: (Exhibit 4) Okay. I am nowhere near prepared as Brad was, of course. But I will say some of the, you know, impacts that he felt were on our fire. First and foremost, of course, was communications. He felt that all the teams that pulled together, between the volunteers, NEMA, the WIRAT team, they all worked very well together, when they got together finally. The big holdup in all that seemed to be a communications issue on the volunteer level. You're talking to the aircraft. The initial...getting things started on our fire, everybody responded pretty quickly. There was breakdown of equipment, which held up the response of the aircraft getting to our fire. And there seemed to be a little red-tape efficiency issues that we had to cut through in order to get things rolling for us. We were greatly appreciative of NEMA and the groups allowing the volunteers to stay on the fire scene. We knew the ground, were more than happy to help. But that, too, led to some of the delay in getting approval to allow volunteers to stay on scene and continue firefighting. The (inaudible)...the WIRAT team, once they arrived, there was at least one, mainly, person that stayed with the fire chief the entire time and helped guide us through the (inaudible) that occurred over the course of ten days. We were greatly appreciative of that; it helped a bunch. NEMA was very supportive. Again, what it came down to was the communications issue. If any money could be saved by making the systems more efficient, then the money definitely should go into communications and allowing us to use the equipment that we have, without requiring our volunteer departments to purchase very expensive radio systems that the state is proposing at this time. A couple of the other issues that Brad wanted to speak on, and he is willing to submit some written testimony, if you'd like, would be that, as we understand it, the pilot that was on the SEAT team this year up in Valentine informed us that it would be very possible for us to contact him directly to respond to any disaster that we might have on the wildfire scene. But apparently we have to go through NEMA first to get the plane up in the air, and that could potentially delay him getting off the ground by 30 to 60 minutes, potentially, when a phone call directly to him to get up in the air would have saved some very valuable time that would have probably impacted our 2012 fire, at least had a plane like that in the air to begin with. Are you still able to hear me? [LR341]

SENATOR AVERY: Yes. [LR341]

ANN FIALA: Okay. (Inaudible) so I couldn't tell. So we were just...Brad was curious if that could happen (inaudible) red tape could be cut (inaudible) to allow efficiency to take place. When a wildfire hits, you know, let the paperwork roll after that. But if a couple phone calls could be made instead of having to go through potentially a half a day of

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paperwork before action actually takes place, we could really probably get on top of the disasters a whole lot quicker. At this time I just want to tell you that Brad would be available for phone call questions on Monday, or he will submit written testimony for your benefit. I thank you for your time. [LR341]

SENATOR AVERY: Thank you, Ms. Fiala, right? [LR341]

ANN FIALA: Yeah. [LR341]

SENATOR AVERY: Okay. Hold on just a minute, we may have some questions. [LR341]

ANN FIALA: Okay. [LR341]

SENATOR BLOOMFIELD: I don't really have a question, but I would appreciate his testimony in writing, if he's willing to do that. [LR341]

ANN FIALA: Sure. I know he is. [LR341]

SENATOR BLOOMFIELD: Thank you. [LR341]

ANN FIALA: Thank you. [LR341]

SENATOR AVERY: I don't see any more questions or comments from the committee. Ms. Fiala, thank you. Don't hang up; pass that to the next person who wishes to testify, and trade seats with them, because we have a very good visual. [LR341]

ANN FIALA: Okay. Okay. At this time we don't have any other people that wish to testify. [LR341]

SENATOR AVERY: Your blue dress is very...your blue dress shows up great. Did you say...? [LR341]

ANN FIALA: (Inaudible) [LR341]

SENATOR AVERY: Do you have anybody? [LR341]

ANN FIALA: No, we don't at this time. [LR341]

SENATOR AVERY: So we did actually wear out your patience, huh? [LR341]

ANN FIALA: No. (Laugh) [LR341]

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SENATOR AVERY: (Laugh) [LR341]

ANN FIALA: We'll just submit written. I think that will be easier. The Rock County Fire Chief will submit written. [LR341]

SENATOR AVERY: Okay. You might want to hang on, on the...for...on our end of the video and audio, because Senator Davis is going to have some closing comments. I do appreciate you participating. I apologize again for the glitches in the technology. [LR341]

ANN FIALA: Thank you very much. [LR341]

SENATOR AVERY: So thank you. Thank you. Senator Davis. [LR341]

SENATOR DAVIS: Actually, we have some other people here to testify. [LR341]

SENATOR AVERY: Oh, you do? Okay. We can use them. We've got about 25 more minutes. Welcome, Mr. Stilmock. [LR341]

JERRY STILMOCK: (Exhibit 5) Thank you, Senators. Jerry Stilmock... [LR341]

SENATOR AVERY: Are you responsible for all of these glitches? [LR341]

JERRY STILMOCK: (Laugh) No, I was hoping it would just go slicker than a whistle, (Laughter) just like you. Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association. You know, the attempt was gallant, and thank you to the...Senator Davis, Senator Avery, and the Exec Committee for making this attempt. I spoke with probably a dozen chiefs--some are in the room, some were at Ainsworth, some were in Chadron--and I want to tell you, though the committee hearing didn't go, you know, just smooth, not on anybody's account in the room, but we had people take vacation days away from work so they could attend at this hearing, just as they took vacation days or leave without pay in order to fight the wildfires in 2012. And I know you know that, but I just wanted to say that quick piece. I want to address, in not any particular fashion, a couple of points, and the first is the \$10,000 limitation. The emergency management as we know it today...and as we were growing up it was named something else, and that was civil defense, and it was primarily established for the Cold War. And we know the history by the color of our hair and the gentlemen nodding their heads at the front table. But in 1973, there was no funding at all for this particular item, this \$10,000 aerial support. That changed for the first time in 1996, legislation was passed; 1995, the legislation was introduced. And that...for the first time there was a \$10,000 amount; before that, there was no authority. 1996, then, was the first time, \$10,000 was placed. And the whole intent was, is you have emergencies in the air, on the ground, and you

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need to have that air support immediately, you can't wait for the declaration in order to...as you heard earlier this afternoon. So that \$10,000 was in place in 1996. In 2012, you all added the hazardous material element because of the chief from Stapleton, as he said, three and a half hours: they were geared up, they were ready to go, but they couldn't. And so you did a good thing back then. So let's consider doing another thing, and that's elevate that amount. What happens when you don't...if you would not elevate that amount, that \$10,000? So at that point we're really talking about aerial applicators, crop dusters, dropping maybe 150-200 gallons. Once they make a few passes, they are approaching that cap; they have to get reauthorization in order to go above that \$10,000. Sometimes there's downtime; I haven't heard any bad things that happened because of downtime. But it's a repeated request of having to go through when you have your hands full, literally. I mean, some of you have seen some of these things, perhaps Senator Bloomfield, Senator Wallman, in maybe other experiences, life with the military, other places that you've seen these types of things happen. So that's the first point. And just to give you a brief background on that legislation, for reference: 81-829.42; we're in subsection (6). Of course, counsel knows that last change was when it was introduced, 1996. The next part is a little more difficult. I look at my position as bringing to you information that I have, and it didn't flow very well today. And I feel some responsibility to the people that I represent, those 7,500 volunteers throughout the state. When I look at you, I want you to think...and you look at me, I want you to think of a reliable, credible person bringing you information, not somebody that's out trying to create negativity with the agencies, and that's not my intent. So I come with some trepidation to share these things with you, but yet it didn't clearly come out. And I think it's important to clearly come out, because I've had fire chiefs tell me these incidents. If somebody steps up to bat in baseball and the bat breaks, I don't think anybody would say, well, that's the fault of somebody that that bat broke. We had three incidents in 2012 that we had helicopters go out, and helicopters sat on the ground, for one reason or another. I attempted to verify those, and it happened in June in the Cottonwood fire. The Cottonwood fire happened up near Crawford, Nebraska, in June of 2012. And because of the inoperability of a Bambi Bucket...you know, we see them on TV; I have not seen one in operation, but the Bambi Bucket dropping slurry or water. That was inoperable, and it sat on the ground. My reference to that is a fire chief that told me he saw it. The second was in July, and I take you to the Fairfield Creek fire. That was near Valentine...I say Valentine to get me geographically squared away. To the people in the room or are listening long distance, I know my Nebraska geography better than that, but I just throw that out to the committee. A second incident, a chief was told that there would be two Black Hawk helicopters ready to go Saturday morning. The fire started on Wednesday. On Friday, he had an aerial applicator present. He sent that aerial applicator home, wherever home was, perhaps Broken Bow--we know that the Broken Bow operator is a popular person for the volunteers throughout the state--based upon what he was told. What happened was, instead of two, one Black Hawk helicopter showed up. The Black Hawk helicopter showed up with inoperable Bambi equipment for a second time in the summer of 2012. That Bambi...that helicopter then, not one but

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two...the Black Hawk operated as a aerial surveillance only, unable to do the duty in which it was called, incident number two. Incident number three was in the Wellnitz fire, and that's recorded in...not by a chief on the ground, which they were in the first two instances I share with you, but in a recall of the Wellnitz fire that was shared, coincidentally, just here recently, as the people in the Wellnitz fire...take you just north of Hay Springs, near the border between Nebraska and South Dakota. And it...you know, the reason why I bring this up is one reason. In 2012, you heard Senator Davis say it and you heard Dr. Josiah say it, we didn't have any fatalities. It June of 2013, we know 19 people died in Arizona. There's been a 122-page report written about that incident, and they are looking at everything: well-trained, yes; had adequate rest, yes; on, on, on down the list. And they're looking at issues of equipment, dispatch of aerial. One of the things they're homing in on is they anticipated and expected aerial support to begin at 7:00 a.m. in the morning, and it didn't happen until 9:00 a.m. Two-hour window, it doesn't look like a whole bunch. Senator Bloomfield, you hit it right on the head when you said it earlier, a half-day is too long. We need to hit the fires when they're 200, 300, 400 acres so they don't become 3,000-4,000 acres. So my point in bringing up is not to lay blame. My point is to let you know that there are incidents out there that are scaring the bejesus out of the volunteers. When the fires are exploding and these things are happening, and 50 miles-per-hour winds, we need equipment that's going to work. And we need to know, with security, that those are going to work. The...it's been a long afternoon and kind of a struggle, so I'm going to end with comments on the document I sent out, and that was...or that I set out, just a little background paper on the compact. You've heard earlier testimony; there's compacts throughout the state (sic), Nebraska being the island. I wanted to give you kind of, you know, I didn't write it for legislative purposes, for advocacy of my clients, in getting you all to consider legislation, if it should be introduced in 2014. It was written to give you what I thought on as a legal document. And what are we going to do because we're all volunteers in Nebraska? Other states that...for the most part, other states that are in compacts--the one we would join, the Great Plains that you heard reference to--those states all have state fire suppression teams; Nebraska does not. If we look at other states...and you'll see in the document that I ask that the whole country respond through the alliance of compacts, so that Nebraska would know what happens in those states where there are only volunteers, how do those volunteers leave the state of Rhode Island, or wherever? I don't know that Rhode Island is a completely volunteer state. But the state deputizes them, and it makes them state employees. That's one alternative. The other is to have state employees, is a third alternative. The fourth is to allow the volunteers to leave the state if they're willing to go. And I've talked to the volunteers: Jerry, we're ready to go; we just need to have the compact in place so we have the protection. I've completed my points, so I think I will stop, but there's just so much information. And the difficult part is, is...some of the testifiers said, well, let's keep things the way they are; some of the testifiers said, having three agencies...Joe Lowe and another one of the testifiers said, you know, maybe it needs just to be one agency. The study is a study, and I guess we've thrown some ideas out and some tidbits, and I'd urge the committee to consider



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some of these items. Realizing it's a short session, we could, maybe, work for the long haul. But thank you for your time and your effort, Senator Avery, in trying to make this happen so that those volunteers could have a voice in your decisionmaking process. Thank you. [LR341]

SENATOR AVERY: Thank you. I apologize to you for all of...for all the problems that we encountered and all the work you've put into this. I still think that we learned something,... [LR341]

JERRY STILMOCK: I hope so. [LR341]

SENATOR AVERY: ...a great deal through this process. So any questions from the committee? [LR341]

JERRY STILMOCK: I take it not. Thank you, sir, gentlemen. [LR341]

SENATOR AVERY: Okay, we have ten more minutes on the video if anyone wishes to address us. [LR341]

CLIFF DAILEY: Good afternoon. My name is Cliff Dailey; it's C-l-i-f D-a-i-l-e-y. I'm fire chief for Sandhills Fire Protection District in Grant and Cherry counties. We are the second-largest fire district in the state. I'd like to comment on the cost of the SEAT that was stationed in Valentine: \$175,000 to, basically, cover everything. And I will guarantee you, we do not have any trees in our fire district. The chance of us getting a SEAT to come help us with a grass fire is probably nil to none. That corridor, the Niobrara corridor, that that thing protects, you know, it probably would do better there. But there's a lot of money being spent, and this summer it did not get anywhere. It threw it away, basically. I understand, you know, the deal, and these fire deals that we had in 2012 probably we won't see again for a long time. If we keep throwing \$175,000 dollars at something that we're not using, I think we could use it better to allow the Forest Service, and mainly Lew with the shop, to provide us with more equipment in our area to go suppress these fires. I think that's probably...would be a better move than spending \$175,000 on a plane that sits there. So thank you. [LR341]

SENATOR AVERY: Thank you, Mr. Dailey. We've had two "Daileys" appear before us today. [LR341]

CLIFF DAILEY: Actually, three of us. [LR341]

SENATOR AVERY: Three? (Laughter) [LR341]

CLIFF DAILEY: Thank you. [LR341]

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SENATOR AVERY: Are you the third Daly? [LR341]

BILL DALY: Yes, sir, I am, Senator Avery. (Laughter) [LR341]

SENATOR AVERY: (Laugh) Have a seat. [LR341]

BILL DALY: My name is Bill Daly, B-i-l-l D-a-l-y. I am the chief of the Arthur Rural Fire Protection District; I'm also the president of Southwest Mutual Aid. Today I'd like to speak as the president of Southwest Mutual Aid. When LB634 was introduced, our mutual aid district voted, and we were opposed to that bill. I'm not going to go over all of the points that have already been touched on, due to the time constraints. But just to summarize, our mutual aid district fully agrees that the \$10,000 limit is too low; it needs to be raised. If there is some way that we can save on any other things--possibly not establishing a second agency or department to oversee what the fire departments are doing, or not having another training team to take the place of the...assistance team to take the place of the WIRAT team--money that could be saved could be routed to the excess property program that is...that's operated by the Nebraska...or the Forest Service. We get so much benefit in...we in western Nebraska, we get so much benefit from that program, because it allows us to obtain equipment to fight our grass fires that we wouldn't be able to otherwise afford. That program does us more good than, as the other Chief Dailey pointed out, the SEAT program. We are a plains area, a Sandhills area; we don't have large forest areas. Ours are, you know, we fight predominantly grass fires. Ground equipment is the best way for us to fight the majority of our fires. And I'm only speaking for our, you know, for the fires that we primarily fight. And really, all of the other points that I had have been covered by everyone else, but I just, you know, I wanted to speak on behalf of the Southwest Mutual Aid. And I'd be happy to answer any questions that you'd have. [LR341]

SENATOR AVERY: Thank you, Mr. Daly. Questions from the committee? [LR341]

SENATOR WALLMAN: Thank you, Chairman Avery. [LR341]

SENATOR AVERY: Senator Wallman. [LR341]

SENATOR WALLMAN: Yes, thanks for coming. In the past, the railroad started a lot of fires in my area; has that happened there? [LR341]

BILL DALY: (Laugh) I'm the fire chief for Arthur County; we're the only county in our...in the state of...or, as far as I know, the continental United States that doesn't have either running water or a railroad. So I can say unequivocally, a railroad did not start a fire in Arthur County. (Laughter) [LR341]

SENATOR WALLMAN: Thank you. [LR341]

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BILL DALY: Now as far as some of the other, you know, the other fire departments in the mutual aid district, yes, there have been fires. But I don't think most people will argue with me: 2012 fire season, there is one reason we had the horrible fire season we did, and that was weather. The majority of those fires were caused by lightning, numerous lightning strikes, and a heavy fuel load. And those two things combined led to what most of us consider to be an anomaly. We don't see that coming again anywhere in the future, most of us are hoping not in our lifetimes as fire chiefs, because we don't know if we have enough stamina to do that again. [LR341]

SENATOR AVERY: So you have no streams at all in Arthur... [LR341]

BILL DALY: We have...no, we have no stream. I'm glad you picked up that, because we do have indoor plumbing. [LR341]

SENATOR AVERY: Yeah, I... [LR341]

BILL DALY: We just don't have any streams or rivers or...you know. [LR341]

SENATOR AVERY: I wasn't going to ask you...I was assuming you... [LR341]

BILL DALY: No, we have no streams, no rivers, and no railroads. [LR341]

SENATOR AVERY: Yeah, and so you picked President Arthur, to honor him for...(Laughter) [LR341]

BILL DALY: I don't know where that went; I'm not sure how they did that, but that's how it came about. [LR341]

SENATOR AVERY: I suspect Arthur is proud nonetheless to have his name on the county. [LR341]

BILL DALY: Yes, we are. [LR341]

SENATOR AVERY: Okay, I don't see any other questions. Thank you, Mr. Daly. [LR341]

BILL DALY: Thank you. [LR341]

SENATOR AVERY: Now, Senator Davis, I need to apologize to you for the technical mishaps. [LR341]

SENATOR DAVIS: Oh, it happens. [LR341]

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SENATOR AVERY: It does. [LR341]

SENATOR DAVIS: Anytime you have technology involved, it can be a problem. I really don't have any closing remarks to make, but I want to thank the volunteers who came down here and who presented in our other communities, because they really are the lifeblood of what fire protection in the western part of the state, and emergency response. I wanted to clarify a couple things that Jerry said. We did quite a bit of investigative work in the process on the SEAT bill. And one of those Bambi Buckets that was discussed had been damaged in training a few weeks before, so what that says to me is somebody dropped the ball in getting the thing fixed. So it was, essentially, transported up there, and then they realized it was broken, you know, that it had been broken prior to that. And that's just not acceptable, I don't think. Senator Bloomfield talked about time being of the essence in these fires, and it certainly is in any emergency response. But in the fires of 2012, if you talked to folks at Ainsworth, you know, there was maybe a chance that that fire could have been put out a little more quickly with a little bit better response. The plane came up from, as I recall it, from Broken Bow in responding to that fire and went on back rather than putting another load of water on, probably because of the \$10,000 issue. And then overnight the fire got out of control, and it burned again for 14 days. So we need to certainly look at upping that \$10,000 figure. It was set, I think, 20-some years ago, or almost 30. And we all know that inflation has taken place. One other thing, talking about communication, I think that's something that is ongoing. And, as you know, Senator Mello has a bill to look into that also, on the statewide radio system. That's a different thing for our volunteers, but it is important that they be able to communicate with each other. A plane that was dispatched to Rushville to fight fire, at the Wellnitz fire, sat on the ground there all day because there was not good communication with...between the department and that plane. So, you know, that's resources that were called in that were never put to use. And the Wellnitz fire did a tremendous amount of damage in Sheridan County. We talked about Pericles system at some point with some people. Pericles is, basically, a box that can tie these radio signals together, is, I guess, the way I would explain it, so people can communicate. I think these came about...and I'm kind of talking off the cuff here, so, you know, I probably need to be careful. But, as I recall, they came about as a result of the 2001, the September 11 episodes, and they were put out into our counties but without a lot of instruction as to how they operated or what they could be used for. So as I...I believe some of them were still sitting in crates, essentially, a few years ago. Well, you know, something that's sitting in a crate in a courthouse isn't doing anybody a bit of good. So if NEMA is putting the things out, NEMA needs to take the responsibility to see that they're put to use. I appreciate your time today. And again, thank you to everybody who testified, and I hope we can do something to support our volunteers and further our safety. We certainly don't want a Yarnell fire situation in Nebraska, where you lose 19 volunteer men and women who devote a lot of time and effort to saving the property and lives of others. Thank you. [LR341]

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SENATOR AVERY: I...we, of course, have a written record that...we'll be transcribing all of that, of this session. But I do hope that you come forward with some legislation that we can consider in this committee... [LR341]

SENATOR DAVIS: Thank you. [LR341]

SENATOR AVERY: ...because I think we've identified a pretty large number of problems that we actually might be able to do something about. [LR341]

SENATOR DAVIS: Thank you, Senator Avery. [LR341]

SENATOR AVERY: So thank you, sir, for your work in this area. And thank all of you for coming. And, Kristin, out in Ainsworth, thank you for your patience, and the people in Chadron. I think we finally got you on and got the people that you wanted to address us in a manner that was our expectation from the beginning. We could hear you and see you. So thank you very much. With that, I will end the hearing on LR341 and again thank all of you for participating. [LR341]