

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

Government, Military and Veterans Affairs Committee
February 06, 2014

[LB825 LB937 LB1018]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 6, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1018, LB825, and LB937. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Dave Bloomfield; Tommy Garrett; Russ Karpisek; Jim Scheer; and Norm Wallman. Senators absent: Scott Lautenbaugh.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. We have three bills before us today. They are listed on the agenda outside the room, starting with LB1018 by Senator Hadley, followed by LB825 by Senator Lautenbaugh, and then winding up with LB937, Senator Karpisek. Before we start on that agenda, I want to introduce the members of the committee. Starting on my right with Senator Tommy Garrett, our newest member, from Bellevue; and next to him is Senator David Bloomfield from Hoskins; and next to him will be Senator Scott Lautenbaugh from Omaha; I believe Senator Murante is not able to be with us today. He was not on the floor this morning. He is Vice Chair of the committee. Seated next to me on my right is Christy Abraham, the legal counsel for the committee. Soon to join us will be Senator Russ Karpisek from Wilber; seated next to him is Senator Norm Wallman of Cortland; next to him is Senator Jim Scheer from Norfolk. Sherry Shaffer is the clerk of this committee and she is on the very far left there. We rely on her to make sure we're doing everything right. One of those things is processing of these green sheets. If you are here to testify for or against any of these bills that we're taking up today, we ask that you provide the information; print it so that it's clearly legible and we can read it, and hand this to the clerk when you arrive at the table to testify. If you wish to record your opposition to or support for any of these bills but do not intend to testify, this form is available at the table on each entrance to the room. We ask that you fill that out as well. We have some procedures that I need to tell you about. When you arrive to testify at the table, please spell your name clearly for the record so that we have an accurate record of who has appeared. We have...if you have any information you would like for us to see, that might be a copy of your testimony or it might be documentation to support your testimony, we need 12 copies of that, and you provide that to the clerk and she will give it to our page to distribute. And there he is, Colton Wolinski from Lincoln. Now if you do not have 12 copies we will make copies for you, but, again, you need to give that to the clerk. The procedure will be that introducers will make initial statements, followed by proponents. Then the opponents get a turn, and finally the neutral testifiers. And closing remarks are left for the introducing senator at their discretion. We will be using the light system. The green light will come on first and that is a four-minute light, followed by an amber light which is one minute. So you have five total minutes for your testimony. When the red light comes on, we ask that you either be finished by then or be very close to it. We try to be polite to everybody and we don't get upset with you if you go a little over, but don't abuse it. Turn off your cell phones, please, any electronic devices

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

Government, Military and Veterans Affairs Committee
February 06, 2014

you have that might make noise. And we will proceed from there. Pay attention to the testimony given prior to your testimony so that you're not repetitive. And somebody already had their radio or cell phone on or was that just a noisy exit? Noisy exit. Okay. All right. We are ready to start. Senator Hadley, we welcome you to the Government Committee.

SENATOR HADLEY: I am just terrified, but I will keep my knees from shaking. [LB1018]

SENATOR AVERY: That doesn't sound like you. [LB1018]

SENATOR HADLEY: Senator Avery, members of the committee, my name is Galen Hadley, and that's G-a-l-e-n H-a-d-l-e-y. I represent the 37th District, and I'm proud to be in front of the august Government Affairs Committee. Part of my testimony is going to be anecdotal because I spent 35 years in higher education, and part of it will be research that I've tried to do on search committees and how they work and what it means. I'd like to start out with a quote that I use quite often from a good friend of mine who taught with me at the University of South Dakota, originally from Ponca, Nebraska, a good Ponca boy. Taught legal environmental business law, and his favorite saying was, "It's a thin sheet of paper that only has one side." We're not dealing with a thin sheet of paper here. There are two sides to this issue, and there will be I think legitimate arguments on both sides of this issue. But part of our job at the Legislature is that every issue we see has two sides, and part of our...what we have to do is to weigh both sides and see what's best for the people, the citizens of the state of Nebraska. I'm going to start out with just a couple of anecdotal remarks. For whatever reason, one year I was the interim president of the University of South Dakota and I was not a candidate for the presidency. I was the vice president in charge of academic affairs. But I was the coordinator between the search firm and the board of regents and the candidates for the president's position. And two things struck me about that. One is, at 7:00 in the morning when the candidates were going to start coming down to the University of South Dakota for open interviews, I received a call from the president and CEO of the largest employer in the state of South Dakota saying he was withdrawing his name, that he just...this was not what he was used to, not something that he basically was willing to do in the end. So he withdrew his name on the morning that we were to start. The second one had to do with the president that we hired. Very good president, was there about five to six years, and the president threw the name in the hat at four other institutions and became a finalist in four other institutions. And the Sioux Falls Argus Leader ran a tongue-in-cheek editorial, and I read the editorial. And the tongue-in-cheek editorial was they were going to have a contest with the winner being how many more positions would the president of the University of South Dakota be a finalist in and not get the position. That person left higher education within a year. That was the feedback of being...their name being made public in a state. I want to talk a little bit about a state to the west of us, Wyoming, because that's been a recent search and I think there's some parallels. I don't think we're parallel. I think, you know, in all honesty we're a better

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

Government, Military and Veterans Affairs Committee
February 06, 2014

institution than the University of Wyoming. But there's parallels. At a special trustees meeting, the...on October 12, 2012, the trustees interviewed three separate search firms to manage the process for them. Now it's really I think important that you understand that search firms, we used to call them search and screening committees, but we call them search firms, and their job is to find the people, the persons who you wouldn't get through normal processes--putting an ad in The Chronicle of Higher Education, calling friends. Their job is to go cultivate friendship with good people they know who might be interested in applying for presidential jobs. So they search out candidates. All three firms said that the confidential searches attract better candidates. After hearing the advice, the Wyoming trustees adopted a resolution requiring search committee members to sign an agreement not to reveal the name of the candidates. Closed searches are becoming increasingly common across the country because candidates want confidentiality so that they can stay in their current jobs in the event they aren't hired. Some public campuses have been punitive--I just gave you an example where it was punitive--to a sitting president and provost who go out on the job market. The job of president is changing. It used to be that the president was primarily concerned about the internal operations of the campus. Now we expect them to interact with legislators, governors, other members of government, big donors to the university. They become external presidents. And you can imagine if you're working with a president about a large gift that you might want to give to the institution and your relationship is with that president and suddenly you read in the paper that that president is now looking for a job someplace else, it can put a chill on donations. The initial screening committee in Wyoming began with 85 applicants. That's a lot. Betty Asher, the consultant, judged to be an outstanding number. The committee then forwarded 15 top names to the second tier. The second committee then chose eight candidates to forward to the trustees for a final selection. We had some very strong candidates put their name in their hat, many sitting presidents with established track records and established body of work, said one of the members of the trustees. In retrospect, the benefit of a closed process is you would hope to get a higher quality candidate pool. We got that in Wyoming. According to one of the members, the eight finalists had originally included five provosts, two sitting presidents, and a nonacademic candidate. A court, an injunction was sought. They went to court. They got a court order opening that would require the finalist to have their names put out. And I want to quote Betty Asher because she gave an affidavit under oath to the court: The request adds that so far two committees who were part of the eight semifinalists dropped out of the search rather than having their names released. Two others have said they will drop out if the search does not remain secret, according to the search consultant Betty Asher. Every sitting president and the nonacademic dropped out of the race. They ended up with four provosts, which there's nothing wrong with provosts moving up. The sad part to this story is the provost lasted eight months at the University of Wyoming and they're now searching again at the University of Wyoming. Many unknowns surround the current search at the University of Michigan. That has just been finished. They named the provost from Brown University. The first time the people in Michigan knew who the

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

Government, Military and Veterans Affairs Committee
February 06, 2014

president of the new...of the University of Michigan was the day they introduced that provost as new president of University of Michigan. But I want to talk about the last president, the one that this provost is replacing. Her name is Mary Sue Coleman. And just to give you some background about Mary Sue Coleman, I looked at two different lists that were put out by Time Magazine and research journal rating presidents. Time Magazine rated her as one of the top ten sitting presidents in the United States right now for public institutions. Another rating system named her as one of the top ten overall ever best presidents. Mary Sue Coleman is now retiring. When she was named, it was a complete surprise to most everyone on the campus, including members of the search advisory committee. Many were convinced that Joe White, a former dean of the business school who I happen to have met who was serving as interim president at the time, would nab the top spot. Coleman, then president of the University of Iowa, another Big Ten school, good school, great school, hadn't been looking for a job. But a search firm hired by the eight-member board of regents contacted her and asked if she would be interested in the position, according to a May 2002 Ann Arbor news article. She was but only if her interest was kept a secret and not divulged. She did not want Iowa knowing she was considering a new job because of the way it would impact her position at Iowa. According to a University of Michigan social work Professor Lawrence Root, it poisons the relationship with their home institution. Carnegie Mellon University and Penn State system of higher education did this exact same thing in hiring their chief executives recently. Ohio State is now looking for a president to take Gordon Gee's position. Members of the search committee are evaluating candidates who are currently university presidents, others who hold different university positions. Robert (sic) D. Cotton, a university Washington, D.C., attorney specializing in presidential contracts and compensation said, secrecy in public university executive searches is a result of higher education institutions not taking kindly to their own employees who are involved in other school's executive searches. There were lawsuits challenging LSU who picked a president with a closed search. Wyoming and Tennessee. I talked about Wyoming. Northern Illinois just did the same thing with a closed presidential search. Purdue's board of trustees, here's a quote, is expected to name the university's 12th president Thursday morning and no one knows who it is. Another, the Penn State University right now is searching for a president. They believe that their laws allow a closed search and that's what they're going to use. We are...the University of Nebraska is now a part of the Big Ten. And this is more than just playing football against Michigan, Michigan State, etcetera. We're part of a great academic conference. And I have just talked about four or five of the institutions in the Big Ten that basically use closed searches because they want to be sure that they can get the best person to be president of their university. Why is it important? The University of Nebraska is a \$2.3 billion a year organization. Big organization. Also, we have a Board of Regents and it's great. It's different than South Dakota's Board of Regents because there they're appointed by the governor, all of them. Here, they're elected. We expect the Board of Regents to do the right thing. That's why we elect them. Just the same as they're held to the standard of what they do when it's time for reelection. So I think giving them all the tools that are possible to come

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

Government, Military and Veterans Affairs Committee
February 06, 2014

up with the best possible person to run the University of Nebraska system or be a chancellor of the University of Nebraska system I think is very, very important. There's an old song and if I was Senator Chambers I would sing it for you but I can't, but times are a changing. I want to end by saying a closed search does not guarantee the best candidate for a position will apply and be chosen. But a closed search I truly believe does guarantee that the pool of candidates for the position will contain more and better candidates for the position than if they have to put out their name in the public. One last thing, the University of Wisconsin system just went through a search. And two of their regents were quoted as saying the pool was not that good because it was an open search and they did not get the quality of candidates that they expected to get. So I think we should not try and tie one hand behind our regents' back in going out and working to get the best possible president to succeed J.B. Milliken, and in the future to be chancellors of our four outstanding University of Nebraska system campuses. With that, I would be happy to take any questions. [LB1018]

SENATOR AVERY: Thank you, Senator. You surprise me with your quote from Bob Dylan. I didn't think you actually knew who the guy was. (Laughter) You are old. [LB1018]

SENATOR HADLEY: I have a vast array of knowledge that just floats around up here. [LB1018]

SENATOR AVERY: That's a first of this committee I think. I'm going to start with a question or two if you don't mind. [LB1018]

SENATOR HADLEY: No problem. I'm happy to do it. [LB1018]

SENATOR AVERY: All right. In the Michigan case where they recently hired a new president, did they have a period of time set aside in the process for a public vetting of their finalist? [LB1018]

SENATOR HADLEY: My understanding, Senator Avery, they did not. I think that would be a very good part of the process. I would recommend that to the Board of Regents that you don't have to follow the process where you just show up on a Monday morning and have someone come in through the door and say we've hired this person. I think there's nothing wrong with having the finalist and you say to the finalist that we need to have you meet the people of the campus. [LB1018]

SENATOR AVERY: What, a ten-day window, meet with faculty, students... [LB1018]

SENATOR HADLEY: I would say a week to ten days. [LB1018]

SENATOR AVERY: ...alumni... [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR HADLEY: Alumni. [LB1018]

SENATOR AVERY: ...business leaders in the community. [LB1018]

SENATOR HADLEY: Business leaders. Education leaders. Senator Avery, I see nothing wrong with that at all. And I think the positive thing of that, you know, it's possible the person that is the finalist, once they get there and meet these groups, it can be a two-way street. [LB1018]

SENATOR AVERY: They may say we don't like you guys. I'm not going here. [LB1018]

SENATOR HADLEY: Yeah. They could say, you know, after meeting your faculty or academic leaders, maybe this isn't the place for me. So that's my opinion. The board may have a different viewpoint. But the board sets the parameters. And just one other quick point on that. You notice that some of these had search committees that advised the board of regents, but they swore them to secrecy. You know, they signed secrecy agreements. That's just another way. There's many ways to do this. [LB1018]

SENATOR AVERY: You do I think share with me a commitment to the principle that the public's business ought to be conducted in public. [LB1018]

SENATOR HADLEY: I agree. [LB1018]

SENATOR AVERY: I know you made your case about why we ought to make an exception for the university. Show me though, if you would, where our past searches have somehow been flawed because they were open and we made a big mistake. I mean, J.B. Milliken is one of the best presidents in my memory and I was here for 40 years, you know, with the university. And nobody is fonder of that university than am I. Nobody is a more consistent defender of that university on the floor of the Legislature. And I'm looking for a compelling reason why we have to suspend what is a very open process compared apparently to a lot of universities. [LB1018]

SENATOR HADLEY: Senator Avery, I could give you a couple of reasons. I think we have had good...Graham Spanier, President Moeser, Martin Massengale, they go back, J.B. Milliken. I think there are different people who apply for positions. You want the...you know, you can have the person who is a provost someplace. A provost is basically the second in a command in a university. You can have sitting presidents who apply. You can have sitting presidents who have been told that they should apply someplace else. You can have probably, old, crotchety legislators that apply. I think, Senator Avery, the main argument for a closed search is, is that you will get a better pool of people applying for that position. And I'll use the last search. I would say that President Milliken probably would have risen to the top even if they'd had sitting

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

Government, Military and Veterans Affairs Committee
February 06, 2014

presidents. You know, he...Nebraska boy, went to school here, spent time here as an administrator, made a very good choice of going away for a while, and then coming back. So he could have very well risen to the top in a closed search also. But I think the idea of expanding the pool and getting some people who would not get into the pool if they knew that their name was going to be given. So I think that's the reason that I feel. [LB1018]

SENATOR AVERY: What is it about universities that makes them so vulnerable to sunshine laws? Because I promoted public records legislation around this Legislature for eight years, and frankly I had more trouble with universities than any other institution. [LB1018]

SENATOR HADLEY: Senator, I don't know. I think that it is difficult with the university because they're different types of organizations within one. They're a research organization, they're a teaching organization, but they're a large complex organization also. What is it, 50,000, 40,000, 30,000 students at the Nebraska campuses, thousands of employees, \$2.3 billion budget--large intricate operation. You reminded me of an interesting point. One of the risks...one of the reasons that you try to get sitting presidents in a search pool is that they have a track record. You know, I served basically as the equivalent of a provost at two different institutions. There's a big difference between being second in command and being first in command. So quite often you like to get people who can come in and say I've been...I've done this. Here's my track record. I've dealt with alumni, students, faculty, legislators. I've done it. Here's my record. I thought to myself when I was preparing for this, Microsoft just named a new CEO. Right. Can you imagine what it would have been like if Microsoft had to put an ad in the Seattle newspaper: Wanted. CEO of Microsoft. Apply here. And then had an open search where they had four or five sitting CEOs from other companies coming in. Another thought, being a political science guru, can you imagine if the President of the United States, if they...when he was picking a federal judge, had to put out the four names of the finalists before he chose which one he would send to the Senate, would that give quite a feeding frenzy? We keep that secret until we send it to the senate. So I probably answered way too much. [LB1018]

SENATOR AVERY: Well, I know that there will be comparisons made to the private sector, but they're fundamentally different institutions. I mean, university, public university exists for a public purpose and, you know, Microsoft exists for a private purpose, to make money for their shareholders and to produce products. That is...there is a bit...and tax money is involved in this position and not in CEO of Microsoft. A little bit of a difference. [LB1018]

SENATOR HADLEY: One of the questions I learned to ask when you apply for jobs in higher education is, is there an internal candidate because quite often, not quite often, sometimes we go through the search process when they have someone who's an

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

Government, Military and Veterans Affairs Committee
February 06, 2014

internal candidate that they know who they're going to hire. But they go through the process in order to be able to check the boxes that we did this. And that could be very frustrating when you go through...it takes a lot out of you to apply and go...you know, go through a two- or three-day vetting process on campus, and then to find out there was an internal candidate that the wheels were greased from the start. [LB1018]

SENATOR AVERY: All right. I know the rest of the committee wants to get in on this, so I'm going to start with Senator Wallman. [LB1018]

SENATOR WALLMAN: Thank you, Chairman Avery. Thank you for coming here. And my question is, if say Senator Avery is president of my university where I go and if he wants to go somewhere else and get more benefits or more pay, whatever, god bless him. Who am I to hold anybody back? And so do the presidents usually give a formal letter if they're going to resign early or two weeks, three weeks, a month, a year? Usually it's quite a while, isn't it? [LB1018]

SENATOR HADLEY: Senator Wallman, it depends on the circumstances. I would say generally speaking if the president is going through a formal retirement process when they get as old as I am and they're...decide that it's time to hang them up, they try to give a year or two leeway so that they can do this. But they also understand that if they're just...they're going to change positions there are risks and you have to weigh those risks. I gave you the example of President of the University of South Dakota, that after finishing as a finalist four times ended up out of higher education because of the intense pressure that, hey, you're a finalist four times and you can't...why do we want you here if somebody else doesn't think you're good enough to be their president. So depends on the situation. [LB1018]

SENATOR WALLMAN: My number one question would always be why do you want the job. [LB1018]

SENATOR HADLEY: Well, there is a pecking order in higher education and it has to do a lot with the athletic divisions. I hate to say it, but that's, you know, you have Division III, Division II, Division IA and Division I and there seems to be a relationship, except for the Ivy League, but, you know, there are good presidents. Gordon Gee I believe...let me run them off, he was president of Brown, president of Ohio State twice, president of Tulane, and president of the University of Colorado. That's an amazing track record, isn't it? He lost the Ohio State job because he'd made some disparaging comments about Notre Dame. But I would say Gordon Gee's most famous ability was to raise money. That was his ability. [LB1018]

SENATOR AVERY: Senator Bloomfield. [LB1018]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Hadley, the college that

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

Government, Military and Veterans Affairs Committee
February 06, 2014

hired Mr. Milliken away from Nebraska, did they use an open system or... [LB1018]

SENATOR HADLEY: My understanding, and probably Regent Clare could be better at it, but my understanding is they used a closed search system. [LB1018]

SENATOR BLOOMFIELD: Okay. And I guess my thought is that, and I'll go back to your University of South Dakota guy that was second place four times, I think that maybe gave the university an idea that he wasn't very happy where he was and he was looking for someplace different. And if that's the case and I worked at the university I'd like to know that he's not happy and is subject to leaving at any time rather than have him come in all of a sudden and being gone. [LB1018]

SENATOR HADLEY: I would agree entirely, Senator Bloomfield. But I think there is a goal of most presidents to be a little bit like the Air Force and Senator Garrett. You want that next promotion. You want that next move up. You want that, you know...you want to go from, you know, a smaller institution to a larger institution to a doctoral granting institution to, as Senator Avery says, the flagship, maybe a submarine but the flagship that they have. Senator Avery and I have discussions about where the quality lies in the University of Nebraska system. [LB1018]

SENATOR AVERY: We sit too close together. [LB1018]

SENATOR HADLEY: We sit...you're right, Senator Bloomfield. [LB1018]

SENATOR BLOOMFIELD: Yeah, I don't mind somebody looking once in a while, but if it's a constant thing. I never quit looking for a better job all the time I was employed, but I didn't have eight or ten applications in everywhere all the time either. [LB1018]

SENATOR HADLEY: I would just say there are some universities that do not take kindly to their president. [LB1018]

SENATOR BLOOMFIELD: I can understand that. Thank you. [LB1018]

SENATOR AVERY: Any other questions? I don't see any. Are you going to stay for closing? [LB1018]

SENATOR HADLEY: I'm going to...I want to see, you know, how the second best committee in the Nebraska Unicameral (laughter) operates, so I'm going to sit and watch the procedure here for a while. [LB1018]

SENATOR BLOOMFIELD: Are you going across the hall already? [LB1018]

SENATOR HADLEY: ...before I go to the best committee across the hall. [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR AVERY: Proponent testimony. Good afternoon, Regent Clare. [LB1018]

TIM CLARE: Good afternoon. [LB1018]

SENATOR AVERY: I'm not surprised to see you today. [LB1018]

TIM CLARE: (Laughter) Well, if I may, I'd like to address some of Senator Bloomfield's comments regarding President Milliken and some of the questions. [LB1018]

SENATOR AVERY: First spell your name for the record. [LB1018]

TIM CLARE: Tim Clare, C-l-a-r-e. So at the end of my testimony if I don't remember to do that, if you'd please ask those questions again. Chairman Avery and members of the committee, my name is Tim Clare, C-l-a-r-e, and I am the immediate past chairman of the Board of Regents for the University of Nebraska. I'm here today on behalf of the board to express unanimous support for LB1018 which would allow the university to publicly identify a single finalist in our presidential and chancellor searches. As board members, we have a constitutional responsibility to govern the University of Nebraska on behalf of the citizens of the state of Nebraska. It is our duty to the taxpayers to make good decisions to keep the university moving forward. One of the most important duties that we have is appointing the president of the university and confirming the appointments of the chancellors. As you know, great leadership makes all the difference for an organization. Our president and the chancellors are responsible for building quality teaching for our students as well as research programs that also serve the students and all of Nebraska, for growing enrollment, for raising private support, and for setting an overall tone of excellence across the university. You and your colleagues in the Legislature and all Nebraskans again rightfully expect us to find the best possible individuals to serve in these critical leadership positions. We did our best to convince President J.B. Milliken to stay. In fact, I asked him three times after he informed me of his decision, I asked him three times to reconsider. And I know other of my colleagues asked him as well. But as you know, President Milliken is leaving for the university...leaving the University of Nebraska to become chancellor of the City University of New York. Soon, the Board of Regents will begin a search for our next president. This is an enormously important decision. I cannot stress that or say that enough. And it comes at a critical moment in the history of the University of Nebraska. We are experiencing unprecedented momentum in expanding access to quality education to more students. We're conducting research that is improving the lives in Nebraska and beyond, and we're building a talented work force that will contribute to Nebraska's economic competitiveness. We don't want to lose that momentum. Selection of an outstanding president who can build on our successes and current trajectory is of paramount importance not only to the board but to all Nebraskans. We hope our search will attract the very best candidates, including individuals who are presidents or

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

Government, Military and Veterans Affairs Committee
February 06, 2014

chancellors with proven excellence serving at other institutions. These aren't the only people we will talk to, of course, but they are certainly the types of experienced, knowledgeable leaders we want to engage. We want to have the best candidate pool possible. Again, we owe that to all Nebraskans. But our experience and the experiences of many of our peers around the country has convinced us beyond a doubt that the compromise reached in 2007 that in effect requires four finalists to be publicly named is no longer the most effective practice in today's highly competitive market for talent. We have abided by that compromise faithfully for the past seven years. But times are changing and highly sought candidates today require a level of confidentiality that Nebraska simply is unable to provide under the current laws of our state. Leading search firms that handle high level academic searches have confirmed to us that candidates in secure leadership positions are unwilling to jeopardize their standing at their current institutions by being one of several publicly named finalists for another job. This is particularly true at leading research universities like the University of Nebraska and it is not a matter of just saving face. Senior leaders often are in the middle of delicate negotiations with members of their state legislature, with donors, and otherwise, and they do not want to put those negotiations at risk by being identified as a candidate elsewhere. In fact, the Omaha World-Herald recently quoted Peter McPherson who leads the association of public and land grant universities as saying that search processes like ours in Nebraska results in an absolute loss in the candidates. Sitting presidents who do not expect to leave are rarely going to apply if their name is going to be made public. This is why many other states provide for university searches similar to what we propose. In the last two weeks alone, two of our Big Ten peers, University of Michigan and Ohio State, each named new presidents. Both of these individuals named were from single publicly identified...they were publicly...a single publicly identified finalist, and both are high level leaders at their current institutions. [LB1018]

SENATOR AVERY: You should be about finished. [LB1018]

TIM CLARE: I've got about another page. It'll take me a minute. I'll read real quick. [LB1018]

SENATOR AVERY: All right. Okay. [LB1018]

TIM CLARE: Similarly, Purdue, the University of Minnesota, Rutgers, the University of North Carolina, the University of Virginia, the University of Georgia, the University of Washington, and many other top institutions also name only a single finalist for their top leadership position. This is the market we will find ourselves in when we begin our search. And if our state statutes aren't changed, as I've said before, I fear that we will be fighting with one hand behind our back. There has been significant amount of discussion about how this bill might impact participation by the public in the search process. Let me be absolutely clear that if the Legislature decides to approve LB1018, the Board of Regents will remain fully committed to transparency and accountability and

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

Government, Military and Veterans Affairs Committee
February 06, 2014

the public...and include the public in the presidential search. Transparency and accountability to the people of Nebraska. The people who invest their resources in the university are some of our most important goals. We will continue to fulfill those goals. We will appoint an advisory committee that will actively assist us in the search by seeking input from the public, constituents, and stakeholders about what qualities we want in our next president and the challenges and opportunities the university will face in the coming years. You can be absolutely assured that when a finalist is named by the committee, that person will visit the university. And in the interests of transparency and accountability, we will hold public sessions that will provide an opportunity for additional vetting and input by the university community, news media, and the public. This will happen before the board meets publicly to consider the finalist's appointment. We understand that we're talking about a balance of two very important priorities--the public's right to know and the University of Nebraska's ability to attract the types of high caliber leaders that policymakers and taxpayers expect of us. I know I speak for the full Board of Regents in saying that we believe the change we propose in LB1018 strikes the right balance between these two priorities. We hope you agree that this is wise public policy. Thank you and I'd be pleased to answer any questions. [LB1018]

SENATOR AVERY: Thank you. Let me ask you, have we had a high-profile search at the university since the 2007 compromise legislation? [LB1018]

TIM CLARE: Probably the highest search we've had is the one at the med center where we just hired the chancellor at the med center. [LB1018]

SENATOR AVERY: And that was a flawed process. [LB1018]

TIM CLARE: I'm not going to say it was a flawed process. We brought four finalists forward. I know that there was at least two that refused to submit their name because of the law. The four finalists we brought forward didn't work and we were able to then bring in Dr. Gold. [LB1018]

SENATOR AVERY: So you had four finalists that were... [LB1018]

TIM CLARE: That were publicly vetted. [LB1018]

SENATOR AVERY: ...publicly revealed... [LB1018]

TIM CLARE: Yes, sir. [LB1018]

SENATOR AVERY: ...records were open... [LB1018]

TIM CLARE: Yes, sir. [LB1018]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR AVERY: ...to public inspection and none of them worked out... [LB1018]

TIM CLARE: Correct. [LB1018]

SENATOR AVERY: ...for whatever reason and you had to go to a fifth candidate.
[LB1018]

TIM CLARE: Yes, sir. [LB1018]

SENATOR AVERY: And that was an open process too? [LB1018]

TIM CLARE: That was...I think that one was more closed because we complied with the law in bringing four finalists forward that were legitimate, reputable candidates and ones that we identified as finalists. [LB1018]

SENATOR AVERY: Do you have in this current search process any plan to publish your search criteria and procedures so that everybody knows as much as you can tell them about what you're going to do and what you're going to look at and that sort of thing?
[LB1018]

TIM CLARE: Yes. What we're doing right now is we're starting to identify our processes, and that will start next week in terms of what we're going to be doing and how we're going to be...what we're going to be looking for, how we're going to...which firm we're going to be hiring, those types of things, yes. That's something that we have not identified yet. [LB1018]

SENATOR AVERY: I can understand that in an open process you may not want to have just two candidates because that really puts the loser in a pretty bad spot. What about three candidates? [LB1018]

TIM CLARE: Well, again, I think it's a...we feel as though it's a disadvantage, particularly when, you know, you asked the question earlier of Senator Hadley why does it need to be...why can't it be public in higher institutions of learning like universities. Why doesn't it have to be? And I can't speak for the other states except to say that they viewed it as a situation where they believe that it is extremely important and have passed laws accordingly. So while we want to be public about this process, we're at an extreme competitive disadvantage and unable to compete in terms of the hiring because we don't have the privacy element that some candidates in other...many sitting leaders in other institutions really want. [LB1018]

SENATOR AVERY: Is it really important that you include vice presidents in this bill?
[LB1018]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

TIM CLARE: That's Senator...again, it's Senator Hadley's bill and I would defer that to him. [LB1018]

SENATOR AVERY: I got the bill drafted for the university, and I should have asked them that. But since you are former chair of the Regents you must have known that this was being drafted and you probably saw a draft of it. [LB1018]

TIM CLARE: Yes, sir. [LB1018]

SENATOR AVERY: And I was just wondering why vice presidents are included. [LB1018]

TIM CLARE: Again, I believe it's... [LB1018]

SENATOR AVERY: Same argument that you had? [LB1018]

TIM CLARE: Same argument. Yeah. [LB1018]

SENATOR AVERY: Maybe a little perhaps overreaching a bit, something to give up in the negotiations with the committee. [LB1018]

TIM CLARE: Certainly worth discussing. [LB1018]

SENATOR AVERY: Questions from the committee? Senator Bloomfield. [LB1018]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Mr. Clare, there are a lot of things that Senator Avery and I don't agree on, and shining daylight on government functions is not one of them. We both agree on that. You wanted to answer my question a little bit and... [LB1018]

TIM CLARE: Yes, sir. [LB1018]

SENATOR BLOOMFIELD: ...this to be your opportunity. [LB1018]

TIM CLARE: Well, first off, I would tell you that the opportunity that was presented to President Milliken was exactly the type of situation that Senator Hadley was discussing in his testimony in that President Milliken was not looking for another job. He was a sitting president, happy where he was, the laws of the state of New York afforded privacy. He contacted me after he'd had several negotiations. We'd had...we have a tremendous relationship. I not only consider him the president of the university; I consider him a very close friend and we have a great relationship. He informed me that he had been having these discussions and he'd also informed me previously several years ago that the average tenure of a president at a public institution is seven to ten

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

Government, Military and Veterans Affairs Committee
February 06, 2014

years. And he was at...at this point in time he was at year ten. So I don't think it's a question at all that was he happy here at the University of Nebraska or anything like that. I think he viewed this as another challenge. He had done many of the things that he set out to accomplish at the University of Nebraska, and I think it was an opportunity for him in looking at CUNY to pursue some other goals and some other objectives that he had in his...you know, for his career. [LB1018]

SENATOR BLOOMFIELD: It just seems a little bit to me like they came in quietly and stole one of ours. Let's give us the ability to go do that to some other university. You talked about the disruption that it causes in a university when they find out that somebody else is looking. What about the disruption it does when you find out all of a sudden that somebody is gone? [LB1018]

TIM CLARE: I don't disagree, but that's the landscape across the country right now. And we can decide that that's not fair, that everybody should be public about it, and I don't disagree with that. But the fact is, is that the other states have said that it's...they're not going to make it public. And so, again, we're fighting with one hand tied behind our back in this search because candidates will not apply. All the top potential candidates would likely not apply for this position. [LB1018]

SENATOR BLOOMFIELD: Thank you. [LB1018]

SENATOR AVERY: Any other questions? Senator Karpisek. [LB1018]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Regent, for being here. [LB1018]

TIM CLARE: Thank you. [LB1018]

SENATOR KARPISEK: Part of what I feel is if they really want to come here, then they will...then we're getting the people that really want to come, not just somebody throwing their name in to see what happens. The other thing is, it sounds like you have a way around this, talking about the med center search. We gave you four. They didn't work out and now we got who we really wanted. [LB1018]

TIM CLARE: That's...I participated and interviewed each of the four candidates coming through. It was not...that was not the situation. The four candidates that came forward, we identified them as candidates that were legitimate candidates. And... [LB1018]

SENATOR KARPISEK: And I'm not saying that that's how it happened. I'm just saying that it seems like that would be a way around it. [LB1018]

TIM CLARE: If we bring in four candidates, quote, unquote, so that with the idea that

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

Government, Military and Veterans Affairs Committee
February 06, 2014

now we're going to go dark and try to bring in that fifth who we can keep private, I don't like doing business that way because that's an intentional act that I think gives the University of Nebraska a bad reputation in the public. I believe that we need to be up-front, which I can say with absolute certainty we were in our med center search and we ended up hiring an outstanding chancellor. Your first question with...could you repeat your first question? [LB1018]

SENATOR KARPISEK: (Laugh) Heck, how would I remember. (Laughter) Oh, the...it seems like we would get who really wants to come. [LB1018]

TIM CLARE: Right. And I don't...I think that's an important criteria. We'll discuss that as...and I've thought of that, too, somebody that's passionate about the University of Nebraska and passionate about Nebraska. And I think that that's an important one. But, again, some of the top candidates aren't looking for jobs, aren't looking to move. And it would be the search firm who has the relationships with some of these individuals that could go to them and say, hey, look at what the University of Nebraska is doing. A lot of those people might at first blush say, I don't even know where Nebraska is, let alone that they've got a great university there. We've got great things going on. And so the search firm could go to those people and say, we've got some great opportunities here at the University of Nebraska. Would you look into it? And throwing their name into that hat. [LB1018]

SENATOR KARPISEK: But going to them and doing that could still happen, right? I mean, the... [LB1018]

TIM CLARE: If they ultimately find that they like it, now it's made...you know, and then they advance in the process, now it's made... [LB1018]

SENATOR KARPISEK: Well, I think...yeah, that's...you've got to get to that top four. [LB1018]

TIM CLARE: Right. [LB1018]

SENATOR KARPISEK: Thank you. [LB1018]

TIM CLARE: Thank you. [LB1018]

SENATOR AVERY: Any other comments or questions? Thank you, Regent Clare, for coming down. [LB1018]

TIM CLARE: Thank you. [LB1018]

SENATOR AVERY: Any other proponent testimony? Welcome, sir. [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

TONN OSTERGARD: Good afternoon, Senator Avery and members of the committee. My name is Tonn Ostergard. I'm president and CEO of Crete Carrier Corporation, and I am here today in my capacity as chairman of the University of Nebraska Foundation and also as a friend of the university and testify in favor of LB1018. As has already been discussed by my predecessors here, in conducting a search for a high profile position, such as president of the University of Nebraska, the best candidates are currently employed and probably not even looking for a new job. And those candidates certainly do not want to jeopardize their current relationships by disclosing they may be even considering other options. As chair elect, I recently led the search to hire a new CEO for the university foundation. We had an outstanding list of candidates from which to narrow our selection. Each of those candidates had a high profile position at other institutions. Without protecting their right to privacy, most if not all of the candidates we considered would not have even submitted a resume. The quality of our search was made possible because we protected the privacy of those that applied. Frankly I think it would be a disservice to the university to compromise the search process by limiting the pool of qualified candidates by not protecting their right to privacy which would impact their current employment. Our friends from the press have written editorials and may testify later today in opposition to this bill citing the public's right to know and the need for full disclosure and vetting of the search process. These same professional journalists will protect the anonymity of their sources that have provided them critical information in preparation for their news stories. We accept the credibility of those unnamed sources and the accuracy of the reporting based on the responsibility and integrity of the journalist. With that privacy, sources...without that privacy, sources would not have come forward, the real story never revealed, resulting in a compromised process. We have entrusted the governance of the university to the elected members of the Board of Regents. They, too, have that same responsibility and integrity to manage this process in the best interest of the university and the taxpayers they represent. Let's let them do their job without encumbering the process. By passing LB1018, we will ensure the Board of Regents has the very best candidates from which to choose. Anything less would be a disservice to the university and the citizens of Nebraska. Thank you for your time and consideration. I'll take any questions. [LB1018]

SENATOR AVERY: Thank you. Questions from the committee? I think we exhausted ourselves on the other two. [LB1018]

TONN OSTERGARD: Great. Thank you. [LB1018]

SENATOR AVERY: Thank you for your testimony. Any other proponent testimony? Good afternoon. Welcome. [LB1018]

KRUPA SAVALIA: (Exhibits 1 and 2) Good afternoon. Chairman Avery and members of the committee, my name is Krupa, K-r-u-p-a, Savalia, S-a-v-a-l-i-a, and I am the student

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

Government, Military and Veterans Affairs Committee
February 06, 2014

body president at the University of Nebraska Medical Center. Thank you for allowing me to testify today in support of LB1018, a bill that I believe has critical implications for students enrolled at the University of Nebraska system. I would like to begin by telling you a little bit about myself. I was born in New Jersey and earned my undergraduate degree in biomedical engineering from the University of Southern California. I worked in clinical research for several years before enrolling in the competitive M.D./Ph.D. scholars programs at UNMC in 2009. I have completed two years of medical school, will receive my Ph.D. in the department of cellular and integrative physiology this summer, and will subsequently return to medical school to complete my last two years of training. I'm here today because I believe there is great value in LB1018. I am convinced that this bill will position our university well if we are to continue being competitive in the academic marketplace. I make this statement with confidence for primarily three reasons. First, the students absolutely understand the importance of recruiting great leaders because it is the senior leaders at the University of Nebraska that have a profound and long-lasting impact on our students. They oversee our academic mission. They hire the faculty who equip us with the skills we need to succeed in our respective careers. They build partnerships with other institutions and businesses that provide us with the opportunities to study abroad and engage in unique learning experiences. They also facilitate fund-raising efforts that support scholarships and help build innovative facilities which are essential to our professional training and success. All of these factors are of critical importance to the students and most importantly to the quality of education that we receive. Second, I believe that the vision for our university, as laid out by our senior leaders, facilitates attraction of remarkable talent to Nebraska. At the medical center, this carries extreme weight because many of our students in medicine, nursing, pharmacy, allied and public health are committed to stay in Nebraska following graduation. From my many conversations with the students, it is clear that this allegiance to our state is fostered by the initiatives articulated by our senior leaders and the great value they place in our university's contribution to the state of Nebraska through teaching, research, and service. For these reasons, it is essential that we continue our productive trajectory under a visionary president who is able to articulate these priorities as a mechanism for driving our University of Nebraska into the future. Third, my experience during the past five years as an M.D./Ph.D. scholar at UNMC has assured me that this institution truly values student engagement in important decision making processes. Our students have historically been engaged in university searches for leadership and I am confident that our input will be a valuable ingredient in the selection of our new president. My fellow student regents and I have the privilege of sitting at the board table where our questions and comments are not only encouraged but truly valued. As students, we have confidence in the Board of Regents to perform the duties they were elected to execute and judiciously govern our university on behalf of Nebraskans. As a final note, I want to point out that I discussed this bill with my executive committee which is comprised of nine prominent student leaders that represent all of the colleges at UNMC. They are unanimously in support of LB1018 and I have a letter from my student body vice president, a Ph.D. candidate named Alicia

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

Schiller, which I would please like submitted for the record. It is in the best interest of the students at the University of Nebraska to recruit exceptional senior leaders. And as a student I believe LB1018 would place us in a more competitive position to do exactly that. I encourage you to support this important legislation. Thank you for allowing me to express our student opinion today. I would be happy to take your questions at this time. [LB1018]

SENATOR AVERY: Thank you, Ms. Savalia, right? [LB1018]

KRUPA SAVALIA: That's correct. [LB1018]

SENATOR AVERY: Did you communicate with the other student regents about their campuses and how they might feel about this legislation? [LB1018]

KRUPA SAVALIA: I have. I've spoken to the other student regents and we all...the student regents themselves are all unanimously in support of this legislative bill. I have only myself engaged with the students on the UNMC campus, however, and the majority of those students and my executive committee unanimously are in support of the bill. [LB1018]

SENATOR AVERY: Thank you. Any questions from the committee? We thank you for your testimony. [LB1018]

KRUPA SAVALIA: Thank you very much. [LB1018]

SENATOR AVERY: Additional proponent testimony. How many more people do we have who want to testify on this bill? One, two, three. Okay. Four, five, six--wait--seven, eight. All right. We've stayed longer before. (Laughter) Welcome. [LB1018]

ROB ROBERTSON: Good afternoon, Senator Avery and members of the committee. I'm Rob Robertson, chief administrator for the Nebraska Farm Bureau. I'm here today in the capacity as the vice chair of the Ag 40 Group. And we are in support of LB1018. The Ag 40 Group is a coalition of over 40 agriculture/natural resources/agribusiness organizations that were formed way back in the seventies to support the Institute of Ag and Natural Resources, to support and enhance the university's partnership with agriculture in the state of Nebraska. As you know, the university's mission is one of the land grant mission, and that land grant mission is not only vital to the citizens of Nebraska but extremely important to agriculture, particularly in the agriculture research and extension field. And as you know, as we look for the next president of the University of Nebraska, I can't think of a more important position to serve agriculture and to serve our number one industry in the state than that position that will be chosen to replace President Milliken. You know, if you look at how we're going to grow agriculture, if you look at how we're going to develop new technologies and innovations and how we're

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

Government, Military and Veterans Affairs Committee
February 06, 2014

going to feed the world, we need the leadership in place in the office of the president of the university that understands agriculture, that appreciates agriculture, that also has the vision for the state of Nebraska that includes its top industry of agriculture. We can't take this process lightly and that's why agriculture is here testifying. There should not be the risk of having any process where the best candidates are not at the table and being looked at. That's our concern. The process, if it keeps the best candidates away from the field, has the potential to hurt the university, to hurt Nebraska, and to hurt our top industry of agriculture. That's why we're providing testimony today in support of LB1018. The expectations are high for the next president. We need the vision and leadership to carry a lot of things forward to build on the momentum and strength that's happened so far. Just in the agriculture side, you look at the Innovation Campus, you look at the Water for Food Institute, you look at ag education initiatives, Rural Futures Institute, there is huge momentum today and that's because of the leadership of President Milliken on down through Chancellor Harvey Perlman and Dr. Ronnie Green with the Vice Chancellor at the Institute of Ag and Natural Resources. We got to continue that momentum. In agriculture, our expectations are high. There's no preconceived candidates that we have in mind whatsoever. We just want to make sure that when the question is asked, is the process in place to assure the best candidate, and the answer to that is no, then that concerns us and that's why we think something should be done and that's why the Ag 40 Group supports LB1018. [LB1018]

SENATOR AVERY: Thank you, sir. Senator Bloomfield. [LB1018]

SENATOR BLOOMFIELD: Thank you, Senator Avery. It's not a question, more of a suggestion. When you're talking to a room with Senator Wallman, Senator Avery, and myself in it, maybe you shouldn't refer to the seventies as way back. (Laughter) [LB1018]

ROB ROBERTSON: Point well taken. Sorry. [LB1018]

SENATOR AVERY: Any other? I don't see any questions. Thank you for your testimony. [LB1018]

ROB ROBERTSON: Thank you. [LB1018]

SENATOR AVERY: We're still on proponent testimony. I know this is a first. You've never been before this committee. [LB1018]

ROBERT DUNCAN: Not before this committee, Senator. [LB1018]

SENATOR AVERY: No, never. Welcome. [LB1018]

ROBERT DUNCAN: (Exhibit 3) Thank you very much, Senator Avery and committee

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

Government, Military and Veterans Affairs Committee
February 06, 2014

members. My name is Robert Duncan, D-u-n-c-a-n. I'm chairman emeritus at Duncan Aviation, a Nebraska-based company doing business worldwide in the sales and service of business aircraft. I come before you today based on my experience in business and in nonprofits. We employ more than 2,000 people, and including about 1,300 in Nebraska. Duncan continues to be recognized as not only the finest business in the aviation industry, but also as one of the finest businesses, period. Fortune magazine has recognized Duncan several times as one of America's top 100 best places to work. We earn that respect from our employees by being honest, truthful, and transparent in almost everything we do. However, part of that respect comes from complete privacy and complete confidentiality of personnel records. Medical records are protected through HIPPA; our personnel records are private because it makes good sense to do so. Our board is charged with the responsibility of hiring our leadership. We guard carefully the identity of the leaders we seek to join the company. The top candidates are almost always employed and would not risk that present job by making public their application elsewhere. I also have extensive experience serving on not-for-profit search committees, including chairing several. In the instances where the applicants are publicly known, their present institution often sweetens their package and retains them. It makes no common sense and we will not get the very best candidates for our university leadership by making public the applicants. It's already been said before, but the City University of New York did not make public J.B. Milliken's application. Nebraska does not make public the applicants for our top athletic leadership jobs. Large public companies do not make their job searches public. Nebraska has publicly elected regents who are charged with the responsibility of hiring the university leadership. They are accountable to us. Let them do their job in private, respecting and seeking the very best candidates. Many years ago, I traveled regularly to Omaha with "Woody" Varner, a former president of both the university and the foundation and Nebraska's number one citizen. He was sought out and hired without a public search and he told me clearly that he would never have considered talking with Nebraska unless he was assured of complete confidentiality. In the name of common sense, respect, and what is best for the University of Nebraska, I urge you to advance this bill. Thank you. [LB1018]

SENATOR AVERY: Thank you, Mr. Duncan. Questions from the committee? Thank you for coming. [LB1018]

ROBERT DUNCAN: Thank you. [LB1018]

SENATOR AVERY: More proponent testimony. Mr. Young. [LB1018]

JOSEPH YOUNG: Good afternoon, Chairman Avery and members of the committee. For the record, my name is Joseph Young, it's spelled J-o-s-e-p-h Y-o-u-n-g, and I'm the director of public policy for the Greater Omaha Chamber of Commerce testifying today on behalf of the Chamber in support of LB1018. I'll be brief. I know you've got a lot...a

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

Government, Military and Veterans Affairs Committee
February 06, 2014

long day ahead of you. We agree with everything that's been said up to this point. I do want to make one...or not clarify but reiterate one point. I'm glad Senator Avery brought up or Senator Hadley brought up Microsoft and I'm glad that you pointed out that we can't really compare Microsoft to an institution like the University of Nebraska. But I will say that if the Microsoft board of directors believed that it was in their shareholders' best interest to open up the search to the final four candidates, I think they would do that. If they could prove that it was best practice, I think that Fortune 500 companies would be doing that all across the country. So there's a reason they don't and I think it's because with respect to other CEOs of other companies and others. So with that, I will conclude and take any questions. [LB1018]

SENATOR AVERY: Thank you. Questions from the committee? Don't see any. Thank you for your testimony. [LB1018]

JOSEPH YOUNG: Appreciate it. [LB1018]

SENATOR AVERY: We're still on proponent testimony. Good afternoon. Welcome. [LB1018]

DARA TROUTMAN: (Exhibit 4) Good afternoon, Senator Avery, members of the committee. My name is Dara Troutman, D-a-r-a T-r-o-u-t-m-a-n. I'm testifying in support of LB1018 on behalf of the University of Nebraska. As Chief of Staff in the Office of the President, I've been involved in recruitment activities for about a dozen senior positions in university administration. Many have included the use of national search firms to help us attract new talent to Nebraska. I'd like to share with you some of the thoughts of leading consultants with whom we've worked. When we engage a search firm, one of the first things we discuss is the current requirement under Nebraska law to produce four candidates who are willing to be identified as public finalists. There is ample evidence that this disclosure places Nebraska at a disadvantage in the highly competitive market for top talent. David Bellshaw of Isaacson/Miller says the trend across higher education is toward more private recruitment processes, especially for a president. This has been the norm in private universities for some time and is becoming increasingly so for public institutions. Mr. Bellshaw says, quote, the role of president requires an individual who has acquired significant leadership experience in complex and nationally consequential organizations. In most instances, that person will be gainfully employed and very well known, so the possibility of a highly visible endgame with multiple finalists will dissuade such a person from engaging in a public search process. Molly Corbett Broad, president of the American Council on Education, told the Los Angeles Times recently that her experience as a university executive in three states has convinced her that confidentiality attracts the best leaders. She said she has a, quote, deep and abiding commitment to the First Amendment, but open searches tend to have a chilling effect and often lead to the hiring of less experienced candidates than a more confidential process. Kim Morrisson of Diversified Search says public disclosure

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

Government, Military and Veterans Affairs Committee
February 06, 2014

of multiple finalists can be a limiting factor in the development and in the maintenance of the candidate pool. Quote, there is no doubt that the level of confidentiality of the process has a direct effect on the composition of the candidate pool, and particularly the willingness of sitting presidents and chancellors to be considered. I have found that this is less a matter of anxiety over the loss of face of the individual, but rather a more reluctance to place their own institutions at risk. For example, there may be sensitive negotiations with the Legislature or with a donor which could be jeopardized if the individual's interest in a potential move were known. Dr. Morrisson says she has had candidates stay with a process only for as long as confidentiality can be maintained; once they had to make the decision to "go public," they declined to pursue the opportunity further. The fact is that recruiters know from years of experience that sitting presidents and chancellors are unlikely to risk publicity which might suggest they are looking for a position elsewhere. That's why so many leading universities, especially major research institutions like ours, recommend only one finalist near the end of the search process. Bill Funk of R. William Funk and Associates has placed nearly 400 presidents and chancellors. Among his recent searches, sole finalists have been named by Ohio State, the University of Minnesota, Purdue, Rutgers, Washington, Virginia, the North Carolina system, UNC-Chapel Hill, the university system of Georgia, University of Georgia, Georgia Tech, LSU, Clemson, and I could name others. Mr. Funk says, quote, if there is not confidentiality throughout the process, you can anticipate that no or few sitting presidents will agree to be candidates. It is not that you can't recruit good people where there is a disclosure requirement, but your pool will not be as robust as it would have been otherwise. Ultimately, the goal of LB1018 is to help ensure that the Board of Regents has the most options available in choosing the next president and future chancellors. John Thornburgh of Witt/Kieffer says that at the precise time when the overall pool of high potential prospects is dwindling across the country, quote, every potential roadblock to attracting the best presidential candidates needs to be identified and removed. Transparency and openness are widely and deeply shared values in public higher education. The Board of Regents will seek broad public input on the challenges and the opportunities facing the university, the characteristics of desired candidates, and suggested nominees. And a finalist would be named sufficiently in advance of the board's public meeting to provide opportunity for discussion and comment prior to his or her appointment. These elements would provide for public involvement in searches for university leadership without the consequences of the current law. We urge your favorable consideration of the bill. Thank you. [LB1018]

SENATOR AVERY: Thank you, Ms. Troutman. Questions from the committee? Let me ask you about the vice presidents being included in this. How necessary is that? Those are lower profile positions. We're not necessarily going to get superstars for vice presidencies. We might get one for president, but that's still a... [LB1018]

DARA TROUTMAN: The recruitment pool for vice presidents is probably a slightly more narrow in scope than that for chancellors and vice presidents. I think that the Board of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

Regents and Senator Hadley, as indicated in the testimony of Regent Clare and the senator earlier, would be willing to consider whether that provision should be removed from the legislation. [LB1018]

SENATOR AVERY: You also talked about a public vetting period. That's not in the bill. [LB1018]

DARA TROUTMAN: It is not currently, and there are states. Currently, there are at least 22 states that provide some sort of exemption in regard to searches for presidents and chancellors. In California, for example, Janet Napolitano was recently named the president of the University of California system. She was named seven days prior to the consideration by the University of California Board of Regents in regard to her appointment. I believe Texas has a disclosure requirement that's about three weeks prior to selection and confirmation. [LB1018]

SENATOR AVERY: I find it very uncomfortable siding with Texas over California. (Laughter) Any other questions? All right. Thank you for your testimony. Any other proponent testimony? Seeing none, we'll go now to opponent testimony. Professor, how are you? [LB1018]

JOHN BENDER: (Exhibit 5) Fine. Thank you. My name is John Bender, J-o-h-n B-e-n-d-e-r. I am a professor in the College of Journalism and Mass Communications at the University of Nebraska-Lincoln. I am here today on behalf of the UNL Faculty Senate Executive Committee which voted yesterday to oppose LB1018. The UNL, full UNL Faculty Senate was going to take up this issue at its meeting Tuesday, but the snowstorm forced a number of senators to miss the meeting, so we lacked a quorum. We have, however, had a straw poll conducted by e-mail, and the result of that is that 37 senators oppose LB1018 and only 5 support it. That's out of 65 senators. The executive committee believes that there are a number of reasons the Legislature should reject this effort to cloak the search process for university presidents in secrecy, greater secrecy than it now has. First of all, we begin with the presumption that openness in government, including the selection of university leaders, best serves the public interest. Secrecy promotes distrust and cynicism. A decision that is reached publicly, even though it may be unpopular, is one that the public can eventually accept if they understand the basis for that decision. When the decision is made in secret, inevitably some people will start to think that the decision was made not to benefit the public interest but to benefit some narrower interest. That may not be true, but where secrecy is the rule, those doubts gain a foothold and start to corrode public trust. The Faculty Senate Executive Committee also finds the degree of secrecy allowed by LB1018 as contrary to the public nature of the university. Whoever is president or vice president or chancellor has the obligation of explaining university actions, university decisions to the public. They're accountable to the public. So whoever holds one of these positions must be comfortable with public scrutiny. So it seems contradictory to begin that person's

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

Government, Military and Veterans Affairs Committee
February 06, 2014

tenure with a basically secret process. And it's not only the candidates for these jobs who are open to public scrutiny, public judgment. The regents are elected by the voters. They are accountable to the voters. And the decisions that they make about university leaders are among the most important that they will make. Those decisions might affect the university for years or even decades. And it seems contradictory again to require that lesser decisions that the Board of Regents make be open to a greater degree of public scrutiny than these very consequential ones. Also LB1018 would create a system in which there would be a greater degree of openness for university positions that are less consequential. Vice chancellors, deans, so forth would continue to be open to public review much as the process works now for presidents and chancellors. And while those are important positions and certainly they deserve public scrutiny, subjecting those administrators who have less impact on the university to greater scrutiny seems upsidedown. Those who argue in support of LB1018 say the greater secrecy in the search process will mean the university will attract a larger and better pool of candidates. We share their eagerness to make sure that the University of Nebraska and its campuses attract the best possible candidates. We're a little bit concerned that the evidence on...in support of that, however, is largely anecdotal and a lot of it comes from for-profit headhunting firms that have a financial interest in promoting that view. But even if it were true that secret searches attract more and better candidates, the end does not justify the means. The purpose of openness is to allow for public consideration, reflection, and reaction. Nebraska taxpayers, students, parents, alumni, and faculty pay for and contribute to the university. They are the ones who have the greatest stake in the future of the university. That stake entitles them to an opportunity to observe the process fully and comment on the candidates before a final decision is made. Thank you. [LB1018]

SENATOR AVERY: Thank you. Good to see you. [LB1018]

JOHN BENDER: Good to see you. [LB1018]

SENATOR AVERY: Questions? Senator Scheer. [LB1018]

SENATOR SCHEER: It concerns me that we would not be interested in attracting the best candidates. And so I'm not trying to imply just that the ends justify the means, however, there is benefit to having the best pool of candidates available. If indeed there was a vetting process of a singular candidate at the end, does that not necessarily have the transparency? You still would have the opportunity to vet that person, to communicate with that person, and look into the person's background, and to meet the person. I'm having a hard time distinguishing the difference of having one individual that you could vet entirely versus having two or four of those. It gives you more people to vet, but ultimately if we're...if the decision by policymakers is looking more strongly at one individual versus the others, why is one not having the one that has the leading candidate just as open as far as the vetting process and information? Explain to me

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

that...how having more than one if the one is indeed looked at to be the presumed appointee? [LB1018]

JOHN BENDER: Well, being able to evaluate the process implies being able to make comparisons. Okay. We're presented with this one person that the Regents say is the finalist. This is the person we want. At that point it really is kind of a done deal. But how do we know that that person is indeed the best? What about the others? We can evaluate that person only by being able to compare that person to the others who were among the finalists. We just went through this process in the College of Journalism and Mass Communications. We selected a new dean at the start of this year. That person will be coming in this spring or this summer. And when we did that, we had five candidates come and speak to us. They were all I think very good candidates. But being able to see who all those candidates were was helpful for us in making our comments to Vice Chancellor Weissinger who was the decisionmaker in that instance, and I think that helped her make a better decision by being able to have our input, our reaction to all five of those candidates. [LB1018]

SENATOR SCHEER: Okay. [LB1018]

SENATOR AVERY: Any other questions? Thank you very much. Opponent testimony, LB1018. Welcome, Mr. Peterson. [LB1018]

ALAN PETERSON: Thank you, Chairman Avery, members of Government Committee. I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. Today I represent Media of Nebraska. That's a open government, First Amendment type coalition of all the Nebraska news media, including the print media, the broadcasters, the daily publishers, Nebraska Press Association, and the Nebraska Broadcasters Association. They're united in opposing this rather enormous change for more than 150 years of tradition of open records in this state with respect to our government. I'll quickly mention a little history. I thought the public records law was pretty old when I was asked by the...some senators to look at it and try to redraft parts of it in 1979, and I didn't do my research then, but I did it yesterday. The public records law in exactly the same phrasing was passed in 1858 by the Territory of Nebraska, and the language that was passed saying that the citizens shall have the right to go in during regular business hours and examine the public records, that's been the law ever since. That phrase is still in Section 84-712. The exceptions stuff was drafted in 1979, and I'm guilty of working on that frankly ever since, trying to keep the exceptions from being too broad so they'd swallow the rule of open government, open records. In '07 of this century, 2007, a compromise was reached on this very issue. And everybody...well, let me take that back, the University of Nebraska, Media of Nebraska, the school boards folks, the superintendents of schools, and other parties, Common Cause, were part of that compromise to reach somewhere in between totally open records. And the compromise was, okay, application materials of people applying for jobs for any public job will not be public except for the finalists. And we

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

Government, Military and Veterans Affairs Committee
February 06, 2014

messed around trying to find a definition of finalists and ended up with what we have right now. It's the last four or if there aren't four applicants, then however many that had reached that final pool, those are the finalists. That was the deal. Now unilaterally the University of Nebraska, a single complaining party has come before you with LB1018. I'm not upset but I'm surprised. I don't know. I guess a deal is not necessarily a deal for some folks. But let's look at the reasoning behind this. Senator Hadley, Regent Clare, these are people that I respect enormously. But why after 158 years I think it is would we change this exception of public records for one party? All the other exceptions to the public records law are general or generic. They apply to everybody. Or like personnel records, medical records, those are legitimate exceptions. Nobody has had the courage, I'll use that word, to come forward asking for an exception to the public records law for just them. Should application materials for other important job seekers for public jobs, should they be treated differently? Why are they so...what's so unique? Has anybody here never applied for a job change and worried a little bit about their security with their present one? I doubt it. I've changed a couple of times. It's life. University, yeah, I know a lot of other states are doing it with terrible results. Now I don't have time but if I were asked about a couple of their state illustrations, Pennsylvania and Michigan, I could tell you what's happened when they went to the one finalists search. It's not pretty. We ought to stick with our open government here. It's worked pretty well for a century and a half and now we want one party to start saying it applies to everybody except me? Come on! It's not justifiable. You might get a bigger pool. Can I finish this sentence, sir? [LB1018]

SENATOR AVERY: Finish the sentence. [LB1018]

ALAN PETERSON: You might get a bigger pool. The question is, how deep is it? You know, you're looking for one big fish. You don't want to dynamite the big, wide, shallow river. You want to find that hole, maybe on an outside bank where it's undercut a little bit. Maybe you got to reach down and get the best fish you can. Maybe you've got to do the best you can with our existing law. You don't need a huge pool. You need the one big fish, so to speak. You need the keeper. I would answer questions if there are. Thank you. [LB1018]

SENATOR AVERY: All right. Then you've asked for this question in your testimony. Tell us about the disasters in Michigan and Penn State. [LB1018]

ALAN PETERSON: Pennsylvania is a wonderful state. They've had a tragedy, as we all know, of some secrecy problems in their university with regard to the disclosures about a coach who allegedly and has been convicted of molesting kids. The president lost his job, a former, fine Nebraska chancellor Graham Spanier and he's under indictment. It's his job they're trying to fill. They've got a one person search...one finalist search system there, all secret. So they've moved it forward for two years trying to replace Dr. Spanier. And in October of last year the regents, having told nobody who they're looking at,

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

Government, Military and Veterans Affairs Committee
February 06, 2014

announced that they were going to make a big personnel decision. And it turned out that a couple of, three days before they had their meeting to make their big announcement which hadn't even been told to all of their regents, or trustees they call them, they cancelled it. And it turns out the person that they wanted hadn't been vetted very well. He was somebody from the state University of New York system, I believe a chancellor or president of one of the medical centers. And it turns out he had \$350,000 or \$370,000 of unreported income that he was supposed to have been reporting to the system. I don't know the details of that. I know that he resigned shortly thereafter. Penn State cancelled the announcement and I assume started over. There's your secret one finalist search for you. In Michigan just a couple of weeks ago with their one finalist search system they finally hired somebody. And when they came to the time to announce it with their secrecy system, they didn't even allow people to have input at the meeting of their regents. I'm not sure if they're regents or trustees, whatever. And neither faculty nor students or anybody else was allowed to say bing. I...you know, there's been a lot of hearsay put in front of you and I normally wouldn't do that, but this is just a report of what somebody at the...at one of the...one of the faculty members who wanted to speak. Here's what he said about it. And I don't think there's anything controversial, so I won't worry that it's inaccurate. He says he applied to speak. He was turned down. He was told there would be no public comments. If I had been allowed to speak, I would have spoken about how the selection process was an example of how the university has eliminated the participation of the governing faculty and students in the governance of the university. He says nobody on the faculty was selected for the search committee except those who were handpicked by their regents and who they knew would go along. You know, sure there's a cost. Might have a smaller pool. This state has always been an open government state. I love it that way. I hope you do enough to vote down this terrible bill. [LB1018]

SENATOR AVERY: Let me ask you this in the case of Penn State and Michigan. How confident are you that an open process wouldn't have produced the same outcome? [LB1018]

ALAN PETERSON: Because... [LB1018]

SENATOR AVERY: A strong candidate in the closed process is going to be a strong candidate in the open process. [LB1018]

ALAN PETERSON: Absolutely. But you know, vetting or checking references is one of the things people in the media, people in the public get to do if they know who to check. With regard to the gentleman who was picked by Penn State, apparently, although we don't know for sure because they won't admit anything but it's pretty well known, and then was found to have wrongfully taken \$300,000-and-some in income and not reported it to his superiors, if they'd been vetted that could have been looked into. As far as Michigan is concerned, they really closed down, so you have the faculty rather

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

Government, Military and Veterans Affairs Committee
February 06, 2014

furiously apparently. And we don't know. We're always hypothesizing what would have, could have, should have happened. But we know that there won't be vetting if it's secret. The public, we pay the 2.3 billion bucks a year to this very important university. And I love the university. I used to represent it at many times under many great presidents. I've represented some of the regents personally and the leading president personally. I love it. I love it partly because it's open, trustworthy, and doesn't sneak around. Let's not change that. [LB1018]

SENATOR AVERY: Well, what I was trying to get at was... [LB1018]

ALAN PETERSON: Yes, sir. [LB1018]

SENATOR AVERY: ...let's say you have a candidate, one candidate comes out of a closed process, turns out to be a flawed candidate. [LB1018]

ALAN PETERSON: Right. [LB1018]

SENATOR AVERY: That same candidate could have also emerged out of an open process and could be just as flawed. How could you... [LB1018]

ALAN PETERSON: I see. [LB1018]

SENATOR AVERY: ...what does the open process do to avoid that? [LB1018]

ALAN PETERSON: Okay. I'm sorry. And I think that's close to what Senator Scheer was asking a while ago, too, and it's a good question. What's the difference as long as we get some chance to vet them at the end. Okay. You know, I suspect as strong-minded and as powerful as our Nebraska regents are, once they've made up their mind that the chance to vet or have some input is pretty meaningless, pretty meaningless, they're not about to back down and change their mind unless there's something enormously serious. The input about the values of the incoming possible presidents, that's something people want to have input in before the mind gets set in cement. That's the difference. [LB1018]

SENATOR AVERY: What if the vetting period preceded the formal offer? You...yeah, you'd have a vetting period, say a ten-day vetting period... [LB1018]

ALAN PETERSON: Yeah. [LB1018]

SENATOR AVERY: ...or public, faculty, all kinds of interested parties to have access to the files, have access to the candidate, but a formal offer could not come until after that vetting process was completed. [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

ALAN PETERSON: I think what I was trying to suggest is that horse left the barn when the regents announced who their...that's a funny use of the word finalists, one finalist, once they've announced who they've picked, sure, they're going to listen because the can't close their ears. But are they going to be likely to swallow their decision? Not unless the person is probably guilty of murder or rape or whatever or absconding with money like the Penn State's problem. Too late. [LB1018]

SENATOR AVERY: My guess is that everybody knows how to use Google. And I would advise any search committee, start with Google. A lot of this stuff is easy to find out. [LB1018]

ALAN PETERSON: Yeah. [LB1018]

SENATOR AVERY: You don't have to put yourself in that situation. [LB1018]

ALAN PETERSON: You know, one part of checking when somebody wants a job is to check their references. How the dickens are we going to check references with everybody sworn to secrecy? I don't get it. It's like... [LB1018]

SENATOR AVERY: I think that vetting process you wouldn't necessarily have that obstacle. I mean, the references would be available to you. [LB1018]

ALAN PETERSON: Well, as I understand it, the search companies, one thing they do is they basically swear everybody they talk to further secrecy. That's part of the game. [LB1018]

SENATOR AVERY: But they'd have to abide by our law. [LB1018]

ALAN PETERSON: I would hope so. [LB1018]

SENATOR AVERY: If they're going to play here, they abide by our law. [LB1018]

ALAN PETERSON: Yeah. I would hope there wouldn't be games played as one of you senators mentioned might have happened up at UNMC. Four finalists, all we...they all passed away or they all went away, and then we'd picked who we wanted. There's a lot of ways to play games. Most of you know that the university got in trouble a few years ago for interviewing down in a Kansas City bar and claiming, well, we weren't really interviewing finalists. And the Attorney General got all over them on that, warned them don't play games with the public records and meetings laws. I love the university but it's got a lousy record on this. [LB1018]

SENATOR AVERY: For the record, no current Regents, certainly no president here today were involved in that Kansas City deal. (Laughter) [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

ALAN PETERSON: I don't expect I'm going to be hired much by the Regents, but, you know, (laughter) I come here as a very loyal past attorney for them and for, well, one of the Regents and one of the big officers involved. And my bias is for the university, except for the people who pay the bills and want to have a little input. So I really think this is a pretty bad bill. I hope you will let it go. [LB1018]

SENATOR AVERY: I think you've made that clear. Thank you. [LB1018]

ALAN PETERSON: Thank you. I'm glad I did. [LB1018]

SENATOR AVERY: Thank you very much. Any...we have another question for you. [LB1018]

ALAN PETERSON: Yes. [LB1018]

SENATOR AVERY: Senator Murante. [LB1018]

ALAN PETERSON: Senator Murante. [LB1018]

SENATOR MURANTE: Listening to your testimony, and I think we can all agree there are a lot of different ways to get at transparency and there are a lot of different ways to get at accountability. And it seems to me that at the end of the day the Board of Regents are elected officials just like all of us and just like a lot of people around the state of Nebraska. And when we get to the accountability issue about how to thoroughly vet or what will motivate them to thoroughly vet candidates, it seems to me that these guys having the ability to lose their jobs because they hire someone who is universally regarded as incompetent or something like that is a much greater motivator than whether or not four candidates have been disclosed to the public. It seems to me that at the end of the day they're accountable to the people in races that in some regards are higher profile than even our races for the Legislature. And ultimately the people will have the ability to hold them accountable. And they...if every Regent I've talked to seems to understand that, and I wanted to get your comments on... [LB1018]

ALAN PETERSON: Sure. [LB1018]

SENATOR MURANTE: ...there is a difference. We aren't talking about a Supreme Court here who have life terms and no accountability to anybody. These guys have to go back before the people and justify the decisions that they make. [LB1018]

ALAN PETERSON: None of the opponents of this bill would take away from the Regents the power and the right to make this choice. However, for decades and decades there's been permission of input from faculty, students, the general public, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

the media before they make the choice. They're going to be accountable when they run every several years, I understand. Some of us know that one or more of the Regents have spent nearly a half a million bucks to get those jobs. I assume they want to keep them. They spent that much on their campaigns. They're largely business people. My concern is the student community, the academic community, and the taxpayers of Nebraska. Do we get our nickel's worth of input before they make the judgment? Yeah, you could probably run a campaign if you got enough money to throw one out. I don't think that's ever really happened. But, sure, there's more ways than one to talk about accountability. [LB1018]

SENATOR MURANTE: To throw a Regent out you mean? [LB1018]

ALAN PETERSON: Pardon? [LB1018]

SENATOR MURANTE: To throw a Regent out, is that what you're saying? They don't have enough money to throw a Regent out? [LB1018]

ALAN PETERSON: Yes. Yeah, you know, like a Supreme Court judge was thrown out a few years ago... [LB1018]

SENATOR MURANTE: Okay. [LB1018]

ALAN PETERSON: ...because people with a lot of money put it together, term limits people, and threw out Judge Lanphier. It could happen. But that's an awful distant form of accountability. So your question is good, but I just think... [LB1018]

SENATOR MURANTE: So what do you think would be a greater motivator, because you made the affirmative statement that if we do this that there...I think you may have just gone out and said that the candidates would not be properly vetted, that we would end up with a president that was not properly vetted,... [LB1018]

ALAN PETERSON: Yeah. [LB1018]

SENATOR MURANTE: ...which would suggest that by passing this, the primary motivator for the Board of Regents right now to thoroughly vet candidates is a state law that says that the four finalists have to be open to the public rather than the fact that if they hire a bum, the people of Nebraska will throw them out on the street. It seems to me like they are going to be motivated by one much more than the other and it's not the state law that's motivating them. [LB1018]

ALAN PETERSON: That may well be true. But I'm not just talking about the careers of the Regents. I'm talking about whether do we want a pure businessperson in the job? The value choice is made in selecting the top leaders of the university. You can go to a

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

Government, Military and Veterans Affairs Committee
February 06, 2014

Microsoft model. Do we want a Bill Gates? Or you can go to an academic model. Or you can try to find somebody like J.B. had with both sets of skills. Wonderful. Massengale, Varner. I heard Varner was selected secretly. I don't know about that. But I know the last several presidents have been selected in this open system and this worked pretty darn well. Why would you change it? Why would you create one exception for one entity in this state to public government? I hope you don't. Thank you very much. [LB1018]

SENATOR AVERY: Any more questions? Thank you, Mr. Peterson. [LB1018]

ALAN PETERSON: Thank you. [LB1018]

SENATOR AVERY: We're on opponent testimony to LB1018. Now let me see a show of hands of people who wish to testify. Hasn't reduced much. (Laughter) Welcome, sir. [LB1018]

DAVID BUNDY: (Exhibit 6) Chairman Avery, committee members, I'm Dave Bundy, B-u-n-d-y. I'm the president of Media of Nebraska and I'm the editor of the Lincoln Journal Star testifying in opposition to LB1018. Few decisions made by the University of Nebraska Board of Regents matter more to our state and its citizens than who leads the university system. The public who elects the regents and who funds the system deserve some idea of how the regents carry out this important duty. Proponents of LB1018 claim that we need this bill, that we need this secrecy to compete for the best candidates. Do we think so little of our place and our people that we think it's necessary to sacrifice Nebraskan ideals of honesty and government transparency to lure applicants? But from a business standpoint let's just say that really is true. What do we get if we win this top secret competition for top talent? We get a president who prefers to sneak around behind his current employer's backs. We get an executive who feels that he or she deserves special treatment because it's hard to balance a job and a job search the way that most of us need to do it in the real world. And we get the leader of a system dedicated to intellectual curiosity who got the job through a process that was designed to quash all intellectual curiosity. A university system president works collaboratively, builds relationships, and wins people over. An open interview process is a perfect showcase for those skills. The process that would be the product of LB1018 shows regents none of these things and it shows the public even less. Our current system, which conceals the identity until there are four finalists, represents a reasonable compromise that's already created an exception to our open records law, and it's an accommodation for the university system at the expense of students, faculty, and taxpayers. LB1018 further erodes the rights of all those key stakeholders. LB1018 would make public a lone finalist. What exactly is a finalist? It sounds a lot like the hire. What kind of revelation would it take for the regents to rethink their chosen finalist? If the public or the regents found something disturbing when their choice was exposed to the light of day, would they "unfinalist" him or her? And after that, how many top applicants would we get? The feedback system proponents of LB1018 have described

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

Government, Military and Veterans Affairs Committee
February 06, 2014

would be little more than a condescending pat on the public's head. How much better do the regents think their secretly-vetted best candidate would be than the best candidate who is committed enough to the University of Nebraska to declare his or her interest publicly and submit himself or herself to stakeholder scrutiny? As editor of the local newspaper and as president of Media of Nebraska, I care deeply about access to information. And I know that Nebraskans care deeply about access to information. If I leave out "Blondie" or the crossword puzzle, you wouldn't believe how fast I relearn that lesson. Nebraskans are rightly proud of their university system. They're invested in it emotionally and financially. The rationale behind renegeing on our current compromise for hiring top administrators at the university system is the higher ed equivalent of saying all of the cool kids are doing it. It's wrong and it's lazy and it's not what Nebraska and Nebraskans are all about. Five years from now, do we want our president sneaking out of town to interview at some academically greener pasture while he or she is on the time clock for us? Might LB1018 bring us marginally better candidates? The public will never know by the bill's very nature. Perhaps the job search would appear cleaner, with all discussion and dissent happening behind closed doors. Certainly, the regent's jobs would be made easier by not giving the folks who elected them a chance to question and look at their work. But who will serve us better, a candidate with enough integrity to declare his or her interest as a finalist, meet students, faculty and be open to public questioning or the finalist, slipping onto campus for a ceremonial unveiling? And which candidate will lead right from the beginning from a greater position of strength, the regents' mystery finalist or one the public has met at some point when its feedback might have mattered? Give the public, the students, the taxpayers what they deserve, what they've paid for and earned, a seat at the grown-ups table for at least part of the process that chooses one of the most public and most important jobs in the state. Please reject LB1018. I'd be glad to... [LB1018]

SENATOR AVERY: Thank you, Mr. Bundy. [LB1018]

DAVID BUNDY: ...answer any questions. [LB1018]

SENATOR AVERY: Questions from the committee? [LB1018]

DAVID BUNDY: Please not about crosswords or "Blondie." (Laughter) [LB1018]

SENATOR AVERY: Senator Scheer. [LB1018]

SENATOR SCHEER: I'm just curious. In your opinion, what length of vetting period is appropriate? [LB1018]

DAVID BUNDY: Well, I mean, the press, we look at vetting as part of our job. The members of the public probably want to do the same thing. You know, if we've got four candidates, you know, I guess I'm looking at vetting as only part of the issue here. I

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

Government, Military and Veterans Affairs Committee
February 06, 2014

mean, I...you know, I think that the regents are probably incredibly competent at Google searching names as well. They are going to know if there's a problem. There's a chance it couldn't, but... [LB1018]

SENATOR SCHEER: I'm not talking about Googling. My impression of vetting would be exactly what you had talked about having a candidate on the campus accessible to students, to faculty, to other members or policy partners within that institution. I'm just asking, you give...you've presented several reasons not to and I'm asking now in your opinion what that specified time period might be that would be adequate for that vetting. [LB1018]

DAVID BUNDY: I don't think they need to camp out, but I think that, you know, a few days, a chance...a couple of days on each campus to meet people and to be available to answer questions, I think that would be adequate. But I think that the point was brought up earlier, if we're doing this one at a time, it doesn't give people really the chance to compare. I think that the idea of doing that for one finalist at a time when this is the regent's selection at this point and this is the person we're unveiling, that's problematic. I don't think it gives the public an adequate chance to see what the options are. I mean, that's part of what we want a window on this for. [LB1018]

SENATOR SCHEER: And is there a distinguishable difference between vetting two or vetting six? [LB1018]

DAVID BUNDY: If four is the law right now, we can live with that. [LB1018]

SENATOR SCHEER: I'm not asking what the law is. I asked you is there a distinguishable difference between two and six? [LB1018]

DAVID BUNDY: Four. (Laughter) I don't...I'm sorry, I'm not trying to be... [LB1018]

SENATOR SCHEER: I'm not asking you to be flippant. This is serious stuff. [LB1018]

DAVID BUNDY: I understand. [LB1018]

SENATOR SCHEER: So I'm asking you to tell me what the difference between not necessarily singular but what is the difference between two if you're truly trying to have comparison? What is the difference between two or your four or six? Wherein lies the difference? [LB1018]

DAVID BUNDY: I think that if there were six that the Regents considered finalists, we'd want to know everyone that they considered as a finalist. I think the more information that we have, the better off that we are. So I would prefer having access to all the applicants, but the horse is out of the barn on that one. Four is a good compromise, but

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

we'd rather have six than two. [LB1018]

SENATOR SCHEER: Okay. Thank you. [LB1018]

SENATOR AVERY: Any other questions? Thank you, Mr. Bundy. [LB1018]

DAVID BUNDY: Thank you. [LB1018]

SENATOR AVERY: Additional opponent testimony. [LB1018]

JACK GOULD: (Exhibit 7) Senator Avery, members of the committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d. I'm here representing Common Cause Nebraska. I am not going to follow my written testimony. It's really good. (Laughter) I'd much rather read it, but. First of all, I know that the...Bobby Dylan has been quoted today and so I just think we ought to point out the fact that when Dylan wrote or sang the song, "Times Are A-Changing," he wasn't talking about a change toward more conservative and secretive. That was not part of the song. And so I want you to be aware of that. I think it's important to note that when we close the number of people that are going to be...have a voice in this, we ought to really take a look at what we're asking. The regents are very much respected here and I respect them as well. But keep in mind, these regents have spent as much as \$450,000 to be elected, much of it their own money. To assume that that group of people truly represents a cross-section of Nebraska is not exactly...is a little presumptuous, let's put it that way. I think it's important that all of the people of Nebraska do have a voice and, true, they are elected, but they also have the money to spend in order to get the job. I think we are...that agents are saying to us trust us, we will make the decision. I'm not sure that you can do that. You're going to say that a handful of men with their views are going to determine what the future of Nebraska will be. The more people you include, the better your choices, the better the discussion. I don't think you want to close that circle. Also, there are rumors, as you know, running all over the place about who's going to get the job. I mean, we've heard that the Governor is going to get the job. We've heard that stem cell research is going to be an issue, that maybe the person we're going to hire is someone in favor of the...removing stem cell research. I mean, these are rumors but the way you put rumors to peace is to simply step up and be open. You have to just say, look, this is what we're doing, these are the candidates, there's no preconceived plan, there's no preconceived candidates. It's an open process and everybody has input. This argument about we're going to have the finalist come out and speak to the public after he's selected, to be honest with you, I can't think of a worst stain to put on a person's back than to have a group of regents select the candidate, put him out in front of the public. The public boos and says we don't like him, and then the regents are going to say, no, we don't like you, go home. I mean, just imagine what that would do a person? I mean, that's his career. It's gone. So, you know, we're concerned about finalists who might be rejected. What about the guy who gets...the one guy who gets rejected in the end? We're not going to do that to

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

Government, Military and Veterans Affairs Committee
February 06, 2014

people. I just can't imagine that we would. I think, too, we have to recognize the fact that Nebraskans respect courage and it takes guts and courage to take on a job like the university would ask a president, and to stand up and say I want the job, publicly. Now what we're saying is we're going to defer to candidates who really want to hide. I mean, they don't want to be known. They want the job but they don't want to be known. That's not courageous. That's not courageous. Nebraskans deserve better than that. Thank you. [LB1018]

SENATOR AVERY: Thank you. Any questions? Senator Murante. [LB1018]

SENATOR MURANTE: I have a question for you, Jack. Your courageous statement. [LB1018]

JACK GOULD: Yeah. [LB1018]

SENATOR MURANTE: Do you think if we passed a state law in Nebraska that said that anyone who applies for a job has to send a letter to their employer letting their employer know that they were applying for another job, do you think that would impact the decision that people might have to seek and explore other jobs? [LB1018]

JACK GOULD: Well, you know, as a teacher I've been in a position where I'd left the job, but I did notify the people that I was leaving and gave them plenty of time to know that I was leaving. [LB1018]

SENATOR MURANTE: When you chose to leave,... [LB1018]

JACK GOULD: When I chose to leave. [LB1018]

SENATOR MURANTE: ...when you got the job, but I'm saying when you're applying. [LB1018]

JACK GOULD: No, no, no. Before...actually I think before I got the job I let people know that I was applying. I didn't make a secret out of it. When I applied for a coaching job, you know, I didn't hold it secret. Everybody knew that I applied. People were rooting for me and some weren't. But... [LB1018]

SENATOR MURANTE: Well, I think we've long established that you are special kind of person, Jack. [LB1018]

JACK GOULD: Oh, well, thank you. [LB1018]

SENATOR MURANTE: (Laughter) And I think most people would be reluctant to look for other jobs or apply for another job if they knew they had to send their current

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

employer notification that they were seeking jobs elsewhere. And I don't think that makes that average person not courageous. [LB1018]

JACK GOULD: Well, but that isn't the requirement here, that isn't the requirement here. I mean, they can apply, you know, the university will make it public. They're not writing a letter to their boss and saying it. And I don't think that...I would imagine that when Senator...when President Milliken decided to take this job in New York, he didn't necessarily keep it secret that he was doing it. He wanted the job, obviously. He took the job. [LB1018]

SENATOR MURANTE: Right. [LB1018]

JACK GOULD: But he didn't write a letter to say I'm...you know, this is a secret, but he didn't keep it from Regent Clare. He knew. I don't think that this secretive issue is nearly as important as you folks would like to make it. I mean, I think if it is a secret process, we're all in trouble. If it's an open process, then the public will have access, we'll all have an opportunity to see who is out there and who was rejected. I mean, I think that's an important part of it. [LB1018]

SENATOR MURANTE: Thank you. [LB1018]

SENATOR AVERY: Any other questions? Senator Karpisek. [LB1018]

SENATOR KARPISEK: Thank you, Senator Avery. And thank you, Mr. Gould. I should have asked the proponents on this bill, but you've been here enough to know that I'm usually a little later on my thought process. (Laughter) But how would everyone feel I wonder if the Legislature wasn't open and we didn't have people come to testify on this, and we just at the end of the 60-day session just say: here's what we decided. Thanks. [LB1018]

JACK GOULD: I think it would be a travesty. [LB1018]

SENATOR KARPISEK: We wouldn't get to see you. [LB1018]

JACK GOULD: Well, that's a travesty in itself. (Laughter) [LB1018]

SENATOR KARPISEK: Anyway, I'm sorry to say it to you but I wasn't going to get a shot in until I wanted to...until Senator Hadley closed, and he has a lot of good things to say, so I didn't want to take it from him. [LB1018]

JACK GOULD: I'm sure he does. Thank you. [LB1018]

SENATOR KARPISEK: Thank you. [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR AVERY: Any other questions? Thank you for your testimony. [LB1018]

JACK GOULD: Thank you. [LB1018]

SENATOR AVERY: Any other opponent testimony? Senator Pappas. [LB1018]

JIM PAPPAS: Former. [LB1018]

SENATOR AVERY: Former. [LB1018]

JIM PAPPAS: Mr. Chairman, committee, members, my names is James, "Jim" Pappas, J-i-m P-a-p-p-a-s. I'm here today representing University of Nebraska-Omaha, American Association of University Professors, AAUP, and we're here to oppose LB1018. I'd like to make a couple of real general comments. First, one for a couple of these older committee members, I was on the Ag 40 Committee back in the seventies, for your information. So I do go back a ways. But one thing I will want to emphasize for some of the people that testified in favor of the bill. State government is not like private business. You cannot compare state government to private business. It just doesn't work. It has to be debatable. I'll debate that with anybody. Most of you have been here long enough to realize that it doesn't work like private business. If it did, a lot of senators wouldn't have their jobs today. Simple as that. I want to also address transparency. That's been the buzz word in the Legislature and Washington, D.C., the last year, year and a half, two years, and it'll probably be through the next presidential election, I might add. So if we're going to talk transparency, let's keep it going now and keep our transparency what we got. To add a little bit about the vetting program and the process, why we need more people and have it be open to the public, the educational community is different. It's kind of like a fraternity. In this fraternity, as an example of the student that testified in favor of LB1018 earlier, you saw her credentials, the places that's she's been to school at. Well, she's made contacts all over the United States with different educators throughout the country. So anytime you get two or three candidates that are released to the public as potential candidates here, right away you're going to have people within the system that know something about them or know somebody that knows them somewhere, because I don't think...I think Senator Avery and Senator Hadley can both commit because they've been in the educational system. The broad-based people that teach and instruct in the system, how many places they've taught, instruct, and people they know around, they're going to find...they're going to know things about these people that you can't Google. They're going to know...they're going to say, hey, you know, I was on a committee once or had a friend who was on a committee once and this guy is really interested in ag even though he's a city guy. Because right now we talk about the ag interests. You know, you look at the Board of Regents now. I don't think you see a whole lot of really ag-backed people on the Board of Regents today. You know, at one time there was. One is the Lieutenant Governor now, but unfortunately he's not there

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

Government, Military and Veterans Affairs Committee
February 06, 2014

anymore. So you can't really say, you know, we can't rely on the Board of Regents to make sure we have somebody, the next president will be ag oriented. That's not going to happen. That's where the public comes in. That's where you need the public to be able to come out and talk to people about it. You know, when we talk about keeping things secret, it works quite well sometimes. Here about ten years ago with approval of the Board of Regents, the approval that a chancellor approved to appoint a athletic director will point at a football coach without letting the public get involved. I think everybody knows the outcome of that, what happened with that 10 or 12 years ago. Wasn't real pretty. But never none of the regents got recalled over that, because of that, and the public was in an uproar over the Nebraska for a long time on that one. But I'd like to just reemphasize, this isn't a business. You can't compare it to Microsoft. We got to keep going with the transparency and let the public get and keep involved. [LB1018]

SENATOR AVERY: Let me ask you, are you finished? [LB1018]

JIM PAPPAS: Yeah. [LB1018]

SENATOR AVERY: Oh, thank you. (Laughter) [LB1018]

JIM PAPPAS: Can I go? [LB1018]

SENATOR AVERY: No, (laughter) not yet. You represent AAUP... [LB1018]

JIM PAPPAS: Yes. [LB1018]

SENATOR AVERY: ...and UNO. [LB1018]

JIM PAPPAS: Yes. [LB1018]

SENATOR AVERY: Did they have a membership meeting and discuss this... [LB1018]

JIM PAPPAS: Yes. [LB1018]

SENATOR AVERY: ...and voted? [LB1018]

JIM PAPPAS: Yes. They wanted to come down and testify, but because of the hearing, the dates, the time, the people who were going to come down and testify, they couldn't. So yesterday I said, you know, because I represent you anyways I'll gladly step in for you. [LB1018]

SENATOR AVERY: Thank you. Any questions? Senator Scheer. [LB1018]

JIM PAPPAS: Uh-oh. [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR SCHEER: No question. But I think true and fairness to the Regents you say they have no ag basis. At least in my area, I think you'd be hard-pressed to see that Mr. Pillen is not... [LB1018]

JIM PAPPAS: Yeah. [LB1018]

SENATOR SCHEER: ...an ag-oriented individual. So for you to imply that there's no... [LB1018]

JIM PAPPAS: True. I forgot about him. And I know him. [LB1018]

SENATOR SCHEER: ...ag representative on the Board of Regents I think is a little far. [LB1018]

JIM PAPPAS: One out of how many? [LB1018]

SENATOR SCHEER: Well. [LB1018]

JIM PAPPAS: Yeah. But Mr. Pillen I do, I know him, and he is the same guild. One of my former lives I was also president of Nebraska Pork Producers, so I'm quite aware of... [LB1018]

SENATOR SCHEER: And I understand he's a big-time guy, so I mean I'm not trying to imply that... [LB1018]

JIM PAPPAS: Oh, he's not either. He was a veterinarian too. [LB1018]

SENATOR SCHEER: Well, he reaches a vast area. And I'm not trying to imply that he's not been... [LB1018]

JIM PAPPAS: Yes. [LB1018]

SENATOR SCHEER: ...a successful businessman as well, but he does I think understand the ag relationship to that. So I'm not being critical of that. I just wanted in fairness... [LB1018]

JIM PAPPAS: In livestock production side, probably not the crop production side. [LB1018]

SENATOR SCHEER: I would say that's fair. [LB1018]

SENATOR AVERY: Any other questions? Thank you, Mr. Pappas... [LB1018]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

JIM PAPPAS: Thank you. [LB1018]

SENATOR AVERY: ...or Senator Pappas. We're still on opponent testimony. Welcome. [LB1018]

ROSE ANN SHANNON: Good afternoon, Senators. I'm Rose Ann Shannon, R-o-s-e A-n-n, Shannon, S-h-a-n-n-o-n. I'm the news director at KETV in Omaha. I've covered news in Nebraska for more than 40 years and I'm absolutely passionate about open government. I've seen the good that comes from openness and I've seen the harm that comes from secrecy. The proponents of LB1018 are concerned that we won't get the best candidates for our high-level university jobs if we continue to make the names of the four finalists public. I can appreciate that point of view. But as a lifelong Nebraskan, I think it sells our state and our university system short. We have attracted excellent candidates in the past, as you all know, and will continue to do so because we have a lot to offer here and because our hiring process if secret won't make that situation change. The Omaha World-Herald made an excellent point in its editorial this morning. It said most qualified applicants would have good relationships with their boards and they would be up-front with them about their intentions to seek another position. I think it's the professional thing to do and I think it's a desirable quality in a person that we're looking for in this job. It's the honest thing to do. The University of Nebraska system is important to Nebraskans. It educates our future leaders, it contributes to the growth of our communities, and it's supported by tax dollars. The public, students, and faculty have a right to know who is in line to lead one of the most important institutions in the state. The interest of the media is in supporting those rights. The public has the right to look into the candidate's backgrounds to compare one candidate against another. They have a right to participate in that vetting process, and it can be valuable. As you know, at committee hearings you get information from people who testify that can influence your opinion and things that you may not have known. I'm also concerned about another thing that the passage of LB1018 could result in creeping governmental secrecy as other bodies seek to pass similar policies that would cloak the hiring process on a local level. I've covered government long enough in this state to know that open government is not a tidy process, and you all know that very well, but it does work. Nebraska passed that public records law, as Alan said, more than 150 years ago. I would urge you not to undo decades of good government by passing this legislation. Please reject LB1018. [LB1018]

SENATOR AVERY: Thank you. Any questions from the committee? Thank you for your testimony. [LB1018]

ROSE ANN SHANNON: Thank you. [LB1018]

SENATOR AVERY: Additional opponent testimony. [LB1018]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

STEPHANIE HEDRICK: Good afternoon. [LB1018]

SENATOR AVERY: Good afternoon. Welcome. [LB1018]

STEPHANIE HEDRICK: Thank you. I am Stephanie Hedrick. I'm the news director at 10/11 News and which has newsrooms in Lincoln, Grand Island, and North Platte. So I come to represent several different views from across the state. When I took the job at 10/11 News, one word stood out when people described this state government--transparency. It was used when talking about the relationship between the media and many public offices. Many Nebraskans take pride in the fact that their state senators are open... [LB1018]

SENATOR AVERY: Excuse me. [LB1018]

STEPHANIE HEDRICK: Yes. [LB1018]

SENATOR AVERY: Could you spell your name for the record? Thank you. [LB1018]

STEPHANIE HEDRICK: Yes. Stephanie Hedrick, S-t-e-p-h-a-n-i-e, Hedrick, H-e-d-r-i-c-k. [LB1018]

SENATOR AVERY: You were on a roll, I hated to stop you. (Laughter) [LB1018]

STEPHANIE HEDRICK: That is okay. I'll get back on the roll here. Many of my media colleagues talked about the processes in place to make access to information easy. Many even commented on how trustworthy the University of Nebraska system really was. But that word transparency is going to be whittled away the more that we consider this bill. When I hear the phrases no comment or we won't discuss that or we won't release that, we've heard that many a times, my instinct as a journalist is to think something is up, something is going on. And I don't think that's just a journalist instinct. I think that's a human instinct in all of us. So when we close the door on any process that is already open, secrecy does replace transparency no matter how much we try to define it. Members of the committee, that price is too high to pay with your constituents if you pass this bill. It will damage the relationship many people feel they have with the university and with you. When 10/11 expanded its coverage to the North Platte area this past fall, I found the excitement surrounding our new television station was not based on the HD signal, not based on more local news coverage. One of the questions I got a lot from people when I visited out there was, so we're going to get Husker sports coming directly from Lincoln. Or one of the questions was, we'll be getting news coming from the University of Nebraska in Lincoln and from our State Capitol. Right then it showed me how invested people from around the state are in the university. Their children go there. The pride is in the university system. Their hard-earned dollars go to the

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

Government, Military and Veterans Affairs Committee
February 06, 2014

university system, and they know the decisions made by the university represent Nebraska. Now you are considering telling those people they will be shut out of the search for its university's president until the very end, until they have only one person to evaluate. That's like myself telling my boss that I am going to go ahead and pick your main anchor but you won't be able to see any of the pool or any of the candidates and have a choice in the matter. And if you know my boss, that probably would not be a good idea. The people of Nebraska have the right and deserve the Regents' trust and the Regents' openness in this search process. Finally, I must repeat what my fellow journalist Mr. Bundy said about what is wanted in a candidate. If Nebraska's university wants to find the best candidates, those candidates should be used to scrutiny. They should be willing to open themselves up to questions, to public comment, to the media, because the day he or she takes office, they will know their decisions will be questioned, their comments quoted, their actions put under a microscope. Both they and their current employer should expect that. That is why we have transparency in the first place. It's what makes us as leaders look at ourselves, look at our teams, and look at our decisions, and make sure they are the best decisions. If someone is not willing to be open about seeking another job or open about their past, I would hope we wouldn't want to consider them in the first place. Who's to say that kind of character won't come back and hurt us as Nebraskans down the road? Our job as journalists is to do the reference checks on these people you look at for important positions. The Regents want the public to trust them as they do their jobs. Let us do our job in keeping them accountable of the decisions they make of the people they look at. Let us keep the process as it is to give us the opportunity to do our own research and keep the public in the know. Senators, I urge you to keep this search as it is. And if I may if I still have time at the moment, a question you had about the number of people. If I can personally just speak on my own behalf, I think the number four does, you know, seem kind of an ambiguous number. To me if I had it my way, the search of the number of people in that search would be the pool that you are looking at before you do pick one person, whether that be four, whether that be six, whether that be ten, whether that be two. Thank you. I'll take any questions. [LB1018]

SENATOR AVERY: Thank you. Questions from the committee? Senator Scheer. [LB1018]

SENATOR SCHEER: More of a response, and I can appreciate where you're coming from, from your industrial standpoint as far as the quantity. But I have difficulty on both sides of this because I do agree that transparency is very important. I have been involved, for example, in the hiring of the Commissioner of Education. It's an open process and it worked well. Did we have candidates that I knew of that I contacted to apply and they didn't? Yes, because of the system. Yeah. So is the fear or the assumption legitimate from the university that there may be some really high-quality people that don't apply because of that? I think so. And having said that, you know, I heard a lot about that it's almost like the snake in the grass that, you know, if this person

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

Government, Military and Veterans Affairs Committee
February 06, 2014

is not wanting to be in secret that it's, you know, it's not really a legitimate candidate. But the fact is we have that right now because only the last four are brought in the public. So if I'm not lucky enough to get to the final four, I'm tenth down the list, I didn't have to tell anybody. I'm the snake in the grass because, you know, I didn't get to that point where I had to notify anybody. So I'm not sure that in and of itself that's a valid reason because probably the vast majority of the people that will apply for this job will never identify anyone to anyone that they are necessarily looking at this. Having said that, you know, is that sufficient enough reason to change the system? Are you not...my mike, not yours yet, so. So I'm not sure that I can agree either way, but I certainly, I go back to Senator Hadley's first comment. I think there's legitimate concerns and both from an open meeting basis and concern for trying to get the best person to run probably the most valuable industry that we have within the state of Nebraska. And I don't know that that...I don't know that we can come up with a compromise that allows that because I've not heard that this is a compromise. So I think there might be others like myself that are somewhat in the same quandary because I certainly can see both your vantage point but I can also see theirs. And I do perceive it to be legitimate because I have lived through it. I have been on a local school board, and that's an open process as well. And I notice young, dynamite superintendents that he or she when I contact them saying, gosh, we have a great spot, you know, come to Norfolk. By the way, Norfolk is a great place to live. (Laughter) But having said that, said, oh, you know, I just got here two or three years ago and I'm doing pretty well and I don't want them to feel I'm not happy here. It's not that they're not happy there. They've got a job there. And if they don't get the position, they don't want to be put in the position of having to defend why they did apply. That's natural progression of people in those positions, people in higher education. That is part of that process. So it's...it is not I don't think as black and white as either you or the university want us to look at it to be. I think it's a lot of gray. And so at what point in time that gray, you know, the sun starts shining and we see which way is the appropriate way. But I just...I continue to take offense at, you know, we don't want the person that's not willing to come out because we already allow it. That's already a part of the system right now. So in fairness, let's try to keep what we're talking about legitimate to what we're really talking about, and that's the final outcome. [LB1018]

STEPHANIE HEDRICK: I feel like the presidents who of a higher education system, you're right, it's not a black-and-white matter. But they do...they would hold the priorities of the First Amendment, of openness, of knowing that they're working for a public university where the public should have a say, should have a look into the process of the decisions made by that university that represents the state. But on that note, something else that was brought up earlier today was on a university that maybe a candidate is working for. And I can only speak for my own personal experience, but when...I actually call the business that my candidates are working for for jobs and I let the candidates know I will probably be talking with your boss, you know, just to make sure that, first, are they under contract or anything like that. And I can tell you, a person

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

Government, Military and Veterans Affairs Committee
February 06, 2014

that they really like that they...that is doing a good job, the first thing they say is I don't want to let them go. I wish I couldn't let them go. But then they also do wish them the best as they go forward. So sometimes the openness, I feel like we're undermining and undercutting those candidates, too, thinking that they wouldn't...if they know they're doing a good job and their employer knows they're doing a good job and knows that they will probably be moving on. So what are we hiding there anyways in the process? Does that...you didn't have a question, but I had a comment. [LB1018]

SENATOR SCHEER: I didn't have a question, but I loved your response, so thank you. [LB1018]

SENATOR AVERY: Any more questions from the committee? Thank you, Ms. Hedrick. [LB1018]

STEPHANIE HEDRICK: Thank you. [LB1018]

SENATOR AVERY: Any other opponent testimony? Okay. We'll go to neutral testimony. Any neutral testimony? I guess this is an issue on which people are not neutral. (Laughter) We will now have Senator Hadley come back and put the capstone in all of this. [LB1018]

SENATOR HADLEY: I'm going to be brief. I realize that you have a full schedule ahead. I made...twice in my life I've made this mistake. One time when I was administrator at the University of South Dakota and this time. They used to tell me never get into an argument with somebody who buys ink by the ton. (Laughter) You know, I find myself in that position again. I just want to reiterate a couple of things. From a conceptual standpoint it's easy to say that people will apply for jobs and take it when they're rejected, that that, you know...that people will understand that and they will do it. But the kind of people we're going to be looking for are the kind of people that are applying for those list of institutions that we read that have closed searches. So you tell...so a search firm goes out to Jill Jones and says I think this University of Nebraska job is really great and I think the Ohio State job is really great, the first question that Jill Jones will probably ask, how do they handle the candidates from a closed or an open situation. And if the recruiter says Ohio State's is a closed system and Nebraska is an open, I'm just here to tell you that's going to be a factor in that person's decision. You can say it isn't, but it is going to be. Secondly, I think the Regents...we were talking about a compromise, I think the Regents have given a compromise. With them coming up and saying we will go through a vetting process, this isn't the University of Michigan, Ohio State, or Purdue that says we're having a press conference tomorrow morning at 10:00 to introduce our new president. We're going to have a press conference at 10:00 to have this person who is the finalist and we will now spend a period of time getting input. And I think it's a disservice to the Regents to say, well, they wouldn't ever back down on their decision. I think that's a disservice. These are quality people. A couple of other

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

Government, Military and Veterans Affairs Committee
February 06, 2014

things, and I don't mean to keep yakking on, but someone said, well, everything is anecdotal. Is it anecdotal that Wyoming has eight candidates, including two sitting presidents, five provosts, and one from industry, and the search firm is willing to get up in an affidavit raising their hand and swearing to it that says two of the presidents pulled out, one of the provosts, and the person from industry because it went from a closed search to an open search? I don't think that's anecdotal evidence. I don't think it's anecdotal evidence when Mary Sue Coleman who is recognized as one of the top presidents in the United States says I would not have applied for this job if it had been an open search. You go back and talk to the people at the University of Michigan and they think she walks on water, the billions of dollars that have been raised and such as that. It was really nice we beat them in football and we saw her cry on the field a little bit at halftime, but other than that she's an outstanding president. And she made the comment. I would not have applied for this position. So it is a balancing act. I don't have the answer, Senator Scheer. But I think the Regents are trying to say that we will vet this person. And I would guess that we would hold them to their word. I don't want to take any more of your time, but thank you. [LB1018]

SENATOR AVERY: But I would point out that the vetting is not in the bill. [LB1018]

SENATOR HADLEY: No. I understand that. [LB1018]

SENATOR AVERY: But it can be put in. [LB1018]

SENATOR HADLEY: Could be put in. [LB1018]

SENATOR AVERY: Oh, you've sparked some interest here. Senator Bloomfield. [LB1018]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Hadley, you said that the Regents are offering a compromise with the vetting. Did they not agree to a compromise seven years ago? [LB1018]

SENATOR HADLEY: Yes, I think they did. But, Senator Bloomfield, that would be like saying that nothing has changed in the last seven years. I think higher education has changed. I was in it not near as long as Senator Avery because I'm not near as old as he is. (Laughter) But, you know, I started my higher education career in 1972 and there's been a big change, there's been a big change. And one of...I was thinking about it as we were talking back there, one of the changes is technology. You know, in the sixties and seventies, you never knew if your president was applying someplace else. Right. Because we didn't have access to Google or whatever it is. So no one was quite as...you know, the information wasn't as quite readily available. Now if I applied for a presidency someplace and was picked as a finalist, you know, 38 seconds it's going to be on the Internet, isn't it? So the information is going to be there. So I think, Senator

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

Government, Military and Veterans Affairs Committee
February 06, 2014

Bloomfield, times are a changing. [LB1018]

SENATOR BLOOMFIELD: I made an agreement a number of years ago with a young lady and I would be very upset if she decided to break that right now. (Laughter) [LB1018]

SENATOR HADLEY: Don't be talking like that. My wife is here. She might get ideas back there. (Laughter) Anyway, this...remember Harry Truman's famous statement that if it was an easy decision or a fun decision, it had been made long before it ever reached his level. This is one of those bills that is difficult. [LB1018]

SENATOR AVERY: Senator Murante has a question. [LB1018]

SENATOR MURANTE: I will say, Senator Hadley, that I tend to agree with both you and the sentiments that Senator Scheer had suggested, that the notion that a person who doesn't want to inform their employer that they're seeking another job is somehow a snake in the grass or something. To me that seems like a standard that perhaps the opponents of your bill aren't applying to themselves and I'd be willing to speculate that a healthy number of them have probably applied for other jobs without letting their boss know that they were looking for employment elsewhere. But one thing I would like to know and I'm going to be researching this after this public hearing is the extent to which, and Senator Karpisek had kind of brought this up, what are the other rules as far as appointments? Now he had referenced public hearings which to me are apples and oranges, might be too close of a comparison, but apples and airplanes maybe would be closer to where we're at. But the other appointments or hires that are made in this state of Nebraska, whether they have to go through this process, I'm not asking you to answer this right now, but that's something that I would like some more information going forward. [LB1018]

SENATOR HADLEY: Senator Murante, real quick, one of the things is that I think makes this kind of position unique, this is a nationwide, could be a worldwide search. The business Ecole in France could...the head of that could say, you know, I could bring skills to the University of Nebraska. So I think there is a different level from some of the other positions in the scope, and it's a pretty narrow field now of people who can run topnotch universities like the University of Nebraska and take it to the next level that should be taken. But I could...I understand your question. [LB1018]

SENATOR MURANTE: Thank you. [LB1018]

SENATOR AVERY: Any other questions? Thank you, Senator... [LB1018]

SENATOR HADLEY: Thank you. [LB1018]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR AVERY: ...for keeping us here for four hours. (Laughter) [LB1018]

SENATOR HADLEY: It wasn't my idea. [LB1018]

SENATOR AVERY: That ends the hearing on LB1018. We'll now move to item number two on our agenda. Senator Lautenbaugh is sending his...your...the legislative aide to introduce LB825. You cleared the room. [LB1018]

BRENT SMOYER: Wow. Apparently, we're not all that exciting with LB825 with everybody up and leaving. [LB825]

SENATOR AVERY: I guess not. You can wait a few minutes if you want until the noise level... [LB825]

BRENT SMOYER: Oh, that's fine. I promise you, this one will not go four hours. So on behalf of Senator Lautenbaugh, you're welcome. [LB825]

SENATOR AVERY: Well, they...let's let the noise level...all right. We are still in a public hearing and we need the room to clear if you're not going to stay. All right. [LB825]

BRENT SMOYER: All right. [LB825]

SENATOR AVERY: All right. [LB825]

BRENT SMOYER: Well, good afternoon, members of the Government, Military and Veterans Affairs Committee, Mr. Chairman. First off, on behalf of the Lautenbaugh office, we would like to wish Senator Murante a happy birthday. I know Senator Lautenbaugh sends along his condolences, I suppose would be one way of looking at it. I'm here on behalf of Senator Lautenbaugh to present LB825. For the record, my name is Brent Smoyer, S-m-o-y-e-r, with the Lautenbaugh office. As you can see by the crowd dissipating and the fact that he sent me, this is a fairly short, sweet, and simple bill. And, of course, given the recent statements of desires for transparency over the last four hours, I think this is right up your alley. Basically, what LB825 does is, it takes any board established under the Nebraska Workforce Investment Act--that's whether the state board, local boards or the youth council boards as well--and any of their subcommittees and, essentially, makes them subject to the Nebraska Open Meetings Act. It's that simple. They have to adhere to the very same rules and regulations that county boards, city councils, and the Nebraska Legislature would have to adhere to. I don't know, necessarily, why they ever got away with not being part of the Open Meetings Act. But this is our effort to remedy that in efforts to maintain transparency for the taxpayers and the voters of Nebraska, given the fact that most of these boards are comprised of elected officials, business representatives, and union members that are actively involved, of course, in dealing with the Workforce Investment Act and the monies

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

Government, Military and Veterans Affairs Committee
February 06, 2014

therein appropriated. So Senator Lautenbaugh felt it was appropriate to bring this bill forward. And I do believe we have some expert testimony following me that can probably answer every single one of the questions you may have. But, again, noting your advocacy of transparency, I assume you will probably want to pass this bill as soon as I get out of the chair, frankly. Yes, sir. I'm sorry. [LB825]

SENATOR AVERY: Thank you for your testimony. [LB825]

BRENT SMOYER: No problem. Thank you. [LB825]

SENATOR AVERY: No. No, don't leave. [LB825]

BRENT SMOYER: Oh, oh, oh, oh. Yes, sir. [LB825]

SENATOR AVERY: What, exactly, is the Nebraska Workforce Investment Act or Board? What do they do? [LB825]

BRENT SMOYER: Well...and, again, this is where the expert testimony comes in a little better than I can. But, of course, under the Workforce Investment Act, there are monies appropriated to be, for lack of a better term, workforce investment. These boards kind of oversee that dispersal. Of course, like I said, it's quite a wide-ranging membership for the board as far as elected officials, union membership, and business representatives. And it's probably in the best interest, again, of the taxpayers and of the voters to be sure that they're keeping an eye on the things that are going on in these meetings. [LB825]

SENATOR AVERY: Do you have any idea how they escaped the Open Meetings Act? [LB825]

BRENT SMOYER: You know, the Open Meeting or the Workforce Investment Act was written years before I was even cognizant of what government was way back in the '80s and so...I believe '80s or early '90s. And so I could not tell you exactly how it escaped the overlook of folks. Maybe it was simply the fact that it was not entirely comprised of elected officials. Because of the involvement of outside interests, maybe they felt that was appropriate to sort of leave them out of the Open Meetings Act. But I think, at this time, we've kind of established that maybe it's a practice that should be changed, so. And, of course, again, the relative experts will have probably a little more detail in that vein. [LB825]

SENATOR AVERY: Okay. Any questions from the committee? Senator Bloomfield. [LB825]

SENATOR BLOOMFIELD: No, I just detected another one of those way-back references. And this time it was the '80s and the '90s. I'm starting to get a little nervous.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

[LB825]

BRENT SMOYER: Sorry. I do apologize, Senator Bloomfield. I realize, you know, it's Senator Murante's 32nd birthday. I assume you've got your 33rd coming up here in another... [LB825]

SENATOR BLOOMFIELD: I'm afraid it's come and gone. [LB825]

BRENT SMOYER: Oh, okay. Okay. Well, again, I'm not that great in math. So that's probably why I'm working here rather than an accounting firm. Happy to handle anything else you folks might have for me. Otherwise... [LB825]

SENATOR AVERY: I don't see any more questions. [LB825]

BRENT SMOYER: Oh, wonderful. And Senator Lautenbaugh being, of course, out of town at the moment will probably...will waive closing, so. Thank you very much. [LB825]

SENATOR AVERY: Okay. Thank you. Proponent testimony? We are taking up LB825. Welcome, sir. [LB825]

CHRIS RODGERS: Thank you, Mr. Chairman and Senators. Happy birthday, Senator Murante. My name is Chris Rodgers, I am a member of the Douglas County Board of Commissioners. My last name is spelled R-o-d-g-e-r-s. I have been on the local Workforce Board for the Omaha area for about the last eight years or so. And the story that how this got to you, I guess I'll give you and I can answer any questions you want, as a member of the Workforce Board. There are three Workforce Boards here in the state: Douglas, Washington, and Sarpy County make up the Omaha area which is known as the Heartland Workforce Solutions Board; the Lincoln, Saunders County Board makes up one; and then the other counties represent the Greater Nebraska Board. That makes up the three. In 1998, the Workforce Investment Act was passed by the federal government. It replaced the Job Training Partnership Act and that changed the way that workforce training was done. The membership of those boards changed in respect to the board had to have 51 percent majority business as members and it had 18 mandated partners by the federal government that had to be on there. A big part of those boards are measurement standards that have to be met by each board. Those measurement standards allow you to get incentive money but they also penalize you if you don't meet certain statistics. One of the statistics is that we are measured by our earnings after six months' training requirements that a group of individuals makes. The committee that handles that is the Performance Committee of the state Workforce Board. Years ago, you also had to negotiate these standards. The state negotiates them with the fed and then the state negotiates talks with local people to get to the standards. About four years ago, our board was in a situation with the state where we were negotiating some standards because of what we thought was a really hard

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

population that we had. The thing with negotiating standards in the state is that, if you negotiate different for one board, you've got to give on one of the other three areas. Well, in our efforts to combat...to make our case for the standards, we attended the local board...the committee of the State Workforce Investment Boards to understand what was going on and to make our case. Eventually, we made our case and I think it was a pretty good case because we were able to make the case for why our standards were there and we had them changed. So as a part of continuing effort to make sure that we had our input and to monitor what was going on, we continued to attend those subcommittee meetings. At one meeting, it was told to us that we could not attend anymore because that board was a recommending body and it did not set policy. That did not set well with the board because we had been attending those meetings and, all of a sudden, we could not. Myself, as a member of the board, I, in my role as a county commissioner, sent a letter to the state Attorney General. I asked our staff to. I got a reply back from the legal counsel of Labor or from somebody, legal counsel in the Governor's Office saying...qualifying why it did not meet the standards and why it did not have to be open because it was a recommending body. My issue with that was, it was fine but we used to come to the meetings, all of a sudden we couldn't. And just like we've demonstrated here and we demonstrate in the county, a lot of the hard work is done in the committee process. If we weren't able to engage in that committee process the first time, we probably wouldn't have been able to negotiate the standards with all three areas in the state and come to some agreement. You know, my fear is not...my fear is that, you know, by the time...if something comes out of the committee recommended, the chance of that are really slim. A lot of the work is done and discussion is happening. By the time it gets to the big board, if there's a recommending board, that board is not a board that's really...is not a working board. It's going to take recommendations from the committees' work and then they're most likely going to move. And so we ask that it be opened up so...because we always thought it was. I know at the local level, it is. And I know there's a clause in here that I didn't know it was not at our local level board but we always open our board meetings up because we think that they're covered under the public meetings law. So it's a simple request to be able to allow us to attend those meetings to understand what's going on and be able to put input into the process. [LB825]

SENATOR AVERY: Thank you. Any questions? I don't see any. Thank you, Mr. Rodgers. [LB825]

CHRIS RODGERS: Thank you all. Appreciate it. [LB825]

SENATOR AVERY: Any more proponent testimony on LB825? Any opponent testimony? Neutral testimony? I don't see any more people that want to speak. Thank you for your participation. And the introducer has waived closing. So that ends the hearing on LB825. We'll now move to the last item on the agenda, LB937. Senator Karpisek. Welcome, sir. Good afternoon. [LB825]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR KARPISEK: Thank you, Senator Avery. Most of my bills are buried fairly late in the order of this committee, so I'm glad to get one in here. The Chair didn't get that. Or just...he's just not paying attention, is he? [LB937]

SENATOR AVERY: I was just trying to figure out if it was an accurate statement. [LB937]

SENATOR KARPISEK: Well, of course. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB937 deals with county supervisors and what constitutes a quorum. Right now, the statute states that two-thirds of the board shall constitute a quorum. LB937 changes that number to be a majority. This bill does not change the number of votes required to pass an issue, which is a majority of the supervisors present. I caught that as I was reading the bill later. I don't know why it is a majority of the supervisors present rather than a majority of the board. But that's what the statute says and, I guess, we could talk about that issue later too. If there's only five, then you would only need three to pass something. Anyway, that's not the issue within the bill. The issue here is that a board of supervisors that are usually seven could have a subcommittee or just four of the members together without triggering the Open Meetings Act. They can work out a compromise or a voting block and then go to the meeting and have the votes to pass the issue. There's been some confusion where people think this would make the matter worse. But the bill's intent is to make four members of the board trigger the Open Meetings Act. So right now, county commissioners go by what we're trying to do here. I think Larry Dix can help me out on that, maybe. But if there's seven board members and four is not considered a quorum, so they can get together at any time and they don't have to fall under Open Meetings. Those four can decide what they're going to do, go to the meeting, they have four votes to pass. The other three are pretty much insignificant. This would say that if there are four of them, that is a quorum. They can't do that. There could only be three. Three of them, then, could be a voting block or get their things together. But then when they come to the meeting, they wouldn't necessarily have the votes to pass over the whole issue. This was brought up to me by someone in Gage County. I worked with Senator Wallman, talked about it a little bit. And I don't know why the difference is between supervisors and commissioners but that is what the bill is trying to do. I'd be glad to try to take any questions. [LB937]

SENATOR AVERY: Okay. Questions? Senator Scheer. [LB937]

SENATOR SCHEER: Senator Karpisek, could you tell me how that would work because in Madison County, we have three. So how does that work with three? [LB937]

SENATOR KARPISEK: Three commissioners, really? Or is it... [LB937]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR SCHEER: Never mind. [LB937]

SENATOR KARPISEK: I think it would be the same. No two could ever be together, can they? [LB937]

SENATOR SCHEER: That's exactly right. [LB937]

SENATOR KARPISEK: Well, if it's two-thirds, they could. [LB937]

SENATOR SCHEER: No. Two out of three is two-thirds. [LB937]

SENATOR KARPISEK: Well, yeah. So right now... [LB937]

SENATOR SCHEER: And two is still a majority, they never could. [LB937]

SENATOR KARPISEK: Well, no. I think two...well, yeah. Okay. [LB937]

SENATOR SCHEER: I'm not big on math either, Russ, but I think that's it. [LB937]

SENATOR KARPISEK: I didn't know anyone only had three. [LB937]

SENATOR AVERY: Any other...Senator Bloomfield. [LB937]

SENATOR BLOOMFIELD: Just so it doesn't come as a total shock, Wayne County also has three. [LB937]

SENATOR KARPISEK: So this really wouldn't affect them one way or another. [LB937]

SENATOR BLOOMFIELD: Well, two makes a quorum. [LB937]

SENATOR KARPISEK: Right. [LB937]

SENATOR BLOOMFIELD: And so they should have...if they're having coffee, they really should have the media in. [LB937]

SENATOR KARPISEK: Either way. [LB937]

SENATOR AVERY: Senator, do you know if there's a difference between supervisors and commissioners? [LB937]

SENATOR KARPISEK: There is a difference. [LB937]

SENATOR AVERY: Yes. I think we're mixing the two up in our discussion here. [LB937]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR KARPISEK: Well, they're both county officials, correct? They both control the county? [LB937]

SENATOR AVERY: Yeah, but your bill specifically refers to boards of supervisors. [LB937]

SENATOR KARPISEK: Correct. What I'm saying is, commissioners are on a majority, why aren't supervisors? [LB937]

SENATOR AVERY: Yeah. Okay. [LB937]

SENATOR SCHEER: And I would stand corrected. My comments were totally out of perspective here. And I... [LB937]

SENATOR AVERY: Any additional comments or questions? Okay, thank you, sir. [LB937]

SENATOR KARPISEK: Thank you. [LB937]

SENATOR AVERY: We are now going to take proponent testimony. The committee is eager to hear from you, Mr. Dix. [LB937]

LARRY DIX: (Exhibit 1) Good afternoon, Senator Avery, members of the committee. For the record, my name is Larry Dix, L-a-r-r-y D-i-x. I am here in support of LB937. You're going to be seeing a map here and I think that will explain and clarify a little bit of the supervisor versus the commissioner from a visual perspective. When you look at the map, all the counties that are in blue currently are a supervisor form of government. And the one you will see in there, Buffalo County, is a county in which the voters in the county recently had voted to eliminate the supervisor form of government and go to commissioner form of government. So Senator Karpisek, as he described in the bill, it's all about a quorum. And this question comes to us from time to time. At some point in time in the history of the state of Nebraska, it was deemed that supervisors, as you'll see in the law, that two-thirds would represent a quorum. If you look at the section of statutes that talk about commissioners, it talks about a majority, plain and simple. So what really, really brought this to light is, recently there have been a number of counties that have taken it to a vote of the people if they want to continue supervisor form of government. And the perfect example is Buffalo County. Buffalo County currently is a supervisor form of government, has seven county board members. The people voted, wanted to go to a commissioner form of government, and wanted to retain seven county board members. So on December...the meeting that the board holds in December of 2014 the...what would constitute a quorum at that meeting would be two-thirds. And the first meeting that they hold in January of 2015, which would be the same seven board

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

Government, Military and Veterans Affairs Committee
February 06, 2014

members, what would constitute a quorum then would be a simple majority. And so this really clarifies it across the whole state that all county board members, when they meet, a simple majority constitutes a quorum. And so it would clarify it. I don't think there's...last night we had a meeting in Kearney about our county board workshop out there, went through this. And it isn't like people are trying to do anything behind the scenes or anything like this. We think it's good that we clarify that. It's probably more confusing to the taxpaying public than anyone else because if you're sitting there in Antelope County and saying, well, why is my board...what constitutes a quorum different than Pierce County and so on and so forth. So we think it will clarify it. But I'd be happy to answer any questions. [LB937]

SENATOR AVERY: Do you know of any instances where this might not work in the public interest? For example, a...suppose you had a seven-member board and four would be a majority. And those four could be in strong agreement on most things. They could control the...they could control that board. And they could convene meetings and have a quorum because they were in the majority if this were to become law. Right now, Hall County, for example, has seven and they have to have two-thirds in order to have a quorum. So this would affect Hall County, wouldn't it? [LB937]

LARRY DIX: This would affect Hall County because they're a supervisor form of government. [LB937]

SENATOR AVERY: Yeah. [LB937]

LARRY DIX: Yep. But it...I don't see that argument any different on a seven-member board or a five-member board or a three-member board. And once you get to three-member boards, those are all county commissioners. When you get to a five-member board, those are all county commissioners. [LB937]

SENATOR AVERY: Uh-huh. [LB937]

LARRY DIX: So if you had a five-member board, you could have three people that, you know, would agree most of the time... [LB937]

SENATOR AVERY: Yeah. [LB937]

LARRY DIX: ...and conduct business, similar to the Legislature could get 25 members together and always agree on something. Wouldn't that be...I won't say that. [LB937]

SENATOR AVERY: That would be weird. [LB937]

LARRY DIX: So...but across the state there are three-, five-, and seven-member county boards. And if it's a supervisor, it has to be a seven-member board. [LB937]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR AVERY: It has to be if it's...? [LB937]

LARRY DIX: It has to be, by statute. [LB937]

SENATOR AVERY: Okay. [LB937]

LARRY DIX: Yep. So every county here that's in blue, those have to be a seven-member board. [LB937]

SENATOR AVERY: Questions from the committee? Senator Bloomfield. [LB937]

SENATOR BLOOMFIELD: I see up in my part of the state, up there, Dixon and Thurston County are supervisor while Wayne and Dakota are commissioner. Can you enlighten me a little bit as to how they are elected or what's the difference between the commissioner and supervisor? [LB937]

LARRY DIX: Well, this statute is one of the things that seems to be different in that. When you have a supervisor, you're always going to have a township form of government. And so you have townships, then, that typically will be the ones primarily responsible for roads maintenance and things like that. When you have commissioners, typically you're going to have a highway superintendent. And that highway superintendent is responsible for all the roads across the whole county. So in a commissioner form, they take care of all the roads and bridges. In a supervisor form, the counties will take care of some of the roads...some of the county roads and the county bridges. But many times the townships have their own levying authority to levy tax for township roads. That's primarily...that's pretty much the...the rest of the statutes that county boards have to follow, pretty much don't differentiate too much other than some of the road sections of statute. [LB937]

SENATOR BLOOMFIELD: Okay. I look down here and I see Saunders County with the number 24 in parentheses and then Franklin County with 11. Is that the number of townships? [LB937]

LARRY DIX: That is the number of active townships. Okay? And when I say active, those are the number that have actually went out and held an election. And so those townships have a three-member board in those. And what's happened over the years is, maybe two of those townships...one has become inactive so the two townships have merged and they become, in essence, a joint township. The unique thing about it is, if you look at Hall County, Hall County is still a supervisor and they have no active townships. There are no townships active in Hall County but they still are a supervisor form of government. [LB937]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR BLOOMFIELD: Okay. We have...go to Saunders County, 24 active townships but seven board members. How is that worked out? [LB937]

LARRY DIX: Okay. The seven board members are not the township board members. [LB937]

SENATOR BLOOMFIELD: Right. [LB937]

LARRY DIX: Those are the county board members. [LB937]

SENATOR BLOOMFIELD: And how are they elected? [LB937]

LARRY DIX: The county board members, they're elected by districts...representative districts. [LB937]

SENATOR BLOOMFIELD: The districts make up so many townships. [LB937]

LARRY DIX: Yep. [LB937]

SENATOR BLOOMFIELD: Okay. Thank you. [LB937]

LARRY DIX: Uh-huh. [LB937]

SENATOR AVERY: Any other questions? Thank you, Mr. Dix. [LB937]

LARRY DIX: Thank you. [LB937]

SENATOR AVERY: More proponent testimony? Welcome, Mr. Beermann. [LB937]

ALLEN BEERMANN: Thank you. Thank you very much. Chairman Avery and members of the committee, my name is Allen Beermann, A-l-l-e-n B-e-e-r-m-a-n-n. I'm representing the Nebraska Press Association. We support this bill for many reasons. But first, I would say that while I had another life in this state some years ago, this issue was perhaps the most problematic issue that ever came to the Secretary of State's Office every day. They couldn't understand the difference. Going to Senator Bloomfield's inquiry, townships usually had two purposes. One was, it defined a precinct for voting. But eventually, it became only for the purpose of who controlled the pile of gravel for doing the roads and that's still true today. We support this bill because it solves a mystery of what defines a quorum and whether it's a majority or two-thirds. It's always a problem for the media. It's always a problem for the citizens. And it is a problem for government, especially at the local level. So I think this is important to clear this up. It's been a problem for probably 40 years and, mostly, it's a mystery to people. And so I think this is good government. That would be my testimony. [LB937]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR AVERY: Thank you. Questions from the committee? I didn't see any. Thank you. [LB937]

ALLEN BEERMANN: Thank you for your courtesies. [LB937]

SENATOR AVERY: We're on proponent testimony. Welcome, sir. [LB937]

GARY BARNARD: Thank you, Senator. Thank you for all that are serving in the Legislature today. When I brought this issue to Senator Karpisek...and I hope you don't hold it against me forever. [LB937]

SENATOR AVERY: State your name. State your name and spell it. [LB937]

GARY BARNARD: Oh, Gary Barnard, G-a-r-y B-a-r-n-a-r-d. Please don't hold it against me till I die, will you? I didn't think it would go this far but this is a testament, I guess, to what, if you get involved, you can do as a citizen. And I know it's late in the day and I don't want to drone on too long. But I was a Gage County supervisor from January of 2007 to January of 2011. So I know a lot about the supervisor form of county government. And I have friends in other counties that are commissioner forms. The differences are a lot alike and not alike. The last gentleman is correct, most of these supervisors, it's about who controls the rocks on the road. In our county, we happened to have 32 motor graders to do all that, counting the county's. So at any rate, when I served on the board of supervisors in Beatrice, I'm not proud to say what happened there but I was there and I witnessed it. The quorum issue of four was abused. And our local news media has exposed it in the last couple of years. Again, it has been abused. What is interesting to me is, now that this has come forward, the county supervisors are now looking at another way to accomplish that without having what has amounted to illegal meetings. And God bless them for that but it's too bad it took this to do it. And it's too bad that we had to shine a light on them to do it. And so I hope they'll do it. It's really simple. They say it might affect our committee meetings. Whether there's three or four on the committee, I'm sorry, I was there and I've done it. It doesn't affect it. The only thing in our county, for whatever reason, our board chairman for years and years and years always thought it was almost like being a mayor and a city council--which it is not--and wants to attend every important...it's usually road and bridge and finance. They insist that they have to be there, they can't do anything without them. Well, guess what? They can and they have. So I can cite issues where our news media has just almost been strung up because they report it, and that's too bad. They tell the public, you're all welcome to come to our committee meetings. The news media is always welcome to come to our committee meetings, except as many times as not, oh, by the way, we'd ask you people to step out. We've got something to talk about. We don't want you here. So if there's four there and nobody's there, that's pretty much a private meeting. And I think it flies in the face of the open meetings law. How can it not? Mathematically, how

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

Government, Military and Veterans Affairs Committee
February 06, 2014

is four not a majority of seven? I mean, that's...it's just simple arithmetic for the most part. And I don't think this is a difficult issue. As the others I got to listen to today, I understand this probably wouldn't be a priority issue. With a little conversation with some folks here, I found out there may be ways that this could happen this year. That's up to you. I don't know your system very well. But if it could, it would alleviate a whole lot of things. And we say that it just affects a few counties, and it does. But if you live in one of those counties and you're having people that, essentially, are having what normally would be an illegal meeting, it does affect it. It's affected my community because it's gotten bad press. So that does affect our community. And it can affect others the same way. And so that's why I'm here. And again, I thank Russ for bringing this forward for me. I...he's always been a friend. Norman and...I think I need to say happy birthday to you today, don't I? [LB937]

SENATOR WALLMAN: Yep. [LB937]

GARY BARNARD: I heard it on the radio this morning. So congratulations to Norm, you made it another one. I hope we all do. [LB937]

SENATOR WALLMAN: Thank you. [LB937]

GARY BARNARD: But at any rate, if there's any way that you could move this forward through the process and get it done...as Larry Dix has said--and I'm sure Larry remembers me, I used to call him pretty regular to get answers to questions and he was always very helpful and got them for me--if we could get this done, I think if there's some way you can move it through the Legislature, it would be out of the way and I think it would be beneficial to our local government. So with that, I don't want to keep you any longer. [LB937]

SENATOR AVERY: Good timing. Your amber light is on. [LB937]

GARY BARNARD: I didn't plan it that way. [LB937]

SENATOR AVERY: Senator Wallman. [LB937]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, this is your house here, you know. This is... [LB937]

GARY BARNARD: I know and I appreciate what you do. [LB937]

SENATOR WALLMAN: And beings you was on the county board, do you think the county supervisors use their money better with...instead of county commissioners? [LB937]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

GARY BARNARD: No. [LB937]

SENATOR WALLMAN: No? [LB937]

GARY BARNARD: We have so much money...you know, most of this property tax is in a county level. We get so much money in the pot every year. And you can bond and do things like that to spend more but I think...and I have friends that sit on township boards. To them, that's important. They think it's the best form of government. And usually, you know what the bottom line is? I think our motor grade operator does a better road...on the roads than your county operators. And that's the truth. That's what a lot of it is. And there are some township board members that privately would support doing away with the township form. But they're not going to say so. They've got to drink coffee or whatever with their friends occasionally, so. But to answer your question, Norm, I think 32 motor graders in one county, if you count the county and the townships, is more than adequate. [LB937]

SENATOR WALLMAN: That's my point. [LB937]

GARY BARNARD: But I'm not here to argue about that. I just hope that if there's some way you could move this through the Legislature, it would be done and out of Larry's hair, me, as a citizen's hair. And actually, even though our county board, now that this has come about, are figuring out, oh, yeah, we don't mind. We can make this work. And it's election year and I'm mindful of that. But they could have done it before. And I think it will actually help them in the end. Maybe some of the arguments with the news media may not happen because then it doesn't appear like you're doing anything they shouldn't be. [LB937]

SENATOR WALLMAN: Thank you. [LB937]

GARY BARNARD: Yes, sir. [LB937]

SENATOR AVERY: Any other questions? I don't see any. Thank you, sir. [LB937]

GARY BARNARD: Thank you. [LB937]

SENATOR AVERY: Additional proponent testimony? [LB937]

KORBY GILBERTSON: Good afternoon, Chairman Avery, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Media of Nebraska, Incorporated. Media of Nebraska is an association of both print and broadcast media from across the state that primarily focus on First Amendment issues, open meetings, and public records. And so, obviously, this is one of our three areas of interest. And we support the

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

Government, Military and Veterans Affairs Committee
February 06, 2014

bill because we feel that, obviously, something needs to be done if there are county board members intentionally trying to circumvent the open meetings law. I'd be happy to try to answer any questions. [LB937]

SENATOR AVERY: Okay. Questions from the committee? I don't see any. Thank you. [LB937]

KORBY GILBERTSON: Thank you. [LB937]

SENATOR AVERY: All right. Still on proponent testimony. Any more proponents? Any opponents? Any neutral testifiers? Senator Karpisek. [LB937]

SENATOR KARPISEK: Thank you. Thinking about Senator Murante and Senator Wallman having the same birthday reminds me of the movie Twins with Danny DeVito and Arnold Schwarzenegger, maybe. I'm not saying which one is which. I just thought...it's not who it is, it's just... [LB937]

SENATOR MURANTE: This is either a short joke or an Italian joke and I'm offended either way, Senator Karpisek. [LB937]

SENATOR KARPISEK: You can take that either way. I just thought of it that you're a lot different. I hope that, you know, Senator Avery when you asked wasn't this going the other way...when I first got the e-mail from Mr. Barnard, I thought the same thing. If four can be together and not be a quorum, those four are not in an open meeting, they can decide whatever they want, then go as a block and vote that way. If we say a majority, only three now can be in that room together without it being an open meeting. So if a fourth one gets in there, it's open. So it does...it's hard for me to wrap my mind around in the beginning. I had to go out and get Mr. Dix and ask what the heck, explain this to me. But in that situation, those four can be together and it's not considered an open meeting so nobody needs to know. It doesn't have to be open. I'm trying to go back down so they can't have their majority figured out and go forward. And I think now Mr. Barnard will be careful what he asks for from now on. But I do appreciate everyone coming and testifying. I'd be glad to answer any more questions if there were any. [LB937]

SENATOR AVERY: Any more questions from the committee? [LB937]

SENATOR SCHEER: Russ, it's 4:30. Really? [LB937]

SENATOR KARPISEK: Hey, when you get me in the hot seat, I... [LB937]

SENATOR AVERY: (Exhibit 2) I need to read into the record a letter of opposition to LB937 from Dan and Ann Purdy from Grand Island. [LB937]

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

Government, Military and Veterans Affairs Committee
February 06, 2014

SENATOR KARPISEK: And I have had correspondence with them to try to explain it.
[LB937]

SENATOR AVERY: That ends the hearing on LB937. I had planned an Exec Session...
[LB937]