

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

[LB487 LB503 LB539 LB552 LB621]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, February 6, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB503, LB539, LB552, LB621, and LB487. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Joni Craighead; Mike Groene; Matt Hansen; Tyson Larson; and Beau McCoy. Senators absent: None.

SENATOR MURANTE: (Recorder malfunction)...John Murante, I am the Chairman of the Government, Military and Veterans Affairs Committee, and State Senator for District 49, which is Gretna, Chalco, and most of northwest Sarpy County. Welcome to the Government, Military and Veterans Affairs Committee. We are here today to hear a number of bills. The bills will be taken up in the order in which they appear on the agenda, which are located outside of this room. If you intend on speaking on any of these bills, we ask that you fill out one of these green sheets and submit it to the clerk when you approach the chair to testify. If you are here and would like to express support for or opposition to any of the bills on the agenda but are not going to testify, we'd ask that you sign in where we can note that you were here for the record. When you come up to testify, please state and spell your name for the record. The process by which we will be proceeding is we will have the introducer of a bill give opening remarks. We will then proceed to proponent testimony, followed by opponent testimony. We'll listen to anyone who wishes to testify neutral on the bill. And then the introducer will have an opportunity to close. We ask that you listen carefully and try not to be repetitive. Again, if someone has stated a position which you also believe, then please just sign in and we will note your opinion for the record. In this committee, we do use the light system. Each testifier will have four minutes to give their remarks. When the yellow light comes on, you will have one minute remaining. We ask that you begin closing up your...summarizing your remarks at that time. When the red light comes on, we ask that you conclude your remarks. At that time, we will open up the floor for questions from the committee members. At this time, we'd ask that you turn off all cell phones or silence any electronic devices, anything that makes any noise. When you come up, if you have a prepared statement or anything to distribute to the committee, we ask that you provide us with 12 copies. Give it to the page. The page will distribute it to the committee members. If you do not have 12 copies, again, give it to the page and we'll make the copies for you. And with that, we'll proceed to the introduction of the committee members, some of whom are here. To my immediate left, Senator Matt Hansen from Lincoln will be here momentarily; followed by State Senator Beau McCoy of Omaha, Nebraska; State Senator Joni Craighead will be here as well; and to our far left is Sherry Shaffer, our committee clerk. To my immediate right is Charles Isom, the committee's research analyst; followed by State Senator Tommy Garrett of Bellevue, Nebraska, who is the Vice Chair of this committee. Next is Senator Bloomfield from Hoskins, Nebraska. He's introducing a bill right now but will be with us momentarily. Next is State Senator Tyson Larson from O'Neill; followed by State Senator Mike Groene from North Platte, Nebraska. Our

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

pages for the day are Seth Thompson--there he is, I'm sorry, he was hiding behind the chair-- from Ogallala, Nebraska; and Tobias Grant will be here from Lincoln, Nebraska. And with that, we are ready to proceed to the first item on the agenda, LB503. Senator Krist, welcome back to the Government, Military and Veterans Affairs Committee. [LB503]

SENATOR KRIST: Good afternoon, Senator Murante and fellow members of the Government...and members of the Government, Military and Veterans Affairs Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District, northwest Omaha with the northern portion of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB503, a bill introduced at the request of the State Auditor of Public Accounts. It would authorize the officeholder to issue subpoenas in order to obtain needed audit information. LB503 is very straightforward, no-frills legislation aimed at providing the State Auditor's Office with the tools needed to oversee and protect taxpayers' dollars effectively and efficiently. Right now, state statute grants the Auditor's Office access to all records of any public entity. However, there are times when it is necessary for the Auditor to examine records held by a private institution or individuals in order to obtain a full and accurate picture of the particular financial situation impacting the state or one of its political subdivisions. There are numerous examples of this. A fairly recent one which garnered quite a bit of news coverage was the embezzlement of guardianship funds by Judith Widener in Scotts Bluff County through programs administered by the Department of Health and Human Services. As you may recall, Widener had managed to be appointed the guardian of more than 600 vulnerable, elderly, and disabled people across the state. She then used her position as the director and president of Safe Haven Incorporated, a company that was supposed to oversee the financial affairs of people with court-ordered...appointed, I'm sorry, guardians, to pocket thousands of dollars belonging to those helpless victims. In order to uncover and prove Widener's despicable crimes, which were perpetrated through DHHS-run programs, the State Auditor needed to exam Safe Haven's Incorporated bank records. Lacking the authority to obtain an access to these private records, the Auditor had to enlist the help of the Scotts Bluff County Attorney to subpoena the records. Fortunately, the Scotts Bluff Attorney proved cooperative and agreed to help, but it took quite a bit of time nonetheless. On the other side of the coin, there have been times when a county attorney declined to help subpoena, needed to help the audit. In another recent case, work by the Auditor's Office implicated a village clerk in a mishandling of public funds. The auditors provided enough information to the clerk to be fired. Still, the question of what actually happened to the missing funds remains unanswered to this day because of the lack of cooperation for subpoena. Although the auditors suspected the clerk of embezzling at the time at least some of the money, nothing could be proven because the county attorney refused to subpoena. Turning to specific provisions of the bill, the language in LB503 is copied practically verbatim from two current statutes. The first section, 50-1205, authorizes the Legislative Performance Audit Committee to issue subpoenas and compel the attendance of witnesses and production of documents and take disposition. This is important because in

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

drafting the bill it seemed reasonable to utilize the existing statute language to create some uniformity between the current subpoena entity's authority by the Legislative Performance Audit Committee and others. Second, LB503 authorizes the Auditor of Public Accounts to seek a contempt of court order from the district court of Lancaster County in response to a failure to comply with a subpoena or refusal to provide subpoena. An editorial note at this point off my prepared comments, as part of the Performance Audit Committee, in my experience this past summer with the Special Investigative Committee, sometimes it's not the subpoena; it's the threat of the subpoena that causes people to become very compliant and very cooperative. So...and we have run, in Performance Audit, several parallel audits with the Auditor's Office. And having the lack of subpoena power made it less effective on the Auditor's side in the past audit function, not under Auditor Janssen. So none of the...I wanted to talk about the public entities that don't...or that do. Right now, numerous state officials and offices have the statutory authority to issue subpoenas. As pointed out already, subpoenas are permitted to facilitate state performance audits but not financial audits. Other entities and officers with subpoena authority range from the Board of Barber Examiners, Liquor Control Commission, the Oil and Gas Conservation Commission, and the director of Aeronautics. Even the State Athletic Commissioner is empowered to issue subpoenas in order to help ensure that the appropriate tax amounts are collected from the receipts of certain sporting events. As a matter of fact, last week the Nebraska Retirement Systems Committee advanced LB40 to General File, introduced by Senator Nordquist. That bill would authorize the Public Employees Retirement Board to issue subpoenas when there is a need to investigate the overpayment of a benefit after the death of an individual member. None of the public entities or officers that I have mentioned or many others with statutory subpoena power is any more crucial to the proper operation and fundamental well-being of our state and its political subdivisions than the Auditor of Public Accounts. If we are going to ask the Auditor to do our heavy lifting in terms of rooting out and exposing fraud, waste, and abuse involving public funds, as the Appropriations Committee has recently done in requesting a financial audit of the Department of Corrections, then we should make sure that his office has all the tools needed to carry out the essential and often painstaking work this subpoena power authority would give him. With these important considerations in mind, I ask you to support LB503. Apologize for that long introduction but I think it gives you a background in terms of what I think is a very important part of the Auditor's job and that is to get the information that he needs to make these decisions. And with that, I would stand for any questions. [LB503]

SENATOR MURANTE: Thank you, Senator Krist. Are there any questions? Seeing none, thank you very much for coming. [LB503]

SENATOR KRIST: And it's not that I am not intense about this, but I'm going to go back to my committee and I waive my closing. [LB503]

SENATOR MURANTE: All right. [LB503]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR KRIST: Thank you. [LB503]

SENATOR MURANTE: Thank you very much. We'll proceed to proponent testimony on LB503. Senator Russ Karpisek, welcome back to the Government, Military and Veterans Affairs Committee. [LB503]

RUSS KARPISEK: A bad penny. (Laughter) [LB503]

SENATOR MURANTE: You've got a lot of nerve coming back here. (Laughter) [LB503]

RUSS KARPISEK: Not everybody remembers. (Laughter) [LB503]

SENATOR GROENE: I do. (Laughter) I'm glad you're on that side. [LB503]

RUSS KARPISEK: (Exhibit 1) You're on this and now we switched, didn't we? Thank you, Chairman Murante and members of the Government Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the legislative liaison for the Auditor's Office. I'd like to thank Senator Krist for introducing this bill. I've found out why I had so many bills, because it's not always easy to get someone to carry one. I want to say that if there are questions today on any of the bills, we have staff here that can hopefully answer those questions. And if not, we will get you the answers as quickly as we can, hopefully by Monday. Mary Avery is the special audit examiner and finance manager in the office; Deann Haeffner is an assistant deputy and county coordinator; and Lance Lambdin is legal counsel. Of course, Auditor Janssen and myself are also here to support the bills and answer any questions. The Auditor and I have both been on the other side of that table on Friday afternoons and we understand that brevity is appreciated. So we will not come up on every bill unless there are questions and then, of course, we'd be glad to do so. Senator Krist did an excellent job of explaining the bill and why the Auditor should have subpoena power. I have handed out a list of 35 states and 3 U.S. territories that allow subpoena power. Those include neighboring states of Iowa, South Dakota, Wyoming, and Colorado. I would also like to point out that many of Nebraska's state and county agencies also have subpoena power other than...more than what Senator Krist said, including, but not limited to, the State Athletic Commissioner, director of Aeronautics, Inspector General of Nebraska Child Welfare, county coroners, county assessors, director of the Department of Agriculture, the director of Agriculture, state Lottery director, Commissioner of Labor, and the Fire Marshal. Again, this is a short list but these are ones that give the authority to a single individual. We have heard some people say, well, you're giving this to just a single individual--the Auditor. These are all single people making that decision. Again, if someone does not want to come for a subpoena, the Auditor would have to go to Lancaster County and have a judge order it. So just the Auditor saying you have to do this does not automatically mean they have to

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

do that. A judge could decide. The Auditor's Office has spoken to state colleges about some concerns of their bill and we both feel that those concerns can be taken care of with a small amendment. And with that, I'd be glad to try to answer any other questions. [LB503]

SENATOR MURANTE: Thank you very much for your testimony. Senator Groene has a question. [LB503]

SENATOR GROENE: So do you got to show due cause for why you're auditing somebody or... [LB503]

RUSS KARPISEK: Of course, just like any other audit that the Auditor does. [LB503]

SENATOR GROENE: I mean subpoena. [LB503]

RUSS KARPISEK: Yes. You'd have to show cause of why you need that subpoena while you're...if you're auditing and somebody doesn't want to come forward or give you the information that you're after, right now they can pretty much stonewall you. [LB503]

SENATOR GROENE: Every government entity has to give you... [LB503]

RUSS KARPISEK: They do. [LB503]

SENATOR GROENE: ...except for the university or whoever claims, you know. [LB503]

RUSS KARPISEK: No, the university, to my understanding, is still a state agency. But right now, Auditor, Senator, Auditor Janssen has started an audit of Corrections. I think in the office we would like to get that...the biggest part done by the end of session so the Legislature can look at what's going on there, especially with the new director. So just talking about what went on in the interim, there may be some times where getting this information isn't as quickly given as it could be for people who need to know. [LB503]

SENATOR GROENE: If an employee of the prisons and a bunch of...some money was involved, you want to be able...you can...if they used it within the system, you can get it without it. But if that person used it privately, you want auditing at that? Is that what you're saying, one step past it? [LB503]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

RUSS KARPISEK: You would...you would, no, you would just subpoena where...the records. Sometimes they don't want to come forward with their records, the whole system. And Mary and Deann are here and they do more with the audits and they can give you more exact examples of where they have had issues where this would have helped. [LB503]

SENATOR GROENE: But the example Senator Krist gave was a private individual. [LB503]

RUSS KARPISEK: It was, but...right, and they had state contracts. [LB503]

SENATOR GROENE: All right. Thank you. [LB503]

SENATOR MURANTE: Thank you, Senator Groene. Additional questions? Senator McCoy. [LB503]

SENATOR McCOY: Thank you, Chairman Murante. And thank you, Senator Karpisek, for being before us this afternoon. I just want to make sure I understand this correctly. Was this a bill that Senator Krist authored that you support or did you ask, did Auditor...did the Auditor's Office ask Senator Krist to introduce this bill? [LB503]

RUSS KARPISEK: I did ask Senator Krist to introduce this bill. [LB503]

SENATOR McCOY: Okay. Thank you. And has there ever been any other time that you're aware of that, even though the subpoena power has not heretofore been something an Auditor in Nebraska has had, has that ever been...this issue ever been discussed? Has there ever been such a bill that you're aware of? [LB503]

RUSS KARPISEK: I am not aware of if there was a bill before. I don't remember one being in front of Government Committee while I was here. I know that there was talk of that but I was never involved in one coming forward. [LB503]

SENATOR McCOY: The reason I ask that question is that you would think, my guess, I would suspect, and I'm of course very familiar with The Book of the States, since it's authored by the Council of State Governments, which I do a lot of work with. Most of these states I think have had this as a power of their state auditors for many, many years, some of them going back well over 100 years I think. I bet if we were to look, probably most of these states, it's not been a recent addition as a power. So I just was curious what you think has...beyond what Senator Krist outlined in his opening and what you've outlined. You know, previous State Auditors in particular, now Lieutenant Governor Foley have dealt with some pretty complicated and thorny

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

audits. Is there something that you perceive to be why this is very necessary at this particular time? [LB503]

RUSS KARPISEK: I think the Corrections audit right now is very important that we get that straightened out on the auditing side so, again, the Legislature can move forward with any recommendations that you have to...I don't want to say fix things but make things better there. I think the issue has been there a long time. And again, just going back in my time in the Legislature, I don't know that the relationships between the Auditor and the Legislature or the Governor's Office maybe would be the right time to bring this forward. [LB503]

SENATOR McCOY: Thank you. [LB503]

RUSS KARPISEK: Thank you, Senator McCoy. [LB503]

SENATOR MURANTE: Thank you, Senator McCoy. Senator Groene. [LB503]

SENATOR GROENE: Yes, just one more question? [LB503]

SENATOR MURANTE: Senator Groene. [LB503]

SENATOR GROENE: Thank you, Chairman. I mean that's a legal document. Who do you have in your staff for legal advice? You got your legal aide that would tell you how to process it and do it? [LB503]

RUSS KARPISEK: Right. We have legal counsel in the office. Mr. Lambdin is here today. [LB503]

SENATOR GROENE: And he would do the processing and write it up and...? [LB503]

RUSS KARPISEK: I would assume that that is how that would work. Again,... [LB503]

SENATOR GROENE: And then in the Attorney General, I mean a lot of times I've heard what if State Patrol stepped in there, investigated? Have you work...has the Auditor's Office worked with them to do...? [LB503]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

RUSS KARPISEK: Not to my knowledge, but again, a new administration, Auditor Foley, Lieutenant Governor Foley did a lot of things for eight years. I'm not privy to how that all worked. [LB503]

SENATOR GROENE: Yeah. Thank you. I just... [LB503]

RUSS KARPISEK: But again, we have quite a few years of experience behind me. [LB503]

SENATOR GROENE: I was just thinking of separation of power, where you've got an Attorney General and the State Patrol investigative, instead of...I'm not against it. I'm just trying to figure out how it all works. [LB503]

RUSS KARPISEK: And I agree and we have talked to the Attorney General's Office a little bit about how all this would work. Again, I'm not saying they said great, not great. We've talked to them in working through it. [LB503]

SENATOR GROENE: Thank you. [LB503]

RUSS KARPISEK: Thank you. [LB503]

SENATOR MURANTE: Senator Groene, any additional questions? Seeing none, always good to see you, Senator Karpisek. [LB503]

RUSS KARPISEK: Well, it was good to see you, too, Senator Murante, and we hope to have you out of here early today. [LB503]

SENATOR MURANTE: Okay. Continuing with proponent testimony on LB503. Welcome to the Government Committee. [LB503]

MARY AVERY: Senator Murante and committee members, my name is Mary Avery and I just came up to clear up a few questions. Senator McCoy, one of your... [LB503]

SENATOR MURANTE: Can you spell your name for us, please? [LB503]

MARY AVERY: Oh, sorry. Mary Avery, M-a-r-y A-v-e-r-y. One of the recent changes that happened is we used to work with the State Patrol all the time when we'd come across fraud in our investigations, and they had subpoena power. That was taken away, which has caused some



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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

issues with us trying to get it from county attorneys and the Attorney General when we come across fraud. We are getting it, but it's taking a lot longer. And a lot of the times, by the time we get to the subpoenas, the person who committed the fraud already knows it and some of the records disappear. In a recent case, the village clerk went in and destroyed all of the records before the subpoena was issued to get the records. So I just wanted to inform you that we used to work with the State Patrol. They had the subpoena power. They would go get the subpoenas right away once we gave them the information. Now going through the county attorneys and the Attorney General, it takes a lot longer process before we can get the actual subpoenas. So that's what has occurred. [LB503]

SENATOR MURANTE: Okay. Thank you very much for your testimony. Senator McCoy. [LB503]

SENATOR McCOY: I just want to follow up on this so I understand this correctly, and thank you for coming up to testify. Was that something...I don't recall that. Was that an action of the Legislature to remove? Do you recall when that was or what that would have been? [LB503]

MARY AVERY: It was probably two years ago, I think it was. [LB503]

SENATOR McCOY: That the subpoena power...that the...explain that. So I'm sure the State Patrol still has subpoena power so the ability for them to... [LB503]

MARY AVERY: They used to be able to do subpoena, issue a subpoena themselves without having to go to the Attorney General or the county attorney to get it. Now they have to go and get the county attorney or the Attorney General to sign off on it, just like we do, to get a subpoena issued. [LB503]

SENATOR McCOY: I, at some other point, I'd love to have more information on that. I just don't recall when that occurred or what the rationale was behind that. And if you can provide that to my office,... [LB503]

MARY AVERY: Sure, I can look that up and... [LB503]

SENATOR McCOY: ...I'd appreciate that. [LB503]

MARY AVERY: Yeah. [LB503]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR McCOY: Thank you. [LB503]

SENATOR MURANTE: Thank you, Senator McCoy. Any additional questions? [LB503]

SENATOR GROENE: Could you supply it to the whole committee? [LB503]

MARY AVERY: The committee? Yeah. [LB503]

SENATOR MURANTE: Sounds great. Much appreciate it. Thank you very much. Proceeding with proponent testimony on LB503, any additional proponents? Are there any opponents to LB503? Any neutral testifiers? Mr. Mueller, welcome to the Government, Military and Veterans Affairs Committee. [LB503]

WILLIAM MUELLER: Thank you, Senator Murante. It's good to be here. For the record, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association. We have been working with Senator Karpisek in the Auditor's Office on a possible amendment. We don't have that for you today and I apologize for that. We just want to make sure that if there is an attorney-client relationship involved that that is protected and recognized. We think that there is reference to that in the Auditor statutes elsewhere and, if it is, we probably don't need to do anything with this bill. But I just want to make sure that that is protected here. And we will continue to work with committee counsel and Mr. Karpisek and I'm sure that we can work this out. [LB503]

SENATOR MURANTE: Wonderful. [LB503]

WILLIAM MUELLER: Thank you. [LB503]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much. [LB503]

WILLIAM MUELLER: Thank you. [LB503]

SENATOR MURANTE: Additional neutral testimony on LB503. [LB503]

LAURA McCORMICK: Hello. [LB503]

SENATOR MURANTE: Hello. Welcome. [LB503]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

LAURA McCORMICK: Thank you. My name is Laura McCormick. I live in Omaha, Nebraska. It's ironic to listen to the gentleman from the bar, I don't know him, but the topic of the guardian ad litem audit, which was conducted in Douglas County... [LB503]

SENATOR MURANTE: Would you spell your name for us, please? I apologize. [LB503]

LAURA McCORMICK: Sure. M-c-C-o-r-m-i-c-k, Laura. [LB503]

SENATOR MURANTE: Okay. [LB503]

LAURA McCORMICK: Would you like me to spell that too? [LB503]

SENATOR MURANTE: Yes, please, just for the transcribers. It helps them. [LB503]

LAURA McCORMICK: L-a-u-r-a. In any event, I think it's somewhat ironic that the gentleman is here. I'm a private citizen but I know a lot about guardian ad litem and there still are records that have not been turned over to the State Auditor. And there are numerous allegations of inappropriate behaviors and activities by some of the contracted vendors as well as the noncontract attorneys. And to your question, is it Senator Groan (phonetically)? [LB503]

SENATOR GROENE: Groene. [LB503]

LAURA McCORMICK: I make public records requests. I believe the Auditor has some difficulty getting some of the records when they are requested. I believe that we should allow the Auditor to be able to subpoena records. And I don't know if some of the people involved in the guardian ad litem audit will be successful in hiding behind attorney-client privilege, but state statute regarding contact with their child clients is very clear. And you know, again, I don't know, I think Krist and Campbell both are introducing legislation. But my personal opinion and I believe the taxpayers who elected each of you would advocate that if you accept money from a governmental entity, then you should be required to turn over your records. And I have yet to meet a single private individual who has a problem with records being required to be turned over to an auditor. Auditors themselves are required to comply with their own code of conduct and ethical rules. And so I think, given the fraud that has gone on in the state of Nebraska with some of these programs that involve vulnerable adults and vulnerable children, there should be a strong subpoena power. [LB503]

SENATOR MURANTE: Okay. Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. Is there additional neutral

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

testimony? Seeing none, Senator Krist waived closing and that closes the hearing on LB503. We'll proceed to the next item on the agenda, LB539, as we continue with State Auditor day here in the Government Committee. Welcome, Senator Watermeier, to the Government, Military and Veterans Affairs Committee. [LB503]

SENATOR WATERMEIER: Thank you. Good day to be here on State Auditor day. [LB539]

SENATOR MURANTE: That's right. We have theme days here in the Government Committee. [LB539]

SENATOR WATERMEIER: (Exhibit 1) Okay. (Laughter) Chairman Murante and members of the Government, Military and Veterans Affairs Committee, my name is Dan Watermeier, D-a-n W-a-t-e-r-m-e-i-e-r, representing the 1st Legislative District in southeast Nebraska to introduce LB539. I am also the Chairman of the Legislative Performance Audit Committee, and although I introduced this bill in my individual capacity, other members of the committee also cosigned on this bill with me. LB539 was brought to me by State Auditor Janssen, and I will try to give you a brief overview of the key provisions of the bill, and he and others from his office will also give you more details. In general terms, the purpose of LB539 is to provide much needed tools to the two separate auditing arms of state government: our Legislative Audit Office and the Auditor of Public Accounts. The specifics of the bill, I want to say that LB539 does nothing to minimize or in any way blur the current distinctions between the respective authority and the duties of these two auditing bodies. As has long been the case, the Legislative Audit Office, under the direction of the Legislative Performance Audit Committee, is solely responsible for performance audits of state agencies. The Auditor of Public Accounts is the executive officer responsible for auditing the finances of this state's agencies and political subdivisions. In no way does LB539 alter that very important division. What LB539 does do is better equip both offices to carry out their respective tasks by ensuring that they are equally empowered to require audited entities to respond timely and responsibly to requests for audit records and documentation. It does several things, three things: establishing deadlines that agencies must meet in responding to requests for information; a second is prohibiting and penalizing retaliatory personnel action against employees who cooperate with the auditors; and the third thing is codifying the Legislature's intention that both offices have access to review but not release information covered by attorney-client privilege. I'll briefly explain these. LB539 provides a specific time frame in which audited entities must provide requested information to the auditors. I believe this is necessary because currently the laws granting both the Legislative Audit Office and the Auditor of Public Accounts access to needed audit information do not specify when such information must be made available. While there can be good reasons an agency is unable to provide information within a day or two of an auditor's request, it is also possible for an agency to unnecessarily delay an audit by not providing information on a timely fashion. LB539 addresses this problem by requiring an audited entity to respond to a request for audit information within three business

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

days of the request. For particularly difficult or extensive requests, the agency would have up to three weeks to provide this requested information. The language in LB539, which is modeled on current public records statutes, also provides a mechanism for partial responses in cases of particularly difficult or extensive requests. The specific provisions differ somewhat from the public records statutes which the Auditor's Office will discuss in more detail later. Additionally, under the existing Legislative Performance Audit statutes, agency personnel that willfully fail to meet these deadlines could be charged with a Class II misdemeanor. LB539 would add the same penalty provisions to the Auditor of Public Accounts statutes. Next, LB539 prohibits and penalizes retaliatory personnel action against government employees who give information to either audit office. The performance audit statutes already prohibit retaliation against an employee who participates in a performance audit and LB539 simply improves existing language by prohibiting retaliatory personnel action, as it is more comprehensively defined in the State Government Effectiveness Act, commonly known as the whistle-blower act. The bill would add a comparable prohibition to Auditor of Public Account statutes and it would add a penalty provision to both offices' statutes. Under the bill, it would be a Class III misdemeanor to take such retaliatory personnel action in response to either a performance or a financial audit. It is important to have these protections for each audit office because the current whistle-blower act does not cover all audit situations. Finally, LB539 states specifically in law that both the Legislative Audit Office and the Auditor of Public Accounts have access to information protected under attorney-client privilege. A 2007 Attorney General Opinion states that under existing statutes the Audit Office already has the right to review privileged information but may not release it unless the agency waives this privilege. The State Auditor's statutory authority to access confidential information is similar to that of the Performance Audit Office, so it is reasonable to believe that the State Auditor also has comparable access to privileged information. Although the AG Opinion did not discuss that office directly, adding this provision to the statute would make it clear to the Legislature it intends for both offices to access confidential information, to include information protected by privilege. It would not, however, put attorney-client privileged information at risk of being divulged publicly. The bill states specifically that compliance with the provisions of the bill does not constitute a waiver of the attorney-client privilege. Furthermore, current statutes governing both audit offices already prohibit them from divulging confidential or nonpublic information. I am also offering AM127, an amendment to this bill. This amendment addresses a concern expressed by DAS regarding the portion of LB539 that pertains to the penalties associated with retaliatory personnel action against government employees for giving information to either audit office. Their concern was that the new language would conflict with union and state employee contracts. AM127 adjusts this language to address their concerns. Thanks for the opportunity to bring this bill forward. I'd be glad to answer any questions. Also have with me today Martha Carter with the Performance Audit Committee. She's very knowledgeable on this, too, but I think this is a good conversation to have. We wrestled with this quite a bit and I feel comfortable right where I'm at right now. So if there's any questions, I'd be glad to answer them. [LB539]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR MURANTE: Thank you, Senator Watermeier. Are there any questions? Not at this time. Thank you very much. [LB539]

SENATOR WATERMEIER: Thank you. [LB539]

SENATOR MURANTE: Much appreciated. [LB539]

SENATOR WATERMEIER: I'll probably not close but I want to listen in a little bit. [LB539]

SENATOR MURANTE: Okay. Sounds good. And since introductions, we have been joined by Senator Matt Hansen from Lincoln and Senator Joni Craighead from Omaha. So we will now proceed to proponent testimony on LB539. Welcome to the Government Committee. [LB539]

LANCE LAMBDIN: (Exhibit 2) Thank you. Good afternoon, Chairman Murante and members of the committee. My name is Lance Lambdin, and that's spelled L-a-m-b-d-i-n, and I'm the legal counsel for the Auditor of Public Accounts. And Auditor Janssen thought that it might be helpful for me to provide you with a little bit of background information about this bill. And to start, the genesis of LB539 dates back to 2007 when the Department of Education denied the Legislative Audit Office access to certain records during a performance audit, citing attorney-client privilege. So the Chair of the Performance Audit Committee, at that time Senator Chris Beutler, now Mayor Beutler, sought a formal Opinion from the Attorney General as to whether the Legislative Audit Office should have access to such privileged information. And for your convenience, I passed out copies of that Opinion and in it the Attorney General opined that the Legislative Audit Office should have access to the privileged information. In doing so, however, the Attorney General acknowledged that the decision was what he called a close question. Now the Opinion was something of a minor victory for the legislative office, but it was not a cure-all. For one thing, the observation that the Opinion's conclusion was a close question could be seen as something of an indication of uncertainty as the correct determination. And this is especially problematic in light of the Nebraska Supreme Court's position that an Attorney General's Opinion should be respectfully considered and that it's not a judicial utterance and has no controlling authority. Consequently, the way things stand now, an agency could decide that the Opinion is incorrect and simply refuse to abide by it. So by codifying the Attorney General's conclusion, LB539 would put to rest once and for all any question as to the authority of the state's performance and financial auditors to access attorney-client privileged information. Something that the Attorney General's Opinion does do very well, I think, which was referred to earlier is to point out that under the current law the Legislative Audit Office is subject to very strict confidentiality provisions that prohibit the office from revealing any confidential information, and the same is true for the Auditor of Public Accounts. So according to the Opinion, these current statutory confidentiality requirements would effectively preserve the

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

attorney-client privilege because those materials could not be released in a report or in any other way. Now in the same Opinion, the Attorney General also answered a question about how long the Legislative Audit Office would have to wait to receive a response to a records request, and noting that the performance audit statutes contain no provisions saying when requested documents must be turned over, the Attorney General responded that the records should be produced, quote, in a time frame that is reasonable under the circumstances. Now as you can imagine, that lack of specificity is not very helpful for auditing purposes, especially when the auditors are running up against a deadline to get the audit done and submitted. And like the performance audit statutes, the laws governing the Auditor of Public Accounts do not say when the records have to be provided and, as a result, there have been times the financial auditors have had to wait for weeks, even as much as months in order to get a proper response to a records request. And this not only delays the entire audit process but also jeopardizes the accuracy of an audit by allowing time to alter or tamper with documentation. And something that many people don't know is that when dealing with uncooperative auditees, the Auditor of Public Accounts has actually had to abandon the current auditing statutes because of the lack of a deadline and make a public records request instead. That way the auditors could be assured a response within four business days as opposed to perhaps possibly weeks or months. The problem with this approach is that the public records laws allow 18 different types of records to be withheld, from personnel to appraisal and security information and that sort of thing. So in those circumstances, the Auditor of Public Accounts, who since territorial days has been recognized as the general accountant of Nebraska, is kind of placed between a rock and a hard place--either request the records under the auditing statutes and hope to receive them sometime, if ever; or make a public records request for those same documents, just like anyone who walks in off the street, and then deal with the reality that some of the records will probably be withheld. So I've hit my time, so I'll be happy to answer any questions if you have for me. [LB539]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?  
Senator McCoy. [LB539]

LANCE LAMBDIN: Yes. [LB539]

SENATOR MCCOY: Thank you, Chairman Murante. Thank you, Mr. Lambdin. And I appreciate the thought process that goes behind this legislation and Senator Watermeier introducing it, but unless I'm missing something, I fear that as it's written it's not going to accomplish what the Auditor's Office is after, if I'm reading the green copy of the bill correctly on page 2. As I look through the bill, if you look at line 27 on page 2 where it talks about "significant difficulty or the extensiveness of the request," a definition for "significant difficulty" or "extensiveness" isn't outlined anywhere in the legislation. So what I fear is the green copy of this bill as written is you're seeking to have this information be released within three days. [LB539]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

LANCE LAMBDIN: Right. [LB539]

SENATOR McCOY: But anybody who would say, well, this is...we believe this is significant or is extensive, they've got three weeks. [LB539]

LANCE LAMBDIN: Right. [LB539]

SENATOR McCOY: So really all this bill does, unless it's amended, as I read the green copy is we've got three weeks. All we have to do is say significant difficulty, extensiveness. There's no definition of what that means. There's no way to prove whether that's accurate or not. And really all this means is we have three weeks to provide this information instead of three days. [LB539]

LANCE LAMBDIN: Right. And I think that's actually a really good point. I think, first of all, getting a response in three days in a lot of cases, just a response, would be more than we've had in a lot of cases, so that's one step. But you're right, you know, there is no definition. I suppose that we could, if push came to shove and we say, no, it's not, we could go to the Attorney General and ask for some help. But ultimately, I think you're probably right. But even within three weeks would be amazing. We've had one case with one entity waited 175 days for...to get a response or to get the papers or the documents that we needed. So, yeah, it... [LB539]

SENATOR McCOY: I understand that. And I would dare say if you were to go to the Attorney General's Office, the Attorney General would look back at this and say,... [LB539]

LANCE LAMBDIN: Right. [LB539]

SENATOR McCOY: ...nothing we can do because there's no definition of "significant difficulty" or "extensiveness." I mean if the goal here is to get it in three weeks, and that's better than what's been done in the past, then perhaps it needs to be written slightly different. [LB539]

LANCE LAMBDIN: Right. [LB539]

SENATOR McCOY: If the goal here is to get it in three days, then we need to put some different teeth to this legislation in order to, in my view, in order to actually have it mean what we're to do, what we're purporting it to do, in my view. [LB539]



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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

LANCE LAMBDIN: Right. Right. And I appreciate that and I'd be glad to work with the committee and to see if we can come up with some language that might address that, so. [LB539]

SENATOR McCOY: Thank you. [LB539]

SENATOR MURANTE: Thank you, Senator McCoy. Are there additional questions? Senator Groene. [LB539]

SENATOR GROENE: Could you...thank you, Chairman. Can you explain to me what the difference is between the two audits? I mean I don't want to waste a lot of time, but give me an example of what you guys, the Legislative Audit, have audited versus what is the Auditor's responsibility. [LB539]

LANCE LAMBDIN: The Performance Audit or...? Okay, well, with the...basically it comes down to the difference between a financial and a performance audit. Yeah, basically we are...we have the authority to look at expenditures of public funds, but we don't have the authority to say, hey, we think, unless we're talking about abuse, fraud, that sort of thing, we don't have the authority to say we think those funds could be spent better in a different...make policy-type decisions or make recommendations regarding policy saying that, you know, you could do a lot better if you did this or you would be more effective. So we don't deal with effectiveness, that sort of thing. We deal with just this is what...this is where the money went, this is how it was spent, and making sure that no laws are broken, that sort of thing. [LB539]

SENATOR GROENE: So if the Legislature enacts a program,... [LB539]

LANCE LAMBDIN: Right. [LB539]

SENATOR GROENE: ...you can go in the bureaucracy that is meant to enact that program and see how the money was spent. And the Legislature then looks at your audit and then make decisions or changes because you guys did the audit. [LB539]

LANCE LAMBDIN: Well, they would... [LB539]

SENATOR GROENE: We make the decisions and the audit comes back to the Legislature. [LB539]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

LANCE LAMBDIN: Right. [LB539]

SENATOR GROENE: All right. [LB539]

LANCE LAMBDIN: The Legislative Performance Audit Office would go in and they would take a look and they'd say, hey, you know, and report back to the Legislature, this isn't working. But that's not something that we would do, so. [LB539]

SENATOR GROENE: Thank you. [LB539]

SENATOR MURANTE: Thank you, Senator Groene. Are there any additional questions? Seeing none, thank you very much for your testimony today. [LB539]

LANCE LAMBDIN: Okay. Thank you. [LB539]

SENATOR MURANTE: Much appreciated. We are still on proponent testimony for LB539. Welcome back, Senator Karpisek. [LB539]

RUSS KARPISEK: Thank you, Senator Murante. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. Didn't plan to come up but I...try to answer a couple questions. Senator McCoy, I think you are exactly right to say that probably don't expect to get it in three days but three weeks. Right now there is no time limit. As Mr. Lambdin said, one case took 175 days. I remember being in the Legislature not maybe with the Auditor's Office but with Performance Audit where things just never did come through Performance Audit. So I do agree with you and we'd, again, be happy to sit down and make that more teeth. And I appreciate you catching that. But three weeks would be wonderful compared to no time line right now. Senator Groene, Mr. Lambdin is in the Auditor's Office, so the Auditor's Office does the money. The Performance Audit Committee of the Legislature does performance audit, makes sure that the laws are being done as they were supposed to do. Maybe they go into--and Martha Carter could probably do a better job of this--they go to agencies and make sure that they are performing as they are supposed to, where the Auditor's Office looks at the money that that agency is spending. I didn't know much about that. I was never on Legislative Audit Performance, but as I see it, they run parallel to each other. One does money; one does performance. And I think that Senator Janssen and Senator Watermeier have done a...been very clear that we don't really want those two to cross paths but run and work with each other. So I hope that answers that a little better. [LB539]

SENATOR GROENE: That's a good explanation. Thank you. [LB539]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

RUSS KARPISEK: And I'd be glad to try to take any other questions or I'll... [LB539]

SENATOR MURANTE: Thank you, Senator Karpisek. Are there any questions? [LB539]

RUSS KARPISEK: Thank you. [LB539]

SENATOR MURANTE: Seeing none, thank you very much again. We are still on proponent testimony for LB539. Are there additional proponents wishing to speak? Welcome back. [LB539]

LAURA McCORMICK: Hello. My name is Laura McCormick. Do I need to spell it again? [LB539]

SENATOR MURANTE: You do, yep. [LB539]

LAURA McCORMICK: L-a-u-r-a M-c-C-o-r-m-i-c-k. I'm from Omaha. A little bit about me: Before staying at home with my kids, I actually was an auditor but I was an auditor in private industry. I worked as an internal auditor and I can tell you that the problems that people have, auditors have, accessing records, it doesn't matter whether it's government or private industry, it's all the same. In terms of confidentiality of records, private auditors also have requirements, all auditors do, to keep materials confidential, much the same...in the same way as attorneys. This is the audit report regarding ad litem in Douglas County, an outrageous abuse of how tax dollars are spent. There's still no answers to some of the questions. They're hiding behind attorney-client privilege. Some of the records, on page 60--sorry, I need my bifocals--page 69 of this report is a very simple document that has to do with instructions. It's just instructions on how to submit your invoice. In order to get this document, I had it before the Auditor had it, months of requests. I had to take it all the way to the Attorney General, Dale Comer, in order to get a simple instruction on how a payment should be processed. I understand the discomfort in terms of should it be three days, should it be three weeks. As a person who requested, here's just a few of the documents that I've requested that directly relate to this. What I would tell you is there are some entities that are cooperative and so the entities that choose to be cooperative likely are going to give you the stuff in three days. In fact, there are some entities that may not even make you type up an official request. There are others, though, that need the parameter of three weeks because then that gives you a boundary. In terms of this audit, some of the vendors that were audited tried to portray this as some sort of a performance audit. This is not a performance audit. This audit was simply an audit that looked at the financial expenditures that were made to these attorneys; did they comply with state statute; did they meet the children within the prescribed period. There's no documentation to prove that they did and they're hiding behind attorney-client privilege. And that's the reason why the Auditor never received those documents. I'm against

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

fraud and I think most taxpayers are, so whatever you can do to strengthen the power of the Auditor I think would be wonderful and it would be very appreciated because then hopefully we would have the Auditor functioning as they should to sort of be a watchdog and to be guaranteeing that what we're spending these monies on is appropriate. So if you'd like to see any of the materials that are related to this specific audit, I'd be happy to show them. [LB539]

SENATOR MURANTE: Thank you very much. Much appreciate it. [LB539]

SENATOR GROENE: I've got a question. [LB539]

SENATOR MURANTE: Hold on one second. Senator Groene has a question. [LB539]

SENATOR GROENE: Excuse me. Is that a government audit or are you...that was a government entity? [LB539]

LAURA McCORMICK: Yes. What...this particular audit was...the audit report was issued. I believe the audit began in 2013, although Mary Avery is here. She could answer more specific questions if you had them. [LB539]

SENATOR GROENE: But you, as a citizen, couldn't you do a FOIA... [LB539]

LAURA McCORMICK: Well,... [LB539]

SENATOR GROENE: ...and then you have ten days to get that document you wanted about... [LB539]

LAURA McCORMICK: ...a public records request, and believe me, I'm very good at them, yes. [LB539]

SENATOR GROENE: Yeah, I figured you would be. [LB539]

LAURA McCORMICK: Yes, that is what I had to do. I was a private citizen who became aware of issues with guardian ad litem. And because of that, I went to visit Senator Ashford's office and they showed me Patrol's report. From there I started reading the contracts, I started trying to follow up, I started observing in juvenile court, doing all of this as a private citizen. I also started making public records requests. And you are right, under the letter of the law, but I believe this other gentleman that was up before me, I don't know his name, he was talking about the list of

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

exceptions. When you make a public records request, you may at times be denied. And certainly if the law were very clear and allowed them to look at privileged information, I, as a private citizen, am never going to be able to see anything that falls under attorney-client privilege and I wouldn't argue that I should. But I think our state auditor most definitely should. And that would be my perspective. Does that answer your question? [LB539]

SENATOR GROENE: Thank you. Thank you. [LB539]

LAURA McCORMICK: Yeah. Okay. No more? [LB539]

SENATOR MURANTE: Okay. Thank you very much. [LB539]

LAURA McCORMICK: Uh-huh. [LB539]

SENATOR MURANTE: Additional proponent testimony to LB539. Is there any more proponent testimony? Is there any opposition testimony to LB539? Any neutral testimony? Seeing none, Senator Watermeier waives closing and that closes the hearing on LB539. We'll proceed to the next item on the agenda, LB552, and Senator Nordquist. Welcome to your Committee on Government, Military and Veterans Affairs. [LB539]

SENATOR NORDQUIST: Welcome. Thank you, Mr. Chairman and members of the esteemed Government Committee. I'm State Senator Jeremy Nordquist from District 7 in downtown and south Omaha. LB552 is introduced at the request of the Auditor of Public Accounts. The purpose is to update duties for the Auditor of Public Accounts related to written reviews of reports. Under current law, in Section 84-304.02(1), the Auditor must perform a written review of all audit, accounting, or financial reports required to be filed with the Auditor's Office by a political subdivision. The same set...statute also requires the Auditor's Office to mail a copy of that written review to the political subdivision involved and a copy to the accountant who prepared the report. This law has been in effect since 1974. When the law was passed, electronic capabilities obviously were much less developed than they are today, so while a lengthy written review may have been the norm three decades ago, the Auditor's Office has been much more efficient by utilizing an electronic check sheet to review those reports. If a submitted report is found to be defective in some way, then a more lengthy written critique certainly is necessary to explain what action may be necessary to bring the report into compliance with standards. In 2011, this section was amended to add the current language in (2)--and that bill actually came through the Retirement Committee--which directs various pension plans and actuarial reports to be filed with the Auditor's Office. The purpose of that addition was to give the Auditor's Office oversight over the political division, largely political subdivision retirement plans and actuarial reports. It also discontinued the requirement to send these reports to the Retirement Systems

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

Committee. Our committee for a long time was getting these reports but really had no oversight over them, no statutory guidance of what to do with them. So we shifted that over to the Auditor's Office. And while we did that shift to the Auditor's Office, we included language that said the Auditor has the discretion whether or not to issue a written review of the retirement pension plan. So they receive the reports, they review them, but whether or not they issue a written review of those, that is at their discretion. This bill, LB552, would allow the same for other political subdivision reports that the Auditor is required to receive. So I'd appreciate your consideration of this bill. I certainly think it will help the Auditor's Office, give them the discretion to choose what work is necessary and what work is not necessary. Thank you. [LB552]

SENATOR MURANTE: Thank you, Senator Nordquist. Are there any questions to the esteemed Senator from south Omaha? Seeing none,... [LB552]

SENATOR NORDQUIST: Thank you. [LB552]

SENATOR MURANTE: ...thank you very much. We will proceed to proponent testimony to LB552. Does anyone wish to testify in favor of LB552? Thinking about it maybe? Decided against it? Okay. Is there any opposition testimony to LB552? Any neutral testimony to LB552? Senator Nordquist, you are... [LB552]

SENATOR NORDQUIST: I'm going to waive closing. [LB552]

SENATOR MURANTE: Senator Nordquist has waived closing. Thank you, Senator Nordquist. Looks like Senator Larson's protest of State Auditor day has come to an end (laughter) and he is here to introduce LB621. Senator Larson, you are recognized. [LB552]

SENATOR LARSON: Thank you, Chairman Murante and members of the Government Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n. I represent Legislative District 40 from O'Neill. LB621 would give the Auditor of Public Accounts the ability to appoint a deputy who is not a certified public accountant. Nebraska has always had a deputy auditor since territorial days until Auditor Foley chose not to have one in 2007, which was his prerogative. A deputy auditor did not have to be a CPA until 1975 when the Legislature changed that rule at the urging of State Auditor Ray Johnson. I think it is important to note at this time that the State Auditor does not have to be a CPA either. Section 84-314 says the Auditor shall have the power to appoint a deputy to do and perform, in the absence of the Auditor, such acts herein authorized and required of the Auditor, as the Auditor may authorize him or her to do, subject to the same restrictions. Under that same statute, the deputy auditor must have at least five years' experience either as an auditor or in an executive capacity involving responsibility from directing the work

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

of others engaged in governmental accounting or auditing or both. The Auditor's Office also functions under statute 84-304 which requires two assistant deputies to be CPAs with at least five years' experience. These are the people who sign off on audits, not the Auditor or the deputy. So the question is, if the Auditor's Office has been able to function without a deputy auditor for eight-plus years, why would the deputy need to be a CPA when filling in for the Auditor who also does not have to be a CPA? Thank you and I'd be happy to take any questions. [LB621]

SENATOR MURANTE: Thank you, Senator Larson. Senator Craighead. [LB621]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Senator Larson, did you...did someone ask you to carry this legislation? [LB621]

SENATOR LARSON: I worked with the Auditor's Office with LB621. [LB621]

SENATOR CRAIGHEAD: So are you carrying it at their request? [LB621]

SENATOR LARSON: Yes. [LB621]

SENATOR CRAIGHEAD: Thank you. [LB621]

SENATOR MURANTE: Thank you, Senator Craighead. Any additional questions? Senator Groene. [LB621]

SENATOR GROENE: Is the deputy auditor position budgeted for? I mean... [LB621]

SENATOR LARSON: Yes. It's my understanding, with talking to the Auditor's Office, and they might be able to clarify more, this isn't...it's already budgeted for and I think they probably have someone in mind that they would make deputy auditor. It's more of a...it'd be a title change. It's my understanding it wouldn't be a raise or anything of that nature. But as our new State Auditor is trying to reform and make the Auditor's Office more efficient, this was one of the things that they outlined to make it more efficient. [LB621]

SENATOR GROENE: I'm assuming the last Auditor didn't believe he needed one but he used the funds somewhere else within his office. [LB621]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR LARSON: With someone else. And I, like I said, I don't think that the Auditor's Office plans on creating a new position. This bill doesn't come with a fiscal note. I think it would be more of a title change, from what I understand, for someone within the office. [LB621]

SENATOR MURANTE: Senator Craighead. [LB621]

SENATOR CRAIGHEAD: Senator Larson, okay, so the auditors are the ones that sign off, the CPAs. [LB621]

SENATOR LARSON: Yeah. [LB621]

SENATOR CRAIGHEAD: Okay. [LB621]

SENATOR LARSON: There's two assistant deputies, too,... [LB621]

SENATOR CRAIGHEAD: Okay. And the two...okay. [LB621]

SENATOR LARSON: ...and they have to be CPAs. [LB621]

SENATOR CRAIGHEAD: Okay. And the two assistant deputies report to the deputy,... [LB621]

SENATOR LARSON: Yes. [LB621]

SENATOR CRAIGHEAD: ...who reports to the State Auditor. [LB621]

SENATOR LARSON: Yes. [LB621]

SENATOR CRAIGHEAD: Okay. So if the State Auditor and the deputy auditor are not CPAs and do not have the full understanding that the deputy auditors do, how do they know what they're signing off on is correct? [LB621]

SENATOR LARSON: I think we put our trust in our elected officials to not only put the best people that they have or that they think to be the deputy but the Auditor. We, the public, trusts that he will get up to speed on those issues. And also when it comes to the...as I said, this position hasn't been filled in over eight years. And in terms of title, I think there's probably someone that has been performing this function for the last eight years but just minus the title.



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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

And I don't think LB621 makes substantial changes because if we don't change and if LB621 doesn't go, I don't think that...and maybe the Auditor can answer this. I doubt that he would even fill the position. The person that would become deputy auditor would just continue on. This is really just simplifying and clearing up the statute and the chance to reform government. [LB621]

SENATOR CRAIGHEAD: Okay. Thank you. [LB621]

SENATOR MURANTE: Thank you, Senator Craighead. Any additional questions? Seeing none, thank you, Senator Larson. [LB621]

SENATOR LARSON: Thank you. [LB621]

SENATOR MURANTE: We'll now proceed to proponent testimony to LB621. Welcome. [LB621]

MARY AVERY: Senator Murante and committee members, my name is Mary Avery, M-a-r-y A-v-e-r-y, and I was just going to clear up a couple questions. The audits done in the Auditor's Office have to be done by Governmental Auditing Standards, and even the deputy and State Auditor have to meet the requirements of those standards. So your question about understanding and knowing, the CPAs are the ones qualified to sign the reports, but the deputy and the State Auditor also have to meet the requirements of the Yellow Book standards, which require CPE in understanding the standards. Does that clarify your question? [LB621]

SENATOR CRAIGHEAD: I understand it well. [LB621]

SENATOR MURANTE: Does that...does that...hold on one second. Does that...so does that conclude your testimony? [LB621]

MARY AVERY: Yeah. [LB621]

SENATOR MURANTE: Are there any questions from the committee? Seeing none, thank you very much. Much appreciated. Additional proponent testimony to LB621? Auditor Janssen, welcome back to your Committee on Government, Military and Veterans Affairs. [LB621]

CHARLIE JANSSEN: Thank you, Chairman Murante, and happy birthday. [LB621]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR MURANTE: Thank you very much. [LB621]

CHARLIE JANSSEN: My name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I am the Auditor of Public Accounts for the state of Nebraska. And even though former Senator Karpisek still calls me Senator, I'm very happy to be the Auditor, especially on the 1st of the month, as you guys are all fully aware. (Laughter) I came up here mainly to, one, I wanted to thank all the introducers today for the bills but also this bill in particular. I think Senator Larson did a great job of encapsulating that the position is...it has not been filled. There's a person functioning in this role due to the statute, a person with a great deal of accounting background in this position. And the position won't go filled. And to maybe answer your question, Senator Groene, because I know I think where you're coming from, this is not asking for more money to create a new position. It's all within my budget right now. It's money that's already being spent. So I've heard rumors out there about, well, he's trying to decrease the budget, which I always try to decrease but...and I can do that by going out and stamping out waste, abuse, and fraud. I can decrease taxpayers' burden, my own included. But we do have a person in mind for this. It's not a pay raise position. I think the only fiscal note, which there isn't, on it would be changing business cards of a title, which would probably take a very...well, we'll probably wait till we use the old ones first. So that's basically what I wanted to come up and clarify. And again, I think it was touched on, in 1975 this legislation changed. We haven't had one for a number of years, but since territorial times, up until that point, we've gone much longer with a non-CPA. And I certainly have great respect for the CPA industry. I've got maybe close to 20 that are working in the office right now, so we're not lacking for CPA standards. And believe me, Senator Craighead, I was just as surprised as anybody when I found out I had to have continuing education. (Laughter) [LB621]

SENATOR MURANTE: Will that conclude your remarks? [LB621]

CHARLIE JANSSEN: That will. [LB621]

SENATOR MURANTE: Thank you, Mr. State Auditor. Are there any questions? Senator Craighead. [LB621]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Mr. Auditor, okay, a CPA has to pass four parts to their exam, one of which is auditing. What are the qualifications that this person who is not a CPA, what tests do they have to pass to be as qualified as a CPA would be in this position? [LB621]

CHARLIE JANSSEN: Other than what's outlined in the current statute, which you've already...you've talked about the number of years in the practice, what we're changing simply is

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

the CPA. So it would be somebody with an accounting background but, again, they're not signing off on the audits. It's the deputies that are doing that. [LB621]

SENATOR CRAIGHEAD: Thank you. [LB621]

SENATOR MURANTE: Thank you, Senator Craighead. Are there any additional questions? Seeing none, thank you very much for coming down today. [LB621]

CHARLIE JANSSEN: Thank you. [LB621]

SENATOR MURANTE: Additional proponent testimony for LB621. Any additional proponents? Any opposition testimony to LB621? Is there any neutral testimony to LB621? Senator Larson waives closing. (Exhibits 1 and 2) And before we close the hearing on LB621, I have two letters of opposition: one from the Nebraska Society of Certified Public Accountants, and the other from David Lechner of the University of Nebraska at Lincoln. And that closes our hearing on LB621 and we will proceed to the final item on the agenda for today, LB487. Senator Ken Schilz, welcome to the Government, Military and Veterans Affairs Committee. [LB621]

SENATOR SCHILZ: (Exhibit 1) Thank you, Senator Murante and members of the committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here today to introduce LB487. And I do have some handouts. Thank you. The purpose of LB487 is to simply expand the current statutory authority of the Auditor of Public Accounts to track public funds in the hands of certain entities that perform a function for or provide a service on the behalf of a governmental body or bodies. To start, under 84-304(4), the State Auditor is authorized to audit any entity created pursuant to the Interlocal Cooperation Act, which includes either the participation of the Educational Service Unit Coordinating Council or any educational service unit. This language was added in 2007. And while it has proven useful in allowing the Auditor to respond to concerns about possible misuse or waste of public educational funds, the addition merely touches the tip of the iceberg in terms of the vast number of other types of entities in this state that operate under the Interlocal Cooperation Act. Seven years before that, language had been added to the same section of statute allowing the Auditor to audit any entity created pursuant to the Joint Public Agency Act, which has separately levied a property tax based on legal authority for a joint public agency to levy such a tax independent of the public agencies forming such joint public agency. Say that fast five times. Again, I'll bet the transcribers love that. Again, while the beneficial...while beneficial, the limited scope of that addition has left untouched many of the JPA entities that have not levied a property tax. In both instances, entities operating under the Interlocal Cooperation Act and the Joint Public Agency Act are permitted to receive, handle, and spend public funds without any oversight by the State Auditor if they do not fall within the very narrow categories established under current law. LB487 would remedy this problem by removing

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

the qualifying language in 84-304(4) so that any Auditor could track the management of public funds by any entities created under either the Interlocal Cooperation Act or the Joint Public Agency Act. Considering the broad authority of these entities to receive public funds under their respective statutes, LB487 is needed to permit the Auditor to respond to allegations of fiscal mismanagement by them. As things stand now, however, the Auditor can only look at how much money public agencies give to the majority of independent entities that have been created under the Interlocal Cooperation Act or the Joint Public Agency Act. If those entities do not involve the participation of the Educational Service Unit Coordinating Council or an educational service unit or levy a separate property tax, as specified in the current statutory language, the Auditor can look no further. Once transferred, those public funds are then effectively hidden from any independent outside oversight. Similarly, LB487 allows the Auditor to trace state or federal funds that make their way to a service contractor or subrecipient, something that is also beyond the scope of the Auditor's authority under current law. The purpose of this provision is to ensure that those who receive public funds for the express purpose of performing a specific service on the behalf of a governmental body do not waste or misappropriate that money. To ensure that the bill accomplishes that goal, a service contractor or subrecipient is defined as "any entity that expends state or federal funds to carry out a state or federal program or function." That definition specifically excludes "an individual who is a direct beneficiary of such a program or function or a licensed healthcare provider or facility receiving direct payment for medical services provided for a specific individual." In other words, when addressing service contractors or subrecipients, the goal of LB487 is to focus on those who are entrusted with public funds to help carry out or implement a governmental program or function, not the individuals for whom that particular program or function is ultimately aimed at serving or benefiting. At this point, I would like to offer an amendment, and I think every one of you received that, to the bill that would narrow even further the definition of service contractor or subrecipient. All the amendment does is add one word on page 3, line 20 so that it would read, and I quote, means any nonprofit entity, end quote. That way it would be made clear that the Auditor could audit only nonprofit service contractors or subrecipients. To conclude, as the law now stands, public funds throughout Nebraska are constantly being put at risk of fraud, theft, or abuse by being entrusted to entities of individuals who are not subject to independent outside oversight. That oversight should be provided by the State Auditor and LB487 would make that possible. And with that, I thank you and I'll try to answer any questions. [LB487]

SENATOR MURANTE: Thank you, Senator Schilz. Are there any questions? Senator Groene. [LB487]

SENATOR GROENE: Example, the Public Service Commission handles all those fees, Universal access fund. Can the Auditor at this time audit them? [LB487]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR SCHILZ: Senator Groene, that's a great question and I know we have folks back here that are much better at answering that than me. So I could tell you an answer, but I wouldn't know if that's correct or not so. [LB487]

SENATOR GROENE: There's an awful lot of money involved there. [LB487]

SENATOR SCHILZ: Yeah. And I will defer to others that have more knowledge on that than me. [LB487]

SENATOR GROENE: Thank you. [LB487]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you, Senator Schilz. [LB487]

SENATOR SCHILZ: Great. [LB487]

SENATOR MURANTE: We will again proceed to proponent testimony on LB487. Welcome to the Government Committee. [LB487]

DEANN HAEFFNER: Thank you. My name is Deann Haeffner, D-e-a-n-n H-a-e-f-f-n-e-r. I'm an assistant deputy with the State Auditor's Office and I'd just like to address the question that you may have brought up. You brought up specifically Public Service Commission and like 911 fees that are collected. If the entities that were to receive 911 fees directed the fees to go to an interlocal agreement that was created, say between a city and a county, we would not be able to look at that money. [LB487]

SENATOR GROENE: That's what we do in Lincoln County. [LB487]

DEANN HAEFFNER: That's right. We can look at the county, we can look at the city, but if they create some kind of an operation between the two of them, we do not have authority to look at that created entity. [LB487]

SENATOR GROENE: Can I ask or shall I wait? [LB487]

SENATOR MURANTE: Are you done with your testimony? [LB487]

DEANN HAEFFNER: Yes. [LB487]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR MURANTE: Okay. Senator Groene. [LB487]

SENATOR GROENE: So once the fees are collected and given to the Interlocal Agreement, you can't touch them. [LB487]

DEANN HAEFFNER: That is correct. [LB487]

SENATOR GROENE: And what about a universal access fund where they're giving it to phone companies to build towers and grow rural access to cell phones and stuff? Can you guys... [LB487]

DEANN HAEFFNER: We do not have authority to access or audit telephone companies. Once that money comes from the telephone company and goes to the county or the PSAP provider, we can audit that at the city or the county level. But we do not have authority to go back to the telephone company and do an audit of that telephone company. [LB487]

SENATOR GROENE: Oh, Universal Service Fund, excuse me. It's service fund. He's correcting me. I said access fund. [LB487]

DEANN HAEFFNER: Yeah. [LB487]

SENATOR GROENE: All right. Yeah. [LB487]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you for coming down today. [LB487]

DEANN HAEFFNER: Okay. [LB487]

SENATOR MURANTE: We're still on proponent testimony to LB487. Senator Karpisek, welcome back. [LB487]

RUSS KARPISEK: Senator Murante, I apologize. I forgot to tell you happy birthday earlier. Happy birthday, and former Senator Wallman, as you pointed out. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the legislative liaison for the Auditor's Office. I didn't want to come up on the last bill because I just quickly wanted to put Senator Craighead's mind at ease. The deputy director would not be me. I was not asked to interview for that.

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

(Laughter) So I'm sure that was your...kind of your hang-up there, so don't worry about that. [LB487]

SENATOR MURANTE: That takes one filibuster off the agenda. [LB487]

RUSS KARPISEK: I think it is someone very qualified and already in the office. LB487...thank you, Senator Murante and members. As Senator Schilz explained, this bill would authorize the Auditor to examine any service contractor or subrecipient of state or federal funds. The amendment that he talked about would make the bill pertain only to nonprofit contractors or subrecipients. The focus of the bill is not to audit private business but to be able to make sure taxpayers' money is accounted for. I have talked with Bill Mueller today and prior, and we are working on maybe more of an amendment. As Senator Schilz said, the medical field is exempted here and Mr. Mueller said maybe dental also needed to be put in there separate. I would tend to think that we would agree. Again, we are not trying to get into anyone's private business records. This would, though, authorize the Auditor to extend its auditing power to interlocals and JPAs, or joint public agencies. I feel this is still public money being used for a public purpose, so why would it not be open to audit just like any other political subdivision? I wish I would have known this when I was mayor at one time and we could have done some other things I guess. I think one thing that keeps coming up is just to say a county and a city could go together, form a waste dump or a garbage dump and then you can't audit that garbage dump. I'm a little perplexed by that. I understand, I'm sure, why people wouldn't want to see that. And I'm sure there may be those maybe behind me who will disagree with my opinion, but I know the Legislature is all about transparency and accountability, and I think LB487 helps move us toward that, both of those things. So with that, I'd be glad to try to answer any questions. [LB487]

SENATOR MURANTE: Thank you, Senator Karpisek. Senator Groene. [LB487]

SENATOR GROENE: Thank you, Senator Murante. We have a situation where we have a nonprofit, that we have an occupation tax by the city on hotel rooms given to a nonprofit for tourism. And there's been a lot of controversy. At present now, those are tax dollars, can you audit that nonprofit? It's given completely to them, \$400,000 or \$500,000 a year with a nonprofit board. Can you audit them? [LB487]

RUSS KARPISEK: In my opinion, no. [LB487]

SENATOR GROENE: Can you with this law? [LB487]

RUSS KARPISEK: Yes. [LB487]

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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

SENATOR GROENE: All right. We also have a nonprofit where they create these development corporations where they're semi public-private. Really I don't know what you call them. But can you audit them now? [LB487]

RUSS KARPISEK: I would say no, but again, Ms. Avery or Haeffner would be better to answer that. But I would say no. Now when we start talking again about getting into private, there's where the line is going to be. [LB487]

SENATOR GROENE: Well, they are kind of combinations with chambers of commerce versus government. They're quasi-private-public, you know, development corporations. Nobody owns it and everybody...I guess nobody owns it. It's just a bunch of money floating around. But anyway, but it originates from tax dollars. But would you think this would help you guys audit those situations? [LB487]

RUSS KARPISEK: In my opinion, yes. I'm not sure on that exact one. I'm sure that the Auditor's Office would have to look at it and make sure that it would apply. But it wouldn't hurt. [LB487]

SENATOR GROENE: That's true and you can prove it, that might become my priority bill. Thank you. [LB487]

SENATOR MURANTE: Thank you, Senator Groene. Senator Craighead. [LB487]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Senator Karpisek, you mentioned medical not-for-profits and one other one which was... [LB487]

RUSS KARPISEK: Dental. [LB487]

SENATOR CRAIGHEAD: ...dental would be excluded from this. [LB487]

RUSS KARPISEK: Correct. [LB487]

SENATOR CRAIGHEAD: Okay. Can you define what a medical not-for-profit would be? [LB487]

RUSS KARPISEK: And I'm not sure that we're talking about not-for-profit on that. This is in the green copy. I was talking nonprofit in the amendment. Reading in the green copy, it just says it "does not include an individual who is a direct beneficiary of such a program or function or a



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

Government, Military and Veterans Affairs Committee  
February 06, 2015

---

licensed healthcare provider or facility receiving direct payment for medical services provided for a specific individual." My thought is a hospital that gets Medicaid funds, of course it does not open their whole books up to an audit. [LB487]

SENATOR CRAIGHEAD: Okay. Thank you. [LB487]

SENATOR MURANTE: Thank you, Senator Craighead. Any additional questions? Seeing none,... [LB487]

RUSS KARPISEK: Thank you, Senator Murante, members of the committee. [LB487]

SENATOR MURANTE: ...thank you. Continuing with proponent testimony to LB487. Are there any additional proponents wishing to speak? Are there any opponents? Any neutral testimony? Welcome back, Mr. Mueller. [LB487]

WILLIAM MUELLER: Thank you, Senator. Senator Murante and members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Associated General Contractors, Nebraska Chapter, and the Nebraska Dental Association. As Mr. Karpisek described for you, we have been working on clarifying language. Our concerns are two. Number one, highway contractors now are very, very closely supervised by the Department of Roads on their projects. There are literally Department of Roads employees who are out on job sites watching contractors perform work. Contractors are not paid until their work is inspected and approved. We want to make certain that they are not subject to this additional audit. Secondly, the Nebraska Dental Association, insofar as dentists provide Medicaid services, they already are subject to federal RAC audits. And there's a bill in another committee this session where we will be looking at those audits. And again, we just want to make certain that we're not going to have multiple audits of the same people who provide services to the state. And I'm sure that we can come up with language that clarifies that. Be happy to answer any questions you may have. [LB487]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you again for coming down today. [LB487]

WILLIAM MUELLER: Thank you. [LB487]

SENATOR MURANTE: Additional neutral testimony to LB487? Seeing none, Senator Schilz waives closing. That ends the hearing on LB487 and ends the hearing for the day. Thank you everyone for coming down. Much appreciate it. [LB487]