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Government, Military and Veterans Affairs Committee  
January 25, 2017

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[LB240 LB318 LB388]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 25, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB240, LB388, and LB318. Senators present: Tom Brewer, Vice Chairperson; Tom Briese; Joni Craighead; John Lowe; and Justin Wayne. Senators absent: Carol Blood, Mike Hilgers and John Murante.

SENATOR BREWER: (Recorder malfunction)...this committee hearing. I'll start by introducing the Senators that are members of the committee. Starting on my right, John Lowe from Kearney; Tom Briese from Albion; not present today is Mike Hilgers from Lincoln; myself, I'll be functioning as the Chair; Tom Brewer from Gordon; and then Andrew; the normal Chair of the Government, Military and Veterans Affairs Committee, John Murante, is not available today, he's from Gretna; then soon to be here, I hope, is Senator Justin Wayne from Omaha; Senator Carol Blood...yeah, Joni Craighead, and then Carol Blood from Bellevue, and then Sherry Shaffer, who is our clerk. The bills will be taken up in the following order today: LB240, LB388, and LB318. They're posted outside the door. The green sign-in sheets are at both sides of the entrance. Sign in only if you're going to testify and give the clerk the sheets as you come up to the table to testify. And if you are not to testify, but would like to be recorded as a proponent or opponent of a bill, there is a white sheet that you can fill out, and they're on the table on both entrances. Print your name and indicate who you are representing before you sign, before you begin your testimony, and please spell out your name for the record. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks we reserve for the introducing senator. Please listen carefully and try not to be repetitive. We'll use the light system here today, green light three minutes, amber for one, and red for the end of testimony. At this time please turn off or silence your cell phones or devices. If you have a prepared statement or exhibit, give it to the page who will make distribution of it or make copies if necessary. We will need 12 copies. We can make copies. Our page today is Joe Gruber from Oklahoma. Raise your hand over there. There he is. And first up, Colonel Baker. Colonel Baker, sorry, Senator Baker. Too much time in the Army.

SENATOR BAKER: Thank you, Senator Brewer and members of the committee. The last time I was here it was entirely different people so it's a new cast here today. I am Senator Roy Baker, Roy, R-o-y, Baker, B-a-k-e-r, and I represent District 30. I need to explain, you know, why I brought this. It goes back to an experience that I had and sort of an eye opener. I'm a partner in the LLC that does executive searches. We were assisting the ESU 11 Board with their administrator search in November and December. The interview date was set for Friday, December 17th. One of the four finalists to be interviewed that day was from Minnesota and a couple others were two or three hundred miles away from home. It turned out to be an icy day with threat of things getting worse. The board and we as consultants felt it was necessary to go

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

ahead with the interview day since the candidates were present, but of the ten members of the board, it was a struggle to get a majority of people present. We met in what probably 20, 25 years ago would have been dubbed a distant learning room. So with the effort, the board was able to get six of the ten members there so there was a quorum present. Their technology person had it arranged so the other four could still participate in the interview and in our matrix our consensus process at the end. We left that they couldn't vote, they weren't present because they weren't quite sure how that was, but it worked out very well. There was a series of screens up there, the people in their homes who couldn't make the meeting were able to see the person interviewed and hear the discussion, and could ask questions and in turn they could be seen. So that gave me, I guess, a glimpse into the future. As we think how far technology has come the last 10 to 20 years, I can hardly manage what's going to happen in the next 10 to 20 years, but I see a distinct possibility that virtual meetings will become perhaps the norm someday. It might be 20 years, it might be 30, who knows, but I think it would be possible to have virtual meetings in the future that allow full public participation just as much as there is now, full participation of members of the governing body as there is now. We find more and more that people sitting on school boards, they have other jobs. A lot of times they're traveling, they're out of state, but if we get to the point someday where they can be connected and participate even though they're in California or New York on business, that would probably be a good thing. So what LB240 does is nothing more than simply add school boards to the list of organizations that can now have the videoconferencing meetings. And that's more to position ourselves for the future so if it does move forward, if and when it comes, and we go to our virtual meetings, that school boards would be positioned along with all the other agencies. As you can see, there's some significant restrictions right now for anyone trying to hold a meeting in more than just primary site. You know, for example, has to be an entity that is involved in more than one county. There has to be advanced notice given and has to be a copy of everything at every site where the meeting is going to be. And so it's not likely something is going to be used very often at all. And I understand why originally they probably put ESUs in. I mean, they're in it right now because educational service units and when you get outside of Lincoln and Omaha, particularly outstate Nebraska, they can cover a very large geographic area, so it would be a distinct advantage to members of the governing board and also from citizens who want to attend a hearing not to have to maybe travel 100 miles to get that done. So that's my rationale for adding school boards to the list of people who can have that type of meeting, and at that point I would take any questions you may have. [LB240]

SENATOR BREWER: All right. Questions? Yes, sir, go ahead. [LB240]

SENATOR BRIESE: Thank you, Senator, and thank you for being here, Senator. Does requiring the school district cover more than one county really take away from the intent of this bill? [LB240]

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

SENATOR BAKER: Well, I don't know. That's what's in there for all the other entities. I guess the theory is that oftentimes the county seat sort of in the middle of the county that no one would have any great distance if it's within the county. I assume that's the rationale for why it went in that way, so I'm not changing that any. [LB240]

SENATOR BRIESE: A lot of those other entities, you know, they cover a broader geographical area and oftentimes school districts, especially in an urban area, can be fairly small and compact. [LB240]

SENATOR BAKER: It could be. [LB240]

SENATOR BRIESE: So they wouldn't be able to take advantage of this the way it's written, could they? [LB240]

SENATOR BAKER: No, I just want...someday I suspect with technology advancing that the things will get to the point where people don't want...have to stay at one place to have a very slow and effective meeting with opportunity with full participation of citizens. [LB240]

SENATOR BRIESE: Thank you. [LB240]

SENATOR BREWER: I guess I'd just like to make a quick comment that, you know, being from the 43rd District and having 13 counties, you know, our...of course we split ESUs out there from where we're at, but if you look at 13 which, you know, has the west, I think it would be invaluable because we really do face a challenge, not just distance, but at this time of the year the weather and everything else. So thank you. All right. Other questions? Go ahead, sir. [LB240]

SENATOR WAYNE: Well, underneath the proposed language, even Omaha would apply to this because I'm assuming when you say two counties, Omaha goes into Sarpy County. Are you...I guess the question is, at these meetings there's a lot of action that takes place at a lot of meetings. Are you assuming that actions should be able to be taken by videoconference or telephone conference? [LB240]

SENATOR BAKER: It's that way right now for other entities. [LB240]

SENATOR WAYNE: Has there been any issues with telephone conferencing, particular? No so much video because you can see the individual on the other side, but telephone conference, you haven't... [LB240]

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

SENATOR BAKER: Senator Wayne, I'm not aware of any issues. [LB240]

SENATOR WAYNE: No further questions. Thank you. [LB240]

SENATOR BREWER: All right. Thank you, Senator Wayne. Other questions? All right. Senator Baker, thank you for your testimony. All right at this time we'll move on to those who are proponents, one more time, proponents. All right. Opponents. Come on up. [LB240]

SHAWN RENNER: Thank you, Senator. Senator Brewer, members of the Government Committee, my name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer with the Cline Williams law firm here in Lincoln, appearing today on behalf of a client, Media of Nebraska, Inc. We have some new faces on the committee so let me take just a second to explain what Media of Nebraska is. It is a nonprofit corporation organized by the Print Broadcast News Media in the state and it acts as the news media's government relations arm, I guess I would say. It doesn't take positions on business issues or those such things, but does take positions on access issues and other government issues. The constituent members of Media of Nebraska are the Omaha World-Herald, the Lincoln Journal Star, the Nebraska Press Association, the Nebraska Broadcasters Association and the Nebraska Daily Publishers Association. Media of Nebraska opposes LB240 and I'd like to explain why that is. I thought I heard Senator Baker say that this bill would only apply to school districts at...work in more than one county or cover more than one county. I don't believe that's what the text of the bill says. It applies to any Class I through Class VI school district unless there's been an amendment that I haven't seen. I was looking at the bill that was on the Legislature's Web site and it simply adds school districts to those entities that may hold half of their meetings...up to half of their meetings by video or telephone conference. So it would allow a school district, as I read the bill, that where everybody lives in the same town to simply not show up and to do it by video or telephone. I'm not sure whether that would be sufficiently convenient that that would actually happen, but the bill is drafted in that way, I believe. The...84-1411, the section of the Open Meetings Act that's being amended, has been amended a number of times over the years. Before I came over I took a look to see when the provisions were added that had the various organizations that concurrently hold video or telephone means and they extend back to the early '90s and there have been additions throughout the years. All of the groups that can hold meetings currently are groups that have some geographical diversity, in other words, they aren't all in the same town or all in the same area, and in fact you'll have a hearing after this one for LB318 which is a Brand Committee bill for the same thing. The Brand Committee has members across the state and Media of Nebraska is taking no position whatsoever on that bill because it is consistent with the other organizations that have been allowed to hold these meetings. It's Media of Nebraska's position that government works best when it is made easy for business people to participate and where the governing persons have to engage with the citizenry. That's the nature of this hearing. You folks sit here and listen to testimony from people, from members of the public to tell you what's on their mind and

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

what they think you should do about legislation. You have the opportunity to ask questions and everybody is able to participate, seeing each other interact with each other, and my client believes that's the best way for government to operate. There are certainly...Nebraska is a large state. It is certainly convenient to travel for a lot of people and that's why LB...why Section 84-1411 has been drafted the way it is and why it has been amended over the years. There is probably no public body that has more direct impact on the citizens of the state than a local school board. School boards take care of our children. They educate our children and they have significant impact on property taxes. In many jurisdictions, school boards are, if not the largest component of property taxes, certainly one of the main components of property taxes. And for that reason we think it's important that people deal with each other face to face to deal with the issues that school boards have to decide on a regular basis, including taxes. So my client's position is that the committee should not advance LB240 and thanks you for the opportunity to present its point of view to you. Be happy to take any questions. [LB240]

SENATOR BREWER: Thank you, sir, for that testimony. All right. Questions? Senator Briese. [LB240]

SENATOR BRIESE: On page 5 here, I don't know if you have...it would appear towards the top there and maybe Section 3, part (a), that if the entity or pool covers more than one county. [LB240]

SHAWN RENNER: Oh, I'm sorry. You're correct, Senator, I...in my reading of the bill blew right past that and you are correct, it does, in fact, say more than one county. [LB240]

SENATOR BRIESE: But towards your point, a small localized school district that happens to straddle a county line would qualify for this. [LB240]

SHAWN RENNER: Yeah. That was Senator Wayne's point, I believe. [LB240]

SENATOR BRIESE: Yes, and so you would have concerns about it based on that. [LB240]

SHAWN RENNER: Yeah. I suspect, I don't know. I'm no expert on school districts. There are probably some that have particularly farther west in some larger counties that have some geographical issues in terms of people getting to meetings. I don't dispute that possibility. In fact, I suspect there are school districts where all the residents...or all the members are in the same county and it covers only one county, yet there's still a significant ways to drive. Cherry County strikes me as being possible for that characterization and yet Cherry County wouldn't be able to

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

participate under this because it requires more than one county as you just pointed out. So I'm not sure that more than one county solves the basic issue that my client's have. [LB240]

SENATOR BRIESE: Sure. And you still object in the circumstance of a large district that it encompasses a lot of square miles in a large area? [LB240]

SHAWN RENNER: It's...that's not what this bill does so that's what I'm here to testify about and using Cherry County, for example. I don't know how my clients would react to that. I think you'd have some definitional problems, how you would have to define it in order to exclude Lincoln for example where it is a school district that is simply in one town and part of the county that surrounds it. You'd have to define it in a way that would allow a geographically large county school district to deal with that but presumably not a smaller geographical area. I'm not sure how you would do that, but it's conceivable, I guess. [LB240]

SENATOR BRIESE: Okay. Thank you. [LB240]

SENATOR BREWER: All right. Additional questions? Yes, sir. [LB240]

SENATOR WAYNE: Thank you, Vice Chairman...Senator Chairman, I guess. [LB240]

SENATOR BREWER: You can call me anything you want. (Laughter) [LB240]

SENATOR WAYNE: Senator Brewer. Is the concern that there are going to be communications via telephone or videoconferencing that would not be picked up by, say the media in the room, or is it more general of just a principle we should interact face to face? [LB240]

SHAWN RENNER: I think the latter is probably more important to my clients but it's certainly possible my law firm has offices in both Lincoln and Omaha and we hold videoconferences sometimes for partners' meetings. I can tell you from personal experience that when the Internet goes down, you no longer have a videoconference available to you and if you're in the middle of a meeting, that causes some problems. That's not the basic complaint from my clients though. Their concern is one of governance and their belief that government works best when people deal with each other and engage on the face-to-face basis. I don't know whether Senator Baker is accurate when he says in 20 years everybody's things are going to be done by video. Perhaps, but my clients believe that when people sit down face to face on important issues that have to be dealt with, and listen to each other and interact, that the government works the best that way. That's basically a philosophical decision. [LB240]

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

SENATOR WAYNE: Is there any leeway with your clients...you may not have had this conversation so you can follow back up with the committee later. If there was a provision that with other telecommunication or videoconferencing, that the media be allowed to have direct access to that line so they can hear other people on the other line. Would that alleviate some of their concerns? [LB240]

SHAWN RENNER: It wouldn't address the philosophical concerns I've identified. It might well take care of some of the practical issues that are involved. I think part of the fear, and I'm not sure...that's probably too strong a word...concern as (Section 84-)1411 currently works, you can...a body that is available for video or telephone conferencing can have up to half its meetings done that way. And so the Legislature has recognized that it's not a good policy idea to have all meetings done that way, that's why the limitation exists. I think one of the concerns my clients have is that to the extent that subject matter drives it and meetings are chosen for video or audio conferencing because of a particularly difficult subject matter, perhaps a budget hearing and the context of a school district that you at least run the risk that that becomes a motivating factor and that's troublesome. [LB240]

SENATOR WAYNE: No further questions. Thank you. Thank you, Senator Brewer. [LB240]

SHAWN RENNER: Thank you. [LB240]

SENATOR BREWER: Senator Wayne, thank you. All right. Any additional opponents? Seeing none, we'll go to neutral. Any in the neutral capacity? Seeing none, Senator Baker. [LB240]

SENATOR BAKER: I would point out just a couple of things. You know, first on page 2, lines 7 through 9, it talks about meetings can be held in accordance with subsections 2 and 3, Section 84-1411, and those are fairly extensive is what...as required there. On page 4, line 6, reasonable advance, public notice; reasonable arrangements to accommodate public's right to attend, hear and speak at the meeting, etcetera. At least one copy of all documents being considered is available to the public at each site of videoconference, telephone conference; at least one member of the governing board is present at each site; no more than half of the entity can be away from the main site. Lines 22 and 23, it's not any way being used to circumvent any public government purposes established in Open Meetings Act. And then part (b), a reasonable advanced public notice which identifies each telephone conference location in which a governing board member will be present. All those meetings are located in public buildings used by members of that governing board and reasonable arrangements made to accommodate the public's right to attend here and speak at the meeting. That's my first point, there are substantial restrictions that does probably cover more than one county. And the second point is, there's a number of agents, it's already permitted to do this. So if it's objectionable for the school board to

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

do it, I assume it's objectionable for any governing body to do it. All I'm doing is saying, add school boards to the list of people who now can operate under these guidelines. With that I close and thank you for your attention. [LB240]

SENATOR BREWER: Any additional questions for Senator Baker? All right. Just one quick one here on school board classification. I assume a Class I then is the largest of schools and then... [LB240]

SENATOR BAKER: Class I was the K-8 districts. And Class II is school districts with a population under 1,000; Class III is the bulk of the districts; Class IV is Lincoln; and Class V is Omaha Public Schools. [LB240]

SENATOR BREWER: Okay. It shows a Class VI here, what is that? [LB240]

SENATOR BAKER: Class VI formerly existed when there was still a lot of Class Is; Class VI was the high school district superimposed over a number of Class I districts. To our knowledge, there aren't any at this time. [LB240]

SENATOR BREWER: Very good. Thank you. All right. Anything else for Senator Baker? Sir, thank you. [LB240]

SENATOR BAKER: Thank you. [LB240]

SENATOR BREWER: All right, next up, LB388. Senator Lindstrom. [LB240]

SENATOR LINDSTROM: Thank you. This is actually my first time in Government Committee introducing a bill so I'm glad to be here. [LB388]

SENATOR BREWER: We're glad to have you. [LB388]

SENATOR LINDSTROM: (Exhibits 1, 2, 3) Thank you. Good afternoon, Vice Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. I am Senator Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. Today I'm bringing LB388 to authorize remote notarization in Nebraska. The idea of LB388 came to me from a constituent who owns one of our great small business success stories, Buildertrend, which does business across the country. Buildertrend was planning on testifying today but sent a letter of support in front of you instead due to the weather. Remote notarization or Web cam

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

notarization is a tool to help the ease and efficiency of doing business in our state. The movement to update notarization processes has been ongoing for years. The majority of states now allow electronic notarization, also known as eNotary. And the movement has quickly progressed to remote notarization. I provided a packet of letters for you from many nationwide organizations who are in support of remote notarization, including the Mortgage Bankers Association, Fannie Mae and Freddie Mac, HID Global, Quicken Loans, American Society of Notaries, and the Electronic Signature and Records Association. Currently Virginia and Montana allow remote notarization in their state, and many other states have brought legislation to authorize remote notarization. The National Conference of Commissioners of Uniform State Laws is working to add an amendment to the uniform law of notarial acts that would allow remote notarization for international transactions. Remote notarization allows for a signer and a notary to see, hear, and speak with each other in real time through audiovisual technology comparable to that of Skype...a Skype-type technology or FaceTime. This way the notary can see the signer and verify their identity as they are notarizing the document. There are companies that have already created the software to notarize remotely. The company Notarize.com will testify after me and can answer more technical questions about the process and Notary has provided letter to be read into the record in support of remote notarization. The process is quite simple. I actually had the chance this morning to go through a demo and it is quite simple I assure you. The document needed to be notarized is uploaded. A photo of the government-issued ID or passport is uploaded and verified using forensic analysis programs and the identity is verified. While the signer is waiting to connect with a notary on-line, they can fill out certain fields in preparation. Once connected, the notary confirms the identity, witnesses the signature, and helps out with the process. Once a signer has signed, the notary completes their electronic portion of the document, applying their electronic notarization seal and signature. The document is then ready to be saved or e-mailed. LB388 will allow businesses to more efficiently work across state and international borders. In this day and age where technology is changing our ability to work from anywhere in the world, remote notarization is a logical next step. With that, I'll take any questions you have. [LB388]

SENATOR BREWER: All right. Questions for Senator Lindstrom? I'm looking. Seeing none, thank you. [LB388]

SENATOR LINDSTROM: Thank you. [LB388]

SENATOR BREWER: All right. Those proponents please come forward. Welcome. [LB388]

MICHAEL CHODOS: Thank you. Good afternoon, Senator and members of the committee. My name is Michael Chodos, M-i-c-h-a-e-l C-h-o-d-o-s. I am with Notarize.com. Notarize is a leading nationwide provider of remote on-line notarization services. We are based in Virginia

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

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and we are in the daily business of providing just this service to people in Virginia and beyond. I wanted to start by saying because this is not an issue on which everybody has focused as kind of their main diet of legislative efforts, you know, so far, we all know that notarization is one of those fundamental features of ensuring integrity in business transactions. It's been around for thousands of years. It is so normal that it is in many ways kind of ignored. But as the tools of business have changed dramatically over the last hundred years, the tools of notarization have changed less dramatically over the last hundred years. So it is in many ways an analog process in a digital world. The proposed bill, which is modeled on Virginia's very successful and now very heavily implemented law, essentially creates a structure which allows the Secretary of State to scan available technology, understand what is currently out there in the world, and adopt a set of flexible standards that accomplish what is always kind of sacred and fundamental about the notarial act while bringing to the notary all of the tools of the modern world. And that's really what this is about. The notarial process is very simple. Basically, a notary makes sure that a signer is who they say they are, that they actually understand what they are signing, and that they are not under duress and that they're not engaging in fraud. Those are the kinds of acts that notaries become very good at after doing it for, in many cases, many years. Over the years, the tools that have been available to notaries have been updated a little. There was a time when notaries only could do this when they personally knew someone and that over time they started to have photo IDs available to them to verify the identity of people they didn't personally know. But the use of robust records like journals, the use of REAL IDs and other verification techniques have been adopted in different ways by states across the country and sometimes very slowly. Remote notarization brings the tools of modern identity validation, the kinds of things that you're probably used to using now when you go visit a bank: knowledge-based authentication in accordance with federal standards, a video secure video link which can be recorded and used for verification and enforcement processes later, geolocation to make sure that you understand where somebody is connecting from and what device they are using. These are the tools that essentially make all of the fraud prevention and integrity issues that come up in mortgage and other key transactions that bedevil people now and that technology can help us solve. So all the act does is enable this move into the future. It provides that the professionals in the Secretary of State's Office can learn and implement technologies as they evolve and change. And it provides an opportunity I think that's most important of all. It provides an opportunity of access. In a state like Nebraska, people are very far apart from each other in many places around the state. Getting to a notary for the transactions that are among the most important transactions in our lives: banking transactions, home buying transactions, etcetera, this is often not easy. Remote notarization makes for a better version of notarization and also greater access. We provide notarial services to the disabled. We provide notarial services to military members on deployment all around the country and around the world. We notarize documents for husbands and wives who are refinancing their house and one of them is on business trips, you know, somewhere else outside of the state. And we do business transactions. We notarize business transactions where companies have offices in different places around the country. This is what

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

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modern commerce looks like. We think that the notarial laws should be updated so that the notarial act supports commerce rather than being that thing that gets in the way. [LB388]

SENATOR BREWER: All right. [LB388]

MICHAEL CHODOS: With that, if there are any questions, I'd be happy to take them. [LB388]

SENATOR BREWER: Before we jump into questions, for the sake of everyone so that we have an understanding of what this would look like, I bring...I have a title that needs notarized. How do you do that if I'm in the remote part of western Nebraska? [LB388]

MICHAEL CHODOS: So a title document, let's just assume that this is the simplest version of that transaction. [LB388]

SENATOR BREWER: Okay. [LB388]

MICHAEL CHODOS: Either you have been given the title document in PDF form by your title company and your lender as part of the transaction or you got it in paper form. If you got it in paper form, you would take a picture of it on your iPhone or you would scan it and upload it as a PDF, you would put it up on whatever the vendor's site is that you are using, and you would see it and the notary would see it. If it's already been filled out by the title company, then you would go straight to signing it. If anything needs to be filled out, you can just fill it out right there on the screen. Once it's ready to go, you will then electronically sign the document either by signing on your iPhone as you now can do just by signing on the screen or by typing it into your computer keyboard; and then the notary will attach his or her certificate and signature, their seal and stamp in a graphical form and they will attach to the document what's called a digital certificate. What that does is in addition to the picture of the seal and the image of the signatures, that will lock the document so that forever thereafter if anybody tries to forge the document, change the document, add in other numbers, put an extra zero, you know, after a number on the document it will be evident on the document that it's been changed. So this provides not just security in identity validation but document security so that the document can never be tampered with. Once that's done and it's been signed by you and notarized by the notary, you have that PDF which you can take to the county recorder or which you can give to the title company for them to go process. [LB388]

SENATOR BREWER: All right. So if we back up to the issue of the person notarizing it, what are we going to have to do to get them up to speed so that they're able to participate in this process? [LB388]

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

MICHAEL CHODOS: So we find that notaries are extremely sophisticated about the notarial process. They've all been doing it for years. And in this day and age, interestingly, many, many notaries because, you know, all of us have smart phones, all of us work on our computers all day every day, it is a relatively simple learning curve for a notary to understand what a digital certificate is. They have to go through their own process by devalidation to get their own digital certificate and then how to use the software to apply it. So we find that secretaries of state--this occurred in Virginia and we assume it will be occurring in states around the country--secretaries of state basically are looking into adopting, you know, standards that a notary must comply with and either requiring education and training or leaving it to the notary to get the necessary education and training in order to be up to speed. [LB388]

SENATOR BREWER: All right. Even for a slow guy like me, I got her now. All right. Questions? Questions? Seeing none, sir, thank you for your testimony. [LB388]

MICHAEL CHODOS: Thank you very much. [LB388]

SENATOR BREWER: All right. Let's see. Proponents. Welcome. [LB388]

PATRICIA OHMBERGER: Hi, Senator Briese...Brewer, thank you very much for being the Vice Chair today. [LB388]

SENATOR BREWER: Thank you. [LB388]

PATRICIA OHMBERGER: Members of the committee, my name is Pat Ohmberger or Patricia. It's P-a-t-r-i-c-i-a Ohmberger, O-h-m-b-e-r-g-e-r, and I am here on behalf of the Nebraska REALTORS Association. I am a member of our board of directors so I am here to be in favor of this bill. And one of the reasons is as a real estate agent for the last 25 years, we in the real estate industry serve our clients. And our clients are very, very important to us and we want to protect their rights and the ease of using something as streamlined as what we're talking about here. And I think I have in the past 25 years went from a brick cell phone and probably all of you are familiarized with that. Our previous speaker here that was in support of this talked about everybody having a smart phone and how easy it was to do all the documents the way they are. I really feel like that is a simpler process now than anybody ever thought about. Prior to being in real estate, I sold fax machines so I was in that analog system back there. And coming up to this century has been interesting to not to speak of that. Probably 90-plus percent of my documents that I sign right now with my clients I e-signature all of them. That's not notarized but, you know, we use that system constantly. So I think we serve the streamline process. We give them the benefit of the doubt. Everyone is so busy that now we need something like that. So I think the technology has come up now with that level and so I would be a very strong proponent of this.

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Government, Military and Veterans Affairs Committee  
January 25, 2017

---

However, that being said, I think the previous supporter of this made it very clear that he could do this and validate that notary without having a problem. So that was kind of our only hitch to this you might say is that we really wanted to make sure that it didn't have any fraud, it didn't have any problems because honestly, I mean, we work with...the clients that we work with, I mean, this is the biggest investment that they're going to make in their life is their homes. And so we want to make sure that that's going to be taken care of. And, you know, the documents that they sign in their banking and their mortgages are very, very important. So I really feel like if we can come up to the new century technology and make it work for us this would be a very good thing to support. [LB388]

SENATOR BREWER: All right. Thank you. Questions? Yes, Senator Craighead. [LB388]

SENATOR CRAIGHEAD: Mrs. Ohmberger, thank you for being here today. [LB388]

PATRICIA OHMBERGER: Thank you, Senator. [LB388]

SENATOR CRAIGHEAD: What documents for real estate need to be notarized and which ones don't? [LB388]

PATRICIA OHMBERGER: Well, right now we don't have to sign any of our documents personally because of the homestead was removed from us having to sign those as far as real estate is concerned. But as far as the title companies, the bankers, and any of the mortgage companies, all of those have lots of, you know, notarization on them. So I've got a client right now that's down in Texas that will be signing all of their documents down in Texas. So once they get their documents from the title company, they're going to have to go to a notary someplace down in Texas to get them notarized to ship them back and there's three sellers. So husband, wife, and a son and so the son will have to sign them here either prior to or after. So, you know, there's going to be a lot of back and forth on that. So there's a lot of it that goes on yet and we're involved in a lot of it. [LB388]

SENATOR CRAIGHEAD: Thank you. [LB388]

SENATOR BREWER: All right. Additional questions? Seeing one, thank you, ma'am. [LB388]

PATRICIA OHMBERGER: Thank you. [LB388]

SENATOR BREWER: All right. Any additional proponents? Seeing none, we will transition to opponents. Come on up. Welcome. [LB388]

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

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COLLEEN BYELICK: Hi. Thank you. Vice Chair Brewer, members of the committee, my name is Colleen Byelick. It's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general counsel and chief deputy for the Secretary of State's Office, here on behalf of Secretary of State John Gale in opposition to LB388. As we've heard, LB388 allows remote notarization of documents which typically refers to a document being notarized via audiovisual technology such as Skype or FaceTime without requiring the physical presence of the signer. Notarized documents are typically significant legal documents. These are things like powers of attorney, wills, estate planning documents, mortgage documents, corporate agreements, health-related documents, oaths and affirmations, acknowledgements, etcetera. These documents are often publicly recorded and do have long-term legal significance. Requiring the signer to be in the physical presence of the notary and to identify the person signing the document have been the hallmarks of a notarized document in order to prevent fraud, to determine that the signer is not being coerced, or that there's no duress occurring. This bill does remove the physical presence requirement and it also provides some different ways to identify the signer. I just kind of wanted to read those to you. One of them provides for a proofing process in accordance with the specifications of the Federal Bridge Certification Authority. The other one is a valid digital certificate accessed by biometric data according to some various federal standards. These are not standards that are familiar to our office. These are not standards that are currently used today, and we're not sure that others in the notary public community are familiar with these standards. Aside from the concerns regarding the identification requirements and the removal of the physical presence requirement, we are concerned about how these documents will be recognized in other states and other countries. Many times notarized documents are used overseas in various transactions. They may also be used in other states. And we know that our local recording offices are starting to see documents or hear of documents being notarized using the Virginia remote notary process and are questioning whether they should be accepting those documents. On a national level, this is very new. Virginia and Montana are the only states that allow it, and Montana limits it to residents within the state. Virginia does not. Virginia could be a resident within another state or even another country. We're not aware that this process has been challenged in court so we're not aware that it has been upheld or validated in that way. The National Association of Secretaries of State has formed a task force to look at this and look at remote notary, but they have not yet issued standards or guidelines for the other states to look at. NASS has issued standards regarding electronic notarization and those were originally issued in 2006 and then reaffirmed in 2011 and 2016. The law that was adopted last year, our electronic notary act law does follow those standards, which gave us great comfort that we're following standards that other states also follow. One thing I did want to mention was the timing of this bill. It has a delayed operative date of July 1, 2017. Given the legislative process and given the fact that we would require to do rules and regs to put these technologies into place, we don't think that that timing is really practical or feasible. That would not give us enough time to study this, to adopt rule and reg, and to actually implement these changes. You know, given the significant nature of these documents, given the uncertainty of this new type of notarization, and given the timing of our own eNotary

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

program, which will go into effect July 1 of this year, you know, we respectfully request that the committee, you know, hold this bill at this time. And I'm happy to answer any questions you may have for me. [LB388]

SENATOR BREWER: All right. Thank you. Questions? Yes, Senator Briese. [LB388]

SENATOR BRIESE: Thank you for being here. You mentioned earlier something about a task force that's been put in play. Is that in place now? [LB388]

COLLEEN BYELICK: Yes. So the National Association of Secretaries of State has identified this as a new topic of discussion given Virginia and Montana's adoption of this. And so they have put forth a task force of numerous secretaries of state that are studying these issues. There's a lot of other groups looking at this obviously and...but yet they haven't come up with any recommendations. There haven't been any standards adopted. It's just a preliminary. It was formed this summer to start looking at these issues. [LB388]

SENATOR BRIESE: When do they plan on finalizing their...? [LB388]

COLLEEN BYELICK: They are planning on meeting in February. NASS typically has a winter and summer meeting. The winter meeting is in February. I do know that they're planning to meet at that meeting. I don't know if they will issue any guidance out of that meeting. [LB388]

SENATOR BRIESE: Thank you. [LB388]

SENATOR BREWER: Any additional questions? All right, seeing none, thank you. [LB388]

COLLEEN BYELICK: Thank you. [LB388]

SENATOR BREWER: All right. Any other opponents? Any in the neutral capacity? Come on up. [LB388]

MARCY WAGNER: Good afternoon, Senators. [LB388]

SENATOR BREWER: Thank you for coming. [LB388]

MARCY WAGNER: Thank you for having me. My name is Marcy Wagner, M-a-r-c-y W-a-g-n-e-r, and I'm here today on behalf of the Nebraska Land Title Association, here in a neutral

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

capacity. I've worked with the land title and escrow industry for the past 25 years. As an industry, we are the investigators, analysts, counselors, and protectors of the property rights. Our members would like innovation, and specifically remote electronic notarization, to work. In order for this innovation to work, there needs to be statutes, regulations, and standard practices that recognize and protect remote electronic notarization. While in Nebraska we may have a statute that accepts notaries from other states, we believe it doesn't address the personal appearance question for secured instruments nor does it contain language to recognize electronic notaries from other states. A document that imparts constructive notice under state law signed through remote electronic notarization deserves the same certainty under state law as a good old-fashioned wet signed personal appearance notarization. As we learned from the foreclosure crisis, judges are all too quick to upend what is otherwise a valid mortgage. Despite concerns by some, if done right, we agree a remote electronic notarization can reduce certain fraud. We're concerned about the acknowledgements. Right now it doesn't state whether it's in personal appearance or remote appearance. We think that that needs to be addressed. These documents are something that's...it's the biggest investment that most people will make in their lives. We notarize warranty deeds, power of attorneys, deeds of trust. We just want to make sure that those documents will be valid and that there is rules and regulations to back that. So finally, we support the concept. We oppose the bill as written and we will continue working with Senator Lindstrom's staff and others to come to a compromise on what we think would be beneficial to the consumers. [LB388]

SENATOR BREWER: And you are neutral, right? [LB388]

MARCY WAGNER: We are neutral. [LB388]

SENATOR BREWER: Okay. All right. Questions? Looking left, looking right, seeing none, thank you. [LB388]

MARCY WAGNER: Thank you. [LB388]

SENATOR BREWER: Any additional neutral? Seeing none, Senator Lindstrom. [LB388]

SENATOR LINDSTROM: Thank you very much, Vice Chairman Brewer and committee members. I'll just touch on a couple of issues I heard. One, I do appreciate the Nebraska Land Title company coming in neutral or Association I should say, I apologize, and we'd be more than willing to work with them to correct some of the language as they see fit. And also with the Secretary of State's Office, we'd be more than willing to work with them also on a date--2017 can be quick. The remote bill that was passed last year goes into effect this year. We'd be more than willing to work with them on delaying that implementation. I don't know if it was touched on, but I did want to emphasize that in this process--and again, I had the opportunity to see how

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

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this was done--all what takes place, the remote face to face, if you will, audiovisual is recorded. So if there's any discrepancy on he said/she said issue there, all of it is recorded in the individual file where you could go back and look. That doesn't happen right now. So I would argue that it actually provides a little bit more security than what's in place now. The document itself, I did have a chance to look at that as well. It looks identical to how a notarized document will look outside of obviously being digital. The seal was there, everything is up to code there. So a couple of issues I just want to touch on. This is a bill to be more efficient. We're obviously in a technology era and just want to help folks make it more efficient business, operate more efficiently, and again, would be more than willing to work with the folks involved to work and help to alleviate their concerns. So with that, thank you very much; and I'd be happy to answer any final questions. [LB388]

SENATOR BREWER: Questions? I think those were excellent points because that's, you know, that seems to be the issue is just how do we make sure that that transition is possible and the time line so that it can be done right. [LB388]

SENATOR LINDSTROM: Sure. [LB388]

SENATOR BREWER: Thank you. [LB388]

SENATOR LINDSTROM: Absolutely. Thank you, Senator. [LB388]

SENATOR BREWER: All right. We have one more, LB318, Senator Hughes. [LB388]

SENATOR HUGHES: Vice Chairman Brewer, members of the Government, Military and Veterans Affairs Committee, for the record my name is Dan Hughes, that is D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. I'm here today to introduce LB318. This bill was brought to me by a member of the Brand Committee. They would like to have the authority to use telephone conferencing for their meetings. Currently, a meeting of the Board of Educational Service Unit, a meeting of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act of the Joint Public Agency Act of the Municipal Cooperative Financing Act can have a teleconferencing. Also the governing body of a Risk Management Pool or its advisory committees organized in accordance with the Interlocal Government Risk Management Act. Also a community college board of governors, or the governing body of a public power district or the governing body of a public power and irrigation district can have the authority to meet by telephone conferencing. The Brand Committee is just having...asking to have that same opportunity. The Brand Committee's jurisdiction is generally in the western reaches of Nebraska. Committee members have to travel long distances to conduct even the smallest measure of business. This will be a savings to the

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

state by requiring the members to gather at the same local...by not requiring the members to gather at the same location, therefore, the expenses for travel and lodging would be reduced. The reporting requirements of the Open Meetings Law will still be met and interested parties will still have the opportunity to participate in conference calls by following approved procedures and guidelines. Members of the Brand Committee are here behind me and will be able to answer more specific questions on how this will work for them. I'd be happy to try to answer any other questions that you may have. Thank you. [LB318]

SENATOR BREWER: All right. Questions for Senator Hughes. Seeing none, sir, thank you. All right. Proponents, please come forward. Welcome. [LB318]

JERRY KUENNING: Thank you, Senators of the Nebraska Governmental Committee. My name is Jerry Kuenning, J-e-r-r-y K-u-e-n-n-i-n-g. I'm chairman of the Nebraska Brand Committee, but today I'm speaking on behalf of the Brand Committee and also as a producer from Imperial, Nebraska. I'm encouraging you to vote for LB318 as this bill will allow the five committee members who are spread across the entire brand area, which is basically a line west of Highway 281, Hebron, Geneva, York, Grand Island, O'Neill, Nebraska. These Brand Committee members participate in quarterly necessary meetings. This bill would allow them not to have to travel for the many meetings that are called between these quarterly meetings. Many times these are very...there's a very serious need to have a meeting that is required to take on issues that can't wait to the quarterly meetings, these committee information meetings and possible actions that are required to take place before the next scheduled meeting. This requires not only the committee members but also producers across the state to travel. Today would be a perfect example following a snowstorm when these producers are back home taking care of their necessary business and couldn't make it to a meeting, but a teleconference would allow them to participate and allow the Brand Committee to be much more transparent. This also alleviates as Dan, Mr....excuse, Senator Hughes mentioned. We go back way too long for me to call him Senator, I apologize. (Laughter) It also allows these additional expenses to be saved to pay for transportation and travel expenses of hotel rooms. I'm going to use an example of our Vice President, John Widdowson who lives in Kearney, Nebraska, which is also in the Brand Committee area. It's 275 miles from the Alliance headquarters to Kearney, Nebraska; 275 miles times 53.5 cents is \$147 one way. By the time he gets back home, many times a hotel is required and meals, we're talking a \$300-plus dollar bill to the state of Nebraska and producers across the state to participate in the Brand Inspection fee. Thank you for your time and I hope to vote favorable for LB318. Are there any other questions? [LB318]

SENATOR BREWER: Thank you for your testimony. Let me start off by a few here. You know, obviously, having the 43rd District, the Brand Committee is somebody who I have a very special interest in. Who will decide on the VTCs as far as the...when you're going to conduct them and who will actually orchestrate the meeting itself? Would that be yourself? [LB318]

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

JERRY KUENNING: Primarily it would be the executive director and the committee members. [LB318]

SENATOR BREWER: And help me, executive director's name. [LB318]

JERRY KUENNING: Bill Bunce, B-u-n-c-e. [LB318]

SENATOR BREWER: So I would imagine what they would do is they would originally from Alliance from the headquarters and then you guys would remote in from wherever you're at. The meetings are normally open to the public, right? I mean, people can... [LB318]

JERRY KUENNING: All of our meetings are open to the public and if I could follow up or insert a little bit here, we would continue to...and would be following public meeting law by following the proper notifications and procedures the public meeting law outlines for us. [LB318]

SENATOR BREWER: Okay. Exactly the point I was wanting to get to there is just so as long as the parties, ranchers, farmers, whoever wanted to have some visibility in what was going on, no issue there. The...I'll open up to the questions first. Go ahead. Any questions on this issue? All right. I guess that was the main thing. I was looking at the...you know, making sure this stays public that people would still be able to have a voice. I mean the concept, you know, is almost too logical if you think about it because I deal with the same thing as you do. That's a long haul no matter where you're at when you're trying to run through the western end of the state and it becomes a safety issue, it becomes a time issue and it becomes an expense issue. So, you know, all those issues I think are very valid. All right. No other questions, thank you, sir, for your testimony. [LB318]

JERRY KUENNING: Thank you and I appreciate your understanding of the situation. [LB318]

SENATOR BREWER: Okay. Any additional proponents? [LB318]

TERRY CONE: Good afternoon, Vice Chairman Brewer and members of the committee. I am Terry Cone, T-e-r-r-y C-o-n-e. I'm a cattle producer from Burwell, Nebraska, and I'm serving as chairman of the Nebraska Cattlemen's Brand and Property Rights Committee. The membership of Nebraska Cattlemen support LB318. Our membership has been encouraging the Brand Committee to modernize their practices and use technology to capture efficiencies. It is important to find qualified persons to serve as volunteer appointees on the Brand Committee and finding a way that travel...that long travel differences will help to keep the time commitment to a

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

Government, Military and Veterans Affairs Committee  
January 25, 2017

---

minimum, widespread locations of the committee members can be achieved. Utilizing teleconference technologies will also allow more involvement of the stakeholders who also have the same travel distances to contend with when wishing to observe the work of the committee. Our members feel that allowing the Brand Committee to use the same technology many other such committees utilize is a step in the right direction and we encourage you to pass this legislation. I'd be glad to take any questions you might have. [LB318]

SENATOR BREWER: All right. Thank you for your testimony. Questions? Just to share an idea I had and it was talking to one of the brand inspectors was, and again it comes to a cost issue, but with technology that we have now, you know, satellite phones is what we use a lot overseas, but there's actually a scan capability with the SAC phones. You could actually scan a brand from anywhere because it's satellite and then that could be transferred into a database, that then could collect the information on what that brand correlated to and the history. They told me I crazy because it was too much technology, but I thought I would share that with you. [LB318]

TERRY CONE: Okay. [LB318]

SENATOR BREWER: Anyway, other questions? The problem, just so you guys understand, is most of the area that the Brand inspectors have to use has very limited cell phone coverage, so the ability to actually take that information on the Brands or what they're doing as far as the type and number and all that kind of stuff, they really have to come back to that point of origin where they can actually get back to a cell capability. And so that's why I brought the SAC capability, but we'll probably need much deeper pockets here in Lincoln before you can do that. Thank you for your testimony. [LB318]

TERRY CONE: You bet. Thank you, committee. [LB318]

SENATOR BREWER: All right. Additional proponents. All right, opponents. Well, this is moving quickly. Neutral. Well done. All right, Senator Hughes. You're waiving. All right. Anything additional? All right, that concludes today's meeting. Thank you for attending. [LB318]