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Government, Military and Veterans Affairs Committee
January 27, 2017

[LB200 LB209 LB458]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, January 27, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB200, LB458, and LB209. Senators present: John Murante, Chairperson; Tom Brewer, Vice Chairperson; Carol Blood; Tom Briese; Joni Craighead; Mike Hilgers; John Lowe; and Justin Wayne. Senators absent: None.

SENATOR MURANTE: (Recorder malfunction)...the audience, we were intended to begin at 1:30 today as you may have observed upstairs, we are in a bit of uncharted waters in the Unicameral right now and we were delayed in adjournment. So, we're beginning a little bit late and as other members filter down, I think we can get through the formalities at the very least. So first of all, welcome to the Government, Military and Veterans Affairs Committee. My name is John Murante. I am the State Senator for District 49 which includes Gretna and northwest Sarpy County, and I'm the Chairman of this committee. We are here today for the purposes of conducting three public hearings. We'll be taking the public hearings up in the order in which they appear on the agenda listed outside of this room. If you are here today and wish to testify on any of the matters before us, we ask that you fill out one of these green sheets. These sheets are located on either side of the room. If you are here and do not wish to testify but do wish to state your support or opposition for any of the matters before us, we ask that you sign in and state your support or opposition. The sign-in sheet is also located on either side of the room. If you do testify, we ask that you begin by stating and spelling your name for the record. The order of proceedings is that the introducer of the bill will be permitted initial remarks. That will be followed by proponent testimony, then opponent testimony, and then we'll take neutral testimony and the introducer will be given an opportunity to close. I ask that you listen very carefully and try not to be repetitive. In the Government Committee we do use the light system. Each testifier is permitted four minutes. When the yellow light comes on, we ask...you have one minute remaining and we ask that you begin concluding your remarks. When the red light comes on, your time has expired and we ask that you conclude your remarks and we will open the committee up for any questions that they may have of you. At this time, I would ask everyone to turn off or silence any electronic devices, cell phones, anything that makes noise. If you do have a prepared statement or an exhibit, anything you would like handed out to the committee, we ask that you provide 12 copies to the page...is there a page here yet? He's on his way down. Okay. The page will be arriving shortly. If you don't have 12 copies, that's fine. Give it to the page and he will make copies for you. Our page, when he arrives, is Joe Gruber from Omaha. And with that having been stated, I will proceed with the introduction of members. To the far right is Senator John Lowe of Kearney, Nebraska; to his left, Senator Tom Briese from Albion; Senator Mike Hilgers is grabbing some coffee right now and represents Lincoln, Nebraska; to his left, Senator Tom Brewer is from Gordon, Nebraska, and he is the vice chairman of this committee; to my right is Andrew La Grone, the Government, Military and Veterans Affairs Committee legal

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counsel; to my left is State Senator Justin Wayne, Justin Wayne represents Omaha and he should be here shortly; to his left is State Senator Joni Craighead, who also represents Omaha; to her left State Senator Carol Blood, who represents Bellevue; and to the far left is Sherry Shaffer who is the Government Committee clerk, and as promised, here is Senator Justin Wayne. So, with that said, we'll proceed to the first item on the agenda, Senator Lowe to introduce LB200. Welcome. [LB200]

SENATOR LOWE: (Exhibit 1) Thank you. Thank you, Chairman and Senator Murante, and members of the Government and Veterans Affairs Committee. I am Senator John Lowe, that is J-o-h-n L-o-w-e, and I represent District 37. District 37 is one of the three districts that represents the people of Buffalo County and I am presenting LB200 today at the request of the Buffalo County Board. LB200, with changing numbers of the residents in Buffalo County. LB200 with changing the number of residents before the county is required to have a survey performed...a surveyor perform the functions of a highway superintendent. The initial bill would only affect Hall and Buffalo Counties. Today, I have an amendment, AM21, consideration of this bill. After conversations with Senator Quick and representatives of Hall County, we came to a compromise of residency requirements. My initial bill called for the change of residence from 50,000 to 75,000. To ensure all parties are satisfied with this bill, we agreed on changing the residence requirement from 50,000 to 60,000. This amendment would also address a few other statutes to reflect the populations...a population requirement for county supervisor to ensure that all statutes reflect the same language. If this amendment is accepted, the bill will only affect Buffalo County. I state that it will only affect Buffalo County because the next most populous county behind Buffalo is Dodge County and the population is 36,706, or thereabouts. The population difference is so great and the growth rates are such that this question won't be an issue for Dodge or any other counties for several decades, at the earliest likelihood. Buffalo County has asked for this bill for two reasons. First and foremost, they want more time to review how to reorganize their department. Currently, the county supervisor for Buffalo County is a part-time employee. If this bill is not put into effect, that position will become a full-time position. This would cause a rather significant restructuring of the department. Without this bill there would also be the significant cost increase for the county. The bill would have to pay their current individual as a full-time employee. To fulfill the requirements in (Section) 23-1901.02, Buffalo would be required to add a full-time engineer as well due to their current employee being a supervisor and not an engineer. The county also likely to have purchase equipment due to the change. This bill is co-sponsored by several senators including the other two senators that represent Buffalo County, Senators Kuehn and Williams. Please consider supporting LB200. Are there any other questions I can ask? [LB200]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much. And we will proceed to proponent testimony on LB200. Welcome. [LB200]

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JAKE GREDER: (Exhibit 2) Thank you. Thank you, Senators. My name is Jake Greder, that's J-a-k-e G-r-e-d-e-r, and I'm a Buffalo County Commissioner here to speak in favor of LB200. As you may have noticed in the fiscal notes submitted by Buffalo County, we stated there would not be a fiscal impact for 2017-18 and 2018-19. The change required by this bill is currently...as currently written would not go into effect for Buffalo County until the next census. With the recent retirement of our long-time serving highway superintendent, we've been looking into the future to determine what would be best for Buffalo County while complying with the state statutes requiring the highway superintendent position. At this time we've not been able to determine the exact fiscal impact of this bill as it speaks primarily to the transition of job duties from one position to another. Until this transition is made, it's hard to determine what those costs would be associated with this change. As stated by Senator Lowe, there is an amendment brought forth to change the population requirement of 75,000 to 60,000. We are in favor of this amendment. As stated earlier, the county's conversation about this bill started as we were addressing the vacancy of our highway superintendent. As we were discussing the process to fill the vacancy, we knew there would be...we knew we would be passing the 50,000 population requirement of this bill by the next census, so we felt we needed to address more than just filling a position. At this time we have hired a highway superintendent, but if this bill does not pass, our highway superintendent may be out of a job as the county surveyor would encompass all the powers of the highway superintendent as we pass that 50,000 population requirement. Currently, our highway superintendent has a Class A highway superintendent license. Because of his license, we receive \$10,500 each year from the state of Nebraska. There's an assumption that if...when the county surveyor there would take over the powers of highway superintendent, we would lose that revenue stream as our current surveyor would not have the highway superintendent's license. We feel that is a negative impact on the county. Our current highway superintendent brings with him a Class A superintendent license, a bridge inspector's certificate and 18 years experience with the County Highway Department. With this statute, we could bring in a county surveyor that may not have the highway superintendents license and may not have the years experience with building and maintaining roads. Though the county surveyor is very knowledgeable about what a county surveyor does, they may not necessarily have the skills or the training to be a highway superintendent. The job duties of these two positions are very different. By virtue of the position, the county surveyor knows the specifics of a road, how to locate corners on the road, but that does not mean that they would know how to build and maintain a road or run heavy equipment. We feel this could be a financial burden to the taxpayers with the possibility of no improved services. More specifically by changing the population requirement from 50,000 to 60,000, Buffalo County would have more time to figure out the best strategy for Buffalo County and what would be best for Buffalo County taxpayers. Based on our structure and our responsibilities, we feel we know what would be best for Buffalo County, and we feel like we are making a change to satisfy a statute, but not because it would be best for Buffalo County or our taxpayers. We feel this change would give us more flexibility in the

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budget process and allow us the time to get the right people into the right positions. I would be happy to try to answer any questions for you. [LB200]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today. Additional proponent testimony to LB200. Any additional proponents? Any opposition testimony to LB200? Is there any neutral testimony to LB200? Seeing none, Senator Lowe, you're recognized to close. Senator Lowe waives closing and that ends the public hearing on LB200. We'll proceed to the next item on the agenda, LB458. Senator Harr, welcome back to your committee on Government, Military and Veterans Affairs. [LB200]

SENATOR HARR: Thank you, Mr. Chairman, members of the Government, Military and Veterans Affairs Committee. It's a pleasure to be back and now I realize that there is actually some hanky-panky on Exec to get me here so often. And it is an honor to be back. I am here on LB458, which amends the County Purchasing Act to remove purchases of personal property or services by or on behalf of county coroners, thereby allowing them to acquire property and services that are not well-suited to the traditional bidding process in flexible manner that protects families and obtains the best results for the communities in which they serve. This bill allows a bidding-out process of pathological testing services. This is problematic as the services are investigative in nature, coroner physicians have existing professional laboratory relationships, and such testing and its qualifications often become the subject of test...courtroom testimony and of trials. Bidding out body transportation services is problematic as body transportation services are integrated into the local emergency response plans and mortuaries may underbid in the hopes of utilizing the contract to obtain business leads. Both pathological testing and body transportation services are arguably professional services not subjected to competitive bidding and this bill merely clarifies that point. This bill aligns county coroners' purchases with their prior removal of county hospital purchases from the County Purchasing Act, and I just want to thank...and by thanking you for allowing me to come and testify on "no questions Friday". With that, I would close. [LB458]

SENATOR MURANTE: That is the theme for the day, I guess, so I picked that up. Are there any questions for Senator Harr on "no questions Friday"? Seeing none, thank you very much. [LB458]

SENATOR HARR: Thank you. [LB458]

SENATOR MURANTE: Proponent testimony. Welcome. [LB458]

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SHAKIL MALIK: (Exhibit 1) Good afternoon, Senators. I'll be "quick Friday", hopefully. My name is Shakil Malik, deputy county attorney from Douglas County Attorney's Office. I want to thank Senator Harr for bringing this on behalf of the Nebraska County Attorneys Association. I'm not going to read to you everything that was in there, you guys obviously can read yourselves. I just want to hit a couple of high points. Where this came about is in Douglas County, unfortunately, we have a lot of deaths, a high population county, not just, you know, homicides, but any type of suspicious death, things that could trigger a coroner having to investigate. We do a lot of autopsies, a lot of different pathological services. Under current statute, coroner's physicians which we employ to do the autopsies, we can appoint and the county board sets the rate and we pay them. Where a question came up is in an audit last year, the question was asked, well, what about all this money you're paying to transport bodies from crime scenes from places to funeral homes, to families, wherever it might be? What about what you're paying for all of that, you know, the blood work, lab testing, pathological testing, laboratory work, do you need to bid that out? We thought about it like, that's kind of a weird thing. How do you...you don't normally bid out like medical services, those types of services because, you know, the qualifications of different labs, the qualifications of different professionals can be very different. Time frames can come up because it is something hazardous or unlawful, sometimes you need an answer fast or you want to go to a local lab that might be a little bit more money rather than like sending it out of state. And then we also looked at with the body transport, we use a company currently that only does body transport. They don't have any type of mortuary or funeral home service and our concern what we've heard sometimes from other counties is, when these are opened up to bidding, funeral homes, you know, will want to come in and bid low because then they're already being contacted with family transporting the body and that might be a potentially, unfortunately, a business lead or a revenue source and we'd prefer just keep it with an entity that only does that type of work, plus we have them integrated into our local emergency and response plans or emergency management agencies, so, unfortunately, if there's a mass casualty event, they're already prepped, they've already worked with the county, they know how to handle all these types of events. So we looked at the Purchasing Act. We saw that, you know, there's the exception, competitive bidding for professional services, but this is an on-going issue of the act for many decades. It doesn't define what's the professional service and, you know, people will try to argue whether something is or isn't depending on their interest. So we thought instead of dealing with that, we'd ask the Legislature to consider putting this exception into the Purchasing Act similar to how it did for county hospitals about four years ago just because these types of services aren't well-suited to the whole competitive, sealed bidding process. Obviously, even if this change is made, you know, there will still be oversight by the county board. They still will approve the purchases. The county clerk, the same thing. All the normal processes, it's just the specifics of the County Purchasing Act that you might use for buying a lot of equipment or construction materials or whatnot won't be...we won't have to necessarily use those to get these types of services and

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items. With that, I thank you for your time and consideration, so I'm a little hoarse today. I think a lot of people are. If you have any questions, I'd be happy to entertain them. [LB458]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. Much appreciate it. [LB458]

SHAKIL MALIK: Thank you. [LB458]

SENATOR MURANTE: (Exhibit 2) Is there additional proponent testimony on LB458? Any additional proponents? Are there any opponents to LB458? Is there any neutral testimony? Seeing none. Senator Harr waives closing and that ends...it does not end the public hearing. We actually have a letter of support for LB458 from Larry Dix from the Nebraska Association of County Officials. That closes the hearing on LB458 and we'll proceed to the next item. Senator Watermeier is in the Revenue Committee right now and we will wait for him. [LB458]

BREAK

SENATOR MURANTE: Senator Watermeier.

SENATOR WATERMEIER: You guys, overly efficient in the Government Committee. The third bill introduced here is quicker than the first bill in Revenue. Good afternoon, Chairman Murante and members of the Government and Military Committee. I am Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, representing District 1 in southeast Nebraska. As a former chair of Legislative Performance Audit Committee, I introduce this bill on the committee's behalf because a new committee had not been created yet. The new committee does support this bill. LB209 would make two changes to the Administrative Procedures Act. First, it would put back in place language that was stricken by last year's LB867, which was a Performance Audit Committee's bill. The language clarified that standards affecting private rights, private interests, or procedures available to the public are regulations under the Administrative Procedures Act, not guidance documents. Returning this language to the act, which was suggested to the committee by the Nebraska Appleseed, will ensure that agencies are aware that any such standards would need to follow the formal promulgation process. This bill also change where an agency is required to send its guidance document index each year from the Executive Board to the Clerk's Office as that office archives many similar documents and would be actually a better fit. I appreciate your time today and I'll try to help the Government efficiency be better yet and be out of your way. I would answer questions but I do have a friend with the Performance Audit Committee here if you had any questions that would be of detail for her, it might be better. [LB209]

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SENATOR MURANTE: Thank you, Senator Watermeier. Are there any questions for Senator Watermeier? Seeing none, thank you. [LB209]

SENATOR WATERMEIER: Thank you. [LB209]

SENATOR MURANTE: Proponent testimony on LB209. Welcome. [LB209]

ROBERT McEWEN: (Exhibit 1) Thank you. Chairman Murante and members of the Government, Military, and Veterans Affairs Committee, my name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n and I'm a staff attorney in the Child Welfare Program at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans, and on behalf of Appleseed, I'm here to testify in support of LB209 because it will advance the purposes of the Administrative Procedures Act. Specifically as Senator Watermeier said, it reintroduces language that was stricken by last year's LB867, and we support this correction because this language has long been a part of the Nebraska Administrative Procedures Act. Similar language exists in the revised model, State Administrative Procedures Act, and this language ensures that government agencies will remain accountable to the public when internal management rules are issued that also impact private citizens' interests or rights. Essentially this change is important because it effectively closes a loophole that agencies could have utilized to avoid the application of the APA. For example, and this did not happen to my knowledge, but for example, under the LB867 rules, a rule directing how a DHHS employee interacts with the public or interfaces with a family in foster care could be easily construed as a rule that's "internal management". But depending on how the rule was drafted and what it said, that rule or the internal management rule could drastically impact that family's life. And as such, we believe that it's proper to be fully promulgated through the rules, through notice and comment under the Administrative Procedures Act. So in conclusion, we support the changes proposed in this bill and we'd like to thank Senator Watermeier for introducing LB209 and thank Senator Murante and this committee for your dedication to ensuring there is clarity and efficiency in the rule-making process. [LB209]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thanks for coming down today. Thank you. [LB209]

ROBERT McEWEN: Thank you. [LB209]

SENATOR MURANTE: Additional proponent testimony on LB209. Any additional proponents? Is there any opposition testimony to LB209? Is there any neutral testimony to LB209? Welcome. [LB209]

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RHONDA LAHM: (Exhibit 2) Thank you. Good afternoon, Senator Murante, and members of the Government, Military, and Veterans Affairs Committee. I am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, director of the Department of Motor Vehicles. I am appearing before you today to offer neutral testimony on LB209. It is my understanding LB209 is a follow up to LB867, enacted in 2016. LB867 created a duty for agencies to post an index of guidance documents and copies of such documents on agency web pages. The effective date of that bill was January 1, 2017, less than four weeks ago. The Department of Motor Vehicles worked through its files and tried hard to identify those that met the new definition of guidance documents in Nebraska Revised Statute 84-901. Most of the content posted on the DMV list of guidance documents to comply with LB867 were forms which already existed on our web page. LB867 required us to group them, add another index to the existing forms index, and create a cover page. Neither the DMV, nor any other agency has independent authority to create penalties or rules that are not already authorized in statute by the Legislature. There must be enabling legislation for an agency to take action against a privileged right, interest, or procedure affecting an individual. LB209 amends the definition of rule and regulation adding new language to define the meaning of something that is not to be considered a rule and regulation based on whether there is a penalty or if it affects a private right, interest, or procedure. It is unclear to me what issue this language is meant to address, or what the DMV should do differently if LB209 were enacted. The guidance documents law is very new and the DMV is making every effort to ensure we are in compliance with the intent of the law. Amending the law before agencies have had an opportunity to do the annual update which is required by December 31 each year, causes confusion in making the legislation operational. Once a cycle has been completed, there would exist a more complete picture of whether any deficiencies exist and how the law could be amended to provide specific guidance to the agencies about what it is that the Legislature wants. I respectfully request the committee hold the bill for one year in order to give state agencies the opportunity to implement one full cycle of last year's law. DMV has no concern with the provision in the bill which requires the agency to report to the Clerk of the Legislature instead of the Executive Board. Thank you for your time today, and at this time, Chairman Murante, I would be happy to answer any questions. [LB209]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Brewer. [LB209]

SENATOR BREWER: Thank you, Chairman. Rhonda, just so I have it, if I'm going to ask a question to the introducer with a bill, basically what bad thing is going to happen if we don't pass this? [LB209]

RHONDA LAHM: I mean, for us it's a little confusing because if you...at least when we looked back at the introduced copy of LB867, that language was in a different place in LB867. And so now it appears to us like the inserted language is language that would be what's not included in a

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rule and regulation instead of what I believe an intent is for it to be included. So it's very confusing for us as agencies when we try to implement the intent of the Legislature when that isn't clear because if you read that, it isn't even...the sentence that it amends it comes after the list of several things that are not a rule and regulation. For purposes of the act, every standard which prescribes the penalty shall be presumed to have general applicability and any standard affecting private rights, private interests, or procedures available to the public is presumed to be relied upon to bind the public. But it's kind of just open, it doesn't...it's not clear. At least it's not clear to us and we've looked at it. We have no desire to not make public what we do. I think we're a pretty transparent agency. We try to be very clear with what we do and we just want to ensure that if it's enacted, we can do what the Legislature intends us to do. And previously, I think that language was up at the beginning of Section 2 in their original draft of LB867. And so when it was reinserted back in, I don't believe it was reinserted back in, in exactly the same place. And I think that's causing confusion. [LB209]

SENATOR BREWER: Thank you. [LB209]

SENATOR MURANTE: Senator Briese. [LB209]

SENATOR BRIESE: Thank you, Chairman, and thank you. Is there a way to fix this in your opinion or if something that...change that could be made that would get what you're looking for? [LB209]

RHONDA LAHM: I'm trying to avoid that but I'm not sure what we're trying to fix. That's the question that we have. So I'm happy to work with whatever we can. It just...when it's constantly changing from an agency perspective, rules and regulations are challenging anyway because they're very specific, as they should be. They require approval at many levels, which they should be. They require the public to participate, which they should be. We have no objections to any of that. It's just when it constantly changes and the definition changes, it makes it very hard operationally to determine what it is we're really supposed to do or what it really is the intent of the body. [LB209]

SENATOR BRIESE: Thank you. [LB209]

SENATOR MURANTE: Any additional questions? Seeing none, thank you very much for your testimony. [LB209]

RHONDA LAHM: Thank you. [LB209]

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SENATOR MURANTE: Is there additional neutral testimony on LB209? Is it...Senator Watermeier, does he want to close? Okay. [LB209]

FRANCESKA CASSELL: For the record, my name is Franceska Cassell, F-r-a-n-c-e-s-k-a C-a-s-s-e-l-l. I wasn't going to testify but just in case there are any questions on the...where things are placed, I thought I could answer that question. So the way that we drafted the bill, the new language should effect 2(a) which is internal procedural documents. It's on page 2...starts on line 11. It should not affect guidance documents at all. Internal procedural documents which provide guidance to staff on agency operations, blah, blah, blah, that lack the force of law and are not relied upon by the public. The purpose of the new language is that there's been some confusion for purposes of what's an internal document on...the old language which was the private rights language was very specific. We widened it out because there were some agencies when we did our audit that were saying, well, if it doesn't affect constitutional rights, then it shouldn't have to be a right, which is not the way that the APA was supposed to be so we tried to make it broader. What we found in the creation of the guidance documents, people were confused that the private rights issue, they just thought it wasn't in effect anymore. And so we took the narrow language and we're inserting it back to say if we're talking about something that's relied upon to bind the public, the presumption is if it's the standard that affects the private right, the private interest or the procedures available to the public then it's presumed to be relied upon to bind the public. It does not affect the guidance documents in any way, or it shouldn't. [LB209]

SENATOR MURANTE: All right. Are there questions? Seeing none, and Senator Watermeier waives closing, which ends the public hearing on LB209 and ends our public hearing for the day. Have a nice weekend, everybody. [LB209]