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Government, Military and Veterans Affairs Committee  
March 08, 2017

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[LB364 LB437 LB510]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 8, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB364, LB510, and LB437. Senators present: John Murante, Chairperson; Tom Brewer, Vice Chairperson; Carol Blood; Tom Briese; Joni Craighead; and John Lowe. Senators absent: Mike Hilgers and Justin Wayne.

SENATOR MURANTE: Welcome to the Government, Military and Veterans Affairs Committee. My name is John Murante, I'm 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 those bills up in the order in which they appear on the agenda outside this room. If you wish to testify on any of the matters before us, we ask that you fill out one of these green sheets of paper; they're located on either side of the room. If you're here and wish to demonstrate support or opposition for any of the matters before us but do not wish to testify, we ask that you fill out this sign-sheet which is also located on either side of the room. I can assure you, if you fill out the sign-in sheet your opinion will be regarded just the same as if you had testified. If you do testify, we ask that you begin by stating and spelling your name for the record which is very important for our Transcribers Office. The order of business is that our introducer will be given an opportunity to open. We'll then listen to proponent testimony, followed by opponent testimony, and then neutral testimony, and the introducer will be given an opportunity to close. We ask that you listen very carefully and to try not to be repetitive. In the Government Committee, we do use the light system. Each testifier is allotted four minutes to testify. When the yellow light comes on, 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'd ask that you conclude your remarks and we'll open the committee up to any questions that they may have of you. At this time I would like to encourage everyone to turn off or silence any cell phones or other electronic devices, anything that makes noise. This is a committee that is equipped for technology, so you may see members referencing their iPhones, laptops, so forth. I can assure you, they're just referencing the matters before us, taking notes, and looking up legislation, but carefully listening to what we have before us. If you have any prepared statement, any exhibits, anything you'd like distributed to the committee, we would ask that you provide 12 copies to our page. If you don't have 12 copies, that's fine, just give our page what you have and he will make copies for you. And our page for the day is Joe Gruber; Joe is from Omaha. To the introduction of members: on our far left is Sherry Shaffer; Sherry is the Government, Military and Veterans Affairs Committee clerk. To her right is state Senator Carol Blood; Senator Blood represents Bellevue, Nebraska. To her right, Senator Joni Craighead; Senator Craighead represents Omaha. To my immediate left is state Senator Justin Wayne; Senator Wayne also represents Omaha, and I anticipate him being here shortly. To my immediate right is Andrew La Grone; Mr. La Grone is the Government Committee's legal counsel. To his

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

right, Senator Tom Brewer from Gordon, Nebraska; Senator Brewer is the Vice Chairman of this committee. To his right is state Senator Mike Hilgers from Lincoln. To his right is Senator Tom Briese from Albion. And on the far right is Senator John Lowe from Kearney; Senator Lowe will be with us shortly...and just entered the room as we speak, right on queue. Senator Lowe, well done. (Laughter) And with the formalities dispensed with, Senator Walz, welcome for the first time to your Committee on Government, Military and Veterans Affairs.

SENATOR WALZ: Thank you. Senator Brewer, I just wanted to say, it was nice that you were pointing to the people. I, obviously, was talking, so we got a full understanding of who they were. (Laughter) Good afternoon. Thank you, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I represent the 15th Legislative District of Nebraska. I appear before you today to introduce LB364. Simply put, LB364 updates the Professional Landscape Architects Act, which hasn't been significantly updated since 1971. But before I get into specific provisions of LB364, I'd like to briefly describe who is a landscape architect and otherwise subject to licensure under the Professional Landscape Architects Act. Landscape architects are licensed professionals who analyze, plan, manage, and design projects that involve the functional and aesthetic uses of land and the natural environment. Licensed in all 50 states, they prepare land-use plans, plan and design neighborhoods, pedestrian pathways, plazas, development sites, parks, and trail systems, as well as perform site design services, including site layout, grading and drainage, erosion control, and construction detailing. They generally hold a professional degree from a university with an accredited landscape/architecture program, have worked three to four years under a licensed landscape architect, and passed a national licensing exam. It's also important to highlight what landscape architects do not do. They are not architects and do not design buildings, and they are not engineers and do not design highways, streets, or municipal utilities. While some services provided by landscape architects may overlap with other professions, LB364 specifically carves out these types of services from licensure and regulation under the Professional Landscape Architects Act. You can see page 18, Section 18, 1(c) of LB364. Examples of projects designed by a landscape architect include the recent redesign of Centennial Mall in Lincoln; Pioneer Park in Lincoln; Gene Leahy Mall in Omaha; Harry and Gail Koch Tennis Center in Omaha; and Central Nebraska Veterans Home in Kearney. That said, I would like to summarize some of the more significant updates to the act which include better defining what's required to become a professional landscape architect; who can practice landscape architecture in Nebraska; removing language that unnecessarily restricts trade by associated occupations such as engineers, architects, and realtors; clarifying when a professional landscape architect license is not required; streamlining the Nebraska licensure process for landscape architects already licensed in another state; and clarifying the state board authority to impose penalties for violations of the act; and last, allowing for an on-line application for licensure renewal which is not allowed today. I do understand that the home builders may have some concerns with this bill and just want them to know that we'd be happy to work with any of the

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

concerns that they may have. Lastly, I'd note that the Nebraska State Board of Landscape Architects whom oversee the state's current act and has spent considerable time vetting this with a variety of stakeholders over the last four years. A number of stakeholders have submitted letters of support as well. With that I'm happy to answer any questions you may have. Thank you. [LB364]

SENATOR MURANTE: Thank you for your opening. Are there any questions? Seeing none, thank you very much, much appreciate it. Welcome. [LB364]

DENNIS BRYERS: (Exhibit 1) Thank you, Senator Murante and members of the committee. My name is Dennis E. Bryers, that's B-r-y-e-r-s. I am a licensed landscape architect. I'm a former chair, as well as a current member of the Nebraska State Board of Landscape Architects. I've been on that board since September of 2002. In my last term, really, after 15 years, it's time to move on. Just a little quick background...my background as a landscape architect, I said I've been working for over 38 years in the profession since graduating with my professional bachelor of landscape architecture degree. I've been licensed for 35 years. I started practice in Connecticut. I'm licensed in five states right now: New York, Connecticut, New Jersey, Rhode Island, and Nebraska. Worked with two private firms in Connecticut on many projects, such things as spec office buildings, low income housing projects, multi-family projects, site designs, a couple of state prisons, just to round out the whole career there. Since '93, I've been employed by the city of Omaha, parks and recreation department; title there--Park and Recreation Planner. Work in the park planning division designing everything from sports facilities, playgrounds, trails, anything that the parks department does. I'm here representing the board on this bill. This is a bill that we've been working on for some four years to look at the revisions. As the senator mentioned, the last major revision to the law was in 1971. Nebraska has a unique place in regulation for the profession in that in 1967, when the Legislature first approved the professional practice act, Professional Landscape Architecture Act, Nebraska was the ninth state in the United States to do it. None of the surrounding states at that time were licensed and it took until 2007 before all the surrounding states around Nebraska finally started regulating the profession. Today, all 50 states regulate the profession, and the District of Columbia just passed legislation late last fall and they're waiting for...because of their unique situation, they have to have any laws they pass reviewed by Congress or so and they are waiting for that to finish up and that should be in about two months, as I understand it. As I've said, we've been working on this for about four years, working closely with a lot of different organizations that have related work with the architects, the engineers, the landscape designers. The senator gave you an idea of what landscape architects do and what they don't do. This law just helps...again, it's basically housekeeping. We're looking at a law that...the original law is 50 years old and there's some sections in there that have never looked at or updated. And after 50 years, twenty-first century, it's time, I think everyone would agree, it's a good habit to go back, look at what's there, see what needs to be revised. And that's what we have done, looking at all of these items. In general, with the

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

revisions that we've done and how we approached it, we formed a task force of landscape architects in the state to look at it. We then prepared a survey to all the people who are...all the licensees who hold a landscape architecture license in this state; both those who live in the state, as well as those who live outside of the state, but practice here for certain projects. We contacted all the different trade organizations: the Nebraska AIA, the Engineering ACEC of Nebraska; the landscape designers, working with them to get input into what we were doing. We also examined a lot of different states that have regulations and see what needs to be done. We think we've got a great...we've addressed a lot of the issues here in order to make it easier for us to run...to regulate the profession in this state and make it economical and competitive with the surrounding states. Thank you, and I'll take any questions. [LB364]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Senator Brieese. [LB364]

SENATOR BRIESE: Thank you, Chairman Murante. And thank you for being here, thank you for your testimony. Here in Lincoln, I think we've made efforts to reduce barriers to entry to occupations in Nebraska. Do you feel that this measure is consistent with that effort? [LB364]

DENNIS BRYERS: Yes, in fact looking at the current law, when it was written 50 years ago, people would have to have an accredited degree from an accredited university, they'd have to get the experience and then take the licensing exam. What's changed in 50 years is there are many more ways that someone can become licensed, a number of different avenues. You don't always have to have the accredited degree; you can get more years of experience and all. The licensing exam has been updated about every five, seven years. So really this bill opens up additional avenues so that we're not limiting anyone who is...moves to the state. In order to be licensed outside, as I did when I came here, or anyone who is in the state graduating in order to apply and get licensed. [LB364]

SENATOR BRIESE: Okay, thank you. And the requirement of having an accredited degree, is that policy or regulation of the board or is that in statute? [LB364]

DENNIS BRYERS: It's one of the routes you can take. You don't have to have, and that's what the bill addresses. It recognizes the fact that there are other educational avenues that people can get the appropriate education in order to apply. So you don't need the accredited degree at all. [LB364]

SENATOR BRIESE: But under this bill, you do need a degree, correct? [LB364]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

DENNIS BRYERS: It's one of the things. The bill mentions it, but it also outlines all the other ways that you can get the education and become licensed here. [LB364]

SENATOR BRIESE: Okay. And if I may follow up with another question, on page 14, line 25 through 27, creates an offense for employing an unlicensed..."knowingly and intentionally employ or retain a person to practice landscape architecture" who is not licensed. Who does that refer to? For example, if I hire somebody who...that claims they're a landscape architecture and they aren't, am I subject to that? [LB364]

DENNIS BRYERS: It's the intent of that is to have someone who might hire someone who...to pose or to practice the profession, landscape architecture, that they know that they weren't licensed to begin with, so I guess...and an owner who deliberately did that, it's something that if a complaint were filed they could be...if it was intentional that they...they knew this person wasn't a landscape architect... [LB364]

SENATOR BRIESE: Your point is well taken--knowingly and intentionally (inaudible). [LB364]

DENNIS BRYERS: Yeah. [LB364]

SENATOR BRIESE: Thank you. I appreciate that. [LB364]

DENNIS BRYERS: You're welcome. [LB364]

SENATOR MURANTE: Thank you, Senator Briese. Any additional questions? Seeing none, thank you for your testimony. [LB364]

DENNIS BRYERS: Thank you, Senator and committee members. [LB364]

SENATOR MURANTE: Welcome. [LB364]

JOHN ROYSTER: (Exhibit 2) Good afternoon; thank you. My name is John Royster, J-o-h-n R-o-y-s-t-e-r, and I'm from Omaha. Good afternoon. I'm pleased to be here today to testify in favor of this bill. I am a professional landscape architect, Nebraska Landscape Architect Number 180. I'm a Fellow of the American Society of Landscape Architects which is our national professional society. I also serve as the trustee for our chapter which means I'm on the national board of ASLA, is what we refer to it. Our Great Plains Chapter includes Nebraska, North Dakota, and

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

South Dakota. During the day I have a job where I'm the president and CEO of the Omaha-based Big Muddy Workshop, Incorporated. Big Muddy Workshop is a privately owned small business, landscape architecture firm, and we were established in 1990. We work primarily for local government, as well as our federal government. Our staff of seven professionals are well educated; they are well paid; and most importantly, they really could work anywhere in the United States, but they've selected to have their careers in our state. Our team works throughout the central United States, although we've actually worked across the United States in some places. Currently, we have projects in Nebraska, as well as four other states. I'm here today to urge you to support this law because the law updates key provisions of the existing act, which the senator covered. It removes unnecessary regulation, which I'm in favor of. During my 15 years on the board, there's portions of the existing law which are not enforced, which I don't feel is good policy and it would be better to remove those sections of the law. The other thing that's important about this current law is it better defines two allied professions which are the professions of professional planning and landscape design. The proposed changes in the current professional landscape architects law help ensure that the private businesses like mine can compete for work across the United States, as well as here in Nebraska. A significant portion of my work comes from work outside of Nebraska. This means that my company brings outside dollars to Nebraska as we practice landscape architecture. To compete for this out-of-state work, it is essential that I be able to become licensed in each state I have a project in. That's a requirement that our federal government requires. The updates in LB364 will help ensure that that will continue to occur and we'll be able to conduct our business. As a leader in the profession of landscape architecture and a private business owner, I request that the committee support LB364. With that I'd be happy to answer any questions. [LB364]

SENATOR MURANTE: All right, thank you very much for your testimony. Are there any questions? Senator Blood. [LB364]

SENATOR BLOOD: Actually, I just need to go on record and say for transparency that I'm actually working on a bio-retention garden in Bellevue, which is a public-private partnership with Big Muddy Workshop right now. [LB364]

SENATOR MURANTE: All right. Seeing no additional questions, thank you very much for your testimony. [LB364]

JOHN ROYSTER: Great. Thank you. [LB364]

SENATOR MURANTE: Welcome. [LB364]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

DENNIS SCHEER: (Exhibit 3) Hello. My name is Dennis Scheer, D-e-n-n-i-s S-c-h-e-e-r. I'm a professional landscape architect licensed in the state of Nebraska, number 159. I live in Lincoln. I'm a former chair and a former member of the State Board of Landscape Architects. I'm a senior principal and the chairman of The Clark Enersen Partners which is a multi-discipline design firm founded in Lincoln in 1947 that includes architects, engineers, landscape architects and planners. We employ over 100 people with office locations in Nebraska, Kansas, Missouri, and Oregon. Our Lincoln office employes over 65 people. I will not repeat points made during the testimony spoken by Senator Walz, Dennis Bryers, and John Royster, although I support the testimony given by each of them. My firm practices the profession of landscape architecture on a local, regional, and national level. We are in competition with firms with staffs of landscape architects that are licensed in other states for projects located throughout the country, including in Nebraska. LB364 is critical to supporting the practice of landscape architecture on landscape architecture-related projects for large multi-discipline firms in Nebraska like mine. My firm recruits students from universities across the country that offer degrees in landscape architecture, including the University of Nebraska. And over the years, we have hired landscape architects at my firm from Kansas State University, Iowa State University, Clemson University, University of Georgia, University of Nebraska, and others. LB364 is critical to firms in Nebraska like mine that need to be competitive in the recruitment of landscape architecture professionals. The site design team at my firm is built on the integration of the licensed professions of landscape architecture, civil engineering, electrical engineering, mechanical engineering, structural engineering, and architecture. All of these professions work together to design multi-faceted, wholistic projects like, for example, Centennial Mall to the north of our Capitol Building here, which is located, as I said, to the north of the building here. LB364 is critical for the completion of projects like the design of Centennial Mall, which is by nature a landscape architecture-related scope of services. The design principal and the project manager for Centennial Mall are professional landscape architects. Licensed landscape architects are frequently best suited to fill the role of "the coordinating professional" which all of our professions in Nebraska have, and this LB364 addresses, for these particular kinds of projects which is the case of the development of Centennial Mall and other projects throughout the state. LB364 positively addresses multiple practice issues related to the profession of landscape architecture, including the few that I've elaborated on today. I urge you to support LB364. Thanks. Are there any questions for me? [LB364]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? [LB364]

DENNIS SCHEER: Thank you. [LB364]

SENATOR MURANTE: Seeing none, thank you, much appreciate it. Is there additional proponent testimony to LB364? Is there any opposition testimony to LB364? Is there any...excuse me. Welcome. [LB364]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

JUSTIN BRADY: Senator Murante and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y, appearing before you today as the registered lobbyist for the Home Builders Association of Lincoln and the Metropolitan Omaha Home Builders Association in opposition to LB364. And I want to start with--we're not opposed to the goal that they're trying to do. This truly is one of those unintended consequences, I think, when you say that that happens. Current law says that they're licensing the practice of a professional landscape architect. And I think that, over history, has said someone that holds themselves out as a professional in this field. As you can see on page three, they're striking that word, on page 3, line 4, they're striking the word "professional" and then saying we're going to define landscape as these different activities. Some of which home builders and developers do. Given an example, like on page 4, lines 14 through 17: do they investigate, select, and allocation of land and natural resources for appropriate uses? Yes, that's what home builders and developers would look at doing. Do they develop a feasibility and site selection studies? Part of that would be with that. So my point is, we understand and support the notion to license professional landscape architects. But we don't want all of a sudden it to be that a home builder who is out there doing services has to then go be a licensed professional architect to do what they would do in their normal course of business. And we have...we're working with Senator Walz and those in support of this. And I do think we'll get there. There's another meeting scheduled for later this week to try to say, okay, where can we put some language to make it clear that that's...I don't believe that's their intent, and we don't want to be licensed by it. So because of that, we're opposed to LB364 as it's currently drafted. I'll try to answer any questions. [LB364]

SENATOR MURANTE: (Exhibits 4-7) All right, thank you very much for your testimony. Are there any questions? Seeing none, thank you. Is there additional opposition testimony to LB364? Is there any neutral testimony to LB364? I do have some letters in support from Sara Kay of the American Institute of Architects; Lynn Johnson, City of Lincoln; and Daniel Thiele of the Professional Engineers Coalition; and a letter in neutral from Amy Miller, ACLU of Nebraska. With that, Senator Walz, you're welcome to close. [LB364]

SENATOR WALZ: Thank you. I'll be short and sweet. I just want to thank you again for listening, taking the time out to listen. I think we all know that there are numerous bills out there this year that are going to allow people to do their work easier, or allow people to do their work period in the state. I'm happy to work with the home builders or work with you with any concerns that you guys might have. And I hope you advance LB364 to General File. So thank you. [LB364]

SENATOR MURANTE: All right, thank you. Any final questions? Seeing none, thank you very much. And that closes the hearing on LB364. We'll proceed to the next item on the agenda, LB510. Let the folks clear out. Just in time is Senator Ebke. Senator Ebke, welcome back to your Committee on Government, Military and Veterans Affairs. [LB364]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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SENATOR EBKE: (Exhibits 1, 2, 3) Almost feels like my committee, as often as I am here. Okay, thank you. Good afternoon, Chairman Murante, members of the Government Committee, my name is Laura Ebke, that's E-b-k-e, I represent Legislative District 32. Thank you for this hearing on LB510. You might remember LB992 from last session that spurred an interim study, I believe, of your committee. LB510 is the new version of that. For a refresher of what this is, LB510 works to place a limit on the amount of debt political subdivisions acquire using installment contracts for the purpose of real or personal property. The impetus for this bill is a rising concern about future payment obligations that become the burden of local taxpayers. Those local taxpayers have almost no say in the decisions to incur more and more debt because they have no vote to stop the installment contracts. This bill and its predecessor were brought to me by the Lincoln Independent Business Association and Mr. Mach will be testifying behind me, as well as others, I believe, to provide more information about this. I've provided three handouts for the committee. The first is a document, it's a chart from the California Debt Advisory Commission. The full 86-page document, as seen here, I can provide you if you'd like to review it, but I know how the paper trail works in committees. What I am handing you is a visual representation of certificate of participation bonds, or the COPs bonds as we sometimes refer to them. I'll be referring to other examples from the California document though. I will refer to these citations as the guidelines because it does say--Guidelines for Leases and Certificates of Participation. I will refer to those as guidelines. These citations provide a great deal of information about Certificate of Participation or COPs bonds. A certificate of participation is a method of structuring and distributing tax-exempt leases to investors by dividing the rental payments and lease into fractionalized interests or shares for individual sale to investors. The shares represented by a formal certificate, much like a bond, certificate of participation can be placed privately or sold publicly. COPs bonds are, generally, are sold for large asset financing and tend to be used more for real property rather than personal property acquisitions. In other words, a certificate of participation functions much like a municipal bond, except that the lessor's security and future payments is limited to the item financed. In the event the installment payments from the municipality are not paid, the title owners recourse is limited to retaking possession of property leased by the municipality. If, for example, a certificate of participation are issued to finance the purchase of a building for the city and the city defaults on its annual payments, the recourse for the default is to reposes the building. To use an example, let's assume that a city plans to purchase a building that it will renovate and house city offices. The cost of the building is a little more than \$5 million, and the renovation is projected to be about \$1.5 million, bringing the total investment to \$6.5 million. Rather than budgeting for the cost and a one-time payment, and rather than floating a bond issue to a vote of the people, the city purchases the building and renovation via an installment contract to be paid for over a period of 15 years. This avoids the need to wrap the entire expense into the current budget and avoids the need to appeal to the voters to authorize what would otherwise be a long-term general obligation bond. Even so, the city is now on the hook for 15 years of future payment obligations, a debt the taxpayers must continue to make payments on in each coming city budget. Well this might seem simple enough,

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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the practical manner in which it works gets a bit more complicated. Rather than entering into the installment contract with the seller of the property or item directly, the city works through a bonding agency to sell a lease interest in the future payments. This allows the city to finance the entire project and make payments on bonds through the life of the installment contract. At the end of the day then, the city can finance the purchase and renovation of a major city building or the purchase of other items the city plans to buy and avoids the input of the voters they would otherwise get if the city used a general obligation bond. If you have a chance, and I think it was page 4 had the...oh, I guess not, page 4 in the guidelines provides a good illustration...I think that might be what we handed out, yes...so you have the illustration. There are a couple of additional important points to note from this guideline book. The first is that certificates of participation were initially created in California, not Nebraska, but California to address a public funding issue that arose from the state's constitutional limitation on public debt. A two-thirds voter approval is required for political subdivisions in California to incur public debt. Certificates of participation were created because California case law held that certificates of participation are not debt. And I won't go into further discussion because the guidelines here do a pretty job of explaining that idea. Again, I will get a copy to anybody who is actually interested and wants one. However, this an arguable premise because certificates of participation create a financial obligation for the city. It's money they wouldn't otherwise be spending, and it's, ultimately, the taxpayers' money. All we need to do is look to the dictionary and its definition of debt to see that certificates of participation are, in fact, debt. The second point is that notwithstanding the issue of whether the certificates of participation are debt, the guidelines also point out that certificates of participation were not created primarily to circumvent the vote of the people; although that is an incidental result. Their main purpose is to avoid the issuance of public debt. As Coby Mach will testify in a bit, the city of Lincoln has incurred significant debt through the use of certificate of participation bonds. Therefore, LB510 proposes capping the future obligations political subdivisions have with respect to these contracts to help protect taxpayers from being forced to make room for payment obligations in future budgets without voter input. The second handout is an amendment, a suggested amendment, based on feedback from LB992 from last year. What we would do there is incorporate a formula for the cap instead of a specific dollar amount. So currently, we have \$25 million. This would provide a formula for the cap. The third handout, and again that's a suggestion for you, it's not an official amendment, but you've got the language there. The third handout is the Nebraska Revised Statute, Section 18-201 which provides the basis for the amendment. The bill that became 18-201 was passed into law in 2015. It limits the amount a municipality may borrow directly to 10 percent of the municipal budget. We've discovered that the term "municipal budget" is not defined, so we went a step further and based the cap on the political subdivision's general fund budget of expenditures which is defined. We made sure to reach out to those who testified on LB992 last year to let them know ahead of time of the proposed budget. I think we got everybody, but... What is, however, still unclear is the extent of the use of this mechanism and the authority by which some political subdivisions do this. We know that cities of the primary class, in other words Lincoln, have expressed statutory

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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authority to enter into these types of installment contracts and corresponding bonds. While a specific Nebraska statute directly authorizes cities of the primary class to use installment contracts, other political subdivisions have either derived their authority from their home rule charters, as in Omaha, or are simply using COPs because it's not expressly prohibited in statute. You'll likely hear today from taxpayers with concerns about how this has impacted the city of Lincoln. You will also probably hear reasons why a cap is problematic from the city of Lincoln and other cities and political subdivisions. What I hope to get from the hearing today is a better understanding of the breadth of the use of this financing tool and the extent to which taxpayers are being committed to these long-term obligation without their direct input. And, Mr. Chairman, I will answer any questions, or try to answer any questions you might have, however, I'm going to leave my LA here to take notes. We have big hearings in Judiciary Committee today, so I do need to get back. There will be a number testifying behind me who will be able to answer your specific questions, I think. So with that I will waive closing, but any questions you might have right now. [LB510]

SENATOR MURANTE: Okay. Senator Blood. [LB510]

SENATOR BLOOD: Thank you, Chairman Murante. Thank you, Senator Ebke, I think it's always interesting when you bring bills forward. I always learn so much. [LB510]

SENATOR EBKE: I never know how to take that. But thank you. [LB510]

SENATOR BLOOD: I'm sincere. [LB510]

SENATOR EBKE: Okay, thank you. Thanks. Go ahead, I'm sorry. [LB510]

SENATOR BLOOD: That's a compliment. [LB510]

SENATOR EBKE: Okay, thanks. [LB510]

SENATOR BLOOD: However, I have questions. [LB510]

SENATOR EBKE: Oh, I'm sure you do. [LB510]

SENATOR BLOOD: Because you give me lots of information and so that makes me want to have questions. Can you tell me when this was implemented in California, what year? [LB510]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

SENATOR EBKE: California, I can't tell you exactly what year. Do you know? In the '80s. [LB510]

SENATOR BLOOD: Because what I think is interesting is that one of the highest bankruptcy rates for municipalities is actually in California. So I wonder...I'd be interested and it's something that I just literally looked up while you were talking. [LB510]

SENATOR EBKE: Sure. [LB510]

SENATOR BLOOD: I'd be interested in seeing if there's any correlation to that and this policy. Can you tell me if there are any default examples in Nebraska that have pertained to this type of (inaudible). [LB510]

SENATOR EBKE: I'm not aware of any default situations in Nebraska. Now, others behind me may know of some, but I don't know of any defaults. The concern really...and I brought this on behalf of...well, LIBA, obviously, but of taxpayers generally. In a property tax situation, these are funds...the funds that are purchased via the COPs bonding, the lease payments, if you will, have to come out of general fund expenditures. So that affects what people get...what kind of a bang people get for their dollar in terms of their property tax. [LB510]

SENATOR BLOOD: And I do understand that, coming from a municipality background. The two concerns I have, and maybe you can address them is, you know, I look at how municipalities, I'll use us as an example, because that's what I'm most familiar with, when they do their yearly strategic planning, they're doing long-term planning, this is usually something that is part of the long-term planning because it allows them to meet their goals, while still having operating expenses and not stretching them so thin should something like what happened in 2009 were to happen again. One of the concerns I have is what about if this were to be implemented, what about the existing debt and installments that are going on right now in pretty much every public entity in Nebraska. [LB510]

SENATOR EBKE: Well, yeah, it wouldn't get rid of current debt, but what it would do is it would place a cap on further debt. So at 10 percent with the amendment, if you've already got 10 percent of your operating budget that's wrapped up in these COPs bonds, you wouldn't be able to expand it. It's like a credit card. [LB510]

SENATOR BLOOD: And how would this affect their debt scores that they were to go for bonds, their bonding...? [LB510]

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Government, Military and Veterans Affairs Committee  
March 08, 2017

---

SENATOR EBKE: Well, that's not my...that's not my bailiwick coming from a school board situation. But, you know, I don't know specifically how that would affect the bond rating. I think that as taxpayers though, everybody...if I'm going to have my income...or my property taxes increased for something that I'm going to be paying on for the next 15 or 20 years, or my children will be paying on for the next 15 or 20 years, seems to me that it's good policy to ask permission. I mean, that's sort of a longstanding...if something big and if they can't plan for it through their building fund or their cash reserves or through their yearly budget. [LB510]

SENATOR BLOOD: Well, and the concern that I have is that if it does affect their bonding rate, ultimately, that costs taxpayers money as well. [LB510]

SENATOR EBKE: Sure. Here's the other piece of this. This doesn't...as I understand it, it's not going to stop a...if you have a regular lease arrangement, if you want to go buy a bus, I'll use the school board, if you want to go buy a bus as a lease, you can certainly do that, okay, directly from the company. That's a different situation than purchasing and selling...basically, selling the...it's sort of like selling the mortgage to somebody else who you're paying. You get a lower...you purchase it through a mortgage system. So if you want to lease directly, I don't think that's a problem. The problem is when you commit to a long-term arrangement and are going...the chart that I sent shows just how confusing it is. [LB510]

SENATOR BLOOD: I guess...and maybe some of the people coming to testify after you can clarify some of this, but I...coming from a municipality background, I understand why municipalities need the benefit of doing that, I hear what you're saying in reference to taxpayers, but I ultimately feel that having the ability for them to do those long-term commitments like that, actually in the long run, saves taxpayer dollars. So maybe that...in my personal opinion, so I'm interested in hearing what the testifiers have to say. [LB510]

SENATOR EBKE: Yeah. Here's the question: does it affect...because you still have to pay every month, so does that affect the taxpayers over the long term if you've committed to a long-term purchase of a building or something like that, does that then reduce the amount of money that can be spent on streets or whatever. [LB510]

SENATOR BLOOD: But if they do that long-term planning, they've already planned for the infrastructure. [LB510]

SENATOR EBKE: Sure. [LB510]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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SENATOR BLOOD: And if they have a big project like that, usually a big project like that is something important like a new police station or they needed to create something in a public/private partnership that's going to generate income for the municipality. And again, I can't speak for anything outside of municipalities, but... [LB510]

SENATOR EBKE: Sure. [LB510]

SENATOR BLOOD: So again, I'll be really interested to hear both sides. Thank you. [LB510]

SENATOR EBKE: And there will be both sides, I can promise you that. [LB510]

SENATOR BLOOD: Thank you. [LB510]

SENATOR MURANTE: Senator Ebke, your amendment, I think, is...if I may editorialize, vastly superior to the green copy of the bill, because as you and I have discussed in the past, the concept of the... [LB510]

SENATOR EBKE: A flat number. [LB510]

SENATOR MURANTE: ...city of Gretna and the city of Omaha having the same credit limit didn't make a lot of sense to me. But with respect to the 10 percent of the total budget, do you have a concept of how many political subdivisions have COP bonds which exceed 10 percent of their total budget expenditures? [LB510]

SENATOR EBKE: No, and therein lies one of the problems. These COP bonds are a little tough to drag out of people to figure out exactly. The first class cities and the home rule are really the only ones that we know are authorized, that we can find anyhow, in statute. And so then the question is, for other cities and municipalities, or for counties, or for school boards, or for, you know, the community colleges and the NRD, I mean, everybody is concerned about this and so it's unclear where they get the statutory authority to use that mechanism. [LB510]

SENATOR MURANTE: Okay. Thank you. Seeing no additional questions... [LB510]

SENATOR EBKE: Okay, thank you. And again, I will waive closing. [LB510]

SENATOR MURANTE: Mr. Mach, welcome back to the Government Committee. [LB510]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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COBY MACH: (Exhibits 4 and 5) Thank you. Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h; I'm the president of the Lincoln Independent Business Association. I want to start off by giving you two dollar amounts, two figures. According to an e-mail we have from the city of Lincoln, January of this year, the city of Lincoln has just over \$45 million in voter-approved bonding debt. That's \$45 million in voter-approved bonding debt. The bonded debt, though it has been issued without a vote of the people, is just over \$42 million. So Lincoln's non-voter approved debt is almost equal to the amount that has been approved by the voters of our city. LB510 works to place a limit on the amount of debt political subdivisions acquire using installment contracts for the purchase of real or personal property. It is, at this point, kind of like a credit card that doesn't have a limit to it. Now, if we go back 15 years, 15 years ago, Lincoln's installment contract debt was just \$1.5 million. That's all we had, \$1.5 million, and primarily we were using it to buy street lights and that made sense. The city of Lincoln now has amass a \$42 million liability on taxpayers. Now, the cost to taxpayers in interest alone, every year our interest is over \$800,000 a year. That interest amount is equal to about one-half cent of the city property tax levy. The city of Lincoln is purchasing the types of property that normally might go to a vote of the people. It's purchased the Experian Building for \$6.5 million. Since then we've had to do other renovations and our total cost in COP bonding for that is now over \$12 million. A club house for Holmes Lake Golf Course, \$2.5 million for improvements to Cornhusker Highway corridor that included art and landscaping. And I've just handed out two editorials from the Lincoln Journal Star Editorial Board, they're exhibits A and B. The first one is dated February 2014 and says: when the city approved issuance of bonds for the Cornhusker Highway beautification project and sidewalk repairs, at that time, the Editorial Board was critical of the use of the tool stating that it was worrisome that no vote of the people was required. The second is exhibit B, that editorial most recently dated December 2015, again criticizes the easy credit that these bonds provide and for the fact that they do not require a vote of the people. Now I want to be clear that LIBA does not necessarily object to the use of COP funding for our city for projects; we don't object to bonding. In fact, we've supported the last couple of school bond issues that we've had. We have supported, as far as history as I can find, all of our storm water bond issues. We most recently supported a tax increase to pay for new fire stations, a new police station, and new 911 equipment. However, we just think that it would be practical to have a lid on this sort of debt and that's what we're asking for. Thank you. [LB510]

SENATOR MURANTE: All right, thank you very much for your testimony. Senator Briese. [LB510]

SENATOR BRIESE: Thank you, Chairman Murante. And thank you for being here and for your testimony. And maybe you said it, if you did, I missed it and I apologize, but what is Lincoln's general operating fund budget? [LB510]

COBY MACH: Our general fund budget is...it's just over \$180 million. [LB510]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

SENATOR BRIESE: Okay. Ten percent of that would be... [LB510]

COBY MACH: Would be \$18 million. [LB510]

SENATOR BRIESE: Okay. Very good. Thank you. [LB510]

COBY MACH: Thank you. [LB510]

SENATOR MURANTE: Thank you. Additional questions? Senator Blood. [LB510]

SENATOR BLOOD: Thank you, Chairman Murante. And thank you for your testimony. I thought it was interesting and you said the quote--a credit card without a limit. How would you say that municipal budgets are driven...what are they driven by? [LB510]

COBY MACH: Taxes. [LB510]

SENATOR BLOOD: Which are... [LB510]

COBY MACH: Sales tax. [LB510]

SENATOR BLOOD: Revenue, right? [LB510]

COBY MACH: Property tax, yes. [LB510]

SENATOR BLOOD: So when a municipal budget does not have incoming revenue, but have a capital project, have a big project that has to be accomplished because it's part of their long-term planning, how do they accomplish that if they have a small window of time? [LB510]

COBY MACH: If they have a small window of time? Well, under...under this bill, there still would be millions of dollars available to any municipality or county or any other government entity in which to use certificate of participation bonding. [LB510]

SENATOR BLOOD: So you don't feel that it would affect them in any way if this bill were passed and they (inaudible)? [LB510]

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
March 08, 2017

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COBY MACH: It would affect the city of Lincoln at this point because the city is well beyond either what was originally proposed at \$25 million cap or...and they're also well beyond a 10 percent lid. So for the city of Lincoln, we would have to get below one of those...we would have to get back below the lid before we could start issuing bonds again. And, you know, I'm not saying we're going to get back to the level we were at 15 years ago when it was only \$1.5 million. But we've come a long way in 15 years. [LB510]

SENATOR BLOOD: Since you seem to be really well informed about Lincoln, because I certainly am not, do you know what the debt ratio is in Lincoln right now? [LB510]

COBY MACH: I do not. [LB510]

SENATOR BLOOD: Because that would really be telling, wouldn't it, as far as the foundation as to whether what they have is working or not. [LB510]

COBY MACH: Well, what I know is that that we're quickly approaching...we're just a few million dollars from being where the...at a point where the \$45 million, which has been approved by the voters of our city, and that if we are going to invest in \$12 million into a building that...those kind of things we would like to see go to a vote of the city...vote of the people. [LB510]

SENATOR BLOOD: So ultimately when people vote public servants in, isn't that what they're kind of doing as well? [LB510]

COBY MACH: It's a valid point. [LB510]

SENATOR BLOOD: Because they entrust that the people who make good financial decisions... [LB510]

COBY MACH: That's what those elected officials are there is to often make very difficult decisions. And we don't want to take away this tool from the elected official. We would, however, like to have a cap. The Legislature has already decided that you will put a cap on how much levy Lincoln Public Schools can have, or any school in our state. You have a lid on what a city can levy as well. So you already have a long history of establishing lids for these governing bodies. [LB510]

SENATOR BLOOD: I think the difference for me is though, we're really talking about things that pertain to strategic planning and long-term investing and...so...but I'm hoping I can hear

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
March 08, 2017

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some more what my...what answers I need from some of these other testifiers. So thank you for answering my questions. [LB510]

COBY MACH: No, thank you. [LB510]

SENATOR MURANTE: Thank you. Are there any additional questions? Seeing none, thank you for your testimony. [LB510]

COBY MACH: Thank you. [LB510]

SENATOR MURANTE: Much appreciate it. Additional proponent testimony to LB510. Are there any additional proponents? Opposition testimony? Mr. Mayor, welcome back. [LB510]

CHRIS BEUTLER: Mr. Chairman, how are you? [LB510]

SENATOR MURANTE: Wonderful. Did you ever serve on the Government Committee when you were in the Legislature? [LB510]

CHRIS BEUTLER: Pardon me. [LB510]

SENATOR MURANTE: Did you ever serve on the Government Committee when you were in the Legislature? [LB510]

CHRIS BEUTLER: I did not. [LB510]

SENATOR MURANTE: All right, well, welcome. [LB510]

CHRIS BEUTLER: I paid attention to the money, as I am today, Mr. Chairman. [LB510]

SENATOR MURANTE: Well, somebody had to. [LB510]

CHRIS BEUTLER: (Exhibits 6, 7, 8) Members of the committee, thank you for giving us a little time to testify today. And I am testifying in opposition to this. The name is Chris Beutler, as the committee clerk long knows, B-e-u-t-l-e-r, in case you've forgotten. And I want to start out by saying something fairly strong and that is that this legislation would severely and arbitrarily curtail installment contracts and negatively impact the ability of the city of Lincoln to effectively

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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meet its financial needs. I am also authorized today to speak on behalf of the Lancaster County Board of Commissioners who are also in opposition, and a letter of their opposition should be passed out to you shortly. Lincoln has utilized lease purchase agreements and certificates of participation, COPs financing which has been described to you very well by the senator. It is a form of lease purchase agreement and we use it to finance essential real and personal property. Nebraska statutes specifically allow Lincoln to use this financing. In fact, in 2006 they expanded our authority to use this financing to purchase real estate as an approved use of COP financing. Primarily, we have utilized COPs to finance our lease purchase activities. The benefit of using COPs is the ability to finance the cost of the property at the lowest possible interest rates. We are able to leverage our AAA bond rating and obtain financing that is not available with any other financing method. Unlike general obligation bonds, owners of COPs hold a legal interest in the property purchased until the bond is paid off. The bondholders, however, are purchasing those instruments based on our credit rating, not because they have a property interest. As of the date of our last audit, this type of financing represented only 8 percent...8 percent of all of our outstanding governmental debt in Lincoln. The city evaluates certain debt ratios prior to each COP issuance. Debt per capita is the ratio that indicates the per capita debt burden and is the general indicator of our city's debt burden. As you can see from the chart that's been handed out to you, if you would take a look at it, our debt per capital ratio, including the JPA debt, that is the separate debt that has been incurred to build Pinnacle Bank Arena and that whole development, excluding that new debt, our debt has been declining steadily, as you can see from the chart, since I came into office in 2007. Debt service as a percentage of general governmental expenditures indicates the city's ability to repay debt without hampering other city services. Again, Lincoln is in very good shape with a debt service of only 12 percent; a percentage considered strong by Standard and Poor's. Finally, the city's debt is less than 1 percent of the city's total valuation which is another indicator the S&P considers very strong. Lincoln's judicious use of available financing tools is why rating agencies have given us a AAA rating, the highest that there is. Corresponding low interest rates would not happen if the rating agencies believed that our debt burden was too high. Clearly, it is not. By the end of the current fiscal year, Lincoln will have approximately \$38 million of COPs outstanding. The \$25 million limitation, now apparently proposed to be reduced to \$15 (million) or \$18 million, would prohibit Lincoln from using this financing method for decades into the future until our debt dropped below whatever the new limit becomes. I've checked with our financial adviser who informed me...who confirmed that the bond agencies negatively consider limitations on financial flexibility. Financial flexibility is the key to understanding all this, in my mind. You have a set of tools that you use. Some at one time in the economic cycle, and some at another time in the economic cycle. Recently, we've been able to borrow at rates that are lower than allowing inflation to set another price a year or two or three years down the line. It makes sense to use these devices. Mr. Chairman, I've run out of time. I hope you all will take the time to read the rest of the testimony. I hope you'll look at the charts, especially this one. Lincoln is doing well. I'm not sure why anybody wants to sit up here and say otherwise because there is no way...an

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
March 08, 2017

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analysis of the facts would indicate to you that Lincoln is in anything but a great financial situation, taking our debt altogether. And by the way, these COPs financings are included in bond rating calculations. So it's not like they're separate and apart in any way. They're calculated altogether. And I would just beg the committee to look at this holistically, as a whole piece and use a form that's indicated that makes sense which is the S&P ratings, but look at everything altogether in our financing of city projects. Thank you. [LB510]

SENATOR MURANTE: And thank you. Senator Blood. [LB510]

SENATOR BLOOD: Thank you, Chairman Murante. And thank you, Mayor, for clarifying some questions that I had with the previous person that was speaking in favor of the bill. I just want to make sure that this is really clear for everybody, because it's clear to me is that if indeed this bill were to pass, ultimately it would affect your bond rating, and many other municipalities' bond ratings, which in the long run would cost taxpayers money, right? [LB510]

CHRIS BEUTLER: Well, absolutely. If it has the effect of deteriorating our bond ratings, and, you know, you can't say for sure about the future, but if it had that effect, it most certainly would increase the interest rates that would be charged on our borrowings. [LB510]

SENATOR BLOOD: Well, you can say that in the fact that reserve is part of the formula. [LB510]

CHRIS BEUTLER: Yes. [LB510]

SENATOR BLOOD: And that's...this is one of many bills that for some reason are out this year that they're trying to cap things. And the thing that always concerns me is that people who haven't had municipal or county backgrounds...a vast variety of public entities that are dependent on these reserves don't understand that ultimately there is a science to it that truly does save taxpayer dollars and allows them to operate in a way that they continue to move forward because they're planning for the future, would you say that that sounds accurate? [LB510]

CHRIS BEUTLER: Yes, I think it's very accurate. I think you made an especially good point with regard to the timing of matters. Oftentimes, we use COPs for small financings, but they may be things that need to be done in a relative hurry. [LB510]

SENATOR BLOOD: Okay, thank you. [LB510]

SENATOR MURANTE: Thank you. Senator Briese. [LB510]

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
March 08, 2017

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SENATOR BRIESE: Thank you, Chairman Murante. And thank you again for being here. Has anyone tried to hazard a guess as to what impact it would have on your borrowing rate, your borrowing cost, interest rate? [LB510]

CHRIS BEUTLER: No, I don't know whether they could calculate that with any certainty. They could make up a model for you, possibly. Would you like me to try to pin that down a little bit more? [LB510]

SENATOR BRIESE: Well, if someone out there would have an educated guess on it or whatever, I'd be interested in knowing that. [LB510]

CHRIS BEUTLER: Yeah. My two finance people are out. One was at a funeral, and another was sickness, so I'll get back to them and see if we can work together to come up with something that would be of interest to you in that regard. [LB510]

SENATOR BRIESE: Okay. Thank you. [LB510]

SENATOR MURANTE: Thank you. Seeing no additional questions, thank you for your testimony. [LB510]

CHRIS BEUTLER: Thank you. [LB510]

SENATOR MURANTE: How many opponents do we have to this bill? All right. We have a couple of seats up front that are open if testifiers want to come sit up front, that would be efficient. Thank you. Welcome. [LB510]

BRUCE VITOSH: (Exhibit 9) Thank you. Good afternoon, Senator Murante and members of the Government, Military and Veterans Affairs Committee. My name is Bruce Vitosh, that's B-r-u-c-e V-i-t-o-s-h, and I'm the general manager and CEO of Norris Public Power District. And I am here today to testify in opposition to LB510 on behalf of Norris Public Power District and the Nebraska Rural Electric Association. LB510, as introduced by Senator Ebke, would limit the amount of installment contracts to \$25 million for political subdivisions. And being a public power district, we are considered a political subdivision of the state of Nebraska. And in addition, political subdivisions would be prohibited from entering installment contracts for the purchase of real or personal property, if the outstanding obligations exceed \$25 million. So the bill, as drafted, does not provide a definition for installment contracts. And it is my understanding that there is not a definition of installment contracts elsewhere in state statutes. So therefore it is unclear to us as public power districts if the issuance of revenue bonds or using

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

other financing arrangements by political subdivisions would be considered as installment contracts as outlined in this bill. And the COP, or the COP financing or funding that has been discussed here today, as something we do not utilize as a public power district, at least at Norris we do not use that type of financing. So assuming that the installment contracts would apply to us as a public power district is what I want to share with you that the electric industry is a very capital intensive industry, like it's the most capital intensive industry in the United States. Electric utilities construct new or rebuild electric infrastructure by funding these projects through either current revenues, by borrowing funds, or using some combination of the two. To illustrate the capital intensiveness of the electric industry, the average capital assets included on the balance sheets of the 30 rural public power distribution systems in the state of Nebraska it averages \$65 million, it's on the balance sheet. Four of these systems have capital assets that are in excess of \$100 million with the largest having capital assets of \$227 million. These values are recorded on the balance sheets, as you may know, at historical costs and, therefore, do not represent the actual costs...when we go about rebuilding that infrastructure. So the actual cost to build this infrastructure is going to be significantly higher than what we carry on our balance sheet. For these same rural public power district systems, the average long-term debt on the balance sheet is \$13 million. Four of these systems have long-term debt in excess of \$25 million, which is the limit here in the bill, and with the highest...or the...one system has long-term debt that equates to \$47 million. So even though the ratio of long-term debt to capital assets is very good in Nebraska, which it is on the public power districts, extremely good in comparison to other cooperatives and other public power districts across the country, the \$25 million limit outlined in this bill is already exceeded by four public power districts, as I just mentioned, and would be extremely burdensome to the public power industry here in the state of Nebraska. So Norris Public Power District, currently our long-term debt is we're under the \$25 million limit, but as recently as 2007, we did exceed the \$25 million limit in order to finance our infrastructure there at Norris Public Power District. So the restriction on debt levels would severely hinder the ability of electric utilities to properly manage its electric infrastructure. So there's a couple of things in here that I want to get to, but with the time limit coming up here, but I just want to say that the...when we go about setting rates for our customers, we take into account many different things when we set rates and we look at our cash balance, we look at our long-term debt we have on our balance sheet. We look at the competitiveness of our rates; we look at our bottom line, our net margins. So we consider all those things when we develop rates for our customers. And long-term debt is one of the components that we look at when we set our rates for our customers. If that ability to set or utilize long-term debt, once we hit that limit, if that's taken away from us, that pushes all the funding or financing for our customers on the current customers and does not allow us to spread those costs over the future. The electric infrastructure that we invest on behalf of our customers it's expected to last 50 years or longer. So if our debt is restricted, then we would have to pull that all into the current year and the current customers would have to finance those costs in the immediate year. So I see I'm out of time, but I just want to say that in order to properly provide reliable electric service and affordable rates to the customers of Nebraska,

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
March 08, 2017

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electric utilities must be allowed to utilize long-term debt financing to properly manage our electric infrastructure. So based on the reasons I provided here today, Norris Public Power District and the Nebraska Rural Electric Association is opposed to this bill. And I appreciate the time. And if there's any questions I can answer, I will certainly do that. [LB510]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Senator Briese. [LB510]

SENATOR BRIESE: Thank you, Chairman Murante. And thank you for your testimony. Norris Public Power District, what would your general fund budget be at this point? [LB510]

BRUCE VITOSH: So our revenues are \$70 million in revenues. Besides as was mentioned here before, that if you take 10 percent of that, our debt would be restricted to \$7 million. So that would definitely be an issue for us because we're currently in excess of that number. [LB510]

SENATOR BRIESE: Okay, thank you. [LB510]

SENATOR MURANTE: Thank you. Seeing no additional questions, thank you very much for your testimony. [LB510]

BRUCE VITOSH: Thank you for your time. [LB510]

SENATOR MURANTE: Welcome. [LB510]

ALLEN HERINK: (Exhibit 10) Good afternoon, senators. My name is Allen Herink, A-l-l-e-n H-e-r-i-n-k. I'm the city of Omaha comptroller, and the city of Omaha would like to go on record as opposing the proposed LB510. Over the past 15 years as city comptroller, I've been responsible for procuring financing for all purchase of city projects and equipment. I have distributed a list of city purchases the city made in 2016 to the use of installment contract funding. As you can see, the purchases are for equipment and buildings that are necessary for basic and essential city services. If you take a look at these things there, this is what we did in 2016: police radios, park equipment, and aerial fire truck. And I won't go down the whole list, but as you can see, it added to \$11.8 million. To put this in some type of perspective, the city's budget in 2017 is \$855 million. So it's just a small portion of our annual budget every year. Again, the city uses this funding to provide basic, essential city services. If LB510 passes with its \$25 million limit, the city would not be able to use this funding tool for at least the next 20 years. This would lead to critical situations in providing city services. City management considers installment contracts as an essential budgeting tool. It smooths out the budgeting

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

process and it eliminates large spikes in expenditures. It is important to retain this financing for its flexibility. I would like to remind you that the city's finance are well managed and are very conservative when issuing debt. The city does not issue debt out of desperation, but through a well thought out financial plan. I cannot overemphasize the importance of this financing tool to the city. I would take questions and I want to thank you for listening to my presentation. [LB510]

SENATOR MURANTE: Thank you very much for your testimony. Senator Blood. [LB510]

SENATOR BLOOD: Thank you, Chairman Murante. Thank you for your testimony. I find it very telling that five of these seven projects were public safety projects. Can you elaborate on that a little bit about how common it is to use installment contracts when it comes to public safety? [LB510]

ALLEN HERINK: Well, we don't do it a lot, but I'll tell you, there was a critical situation about three years ago when our police cruiser fleet became dilapidated. It seems like every year we budget and when we need to balance the budget in the last few months or few weeks, it's easy to cut 10 or 12 cruisers out. And over a period of years, the cruisers dilapidate. Well, we decided it was time to kind of buckle up and we did a lease purchase agreement for the purchase of 120 cruisers for a three-year period. And we need 40 cruisers a year to maintain our fleet. And we were able to set that in stone and we issued this debt with the life expectancy of the asset in mind. So we took out a three-year loans for these cruisers, paid them off on time. But it allowed us to stay consistent with our procurement needs. [LB510]

SENATOR BLOOD: And that's a good example of... [LB510]

ALLEN HERINK: That's a good example of...the police radios on this. Whatever it takes, we do it for a number of different things. Again, we have...we wouldn't be able to use this tool for 25 years. We have that amount out there outstanding already. [LB510]

SENATOR BLOOD: Thank you. [LB510]

ALLEN HERINK: So we really do oppose this. [LB510]

SENATOR MURANTE: All right, seeing no additional questions, thank you for your testimony. [LB510]

ALLEN HERINK: Thank you. [LB510]

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Government, Military and Veterans Affairs Committee  
March 08, 2017

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SENATOR MURANTE: Welcome. [LB510]

PAUL ILLICH: Thank you. Good afternoon. My name is Paul Illich, P-a-u-l I-l-l-i-c-h; I'm the president of the Southeast Community College. And on behalf of the community colleges in Nebraska, we will be opposing this bill. Nebraska community colleges currently we have no authority to receive capital construction funds from the state. The community colleges can only use 2 cents of the 11.25 cents tax levy for capital construction, renovation, and deferred maintenance. We do have the authority to utilize lease purchase and other installment financings to leverage the 2 cents to significantly reduce costs to the taxpayer. The other community colleges have utilized these similar installment financings for a number of construction projects. LB510 would greatly limit the ability of community colleges to effectively utilize the 2 cents to leverage that. We heard that several different times already today. So in effect, this would drive up the cost of construction due to the time, of course, would lag. So for example, we would have to save for many, many years just to cover the cost for one project. Southeast Community College currently has waiting lists of one to three years in a number of its critical programs such as welding, radiologic technology, associate degree nursing, dental assisting, and so forth. We need to expand our capacity to take in greater numbers of students. However, we have aging facilities. In fact, almost all of our facilities were inherited and were built in the 1960s. The one exception is at 88th and O, and that was built in 1978, which is now is about 40 years old, right at it. So we have dozens of replacement and renovation projects that we need to take care of. So LB510 would make it very difficult to move forward. It would also significantly limit public/private partnerships. So right now we've got housing on two of the campuses and we're looking to replace those...or actually expand those because we have waiting lists in those housing developments. So we're actually looking at a public/private partnership to do that which would include lease purchase agreements that would either limit or eliminate this as an option all together. We also have a number of very expensive programs in current technical...so for example, in agriculture and heavy technology, those programs absolutely rely on very expensive equipment. So in many cases we lease that...lease combines, tractors, we have a 516-acre farm we lease. And we heard it earlier, it's not clear when we say installment contract whether this would include that; it very may well. Just real quick, something I wanted to mention, the Higher Learning Commission, in order to be...that's our accrediting body, to be in compliance with the commission, we have to be in compliance with all of the various criteria. One of them reads: the institution has the fiscal and human resources and physical and technological infrastructure sufficient for its operations whenever and however programs are delivered. So LB510 would make it difficult for us to be able to position ourselves to be in compliance with that. The other thing that the Higher Learning Commission does, it performs an annual assessment. So one of the points I want to make here is we already have a very specific regulatory control on all borrowing that we do. So they do an annual assessment to ensure that we are financial stable. They use...the assessment includes something called a viability ratio which is part of something called a composite financial index score. A viability ratio compares net assets to long-term

Transcript Prepared By the Clerk of the Legislature  
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Government, Military and Veterans Affairs Committee  
March 08, 2017

---

outstanding debt. Institutions are monitored every year and they must stay within a certain range. So we already have a regulatory component to our borrowing. And the other thing that was sort of mentioned earlier that I wanted to point out is that we have an 11-member board. Any type of financing that...and they're elected officials...any type of financing goes through very, very intense vetting process. It all has to be consistent with our strategic plan. And so we have the regulatory, I say, mechanisms already in place. And as was pointed out multiple times, this would absolutely cost the taxpayer much more money because you couldn't leverage the authority that you already have. So, I'll take any questions. [LB510]

SENATOR MURANTE: All right, thank you very much for your testimony. Are there any questions? Senator Briese. [LB510]

SENATOR BRIESE: Thank you, Chairman. Thank you for your testimony. Did you say the extent of your lease purchase or installment sales obligations at this point dollar-wise? [LB510]

PAUL ILLICH: No, we actually...we've just developed a facilities master plan. We do not have any outstanding. And so for us at Southeast Community College, we wanted to utilize what we do have within our authority. This would greatly eliminate that. So, for example, just to move forward on student housing, which we need to expand on, it would...we couldn't even cover the three units that we want to do with the \$25 million cap...or the other cap; because in our case, it would put us at \$8.6 million, which wouldn't even cover one project. That's 10 percent of our operating budget, which is about \$86 million. [LB510]

SENATOR BRIESE: Very good. So it's roughly \$86 million a year. [LB510]

PAUL ILLICH: Eighty-six million (dollars) unrestricted operating budget. [LB510]

SENATOR BRIESE: Okay, thank you. [LB510]

SENATOR MURANTE: All right, seeing no additional questions, thank you for your testimony. [LB510]

PAUL ILLICH: Thank you. [LB510]

SENATOR MURANTE: Additional opposition? Welcome back. [LB510]

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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LYNN REX: Thank you. Senator Murante, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We appear before you today in strong opposition to this measure. Whether you're talking about certificates of participation; installment contracts, however that may be defined; or lease purchase arrangements, this bill would have a desperate impact on municipalities across the state; in particular, with respect to the amendment, as I understand it. I have not seen it. If it's limiting it to 10 percent; is that correct, Senator? So this would have a tremendous impact on municipalities across the state. Certainly, Mayor of Lincoln has indicated what the impacts this would be on the city of Lincoln. Also, the finance officer for the city of Omaha has articulated what the concerns would be for Omaha. But I just want to tell you, in your cities and villages, in your districts, this would have an impact on them as well. Municipalities of the state of Nebraska in 1996 were put under a lid and levy limit by the Nebraska Legislature. In 1996, second class cities and villages, and you have those, were structured to go from a \$1.05 per \$100 of valuation down to 45 cents plus 5 cents on interlocal agreement. What did that mean? That meant within two years, second-class cities and villages in this state had to reduce by half what their task-asking was. These are tools that they need to have, not just because they save taxpayer dollars, which is clearly the case in terms of flexibility and financing, these are tools they had to have to even do the very basic services that they provide. Because we've got cities in this state that even though you authorize a 2.5 cent on restricted funds over the prior year that they could increase their expenditures by, of the 529 cities, over half of those are up against the maximum levy limit of 45 cents plus 5; and about half of those cannot even raise the 2.5 cents which you would allow them to have because they're up against that levy limit. So they have to do these...make these kind of lease purchase agreements, these installment contracts, just to do the very basics to buy a police car. Unlike Omaha, they're not buying them in increments of a hundred police cars at a time or more, they're buying them one at a time. And quite frankly, most of our cities would tell you they're buying them at a auction based on used State Patrol equipment that they buy. So I would just suggest to you that this bill, especially with that amendment, would have a disparate impact. This is about saving taxpayer dollars. And I want to underscore another very, very important point. It is not a mayor of a city, it is not the chair of a village board that makes a decision on whether or not they're going to do a lease purchase and installment contract or a certificate of participation; this goes to the city council or the full village board. This is not just a decision of one individual on the executive branch of government. This is a decision that is brought forward to the city council, the village board; I'm sure that's what was being said also for the community collages. And what that means is, it is subject to the Open Meetings Act, which this committee is the expert on because you have dealt with those issues for years and years. So, they have to have reasonable advance publicized notice of when that issue will be on the agenda. The agenda has to clearly articulate what it is and what it's for, and then it requires a vote of the city council or the village board in order to do...whether it's a lease purchase, an installment contract, or a COP. Those types of things, obviously, at a public hearing, individuals have the opportunity to indicate what their concerns may be. But I can't imagine any individual that cares about taxpayer dollars

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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coming forward saying we would prefer that the city pay more. We prefer that you use a financing tool so our taxpayers can pay more. I just don't see that happening. So we just want to underscore the fact that this is an extremely important...these are extremely important financing tools. We don't know what the definition of installment contract is. We think, generically, obviously people understand that, but in talking to our members across the state, whether they're doing installment contracts, lease purchase, or COPs, this would have a devastating impact. And so with that, I'd be happy to answer any questions you have. And again, we hope that you, too, don't have an interest in raising taxpayer dollars. And I can't imagine Senator Ebke does either. [LB510]

SENATOR MURANTE: All right, are there any questions? Seeing none, thank you for your testimony. [LB510]

LYNN REX: Thank you very much for your consideration. [LB510]

SENATOR MURANTE: (Exhibits 11-15) All right, is there additional opposition testimony to LB510? Is there any neutral testimony to LB510? I do have letters of opposition from Bruce Vitosh of the Norris Public Power District; John McClure, Nebraska Public Power District; Todd Wiltgen, Lancaster County Board of Commissioners; Robert Beatty, KBR Rural Public Power District; and the Greater Nebraska Cities. And that closes our hearing on LB510. Brings us to our last item of the day, Senator Craighead. Senator Craighead, welcome to your Committee on Government, Military and Veteran Affairs. [LB510]

SENATOR CRAIGHEAD: (Exhibit 1) Thank you, Mr. Chairman. Good afternoon, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d, and I represent the 6th Legislative District in Omaha in Douglas County. I come before you to introduce LB437 which would amend the Taxpayer Transparency Act by specifically authorizing independent instrumentalities to comply with the requirements (inaudible) act by providing a link on the state's transparency Web site. I have also presented an amendment, AM557, to the committee today to narrow the scope of LB437 by deleting the references to independent instrumentalities and limiting the link option to the Nebraska Investment Finance Authority, or NIFA. In 2016, the Legislature amended the act by broadening the scope of state entities mandated to comply with the act's financial data foreclosure requirements. Currently, the act requires quasi-public governmental entities and state independent instrumentalities to submit their financial data to the state treasurer for posting on the state's transparency's Web site, [www.Statespending.Nebraska.gov](http://www.Statespending.Nebraska.gov). State entities must disclose all expenditures of state receipts as defined in the act whether appropriated or not appropriated and must post all contracts that serve as a basis for an expenditure of state funds on a Web site maintained by the Department of Administrative Services. Because NIFA is not a

Transcript Prepared By the Clerk of the Legislature  
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Government, Military and Veterans Affairs Committee  
March 08, 2017

---

state agency, transaction-level data and financial information of NIFA is not maintained on the state's system. Instead, such data and information is maintained by NIFA on servers NIFA owns or over which NIFA has control. NIFA establishes and regularly updates the protocols for the management and monitoring of such data, including cyber security protections, that best fits the needs of NIFA's particular operations. I have learned that requiring an independent state instrumentality like NIFA to post its financial and other data on a server, over which it does not have control, is problematic. A cyber security incident or breach related to its data unnecessarily exposes NIFA to the risk of lawsuits and other claims against the assets of NIFA. To help mitigate this risk, NIFA has secured a private cyber risk insurance policy which covers the risk of cyber fraud, but only if NIFA owns or controls the servers on which such data is displayed. LB437 provides a simple and practical solution to this issue by allowing NIFA, as an independent instrumentality of the state, to establish a link to [www.statespending.gov](http://www.statespending.gov) from a server owned and managed by NIFA. Public access to NIFA's information from the treasurer's Web site [www.statespending.Nebraska.gov](http://www.statespending.Nebraska.gov) would be accomplished by one additional click ensuring comprehensive disclosure and complete transparency without increasing the risk of liability for NIFA. The information maintained on NIFA's Web site would be accessed in the same searchable format as set forth on [www.statespending.gov](http://www.statespending.gov). The link proposed by LB437 furthers the public purposes underlying the act and permits NIFA to continue to monitor and securely manage its data while still complying with the act. Thank you for the opportunity to speak on LB437. I appreciate your consideration of this bill and its proposed amendments. I welcome any questions you may have. [LB437]

SENATOR MURANTE: Thank you, Senator Craighead. Are there any questions? Seeing none, thank you for your opening. [LB437]

SENATOR CRAIGHEAD: Thank you. [LB437]

SENATOR MURANTE: Much appreciate it. Welcome. [LB437]

TIMOTHY KENNY: (Exhibit 2) Thank you, Chairman Murante, and thank you, members of the Government, Military and Veterans Affairs Committee for the opportunity to talk. Forgive me if I'm a little...I've got a little sore throat from the meeting. I might need a dispensation with respect to three minutes. My name is Timothy Kenny, spelled T-i-m-o-t-h-y K-e-n-n-y. I'm the executive director of the Nebraska Investment Finance Authority. It's been my honor to serve in that capacity since 1994. Thank you for the opportunity to work on this transparency issue. The clarification specifically offered by LB437 was discussed in this committee 13 months ago. You may remember in conjunction with LB851 that amended the Nebraska Taxpayer Transparency Act to require state instrumentalities like NIFA to provide this transaction and contract data in accordance with the act. Then, as now, NIFA has no concern about the disclosure of content

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Transcriber's Office

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

because full and complete audited, regulated disclosure by NIFA to the public, the Securities Exchange Commission, the bond rating agencies, the IRS, and this body has been our standard and our practice for more than 30 years. A 30-year history of audited disclosure is a track record that few, if any, Nebraska departments or instrumentalities can match. In both our testimony last year and subsequently this year in our discussions with the Treasurer, the State's Chief Information Officer, the Governor's Policy Research Office, the Attorney General, the Secretary of State, our board, and the members of this committee who have been very generous with their time, and we much appreciate it, we discussed in detail the issue of cyber security and specifically what happens when transaction data is posted on the World Wide Web. We have provided you earlier with research about the increased incidents and cost of data breaches caused by phishing and ransomware which is just a few of the problems that can occur. As LB851 progressed last year, the bill sponsor and the Speaker both indicated that they felt that that bill as written was broad enough for us to achieve our proposal...our proposed linkage of the NIFA data to the servers...to the state's servers for the single searchable transparency Web site. They thought the language was sufficient. But subsequently in the mid-2016, when we tried to negotiate that agreement with the Treasurer, exploring that the NIFA data would be available and explaining that NIFA would be available on a searchable basis meeting all the requirements of the Transparency Act, the Treasurer responded that it was his belief that the language of the Transparency Act, as amended by LB851, did not permit providing our information by digital link to the state's transparency site. As we've explained to the Treasurer, our ability to maintain the NIFA data on our server, over which we have control, is essential to maintaining our cyber risk insurance. In addition, NIFA has in place certain protocols and procedures which are determined to best protect and defend the data and the systems of NIFA and its customers. As an instrumentality, not under the protection of the state, our data is currently on a network with protection, detection, and immediate response capabilities, and with our security protocols that have been determined to be the best practice for our kind industry. We believe the proposed by LB437 is both practical and prudent. It would link our NIFA data to the state's transparency site with a one-click, hot link under the tab "Other Government Agencies" and be located on the state's transparency Web site. This would allow us to protect our data while fully complying with all the requirements of the act. Letters in support of LB437 have been sent by the general public, by the Nebraska Press Association, Nebraska County Officials Association, the Nebraska League of Municipalities, and several entities that we do business with. These letters concur with our concerns and indicate the challenges that they face from phishing letters and phishing events. Their letters confirm their expectations and understanding that we are all connected in a continuous data loop with bad actors attempting to exploit those connections if we publish that data digitally. And they believe, as we do, that we are all obligated to do our best to protect each other. On a positive note, we reviewed the source data for the standard against which the state's site is measured, the 2016 Research Group...PIRG Research Group, and we don't believe that the rating that we received on that good site, from that good group, would be diminished at all by LB437. If I may close, just briefly in summary, the four issues are simply that this issue is a

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Government, Military and Veterans Affairs Committee  
March 08, 2017

---

cyber risk issue and that risk increases materially each day and must be managed. Secondly, without the ability to protect, detect, and defend our data systems, NIFA's probability of cyber crime breach is more than double, placing our data directly on a transparency site of which we have no control would void our insurance. Thirdly, we at NIFA simply ask to be the entity responsible for protecting and managing our data and our systems. And finally, passage of LB437 will not in any way reduce the amount or the type of disclosure required on a single, searchable state transparency Web site, nor will LB437 change or limit what the Treasurer reports in accordance with the Transparency Act. Thank you for your listening and attention to this; and thank you for your consideration of LB437. I'm happy to answer questions. [LB437]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Seeing none, thank you for coming down. Is there additional proponent testimony to LB437? Seeing none, is there opposition testimony to LB437? Treasurer Stenberg, welcome to the Government Committee. [LB437]

DON STENBERG: (Exhibits 3, 4, 5, and 6) Thank you, Mr. Chairman. Mr. Chairman, members of the committee, for the record, my name is Don Stenberg, D-o-n S-t-e-n-b-e-r-g, I'm the Nebraska State Treasurer. I handed out two documents. One is my prepared testimony, which I am going to go through. And the other is...where is my copy?...did I give all my copies away?...no...that I will come to very shortly. First of all, Mr. Chairman, I'm here to strongly oppose LB437. In 2009, the Nebraska Legislature passed LB16 to put the state's checkbook online for the purpose of giving taxpayers the transparency they needed to see where their tax dollars go. For each state agency, that 2009 bill requires the amount, date, purpose, and recipient of all state expenditures be made available online. And that is this document that you have here. I thought it would be helpful for the committee to see exactly what we're talking about that. So I took this from the state's transparency's Web site, which has tremendous search capability. And so what I did is I selected expenditures from the State Department of Revenue; amounts over \$2,000; the first hundred records starting July 1 and they run through July 20. And as you can see there, there are a variety of expenditures for different purposes; some for net pay for state employees; some to the Lancaster County Event Center; some to the Adams County Agriculture Society; and so on and so on and so forth. What I'd like to do is direct the committee's attention to the first page, and basically the top of the columns. And this is the only information that is online on the transparency Web site concerning specific expenditures by state agencies. And this is available for every state agency: the Governor's Office, the State Legislature, the Revenue Department, the Investment Council, the Department of Agriculture, on and on and on. And this information has been online since 2009 without incident. The only information that's there, the only information that NIFA is required to provide under present law is this information: the date of each payment, who it was to, the dollar amount, and a couple words about the purpose of that expenditure. So that is what we're talking about here today. Now in 2016, just last year, the Legislature passed LB851 by a vote of 48 to zero to require the same disclosure be made for

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

entities created by state law whose board has one or more persons appointed by the Governor. Now every independent instrumentality, except NIFA, is complying with the Taxpayer Transparency Act as written. Since last September, the Executive Director of NIFA, Mr. Tim Kenny, has, with the assistance of his lawyers, engaged in the campaign of obstruction to conceal financial information concerning NIFA from the State Treasurer. Excuse after excuse has been made. Volumes of correspondence has been exchanged. Several meetings have been held; all which ended with no agreement from Mr. Kenny or his lawyers that Mr. Kenny would obey the law as written, the law which passed this Legislature 48 to nothing. Now, I only have one copy of this available that I'd like to offer for the record, Mr. Chairman. This is the correspondence that we've exchanged over the last six months and will pretty much confirm everything I have to say to the committee today. So I'd like to have that...offer that for the record. Now as I point out, the only expenditure financial information Mr. Kenny is required to provide to the State Treasurer is the amount, date, purpose, and recipient of each of NIFA's expenditures; the same information that has been online for all state agencies without any incident since 2009. We're not asking for...the law does not require that we be provided with any Social Security Numbers, with any dates of birth, with any mothers' maiden names, with any home address, or any other confidential information. Now, under Nebraska's public records law, all of this information is now and has been a public record available to the public at their request for several decades, including this same information from NIFA for the last several decades. This bill does not create any new public records. It merely takes public records that exist and put them online for the convenience and for the information of the Nebraska taxpayers. Now in my opinion, when a government bureaucrat fights this hard to prevent the disclosure of financial information, he is hiding something. I see many similarities between what is going on at NIFA and what happened with the Tourism Commission, the Brand Committee, and to a certain extent the Omaha Goodwill scandal. The Tourism Board was made up of good people with full-time jobs elsewhere. The board met a handful of times and the executive director took important actions without getting the prior approval of her board. She was fired for two main reasons: she asked the Legislature to increase her appropriation without getting her board's prior authorization, and she overspent her budget by \$4 million. Like the Tourism director, Mr. Kenny brought this bill to the Legislature without his board's prior approval. That action got the Tourism director fired. Why should Mr. Kenny be treated any differently for the same offense? This bill is part of an ongoing coverup operation and I'll explain that later. The Brand Committee scandal was similar. A part-time board of good people who met infrequently and an executive director who kept his board in the dark on important issues and took inappropriate actions. The Omaha Goodwill scandal had an executive director who paid himself and his cronies grossly excessive salaries and a board that let him do it. Now administratively, the situation at NIFA is just like these examples. We have a board composed of good people with full-time jobs elsewhere and they're not able to provide the oversight that is needed. And we have an executive director who takes important actions without his board's prior approval. That same executive director has gone to great lengths to obstruct and prevent the State Treasurer from seeing basic NIFA financial information and putting that

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

---

information on state's transparency Web site as required by law. Now LB437 is written to facilitate Mr. Kenny's continuing coverup. The bill does not require that the information would have a search capability for NIFA expenditure information. This facilitates a coverup in two ways: first, it makes it nearly impossible to find what you're looking for; and secondly, it makes it all but impossible to discover if some expenditures are not disclosed on the Web site. When I look at NIFA, I see red flags everywhere and I intend to take two actions to get to the bottom of this. In the next few days I intend to write to the State Auditor and request a detailed audit of NIFA. In addition to determining where any money has been spent inappropriately, I will ask the auditor to review the pay of NIFA staff to see if it's excessive. In addition, I will ask the State Auditor to determine whether the internal controls at NIFA are sufficient to prevent fraud, waste, and abuse. Second, I'm going to make a public records request for NIFA's financial records in the near future. By law Mr. Kenny will then have four business days to produce those records. Based on my past experience with him and his lawyers, I'm all but certain that he will not do so. Under Nebraska law, I may then ask the Attorney General for an opinion as to whether the information is public record, which it clearly is. At that point, if the information is not produced, I can ask and the Attorney General is required to file suite to obtain the information. I have the following recommendation for the committee concerning LB437. I recommend that you delete all the language of LB437 and substitute a provision that the Executive Director of NIFA be appointed by the Governor with the advise and consent of the Legislature, and that the Executive Director serve at the pleasure of the Governor. This is similar to the hiring of our state investment officer who must be approved by both the Governor and the Legislature before he can take office. If the executive director serves at the pleasure of the Governor, the Governor through his staff, including PRO and DAS, can help provide the oversight that is needed. The situation at NIFA is serious. In the last two year alone, NIFA has issued \$475 million in housing bonds. They have approximately \$1 billion in bonds outstanding. The amount of money sloshing around at NIFA is enormous and is ripe for abuse. The NIFA board is made up of good people, but they simply do not have the time to provide the level of oversight that is needed considering the amount of money that's involved. My promise to this committee is that working with our State Auditor and Attorney General, we will find out exactly what Mr. Kenny is hiding. Hopefully, it will not be the kind of scandal that we've seen recently at the Tourism Commission, the Brand Committee, and Goodwill of Omaha. I want to make one comment, and that is that nothing I have said is intended to be critical of Senator Craighead for bringing this bill. I've been around the Legislature a long time. I was Governor's legislative aide back in the late '70s and early '80s; served as Attorney General for 12 years, and the State Treasurer for 6; and in those capacities, I've worked closely with the Legislature so I know how these things happen. My guess is that someone from NIFA brought this bill to Senator Craighead and said NIFA wants this bill. I suspect they didn't tell her that the NIFA board had not given its prior approval to have this legislation introduced. And then I think it was probably...you know, this is a simple bill, we need...you know, the State Treasurer is kind of hard to work with, we just need to put this...we just need to amend this bill so that we can disclose this ourselves; a very simple bill, the

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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Treasurer may be against it, but it's really...it should sail right through the Legislature. Well, that's not really what's going on. Now, Mr. Chairman, we had a brief discussion yesterday and you suggested that perhaps it would be helpful to the committee if I discussed some efforts to resolve this issue that had been taken prior to today and so I will do that. Now, the issue that NIFA has described to me, and we've got to start with what they see the issue. They concede that they're not going to give me any confidential information. They're just going to give me this same information that's on this sheet I just handed out to you from the Department of Revenue. But what they say is, well, okay, we give you that information, you put it on the state's transparency Web site and then some bad guy comes along and this bad guy somehow uses that little bit of information to somehow defraud somebody out of some money and we're really afraid here at NIFA that we'll be held liable for that. So the first thing I did, I said, well, I'm not sure this is a real problem, but I want to give you a chance to prove it to me. So I said, find me a case. And I said this in writing so it's right here. Find me a case anywhere in the United States where this has ever happened and a government entity has ever been held liable for that. They have provided no such case. There is no such case. Now, every day...every business day I get an e-mail from the National Association of State Treasurers of which I'm a member of the executive committee. And they update us on anything going out across the country that affects state treasurers. And in the six years I've been State Treasurer, nobody has had this problem. And there's transparency Web sites in all 50 states. It just doesn't make any sense that some state entity that is providing public information as required by state law could possibly be held liable for somebody misusing that public information. It's never happened in the history of the United States. And I challenged them, I gave them the opportunity to provide me one case from anywhere in the country. So that was my first effort. So then the next thing I tried to do, and then I have some additional things, but so I next made the point that, you know, if you're worried about this, if you give it to the State Treasurer and it's on the state transparency Web site instead of putting it on your own Web site, you're better protected. And here's the example I used for that: NIFA, or any employer, is required to withhold money from an employee's paycheck. And so at the appropriate time NIFA provides that information, like any employer, to the Department of Revenue. It includes the Social Security number of the employee, the employee's name, the employee's home address, the amount of their pay, how much was withheld from their paycheck for state taxes and federal taxes. Now let's assume that some bad guy, heaven forbid, hacks the State Department of Revenue Web site and obtains all that information. Now, would NIFA be held liable because the Web site over here at the Department of Revenue got hacked? All they were do...all they did was what they were required to do. They provided that information to the Department of Revenue. And so if anybody is liable, it's the Department of Revenue for not having adequate security. Same principle here: NIFA gives this information to the State Treasurer; State Treasurer puts it on the Web site. If anybody is going to be liable, it's the state of Nebraska, because all NIFA did was comply with the law, just like when they file with the State Department of Revenue. Now I made three offers to try and obtain voluntary compliance by NIFA. One of those things said, well, they said we need to limit downloads so that bad guys can't

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

Government, Military and Veterans Affairs Committee  
March 08, 2017

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take a lot of this information and use it for bad purposes. And so I said, okay, we'll limit downloads of NIFA data from the transparency Web site to no more than ten items. Well, that wasn't good enough for the voluntary compliance. So then I offered, I said, okay, well, they said, you know, what we really need to do, we need to be able to monitor this on a real-time basis to make sure that no bad guys are accessing this information on the Web site. And so, not fully thinking through what that meant, I said, okay, fine; we will let you give you access to monitor whoever it is that's looking at your data on the state transparency Web site. Well, that wasn't sufficient. And I want to tell the committee today that I'm taking that off the table because I didn't think through that. And I think you need...this is very important to understand, because this is exactly what the bill does, and this is not speculation on my part, this is what NIFA representatives have told me. What they mean when they say "protecting their data" is they're going to monitor on a real-time basis every single Nebraska resident who accesses their Web site to obtain basic financial information about NIFA. And if they think it's a bad guy, they're going to deny access. So Senator Murante, Senator Blood, Senator Lowe, if any of your constituents go to this Web site of NIFA, under this bill, they will be monitored by NIFA, they will be spied on my NIFA. And I think that's just wrong. I don't think a state agency...or state-created entity should spy on our citizens who simply want to get basic financial information that is public record and it is on-line. So that is what this bill really does and that's what they intend it to do. Now, there's one last effort that I made to try and resolve the liability concerns that NIFA has expressed. And if a page will come over here, we'll get that for you. Now this is a, what I would call a compromise or a settlement of this issue that I offered. I personally delivered this; I hand delivered a copy of this to the chair of the board of NIFA and to one of the attorneys for NIFA. As you can see, it's a very simple amendment. It strikes all of LB437 and it provides complete immunity from lawsuits...let me just read it: Neither the Nebraska Investment Finance Authority, nor its board members and employees, may be held liable for providing the information required by the Taxpayer Transparency Act to the State Treasurer for any damages resulting to any person as a result of the use of that information by a third party for an illegal purpose--complete immunity. This was not good enough. The lawyer for NIFA told me two things: number one, well, this doesn't protect us from federal lawsuits; which is true, the state Legislature can't do that. So I said, okay, tell me what federal law could possible make NIFA liable for providing this information as required by state law. Well, she couldn't identify any such federal law. The other reason they did not accept this, according to their lawyer, is that, well, if we put this in, you know, the trial lawyers might show up and be unhappy with this. Now, if I had an offer to hold my client completely harmless from any possible legal action, I wouldn't really be that concerned that maybe the trial lawyers wouldn't like it. I would take this in a heartbeat. This was not good enough. And this is what finally convinced me to come here today and lay this out; because if they won't take this, they're hiding something. That's my opinion and we're going to get to the bottom of it. And that, I'd be happy to take questions. [LB437]

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Government, Military and Veterans Affairs Committee  
March 08, 2017

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SENATOR MURANTE: You already answered my question, Mr. Treasurer. Are there any questions for the Treasurer? Seeing none, thanks for coming down. [LB437]

DON STENBERG: Thank you, sir. [LB437]

SENATOR MURANTE: Appreciate it. All right, thank you. Are there any additional opponents left to speak on LB437? Is there any neutral testimony? Senator Craighead. [LB437]

SENATOR CRAIGHEAD: Thank you, Chairman Murante and committee members. I appreciate the discussion today and I'm confident that LB437 and the proposed amendment provide a simply, reasonable, and appropriate solution to some of the complex issues and concerns faced by NIFA and independent instrumentality of the state with respect to maintaining control over the security of its data, while still meeting the full purpose of the Taxpayer Transparency Act and its requirements. LB437 helps clarify the language of the Taxpayer Transparency Act provided by NIFA with an option by...which it may comply with the Taxpayer Transparency Act. The bill does not reduce the content of the information required to be posted by NIFA pursuant to the Taxpayer Transparency Act. It is the obligation of our state to recognize that we are in an interconnected data loop with all of our citizens. We need to be aware of the shared digital risks and do our part to ensure that our laws provide for systems which are modern, protected, and well managed to every point in state government. LB437 provides a balanced approach to both the state's desire to disclose financial data in a transparent fashion and NIFA's need to protect such data from misuse and mitigate risk. I ask for your support and encourage you to move LB437, with the proposed amendment, out of committee. Thank you. [LB437]

SENATOR MURANTE: Thank you. Senator Craighead has a question...oh gosh, Senator Blood has a question for Senator Craighead. [LB437]

SENATOR BLOOD: Thank you, Senator Murante. I was waiting to make sure it was me. Senator Craighead, this afternoon with the testimonies, did you feel it was fair and balanced in reference to your bill? [LB437]

SENATOR CRAIGHEAD: I felt we had two very distinct sides to the testimony. [LB437]

SENATOR BLOOD: But everyone was giving a fair shot to equally speak? [LB437]

SENATOR CRAIGHEAD: No. [LB437]

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Government, Military and Veterans Affairs Committee  
March 08, 2017

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SENATOR MURANTE: Senator Craighead, in your experience in the Legislature, have you ever seen a committee chairman shut down a constitutional officer while testifying? [LB437]

SENATOR CRAIGHEAD: No, I have not. [LB437]

SENATOR MURANTE: (Exhibits 7-13) Thank you. Seeing no additional questions, I do have letters of support from Judy Petersen, of the Central Nebraska Economic Development District; Amanda Brewer, Habitat for Humanity of Omaha; William Brush, Security State Bank; Larry Dix of NACO; Brent Clark, city of Broken Bow; Allen Beerman, Nebraska Press Association; and Lynn Rex of the League of (Nebraska) Municipalities. And that closes our hearing on LB437, and ends our public hearings for the day. Thank you. [LB437]