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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 18, 2018

[LB859 LB887 LB902]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 18, 2018, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB902, LB859, and LB887. Senators present: John Murante, Chairperson; Tom Brewer, Vice Chairperson; Tom Briese; Mike Hilgers; John Lowe; Theresa Thibodeau; and Justin Wayne. Senators absent: Carol Blood.

SENATOR MURANTE: (Recorder malfunction)...Government, Military and Veterans Affairs Committee. My name is John Murante. I'm the State Senator for District 49, which includes Gretna and western Sarpy County. And I'm the Chairman of this committee. We are here today for the purposes of conducting three public hearings. We will be taking the bills up in the order on which they appear on the agenda outside of this room. If you are here and wish to testify on any of the matters before the committee, we ask that you fill out one of these green sheets of paper. The green sheets are located on either side of the room. If you're here and wish to state your support or opposition for any of the matters before us but you do not wish to testify, we ask that you fill out one of these sign-in sheets. Again, the sign-in sheets are located on either side of the room. If you do testify, we ask that you begin by stating and spelling your name for the record, which is very important for our Transcribers Office. The order of proceedings is that we will allow the introducer an opportunity to open, then we will listen to proponent testimony, followed by opponent testimony, then neutral testimony, and the introducer will be given an opportunity to close. We ask that you listen very carefully and try not to be repetitive. In the Government Committee, we do use the light system. Each testifier is afforded 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 is expired. We'd ask that you'd conclude and we will open the committee up to any questions they may have of you. If you have a prepared statement, an exhibit, or anything you wish to have distributed to the committee, we ask that you provide 12 copies to one of our pages...to our page, today; John (phonetic) is back. And if you don't have 12 copies, don't worry; just give what you have to the page and he will make copies for you. With that said, we have dispensed with our formalities beyond the introduction of members. I'll start with the far right, Senator Lowe.

SENATOR LOWE: Thank you. John Lowe, District 37; south half of Buffalo County.

SENATOR BRIESE: Tom Briese, District 41.

SENATOR HILGERS: Mike Hilgers, District 21; northwest Lincoln and Lancaster County.

SENATOR BREWER: Tom Brewer, District 43; thirteen counties of western Nebraska.

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ANDREW LA GRONE: Andrew La Grone, I'm the legal counsel for this committee.

SENATOR THIBODEAU: Theresa Thibodeau, Legislative District 6; part of northwest Omaha.

SENATOR MURANTE: And our substitute clerk for the day...

LAURA OLSON: (Laughing) Laura Olson.

SENATOR MURANTE: Thank you. All right, and with that having been dispensed with; Senator Bostelman, welcome to your Committee on Government, Military and Veterans Affairs. Welcome.

SENATOR BOSTELMAN: (Exhibits 1-2) Thank you. Good afternoon, Chairman Murante and committee members. My name is Bruce Bostelman, and that's spelled B-r-u-c-e B-o-s-t-e-l-m-a-n. And I represent the Legislative District 23. And I'm here today to introduce LB902. LB902 would add an exemption to the public records statute 84-712.05, which reads; "The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records." The statute goes on to list several types of records which may be withheld from the public. This list includes records such as medical records, personal records, and personal information and records regarding a student of any educational institution, records which reveal the identity of any public library patron using a library's materials...the library's materials or services, records kept by public bodies which maintain collections of archeological or historical significance, and others. LB902 would simply add to this list information obtained by any government entity regarding firearm registration, possession, sale, or use that is obtained for purposes of an application permitted or required by law or contained in a permit or license issued by such entity. Such information would still be available to any federal, state, county, or local law enforcement agency. The concept of protecting an individual's information pertaining to firearm applications is not a new one in Nebraska. Applications and permit holders under the Concealed Handgun (Permit) Act is already protected and not considered a public record under state...and not considered a public record under state statute 69-2444. The Legislature has seen fit to include these various exceptions to public records over time to address concerns of privacy and changes with technology and society, and should continue to do so. LB902 is just another such evolution in our statute necessary to address growing concerns. Currently, Nebraska statute 69-2403 requires that if I wanted to purchase, lease, rent, or receive transfer of a handgun here in Nebraska, unless a specific exemption applies, I would be required to fill out an application form titled "application to purchase, lease, rent or receive transfer of firearm" form from my local police department or sheriff's office in order to obtain the certificate. And I believe that is the form...one of the forms that you have, it's

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titled on the top "State of Nebraska." I may also be required to fill out Form 4473 of the Bureau of Alcohol, Tobacco, and Firearms; ATF. And that is the other form which you have, which is a firearms transaction record. I believe both of these forms have been handed out by the pages, so you can see the type and amount of personal information each form contains. In fact, I've highlighted several of those on those forms. For such applications, I would need to provide information including my name, current address, how long I've lived at that address, my previous address and how long I resided there, an alien registration number if applicable, date of birth, place of birth, height, weight, and race. There's also a place to include my Social Security number. Additionally, I would need to provide a driver's license, or state or military identification card. Overall, this application provides an abundant amount of personal information. That information can be used in a variety of ways that negatively impact or harm the individual, including use for fraud and identity theft purposes, when made available to the public. Such significant compilations of data on a person all in one location provides a quick and easy way for people to gather and misuse this information. Again, this information would still be required when involved in purchasing, leasing, renting, receiving, or transferring your firearm, and law enforcement officials would continue to have access to that information. LB902 simply protects the sensitive information contained on these forms from being disclosed to the public at large. There are also safety concerns associated with considering personal information contained on such forms to be a public record. Instances where an individual fleeing from abuse or another negative situation wishes or needs to purchase, lease, rent, receive, or transfer a firearm, their address and information required on such forms are not protected. Furthermore, since such information is considered a public record, it opens up any individual who owns or has submitted an application regarding a firearm to public dissemination of their identities and information. I will note this includes those that have been approved and those that have been disapproved...denied access or permit. This can then be used in a criminal or troublesome manner against these individuals. Once such information is public there is no way to contain it, and it then may be used to harass or threaten these individuals. Additionally making the identities and addresses of these individuals known also provides an opportunity for theft or unauthorized use of such firearms. The personal information of these individuals are not just assessable, or used to gather information on a single individual or for a personal basis, but can be requested broadly and widely disseminated. As was the case in New York when a New York news site published the names and addresses of handgun permit holders as an interactive map. These types of broad requests for firearm holder information does not happening...is not happening...is not just happening in other states; the Lancaster County Sheriff's Office has received a public information request in the past for this type of information. The request was for all firearm purchase permits for the last ten years. That request was later voluntarily rescinded, but it simply indicated the potential problems associated with considering this information a public record. Nebraska is not the only state that has considered this type of legislation. Numerous other states limit or prohibit public access to firearm registration and permit holder information as well. In a quick review, we did a quick search; 40 states, in fact, restrict or limit, 8

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states are considering it, and 2 states have no permit whatsoever. So, of the 50 states, all states either have or are considering this type of legislation. As the law currently stands, there are some conflicting thoughts on the extent to which this information is a public record. Whether a particular request for this information would be approved or how long such information is on hand can vary, which creates inconsistencies within our law. LB902 would help provide more clarity and consistency to our laws regarding the personal information contained on these forms. LB902 addresses and provides a proper balance between concerns of safety and privacy, and I therefore ask for your support of LB902 and its advancement to the General File. Take any questions if you have them. [LB902]

SENATOR MURANTE: Thank you, Senator Bostelman. Are there any questions? Senator Brewer. [LB902]

SENATOR BREWER: Thank you, Mr. Chairman. All right, on the ATF Form 4473, if you wanted information on that, that is not available because that's a federal form. Is that correct? [LB902]

SENATOR BOSTELMAN: Well, but the problem with...it is a federal form, but it's held by your local establishments; gun shops, stores, Cabela's, Scheels, anybody who sells a firearm. If you don't have a handgun permit, this is the form you fill out. If you go to any place and purchase a firearm, this is the permit that they use that they apply for and send to the...for the background check. So they maintain it locally. [LB902]

SENATOR BREWER: Okay. And currently the state of Nebraska form that you gave us a copy of, that is accessible... [LB902]

SENATOR BOSTELMAN: Yes. [LB902]

SENATOR BREWER: ...with all of the information? Okay, thank you. [LB902]

SENATOR BOSTELMAN: Yeah, both forms are accessible. [LB902]

SENATOR MURANTE: Any additional questions? Seeing none, thank you for your opening. [LB902]

SENATOR BOSTELMAN: Thank you. [LB902]

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SENATOR MURANTE: Thank you. Proponent testimony. Senator Schilz, welcome back to the Government Committee. [LB902]

KEN SCHILZ: Thank you, Mr. Chairman. Good afternoon. Chairman Murante and members of the Government, Military and Veterans Affairs Committee, my name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I am here testifying on behalf of the National Rifle Association in support of LB902. LB902 addresses the need for personal information connected with firearm permits to be confidential. In the past, the names of individuals who either own firearms or who have legally obtained permits to carry firearms for self protection have been published in states that lack adequate confidentiality laws to prevent such disclosure. For example, in 2012, personal information that was published by a local newspaper in New York, that information was then used to make an interactive map with the location of firearm owners or permit holders. Burglars then targeted the houses on the map in an effort to steal firearms. Inadequate confidentiality laws endanger public safety and sets the stage for citizens to be harassed or targeted for exercising their rights under the law. The NRA does not oppose the release of numerical statistics pertaining to the issuance, denial, revocation, and administration of concealed carry permits, but believes a clear line should be drawn at the names, addresses and other personal information that identifies individual applicants or permit holders. LB902 would bring Nebraska in line with many other states that currently have permit and firearm confidentiality laws to prevent such disclosures that jeopardize the safety of law-abiding citizens. Thank you for the opportunity to testify today. I would urge the committee to move this bill to the floor for debate. And I would be happy to try and answer any questions you may have, thank you. [LB902]

SENATOR MURANTE: And thank you for your testimony. Are there any questions? Seeing none, thanks for coming out. [LB902]

KEN SCHILZ: Thank you. [LB902]

SENATOR MURANTE: Additional proponents. Welcome. [LB902]

PATRICIA HARROLD: Good afternoon, Senators. My name is Patricia Harrold, P-a-t-r-i-c-i-a H-a-r-r-o-l-d. And today I'm testifying in support of LB902 and representing the members of the Nebraska Firearms Owners Association. As you all have heard--and I'll be non-redundant, so I reduced my testimony--it advances privacy protections for citizens in Nebraska and it aligns this addition with the objective of this piece of legislation. Sensitive personal and private information is already being used in our communities for nefarious purposes, and this particular subset of information should remain protected, or be protected. When I looked at the current law and how it protects, it was really interesting the range of protected information, from student records and patient information, which was really obvious. Of course we want to protect that, but I found

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archaeologically sensitive locations and the donors of historical artifacts were also protected. And this leads to my support as well. They were provided protections for various reasons. Protections are afforded to some due to reasonable fear of theft, vandalism, or trespass; and this was in the case for the archaeological sites. We don't want to share where those sites are in advance of research being done because those places might be stolen from. And there's also reasons for when sharing the information has no good public purpose. So when it comes to firearms--firearms law, the use of firearms in crimes, all those--aggregate data is very important. We all like to have aggregate data so that we can make informed decisions. Aggregate data will continue to be available when this passes, and we support that. We support this bill because it provides for the appropriate and sanctioned use. And that's what I'd like to emphasize: appropriate and sanctioned use of personal data makes sense. I work, myself, for the Department of Defense. I handle personally identifiable information all the time. The levels of protection afforded to that information are extreme, and rightfully so. I have been a victim of the Office of Personnel Management's lack of management of my personally identifying information, and I have now a life-long identity guard protection over my credit report for that reason, and I will continue to do so. So that information, obviously, is something we don't want out in the public. But I would like to start off with some personal information. I volunteer as a firearms instructor, primarily for women. And I have a large subset of clients who are learning firearms safety for the purposes of self-defense. And these ladies have recently left their shelters, domestic violence shelters. And in conversations with them about the process by which they should learn about firearms, we see their permit to purchase and then maybe eventually get their CHP, there was a concern that they brought up about, well, there's all these protections about my information now so that the perpetrator of violence against me cannot find me. However, if I buy a gun my information might be made public, my address might be made public, and how am I now protected? And so we talked at length about that. And, luckily, I was getting ready for this hearing today and I explained to them hopefully I would get to share this information with the committee so that they could learn your concern. Our 10,000 full members of the Nebraska Firearms Owners Association--and we have almost 20,000 followers in the state of Nebraska--are concerned about personal information with relation to us. A majority of firearms used in the commission of crimes are stolen. Making it easier for individuals to identify from whom and from where to steal their next firearm makes no logical sense. I would prefer that they don't know what I have in my home, or where I might have it. And we hope that you support this bill. Welcome any questions. [LB902]

SENATOR MURANTE: Thank you, very much, for your testimony. Are there any questions? Seeing none, thanks for coming down. Much appreciated. Mr. Smathers, welcome to the Government, Military and Veterans Affairs. [LB902]

SCOTT SMATHERS: Chairman Murante, members of the committee, thank you. I am Scott Smathers, executive director of the Nebraska Sportsmen's Foundation. It's S-c-o-t S-m-a-t-h-e-

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r-s. Nebraska Sportsmen's Foundation was founded in Nebraska by Nebraskans for Nebraskans in 2002. We are a 501(c)(3) nonprofit educational distribution system for the traditional, what's referred to as the "hook-and-bullet crowd." We have roughly over 13,000 members and conservation partners in the state of Nebraska since 2002. Most of you I'm familiar with, I've been here many times in different committees testifying on behalf of legislation for sportsmen. LB902 is...we are a part of the original conversation years ago, as this bill has been moved through this system several different times. The bill comes from our membership...from a couple extra points that you already heard from Senator Bostelman and former Senator Schilz and Patricia. There's a reasonable sense of protection from a lot of different categories within our state statute. However, one of the most fundamental rights that I have is to purchase a firearm. I am not opposed to any legislation that requires me to just follow certain steps to own said legislation...firearms, or our members aren't. But the raids that started in 2011/2012, particularly in New York, then the attorney general of Illinois request that firearm owner's information be made public. One of the things that was not even mentioned here is that you are putting a bullseye on those homeowners. As you heard, burglaries were targeted towards those homeowners. Essentially, you're also providing a list of who's not protected. So everybody that does not have a purchased firearm in their home has also become a victim of certain circumstances around the country. We're all aware of the current political climate in our country, we're all aware of the political...or the bullying issues that are occurring on social media. Doesn't take much effort to go get that list then start your campaign because you now have their name, you can social...you can search them on social media, you can search them through the records; you can start your attacks. I personally have been a victim of one of those, another issue. Was not my firearm, but it was a position we took on particular bill that has been through this Legislature five years prior. And that individual was certifiable, and he found my information through my registration information on my testimony. We're simply asking that you give us the same protection as you're giving some other basic human rights that groups have. Our members are concerned about their safety, they're concerned about their families. We have firearms in our home for various reasons; I'm an avid outdoorsman. Our traditional crowd firm is traditional outdoorsmen. We have shotguns, rifles. We do purchase handguns; we all have our purchase permits. We're not home all the time. Imagine if your wife is at home with your children. You have a house full of weapons. Now they have your address and you're not home. So, we ask for you to move this bill to General File. We seek your support, and our members will thank you for that. Thank you, very much. I'll answer any questions. [LB902]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Seeing none, thanks for coming out. [LB902]

SCOTT SMATHERS: Thank you. [LB902]

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SENATOR MURANTE: Additional proponent testimony on LB902. Is there any opposition testimony to LB902? Is there any neutral testimony? Welcome. [LB902]

KORBY GILBERTSON: Good afternoon, Chairman Murante, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. Appearing today as a registered lobbyist on behalf of Media of Nebraska in opposition to this legislation. Just a little bit of background, I believe Mr. Smathers talked about the fact that this legislation or reiteration thereof has been introduced several times. Heretofore, it's been heard by the Judiciary Committee, so you're hearing it, I believe, for the first time in this committee. Last year, LB...I think it was LB637, was introduced and discussed in the Judiciary Committee. It's still in Judiciary Committee right now. I think that it's safe to say that this bill is an improvement on the last legislation because the last legislation was fairly open as to any records or information having to do with licensure or the use/sale of guns. So this one is a little more limited in to that it has information for the permits or licenses. However, Media of Nebraska... which, for those of you who aren't familiar with Media Nebraska, is made up of both print and broadcast media. But, this association only limits their interest to open meetings, public records, and First Amendment issues. So that's why this bill is of interest to that group. And we just ask you to be very serious in looking at the reasons why you would exempt further public records. I think to say that this would curb any identity theft is a fairly long reach since all of our private information is fairly public at this point. To think that a firearms purchase permit would open the door to more identity fraud, I think, is maybe a broader statement than would be accurate. With that, I'd be happy to answer any questions. [LB902]

SENATOR MURANTE: All right, thank you. Are there any questions? Senator Hilgers, then Senator Brewer. [LB902]

SENATOR HILGERS: Thank you. Thank you for being here. Can you, maybe, articulate how you view the difference between, or how you would compare, sort of...what are...I think what we would all agree would be public records--open meetings, records relating our public officials who every--we want our media to hold us accountable. Versus what really are...is private information that has been submitted to a public entity but really is private information. How are...how do...how are those two things similar? [LB902]

KORBY GILBERTSON: In the other licensure information and permit information in this state is public as well. So this isn't the only one. [LB902]

SENATOR HILGERS: Like what...give me an example? [LB902]

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KORBY GILBERTSON: Driver's license information is public, any other license information. When you get a license from the Board of Medicine to practice, that's public. When you get a license to do other jobs in Nebraska, that's all public. [LB902]

SENATOR HILGERS: Right, so by...thank you for that, but I guess my question is; how do those, I mean if we're talking about from a policy perspective, why should someone's private information be subject to a public interest in that way? I mean, again, we're talking...I understand when we're talking about public officials and holding public officials accountable, but you're talking about someone exercising their Second Amendment right, providing private information. How are those two things equivalent? [LB902]

KORBY GILBERTSON: I think what we're saying is it's no different than anyone else who's applying for a license to do something in the state. [LB902]

SENATOR HILGERS: Okay. [LB902]

KORBY GILBERTSON: So then they're...you're holding this at a higher standard than other licenses and permits. [LB902]

SENATOR HILGERS: Okay. I appreciate that. As a...when I look at this though, what I see are questions that are, I think, fairly significant. I mean, there are certainly not just name and address; Social Security Number--it's optional but people put that on there--from...and certainly from a data privacy perspective that's important. But: have you ever been convicted of a felony; were you discharged dishonorably; have you been convicted at any court for misdemeanor of domestic violence, certainly those are questions that are relevant to whether you can own a handgun. But that...those...that's the type of question that's, I don't think, on a typical licensure request, or your drivers license request... [LB902]

KORBY GILBERTSON: I think if you look at the...yes, they are. Medical practices, law practice, other things, you fill that out and that's on record. [LB902]

SENATOR HILGERS: Well, so my bar, and that...and I don't...so, to clarify...and I...is my bar application that I submitted... [LB902]

KORBY GILBERTSON: I don't know, I don't think your bar...Senator Wayne... [LB902]

SENATOR HILGERS: Is that public? [LB902]

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KORBY GILBERTSON: ...is shaking his head yes, so I'll rely on him. But I do know... [LB902]

SENATOR HILGERS: You can get my bar? [LB902]

KORBY GILBERTSON: ...that your license is public. [LB902]

SENATOR HILGERS: Well, my license would be... [LB902]

KORBY GILBERTSON: Yes, application... [LB902]

SENATOR HILGERS: ...but my application is...that would provide all the kind of details that we're talking about, is that public? And I don't know the answer to that. [LB902]

KORBY GILBERTSON: I would check for sure, but I think it very well might be. [LB902]

SENATOR HILGERS: Maybe we should amend that. [LB902]

KORBY GILBERTSON: And I'll go back and look. But, you know, from your standpoint, you know, you're not going to use who has developed everything...my home address is public, every penny I make is public because of what I do for a living. So, there's...you're holding one group to a higher standard than others. And so, I think we're just asking that when you're doing that think very seriously about who you're creating this for. And then next year, are we going to look at other licenses and permits and say, well these people shouldn't have their home address listed even though you can Google it and find it in two seconds. [LB902]

SENATOR HILGERS: Yeah, and I guess that's...I'm trying to tease out the policy here, right, because on a...for...and I actually...I did not know that some of things were public, or even potentially...potentially my application to practice law is public. That actually, in some ways, is concerning, right? For some...for me...or, I don't have anything in my law application that would be concerning (laughter), but from a privacy perspective, I do struggle with the policy reason why we would allow that to be public. But those, at a minimum, are privileges, right? So, the state is saying as a privilege for you to be able to practice law or to be a nurse practitioner or a doctor, maybe the state does have a policy interest in saying, you know, these are going to be public. [LB902]

KORBY GILBERTSON: Right. [LB902]

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SENATOR HILGERS: Maybe that's a legitimate policy interest to create. I don't know. But from a...when we're talking about a different type of right, which is a constitutional right, right? I mean this is... [LB902]

KORBY GILBERTSON: That's not absolute, so... [LB902]

SENATOR HILGERS: No, but I guess...would you say that that is...so, you would...you would...right...but I guess my question is, isn't that a deterrent of some kind? If you think that some of this really personal information could be made public, isn't that a deterrent to exercise your right? [LB902]

KORBY GILBERTSON: You know, I don't know. I think, as a long-time hunter and outdoorsperson, I don't think it's ever been a deterrent to anybody I know. And it certainly hasn't deterred me or my family, but I suppose it could be used as an argument. I just have never seen any evidence of that. And, like I said, you're the policymakers. We're just asking that, you know, make sure you're understanding that when you do this then you're opening the door to others coming in making similar arguments. And right now we have a limited list of 20 things that we're protecting and, as that list gets bigger and bigger and bigger, we need to consider why we're doing that. [LB902]

SENATOR HILGERS: And I totally understand...I appreciate that dialog. I guess my last question, if it's okay, Mr. Chairman, then I'll pass...I think Senator Brewer has some questions. Is...could you see a rational line to draw...that we could draw from a policy perspective between those types of licensure applications or some other things that might be privileges with the constitution...is that a rational line to draw? [LB902]

KORBY GILBERTSON: I think there probably is, yeah. And that's for you to make as policymakers. [LB902]

SENATOR HILGERS: Okay. I really appreciate. Thank you. [LB902]

SENATOR MURANTE: Thank you, Senator Hilgers. Senator Brewer. [LB902]

SENATOR BREWER: Thank you, Mr. Chairman. All right, some of my thunder was stolen by my comrade here (laughter), but I guess where I'm going to ask the question is that...you're doing a comparison between whether it be a bar license or whether we're talking about a park permit, and your ability to understand that if you go to this location, you're going to be able to find guns. And if you're someone who wants guns and doesn't want to pay for them, doesn't that seem like a

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pretty quick conduit to go and get whatever you want? And this person is being put in jeopardy simply because of the way that we're allowing people to have access to this. [LB902]

KORBY GILBERTSON: I think that if that was the case, Senator, there would be more coverage of massive numbers of break-ins that go on. I have had two break-ins and guns stolen from my house, once when I was there. And it wasn't because of any of that, it was before those existed. So, I think... [LB902]

SENATOR BREWER: I'm not denying that the dumb criminals might go wherever it's handy. I'm saying if you're someone who takes the time to figure out where you can go for the biggest bang for your buck, wouldn't this be an easy way to do it? [LB902]

KORBY GILBERTSON: It absolutely would, but I'm not sure that there's evidence of that happening. [LB902]

SENATOR BREWER: Okay, thank you. [LB902]

SENATOR MURANTE: Thank you, Senator Brewer. Senator Wayne. [LB902]

SENATOR WAYNE: It seems like my colleagues are concerned about the fundamental right to bear arms. You have a fundamental right to own property, correct? [LB902]

KORBY GILBERTSON: And I'm not trying to argue the fundamental right to bear arms, I very much support that. [LB902]

SENATOR WAYNE: No, I'm just...I'm just getting on the record; do you have the right to own property? [LB902]

KORBY GILBERTSON: Um-hum. [LB902]

SENATOR WAYNE: And your information, your address, is available via public right now in any assessor's website. [LB902]

KORBY GILBERTSON: Um-hum. [LB902]

SENATOR WAYNE: So that's a fundamental right in which your privacy is (inaudible)...
[LB902]

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KORBY GILBERTSON: There are a few exceptions to that, if you're a law enforcement officer, there are things... [LB902]

SENATOR WAYNE: Correct. [LB902]

KORBY GILBERTSON: ...you can petition to have it removed. But it's still accessible. [LB902]

SENATOR WAYNE: And then you also have a right to vote. And clearly, anybody can download a voter folder file and that gives you your address and your... [LB902]

KORBY GILBERTSON: Yes. [LB902]

SENATOR WAYNE: So, clearly the fundamental right is in the access to one's address happens all the time. What we're talking about is the licensure, and there isn't a database out there just for those who are watching or maybe doing a transcript letter that shows where every application of everybody lives, currently. The concern is whether they can request that information. [LB902]

KORBY GILBERTSON: Right. [LB902]

SENATOR WAYNE: It's your position here that they can request that same information off of any license that's in a public... [LB902]

KORBY GILBERTSON: Domain, yeah. [LB902]

SENATOR WAYNE: Yeah, or in a public/government entity. So, right now school teachers, their...you can look up how much they make and you can know where their address is. So anybody who works for a government... [LB902]

KORBY GILBERTSON: Entity. [LB902]

SENATOR WAYNE: ...entity, except for law enforcement and a couple other ones, their privacy information is typically out there to... [LB902]

KORBY GILBERTSON: Yes. [LB902]

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SENATOR WAYNE: I just wanted to make sure that's clear to everyone. And since I can't testify, I really appreciate you saying yes. (Laughter) [LB902]

KORBY GILBERTSON: (Laughing) You're welcome, Senator. [LB902]

SENATOR MURANTE: Senator Thibodeau. [LB902]

SENATOR THIBODEAU: Thank you, Mr. Chairman. I guess my question surrounds back to...we are opening a can of worms of privacy, but I like the idea of privacy. I like the idea of people not being able to find our address or whatnot. But where I'm coming back to is the testimony we heard with regards to domestic violence victims. And so, I know that they do have other protections in place for them so that people cannot find where they have gotten back on their feet and have gotten a new address and that type of thing. So, I guess, if this is an avenue to where somebody could find them it seems to me that that would...that would be one more area of protection for these victims. And I would...I guess I would like to know your opinion or what...if you see or experience that, you know, people have been found in that way. [LB902]

KORBY GILBERTSON: I have not...not to my knowledge. But we have not opposed, in the past, legislation that has gone to protect the whereabouts of victims of domestic abuse. So, I think...and as I was listening to the proponent's testimony, I was actually thinking; I wonder if it would already fall under the existing protections that...because a lot of times that information is redacted from things. So I'm wondering if that's already covered by one, and I'm not sure. It's not in the public record statutes, but it's in other statutes regarding domestic abuse, so. [LB902]

SENATOR THIBODEAU: Thank you. [LB902]

SENATOR MURANTE: Thank you. Senator Lowe. [LB902]

SENATOR LOWE: Thank you for your testimony today, Miss Gilbertson. Just looking through the Form 4473 from the ATF, it also includes the manufacture of the weapon, the model, the serial number, the type or the caliber and gauge. This is more information that would be on a drivers license or anything else. So the...if it was a criminal looking for these things, they could build up an inventory and they could search for more than one transaction record for an individual and tell exactly how many...approximately how many records that individual has. So, I believe that this holds more information than just a licensure of a doctor or a lawyer. It's hard to steal a doctor's doctorate. Where they could build up an inventory. What are your thoughts upon that? [LB902]

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KORBY GILBERTSON: I think my comments, regarding the doctor and things, is that this is also being used as an avenue for identity theft. So, in that circumstance, it would be the same. As far as having the model number and serial number of a firearm, I was not aware that the federal form was public record. I know that the state license is, so I'd have to go back and look at that again. But I understand what you're saying there. [LB902]

SENATOR LOWE: Okay. [LB902]

SENATOR MURANTE: Senator Hilgers. [LB902]

SENATOR HILGERS: I just want to follow up, my crack research staff just brought me some information that confirmed...there's a lot of...I mean, there's a lot of ways we provide information to the government, and getting our arms around all those different ways and the exceptions, I know, is a big task. But, they...I understand the Nebraska statutes actually do protect the information that we provide to the DMV as part of our application. You can get name and address, but beyond that you can't get it unless it's with written consent. I wasn't clear from our earlier conversation, and I apologize if I just missed this; is that...was that your understanding as well? That that information actually is protected with the application? [LB902]

KORBY GILBERTSON: You can access it, and, I think, through FOIA requests you can get more information than...you can't just access the list...you can access the list online. [LB902]

SENATOR HILGERS: Though, my understanding is that that information cannot be provided without the written consent of the applicant. [LB902]

KORBY GILBERTSON: Of the applicant? Okay. [LB902]

SENATOR HILGERS: Was that...I just...I didn't know if that's your understanding of it. [LB902]

KORBY GILBERTSON: I think driving...I was saying driving records, I believe, are...so if you have... [LB902]

SENATOR HILGERS: Oh, like a speeding ticket or something? [LB902]

KORBY GILBERTSON: ...like, a speeding ticket or things like that. Yeah. [LB902]

SENATOR HILGERS: Okay. Thank you, very much. [LB902]

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SENATOR MURANTE: Okay. Thank you, Senator Hilgers. Any final questions? Seeing none, thank you for your testimony. [LB902]

KORBY GILBERTSON: Thank you. [LB902]

SENATOR MURANTE: Additional opposition testimony to LB902? Is there any neutral testimony on LB902? Senator Bostelman. [LB902]

SENATOR BOSTELMAN: Thank you, very much, Chairman Murante. In closing, couple thoughts from what we heard. One thing I mentioned before, 40 states; Alabama, Arkansas, Colorado, New York, Kansas, Oregon, Ohio, Rhode Island, Texas, Virginia, Alaska, Arizona, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Washington, and Wisconsin all have limited or prohibited access to this type of data. In addition, the states of...that have no public access, some of them were included; there was Alaska, Arizona, Connecticut, Delaware, the District of Columbia, Florida--I believe I read most of those--Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota...or South Carolina, South Dakota, Utah, Washington, and Wisconsin have no public access. And Vermont and Wyoming do not require a permit process whatsoever. The other thing is, last session in the Legislature, we did pass two public records legislation: LB280 by Senator Crawford and LB624 by Senator Wishart. They were passed by the Legislature. Couple things, also, with data collection or just how long these...this documentation sits around, since they're kept differently by different entities, by different...whether it's a store, whether it's a sheriff's department or police station. Lancaster County Sheriff's Office, for example, keeps the approved permits for three months and the denied permits for three years. I think we should keep in mind the usefulness and relevance of the data specific to a particular individual and the privacy rights and concerns of the personal information of an individual to the public. I would ask for your support on LB902 and your passing it on to General File. Thank you. [LB902]

SENATOR MURANTE: All right, and thank you for your closing. Any final questions for Senator Bostelman? Seeing none, thank you very much. [LB902]

SENATOR BOSTELMAN: Thank you. [LB859]

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SENATOR MURANTE: And that closes the hearing on LB902. We'll proceed to our next item on the agenda, LB859. Senator Hansen, welcome back to your committee on Government, Military and Veterans Affairs. [LB859]

SENATOR HANSEN: Thank you. [LB859]

SENATOR MURANTE: You're clearing out the room. (Laughter) Welcome. [LB859]

SENATOR HANSEN: Thank you. Good afternoon, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, representing District 26 in northeast Lincoln. I'm here to introduce LB859, a bill which would allow family members to access records related to the investigation surrounding a death by a family member who died on the job. You will get a chance to hear from some of those today personally affected by those...the issue, but I'll provide a brief overview. I was approached by the group the United Support Workers for...the United Support and Memorial for Workplace Fatalities. That group told me about some involved who have gone through the terrible experience of the death of a loved one as a result of an accident at work. When trying to learn the details of what happened, they've been denied access to investigation records and cut off from learning the circumstances surrounding their loved one's deaths. This is because sections of our statute list documents that may be withheld from the public. Among such things is medical records, trade secrets, and attorney files. This also includes law enforcement files that have to do with investigations. Under current law, these can be withheld even after the investigation has been closed and releasing them would cause no foreseeable harm or danger to anyone involved. So, language has been included in this bill to ensure that if there was a reason for not releasing certain records, those records can still be withheld. For example, only family members can request access and only once an investigation into the death of an employee has ended. Any identifying information of informants or those making complaints can still be withheld, in addition to any information that can compromise another ongoing criminal investigation. We need to be able to prevent families from being in the dark after going through the unimaginable experience of losing a family member. This bill is needed because existing law is at the expense of those family members. As I said before, I'll have some testifiers behind me who could share their personal connection. With that, I will close my opening and be open for questions. [LB859]

SENATOR MURANTE: All right. Thank you, Senator Hansen. Are there any questions? Seeing none, thank you for your opening. [LB859]

SENATOR HANSEN: Thank you. [LB859]

SENATOR MURANTE: Welcome. [LB859]

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TONYA FORD: (Exhibit 1) Thank you, very much. My name is Tonya Ford, T-o-n-y-a F-o-r-d. And I'm the executive director of a national not-for-profit organization known as United Support and Memorial for Workplace Fatalities. And I reside in District 21. LB859 is a great importance to the families that have or, sadly, will be affected by a work-related incident. AFL-CIO recently released that there were approximately 4,821 reported work fatalities in the U.S. in 2016, and approximately 67 workers were killed here in Nebraska. That left approximately 67 families with the everlasting emotion one endures after such a tragic loss and many unanswered questions. I personally have been blessed to meet and stand beside many of the families that have forever been affected by a work-related incident. And I have heard their frustrations and their questions and their emotions. I have been honored to get to know their loved ones through them. And in 2016, I met widow Cheryl Spencer of District 48 after her husband, Jim Spencer, was killed in a trench collapse. On multiple occasions, Ms. Spencer formally requested the investigation report from Alliance Police Department. Each time her request was denied. She even asked if she could review the reports in front of their presence, and yet she was still denied. She had asked that I give you guys a copy of her support in letter in regards to her story and the struggles that she had. All of our family members have many things in common, and they all understand the frustration, pain of having unanswered questions such as what happened, what took my loved one from his or her family, did he or she suffer, what injuries did he or she receive, were they alone. Many of these questions can only be answered through the investigation report completed by others such as OSHA and, of course, our law enforcement. However, like Ms. Spencer, not only families...not all family members have been able to receive the investigation report allowing them to have the closure they deserve after a tragic incident that took their loved one. When discussing this bill, it is significant to know why this amendment is so important. The law enforcement investigation report, sometimes, is the only investigation report that a family member may receive after the loss, answering many of their unanswered questions. Family members should not have to hire legal representation, incurring the unnecessary costs, to receive any investigation report pertaining to their loved one's death. A family member can receive the investigation report from OSHA, however, not all fatalities under OSHA jurisdictions are investigated by OSHA. Companies with ten or less employees are not investigated by OSHA; farm incidents, not investigated; incidents in public entities are not investigated. OSHA has six months to complete their investigation. OSHA will not complete a FOIA request until the case has been closed, citations paid in full. Once it is closed, the request can take anywhere from a few months to a year to complete, depending on the size of the investigation. OSHA redacts information, sometimes causing some incomplete of the story and leaving them with many unanswered questions. Unless you're directly affected by a work-related incident, many of you do not understand what family member victims struggle through physically and emotionally. There's no reason to have a family member struggle or fight for their right to know and understand what happened to their loved one. Going to work should not be a grave mistake. And we, as family members, know and understand that first hand, there's nothing in the report that will give us our loved one back. It will just tell us why they left us that day, giving us a little

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peace in our hearts. I thank you, very much, for your time and your consideration in this matter. And I'm open for any questions. [LB859]

SENATOR MURANTE: Thank you, very much, for your testimony. Are there any questions? Seeing none, thank you for coming down... [LB859]

TONYA FORD: Thank you. [LB859]

SENATOR MURANTE: Much appreciated. Welcome. [LB859]

ALLISON WESTON: Hi, my name is Allison Weston, A-l-l-i-s-o-n W-e-s-t-o-n. And my husband, Jason, lost his life on March 16, 2016, in a work-related accident. He was 41 years old. I had two police officers come to my office at work and tell me there had been an accident and that Jason had been killed, but they had no other information. A few hours later, I received a phone call from the CEO of CPI who wanted to pass along his condolences. When I told him I wanted to know what had happened, to me, his answer was; I don't know. I spent the next few days in a fog; planning my husband's funeral, trying to figure out how to tell our almost-four-year-old daughter why her daddy wasn't coming home, and wanting to know what had gone on in that grain bin that resulted in Jason's death. Sorry... [LB859]

SENATOR MURANTE: It's okay, take your time. [LB859]

ALLISON WESTON: I contacted the Adams County Sheriff's Office and requested the police report from that day and was told once it was complete it would be sent to me. Friends and family questioned why I would want to read that report, but I needed answers. I needed to know what went wrong that day because CPI was not talking to me about anything. I did, eventually, receive the report from the Sheriff's Office, as well as the report from Hastings Fire and Rescue and the autopsy report. I read them word for word multiple times, and I was finally able to piece together some of what had happened and get a sense of what had went wrong that day. If I did not have those police reports, I would have sat for six months waiting on the completion of the OSHA investigation before I would have had any idea of what happened and what ultimately took Jason's life. I feel it is so important for families to have access to reports--whether it be from the police, the fire department, the emergency room, the county attorney, etcetera--because sometimes those are the only answers the families are going to get. So, please, I ask for your support in passing LB859 and allowing the families the right to some answers. Thank you. [LB859]

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SENATOR MURANTE: Thank you, very much, for your testimony. I think I can speak for the entire committee in expressing our condolences for your loss, and thank you for coming and testifying and sharing your story today... [LB859]

ALLISON WESTON: Thank you. Any questions... [LB859]

SENATOR MURANTE: ...let's see if anyone has any questions for you. Seeing none, thank you very much for coming out. [LB859]

ALLISON WESTON: Okay, thank you. [LB859]

SENATOR MURANTE: Welcome. [LB859]

ROD HITCHLER: Welcome, thank you. I'm Rod Hitchler, R-o-d H-i-t-c-h-l-e-r. I'm here this afternoon to speak in support of changes to LB859. My son, Ryan Hitchler, was injured in a work-related incident on May 9...May of 2009, which resulted in his death three days later. I have three reports I was given: the OSHA investigation report, the Department of the Air Force investigation report, and the Lincoln, Nebraska, police investigation report. These three reports contained a lot of the same information and pictures of the accident scene, but has different information as it pertains to the investigating authority. I'll read a couple paragraphs from the police report from the officers that were on scene. Quote; when I arrived on scene, Lincoln Fire and Rescue was also present. When I asked the chief about his perception, he said one of the persons looked very bad. In fact, we should start considering that he probably will be a fatality. I have another quote here from him, it says; I arrived at BryanLGH West. I was able to speak with the ER nurse, who was assigned to Hitchler. She said Hitchler's injuries were very serious. He had multiple skull fractures, an open fracture of the right arm, and a liver laceration. After CT, Hitchler was scheduled for emergency surgery. His prognosis is not good, and he is not expected to live. I'll tell you why those statements are so important to me, along with the other information in these reports. Ryan was on life support while he was in the hospital. On the third day, after talking with doctors, my wife and I made the decision to remove Ryan from life support. A few minutes later, he passed away. Now, most people don't have to make that decision, to remove a loved one from life support. And sometimes you start second-guessing yourself on the decision you made later in life. But by having access to that report and reading those statements, it just reassures me that we made the right decision. The report helped us understand what happened, and that's kept my wife and I strong and on the same page with the decision we had to make. In closing, I want you to understand that not all work-related accidents are investigated by OSHA, or the Department of the Air Force for this matter. That is why it is important that this bill moves forward. It can help with the grieving process, the healing process after the death of a loved one from a work-related accident. It may also help keep a family together or to even prevent a similar

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accident in the future. Please think of what I have said here this afternoon as this bill moves forward. Thank you. [LB859]

SENATOR MURANTE: Thank you, very much. And thank you for sharing your story as well. Much appreciated. Are there any questions? Seeing none, thank you very much. [LB859]

ROD HITCHLER: Thank you. [LB859]

SENATOR MURANTE: Welcome. [LB859]

SUSAN MARTIN: (Exhibit 2) Good afternoon, Senator Murante and members of the Government, Military and Veterans Affairs Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO and all working families in this state of Nebraska in support of LB859. A sudden accidental, unexpected death shatters the world as we know it. It is often a loss that doesn't make any sense. We realize that life is not always fair, and that sometimes bad things happen to good people. The sudden death leaves us feeling shaken, unsure, and vulnerable. Death to a sudden or traumatic accident can raise a number of complex issues for the survivors. The grieving process is often very different from an expected or anticipated death. Sudden loss or death creates special problems for the survivors, and many of these problems compound the grief response. The grief response following sudden loss is often intensified since there is little to no opportunity to prepare for the loss, say goodbye, finish unfinished business, or prepare for a life apart. A sudden tragic event shatters our sense of order and thrusts us into a world forever changed. Survivors of sudden loss may experience a greater sense of vulnerability and heightened anxiety. Survivors are left asking why. Yet it may be difficult, if not impossible, to find an answer. The question why is more of a plea for meaning and understanding, an expression of distress. And not all questions have complete answers. But by passing this legislation it will give survivors an opportunity to further cope with their grief by obtaining answers that may be available to them. Will they ever have closure? No, but more acceptance and peace moving forward. Because not all work-place deaths are investigated by OSHA if the local authorities do complete an investigation, the option for the family to get a copy of the investigative report may give them answers to further allow them to cope with their grieving process. It's not the intention of this law to compromise a criminal investigation or any other information that may be held from the public that is currently contained in the law, but to only allow a police investigative report to be available to the family of a loved one. Thank you for your consideration, and I ask that you support LB859. [LB859]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Seeing none, thank you for coming down today. Is there additional proponent testimony to LB859? Any

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additional supporters? Is there any opposition testimony to LB859? Is there any neutral testimony to LB859? Senator Hansen. [LB859]

SENATOR HANSEN: Thank you, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. I would like to start by thanking those we had to come testify. Their advocacy and their support on this issue is hopefully going to improve the situation for, unfortunately, the families that will follow them down the line. With that, I am, as always, I'll just close by saying that I'm more than happy to work with the committee and committee members to figure out what we can do to move this bill forward and get it done this year. [LB859]

SENATOR MURANTE: All right. Thank you, very much, Senator Hansen. Any final questions for Senator Hansen? Seeing none...oh, excuse me, Senator Brewer. [LB859]

SENATOR BREWER: Thank you, Mr. Chairman. Senator Hansen, first off, thanks for bringing the bill forward. [LB859]

SENATOR HANSEN: Absolutely. [LB859]

SENATOR BREWER: So many of the things we see seems like such logical common sense. You had someone in your district approach you on this...or how did you figure out that this void existed, that we needed to fix it, because I think it's a good bill. [LB859]

SENATOR HANSEN: The conversation started with Tonya Ford. And she approached me since I was...she approached me and we went from there. And it was trying to just fill that void. As they shared; you know, sometimes there's an OSHA investigation, sometimes there isn't, sometimes the police report is easy to get access to, sometimes it isn't. And so, it just seemed, like you said, to make sense to have, kind of, a statewide standard of what is and isn't available. [LB859]

SENATOR BREWER: Good work. Thank you. [LB859]

SENATOR HANSEN: Thank you. [LB859]

SENATOR MURANTE: Thank you. Seeing nothing else, Senator Hansen, thank you, very much. [LB859]

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SENATOR HANSEN: Thank you. [LB859]

SENATOR MURANTE: And that closes the hearing on LB859. We will proceed to our last item on the agenda. [LB859]

SENATOR BREWER: LB887; Senator Murante, welcome to your Committee (laughter) on Government, Military and Veterans Affairs. [LB887]

SENATOR MURANTE: See, I really know how to clear a room. (Laughter) Good afternoon, members. For the record, my name is John Murante, J-o-h-n M-u-r-a-n-t-e. I'm the State Senator for District 49, which includes Gretna and western Sarpy county. I'm here today to introduce LB887. Really, the thrust of this bill can be found on page 3, line 8. The background on this is that last year there was a bit of confusion and disagreement over the meaning of the term "at least 75 percent of the governing body." What we're talking about right now is a law that determines the process by which political subdivisions can exceed their budget authority and a standard by which exceeding that budget authority would be accomplished. That the law as it exists at the moment states, as I mentioned...it requires a vote of 75 percent of the governing body. There was a dispute as to whether that meant 75 percent of all the members of the board, or 75 percent of those members who were present and voting. There was an Attorney General's Opinion on this that dove way down into the weeds that I won't spend a lot of time discussing. It was his opinion, the Attorney General's Opinion, that this meant a majority of those present and voting. So, I am offering a bill which returns the law to what my understanding was, which is 75 percent of the entire body. I think that's important for a couple of things. First of all, it conforms the standard by which political subdivision votes are adopted and it makes it much more similar to the way this Legislature operates. I think you'll note that in our rules of the Legislature and most of the constitutional provision which governs us, votes are required to be a majority of the elected members. It takes 25 votes to pass most of the legislation and the motions in this body. So, if a...and there have been instances where members of this Legislature have been sick or, for whatever reason, has missed an extended period of time, that doesn't lower the threshold, it still requires 25 votes. And for something of this gravity, exceeding statutory budget authority, I think the bar should be pretty high. And raising that bar to a supermajority of the elected members of that body, that really ought to be the bar necessary to exceed budget authority. So, that's the rationale. And, if nothing else, I do believe that there is clearly disagreement as to what this statutory language means right now, and that clarity is very important. And, one way or another, we're going to have to make a policy decision as to whether that bar ought to be 75 percent of all the members or 75 percent of those present and voting. In my view, as you can see in the bill, that really ought to be the higher bar. And that's what I propose to you today. So, I'd encourage your support and be happy to answer any questions that you may have. [LB887]

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SENATOR BREWER: Thank you, Senator Murante. Questions on LB887? Go ahead. [LB887]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you, Senator Murante, for bringing this. Not to go too deep, but maybe slightly into the weeds, can you explain...you know, when I read this without the language, it seems the plain language meaning, to me at least, is that the "governing body" is the governing body, no modifier, no of those voting and the like. Can you explain a little bit of the rationale, the argument, that the current language without the modification means that it's of those voting? [LB887]

SENATOR MURANTE: Sure. This goes back to a Supreme Court case that, I believe, was from the 1930s. I've read the Attorney General's Opinion, and that's the basis of my understanding. Which, I believe it even went into Robert's Rules of parliamentary procedure of attempting to determine what a majority constitutes, and that was the basis of that opinion. I have the Attorney General's Opinion in my office and I'd be happy to share that with you, if that's all right. [LB887]

SENATOR HILGERS: Yeah, thank you. [LB887]

SENATOR BREWER: All right. Any additional questions? Thank you for your testimony...oh...thank you for your testimony. And you'll stick around for closing? [LB887]

SENATOR MURANTE: I'll be here. (Laughter) [LB887]

SENATOR BREWER: All right, any proponents? One more time, proponents. Any in opposition? Come on up. Welcome. [LB887]

JEFF KIRKPATRICK: (Exhibit 1) Thank you. Good afternoon, Senator Brewer, members of the Government, Military and Veterans Affairs Committee. My name is Jeff Kirkpatrick, J-e-f-f K-i-r-k-p-a-t-r-i-c-k. I am the Lincoln City Attorney, and I appreciate the opportunity to testify this afternoon. My assumption coming here was that, at least in part, LB887 was sparked by the legal discussion that Senator Murante earlier referred to that developed from a 2007 vote by the Lincoln City Council. The council had voted to increase the restricted funds lid by an additional 1 percent for the biennium. The vote was five to one to increase the lid, with one council member being absent. Our city finance department reported the lid increase to the State Auditor, as is required by state statute, noting that the 5 to 1 vote was an 83 percent majority so that the 75 supermajority requirement was met. This conclusion was not questioned by the Auditor's Office when the report was filed. This past year, the question was raised whether the finance department's conclusion was correct; whether the statutory language of "at least 75 percent of the governing body" meant 75 percent of the elected members or 75 percent of the membership

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present. Our law department looked at the question and concluded that both common law and Lincoln's city code clearly establish the language meant 75 percent of the membership present. Knowing that the issue is a situation which, while being very rare, will reoccur, the Auditor's Office sought clarification from the Attorney General. In a well-reasoned Opinion, the Attorney General reached the same conclusion as my law department, that "governing body" means the members of the governing body present during the vote. I would submit that now that the statutory language has been clarified by the Attorney General, that it does not need to be amended. The supermajority requirement in 13-519 is already a very high standard. Seventy-five percent means a three-member board of commissioners, if all members are present the vote must be unanimous. It means for a five-member board of supervisors the actual supermajority must be 80 percent, 4 out of 5 members. And it means for a seven-member city council, the supermajority must be 83 percent, 6 out of 7. That seems to be a high enough bar for a measure which, as a practical matter, most governing bodies pass unanimously and without controversy. If LB887 passes, it will put in place a situation where if one member of a three-member board is absent due to an unexpected event such as a funeral or illness, it would be impossible to raise the lid, even if the absent member was a strong supporter of the increase. For Lincoln's City Council, it would mean that in the absence of one member a single dissenting vote would prevent the lid from increasing. As a means of clarifying the statute, this legislation is unnecessary. As the Attorney General's Opinion makes clear, based on existing precedent the statute is already clear. As a means of handicapping the growth of governmental spending, this measure is irrelevant. Broadly speaking, this is a measure that governing bodies...boards routinely pass without much discussion as being prudent fiscal management. And Nebraska's elected officials are dedicated public servants who are rarely absent during crucial budget votes. This change, if adopted, will primarily serve as a trap for those few governing boards that, due to an absence caused by an unexpected emergency will find themselves unable, even with the support of a supermajority or all of the elected members of the governing board, to pass this important routine measure. With that, I would be happy to respond to any questions. [LB887]

SENATOR BREWER: Thank you for your testimony. Senator Briese. [LB887]

SENATOR BRIESE: Thank you, Mr. Kirkpatrick, for being here. I noticed in your testimony here, you suggest that "broadly speaking, this is a measure that governing boards routinely pass without much discussion." What do you base that conclusion on? [LB887]

JEFF KIRKPATRICK: It...the discussions we've had, since this came up, we were interested in seeing what other subdivisions' experience had been. And Lincoln, frankly, has not passed that restricted funds lid for the past few years. That puts us in a very small minority. I think that the city of North Platte, once or twice, did not pass it. I couldn't tell you the last time the city of Omaha, for example, didn't pass it. It's just routine around the state for all sorts of subdivisions to

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pass that because it doesn't require them to spend money or to raise taxes, it just gives the opportunity to if there's inflation or growth or emergencies. [LB887]

SENATOR BRIESE: Okay. Do they typically pass that unanimously? [LB887]

JEFF KIRKPATRICK: They typically do. Not always, but that's, I think, the typical thing. [LB887]

SENATOR BRIESE: Sometimes not, though, correct? [LB887]

JEFF KIRKPATRICK: There's always situations where you have one dissenter. [LB887]

SENATOR BRIESE: Okay, and in those situations what we're talking here could make a difference? [LB887]

JEFF KIRKPATRICK: Could make a difference, and let me give you an example that affects Lincoln. Assuming that you had majority, the supermajority was in support of it. But, we've had two situations within the last ten years where we've had vacancies on the city council. Once due to death, a very good member suffered from pancreatic cancer and passed away while she was serving. Served up until the very last. I mean, she would come to city council meetings when I know that she had very little strength left in her body because of the chemotherapy. And then there's always that period after the vacancy where you have to fill that vacancy. We had another city council member a few years ago that had a business opportunity and actually left the country to take the position in the far east. And so, again, there was a vacancy that had to be filled. So it's not just a matter of I'm resigning and I'm leaving the country and not being available or you've got a significant illness, it is also when you do have those vacancies. That period of time while that vacancy is being filled where you take applications and the process moves forward. Which could be a period of several weeks to a month or more where you'd be unable to pass something like this if you had, like the Lincoln City Council's situation, even one dissenting vote. But certainly for some county boards, if you have one vacancy then you can't vote it at all because it requires unanimity. [LB887]

SENATOR BRIESE: But, you suggest in here "as a means of handicapping the growth of government spending, this measure is irrelevant," but in some circumstances this would be relevant...(inaudible) [LB887]

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JEFF KIRKPATRICK: I would say it's largely irrelevant, I think that is an important clarification. It's certainly impacting Lincoln city government right now because we haven't passed that lid for a number of years. [LB887]

SENATOR BRIESE: Okay, thank you. [LB887]

SENATOR BREWER: Additional questions? Senator Wayne. [LB887]

SENATOR WAYNE: Is it that you haven't passed it because there aren't enough votes? [LB887]

JEFF KIRKPATRICK: Right, that's correct. We've had, in this case of Lincoln, if you have two votes against it, then it does not pass. [LB887]

SENATOR WAYNE: But how would that affect it if the law was changed? [LB887]

JEFF KIRKPATRICK: It would have affected it back in 2007 if the law was changed, because there you had someone who was absent, and my memory fails me as to whether that person was...had voted in the past to pass it or not. That person was absent, we had a five to one vote, we considered that under the law that currently exists to be 83 percent majority, and so the lid passed and we had that additional spending room. [LB887]

SENATOR WAYNE: Because you didn't include the person who was absent? [LB887]

JEFF KIRKPATRICK: Correct, because under the statute the person should not have been included. [LB887]

SENATOR WAYNE: But this would include that person? [LB887]

JEFF KIRKPATRICK: Yes, and so that five-to-one vote then becomes it not being that 75 percent requirement. So the lid would not have passed. [LB887]

SENATOR WAYNE: But do you think if people elected everybody and this is such an important measure for a supermajority, that everybody they elected should have a say whether they were there or not? [LB887]

JEFF KIRKPATRICK: Well, if they're unable to be present, for example, because they're in the hospital, they don't have a say one way or another. And their say might well have been; I want to

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vote for raising the lid. But, by being absent, if the law changes essentially their absence becomes a "no" vote. [LB887]

SENATOR WAYNE: But isn't that what it should be by default with the supermajority? [LB887]

JEFF KIRKPATRICK: Well, I would suggest that no, it should not. That your absence doesn't express the will of the body or your informed decision. It just expresses the fact that you're absent. And so, why should that change the vote of the board? [LB887]

SENATOR WAYNE: I'm just thinking of my days on OPS school board. That we know certain people were out of town, and we could have had a meeting and passed things that maybe they would have objected to. And that's my concern, especially when you start talking about villages and people who have three-member board commissioners and those kind of things. That there's no protection into a meeting of which we know the "no" vote won't be there, so we'll just have the "no" vote be gone that day. [LB887]

JEFF KIRKPATRICK: Sure, well, and I think that that is definitely a possibility, you know. And I base my experience primarily on working with the Lincoln City Council, where our attendance, frankly, is very high. It's unusual for people to be gone. In part, I supposed, because we don't meet following holidays, so people plan their trips and absences around those. But there are some absences that can't be prevented, obviously. And I would argue that the work of the city or the county should be able to go forward in their absence, and their absence should not be taken as making the decision. [LB887]

SENATOR BREWER: All right. Any additional questions? Over here. [LB887]

SENATOR THIBODEAU: I have... [LB887]

SENATOR BREWER: Over here. [LB887]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you, Mr. Kirkpatrick, for being here. I really appreciate it. A couple questions, if you don't mind. First is, for the Lincoln City Council, what would be a quorum sufficient to hold an official meeting? [LB887]

JEFF KIRKPATRICK: Four is a quorum. [LB887]

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SENATOR HILGERS: Four is a quorum. So, if you had four under the way that the Attorney General Opinion has worded it or interpreted this language, then, theoretically at least, if you had...it would...three would pass? [LB887]

JEFF KIRKPATRICK: Well, no, because you have to look at not only state statute but also our own city code. And under the city code, it requires four votes to pass anything. [LB887]

SENATOR HILGERS: Okay, so...okay, so I see. From a state statutory perspective, it could be three but you have an additional restriction to have four. [LB887]

JEFF KIRKPATRICK: Correct. [LB887]

SENATOR HILGERS: I understand...okay. And so, putting aside Lincoln's additional restriction, and the only reason I'm doing that is because we're talking statewide here... [LB887]

JEFF KIRKPATRICK: Exactly. [LB887]

SENATOR HILGERS: ...but I appreciate your experience in forming this discussion. But in that instance, if you had a seven-member council that had a quorum of four and they didn't have that separate restriction, again, so let's say not Lincoln...then three members theoretically, under that interpretation, would be sufficient to have the increase, right? [LB887]

JEFF KIRKPATRICK: Yes. [LB887]

SENATOR HILGERS: And so, as a policy matter, I mean, where I have some "uncomfort" from a policy matter is creating a system, sort of dovetailing on Senator Wayne's question, in which you could essentially have a minority of the body overall voting for something that the Legislature has indicated should at least have some significant threshold, right? I mean...how would... [LB887]

JEFF KIRKPATRICK: Well, very significant. I think you would agree with me that 75 percent is a very high supermajority. [LB887]

SENATOR HILGERS: Right. I would, except in the context in which people are missing, you could have a situation which you have a minority of the overall board voting to exceed the lid. [LB887]

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JEFF KIRKPATRICK: That would depend upon the rules of that body. [LB887]

SENATOR HILGERS: Right, and assuming that we didn't have in the absence of any additional restrictions from the municipality. (Inaudible). [LB887]

JEFF KIRKPATRICK: Which I would suggest, and I think you would agree with me, would be a very undemocratic way of setting up rules where you could, with enough absences, allow a minority of a governing board to actually make decisions. Which is something, obviously, that the Lincoln City Council would never allow under any circumstances. [LB887]

SENATOR HILGERS: And I appreciate that, and I agree with you. Which is why, from a state statutory perspective, when we're setting policy for the entire state, it seems to me that by having...by not making this change then we are making it more likely that that could occur, to have that sort of...kind of undemocratic outcome. [LB887]

JEFF KIRKPATRICK: Well, if the concern is those undemocratic decisions...and I would, frankly, admit I'm out of my depth here. I'm not sure whether they could or not, frankly. I don't know. But if they could, if you had a situation where a minority on a governing board could make decisions--and there are all kinds of important decisions that are made on the local level--I would suggest that maybe this committee should take look at and address it not just on this specific statute, but more broadly because, as I said, the restrictive lid is something that's passed routinely. The reason why I think I'm sitting up here by myself and not surrounded by a lot of other subdivisions is, frankly, it doesn't affect them. I mean, you could go to the city of Omaha which, right up the road, does not have that issue because they've got millions and millions of dollars under their restricted lid due to their pattern of passing the lid every time it comes up. [LB887]

SENATOR HILGERS: And I appreciate that. Switching gears briefly, if...I mean, I do think that there...I know in your testimony that the Attorney General's Opinion makes clear...I haven't read it so maybe when I read it, it will make it clear. I do think...I think a judge or a court could come to a different conclusion. So I do think that it's important that the Legislature provide some clarity. So if we were to...if we were to put into place what the Attorney General has done, just to make sure I'm on the same page, would it mean you would propose having it say "members of the governing body present during the vote," or would you have alternative language that you would suggest? [LB887]

JEFF KIRKPATRICK: Well, I think that the language is...yeah, present during the vote. Not voting, but present. [LB887]

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SENATOR HILGERS: Present. [LB887]

JEFF KIRKPATRICK: So that abstentions would not take away from the number of votes necessary. [LB887]

SENATOR HILGERS: So...and then my last couple questions just relate to some of the instances that you mentioned where people might be absent, right. You have the illness, someone is out, it's an emergency, maybe they have a last-second trip they have to take for work, versus the long-term vacancy. I mean, could that...those instances be addressed somehow in the language that we currently have? In other words, we have on one hand the ones where it's a one-off illness, someone's sick, they have the flu. I mean, you could have...unless it's an emergency situation, it seems like you could have the vote the next week, right? So maybe you could have an emergency language in there. Or just say hey, you know what, the price of doing...the cost of doing business, we're just going to wait a week when that person's back. But for the longer-term vacancy could you have something...and I take your point, say, if someone's out for...you know, the vacancy hasn't been filled for six months or a year or three months, then you might have some significant handcuffing of the governing body. In that instance could that be addressed, though, with some language that would take into account vacancies? [LB887]

JEFF KIRKPATRICK: It could, I think from a public policy perspective, my concern would be if you're making it that much more elaborate and it's just for this one vote, maybe you're making it more complicated than it needs to be. And from the city of Lincoln's perspective, part of why it became an issue in 2007 and has been an issue at other times is we have tended to have that vote--not because we're required to, but just because it's part of the budget process--as part of the budget process. So we adopt a budget, and either in that budget resolution or an accompanying resolution that's the time we adopt the waiver of the lid, if, in fact, it does pass. At least, that's when it comes up for a vote. And that tends to be, frankly, at the last vote before the end of the fiscal year because the further along you are in the fiscal year, the more accurate information you have. And so, I think there are a number of other subdivisions that differ from us and have traditionally passed it earlier in the year when that doesn't become a problem. But, certainly for us, with the practice, at least we have in the past where we're voting, really, on that last meeting day, quite often...well, the last one in order to allow that there to be a veto and then for the council to override the veto, so it's not quite at the end. But it does cause a problem if you have somebody that's out for a couple of weeks because they're in the hospital, whereas if we voted earlier in the cycle it wouldn't be...it could wait, you could postpone that vote. And so, to a certain extent, that, maybe, is a self-inflicted problem that Lincoln has, but it's made sense in the past. And I think, currently, you could still make an argument that this vote, because it's tied to the budget, it makes sense to do it at the same time as a budget resolution. [LB887]

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SENATOR HILGERS: Thank you. [LB887]

JEFF KIRKPATRICK: And I apologize for probably getting more in the weeds than I needed to. [LB887]

SENATOR HILGERS: Actually, I appreciate it, I enjoy getting into the weeds. So, thank you. [LB887]

SENATOR BREWER: Well, and it's good that the attorneys on the committee earn their keep here. Any additional questions? [LB887]

SENATOR WAYNE: Senator Thibodeau... [LB887]

SENATOR THIBODEAU: No, so, I've had two great attorneys, actually, answer both the questions that I had. So, I withdraw any questions. [LB887]

SENATOR WAYNE: I do have one question. So, your current city ordinance is based off of quorum being all members, but you're saying the state statute for supermajority should not use that same standard? [LB887]

JEFF KIRKPATRICK: The quorum is four members. I'm not sure I understand your question. [LB887]

SENATOR WAYNE: But your quorum is based off of all members being present, in order to have a quorum your four-member is based off of that, right? How many people are on the city council? [LB887]

JEFF KIRKPATRICK: Well, the quorum is not based on a percentage. The quorum is four members. And we also require four members to pass any piece of legislation. [LB887]

SENATOR WAYNE: Where is that quorum established at? [LB887]

JEFF KIRKPATRICK: In our rules, in our city code. [LB887]

SENATOR WAYNE: What is that four based off of? [LB887]

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JEFF KIRKPATRICK: It's a majority of the body. [LB887]

SENATOR WAYNE: So a majority of the body, not necessarily the members of them present. It's the majority of the entire body, correct? [LB887]

JEFF KIRKPATRICK: Exactly. [LB887]

SENATOR WAYNE: State statute you don't want us to look at that, even though, locally, you look at that to establish quorum. [LB887]

JEFF KIRKPATRICK: Well, I think when you're talking about a supermajority for one specific item that's voted on once a year, you can look at that differently--and you should look at a supermajority vote differently--than you look at how you conduct your regular course of business. [LB887]

SENATOR WAYNE: But you don't do that locally, though. [LB887]

JEFF KIRKPATRICK: I'm not sure I follow you, Senator. [LB887]

SENATOR WAYNE: You don't change your quorum and your four to pass on any other...you don't change it based off of who's present, locally, right? You base it off of all members. [LB887]

JEFF KIRKPATRICK: Well, we base it on having to have a majority vote to pass something. [LB887]

SENATOR WAYNE: Thank you, got it. [LB887]

SENATOR BREWER: All right, additional questions. Senator Lowe. [LB887]

SENATOR LOWE: Thank you, Mr. Kirkpatrick, for coming and giving testimony. You state that "if LB887 passes, it will put in place a situation where if one member of a three member board is absent due to an unexpected event, such as a funeral or illness," it's impossible to raise the lid. How many three-member boards are there that this would affect? [LB887]

JEFF KIRKPATRICK: You know, I don't know that. I know that there are a lot of our smaller counties that have three-member boards of commissioners. Coming from Brown County myself, that's just what I have been accustomed to. So, it would be a fair number. [LB887]

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SENATOR LOWE: Okay. [LB887]

JEFF KIRKPATRICK: Now, when I said that would make it impossible, it would be impossible unless you had time within the fiscal year and the person was able to return and you could put it on the agenda at a later time. [LB887]

SENATOR LOWE: I just looked up one of the smaller communities in our...my district, and they have a five-member board. So, I'm just wondering how many, you know, because even small... [LB887]

JEFF KIRKPATRICK: I would have to research that and get back to you, Senator. [LB887]

SENATOR LOWE: (Inaudible). [LB887]

JEFF KIRKPATRICK: I know that many of the counties that I'm most familiar with because of where I grew up, had three-member boards; Cherry County, Rock County, and Keya Paha County. I mean, it's the ones I'm most familiar with had those three members, are the smaller ones (inaudible). Holt County, I think has five. So, there's a variation for sure. [LB887]

SENATOR LOWE: All right. Thank you. [LB887]

JEFF KIRKPATRICK: Welcome. [LB887]

SENATOR BREWER: All right, additional questions. [LB887]

SENATOR THIBODEAU: I'm good, thanks. [LB887]

SENATOR BREWER: You sure? [LB887]

SENATOR THIBODEAU: (Laughing) Yes. [LB887]

SENATOR BREWER: Last chance. Well, obviously you've moved up now that I know you from my district. (Laughter) All right, thank you for your testimony, sir. [LB887]

JEFF KIRKPATRICK: Thank you, Senator, I appreciate it...and committee. [LB887]

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SENATOR BREWER: Additional testimony in opposition? Testimony in neutral status? Come on up. Welcome. [LB887]

BETH BAZYN FERRELL: Thank you. Good afternoon, Senator Brewer, members of the committee. For the record my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing neutral on this bill, we were not planning to testify today. Our board hasn't met yet to take a position on bills, so we officially don't have one. But I did want to share with you, there was a question about how many counties had three-member boards. I do have some information here from 2011, I believe there are 41 counties that have three-member boards. I just did a quick count, so I may be off one, but I would just submit this for your information. [LB887]

SENATOR BREWER: All right, thank you. Questions? That was a very good extemporaneous speech. [LB887]

BETH BAZYN FERRELL: (Laughing) Thank you. [LB887]

SENATOR BREWER: (Exhibit 2) Thank you for coming in. All right, that's all we have. Thank you. Anyone else in a neutral capacity? All right, we have one letter for record from Christy Abraham from the League of Municipalities in opposition. And Senator Murante for your closing. [LB887]

SENATOR MURANTE: Thank you, Mr. Vice Chairman Brewer. So I'll just go over a couple things. First, I...there are certainly going to be some principled disagreements about simply what should the bar be to pass a motion to exceed a budget authority. I do think if I had a disagreement on what the law says, there has been...there was some discussion relative to extended absences. And I think that is one instance and I can think of one example of this Legislature where that happened in recent years. There's a different, I believe, standard when we're talking about vacancies, which got brought up. In my view, and certainly how this Legislature operates, it is a majority of the elected members. So, if you're talking about the majority of a governing board and someone resigns or is not on the governing board, then the number of people on that board is reduced by one until the vacancy is filled. So, in this Legislature, we have a 49-member body. If somebody resigns then, the purposes of establishing majority, that number goes to 48 until that position is filled. So, I don't think that when we're talking about vacancies and the process by which vacancies are filled--that can, in some instances, be a long, drawn-out process--I don't believe that by passing this bill we're jeopardizing anything. I believe the statute is already covered by saying when a vacancy exists, the size of the governing board shrinks by one. That's certainly how this Legislature operates. And the second is, I think, when we start going down this road of all you have to do is not be

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present, and that is functionally lowering the bar and helping to make a motion pass. I think we sometimes see it in this body, but I think it is terrible public policy when you can start going around saying I know you don't want this to pass, I know you're going to vote no, but just don't show up and the motion will pass. I don't think that's good public policy. If you're going to pass an override motion of this magnitude, I believe it is important enough that 75 percent of the individuals who were elected by the people of any given political subdivision ought to show up and say yes. And if 75...if it is less than that, the motion ought to fail. And if somebody just, whether because they're sick or they just don't want to take a public policy stance on a given item, that should not be a rationale for lowering the bar on what it takes to do something of this magnitude. That's my opinion, but certainly I would be happy to talk about this issue with this committee going forward. So, that's what I have to say. Thank you, very much, for the time this afternoon. [LB887]

SENATOR BREWER: Thank you, Chairman Murante. Questions? Questions? Seeing none, thank you for your testimony. And with that concludes all of our bills for the Government Committee today. Thank you for attending. [LB887]