

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Government, Military and Veterans Affairs Committee March 7, 2019

**BREWER:** Good afternoon, ladies and gentlemen. Welcome to the Government, Military and Veterans Affairs Committee. My name is Tom Brewer, I'm the Chairman for this committee. I represent the 43rd Legislative District, which is 13 counties in western Nebraska. We will start today with introductions of committee members, starting on my right with Senator Blood.

**BLOOD:** Good afternoon, I'm Senator Carol Blood, and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska.

**LOWE:** John Lowe, District 37: southeast half of Buffalo County, Kearney, Gibbon and Shelton.

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

**M. HANSEN:** Matt Hansen, District 26: northeast Lincoln.

**KOLOWSKI:** Rick Kolowski, District 31 in southwest Omaha.

**BREWER:** Dick Clark the legal counsel, Julie Condon our committee clerk. We've got Kaci and Preston our pages. And I think Senator Hunt and La Grone have other events going on here. And with that said, let's jump into some administrative things. Today we're gonna have hearings on LB267, LB336, and LB543. We'll start with making sure everyone has muted their electronic devices. The senators will be using computers and cell phones to keep track of other committees they might have to go present in or to do research. If you wish to have your attendance recorded in the hearing, please fill, fill in your line on the white sheet. If you wish to testify, a green sheet is over there. Bring them up and either give them to the page or the committee clerk when you come forward. If you wish to hand out materials and you do not have 12 copies, please get with the pages and provide them the copies that you need made copies of. Our policy on letters being submitted to the committee, they need to be in 5:00, before 5:00 p.m. on the day before public hearing. The letters must include your name; address; bill number; your position, either for, against, or neutral; and that you wish to have it in the official record. We will not be posting mass mailings in the official record on letters. If you plan to, to testify on a given bill, we'd ask that you come forward to one of the two, first two rows so we have some idea how many are gonna testify on a particular bill. When you testify, we ask that you would

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spell your name, state your name, and be sure to speak clearly to the microphone. All bill testimony will begin with the senator opening, senator's opening statements, then proponents, opponents, and those of the neutral. And the senator will then be given an opportunity to give closing remarks. We will use a light system. Today we'll be using five minutes. We'll have four minutes, it will be green; one minute, amber; and then it'll turn red. Besides the red alarm, there will be an audible alarm that goes off. Please complete your testifying after that. With that said, LB267, Senator Bolz. Welcome to the Government, Military and Veterans Affairs Committee.

**BOLZ:** Thanks, Senator Brewer. I am Senator Bolz, that's K-a-t-e B-o-l-z, here to present LB267. Simply put, Nebraska has too many dangerous bridges. A 2014 report of the Legislature found that of the 11,763 city and county bridges 7.7 percent are functionally obsolete and 22.-- 20.2 percent are structurally deficient. These bridges can become dangerous for agricultural and other large machinery, school buses, and in some cases general traffic. In fact, Lancaster County, colleagues, in 2018 our county closed 18 bridges on county roads. Many of those bridges are nearing 100 years old and those construction methods are simply outdated and unsafe. So LB267 would provide county commissioners an option to add repair of scour critical or structurally deficient bridges to existing bonding authority to repair county infrastructure. Under existing Nebraska statute, a county has the authority to bond for court, courthouses, jails, and other county buildings. The bill diversifies this current authority for counties to utilize the 0.052 cent for bond for the repair, retrofitting, and construction or replacement of bridges that are deemed deficient or scour critical pursuant to Department of Transportation standards. This makes sense for a number of reasons. One is that the authority to bond would provide communities the ability to address an emergency situation such as the 2015 floods here in Lancaster County. It would better ensure farm to market routes that provide access for the agricultural industry, especially during harvest time. And counties may have a cash flow problem if they're waiting for reimbursement from the National Emergency Management Association, and so those repairs would allow for ongoing maintenance even during times of emergency. I would argue that this is a very reasonable approach. One reason for that is that interest rates are really pretty low right now, which would save counties money into the future. And another is that if a county were to exceed the \$200 million that they are currently allowed then they would have to go to a vote of the people, so there are some fiscal parameters around this legislation. So I think it's an

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important tool. I do have a little technical amendment that gets the language around defining the deficient bridges more precise and correct. I also have a copy of the summary of the 2014 report and an article about rural deficient bridges that I'll have the page pass out to you. And I'd be happy to answer any questions.

**BREWER:** All right, thank you for your opening. Questions? Senator Kolowski.

**KOLOWSKI:** Thank you, Mr. Chairman. Senator, thank you for coming today and sharing this. In the growth of the metropolitan area in Omaha or in Lincoln, as I've witnessed over the last 50 years, the tremendous amount of expansion of the city and the county taking place at the same time, it is a definite challenge for everyone, especially in small bridges or old, antiquated bridges. Are there, will there, would there be city/county mixture of money and decision making on this or is it simply this is the city zone and they'll take care of that if it's outside of the city? But if it's only the county, the county will take care of that? Or where, where does that fit as far as city/county relationships?

**BOLZ:** It's, it's a good question. I know that there is some city county planning in Lancaster County. I can't speak to every county across the, across the state. There may be some folks who testify today that may have a better insight. Lancaster County-- well, let me say that differently. The authority is for the county. So the county ultimately would have to make the decision. I would assume that they would do so in consultation with the city and in a community like Lincoln or Omaha.

**KOLOWSKI:** Do they share funds then?

**BOLZ:** That's a great question for one of the testifiers following me.

**KOLOWSKI:** Thank you.

**BREWER:** All right, additional questions? Reading through this, I just had a couple of quick notes. You know, the, the one that we get hit with continually, which is valid, is that it's local control. This would be local control because it's got to be in the county. On the downside, it could be perceived as raising taxes. But it would then be the county that made the decision locally for that. Is that-- am I tracking with you?

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**BOLZ:** I, I think that's fair. I would also say that, that if the county needs resources to manage structurally deficient bridges they're going to have to find those resources somewhere.

**BREWER:** Or we drive on old bridges.

**BOLZ:** Before we drive on old bridges.

**BREWER:** And that could be a safety issue.

**BOLZ:** Absolutely.

**BREWER:** Thank you. No other questions, will you stick around for closing?

**BOLZ:** I'll do my best. I've got a couple bills up across the hall, but I'm going to try to stay.

**BREWER:** OK, thank you.

**BOLZ:** Thank you.

**BREWER:** OK, we will start with proponents for LB267. Welcome to the Government, Military and Veterans Affairs Committee. Got your green sheet? OK.

**JENNIFER BRINKMAN:** Thank you. Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Jennifer Brinkman, J-e-n-n-i-f-e-r B-r-i-n-k-m-a-n, I'm the current chair of the Lancaster County Board of Commissioners and I represent District 2 in northwest Lancaster County. I'm glad to see my state representative here today as well. I appreciate the opportunity to provide testimony in support of LB267 today. Last year, the county board convened a citizens task force to review the existing conditions, future needs, and potential policy improvements and funding solutions that could be leveraged to improve Lancaster County's infrastructure. The results of the task force report identified a \$9 million gap in annual funding to address improvements to critical bridge infrastructure and a \$15 million gap in annual funding for maintenance and repair for all roads and bridges in the county. The report recommended that we work to identify and seek additional funding mechanisms that could be directed toward infrastructure maintenance but acknowledged that, even if the county could add revenue by establishing a wheel tax or a countywide sales tax, the total revenue from these new sources would not solve the

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identified funding gap. So the proposal before you would expand the current statute which provides the ability to bond basically for buildings. We would refer to those maybe as permanent structures, and we believe that bridges should be included in that same type of category. We currently carry no debt as Lancaster County. And with the, acknowledging your discussion just previous, with the ongoing discussion here about limiting local governments' ability to access increases in valuation or limiting our budget growth, we really need this authority to help us make inroads into solving this critical problem. As I mentioned, if you may look at this through the eyes of another property tax increase, I want you to know that we are looking at other sources of funding and we have applied for assistance through the state's county bridge match program over the past three years. We've requested support for five bridges and received \$200,000 to replace two bridges in Lancaster County. As you're aware, the Transportation Innovation Act set aside up to \$40 million for bridges that were structurally deficient back in August of 2016. Our county currently has 30 bridges that are eligible for that funding. We're committed to leveraging the state and federal dollars that are available to us to support our transportation network. The authority we're seeking through LB267 would just provide us one more tool to help meet the goal of providing safe and reliable transportation for Lancaster County citizens and visitors. Our board is committed to creating a sustainable program that will end the current Band-Aid approach our engineer must take to keep our road network open. This bonding authority is only part of the solution but an important component. And I urge you to forward this legislation to the full Legislature for consideration. I'd be happy to answer any questions.

**BREWER:** All right. Thank you for your testimony. Thirty bridges that would fit the category of needing repair or replaced?

**JENNIFER BRINKMAN:** Well, those are just the ones that are on that list from August 2016. I'm sure our engineer who's going to testify after me will tell you that we've added some to that list since that date, and there are additional bridges that just, that are still in need of repair and maintenance but they didn't meet that specific criteria that year.

**BREWER:** All right. Thank you. Questions? All right.

**JENNIFER BRINKMAN:** OK, thank you.

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**BREWER:** Thanks for your testimony. Next proponent. Welcome to the Government, Military and Veterans Affairs Committee. Thank you.

**PAM DINGMAN:** Good afternoon, Senator and members of the Government, Military and Veterans Affairs Committee. My name is Pam Dingman, P-a-m D-i-n-g-m-a-n. I'm a licensed engineer in the great state of Nebraska and I'm the current Lancaster County Engineer. I appreciate the opportunity to provide testimony in support of LB267 today. I would like to start out with some statistics on Lancaster County bridges, discuss what these bridges mean to the people who live in rural Lancaster County, and close with the need for additional solutions. Lancaster County has 297 bridges or bridge-length culverts; 27 are structurally deficient according to the Nebraska Department of Transportation; 24 hour scour critical according to the Nebraska Department of Transportation. Lancaster County engineers have determined that another 19 of these bridges are highly susceptible to scour. The following is a breakdown of the bridges declared scour critical by NDOT. Fourteen are WPA, or Work Progress Administration, bridges. These are bridges from the 1930s and, in some cases, even before. Seven are bridges that were replaced after the flooding of the 1950s with timber back wall type abutments. Three were replaced after flooding in the 1970s with used bridge materials. Sadly, 16 of these bridges are on both lists. Lancaster County currently has 15 bridges that are closed and will remain closed until funding is available to design them and, and construct them. My department currently has funding to replace five of the closed bridges this year if the snow ever melts or the ground ever dries, which could be quite a long time. Unfortunately, I know that five more will quickly take their place. As I travel the county roads, people constantly stop and ask me to stop closing bridges. However, unfortunately, this is not an option. Once a bridge has been determined to be a clear and present danger to the public, it must be closed. I have an ethical obligation as a licensed professional engineer to protect the safety and well-being of the traveling public. In the last five years, closures have caused school buses to have to be rerouted, farmers to have to drive an extra four miles around their section of ground, and they've disrupted critical farm-to-market routes. The rural people count on these bridges to get them to and from town and school. Many times I have no answer to tearful farmers who plead with me to minimize the closure time of their favorite bridge. In 2015, Lancaster County experienced the largest flooding since 1908. This flood damaged many roads and bridges which led to the county be, being eligible for FEMA funding. However, FEMA funding is reimbursed after infrastructure is repaired or

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replaced. In 2015, Lancaster County did not have a contingency fund that would allow us to start repair or replacement of these bridges. And Lancaster County still does not have such a fund. Therefore, in 2015, as the county engineer, I had no choice but to cancel much of Lancaster County's construction program. Today I'm asking that you support adding bridges which have been declared structurally deficient or scour critical by the Nebraska Department of Transportation to state statute 23-120. This will give counties one more mechanism in replacing our aging bridge inventory and restoring school and farm-to-market routes. Thank you for your time on this very urgent matter. And then, just because everybody loves pictures of bad bridges, and it's a cold March afternoon, I thought I would bring you some pictures of some of my bridges that are bad. If you have any questions, please feel free to ask me.

**BREWER:** All right, thank you for your testimony. Actually, your handout is very nice. On the issue of the scouring critical, is scouring just a term for rusting or--

**PAM DINGMAN:** OK, so thanks for asking that, Senator. And so if you turn to the last page of your packet and you'll see bridge T171 outside of Sprague, and you see the hole with the truck and then in the bottom there's a truck actually in the hole. For the record, the bridge was closed and the truck went around the hole. You may see his Bush Light can underneath the truck. But this is an example of what happens at what we call bridge scour, and so the material behind the abutment washes out. Now, sometimes it may wash out on the surface so it's easily seen. Other times it washes out underneath and it kind of creates a sinkhole type of, type hole. Obviously, these are very dangerous. The pink paint in the photo actually shows how deep the hole is underneath, and this is a scour critical bridge from 2015. I think the thing that is interesting about this bridge is it was over a finger to a lake and technically had no flow under it. So it's on our susceptible list because we're familiar with it having a problem but it was not on NDOT's list. Does that answer your question about scour critical?

**BREWER:** It, it does. And it helps to also understand how the truck ended up in the hole so.

**PAM DINGMAN:** I know, right?

**BREWER:** Guess if it says "bridge out" you should listen to the sign.

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**PAM DINGMAN:** If the bridge is closed, please don't go around the barricades.

**BREWER:** All right, questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Engineer Dingman. Is that the right "honorative"?

**PAM DINGMAN:** Dingman is the right term. Yes, thank you.

**HILGERS:** Thank you. And thank you for all the work you do for our county. And now especially with these snowstorms you've been working overtime.

**PAM DINGMAN:** Thank you, I appreciate that.

**HILGERS:** Thank you is your crews for all the great work for all the great work they do.

**PAM DINGMAN:** I'll let them know.

**HILGERS:** So I appreciate all the materials, I was just hoping you could help me understand. So I appreciate Chairman Brewer's question on scour. I think that helps answer that question. And then structurally deficient, can you just describe the distinction between those two for the record?

**PAM DINGMAN:** So scour and structurally deficient are, actually the labels are put on them by the Nebraska Department of Transportation through the definitions given to the Nebraska Department of Transportation by the Federal Highway Administration. So there are a number of criteria. I'd like to tell you there's not calculus in the criteria. The bridge engineer actually from Lancaster County sent me with some of the grid. It's about 500 pages of grid, and so if you're interested in that we can schedule a meeting. But maybe you can just go with it's been assigned by Department of Transportation and some people who are very smart.

**HILGERS:** From a layperson's perspective, is structurally deficient not as bad as scouring? Or is it worse?

**PAM DINGMAN:** Well, that's the thing I think is interesting. That's why I included both maps on here. You may note that not all structurally deficient bridges are scour critical. However, some of them are. So in particular, in your district I have a number of-- well, your district



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has the worst bridge in Lancaster County, which happens to be closed right now on about 1st and Raymond Road, bridge C91. WPA-era bridge that is scour critical, I believe it's functionally obsolete, too, because it's not really wide enough and structurally deficient. So it's weight posted, so we can't take a full-weight truck across it, and then it also has the scour issue. And that is actually shown in your packet as C91 Raymond Road west of 1st Street. It floods and overtops the road in very minor events. And this isn't-- I did have to close this bridge two weeks ago because it actually moved three inches in one day when it when it got above freezing. And so obviously we don't like to see our bridges have movement. That's not good. I'm just saying that's not good. One of our plow trucks went over it and he noticed the bridge move as his truck went over and, and we closed that bridge but--

**HILGERS:** No, thank you. That's very helpful and the map, and I appreciate all the key and the description between-- the map is very helpful. So I guess my last question would be from Commissioner Brinkman's testimony she identified a \$9 million funding gap to address improvements and other \$15 million in annual funding for maintenance and repairs. If this bill were to pass and the tool was used by the county to its maximum extent what, how quickly could these bridges, you know, what would that do in the near term to this, these maps that you have?

**PAM DINGMAN:** Well, to both of the maps that you have, if you were to open to the structurally deficient bridge map and you were to find North 14th Street, which is about in the center of the legend on the top of your map, and you were to follow your finger down to the city limits, you would see bridge F78 and bridge F88. If you were to turn to the scour critical page you see 78, 82, 86, and 88. So 78, F82, and F86-- and there's also pictures of those in your packet-- are all WP era bridges that one of my predecessors in the '80s raised them and put a new bridge deck on them. And in his engineering notes he has that he doesn't have the money to replace the bridges the way they should be. So he's replacing the deck and that will last 20 years. And now we're 20 years, even past that. And so North 14th Street is Lancaster County's only north-south route. Of course we have Highway 79 and Highway 77, 3,400 cars a day. But we are going to have to close that corridor and place these four very, very bad bridges. Of course the number will be more than \$2 million. So that is something that we could use this money for right away.

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**HILGERS:** So that, OK, so that's-- so that if we, if there were to pass that would be-- and your priorities can always change, I'm not trying to box you. I'm just trying to get a sense of how quickly this map changes. Do we get four done, you know, in five years is it most of these problems are resolved or is this just to keep things as stable as possible? Some incremental. Just trying to get a sense.

**PAM DINGMAN:** Sadly I've had to make the decision as Lancaster County Engineer, and it's a horrible decision to make. And that's the decision I made a couple of years ago to really focus our funding on bad bridges in our paved corridors, bad bridges in our paved corridors. Those are our heavy traveled farm-to-market. In some cases, in most cases over a thousand cars a day. And so that's where we're really focusing right now. Although we are trying to go back and, and get our smaller bridges that are bad too because they, they create really horrible issues for our farmers. In your district, two years ago, I had a bridge that we had to close. And the grandfather was on one side of the bridge aging in place in his home, the family was on the other side of the bridge and they brought grandpa dinner every night. And so now, instead of just this quick five-minute trip, they had to do the four miles for the two years that it took me to get the bridge repaired. And that, they are not necessarily engineering stories, but they're human stories and they are very moving.

**HILGERS:** Thank you very much.

**BREWER:** All right, additional questions? Senator.

**KOLOWSKI:** Thank you, sir. Thank you for your comments today. It's deja vu all over again. As I've lived in Douglas County for the last 50 years and see the expansion that we've had in the Millard School District alone in my tenure there, it just exploded. Now you can, you can have difficulty finding money or people complaining about it until you have your first injury or fatality. Then, all of a sudden, you find lots of money and lots of interest. We haven't had that happen in Omaha, unfortunately, because they've been ahead of themselves on the building of bridges and the expansion of the roads and all that that goes with it. Do you have adequate funding possibilities with this, this particular bill? And is it enough and is it fast enough to do the job, because Lincoln is going to continue to grow, as you know, as it is at the current time, in the same way that Omaha in all quadrants of the compass is doing the same kind of growth?

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**PAM DINGMAN:** So let me address that in a couple of areas. Commissioner Brinkman referenced the Lancaster County task force where we studied it, and a \$9 million a year shortfall. Currently in our budget we have \$2 million, a little over \$2 million for bridges and bridge-length box culverts. So that shortfall is \$9 million a year for 20 years, and that's current needs only. So that's assuming that in the next 20 years no more bridges become bad. So, again, this is a tool. You know, when we're talking numbers this big, in order really to meet the critical funding gap only would mean doubling Lancaster County's revenue from property taxes. That's a lot. And so, and so we're looking at whatever tools we can, we can get to move us incrementally forward. In 1978, after flooding in Lancaster County, there were five bridges that did collapse with people on them. Now, I can't find records of any lawsuits from those bridges, but I would hate to have a bridge collapse with someone on them. And that being said, as the engineer, you know, I exercise all reasonable care, which is the requirement of my engineering license. On any given day, these bridges, you can go out and look at them and they can be pretty, pretty scary.

**KOLOWSKI:** Well, the city and the county must know, and I know they do, have the future plans for every particular area and addition that would be added by developers. They're going to explode, as they have in the last 20, 30 years just in the area. You, you can't deny that. And you-- don't, don't be swayed by the very few voices that will say, we just can't afford to do this. Because you can't, can't afford not to.

**PAM DINGMAN:** So I think you may not be aware, but prior to becoming county engineer I specialized in land development in the Omaha and Lincoln metropolitan areas. So the thing that I didn't know when I became county engineer is we're very generous and we like to give our infrastructure away if we can. And so very ceremoniously several times a year I give the city of Lincoln what I will call a very bad present. Last year I gave them one of these WPA bridges and their engineer quickly called me and said, hey, your, your notes on this bridge say that it needs to be replaced. It's a, it's a 40-foot bridge that needs to be replaced with 140-foot bridge to the tune of about a million and half dollars. And I said, you know, that, that's correct. It's kicking the can down the road or giving it to somebody else. These are not good presents.

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**KOLOWSKI:** I began teaching in the Millard Public Schools in 1970. We had 5,000 kids in the district, we have 25,000 now. There's nothing but explosion of houses going up and, and new areas expanding across. Well, I never heard a complaint from a person anywhere in all those years that was complaining about that bridge that they're doing down here or the extension of expansion of a two-lane to a four-lane for turnability and everything else. It's we're behind the curve on these things. And if we don't get ahead of it, there will be fatalities. And no one wants to see that happen. We want to be ahead of those things and work with the, the city and the county to make those things happen in a decent fashion in each of our cities.

**PAM DINGMAN:** And at the current time, the best tool I have for that is when a bridge becomes a clear present danger to the public I close it.

**KOLOWSKI:** Absolutely.

**PAM DINGMAN:** And that's an, that's unfortunately my best tool.

**KOLOWSKI:** I understand. Thank you.

**BREWER:** All right, any additional questions? Seeing none, thank you for your testimony. Welcome back to Government, Military and Veterans Affairs.

**TODD WILTGEN:** Thank you, Mr. Chairman. And good afternoon, members of the committee. My name is Todd Wiltgen, spelled T-o-d-d W-i-l-t-g-e-n, and I'm here to testifying in support of LB267 on behalf of the Lincoln Chamber of Commerce and Industry. I'm also a former Lancaster County commissioner, having served as the chair for the last two years. And I would like to thank Senator Bolz for introducing this legislation. It falls in line with our ongoing priority at the chamber to address funding gaps to address our infrastructure needs. Counties mat, manage important farmer market routes that provide access for agriculture industry. Keeping bridges open to facilitate that access continues to be an important component of our support for economic development in Lancaster County. These transportation routes facilitate movement for citizens between home and work or school. The Lancaster County Engineer's budget has been consistently interrupted by the need to address emergency repairs for bridges throughout our county. Those emergencies disrupted the transportation routes for our citizens. Counties need the flexibility to protect the public health, safety, and welfare of our citizens. In what remains historically low interest rate environment, bonding would enable counties to fund

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needed infrastructure repair now and counteract the ever-increasing construction escalation of 5 to 6 percent within the industry every year. And generally, the importance of maintaining what counties have in good repair is critical to the continued growth and development of rural Nebraska. And for these reasons, I'd ask that you would, that you advance LB267. And with that, I would attempt to answer any questions you may have.

**BREWER:** All right, thank you for your testimony. Questions. Yes.

**KOLOWSKI:** Yes, me? Thank you, Mr. Chairman. Is it enough money in this particular structure in this bill to do what you want to do as quickly as you need to do it?

**TODD WILTGEN:** Based on my experience as a county commissioner, it would not be. As the County Engineer and my successor mentioned, there, there's a gap there. That we were behind before the 2015 floods and we've fallen even further behind. But with that, there still is a larger gap. And this only really addresses the one part of the puzzle. You know, the infrastructure needs in rural Nebraska are very similar. There's really not, they're not-- there isn't a lot of difference between issues that we face Lancaster County and other counties throughout Nebraska. We have a different population. You know, we have a population center of 290,000 out of a 300,000 population county. So there's a lot of issues out there. There's scour critical bridges, there's structurally deficient. And so this is just that one part, and it really allows the county boards the opportunity to have a deliberate conversation about a structure. What, what happens a lot of times is during a county board's budget process they will pass a budget, give a pool of money to the county engineer, and leave it up to him or her to make those decisions. But this would allow the county boards to have deliberate and be precise on what structures they want to bond for. And so it's just one of many tools as the engineer mentioned.

**KOLOWSKI:** Thank you.

**BREWER:** All right, additional questions? Thank you for your testimony. Additional proponents? Welcome back to Government, Military and Veterans Affairs.

**JON CANNON:** Thank you, Chairman Brewer, distinguished members of the Government, Military and Veterans Affairs Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n, I'm the deputy director of the Nebraska

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Association of County Officials here to testify today in support of LB267. First, I would like to mention my appreciation to Engineer Dingman for the great work that she and her staff and her crew have done this last winter. They've done a pretty good job of clearing off our roads. And for all the people that have come to Lincoln, I sure hope you appreciate it as well. But it gets me to the core of what this bill is all about, and that is when I talk to people across the state about property taxes in particular, what they want property taxes to go toward are fire protection, police protection, roads and bridges. Those are the three things that always comes up. And this gets to the very core of what people expect their county governments to do. And it's because of that that NACO would like to lend our support to LB267, and we'd urge you to push this out onto the floor. With that, I'd be happy to take any questions. Thank you.

**BREWER:** All right, thank you for your testimony. Questions? I think you got off easy today.

**JON CANNON:** Yes, sir. Thank you.

**BREWER:** You bet. OK, next proponent. You got, forgot the green sheet.

**WILLIAM MUELLER:** Have a sheet here somewhere. Thank you, Senator, members of the committee. My name is William Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Associated General Contractors Nebraska Chapter. Our members are the companies and individuals who build roads and bridges in Nebraska, and we appear here today in support of LB267. Senator Bolz has already mentioned to the committee that in 2016 the Legislature adopted the Transportation Innovation Act. And as I look around the table, I think, Senator Kolowski, you may be the only one who was here in 2016 to vote on that bill. The bill did provide for up to \$40 million-- Senator Brewer, was also here, and Senator Hansen. There were others here. This bill did provide up to \$40 million in state matching funds for county bridges. And this may not have been the first time that the state funded county bridges, but there was no funding going on at the time that this bill passed. County Engineer Dingman testified about Lancaster County receiving some money in the most recent group of bridges approved by the Department of Transportation. We are in the third year of the program. As I said, there, there is up to \$40 million available for the state to help counties repair bridges. We have a significant problem in Nebraska with bridges. It's obviously not just Lancaster County. We have nearly 2,000 county bridges that are structurally deficient or functionally obsolete, ranking Nebraska the sixth worst

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in the country for bridges. So, again, AGC supports the bill. Whenever we've spoken with citizens, whenever we've spoken with senators and legislative candidates, there is much, much support for bridge construction and bridge replacement. We think that this bill helps that and we support it. I'd be happy to answer any questions that the committee may have.

**BREWER:** All right, thank you. Sixth worst?

**WILLIAM MUELLER:** Sixth worst.

**BREWER:** Not a very good title. OK, questions? Seeing none, thank you.

**WILLIAM MUELLER:** Thank you.

**BREWER:** Next proponent. Welcome to the Government, Military and Veterans Affairs Committee.

**RON SEDLACEK:** Thank you, Chairman Brewer and members of the Government Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and Industry. Our transportation council discussed this bill and recommended it to the board for approval as further discussed. And for the reasons that were stated already by, particularly the Lincoln Chamber, Mr. Miller, previously, that those were the ideas that were in our discussion in regard to supporting this legislation and, and see it as a statewide issue. Not just Lancaster County or the metro areas, but particularly for public safety, for farm-to-market, and commercial transportation and traffic. We support this this idea of using a financing mechanism to, to provide more immediate rather than long-term, a long-term effort to address the situation. And for those reasons is why we support the legislation.

**BREWER:** OK, thank you. Questions for Ron? Senator Blood.

**BLOOD:** Just a real quick question. Since we have organizations coming in, can you tell me how many voices that you represent in Nebraska Chamber? Do you know what their membership is?

**RON SEDLACEK:** Our membership is, obviously it varies from time to time, but about approximately 2,100 to 2,300 members statewide. From sole proprietorships to some of the largest companies in the state.

**BLOOD:** Thank you.

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**BREWER:** Any additional questions? All right, thank you.

**RON SEDLACEK:** Thank you.

**BREWER:** OK, additional proponents? Are there any opponents? Welcome to the Government Committee.

**DUSTIN ANTONELLO:** Hi. Good afternoon, Chairman Brewer and members of the committee. My name is Dustin Antonello, D-u-s-t-i-n A-n-t-o-n-e-l-l-o, and I am testifying on behalf of the Lincoln Independent Business Association. LIBA opposes LB267. At a time when you are hearing from thousands of Nebraskans about high property taxes, making it easier to raise property taxes does not make any sense. This bill will allow counties to issue bonds for the construction and repair of bridges without a vote of the people. There is no doubt that the condition of some of our bridges in Lancaster County are in dire need of repair. LIBA continues to support investment in our bridges moving forward. How, however, if the county board truly believes that it needs an additional funding source for bridges, the county should use the traditional method relied on for bonding and appeal to taxpayers to fund the repairs. In the city of Lincoln, we have stormwater problems, which is why the city recently decided to put a \$9 million stormwater bond on the ballot in April. To our knowledge, a stormwater bond has never been rejected in Lincoln because voters recognize the utility of these projects. The county board could utilize the same mechanism to fund bridge repairs to ensure these projects get buy-in from the community before their property taxes are increased. Thank you. Be happy to answer any questions.

**BREWER:** All right, thank you, Dustin. OK, questions? Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. And so you represent LIBA today, is that correct?

**DUSTIN ANTONELLO:** Yes.

**BLOOD:** And how many members does LIBA have?

**DUSTIN ANTONELLO:** We have just under 1,400 members.

**BLOOD:** And do any of them also belong to the State Chamber?

**DUSTIN ANTONELLO:** I believe so.



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**BLOOD:** So what do you think about this quandary that LIBA comes out against it, but the State Chamber, Chamber comes out in favor of it?

**DUSTIN ANTONELLO:** Well, you know, I think the reason that our companies-- or, I mean, our organizations are not always going to be on the same page. We do agree on a lot of the same issues. And, frankly, I'm sure there are a lot of members of the State Chamber of Commerce who don't necessarily agree with them on this particular issue or don't necessarily agree with us, but they still see value in being part of our organizations whether or not they agree with them on a specific issue.

**BLOOD:** So, if I heard you correctly, are you saying that you think that everything should go to a vote? Is that what you're saying that should happen or what are you saying? I wasn't sure.

**DUSTIN ANTONELLO:** I think there's a specific carve-out in the state statute for courthouses and jails. And we're now adding bridges on top of that, whereas the county board already has the ability to seek bonds for bridge repairs through the traditional bonding process. So, yes, we think it should go before a vote of the people instead of having a special carve-out for it in this, this statute.

**BLOOD:** So what would your definition of critical infrastructure be?

**DUSTIN ANTONELLO:** I'm not, I'm certainly not an engineer but I would say--

**BLOOD:** And I don't expect that. I certainly do not expect that. It will help me know where to go with this question.

**DUSTIN ANTONELLO:** Well, I certainly recognize and I, you know, we've spoken to the Lancaster County Engineer many times over the problems with the bridges and roads in the county, and were involved in the infrastructure task force process. So, you know, I'm not refuting that we have problems with that. The bridges represent critical infrastructure in some instances.

**BLOOD:** Right. And being able to get from point A to point B without falling off into a river, those are good things, right?

**DUSTIN ANTONELLO:** Yes.

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**BLOOD:** So, and you understand, too, that when it's, it's only up to \$2 million, right, and then it does require a vote, doesn't it?

**DUSTIN ANTONELLO:** Yes.

**BLOOD:** How much were they saying they needed to fix bridges, do you remember?

**DUSTIN ANTONELLO:** I think it was a \$9 million shortfall that was identified by the annual shortfall.

**BLOOD:** Multiple bridges. So the chances of them fixing like all the bridges at once is probably is improbable.

**DUSTIN ANTONELLO:** Probably, yes.

**BLOOD:** Right? So one of the concerns I have, and I've said this before, I think, with LIBA is that your members benefit greatly from any kind of growth in our community. And you have construction companies, cement companies, yes?

**DUSTIN ANTONELLO:** Yes.

**BLOOD:** That are members for LIBA. And they don't necessarily have the ability to wait around for jobs, so if they don't get jobs here in Nebraska, they'll potentially go to other states, especially the bigger construction companies.

**DUSTIN ANTONELLO:** But we're not going to advocate one position over the other just so it will benefit a specific sector or industry of our company. I don't think that's what--

**BLOOD:** Really?

**DUSTIN ANTONELLO:** I mean, of our organization. I don't think that's what, I mean, we have members who disagree, who are involved in different industries. We're not going to show preferential treatment to, to construction companies because they may benefit from this part, particular bill whereas, you know, other, other businesses will not benefit but they'll see their property taxes increase.

**BLOOD:** So you don't see that as disenfranchising your members?

**DUSTIN ANTONELLO:** No, not at all. I think they are, they have their voice in our organization, just like any other industry group does.

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And I think, you know, we, we're not going to advocate for something just because it benefits a subset of our membership.

**BLOOD:** So if there's something that needs to be done and it is critical infrastructure and it is urgent, then you think that that's not a big enough an emergency to get it done in a timely manner?

**DUSTIN ANTONELLO:** Here's what I'll say. I mean, the County Engineer last year during the budget process over the summer asked for her budget to be increased. The county board said, no, they did not want to see their property, the property taxes go up. That was the reason given for not increasing the budget for the engineering department.

**BLOOD:** Well, shame on them. But at the same token, I see them being creative and trying to find ways have nothing to do with raising taxes that people are putting roadblocks in the way. And I find that confusing.

**DUSTIN ANTONELLO:** I don't think it's a roadblock in order to seek the approval of a community before going ahead with these important projects.

**BLOOD:** I think the community does have the understanding that when it comes to critical infrastructure-- and I'm going to end with this sentence, because I certainly don't bicker with you-- I think it's important to communities to, to be able to feel safe when they drive across a bridge. We all remember what happened in Minnesota. I don't think anybody's life is less important than picking apart legislation that doesn't need to be, necessarily, picked apart. And I kind of feel that that's where we're at right now. And I always have grave concerns-- and I apologize I'm gonna say this in advance-- that LIBA considers itself a business organization but you frequently come and talk not in the best interests of your members. And that, I find that concerning. I find you speaking more about government as opposed to the voices of your business members, and I'm concerned about that.

**DUSTIN ANTONELLO:** Let me just say, I would disagree with that. I mean, I think what top of mind for our members is increasing property taxes and government spending. And we just do not support another avenue for our property taxes to be raised. And I would say the vast majority of our members, that is top of mind to them. And a subset of construction members benefiting at the expense of property taxpayers is not what we're going to advocate for.

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**BLOOD:** But I would think your members also want to get from point A to point B to get to their jobs as well.

**BREWER:** OK. Let me remind everyone we are here to ask questions. It is not a cross examination. Do you have any more questions? All right, thank you. Are there any more opponents? Are there any in the neutral capacity? All right, I believe Senator Bolz probably had to go to her next presentation. So we'll go ahead, and we do have a couple of letters. LB267 has two letters as proponents, no opponents, and none in the neutral position. With that, we'll close on LB267 and move to LB336. Senator Hansen, welcome to your committee on military-- Government, Military and Veterans Affairs. Sorry, I always put the military first.

**M. HANSEN:** Sure. Not a problem. Maybe we could rename it in the rules. All right. Good afternoon, Chairman Brewer 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, and I represent District 26 in northeast Lincoln. Today, I am introducing LB336, which is somewhat of a companion bill to the one that I introduced to this committee two weeks ago relating to public safety. The bill in front of you removes the stringent requirement of a 75 percent vote of the governing board, of a governing body to adopt the additional 1 percent authority of restricted funds within the budgeting process. This bill now requires a majority of those members make that decision. That is consistent with most other voting thresholds for political subdivisions. I worked with the city of Lincoln on this bill. I believe they've met with Senator Brewer on this topic over the interim. They are a growing city and have not adopted the additional 1 percent number in a number of years. All political subdivisions are able to increase the restrictive budgets by 2.5 percent year over year. That decision is based on a majority vote during the normal budgeting process. Without the base growing at the same rate as personnel costs and other necessary services, it could come to a crisis situation for future administrations. Since introducing this bill, I've learned that this could also be beneficial to some counties as well. There are many county boards with the only three members and, thus, they need a unanimous vote in order to adopt this additional 1 percent that we're talking about today. I would like to point out that most cities and counties across the state routinely do vote for this additional 1 percent because it is a sound budgeting practice. So this will not equate to some dramatic sea change but will certainly benefit, could benefit my community. With that said, I'm open to compromise on this

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solution and would be happy to work with the committee on any other ideas as necessary. Brandon Kaufmann, the city of Lincoln finance director, will be testifying behind me and can answer specific questions about the local budgeting process and the impact this may have. With that, I'd be happy to answer any questions and would encourage the committee to advance LB336.

**BREWER:** All right, thank you, Senator Hansen. Questions for Senator Hansen? All right.

**M. HANSEN:** Thank you.

**BREWER:** I'm assuming you're gonna stick around for closing?

**M. HANSEN:** Yes.

**BREWER:** All right, thank you. All right, we will start with proponents for LB336.

**BRANDON KAUFFMAN:** Good afternoon, Chairman Brewer, members of the committee.

**BREWER:** Welcome to the Government Committee.

**BRANDON KAUFFMAN:** Thank you. My name is Brandon Kauffman, B-r-a-n-d-o-n K-a-u-f-f-m-a-n, I'm the finance director for the city of Lincoln. I'm here to testify in support of LB336, which would allow governmental units to increase the limit of revenues by a simple majority vote. Restricted funds has a revenue cap law limits our core revenues to 2.5 percent growth. Restricted funds make up about 75 percent of our taxing fund revenues, and those revenues fund things like police and fire, libraries, parks and recreation services. Restricted funds also allows for exemptions, but those exemptions are fairly minor. They're about 23 percent of our tax funding budget. The 2.5 percent can be increased by 1 percent with a 75 percent vote of the governing body. This is a high test. It takes three-fifths of the senators, as you know, to put a constitutional amendment out for a public ballot. Takes two-thirds of both chambers to change the Constitution for the United States, along with ratification by the states. But to increase your restricted funds by 1 percent it takes 75 percent of the governing body. It's a high legislative test, higher than most important documents that guide our governments. I encourage this committee to support LB336, the legislative test to increase by 1 percent is too high. Growth is a constant challenge that must be

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managed by cities. Allowing a simple majority would make it easier to address budgetary issues for municipalities. With that, I'll stand for any questions.

**BREWER:** All right, thank you. Questions? All right, thank you.

**BRANDON KAUFFMAN:** Thank you.

**BREWER:** Welcome back to the Government, Military and Veterans Affairs Committee.

**CHRISTY ABRAHAM:** Thank you, Senator Brewer, it's nice to see you. My name is Christy Abraham, C-h-r-i-s-t-y A--b-r-a-h-a-m, here representing the League of Nebraska Municipalities. We just want to echo the concerns that the city of Lincoln raised about the 75 percent threshold and say that this situation does seem to impact Lincoln the most, but that there are other communities out in Nebraska that would also benefit from the change in this bill. So thank you for your time today.

**BREWER:** All right, thank you. Look around real quick, questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Good to see you. Thank you for being here today. Do you know when this originally was put into place, the 75 percent threshold?

**CHRISTY ABRAHAM:** You know, that's a, that's a great question. I know that the restricted funds went in, it's been a little over 20 years ago. My guess is it came in around that time. But I can find out for sure, Senator Hilgers, and get back to you.

**HILGERS:** I can probably look it up, too. I was just curious. The other question I had was, and I know there's-- these are hard things to measure because if you don't have 75 percent support there may never be an attempt, but to the extent that you even have a anecdotal sense or something, something you can provide the committee in terms of how often it might happen where there is an attempt to, to increase the spending limit and there, there was something over half but not quite 75 percent.

**CHRISTY ABRAHAM:** And I don't know that this exactly answers your question, but I'll give you the information I got from the Auditors Office. There are 105 municipalities that did not get the extra 1 percent. Now, I don't want to imply to you that that means all the 105

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attempted the vote and didn't get the 75 percent. That certainly is true for several that we know. As we've talked about before, there are some small villages they can't even raise 2.5, let alone the 3.5 percent, so I'm guessing it's some of that. But there are 105 out there that don't take the extra 1 percent for whatever reason that is.

**HILGERS:** OK, thank you.

**CHRISTY ABRAHAM:** You're welcome.

**BREWER:** All right, any other questions? All right, thank you Christy.

**CHRISTY ABRAHAM:** Thank you.

**BREWER:** Additional proponents for LB336? Welcome back to Government.

**BETH BAZYN FARRELL:** Thank you. Chairman Brewer, members of the committee, for the record my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Farrell, F-a-r-r-e-l-l, I'm with the Nebraska Association of County Officials and I'm appearing in support of LB336. What I'm handing out is a map that we've shared with you before. It shows the number of county board members in each of the counties, and so can make the calculations and see how that would apply to those counties. I would just echo the support that previous testifiers have stated, and I would be happy to answer questions.

**BREWER:** All right, this map is handy. Thank you. Questions? Senator Lowe.

**LOWE:** Thank you, Chairman. Thank you, Beth for being here again today. On this map it shows the counties with three members. Would it be possible for those counties to increase their membership as far as commissioners so it might be easier for them instead of a three, maybe a five-member?

**BETH BAZYN FARRELL:** Yes, they could do that. A three-member board can increase to a five-member board. It can also go the other way too. In a county that is a township form, right now they have seven members. If they choose to go to a commissioner form, they could retain the seven or they could go to five. So there is some flexibility in how many members that they do have, but they certainly could increase.

**LOWE:** It just costs more once you get more members.

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**BETH BAZYN FARRELL:** That's an argument that we, we hear. It depends on how the county would decide to restructure then, if they have a different number.

**LOWE:** More-- thank you.

**BREWER:** I'm going to go ahead and run a question by you here. There is a lot more three-member boards than I realized. That's why I kind of, I like your map. I may have to hang onto this one. I think where the concern is gonna be is, is the, anything above 50 percent as opposed to like if it was two-thirds, two of the three, would that be closer to, I mean, would you be able to support that? Because I think for the bigger counties or the bigger boards we're trying-- because right now I assume it must be three of the three for most of the three-county boards in order to--

**BETH BAZYN FARRELL:** If it's 75 percent of the majority, 75 percent of the board total it would--

**BREWER:** So if it was two, or 66, so it would have to be all three in order to pass.

**BETH BAZYN FARRELL:** Right.

**BREWER:** So anything less than that would be two of three, would put you-- anyway. I guess that's something we'll, we'll talk internally on here. But, you know, that would be a majority but it wouldn't require absolutely all members to be in support of it. All right, any other questions? All right, thank you for your testimony. All right, any more proponents? All right, opponents? Welcome back to Government, Military and Veterans Affairs.

**DUSTIN ANTONELLO:** Good afternoon, Chairman Brewer.

**BREWER:** Good afternoon.

**DUSTIN ANTONELLO:** My name is Dustin Antonello, D-u-s-t-i-n A-n-t-o-n-e-l-l-o. LIBA opposes LB336, requiring only a majority of all members of the governing body to improve increases to the budget rather than the current 75 percent would leave taxpayers vulnerable to, to decisions that do not fully represent the will of governing body or the will of the people. LB336 will weaken the authority of city councils across the state and provide more power to mayors' offices. In Lincoln, the city council's power is already constrained compared to the mayor's office. In a 2015 legal opinion on the mayor's



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control of single-year contracts, the city attorney wrote, and I quote, Lincoln's mayoral council form of government has been called an 'autocratic mayor system,' meaning the mayor should have ample power to control fully the administration of municipal affairs. During the 2016 city budget negotiations, the mayor leveraged this autocratic authority to sue the city council and force them to pass a higher property tax rate. The 75 percent threshold preserves the balance of power and protects against majority rule. Lowering the threshold to a majority of the governing body will further erode the ability of city councils to provide the necessary checks and balances against mayors statewide. Please do not advance LB336 to General File. Thank you, and I would be happy to answer any questions.

**BREWER:** All right, thank you for your testimony. Questions? All right, thank you.

**DUSTIN ANTONELLO:** Thank you.

**BREWER:** OK, any other opposition testifiers? Any in the neutral capacity? All right, Senator Hansen, come on back.

**M. HANSEN:** Thank you, Chairman Brewer, members of the committee. I'll just kind of close by saying I'm happy to work with any committee members that are interested in this issue. Kind of at the end of the day, the, the 2.5, the extra 1 percent, 75 vote thresholds are all just numbers a past Legislature picked. I'm sure there's some thought and some logic between each one of them but they are just kind of the standards we'd set. And if it's, you know, seeing how the 75 percent applies, maybe works in many situations, not all. And if two-thirds makes more sense or something like that, I'd be happy to talk with committee members.

**BREWER:** OK, very good. Questions? All right, seeing none, thanks.

**M. HANSEN:** Thank you.

**BREWER:** All right, we do have some letters to read in on LB336. LB336 has three letters as proponents; one letter in opposition; and none in the neutral. And that will close our hearing on LB336 and we will open on LB543. Senator Lowe, welcome to your committee on military-- Government, Military and Veterans Affairs. I just keep putting the military first.

**LOWE:** Always put the military first.

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**BREWER:** That's kind of my history. Anyway, welcome.

**LOWE:** Thank you, Chairman Brewer and the fell, fellow members of Government, Military and Veterans Affairs Committee. My name is John Lowe. That's J-o-h-n L-o-w-e, and I represent the 37th District. Today I'm here to present LB543 on behalf of the Department of Administrative Services. This bill makes three changes to current statutes. First, this bill adjusts the process for getting a bond for contract. Currently, a bond is required before entering into a contract. Unfortunately, this process does not work since it is difficult to get a bond until a contract is agreed to. This bill changes the process so that the contract can be agreed to, which will then allow the bonding process to work. It does clarify a lot-- it does clarify that no constitutional material or actual construction can occur until the bond is approved. Secondly, this bill makes a language changed from the "shall" to "may" in the phrase: may prom-- promulgate rules and regulations. The first change is in 73-306. This change was made because extra rules and regulations are not needed for Sections 73-301 through 73-305. The requirements in these statutes are clear and do not need extra rules. In fact, the regulations and statute are nearly identical. 73-301 deals with the responsibilities and the duties of the Director Administrative Services when it comes to contracts for personal services between a private entity and state agencies. 73-302 through 73-305 deals with the con, contract process. The same change of "shall" to "may" also appears in Statute 81-1016. Again, again, this was done because additional rules and regs are not necessary for 81-1008 to 81-1025 [SIC]. This section of statute deals with the Transportation Services Bureau and its responsibilities. This bill also makes changes to the statutes of deputy directors and department lawyers. These positions will become at-will employees. Let me make it, make it clear here that no person who is currently employed in these positions would be forced to change their employment status. The main effect of this bill would be for new employees. I believe that these changes make perfect sense. Deputy, deputy directors are the right hand of the director, of the directors. It only makes sense that they should be selected by the person they are working directly with. In my past experience when I acquire a new business, such as a bar, I found it to be crucially important that my manager was someone that I had the same vision and expectations for the company as I did. Every senator in this body takes special care to ensure that their legislative aide, the senator's right hand, has the same expectations and goals as we do. Why would we expect anything less from our departments? A similar argument can be made for why

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lawyers within the departments should become at-will employees over time. There are critical elements of our departments and it makes sense that they are fully committed to the path that the department has chosen. And once again, let me make it clear, no person currently employed will be or can be forced to change their employment status under this bill. It simply affects new hires. I also have AM541 attached with this bill. This amendment does two things. First, it clarifies, clarifies that this bill will not affect the Secretary of State, Treasurer, Attorney General, Auditor, Legislature, courts, Board of Educational Lands and Funds, Public Service Commission, University of Nebraska, and Coordinating Commission for Postsecondary Education. The second part of this amendment simply clarifies that the salaries for the deputy directors and attorneys would be approved by the entity with oversight of the director. And if there are no such entity, then the Governor would have the authority to approve the salaries. I urge you to vote this bill out of committee and I am willing to answer any questions that I may have knowledge of. Representatives from the DAS will be coming up after I am, so they will be able to answer those questions more full, more fully than I would be.

**BREWER:** Thank you for your testimony and I like the way you threw that at the end, that you would be willing to answer any questions you have knowledge of. That leaves it somewhat limited, but OK. Senator Blood.

**BLOOD:** He's just saying what everybody's thinking.

**LOWE:** Hey, it's Thursday, let's go home.

**BLOOD:** It's our Friday. Senator, can you kind of walk me back through this. I'm, I'm listening and I've read through the bill. And I know you know the answer to this. So where did this this bill come from, who did it come from, and what problem are we trying to solve? I'm not sure I understand the problem that we're trying to solve.

**LOWE:** From the Department of Administrative Services.

**BLOOD:** And what problem are we trying to solve?

**LOWE:** When, well, like I stated, when, when I take over a business or something like that I want to make sure my second in command is on the same thinking as I am.

**BLOOD:** How does this do that?

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**LOWE:** When I hire that person. It has no affect if, if the second in command is already in this position. I mean, if I take over a business and they're there, once they leave and I replace somebody they're kind of an at-will employee.

**BLOOD:** So, so the point is to create at-will employees?

**LOWE:** Basically.

**BLOOD:** And why do we want to create at-will-- and I'm not being a smart aleck, I'm truly trying to understand this.

**LOWE:** Just so the, the, if the thinking is not the same or the thinking changes that we're able to terminate, I suppose. But I will let the Department of Administrative--

**BLOOD:** Can't do that already? I mean we're a, we're a state that does that already.

**LOWE:** You know, I'm not sure.

**BLOOD:** We are. All right. No, I didn't mean to put you on the spot. I truly am trying to get my head wrapped around this, and I'm not understanding something. Thank you.

**LOWE:** Thank you.

**BREWER:** All right, questions? Yes, sir.

**KOLOWSKI:** Thank you, Mr. Chairman. Senator, I had some of the same concerns when I was listening. And on one hand, it sounded like union busting, trying to break up whatever might exist and get it into a different level or slot of understanding within the realm of the job descriptions within the company. And I'm also looking for more clarification. So I am, I, I could echo what the Senator Blood has mentioned here.

**LOWE:** Yeah, you know, if the employee is, is employed they are not terminated. It is only after they leave the department and that the new employee would be the at-will employee.

**KOLOWSKI:** I understand that.

**LOWE:** So it wouldn't-- so we're not terminating anybody to purge.

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**BREWER:** All right, Senator. Oh, Senator Blood, go ahead.

**BLOOD:** I'm sorry. OK, I'm sorry. And I'm not trying to beat a dead horse, it's just I'm hearing you say this over and over again. So Nebraska's already an at-will employment state, right? Do you see where the disconnect is?

**LOWE:** That's why I'm going to let the ones describe this.

**BLOOD:** Because, you know, an employer in Nebraska and can fire their employees for no reason at all. So that's where I'm confused.

**LOWE:** OK.

**BLOOD:** All right, thank you.

**LOWE:** Thank you.

**BREWER:** All right. And just a follow up. You got three pieces to this, if this looks right. So you got the bonding process, you get the excess of regs, and then the last part was what you were just talking about with the work, work for hire of key people. All right, so that part I'm track, I'm tracking with you. That's right. OK. So we will, we will ask questions of those that would follow you. And then we don't get the answers, you'll get a close.

**LOWE:** All right.

**BREWER:** Very clearly. All right, thank you.

**LOWE:** Thank you.

**BREWER:** All right, if we could have our first proponent come up, please. Mr. Jackson, welcome to the Government, Military and Veterans Affairs Committee.

**JASON JACKSON:** Thank you, Colonel. And I understand I'm the last thing between you guys and the weekend. Don't know if that accrues to my benefit or to my detriment, but nonetheless, I appreciate the opportunity; and thank you to the members of the Military, Government and Veterans Affairs Committee. My name is Jason Jackson, J-a-s-o-n J-a-c-k-s-o-n, I'm the Director of the Department of Administrative Services, and I'm here in support of LB543. As Senator Lowe mentioned, LB543 has three primary policy goals. So these are the problems that the bill is attempting to solve. The first of which is bringing the

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state's bonding process into alignment with industry best practices. Second, reducing regulatory burden. And third, making our talent management practices more competitive for attorneys and executive level employees. And I understand there's some questions about that, and I'm happy to get into specifics on that during Q&A. Regarding the bonding process specifically, this legislation proposes to amend current law found in Statute 52-118(3). By changing the timing of the approval and filing of payment bonds from prior to the contract being signed to after the contract is signed. From prior to the contract, to a contract being signed to after the contract is signed but prior to the purchase of any construction material at the start of any construction. Surety companies cannot issue payment bonds on a contract until a contract is in existence typically. The law, as it currently exists, creates a recurring issue with surety companies. This change permits a contract be signed but not acted upon until after a bond is filed and approved, which achieves the intended policy result of the existing statute but nonetheless brings the process into alignment with current industry best practices. Secondly, this legislation also proposes to reduce regulatory burden by removing the requirement of promulgating role-- rules and regulations beyond the existing statutes for the review of personnel service contracts that displace permanent state employees, as well as rules and regulations pertaining to the use of state-owned vehicles, state-owned and personal vehicles for official state business. The existing rules and regulations pertaining to these issues mirror exactly the existing statutory language. The rules and regulations regarding use of state-owned and personal vehicles are almost entirely captured in existing statute. The Transportation Services Bureau sees a high level of compliance to policies and procedures already, and would be able to capture any remaining items not already established in statute in the Transportation Services Bureau policies and procedures. The use of guidance documents allows for a more efficient and rapid response to any implementation issues, and removes the unnecessary red tape from the operation of state government. Finally, LB543 proposes to make our talent management practices more competitive by modifying statute 81-1316 to include all personnel employed as deputy directors of all agencies and all personnel employed as attorneys of all agencies as discretionary at-will teammates. The objective is to allow agency heads the opportunity to: recruit, hire, supervise critical, confidential, or policymaking personnel without the restrictions of selective services procedures, compensation rules, career protections, and grievance privileges. These worker types are knowledge workers in fields requiring legal and policy acumen where performance appraisal

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is more subjective than other worker types. Creating a high-performing organization requires that agency directors have the discretion to build their respective teams with deputies and legal counsel that share their policy goals and are able to shape those goals within the legal constraints while balancing acceptable legal risk. This change will also make the state more competitive for top executive and legal talent by enabling agency leaders to be more flexible with respect to compensation for these types of positions. Current law protects employees who are under the State Personnel System from having their employment designation changed without their permission. This means LB543 would only apply to new hires after the effective date of this bill. We also support the amendment that clarifies that other constitutional agencies aren't impacted. Thank you for your time. And thank you to Senator Lowe for bringing this bill on our behalf. And I'm happy to answer any questions that you have.

**BREWER:** All right, Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. Can you please answer the question? I'm confused. Nebraska is already an at-will state. Why do we need an additional exception when anybody can be fired for any reason in Nebraska?

**JASON JACKSON:** Sure. So Nebraska, the general rule for employment law in the state of Nebraska is at-will, barring exceptions.

**BLOOD:** It's the law.

**JASON JACKSON:** State government is not, however, at-will. So that's what Chapter 81 of it deals with in our legislative code, is it provides the classified civil services rules that govern employment for the state of Nebraska. So that combined with the state Collective Bargaining Act govern employment for the state of Nebraska with a couple of exceptions, those exceptions being enumerated in the bill that we're attempting to modify here by adding attorneys and deputy directors.

**BLOOD:** So what part of statute are you saying that precludes you from doing that currently?

**JASON JACKSON:** So it's basically all of Chapter 81, and specifically we're modifying 81-1016 [SIC], which enumerates the positions that are exceptions to the rule that state employees have civil service protections, that they're not at-will. So 81-1016 enumerates specific

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positions that aren't at-will. The general rule within state government is that you're not at-will.

**BLOOD:** Why do you think that is, in your personal opinion?

**JASON JACKSON:** Well, I think that is because we don't want-- we want to have rigor and make sure that we're providing good talent management decisions. And we also-- there's a constitutional basis for saying, hey, there's an interest in making sure that adverse government decisions aren't arbitrary in character. So there's some policy reasons for why that chapter is constructed the way it is. But the Legislature has also provided for where that policy exception arises. And I know that was one of your questions, is what would be the purpose of this? And that's directly from, again, 81-1016. "The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, supervise critical, confidential, or policymaking personnel without the restrictions of selection procedures, compensation rules, career protections, and grievance privileges." So for us, attorneys are analogous to these knowledge worker types that are already at-will within the statutory regime, things like pharmacists, physicians, psychiatrists, psychologists. These employee types currently are at-will precisely because they're knowledge workers and we need to be able to have flexibility with respect to how we hire them, how we evaluate them, and how we compensate them so that we can be competitive for that type of talent.

**BLOOD:** So I keep hearing you say competitive and I, and I'm going to reread this bill and research it over the weekend. But then the other side of me is saying it just sounds like another way for workers to lose their rights, and that concerns me. And I do hear what you're saying and I have taken notes. But I find that part of this bill really concerning.

**JASON JACKSON:** OK.

**BLOOD:** But I do respect your opinion, and I sincerely will research it.

**JASON JACKSON:** Well, it's, it's mutual. I guess one of, and as a matter-- as a response, I would say what's, what's unique about attorneys in state government is the norm for an attorney is that you serve at the pleasure of your client. The government context is the only context that I'm aware that an attorney has rights against their



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client. So that's kind of one of the things that this bill is attempting to correct, is to set attorneys on par with their private sector partners and recognize that attorneys serve at the pleasure of their client in the normal workplace environment. And this bill attempts to do that.

**BLOOD:** So the Nebraska Bar Association is completely behind this then?

**JASON JACKSON:** I understand that the State Bar Association is in opposition. We're having conversations with them. We're amenable to dialogue about how we might mitigate their concerns.

**BLOOD:** I'm glad I asked that. That's interesting. All right, thank you.

**BREWER:** All right. Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Director, for being here. I appreciate it. I was, I'm very interested in this topic. I understand the importance of hiring high-performing attorneys. I have a lot of experience doing it, I've hired dozens of them. And I think in my opinion, they're all high-performing, and it's not easy to do. And I understand having flexibility-- it's not easy to, one, to identify them; but two, to recruit them, especially in this type of marketplace where you're competing with, with private industry. So let me ask you, under the current scheme, so embedded in sort of your, in your test-- your testimony today, is at least, you've touched on it, which is the current system it puts you in-- these are my words, not yours. It sounds like somewhat of a bind, unable to attract talented attorneys. Can you sort of put a little bit more on that? You mentioned specifically compensation, is it primarily compensation? Is it other things? Can you flesh that out a little bit?

**JASON JACKSON:** Yeah, I would say there's a couple of factors. So I think it's the end to end kind of talent management for the attorneys. It's attracting them, it's retaining them, it's rewarding them, it's evaluating them. One of the things that, you know, as you know, Senator, the marketplace for legal talent is one that's very competitive. Within our current statutory scheme and within our existing service, civil service rules there's, there's really hard caps in terms of what types of salaries and what types of rewards that we can offer.

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**HILGERS:** Can I pause you right there?

**JASON JACKSON:** Yeah.

**HILGERS:** So what would be an example of-- what would be a threshold right now?

**JASON JACKSON:** Yeah, so--

**HILGERS:** Does it go by a certain, like, years of experience?

**JASON JACKSON:** You're going to have to give me a little bit of grace here, but I think the range for an attorney three in state government, which would be the senior-most attorney in state government typically, would be somewhere from, like, the low \$70s to perhaps the mid \$80s, high \$80s.

**HILGERS:** And a row-- and so, again, I understand, a little grace. I'm not going to hold you to the numbers, but the most, so level three is the most senior. How many years for the most senior-- on average, roughly, how many years of experience?

**JASON JACKSON:** Well, there's, there's no hard-set threshold. But typically you would see we hire people into those positions depending upon the scope of the work. Oftentimes you see people matriculate up to that level and with two or three years of service time. That's largely because agencies are trying to manage within our civil service scheme to get people up to these salary thresholds so that they can be more competitive.

**HILGERS:** Well, maybe I'll ask you differently. So how many, how many years of experience post law school might someone in that position be?

**JASON JACKSON:** I'd be completely speculating there. It would be somebody, somebody with existing experience. Probably--

**HILGERS:** So how about someone who's got what Senator La Grone has, a year or two, a little wet behind the ears? Someone who has maybe got a little bit more?

**LA GRONE:** Three years.

**HILGERS:** Or three years? Fifteen years?

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**JASON JACKSON:** Again, if you'll extend me a little bit of grace, and I'd be able to follow up with more exactitude, but I think what you would see is somebody hired into an attorney three level position would have five-plus years of legal experience either in state government or in the private sector or in some other, some other area of practice.

**HILGERS:** OK, thank you. And I, I think I cut you off on the compensation. So if you have more to answer, if you have more to your answer about the, the tools that this would give you besides compensation that you like to elaborate on, please do so.

**JASON JACKSON:** Well, I think the other factor here, and again, it gets to just kind of the nature of an attorney in practice and managing an attorney, is that talent evaluation for attorneys is necessarily subjective in character just by the nature of their work product. And particularly for nonattorneys managing attorneys, it's, it creates difficulty to try to talent manage or performance manage either underperformance or conduct issues or those types of things going through all of the protections that exist within our existing civil service--

**HILGERS:** So like what would be some example? I guess I hear the point, but maybe I'm just unfamiliar with this process. So could you give me some examples of why that is?

**JASON JACKSON:** Well, sure. So, so let's say the state enters into a bad contract that flowed from bad legal analysis, OK?

**HILGERS:** OK.

**JASON JACKSON:** In the absence of-- our current civil service rules make it very difficult to performance manage that attorney because it gives them so many grievance rights and procedural rights that they'll be able to advance relatively subjective arguments about the nature of the law, etcetera that might mitigate against the ability to, to hold them accountable for some of those decisions.

**HILGERS:** Got it. Thank you very much--

**JASON JACKSON:** My pleasure.

**HILGERS:** --for your testimony. Thank you.

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**BREWER:** All right, Senator Hilgers. Additional questions? Senator La Grone.

**LA GRONE:** Thank you, Chairman Brewer. Just that, I had another question but I want to tag a little bit on what Senator Hilgers just going into, because it raised a question in my mind. Being someone who had just, hasn't that terribly-- hasn't been that long since I've come out of law school and initially went into the legal market. So can you say again the rough number for how much the most senior attorney in state government gets paid, your level three attorneys?

**JASON JACKSON:** The most, now these are the most senior classified--

**LA GRONE:** Right, correct.

**JASON JACKSON:** --attorneys. You're, you're into your upper \$80s in the salary threshold.

**LA GRONE:** OK.

**JASON JACKSON:** And I ask for a little grace on that.

**LA GRONE:** Yeah, that's fine. Just a rough area. And that, that's surprising to me, because when I was exiting law school that's about the same amount that the top law firms were paying for entry level attorneys. So that's surprising to me, and I can see how that would cause a competition problem for the best legal talent. And so along those lines, what does an entry level attorney that is classified employee, what, what range are we talking about around there?

**JASON JACKSON:** I think we're in the mid \$50s to low \$60s on those.

**LA GRONE:** So we're talking about when, we're looking at the same talent pool, you're talking about roughly \$30,000 less than your top law firm is--

**JASON JACKSON:** Correct.

**LA GRONE:** --offering. So that does obviously create a competition problem. Then my next question was, when you were discussing this being an exception to the service system and adding to that list of exceptions, I was looking through the list of exceptions since it's in the bill. And I see under there obviously the Legislature and the Attorney General's Office. So I know that when I was attorney, an attorney here at the Legislature I was at-will. And so am I

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understanding correctly that all of the attorneys in the Attorney General's Office are also at-will?

**JASON JACKSON:** Correct.

**LA GRONE:** So really this is just applying the same standard that the Legislative Branch and the Attorney General's Office has to the rest of the Executive Branch attorneys that are currently under this system, is that correct.

**JASON JACKSON:** Yes, Senator. And I'd actually broaden that beyond that, because we've also done some analysis of some of our peer surrounding states. And we've found that among those most attorneys in Iowa are discretionary, all attorneys in Missouri state government, Wyoming state government, Kansas state government, and South Dakota state government are discretionary. Of our peer surrounding states only Colorado has a situation similar to our own. So to us, this represents best practice and the practices that are considered-- consistent with some of those other constitutional branches that you referenced.

**LA GRONE:** So not only might you have a competition problem of the private sector, you might also have competition problem within state government?

**JASON JACKSON:** Correct, yes.

**BREWER:** Senator Hilgers.

**HILGERS:** Were you done? I'm sorry.

**LA GRONE:** Yeah, I'm sorry.

**HILGERS:** Thank you, Chairman Brewer. Two, two quick follow-ups. One is, and I meant to ask this, and I think it's implied, but I want to make it explicit. If you, if you-- if this bill were to pass, you would have the, DAS would have the ability to pay more for an attorney, right? And that's what, when you say flexibility, I assume it's flexible to pay them more.

**JASON JACKSON:** But I want to be clear, it isn't DAS that would--

**HILGERS:** I'm sorry.

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**JASON JACKSON:** It's, it's the hiring agency--

**HILGERS:** I'm impeding that to you.

**JASON JACKSON:** --would be would be vested with the ability and the flexibility to pay more as they are trying to acquire legal talent.

**HILGERS:** And that's, I appreciate the precision. The second question I have is, to the extent that you can answer, I mean, the clients-- so the attorneys are representing the client. And the client in those instances are the agencies?

**JASON JACKSON:** The agency or the state. Correct.

**HILGERS:** And so the current regime makes it more difficult for the clients to be able to choose, if the lawyer doesn't give good legal advice, it makes it more difficult for the clients to be able to determine what lawyers should represent them?

**JASON JACKSON:** Correct.

**HILGERS:** Thank you.

**BREWER:** All right. And just, just for clarification, so we're kind of in a special bubble here within the Legislature because the committee clerk was, I guess, an at, at-will or, I mean, I got to pick who I wanted. We stepped up the game with the legal counsel anyway. But for you, you're under those restraints right now where you don't have that and that's what you're trying to essentially do here is to have where you have the option.

**JASON JACKSON:** Yeah, Senator, exactly. So what this would do is basically replicate the, what you guys enjoy-- excuse me, what the Legislature enjoys for selecting your own staff and your own legal staff for your respective committees and your respective offices. There's, I think, a policy, the policy that informs that is you need to be able to-- the attorney needs to be able to represent the client and serves at the pleasure of the client. I want to just use this response as an opportunity to respond to Senator Kolowski. There's no interest in union busting, certainly not on my part, not on the administration's part here. No existing employees are impacted unless they elect to be. This is purely about bringing the state Nebraska into alignment with how other private sector attorneys do business and what's best practice for our surrounding states, and what our other

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constitutional agencies like the Legislature, what they enjoy with respect to the selection of their attorneys.

**BREWER:** When, and I think some of it was putting three items together, and then the one is the one that tends to catch everybody's attention, not the excess regs or the bonding process. All right, additional questions? OK, thank you for your testimony.

**JASON JACKSON:** Thank you, sir.

**BREWER:** Additional proponents for LB543? OK, we will transition to opponents.

**MICHAEL RUMBAUGH:** Chairman Brewer.

**BREWER:** Welcome to the Government, Military and Veterans Affairs Committee on a Thursday afternoon before a four-day weekend.

**MICHAEL RUMBAUGH:** Good afternoon to you and the members of the committee. My name is Michael Rumbaugh, M-i-c-h-a-e-l, Rumbaugh is R-u-m-b-a-u-g-h. I appear here today on behalf of the Nebraska State Bar Association. We appear in opposition to the portion of LB543 that would exempt newly hired attorneys from the State Personnel System. We make no-- we take no position with regard to deputy directors and the other elements of the bill. But we're, we're narrowly focused on the attorney situation here. And let me tell you a little bit about myself before I go on into the substance of my testimony because my tenure in state government predated, I think, everybody at the table in the committee. I spent 41 years practicing law for the state of Nebraska in various capacities, starting in 1973 with the old Department of Public Welfare as a staff attorney. I became the general counsel for 14 years for the Department of Social Services, and then I spent another period of time as a section chief with the Department of Health and Human Services before going over to the Attorney General's Office in 2004, where I spent the last 10.5 years of my career doing litigation work. I have supervised attorneys, I've hired attorneys, I've dealt with exclusively with attorneys that were under the state personnel classification system. I never found that to be particularly onerous. We were always presented with a slate of candidates when we went to hire an attorney. We could select those we wanted to interview. And I would also comment that I think the compensation system for attorneys in the state has historically been artificially low. We used to try to deal with that, with little or no success. But the pay grades and the pay scales are subject to adjustment within the

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classified system. There should be no mistake about that. The grounds for our opposition are these. Well, first let me say this. When I first talked to Bill Miller about presenting testimony today, I looked at the bill and I thought, what are the pros and cons about dealing with attorneys in this way? And this is reaching down quite low, frankly, in the scheme of things within the personnel that serve a state agency. It's one thing to have the chief attorney exempt, and I think most agencies probably have that now. That was the trend when I was in government. But to reach down to the staff attorney positions, I, I couldn't identify any real pros for that. I understand the director and his testimony about what he sees as the advantages. And I would just respectfully disagree with a lot of those. Their-- attorneys are bound to zealously represent their clients and they do so every day. And they do so but with the obligation ethically not to allow their legal discretion to be governed by a layperson. That's an ethical violation for an attorney to do that. The duty that attorneys within agencies owe their agencies is to provide them with independent, well-researched and well-reasoned legal opinions and advice. And that happens every day. And they have the obligation to tell administrators when a particular course of action that may be being pursued is not legally feasible for one reason or another. I remember directors telling me all the time, you guys are just obstructionist, you're always telling me we can't do these things. And my response to that was always, you know, Mr. or Ms. Director, that's my job. And all I give you is opinions and advice, and you're free to take it or leave it. I'm not-- I can't give you directions, but I'm obligated to give you competent legal advice. And that's what we always tried to do. And I think that's, that's the mission of agency attorneys. And they must do so with the ethical considerations in mind. The agency attorneys must be free to exercise their independent legal judgment in forming opinions and providing advice and legal services as they, as they zealously represent their agencies. I think the worst case scenario I could envision under this system with exempt attorneys is that a director would say, I want a legal opinion that says I can do this, when the attorney knows perfectly well that that's probably not going to be allowable. So that's an extreme influence. Undue influence can be otherwise more subtle. And we would simply ask that the, that the committee ban the statute to strike that provision that would apply to attorneys and allow the status quo to continue because it's, it's not clear to me that there is any great problem that needs to be addressed. And with that, I'd be glad to take questions.



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**BREWER:** Well, thank you for your testimony. Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you your testimony today. A lot of respect for the bar, although I do have some questions for you regarding the position that the bar has taken on this, which I will tell you on the outset I'm, I'm actually fairly troubled by. But let me at least get out on the table your objections, because you're here opposed, correct?

**MICHAEL RUMBAUGH:** Correct.

**HILGERS:** The objections I hear, and I want to be fair, so I want to make sure I get them all, is that you think that this will be, this will put a limitation on the ability for them to zealously represent their clients. Is that a fair--

**MICHAEL RUMBAUGH:** It could. I mean, it could, could, it could provide the atmosphere where incentives are in place for them to skew their legal opinions in order to protect their employment.

**HILGERS:** OK. And the other one, and then-- and so as an example, so not necessarily as a-- and again, I just want to get your arguments as-- I want to fairly understand your arguments. You used the example as maybe someone asking an attorney for a legal opinion that doesn't, isn't consistent with what they-- with would be what they would view as, you know, the accurate representation of law or following known ethical responsibilities to give good legal advice. Would that be an example of, of the potential impact that the bill would have?

**MICHAEL RUMBAUGH:** I tried to characterize that as an extreme example. I've never seen anything like that.

**HILGERS:** Fair.

**MICHAEL RUMBAUGH:** It's, it's, it's in the realm of possibilities then because I can tell you if I'm an agency director, I want this opinion or you're gone.

**HILGERS:** Fair.

**MICHAEL RUMBAUGH:** You'll just pack up your desk and you'll be escorted out the building.

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**HILGERS:** And I don't want it, I don't want to suggest that you're saying that that's likely or common or anything else.

**MICHAEL RUMBAUGH:** No.

**HILGERS:** But it could. So here is, I guess, here is, I have several concerns with, with the opposition as expressed. One is that the instance you identified could happen in any profession and in any instance in which an attorney is hired by a client. The client could say, I want that opinion. However, those same restrictions that we are, that the bill would purport to remove do not apply in other instances. So why is it that that can be allowed in the context of a general counsel for a company or an outside counsel for a, for a client but not in this instance?

**MICHAEL RUMBAUGH:** I make the distinction very clearly, Senator, between private employment in the private sector and government employment. And I know that's maybe not always popular. But when the government takes actions, historically the case law has said that employees are entitled to due process. In other words, when I was functioning as an attorney under the classified system I couldn't be fired just because somebody decided Monday that they just didn't like the way I was operating, unless it could be shown that there was just cause and that I was doing things improperly such that there would be good cause for dismissal. But I have due process rights. I could appeal, I could not ask for reviews and all that sort of thing. And that's the kind of protections that attach to most classified state employee positions.

**HILGERS:** Also-- if you have more to say, I don't mean to cut you off. So I guess that goes to the crux of my question, which is-- or my concern, which is that I think there is a deep history in Nebraska ethical rules, the ethical rules around the country that say the client has the right to choose their attorney. And that, and in fact, in many states, and I think Nebraska is one of them, restrictions on the ability of the client to, to hire an attorney such as a non-compete clause are void as against public policy. But this provision that currently exists, in my view, is an absolute restriction on the client's ability to hire their counsel. Now, I hear what you're saying in terms of due process rights and state employees, and I get that entirely. But as an attorney, I view those two things as in conflict. And ultimately, as I hear the bar's opposition, the ethical-- the, the right of a client, of a client to hire their

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attorney is trumped by a public due process right that might exist. And that, that gives me great pause. I'll let you respond to that.

**MICHAEL RUMBAUGH:** And I understand and appreciate that, Senator. I, I would only respond by saying that it's my understanding that most chief legal counsel, if not all chief legal counsel positions in state government, are already exempt such that agency heads can hire whoever they want to head their legal office. What this bill does is reach down into the level of staff attorneys that would be reporting to that chief attorney, who would be the primary connection with the agency head, and these staff attorneys perform day-to-day work, you know, as assigned. But those people are hired then unusually by the chief attorney, or if they're already in existence, on staff, then they continue, they carry over.

**HILGERS:** So you explain that, why that distinction makes a difference in this case. In other words, if you-- the head attorney can be-- and I'm not being obtuse, or intentionally so, at least-- if the head attorney can be exempt, why, why would the staff-- why would it be problematic if one attorney can be exempt but not the other one?

**MICHAEL RUMBAUGH:** Well, I think historically the exemption business and excluding people from the protections of the state personnel system has not reached down to the level that we're talking about here in terms of the, the relative pay grades and the job titles and those sorts of things. Somewhat lower-level employees have always been part of the system. And then there was the trend to move the agency counsel, the chief counsel into an exempt position. So that, just as you're pointing out, that the agency head would be free to hire and fire as they, as the wished. But it just wasn't something that extended down to that level. Recruiting and retaining attorneys that want that security and want that protection so that they can't be arbitrarily fired because of their private political views or any other things that they're involved with. There's a lot of people that like that particular protection, and it's something that we think can-- to remove that can create a chilling effect on the ability of those lower-level people to exercise their independent legal judgment properly.

**HILGERS:** That's fair. And I would say-- and I do want to ask just a question or two about a related piece of this. I don't want to belabor this, but I do think it's really important. And I hear your argument saying, hey, this negative effect or effects could occur. I hear those and I'm not-- my argument is not that that might not happen, to be

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very clear. My argument is as, well, as, you know, I can't say my first day in law school, but as long as I've ever been attorney or been trained, the client gets to decide. The client gets to decide. And there's a long history going back for a long period time where these types of restrictions, even if they might have some benefit rights, some contractual benefit. Or maybe it will impact some chilling impact and some other instance don't trump that. And the fact that we have this now and, in fact, I was not aware of it until I read this bill and still-- I wasn't aware of it and it deeply troubled me that we even have it. And that's why I guess, and this isn't directed to you personally, by the way, any of this. I understand you're not a representative of the bar. I was a little concerned that the bar, of all entities, would come and not-- and be in opposition to something that impacts what I think is the client's bedrock right to hire their attorney. Now, you know, I'm going to say something about compensation, but if you want to respond to that, you certainly can. I don't want to have the last word. But on the compensation piece, just briefly, I guess I hear you. You're saying, as I understand it, hey, look, we think they should be paid more. There's another mechanism to pay them more. Is that fair?

**MICHAEL RUMBAUGH:** Yes.

**HILGERS:** That mechanism, as far as I can tell, has never been used, or I should-- not never. It has not been, that tool has not been used to, to raise their attorney salaries meaningfully compared to private sector salaries for decades. Fair?

**MICHAEL RUMBAUGH:** It used to be done by artificially manipulating the pay grade of the, of an attorney so that they could qualify for a higher salary. Because the salary, the salary range for even moderately experienced attorneys didn't really allow us to retain people that were high performers. And so we, our only alternative in those days was-- and I don't know what's going on now. But in those days, we just would have to have them try to have them reclassified to a higher position by manipulating their duties and that sort of thing.

**HILGERS:** Oh, go ahead. Sorry.

**MICHAEL RUMBAUGH:** I'm done.

**HILGERS:** OK, fair. I guess my, you know, I just, I hear the testimony that says-- and this rings true to me because I know government employees generally are paid less-- but I hear the testimony that

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says, hey, you know, the senior person in state, as an attorney in state government might make \$70,000, \$80,000, plus or minus a little bit. They might have well over 5 years' experience, maybe 10, 15, 20 years' experience. And I look at the, I look at the attorneys, the market in Nebraska, and even private sector jobs in Nebraska pay less than private sector jobs in Kansas City or Denver or Chicago certainly. But even more comparable markets than that, than even Des Moines. And yeah, we're saying you're 15 years in, you're at the peak of your earning potential, we're trying to recruit really talented people to advise HHS and their billion dollar organization. We're trying to advise HHS on how to navigate the incredibly complex and really important federal rules and regulations. And, but we're saying at the same time, we don't want to give you and your director a tool to try to go out and compete for talent. Now, I understand you're not saying they shouldn't be paid more. I don't want to-- I know you're not saying that. But that tool hasn't been exercised. This bill would give, as I understand it, the director a tool to go out and compete compensation-wise to try to get it. So why wouldn't-- I know you're still opposed to it, but that strikes me as another strong argument for this particular bill, because otherwise we're having these huge entities, big agencies, lots of money at stake, impacting a lot of lives around Nebraska, and we're not giving them the tools to go hire the best people they can. Would you agree? There's the question.

**MICHAEL RUMBAUGH:** I would agree that that would streamline and simplify the process but it would take-- at what cost? You remove all the protections that these people have. I ended up making a career in state government whereas I had originally thought I'd be there a couple of years and move on to private, because I started to really enjoy what I was doing. I used to appear in front of legislative committees on a regular basis when I was general counsel for the DSS. I had, I just, I got a lot of fulfillment out a lot of the things that I was able to do, including working with the Attorney General's Office on litigation, all those sorts of things before I was even over there permanently. And so I, you know, I found that there are ways-- you're not always, it's not always just monetary compensation. That's certainly a factor, but there are other, there are other elements that come into play in terms of job satisfaction working within the government, which I found to be rather fulfilling.

**HILGERS:** And I would agree. I would say there are many fine attorneys and public servants, and they take a financial sacrifice every day. I

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certainly understand that wouldn't disagree with that. In any event, thank you very much for being here and for your testimony.

**MICHAEL RUMBAUGH:** My pleasure. I should also add, I think, if I might, Chairman, that we, the association is perfectly willing to work with the director or Senator Lowe or whomever to see if there is any other, other options here or any other approaches that might be taken. We want to express that flexibility to you.

**HILGERS:** Thank you.

**BREWER:** Additional questions? Oh.

**M. HANSEN:** Thank you, Chairman Brewer. So I don't have a question to start off, but after listening to Senator Hilgers' line of questioning, I started developing some. So I kind of wanted to start off, so can you remind me again what your background is? Because you worked as an attorney in state government, correct?

**MICHAEL RUMBAUGH:** Right. I was started out as a staff attorney with the Department of Public Welfare. And then when that turned into the Department of Social Services I was general counsel of that agency supervising 16 lawyers and 3 investigators and support staff. And then when we went into the HHS initially, configuration, I was a team leader for protection and safety, supervising a number of attorneys there. And then I went to the Attorney General's Office where I set up the Medicaid Fraud Control Unit initially, supervised people there, and then moved over into civil litigation.

**M. HANSEN:** All right. So, so I guess this level of attorneys who are already not exempt. Kind of, I know we've been talking about largely these kind of entry level attorneys or younger attorneys, less senior attorneys, however we want to frame it. What-- I guess, what are their day-to-day, who is giving them, assigning them the tasks and duties that they're filling on a day-to-day basis?

**MICHAEL RUMBAUGH:** Well, it depends on the size of the office, obviously, because you can have mid-level supervisors, and we did back at the Department of Social Services. We would have certain people, like got my, my assistant general counsel was in charge of the hearing process for appeals that were handled within the office. And he would assign responsibilities to the staff attorneys for what cases they were going to handle, when they would conduct hearings. I would personally make assignments to other top level staff that had people

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working under them for child welfare. And so that way on a day-to-day basis it just kind of trickles down in some respects.

**M. HANSEN:** And when you say hearings, so what exactly, like, so what role are they playing in that hearing?

**MICHAEL RUMBAUGH:** Well, and again, this is, this goes back a number of years. So you have to understand we're talking about the '80s and early '90s. At that time, the agency conducted all of its own administrative appeals that were filed by welfare recipients, by Medicaid providers, and others that are our legal staff handled those administrative hearings in-house. Now I think they have a separate arm of the agency that does that, that I'm not sure what connection it has with the legal office but they, it's-- and because of the size of things now there it's had to be changed.

**M. HANSEN:** OK. And I guess-- thank you. Thank you for that background, that helps. I guess that kind of leads up to my question that kind of Senator Hilgers line of questioning, you know, is, is the concept of the attorney-client relationship. And I was trying to apply that kind of concept from the private sector to the public sector in the same as in, you know, the-- in the same way, you know, if you had a personal injury case, it's very clear what the client is, you know? And they're hiring an attorney and can make a decision on that. But when there's, say, a situation where the state is involved and has an attorney from one department, it's not necessarily something that's created and assigned and by the agency director. And so I was trying to figure out how you applied that kind of same attorney-client framework to just that individual entry level employee.

**MICHAEL RUMBAUGH:** Well, an example might have been that my director back in the day would have come to me and said, you know, we need a legal opinion on this policy that we're looking at implementing in the Medicaid program.

**M. HANSEN:** Sure.

**MICHAEL RUMBAUGH:** And we would meet and we would flesh out exactly what was being pursued. And then I would potentially assign one or more attorneys to do research and give me preliminary opinions on it, you know, looking at the federal requirements and everything else. But so it would, it would it would operate much like a private law office. I was working directly with the director and then I would go back to my staff and delegate responsibilities to them to conduct some of the

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preliminary work that we needed to do to come up with the opinion being requested.

**M. HANSEN:** OK. I was just-- and I appreciated Senator Hilgers line of questioning. I was just trying to, I guess, conceptualize how you factored in the attorney-client relationship. Because at the end of the day, you know, the powers vested in an agency head are somewhat the powers of the Executive Branch vested in a center person. And the Executive Branch is the powers of the people invested in the, the branch of government. So kind of the concept of just saying, you know, you know, the CEO of HHS is the client. Well, the CEO of HHS is a statutorily created position at the end of the day. They're not, you know, that could, that could be abolished overnight if we the Legislature so choose. It's not really the base interests, but it's the base interests of the kind of the people funneled through the system and it got to that point.

**MICHAEL RUMBAUGH:** I always looked at it as though my primary client was the agency as represented by the director. And obviously the agency is an amorphous concept that doesn't have independent thinking going on. It comes down to the people involved. But, but the directors were, I considered them to be in essence my clients. And, you know, I thought it was my job to try to further their interests to the best to the extent I could ethically without unduly disregarding the legalities of the situation that I uncovered as I look at things. But we were always able to do those things. And having those attorneys that were on my staff under, under protection, you know, was never a problem.

**M. HANSEN:** Thank you. I was largely just thinking out loud here. So I appreciate your, your help and your humoring me.

**BREWER:** Thank you, Mr. Hansen. All right, hang on here. All right, you get one more try.

**HILGERS:** Well, it only-- because I think Senator Hansen's questions are good ones. I just think, especially for nonattorneys listening, but even for attorneys, I think, and to have the record clear. I do think that line of questioning is really valuable because the concept of who the client is in a big organization is sometimes, it's not intuitive. And I think your answer was dead on in the sense of, you know, if you represent company X you rep-- as an attorney. So if you're a junior attorney in company X, you don't represent the general counsel of company X, and you don't necessarily represent the CEO



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individual or not-- the CEO individually of company X. You represent company X through its representatives which, in that instance, would be the CEO. Or in the example you gave, the agency through its CEO. Is that-- did I state that accurately?

**MICHAEL RUMBAUGH:** I think that was accurate, yeah.

**HILGERS:** Yeah, so that, so I think that was very helpful. And I think, you know, for entities and companies that are not people, we talk about this a lot in the campaign finance context, but it's also true in other contexts. But they are represented by people and they, the law has a really good way of, of being able to handle that by saying the company is represented by entities and the ent-- the individual person-- I'm sorry, the individuals. The individuals themselves without that corporate hat on are not the clients, but they're representing the company which is the client. In this case, it would be the state agency might be the client, right.

**MICHAEL RUMBAUGH:** Right.

**HILGERS:** OK, thank you.

**MICHAEL RUMBAUGH:** And that's dead on with my analysis.

**HILGERS:** Yeah, thank you, I appreciate that. No more questions for me.

**BREWER:** Senator La Grone.

**LA GRONE:** Thank you, Mr. Chairman. And I'll get away from the client analysis. Just a real quick one that I'm not-- and thank you for being here and thank you for the work that you've given our state in the past and that you do by being involved in the bar association currently. There's one part of your argument that you mentioned that I'm having a little bit of difficulty with, so I was wondering if you could flesh out a little more. And that is you, that your nightmare scenario of, of this state attorney altering the opinion because if you don't do this you're fired type of thing. And as you mentioned, there are already ethical rules that, that, that would cause conflicts with. So I guess my question is, why wouldn't those-- because myself having previously been an at-will government attorney, I'm not seeing how that ill wouldn't already be prevented by the ethical rules when those would impact your livelihood rather than just a current position. So I was wondering if you could flesh that out a little more.

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**MICHAEL RUMBAUGH:** Well, yeah, I guess I don't want to speculate too much. But I think that, I think in reality the scenarios would probably be much more subtle. Where the expectations of the agency head were communicated and nobody was ordered to do anything but it was just kind of, well, we really want to do this and we really want your support on this. And then, and then the attorney would be in the dilemma. If the attorney was of the, of the opinion after researching it properly that that course of action was not legally sustainable then the attorney would be in the position of having to decide, you know, what, what they were going to do in terms of whether you tell the, tell the director that I can't, just can't do that. Or whether they cave and, because they don't want to lose their employment, they go ahead and fudge something. But, you know, I don't, I think most attorneys would operate ethically, but I don't know why they should have to be under that pressure. I don't know why that kind of a scenario and that kind of a dynamic ought to be allowed to develop. Because over time, I think that's what you could end up with. And if they don't have the protections of due process to be protected from arbitrary and capricious actions by the agency heads, why, it's just, they're just kind of out there on their own. And that's one of our primary concerns is that we think that these protections are appropriate and don't really create a big barrier.

**LA GRONE:** OK. See, my struggle with that is because with the legal counsels in the Legislature and the attorney, the Attorney General's Office already operate. I think we've seen the ethical rules be more than sufficient. And so that's why I'm just seeing a disconnect there is all, but that's fine.

**MICHAEL RUMBAUGH:** And I think in agency scenarios it's a little bit different, too, than it is in the AG's Office where I was. And I was at-will while I was there. But you didn't really-- you were, you were representing agencies in court but you weren't advising them on policy questions and that sort of thing that in-house counsel does. That's, that's the essence of in-house counsel, is providing that legal guidance day to day on what's going on and what the director wants to do.

**LA GRONE:** And that, and so if we're restricting it to that, just that type of counsel analysis, that's what, you know, the counsels of the Legislature do here every day. So that's why I'm just seeing the disconnect.

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**BREWER:** Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. So I'm going to kind of walk back because I still have some general questions, and they are questions and not statements. So I'm reading the sentence from one of the proponents. The objective is to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. But then I see them talking about this proposal is to make our talent management practices more competitive. I don't understand how it makes a position more competitive when you're basically punishing them by taking away their due process and their protections that they would have in other places. Can you explain to me, since you seem to be very well-versed in this, how that makes it more competitive?

**MICHAEL RUMBAUGH:** Well--

**BLOOD:** I'm really puzzled by that statement.

**MICHAEL RUMBAUGH:** I am too. I mean, I guess that's why I'm here opposition on behalf of the bar association is that we don't, with regard to attorneys-- now, again, the policymakers over on the deputy director side, we're not commenting on that because that's a whole different kettle of fish.

**BLOOD:** Right.

**MICHAEL RUMBAUGH:** But with regard to the attorneys, I, I don't-- I mean, I guess if you just get rid of the rules and you can just do whatever you want on a whim, and by administrative fee out, I mean, I guess you could argue, arguably say that that makes it easier to competitively hire people.

**BLOOD:** So you're saying it makes it more competitive. You mean that the fact that you could lose your job at, at any time makes you more competitive or-- I'm still confused with that sentence or that.

**MICHAEL RUMBAUGH:** Well--

**BLOOD:** So like you run in fear and you do a better job? Or is it more competitive because you always know there's gonna be somebody losing their job eventually and you can get another job. I don't understand what that sentence means.

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**MICHAEL RUMBAUGH:** Well, I don't either. I, you know, that's why we're in opposition. I just don't-- that doesn't click for me with regard to what I know about the functioning of agency attorneys and those that do so every day under the, under the classified system of state personnel. I-- when you hire people in state personnel you, that's competitive. I mean you--

**BLOOD:** Right.

**MICHAEL RUMBAUGH:** They bring in a slate of people and you interview people, and you try to pick your best qualified candidates but.

**BLOOD:** One more question, and it's a quick question. So and then they're calling you a knowledgeable worker. How, how long do you have to go to school for to be an attorney in Nebraska?

**MICHAEL RUMBAUGH:** Well, usually seven years.

**BLOOD:** Seven years. And that would make you a knowledgeable worker, right? Is that true, based on this?

**MICHAEL RUMBAUGH:** I did-- I'm sorry, I didn't follow your question.

**BLOOD:** So they're calling people who do legal work in, in Nebraska that would be, if they are hired the worker type is "knowledgeable worker" in fields requiring legal and policy acumen.

**MICHAEL RUMBAUGH:** They would, they would have a fundamental level of knowledge in that area. And obviously to be developed as they go along.

**BLOOD:** And so it says that your performance appraisal is more subjective than other worker types. Why would that be? I truly am just trying to understand that because this doesn't make sense to me at all.

**MICHAEL RUMBAUGH:** And I'm kind of with you on that.

**BLOOD:** Well, you've had seven years of school as an attorney and been an attorney for how long? Decades? Since you were like 12, right? So yeah, I appreciate the help. I just, I'm-- while everybody is talking and doing the lawyer thing, I'm looking up terms and trying to figure out how this plays out. And I keep coming back to this doesn't make a lot of sense to me. It just seems like kind of what you said, and that may not indeed be the case but, you know, I do question the reasoning

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behind it. And you've helped me out in the fact that you say it doesn't make sense to you either. So I'm going to be really careful because I'm not here to make statements, I want it to be a question. So then the question I have you'd answered. So thank you.

**MICHAEL RUMBAUGH:** You're welcome. Thank you, Senator.

**BREWER:** All right. Just a couple of quick general questions, since you're here. Is it safe to say you're representing the bar association?

**MICHAEL RUMBAUGH:** Yes, sir.

**BREWER:** How, do you know how many attorneys work in state government for the state of Nebraska, ballpark?

**MICHAEL RUMBAUGH:** Hundreds.

**BREWER:** Hundreds. And, and is the bar association, is that mandatory for everyone to be a part of that or is that optional? How does that work?

**MICHAEL RUMBAUGH:** That's become optional because of a Supreme Court decision some years ago where the actual bar association itself, the association, you can join or not join. As, as an attorney there's always kind of some relationship there is the way I look at it. But you have to be licensed to practice. The licensing is governed by the Supreme Court.

**BREWER:** So if someone receives their degree, passes the bar, becomes an attorney, you don't have to be a member of the bar association. Is there a percentage of people that have completed all the requirements, became a lawyer and are members of the, of the bar? Is that a number that's out there somewhere?

**MICHAEL RUMBAUGH:** I'm sure it is, Senator. I'm not familiar with it. I don't know.

**BREWER:** And obviously is it pretty common if you work for the state of Nebraska as an attorney that you are a member of the bar? Or is that, again, it's optional so--

**MICHAEL RUMBAUGH:** It's optional if you want to pay the dues and take advantage of the benefits that accrue from that, which also includes

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CLEs and things like that. But there's a number of things that can come from that.

**BREWER:** You do realize that I think you've been mauled the hardest of anybody in quite a while here and you've done really well. Forty-one years. Thank you for your service. Any other questions? Thank you.

**MICHAEL RUMBAUGH:** Thank you, Senator. Safe travels.

**BREWER:** All right. OK, any other opponents? Any in the neutral? Senator Lowe, welcome back for your closing.

**LOWE:** Boy, would I like to waive closing.

**BREWER:** I bet you would. All right.

**LOWE:** Thank you, Chair. Thank you, Mr. Rumbaugh, for coming and speaking today. And Jason Jackson. A lot less speakers today than what I thought they were going to be. So this is good. Thank God we live in Nebraska. We have common sense here, and I think that rules very well with us. Iowa, Missouri, Kansas, Wyoming, and South Dakota all have something like this. Colorado and Nebraska are the only two that don't. I'd rather join those other states than join Colorado, stay with Colorado. I think Nebraska is a very common sense state. To your questioning, Senator Kolowski, it was stated this is not a union-busting measure. I believe we found out that they're not at-will employees. So I think that kind of answered one of your questions, Senator Blood.

**BLOOD:** Not really, but thank you.

**LOWE:** OK. Senator Hilgers, Senator Brewer, Senator Hansen, you're each chairmen of a committee. You hired your legal counsel. You made that decision on who you hired. You didn't have to accept who was in that position before, and I think you're grateful for that opportunity to do that. And I think that's what the directors would like to do. We want to do what's best for the state of Nebraska. We want to do best practices. We want the best people to complete our task that we have out before them. And I believe that's what this bill is attempting to do. Not all agencies of chief councils are exempt. The Department of Administrative Services is not exempt in this. So I'd like us all to take a weekend to think about it and come back and then vote green when we come back. Thank you very much.

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**BREWER:** All right, thank you for your closing. Senator Blood.

**BLOOD:** So why don't we want to be like Colorado? You weren't really clear on that point.

**LOWE:** I don't exactly agree with some of the things that they've done in the past.

**BLOOD:** Such as? I guess I'm confused that you refer to a state and there's no explanation. So I'm kind of curious why you don't want us to be like Colorado. That would help clarify to me what your closing statement meant.

**LOWE:** I don't agree with their marijuana policy, frankly.

**BLOOD:** OK.

**LOWE:** I think our ski resorts are better. And our cross-country skiing is much more fun.

**BLOOD:** That's humorous but not clarifying.

**LOWE:** I think I clarified that with my first remark.

**BLOOD:** Which is--

**LOWE:** The marijuana policy.

**BLOOD:** And so because they have a marijuana policy, we don't want to follow them when it comes at-will employees?

**LOWE:** I said I don't want to be. That's a personal--

**BLOOD:** But you-- OK. You understand that you're closing you said: Do we want to be like this state? Right?

**LOWE:** I said I would like to be like these other states.

**BLOOD:** But not like that state. So it's just a personal thing, not anything that we should consider?

**LOWE:** I said I would like this, yes.

**BLOOD:** All right. Interesting. Thank you.

**LOWE:** I believe I said that.

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**BREWER:** Additional questions. All right. Saying that, thank you for your closing. There are no letters in opposition, no letters in support. No letters. And with that, we will close on LB543 and close hearings for Government, Military and Veterans Affairs. Have a good weekend.