

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Government, Military and Veterans Affairs Committee March 20, 2019

**BREWER:** Good afternoon, ladies and gentlemen. Welcome to the Government, Military and Veterans Affairs Committee. My name is Tom Brewer. I represent the 43rd District, which is 13 counties of western Nebraska. Today, I would like to start the committee hearing by introductions of committee members starting on my right, Senator Blood.

**BLOOD:** Good afternoon, my name is Senator Carol Blood, and I represent western Bellevue, and southeastern Papillion, Nebraska.

**LOWE:** John Lowe, District 37, southeast half of Buffalo County. It is now drying out.

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

**La GRONE:** Andrew La Grone, District 49, Gretna, and northwest Sarpy County.

**HUNT:** And I am Megan Hunt, and I represent Midtown Omaha in District 8.

**BREWER:** To my right, Dick Clark, legal counsel. To my left, Julie Condon, the committee clerk. And our pages today, Kylie and Preston. So they'll be who you go to if you need to have copies made. Today, we're having a public hearing on LB581 and LB717. With that said, we have some administrative things to take care of. First off, be sure that your electronic devices are on silent and any other electronic devices are in the silent or off mode. The senators will be using electronic devices to find out when they're due to be in another committee hearing or pass information or do research. Let's see, if you are planning to have your attendance recorded, there are white sheets over on the table. If you are planning to testify, you'll need to do one of the green sheets and turn it into the committee clerk or to one of the pages. If you have materials to hand out remember that we're requesting 12 copies. If you don't have 12 copies, get your materials to a page and they will make copies for you. Letters that are submitted that will go into the official record need to be in by 5:00 p.m. the day prior. That letter should have your name, your address, the bill number, your position either for or against or neutral and that you want it to be part of the official record. Let's see, if you are planning to testify on a given bill we'd ask that you'd come into the front two rows when the bill is up so we have some

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idea on a head count. Be sure that when you're testifying you speak into the mike clearly, start by saying your name then spelling it. The sequence will be the presenter, followed by the proponents, opponents, and those in the neutral, and then the closing by the presenter. Today, we will use the five-minute light system, green for four, amber for one, and then to red. We'll also have an audible alarm in case you're not paying attention. With that said we will begin with LB518 [SIC], Senator Albrecht, and we have a substitute.

**LAUREN McCARTHY:** Hi. Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee, my name is Lauren McCarthy, that's L-a-u-r-e-n M-c-C-a-r-t-h-y, and I am the legislative aide for Senator Joni Albrecht, representing Legislative District 17, which includes Wayne, Thurston, and Dakota Counties. LB581 was introduced as a potential avenue to encourage accessible, uniform, and easy to understand budgets and financial reports of political subdivisions. The Nebraska Budget Act requires the governing body of political subdivisions to prepare a proposed budget statement on forms prescribed by the State Auditor. LB581 would amend the Budget Act to require proposed budget statements to be made in accordance with Generally Accepted Accounting Principles using the accrual basis. LB581 would offer a waiver to this requirement to subdivisions that have also been granted a waiver of audit requirements by the State Auditor. This exemption was included in an attempt to not impose a burden on smaller political subdivisions that already are not required to report to the State Auditor. The idea for this bill arose when Senator Albrecht became concerned with our ability to reduce the property tax burden without the public and sometimes even lawmakers having access to budget and financial statements that are easy to understand and clearly detail where tax dollars are coming from and where these tax dollars are going. With the exception of a few political subdivisions, including District 17's own South Sioux City, almost all political subdivisions in Nebraska report their financial statements on a cash basis. The cash basis of accounting recognizes revenues when cash is received and expenses when they are paid. Cash basis does not recognize accounts received or accounts payable. As I'm sure you can see, this can be problematic for lawmakers and the public alike as a financial report will not give a complete picture of the actual financial status of the political subdivision. Using an accrual basis of accounting would record revenues and expenses as they are earned regardless of when the money is actually received or paid. Accrual-based financial statements would give us a more realistic idea of the political subdivisions' financial

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status. A study by the National Association of Counties found that as of 2015, 32 states require counties to follow Generally Accepted Accounting Principles through statute. The study also reported that Nebraska is one of only two states that does not have a state statute or policy instructing counties how to report their annual financials. The Governmental Accounting Standards Board released a report in 2015 stating that 37 states require at least some of their political subdivisions to use Generally Accepted Accounting Principles, and that the market prefers this type of reporting. LB581 was introduced to first, determine why Nebraska does not align with the majority of the country when it comes to budget and financial statement reporting. And second, LB581 was introduced as a first step to finding a viable path to ensuring Nebraskans have access to uniform and easy to understand budget and financial reports. Changing accounting standards is a complex task that will require research and teamwork. Senator Albrecht is happy to work with the committee, the State Auditor's Office and the various political subdivisions to find a solution that brings accessible, uniform, and easy to understand budgets and financial reports. While you cannot ask me any questions about LB581 today, I am sure you have many. I am confident that the testifiers following me will be able to answer questions you have, but please feel free to reach out to Senator Albrecht or myself for any other questions after this hearing. Thank you.

**BREWER:** Thank you, Lauren, and I was going to remind them that only my staff gets abused if they present. [LAUGHTER] Thank you for that opening, and I would ask you if you're gonna stand by for closing but that wouldn't be necessary, would it?

**LAUREN McCARTHY:** Nope, I'm gonna go to the Judiciary Committee now.

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

**LAUREN McCARTHY:** Thank you, guys.

**BREWER:** All right, we will start with those proponents of LB581. Come on up.

**SARAH CURRY:** Hello, my name is Sarah Curry, S-a-r-a-h C-u-r-r-y, and I'm the policy director for the Platte Institute. A few years ago, I asked one of our interns to look up how much inheritance tax revenue was collected by the counties. Surprisingly this proved to be a very tedious task, and this young intern took most of the summer working 40-hour weeks to collect the information. And this is what sparked my

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interest in how local government accounting data could be more attainable. Over the last year, I have researched local accounting practices and states, reviewed academic literature on the issue, and also met with citizens and officials across Nebraska about their use of local financial documents. What I have found is that Nebraska is somewhat of an outlier in government accounting standards. Most states require local governments to comply with Generally Accepted Accounting Principles, or GAAP, where Nebraska mostly does not. Right now, most of Nebraska local governments are operating under a cash or modified accrual basis of accounting. And while these formats have value they do not tell the entire financial story. The arguments for using these methods is that they are easier for less qualified accounting staff to prepare and they require less staff which results in lower costs. These are justifiable, but I believe the consequences of these methods are more detrimental than their benefits. Accounting methods do not-- accounting methods not compliant with GAAP do not recognize the capital assets owned by a government nor do they measure true program costs or future obligations. For example, cash basis documents do not include promises to pay in the future like salaries and benefits. Using an accrual basis like GAAP will uncover noncash obligations and is beneficial in decision making and helping to control spending such as avoiding payments that have been deferred that could affect a budget the following year. Overall, cash and modified accrual methods focus on the short term and do not properly account for debt. A 2007 Government Accounting Standards Board, or GASB, study found that municipal debt costs were 14 to 25 basis points lower in states that required GAAP because the bond market users are more accustomed to using GAAP financial information. Another benefit of compliance with GAAP is that it establishes trust between taxpayers and the local government. In a time where local governments face scrutiny for high property taxes, GAAP compliance will improve accountability while also offering locally elected officials the tools they need to be good stewards of tax dollars. I believe the value of the benefits that result from following GAAP justify the associated costs. Our local governments cannot appropriately manage what they do not measure. I've had meetings on this subject with Auditor Janssen and his staff, Lieutenant Governor Foley, Nebraska NACO, the League of Nebraska Municipalities, and I've also reached out to GASB, as well as numerous accountants about this issue. I'm grateful that some of them are present, some of them are present today to testify and give you their perspectives. In addition to GAAP-compliant accounting being a worthy goal to work toward statewide, several local governments in Nebraska deserve acknowledgement for already going above and beyond the minimum

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requirements by complying with GAAP accounting. The NRDs use GAAP accounting as well as the cities of Beatrice, Lincoln, Norfolk, Omaha, Papillion, South Sioux City, Douglas County, which is the only county in the state, the University of Nebraska and the state of Nebraska are the ones that I've been able to document. These entities show that GAAP compliance is an achievable task that can be asked of other local governments of similar sizes. I've included with your testimony a map. This is from a national NACo research paper, and what it does is it shows the accounting standards used by the U.S. counties. And according to the map, Nebraska and South Dakota are the only states left where a majority of their counties follow only the very basic financial reporting standards. The states in blue comply with GASB standards, while the light orange states use a statement format that is regulated by their State Auditor or by their state. I've also included three charts that were provided to me by-- from GASB, and what this shows on these charts is the number of county governments required to follow GAAP accounting and then also local governments that are not county and then the last page there is school districts required to use GAAP accounting. And in Nebraska none of these are required to follow GAAP accounting. I'm happy to take any questions, and thank you to the committee for hearing my testimony.

**BREWER:** All right, so thank you for your testimony. There are gonna be-- the transcribers are gonna be asking me questions if I don't make sure and go through some of this. OK, GAAP, just the General Accepted Accounting Principles; GASB, Government Accounting Standards Board. But if I flip over to the other page-- when we use the--

**SARAH CURRY:** I spelled those out in the testimony.

**BREWER:** O-- OCBOA--

**SARAH CURRY:** NACO is-- so there's the Nebraska Association of County Officials, and then there's also the National Association of County Officials. And so I, I specified by saying Nebraska NACO and National NACo, so to differentiate between the two organizations.

**BREWER:** And just to make sure I got it right on the-- I'll just spell it, the O-- the OCBOA that stands for what again?

**SARAH CURRY:** The what-- where--

**BREWER:** On the, on the map.

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**SARAH CURRY:** Oh, you know I, I forgot. That was from there-- that was from National NACo study, and that was in the footnote. And I just wanted to include that for the committee so--

**BREWER:** OK,--

**SARAH CURRY:** -- I, I don't know.

**BREWER:** I've got a note here that--

**SARAH CURRY:** I can send that to your staff.

**BREWER:** --says Sarah Curry was a research bulldog and had all the answers.

**SARAH CURRY:** I'm sorry,--

**BREWER:** That's all right, don't do it again.

**SARAH CURRY:** --I'm letting you down.

**BREWER:** OK. Questions? Thank you for your testimony.

**SARAH CURRY:** Thank you. Do you need me to get your office what that means?

**BREWER:** If you could,--

**SARAH CURRY:** Yeah.

**BREWER:** --and that way when they come back and ask me I don't look confused.

**SARAH CURRY:** No worries, thank you.

**BREWER:** Even though I probably will be. OK. Additional testifiers that are proponents. Seeing none, we will transition to opponents. Welcome back to Government, Military and Veterans Affairs. We missed you.

**CHRISTY ABRAHAM:** Thank you, Senator Brewer, as I have missed all of you. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, representing the League of Nebraska Municipalities. And I just want to start by thanking, Senator Albrecht, and her staff Lauren for meeting with us yesterday to talk about this bill. The League's position right now is the green copy really is unworkable for us. And I, I think particularly for our smaller communities, this is an added cost that

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they just cannot afford right now. But in our conversations with Senator Albrecht, she indicated her intent to have an interim study on this issue and we are more than happy to be part of that team that's going to explore how we might change these standards. We've already had two communities, the city of Lincoln and the city of Stromsburg step up and say they'd be happy to be part of that team. So we're, we're very glad to be part of that. And just for the record, Senator Brewer, OCBOA stands for Other Comprehensive Basis of Accounting. So that just rolls off the tongue.

**BREWER:** It, it does, thank you.

**CHRISTY ABRAHAM:** You're very welcome. I'm happy to answer any questions.

**BREWER:** Well, you started off by, by answering that, and the fact that you know that is kind of impressive.

**CHRISTY ABRAHAM:** Yeah, I just had it in my head. No, I, I looked at the study that she referred to and it was in there.

**BREWER:** Oh, you cheated.

**CHRISTY ABRAHAM:** Yeah.

**BREWER:** OK, yes, Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. It's nice to see you again. I miss you over the interim. I don't see you as frequently.

**CHRISTY ABRAHAM:** We'll-- we'll just have to plan to get together. Let's do, let's do an interim study on, on accounting principles.

**BLOOD:** I'm gonna pass on that.

**CHRISTY ABRAHAM:** Oh, OK. [LAUGHTER]

**BLOOD:** So, so the first thing that comes to mind-- again, I'm putting on my municipality hat, because that's my past experience, is-- wouldn't this be a coding nightmare to start with for some of the municipalities, counties? You know how-- you know, what I'm talking about, how everything is coded, and, and if you switch from a cash basis to accrual and use specific software, don't you have to recode?

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**CHRISTY ABRAHAM:** And I apologize, Senator Blood, those words aren't what our communities are calling and expressing concern about is the, is the code necessarily it's that the clerks are saying-- I, I personally can do a cash basis accounting method, but I can't do accrual. We would need to hire a CPA or an accountant to do it--

**BLOOD:** Right,--

**CHRISTY ABRAHAM:** --because we just don't have the skill set to do it.

**BLOOD:** -- and that's true it takes a specific area-- a level of expertise.

**CHRISTY ABRAHAM:** Yes.

**BLOOD:** I'm thinking about added staff time and funding and that it's gonna be-- cost taxpayers money to make that transition is my concern. So you haven't heard that concern?

**CHRISTY ABRAHAM:** I'm sorry, the, the code-- the recoding-- I'm sorry, I have not heard that concern by--

**BLOOD:** No worries.

**CHRISTY ABRAHAM:** That doesn't mean it's not out there, Senator.

**BLOOD:** No worries. And then, how do they feel about the mod-- a modified accrual accounting? Because I know that some of the, the municipalities that we refer to is using cash basis accounting are really using the modified accrual system.

**CHRISTY ABRAHAM:** That is true. And I, I get the impression that some of what I would call our moderate-sized communities, like your first-class cities,

**BLOOD:** Um-hum.

**CHRISTY ABRAHAM:** --are using the modified accrual, so part cash basis part accrual.

**BLOOD:** Right.

**CHRISTY ABRAHAM:** And our larger communities, I think, use accrual as we understand from the Auditor's Office, because it helps their bond rating.

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**BLOOD:** Right.

**CHRISTY ABRAHAM:** Sometimes the bonding companies require more information in terms of their debt load and so they are using accrual. When you look at a city of Stromsburg, boy, that's not their main concern is what their bond rating is. So--

**BLOOD:** No, their, their concern is that the community understands what the budget means when they come to a city council meeting.

**CHRISTY ABRAHAM:** That's exactly correct.

**BLOOD:** So-- and you answered my bond question, so I'll mark that off my list.

**CHRISTY ABRAHAM:** Great.

**BLOOD:** Thank you.

**CHRISTY ABRAHAM:** You're very welcome. You sure you don't want to do an interim study on accounting?

**BLOOD:** I'll sleep on it.

**CHRISTY ABRAHAM:** OK, thank you.

**BREWER:** All right, anyone else have questions? Thank you, Christy.

**CHRISTY ABRAHAM:** Thank you so much.

**BREWER:** OK, additional people in opposition. Welcome to the Government, Military and Veterans Affairs.

**BETH BAZYN FERRELL:** Thank you. Good afternoon, Chairman Brewer and members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials, and I'm appearing in opposition to LB581. What you're receiving is a letter from Joann Fischer, she's the Knox County Clerk, and considering everything that's going on in the state she wasn't able to be here today but she asked me to share her comments with you. I think as you read her letter you'll see she makes a number of the same points that the League of Municipalities made-- excuse me, that cash basis is an easier process for county officials to use. It can be done without hiring additional staff and those are really the reasons that were in opposition to the bill. We are also

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very concerned about the cost that would be involved in any kind of a software conversion. If you ever have been involved in a software conversion, you know that it can be an expensive process. It can be a time-consuming process. And under the circumstances with what the counties are going to need to budget for infrastructure repairs after all of the flooding, we think that this is probably not the best use of county resources at this point. We'd be happy to be involved in an interim study, and we would encourage that if this is something that you'd like to pursue. I'd be happy to answer questions.

**BREWER:** Thank you for your testimony. And, yes, I'm sure that Joann is a little bit busy right now with everything going on. OK, questions? Seeing none, thank you. Let's see, the term outlier was used here so I'm anxious to hear.

**RUSS KARPISEK:** I was anxious to hear if you've missed me, too.

**BREWER:** We missed you. [LAUGHTER] Sorry, I, I--

**RUSS KARPISEK:** I really didn't think so. Thank you, Senator, anyway. For the record, my name is Russ Karpisek, R-u-s-s- K-a-r-p-i-s-e-k. I am the legislative liaison for State Auditor, Charlie Janssen. I do have to thank Ms. Curry and Senator Fox for coming in and talking to us about this bill. And again, kind of figuring out that maybe we can work on this over the interim. Ms. Curry did talk about the, the cities that do, do the modified accrual anyway, and those mainly are ones who own their own utilities and they do GAAP accounting on their own utilities. I suppose, again, I'm not sure why, but if you know that you're going to have to pay things back in the future. So as I understand it they usually do GAAP on that side but not for the other side. And, and, Senator, again you came, Senator Blood, from a, a bigger community that is probably why I don't understand the coding either coming from a smaller one, so maybe that's where-- where that is not being picked up. Ms. Curry also talked about budget forms are prescribed by the Auditor so they all look the same. The Auditor's Office has made the forms and you fill it in, everybody fills it in the same. Not the case with the audit forms. And, as we talked, that may be something that we can look at over the summer that all the forms would look the same, they're prescribed by the Auditors Office. If you want to find swimming pools across the state, maybe you go to page six, line three, and it's there. The reason that, that doesn't happen now is because everybody can make their own forms, every different CPA or city can fill it out how they want, as I understand it. Again, that is one way to go about it. And my understanding is one

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thing that they-- the Platte Institute would like to see and Senator Albrecht, that it would be easier to read for everyone to not have to dig through and find things. Our opinion is, is that accrual accounting would not help that because many states do-- that do use accrual accounting-- the State Auditor audits all the cities, counties, and so they use that one form because they do it all. Our state does not do that and I don't think you'd want to see the, the financial-- the fiscal note on that if we were to do all of the, the auditing across the state. There's a little language in the bill that we feel wouldn't work also. It talks about the, the people who would not have to use accrual accounting if they have a waiver. Well, that would be kind of-- you'd have to get the waiver first. And, and again that's just probably rewording. But right now with the cost to the communities, we don't think that it-- it's a good idea. Again, if-- I guess, our question was what, what do you really want out of this? And if it's-- if it is to be able to read the audits easier or be able to get-- write down so people can see what's really in there that aren't accountants, I think that we're very interested. I know we're very interested in transparency, and we would-- we are very interested in helping with an interim study and try to get to where they want to be. I'd be glad to try to take any questions.

**BREWER:** All right, thank you for your testimony. Now-- Russ, just out of curiosity, when you were on this side of the table what district did you represent?

**RUSS KARPISEK:** Thirty-two, Senator Brandt.

**BREWER:** Brandt, OK, thank you. Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. Just a question of clarification. Did you say Senator Fox at the beginning?

**RUSS KARPISEK:** Yes.

**BLOOD:** Who's Senator Fox?

**RUSS KARPISEK:** Nicole Fox, who is--

**BLOOD:** Oh, Senator Fox, all right.

**RUSS KARPISEK:** I guess I should have said former Senator Fox.

**BLOOD:** So she brought that to you as well?

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**RUSS KARPISEK:** Well, Ms. Curry and--

**BLOOD:** OK.

**RUSS KARPISEK:** --former Senator Fox came and met with us.

**BLOOD:** Former Senator, OK. I was trying to figure out who the heck you're talking about that make so much more sense. Thank you.

**RUSS KARPISEK:** I'm sorry, I saw the confusion on your face, but I'm so used to people--

**BLOOD:** I wasn't sure I heard,--

**RUSS KARPISEK:** looking at me like that. [LAUGHTER]

**BLOOD:** I wasn't sure I heard you correctly. I'm sorry for the RCA dog look, but, thank you.

**RUSS KARPISEK:** Thank you.

**BREWER:** OK, any other questions? And we did miss you, OK.

**RUSS KARPISEK:** OK, good, thank you. You must have shot at me and missed.

**BREWER:** No, I--

**RUSS KARPISEK:** Thank you.

**BREWER:** Just a moment of, of forgetfulness on my part. I won't do it again. All right, additional testifiers in opposition to LB581? Seeing none, are there any in neutral? Seeing none, that would mean we are gonna transition to letters, and on LB581, we have one proponent, five opponents, and none in the neutral. With that said, hand that over, and that over-- might need these.

**La GRONE:** All right, we'll-- so we will close our hearing on LB581. We'll now move to our hearing on LB717. Senator Brewer, welcome to your committee on Government, Military and Veterans Affairs.

**BREWER:** Thank you, Vice Chair La Grone and fellow members of the Government, Military and Veterans Affairs Committee, my name is Tom Brewer, T-o-m B-r-e-w-e-r, and I represent the 43rd District of the beautiful Nebraska Sandhills. I'm here to introduce LB717 for one very simple reason, I want to Nebraska taxpayers to get their money's worth

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when the state government enters a contract. LB717 will require automated monitoring of work on IT contracts worth more than \$100,000. The idea is that this monitoring would verify that the hour billed actually means an hour worked. I still think that accountability is very important. I still want Nebraska contracts to be transparent, and I think that contract work should be verified. But after talking to the Chief Information Officer and to some of our state agencies, I have some concerns about this bill. Among the things that I am concerned about that we're working on is I think there is a data security issue. There is a contract cost issue, and the federal compliance issue are all things that I have concerns about that are contained within this bill. I do not think that these concerns have been addressed at this point and that's why at this point I am-- I'm gonna have those that are here to testify hopefully give you more information. And, and I think at the, at the close, I would entertain questions. But again, this is a-- an IT contract issue, which some may be surprised but it's not my strong suit. Anyway, with that said, I, I will take any questions now that you might have.

**La GRONE:** Thank for your opening. Are there any questions? Seeing none, I'm assuming you'll be sticking around for closing?

**BREWER:** I will.

**La GRONE:** We'll now move to proponents. We'll take our first proponent testifier. Welcome to the Government Committee.

**BILLY KENNY:** Thank you. My name is Billy Kenny. I-- that's B-i-l-l-y K-e-n-n-y. I represent TransparentBusiness. We are a remote work force management platform. We work with almost 9,000 customers. We work with companies such as Microsoft, Google, Facebook. Our subsidiary is SheWorks, and SheWorks is a platform that enables women who have left the work force to reenter remotely and work with companies looking for their services. Last summer, we entered an agreement with EY to create one hun-- one hundred thousand of these jobs by 2020 for women who want to reenter the work force. I'm here today because we support this legislation because it protects taxpayers' money by giving the state the tools to prevent fraud, waste, and abuse from overbilling on computer-based work billed by the hour. Currently, the state has no ability to verify this work. They must rely on self-certification of these contractors by providing timesheets and other materials that would verify this work but it's self-certified. This gives them the ability to verify every dollar that is spent on an invoice, is a dollar that is spent on work. By providing this ability to verify this

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legislation makes contractors accountable for all their work as they are in any other contract with the state. It's important to note this comes at no cost to the state. The, the cost is assumed by the contractor. And we believe that the cost is actually a savings for the contractor because we are automating what is a manual process. It's important also to note that the software is installed on the computers of contractors. There is no software installed on any state computers. The state does not need any software to access the information, they access it through a secure portal with a password behind the firewall or independent cloud that the-- is approved by the state-- that-- the screenshot to upload it to. This is not spyware. Spyware is something that tries to find information by concealing it. This is completely transparent and the legislation itself makes the process of billing for this work transparent. It's important to understand the legislation not only, only changes the method of collecting this information, it does not mandate it. So by automating what is a manual process, it is saving the state as well money, and by saving the contractor this money that would be spent on administrative work, it is giving that money to be put into the project to produce a better product for the state. This is-- the software itself is completely controlled by the worker. So the software would be on the computer of the worker. It is turned on and turned off by the worker. They have the ability to review the screenshots every three minutes, six minutes, whatever is determined by the state and the contractor for the time needed to ver-- for them to review those screenshots. They also have the ability to look at it when it is uploaded to their diary and they can look at it before the-- it is transferred to the state or the state has the ability to look at it. That can be a day, a week, it's determined by the contractor in the state themselves. In closing, I'd like to say that fraud is, is, is an issue that has been seen across the country and has been identified by organizations such as Accenture which says: fraud, waste, and abuse work like enemies of the state robbing the government agencies and compromising the delivery of public services for the future. Deloitte has called for the use of this type of software saying: a prevention-focused strategy can be doubly lucrative. Prevention saves not just the cost of overpayments, but also the cost of the chase. Potential fraud-- fraudsters moreover are often discouraged from committing fraud, abuse, if they know that their behavior is being watched. It is well known among program integrity professionals that prevention is much more cost effective than after-the-fact recovery. And I'd also like to say that the software itself is highly customizable. And what that means is, we know there are a lot of concerns about this. We can customize it to

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meet those concerns. We've not talked to any of those that have raised them, they've not come to us, but we would love to sit down, go over all the concerns, demonstrate how this works, address those concerns, customize the software in a way that gives the state the ability to protect the taxpayer money. That's what this legislation does and can be customized to, to meet any concerns that have already been raised. Thank you.

**La GRONE:** And thank you for your testimony. Are there any questions?  
Senator Blood.

**BLOOD:** Thank you, Vice Chair La Grone, and Mr. Kenny, yes?

**BILLY KENNY:** Um-hum, yes.

**BLOOD:** OK, so Mr. Kenny, can you walk me through a few things? Because I've been reading up on this for several days, and I just have a lot of questions. So you are with the organization who sells the software, yes?

**BILLY KENNY:** We are one of several companies that do.

**BLOOD:** That sell the software?

**BILLY KENNY:** Correct, um-hum.

**BLOOD:** OK, so what-- outside of this organization it sounds like they have subcompanies that sell it, so you represent that company. Is that correct?

**BILLY KENNY:** Well, we are the one that does sell it,--

**BLOOD:** OK.

**BILLY KENNY:** --so we are of several that do.

**BLOOD:** OK, so how many states have you been to since this, this software has been created to present bills like this? Is this [INAUDIBLE] the first that you've come to?

**BILLY KENNY:** Currently, there's bills in 30 states.

**BLOOD:** So 30 states, has it all happened this year?

**BILLY KENNY:** It started last year, last March.

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**BLOOD:** And who's your competition? Who else makes this software?

**BILLY KENNY:** There are a number of companies. There's probably half a dozen. We work as one of them and the other thing is this is the type of software that-- software--

**BLOOD:** Can you give me some of the companies that compete with you?

**BILLY KENNY:** We work as one. Others, I can be happy to supply them to you.

**BLOOD:** Because I, I haven't really found any that do truly what you say yours does. And I find that concerning.

**BILLY KENNY:** OK, um-hum.

**BLOOD:** And-- but I'd be happy to, to wait for that information--

**BILLY KENNY:** Yes, I will definitely get that to you.

**BLOOD:** --since you say that there is people--

**BILLY KENNY:** There are.

**BLOOD:** --that truly do compete with you.

**BILLY KENNY:** Um-hum.

**BLOOD:** And then you said that the cost would be passed on to, to the engineers and contractors--

**BILLY KENNY:** Well, just to be clear if I may, this only applies to IT, so engineers. This does not apply to architects, this does not apply to-- so it's just IT contracts.

**BLOOD:** OK, so on the IT contracts, if the cost falls on them, do we have a lot of letters of support saying that they're very enthusiastically supporting this? Have you got that in that packet?

**BILLY KENNY:** I have not seen that, no I'm not sure.

**BLOOD:** Ok, so as far as-- so it's your impression, not necessarily anything that we can prove that people are in support of this?

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**BILLY KENNY:** Right, but if, if I can kind of explain it to you a little bit why we believe that?

**BLOOD:** Absolutely. Yeah, I'm looking for answers.

**BILLY KENNY:** If you-- so all the cost of our support is a dollar per day per user, so that's roughly 30 dollars a month. Right now the way that a contract provides this backup or this information to verify the work is through timesheets, calendars, things like that, that requires manual input. So a worker will input the hours they've worked and a description of that work that they've done. That takes roughly three minutes a day, roughly 15 minutes a week, and that's on-- that's, that's time that is billed to the state. So roughly 15 minutes a week is roughly an hour a month. So an hour a month if you're billing 60 dollars an hour that's 60 dollars. Ours cost 30. So we believe by automating this process, by making it more efficient, it in fact will save time and money for the contractor.

**BLOOD:** Walk me through the process of what IT will be inputting into the software. What will they be putting into the software?

**BILLY KENNY:** They-- actually the way it works is in the beginning of the contract, the state and the contractor will identify Web sites and tools and applications that will be used on the project. Those are input into the software, and what the, what the software does-- and if I could ask, if you look in your packet there's a series of screenshots that are here and will help with this. So what goes into the software are those approved if you will, Web sites, applications, and other tools that are needed to fulfill the contract. What this software then does is it takes a screenshot and then it can verify whether that, that screenshot was related to that work. What the state will see is in this first page, the first thing they will see is a-- is this screen and what this is, is all the workers that are working on the project here, and this shows roughly three weeks and two days of work. Essentially one thou-- one thousand hours of work is captured on this one screen. If you look up above, there's three buttons: productive, undetermined, and questionable. Productive-- when you press that button shows the time that was worked on those sites that were approved and input into the software. So if you look at the second screen, that they will see when they press that button, it's all those, all those hours that remain in the darker blue, those are approved work that means that that work has been verified. So by pressing one button, the state has verified 700 hours of work. And so it's a very simple process by, by this process. The, the workers

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themselves do not have to do anything in terms of putting this information in. They-- they're made aware when a screenshot it's taken. They have the ability to review it. They have the ability to eliminate it. But if-- they do not have to input anything to do this. That's where the savings come from.

**BLOOD:** They don't have input, but they have to relay the information.

**BILLY KENNY:** Well, they-- they're working--

**BLOOD:** I mean, you can't just guess on what that worker's done, right?

**BILLY KENNY:** Well, the screenshot tells you that information.

**BLOOD:** What about when they're in the field?

**BILLY KENNY:** The legislation calls for it to only apply to work on a computer billed by the hour. So that other work, when they're in the field or elsewhere, if they take a phone call-- on the software again, on the first page, you'll see a button that says manual time, you have the opportunity to put in time that's manually, manually done. So if you are working on the project, you have to call the state agency for some information, you have an hour conversation, you can then put that in manually, so that, that will be recorded in there and the state will know that's what was done during that time.

**BLOOD:** I, I appreciate great software, but I find-- I have to be very frank, and I mean this very respectfully, I find some of this very suspect. You've been to 30 states, and you're obviously working with lobbyists. Who is support-- who is paying our-- the lobbyists in the different states? Is it your organization?

**BILLY KENNY:** It's our organization, yes.

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

**BILLY KENNY:** Um-hum.

**La GRONE:** Thank you, Senator Blood. Senator Hilgers.

**HILGERS:** Thank you, Vice Chair. Thank you for being here. I just had a couple of questions regarding the functionality. So is, is it owned? Is it a Web browser that's-- it's not like Google Chrome, it's a-- is it your--

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**BILLY KENNY:** The software or--

**HILGERS:** The software.

**BILLY KENNY:** Yes.

**HILGERS:** You're saying that there's a certain-- I took it that-- you didn't say browser, but I sort of inferred that you were describing a browser.

**BILLY KENNY:** Well, the software is then-- is downloaded on the worker's computer, OK. And then the information is uploaded either behind a firewall of the contractor or to an independent server like Amazon Web Server-- Web Services.

**HILGERS:** So it takes-- well, but-- so I'm just talking about the interface of what it takes a screenshot of. What does it a screenshot of?

**BILLY KENNY:** Of the actual computer of the worker.

**HILGERS:** But-- so-- but, it's not limited to some-- the four corners of say Google browser or some software? Whatever, whatever the--

**BILLY KENNY:** It will work with whatever browser-- whatever's on the computer, it will work with that.

**HILGERS:** So-- and I'm not-- I'm asking for a particular reason if it-- you know, you have a-- if you have a Web browser that's taking up half of your screen that takes a screenshot that gets whatever is behind the Web browser plus the Web browser-- the whole screen in other words?

**BILLY KENNY:** It would take the whole screen.

**HILGERS:** It would probably be like a control print on my computer.

**BILLY KENNY:** Um-hum.

**HILGERS:** So how-- so I'm thinking this would apply to attorneys as well, correct?

**BILLY KENNY:** No, it does not, only Information Technology contracts.

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**HILGERS:** I thought I read-- does it-- it does not apply to time for attorneys. OK, so what-- I guess, there is-- you said it wasn't-- it's not spyware,--

**BILLY KENNY:** Um-hum.

**HILGERS:** --but I sort of took that to mean when you describe it that what you meant was that spyware is something that the user doesn't know exists.

**BILLY KENNY:** Exactly.

**HILGERS:** They know it exists. But I think the spyware is-- takes the-- tracks your movements and what you do on your computer. So is it only limited to a screenshot, does it take keystrokes?

**BILLY KENNY:** It counts keystrokes, but it does not record the content of the keystrokes. And if you look again on this, on these sheets, on number three and this shows questionable, and you'll see the solitaire, but you'll see here a series of bars, a bar chart if you will, that's showing the counting of keystrokes, so there's no content associated. So you can't identify passwords, you can't identify anything that is-- comes from those keystrokes, just the actual number of keystrokes.

**HILGERS:** Well, how do-- I mean, does the software-- I mean, the software is tracking the actual keystrokes, right? So--

**BILLY KENNY:** It's counting them.

**HILGERS:** Well, but is it, is it storing the-- what letters you're hitting? I mean, so I just hit LLL--

**BILLY KENNY:** No, it just, it just stores the number of times you've hit a, a key.

**HILGERS:** A, a key so you can just hit L [INAUDIBLE]--

**BILLY KENNY:** You can hit L, they won't-- it does not know what key it is.

**HILGERS:** What about other aspects of it? I mean, what if someone's got personal-- Social Security number or something else that's on their screen?

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**BILLY KENNY:** So one thing that, that software does that's important is if you look again on this third screen, you'll see in the bottom second row of screenshots, what appears to be a screenshot that's, that's blurred, and what that is, is the state and the contract-- contractor can agree that certain sites or applications can be blurred. And what that means is that the software will identify the site but will not show the content. And that's how you can protect against proprietary content, anything related to HIPAA or something like that. And what happens is if you turn to the fourth sheet and look at the information-- this is another way to present the same information. You'll see this pie chart. And the pie chart shows the percentage of work done by the worker on the various sites and applications. You'll see a number of circles with colors. What it would show if, if it was-- if a screen was blur-- blurred out-- let's say, it was on the Internet or LexisNexis or something like that, it would show the percentage of time the person spent on that but not the, the, the actual content of that. So it gives them the insurance that they did work on that site which is approved, it just doesn't reveal the information.

**HILGERS:** So that-- the negotiation of the blurred out sites would be done by the contractor and the state?

**BILLY KENNY:** Correct.

**HILGERS:** What sort of input, if any, would the employee have, the actual worker?

**BILLY KENNY:** I guess the, the contractor would want to know the, the actual sites and applications and probably would talk to their workers to find out if they captured all the, the ones they want to use.

**HILGERS:** Are there any data? I mean, it seems like there's potential for data security issues here. Have you had any in other states that have [INAUDIBLE] this software?

**BILLY KENNY:** No, and I think-- you know, one of the things that we think is important is that this-- all the screenshots and information are kept by the contractor. So the security that the contractor has which is approved by the state is what is used to protect this, and they have full control. The access that the state has is through a portal, password protected, and is-- they can only look at the information, they cannot download it.

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**HILGERS:** Can they print screen it?

**BILLY KENNY:** I'm sorry?

**HILGERS:** Can the state print-- I mean, control--

**BILLY KENNY:** No, they cannot.

**HILGERS:** They could take a picture of it with their camera phone?

**BILLY KENNY:** Possibly.

**HILGERS:** OK, thank you.

**BILLY KENNY:** Um-hum.

**La GRONE:** Thank you, Senator Hilgers. Senator Lowe.

**LOWE:** Thank you, Vice Chair. And thanks for coming today and testifying. Senator Hilgers brought up the point that I'd like to ask you about. If you have a split screen,--

**BILLY KENNY:** Um-hum.

**LOWE:** --and part of that is HIPAA controlled, will it blur just half of the screen?

**BILLY KENNY:** It can be customized to do that, yes.

**LOWE:** It can be. OK, and--

**BILLY KENNY:** Because that-- when I say that, that information will come from a different-- I mean, what-- if I understand your question correctly, you're talking about two different Web sites, correct?

**LOWE:** Two different Web sites.

**BILLY KENNY:** Right, so it'll already been preprogrammed to blur that.

**LOWE:** OK.

**BILLY KENNY:** So what will come up is the one that he-- the person is working on, which is approved, and the one that needs to be blurred. So what you'll see is the blurred and, and the clear one.

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**LOWE:** OK, thank you on that. What else can this data be used for by the contractor?

**BILLY KENNY:** Nothing else. In fact, the legislation itself says that they cannot use it for anything other than provide verification of the hours worked on a computer.

**LOWE:** OK, and, and you had said that you own one company,--

**BILLY KENNY:** Um-hum.

**LOWE:** --but there are many other companies out here,--

**BILLY KENNY:** Right.

**LOWE:** --so we can decide not to buy--

**BILLY KENNY:** Absolutely.

**LOWE:** --your software, but go with another one. This is not--

**BILLY KENNY:** We anticipate there will be a lot of competition if legislation does pass. Yes, absolutely.

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

**BILLY KENNY:** As I was saying before, we also anticipate that if it does pass that, that there'll be companies, certainly within Nebraska and elsewhere, that will see the opportunity and will want to develop this soft-- software, so that we certainly anticipate that. But, again, it's just-- we see it as an opportunity to save the state money both for overbilling and also through the efficiencies that come through automation.

**LOWE:** Thank you very much.

**BILLY KENNY:** Um-hum.

**La GRONE:** Thank you, Senator Lowe. Any additional questions? Seeing none, thanks for coming down.

**BILLY KENNY:** Thank you.

**La GRONE:** We'll now takes-- take our next proponent testifier. Any additional proponents? Seeing none, we'll move to opposition

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testimony. We'll take our first opponent. Welcome to the Government Committee.

**ED TONER:** Thank you. Good afternoon, Vice Chair La Grone and members of the committee, my name is Ed Toner, E-d T-o-n-e-r. I am the chief information officer of the state of Nebraska. Thank you for this opportunity to address the committee regarding LB717. This legislation has been introduced in at least 24 states this year. And although the honorable intent of the bill's sponsor is clear, the provisions of this legislation will create significant privacy and federal regulatory compliance concerns. I have shared a news release from the National Association of State Information Officers, which represents the state's CIOs, who unanimously voted to oppose this legislation due to citizen privacy and federal regulatory compliance concerns. I'll also add they have never opposed or even commented on legislation for the number of 20-plus, 30-plus years they've been in existence. There was talk about remote workers. We have very few remote workers. There's talk about Web sites. Our data does not exist out on Web sites, it's internally held. That is some of our privacy controls that we put in place. The work being done by the majority of Nebraska's contract workers is performed on state-owned computers and equipment residing on the state's internal network. The vast majority is contractors work side by side with our state teammates with the same information-- the same sensitive information including child welfare systems, tax information, and unemployment. They do not work relentlessly. To meet this legislation we will-- we would effectively be mandating the installation of third-party spyware on state-owned devices for the sole purpose of reclassifying sensitive data to audit records and transferring the ownership of our sensitive data to an outside entity. This creates significant risk to our citizens' privacy and an unnecessary burden to many of the state's contract vendors. Many of the proposed provisions violate or would be in direct conflict with federal policies, statutes, and regulatory compliance requirements, and would essentially result in the exclusion of all organizations that process citizen information. For reference, I provided some applicable policies, regulations, and statutes in my testimony: CJIS, the Criminal Justice Information Systems Security Policy; U.S. 522 [SIC], Privacy Act of 1974, records maintained on individuals; U.S. 6103 [SIC], confidential-- confidentiality and disclosure of returns and return information; Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996, otherwise known as HIPAA. The bill also requires ownership of this data to be given to the contractor. Like reclassification, the premise of

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transferring ownership of sensitive information captured in an image to the contractor is extremely problematic and prohibited by virtually every federal regulatory authority. If this was-- was simply excluding a Web site, that's one thing, but our people are utilizing data that could have a Social Security number or some other PII data somewhere on their screen as they're processing applications, as their coding information, and so there would be no way to efficiently exclude a Web site that would, would not be an appropriate way to it-- to affect that. Data ownership is key. If the data in these images is owned by the contractor or some other party it could potentially create a gray area whereby the contractor could do anything with that data and argue they have a right, they own it. The solution like all software is subject to compromise due to vulnerabilities that are within all software programs whether it compromises due to this software or another application that we have on our computers. If the computer becomes com-- compromised, this software could be leveraged. No software is immune to compromise and my intent is not to frame this software as more vulnerable than any other software that we utilize. However, I need to ensure the committee is aware of the higher level of risk a solution like this presents to the system services and data processed by the state and its contractors. Duplication is-- of sensitive data should always be avoided-- and I'm running out of time, and in most cases is prohibited by policy or regulatory authority. By duplicating sensitive information the risk of intentional or unintentional disclosure is dramatically increased. Requirements for storage is also problematic. Records created by this bill would remain available for long-term analysis.

**La GRONE:** Mr. Toner, we're going to go ahead and move to questions, but I'm sure you will probably have an opportunity to finish up with what you wanted to say.

**ED TONER:** Thank you.

**La GRONE:** Thank you. Move-- we now move to questions. Senator Hilgers.

**HILGERS:** Thank you, Vice Chair La Grone. Mr. Toner, thank you for being here. You're the next person up so I'm gonna ask you this question and it actually doesn't relate directly to your testimony, but the proponent left before I had the opportunity to pull up the bill. I read this bill-- I asked about attorneys and whether this applies to outside counsel. He said, no. I read on page 3, line 27, that it does relate for-- to "state agency for professional or

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technical services in excess of one hundred thousand dollars." Would-- do you interpret that as applying to outside legal services?

**ED TONER:** Oh, absolutely, and if you visit their Web site they cite that.

**HILGERS:** Yeah. Well, I didn't get to-- because of his answer I didn't get a chance to talk to him about that, but that, that gives me significant pause to get into potentially attorney-client information when it comes to outside counsel.

**ED TONER:** Absolutely.

**HILGERS:** Thank you.

**La GRONE:** Thank you, Senator Hilgers. Senator Blood.

**BLOOD:** Thank you, Vice Chair La Grone. How are you today, Mr. Toner is it?

**ED TONER:** Yes, Toner.

**BLOOD:** And I'm so glad that you're one of the people that came down to testify, because you said a lot of what my concerns are already on record and that is a good thing. One of the things I'm gonna ask you is, is purely your opinion, but I think you're qualified to answer this, this question. If we were to pass a bill like this wouldn't it be just basically mandating a particular company that didn't have to do an-- didn't have to do a, a-- I want to say RPG and that's not right.

**ED TONER:** RFP.

**BLOOD:** The RFP, thank you. I was like that is definitely not right. I hate acronyms. Because the state usually does RFPs--

**ED TONER:** That is correct.

**BLOOD:** --on big contracts, but yet we have a bill asking us to select a company who says that they have competition but I'm not finding that competition. Isn't, isn't that what this does?

**ED TONER:** Yes, Senator. In my opinion, it absolutely does. And there is very little, if any, competition that I could find also.

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**BLOOD:** And the concern that I have is that this-- a company that produces software is paying lobbyists to promote bills on their behalf to promote their software, and I find that distasteful for me personally. One of the concerns I have is not only the data but also the algorithms that are used. Is, is that not also something they can make money off of? And that's kind of a big brother thing, kind of like what we went through with Facebook, right?

**ED TONER:** It's, it's, it's very much something that could open up some other possibilities.

**BLOOD:** I am-- I fully believe in transparency, but I think there's a difference between transparency and, and-- you know, I hate to call it this, but I don't know what else it, but government overreach, big brother, and I think that's kind of where we're at. Do you know who-- have you been able to do research on this company?

**ED TONER:** Yes, I have.

**BLOOD:** Do you know where they get a lot of their funding from or any of their, their past history financially that you're willing to say on record?

**ED TONER:** It is a-- there is a lot of material out there on this company and its, and its founders.

**BLOOD:** There is-- I remember a big Bitcoin ad last year when they were trying to take down Bitcoin.

**ED TONER:** Right, and the founders of the, the company, definitely there is information out there. This is, this is clearly-- you know, when you ask about-- you know, who could potentially use this type of software? Public entities, in my opinion, are, are-- would not ever be a, a proper customer of this software.

**BLOOD:** Right.

**ED TONER:** My several years, 20 years in the private sector in IT, there was a move for several years to have remote workers, and I could see were the Deloitte's, which were mentioned, or some of the other companies would use this because of the fact that that's a closed system, that's a virtual private network between their remote worker and them.

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**BLOOD:** It's perfect for the gig economy, right?

**ED TONER:** Exactly, for, for the person who wants to take three months and work from home and to ensure that that person was actively at their workstation, which would be their home office. I could see this but that's a closed system.

**BLOOD:** Right.

**ED TONER:** Because as a company I'm making that decision to allow you to work from home, and, and you at the same time agree to loading this software on your computer. I then can check in periodically, but I would never store even in that situation I would not store it. I don't want additional information out there on, on anything, but I could see where there are customers-- and I won't deny that there is a use for that. I can also tell you that in my 20 years in private industry, the-- really the movement has been more to bringing those people from remote workers back in. In fact, many of the CIOs and CEOs of many of the largest companies have outlawed work from home. First Data, where I came from, it was prominent until about a year or two before I came to the state. And then they said no, no more remote workers. So we've gone through those swings,--

**BLOOD:** Right.

**ED TONER:** --and a lot of it was-- there's-- you know, a lot of it is just the community working together, they think you're more efficient. But again, there's a security aspect of you working from home and you might be-- we don't know exactly what's being shared.

**BLOOD:** Well, we all know that some companies and some state organizations are sometimes just one angry employee away from a breach. So--

**ED TONER:** That's-- that is absolutely correct, Senator.

**BLOOD:** Thank you.

**ED TONER:** Thank you so much.

**La GRONE:** Thank you, Senator Blood. Any additional questions? Seeing none, thanks for coming down.

**ED TONER:** Thank you.

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**La GRONE:** We'll take our next opponent. Mr. Botelho, welcome back to the Government Committee.

**BO BOTELHO:** Good afternoon, Vice Chairman La Grone. Thank you. Good afternoon, Vice Chair and members of the Government, Military and Veterans Affairs Committee, my name is Bo Botelho, B-o B-o-t-e-l-h-o, and I serve as chief operating officer of the Department of Health and Human Services. I'm here to testify in opposition to LB717. LB717 states a contract subject to this subsection shall require a contract review the third-party software to verify that hours billed for work under the contract that are performed on a computer are legitimate. The contract shall specify that the agency will not pay for hours worked on a computer unless those hours are verifiable by the software or by data collected by the software. Deliverables and work products created on behalf of HHS go beyond what is generated and stored on the computer. Often the work completed on the computer is a culmination of meetings, discussions, notes, and follow up. Slope-- solely relying on a particular piece of software for the acceptance and payment of work on an individual computer will be an incomplete system of record and an inaccurate reflection of effort and time. Many of our technical projects rely on significant amount of collaboration between state resources, contractors, and large-system integrators. An individual computer will not have all associated tasks and activities including the reliance on others to complete the preceding tasks. This could create a situation where the software is misleading and, or inaccurate of the work performed. The bill will also require automatically gathering verification data of a state-funded activity by tracking total keystrokes and mouse event frequency and taking a screenshot at least once every three minutes. Many of DHHS systems contain personally identifiable information and private health information, many if not all, as well as information from federal sources such as the Social Security Administration and the Internal Revenue Service. Collecting this information via screenshots and keystrokes creates a substantial increase in the number of areas within our network that are storing sensitive information. Every contractor's computer is required to follow this legislation and substantially increasing our risk of a data breach. Additionally, the collection of keystrokes and screenshots would also allow a third-party access to our software source code, user accounts, and their passwords. Because the data is collected as input to a computer, it would effectively bypass many of the security controls that are on our main-- mainframes. This would make it easier for attackers to find vulnerabilities within our software and exploit our systems. Finally, LB717 states the data

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collected by software shall be considered accounting records belonging to the contractor. The contractor shall store or contract with another to store the data collected by the software for a period of seven years and provide the access to the contracting agency or the Auditor of Public Accounts upon request. This poses a significant information security concern as the potential for personally identifiable information, protected health information, and other sources of confidential information would now be under the control of the contractor and whomever they would choose to store that information on a long-term basis. Potential data breach-- breaches under this scenario would have negative impacts to our most vulnerable citizens, who rely on DHHS to keep their information private and secure. Federal partners will continue to hold DHHS accountable for maintaining administrative and security controls and to protect the privacy of-- and information of constituents, and that becomes a much more difficult task once the information is allowed to leave the state computing environments. With that I'm, I'm finished, and I'll be happy to answer any questions you may have.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

**BO BOTELHO:** Thank you.

**La GRONE:** We'll take the next opponent. Welcome to the Government Committee.

**BRENT HOFFMAN:** Thank you. Good afternoon, Mr. Vice Chairman La Grone and members of the Committee, my name is Brent Hoffman, B-r-e-n-t H-o-f-f-m-a-n. I am with NIC Incorporated, who provides on-line government services in 28 states as well as the federal space. I am the general manager for their Nebraska operations here in Lincoln and we are the one of the vendors that work along side by side with the state and the CIO's Office to provide a wide-range of services to-- that better citizens of the state of Nebraska. I have submitted the letter from our executive chief security officer with more detail, but I will hit a couple of points in my testimony from that letter that will be pertinent and afterwards I'll ask if there is any questions. Today, many states have legislation being promoted by a private company that would track state contractors' computer activity. Specifically, the legislation proposes capturing screenshots every three minutes as well as keystroke and mouse movement activity on every computer used by every employee of a state vendor with contracts valued at more than \$100,000. The legislation has been broadly opposed

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by both public and private interests in states where it has been introduced as mentioned before. Government vendors-- or no doubt-- no one doubts that transparency in government is important. However, the promises of full transparency associated with this bill are elusive-- are illusionary. Government vendors routinely handle sensitive data as part of their contracts with state agencies. The proposed tracking keystroke-- tracking of keystrokes, screenshots would likely include HIPAA information, personally identifiable information, criminal justice data, and financial data into a single repository allowing states-- the state's most sensitive data to be targeted or widely distributed. As mentioned before not all technical work is done on a computer. Neither the legislation nor the sponsor have articulated how capturing keystrokes would improve government oversight or management of its vendors. As a consequence, the bill does not offer transparency as purports and offers no legitimate purpose to support a bill that is undisputedly increases security risks and violates privacy. Screen capture requirements in the proposal-- in the proposed legislation would risk the confidentiality of government vendors' inventions and intellectual property. In several states, the legislation does not include FOIA exemption for public to receive this data. Therefore, screenshots containing sensitive information and intellectual property have the potential to be shared. Lastly, in response to the ever growing opposition of this legislation some proposed drafts have been amended to raise the contract value, remove the specificity of mouse tracking, screenshots, and keystroke recording, and to allow each agency to set its own standards creating even more confusion and ambiguity. Any and all amendments fall short of addressing the significant privacy and security concerns associated with this bill. There are no acceptable amendments or exceptions to this legislation. With that, I will answer any questions.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

**BRENT HOFFMAN:** Thank you.

**La GRONE:** We'll take the next opponent. Welcome to the Government Committee.

**JEANNE McCLURE:** Good afternoon, I'm Jeanne McClure, J-e-a-n-n-e M-c-C-l-u-r-e. I'm with ACEC Nebraska. That's the American Council of Engineering Companies, and we are here today to oppose LB717. We represent engineering companies across the state of Nebraska and we

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are partners with the state of Nebraska to the point of being very proudly called in yesterday to meet with the DOT to discuss flooding issues and how to handle, handle those. So we, we work really closely and we take pride in that. We applaud Senator Brewer for his interest in protecting the interests of the state and we feel like he does, that transparency is important. However, this bill is brought to you directly by one company, TransparentBusiness, who's not here to help Nebraskans, but we believe to help themselves. The bill is a vehicle for a specific company to legislate the use of their product to increase sales. TransparentBusiness has been working across the United States to get as many bills as possible introduced for their product. I'd also note my letter was distributed, and I'm just gonna give you some highlights of it and not read the whole thing. We are working closely with some other industry partners: AIA, the architects, and AGC Building Chapter, and they-- and also the Omaha Chamber of Commerce, and they have submitted letters in opposition. We see this as a financial burden on state agencies and there is a fiscal note associated with this which are already understaffed and underfunded. They would need to provide audit-- auditors, FTEs, and equipment to review the data that would be collected by the software. We see it as an unfunded mandate for the businesses, the contractors that work with the state. And as was pointed out earlier on page 3 of the bill, the previous-- the proponent for this bill said that it only applies to IT companies. I don't see that. I see that it talks about anyone who's professional or technical services that contract with the state. So we-- as we see it the engineers are clearly, clearly in the bill. We believe that as has been mentioned before that there's a problem with the data breaches and security, also privacy issues, proprietary information that companies would use as they work on their, on their own computers. We don't work within the state on their systems, our firms work on their own. And all of the work that they do isn't on the computer, it's conferring with people, meeting with people, all of those things have been mentioned before. I think it's also important to mention that licensed professionals are bound by a code of ethics that prohibits abusing the system or cheating a client. And we feel very strongly about that, we actually are required to complete ethic PDH hours by the state and we take that seriously. When our, when our engineers stamp their documents that code of ethics goes along with them. The last and maybe the most important point I would bring to you is the Federal Acquisition Regulation, also the acronym FAR, specifically guides how engineers work and how they audit what they do. It-- that's a, that's a thing for government procurement. It's, it's, it's the same thing, code of ethics and how we do our business.

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So we think all these things just to note that-- you know, the request that you would indefinitely postpone LB717.

**La GRONE:** Thank you for your testimony. Are there any questions?  
Senator Blood.

**BLOOD:** Thank you, Vice Chair La Grone. So it sounds like you've done some research on this, so I'm gonna ask you two questions. The first one was about FAR because I researched that as well. You guys have actually been working quite intensely at the federal level to update those rules and to make sure that you fall under those guidelines. Would that, would that be a correct assumption based on [INAUDIBLE]?

**JEANNE McCLURE:** That's correct, yes, yes.

**BLOOD:** OK.

**JEANNE McCLURE:** And we, and we really promote that, and, and we'd want to make sure that all of our firms do that, and-- I mean, it's-- the state of Nebraska requires it.

**BLOOD:** I mean, and with all due respect-- I mean, you're paying a lot of lobbyists to go to the federal level and do that on your behalf.

**JEANNE McCLURE:** Right.

**BLOOD:** I track everything, sorry. So are you familiar with the video that went out on behalf of this software?

**JEANNE McCLURE:** I am. I viewed it.

**BLOOD:** I want to ask you--

**JEANNE McCLURE:** It's, it's very compelling. I mean,--

**BLOOD:** It is compelling if you--

**JEANNE McCLURE:** --if, if I saw it for the first time and I thought, wow, this is great.

**BLOOD:** So the way I interpreted it was that it, it entices investors because it basically suggests adoption of policy by requiring government contractors like yourself to use tracking programs and the promise was a-- I'm bad with numbers, I want to say ninety thousand percent increase, does that sound right?

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**JEANNE McCLURE:** I can't-- I honestly can't remember, but, yeah, it's, it's pretty compelling what they promised.

**BLOOD:** Or 90 percent return, an express ticket to Fortune 500. So-- I mean, to me it almost sounds-- and I, I mean, I, I hope I'm wrong, but to me it almost sounds like they're marketing this in every state by mandating it and they're gonna have a lot of happy stakeholders should this law pass. Does that sound accurate?

**JEANNE McCLURE:** It does to me. I, I mean, it just seems like--

**BLOOD:** That's what I'm seeing.

**JEANNE McCLURE:** --it's just a too good to be true thing, so when something seems too good to be true, I would-- I want to investigate it and see why.

**BLOOD:** I mean, Uber--

**JEANNE McCLURE:** Why not--

**BLOOD:** --did the same thing, but in a different way. I mean, I respect the fact that they're so enthusiastic but--

**JEANNE McCLURE:** Why, why not bring this proposal to the Department of Administrative Services and say,--

**BLOOD:** Right.

**JEANNE McCLURE:** --see what we can do for you. And, and then let them decide.

**BLOOD:** Like any other contract.

**JEANNE McCLURE:** Right, right, like we would do. We aren't legislating that you-- you know, you use this particular engineering firm to do whatever.

**BLOOD:** Right, absolutely.

**JEANNE McCLURE:** We're letting the free market work. We're in Nebraska. We trust our neighbors. We trust our partners, and, and we really do. The, the firms in the state have really worked hard to, to develop trust with our state partner, with our city partners, our county

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partners to make sure that we have that give and take. And they know they can call on us to do things when they're needed to be done.

**BLOOD:** I certainly don't fault them for wanting to make money, I just--

**JEANNE McCLURE:** Nope, no.

**BLOOD:** --don't want it to be on the, the backs of Nebraskans, so thank you.

**JEANNE McCLURE:** Thank you.

**La GRONE:** Thank you, Senator Blood. Any additional questions? Seeing none, thanks for coming down. Any additional opponents? Seeing none, we'll move to neutral testimony. Seeing none, Senator Brewer, you're welcome to close.

**BREWER:** Thank you, Vice Chair La Grone. All right, let's backtrack a little so you understand how this all came about. First off, if you ever served any time especially overseas in a combat zone you see companies come in and literally ravage the military on contracts. They normally work in a SCIF, SCIF is simply a secure facility. It's almost impossible to verify the work they do. But what will happen is your bill for work that may or may not be done, there's really no way to know, to the tune of millions of dollars and many of those contracts were to, to build software programs that would assist us. Some of it was to take information that was collected, intelligence on the battlefield, and then to decide how much of that information could be classified in a way so as the local nationals could have it and not breach any rules we have with classification. And so many times you would have that contract go on and on, you'd be waiting for the product, and they would essentially at some point give you a product that was never gonna work. It was obvious it was never gonna work. And what resulted is they would then be pulled off the contract, it would be rebid, someone else would get it. Doesn't change the fact that they were paid for the work that was done even though no real work was done or at least work that was useful. So it might have been with that mindset that when I was approached on this bill, that I agreed to take it on. If you look at the number, we had a little over 700 bills, it's LB717. It was an area where I don't have expertise. And so the concept of requiring automated monitoring of, of IT work, IT contracts over a hundred thousand and that we try and verify the hourly billing for the actual hours worked seemed like a good idea. You know, accountability

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should always be important, transparency. So after I took on the bill, I happen to have 20-some others, many of those were very vital to the district. And this particular bill, I was not able to do the work I should have done before I ever took it on. And as we peeled back the layers, I realized that there were so many things that I didn't understand and I could not answer. That's how I got in the situation I'm in with this bill. So-- you know, you heard both sides of the issue today. I don't-- you know, this may be, this may be something that there needs to be some oversight of. But, I again did not have the base of knowledge to really address this. And, and, and now that I'm here you understand the concerns from the state and I think those are valid, so there's lessons to be learned. First off, make sure there's an issue before you try to write legislation for it. And then second off, make sure you understand so that you don't put yourself in a position where you realize that you didn't do your homework and that-- you know, you, you shouldn't be in that position. But it's, it's where I am with this bill. Again, I think that there might be some need out there, but I need to figure out exactly what that is before we start walking through this.

**La GRONE:** Thank you, Senator Bewer-- Brewer. Are there any questions? Senator Blood.

**BLOOD:** Thank you, Vice Chair La Grone. Senator Brewer, I just want to say that I do appreciate the fact that you are looking out for your constituents and Nebraskans and that your goal was about transparency and efficiency, and I just want to thank you for that.

**La GRONE:** Thank you, Senator Blood. Any additional questions? Senator Kolowski.

**KOLOWSKI:** Thank you, Mr. Chairman. Senator, on something like this particular bill, when I sit back and look and, and hear this bill presented for the first time, I have to be honest and say there's a great deal of skepticism that comes forward. It jumps off the page at me. And when you talk about your military experiences and contracts with civilian employees to bring in and do something in a civilian-- you know, in a, a, a battle zone, I get more skepticism. I say that because there's an awful lot of money being exchanged at the national level right now, and international level as far as any of the bases anywhere that we're located anywhere in the world. What is, what is the fail-safe that we have on these that they're being done correctly and that everything is copacetic as far as how things are being done? And if we have something that looks like it could give us data that

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pro-- progress is being made on a certain project and something is being done correctly, that's one thing, but if it's buried under a whole bunch of figures and I don't know what's going on and no one can tell me what's going on, I have skepticism about those things. Now you have been there and done that in those particular situations, I'm just telling you how it smells occasionally from this position and I'll stop right there.

**BREWER:** Well, I, I won't argue with some your observations. Part of the problem is-- you know, there's, there's a relatively small amount of, of the society in general that really understands the inner workings of how software and IT programs are done and how software is made and how hard the hardware part operates. And for most of us we tend to step back and trust that those people that are doing that are doing it because we don't understand enough and it's such a, a giant bridge to get there in knowledge. I mean, you really if, if it wasn't something you grew up with, something that you were really had a burning desire to learn about, you probably aren't gonna know what you need to know and it's not an area where you want to do it halfway. You either be good at it or get out of there because all you're doing is causing problems. That may be me right now. But it wasn't because I didn't have a heart to try and fix it, it's just because I don't know what I don't know. And I'd like to think that here in Nebraska that we have enough efficient, effective, honest people that are having oversight on our system that this is not a problem. You know, maybe, maybe that experience I had overseas tainted how I looked at things and maybe I was too concerned about something that really may not have been a, a factor here. So-- you know, looking back on-- you know, what-- would I do things different. For one, I would, I would get a whole lot smarter on a bill before I put my name on it. And, and, and then I'd make sure that I have experts to coach me so that I don't take off down a path that may not be the right way.

**KOLOWSKI:** Well, I understand that and thank you for those comments. I had the opportunity in, in my life in 1993 to 1995 to work and build, for the first shovel full of dirt turned to the open-- opening day key, Millard West High School, a 70 million dollar project. I was there every day. And with that I-- as a district official, we, we saw the progress, we saw with the things happening, and we got to double check and triple check things along the way and made changes along the way that made things better. So I, I understand where you're coming from and I have experience in that phase of life as well, but I'm still sharing my feelings with you personally. And thank you for your

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feelings as well as to where we are with what we're dealing with here.  
Thank you.

**La GRONE:** Thank you, Senator Kolowski. Any additional questions?  
Seeing none, before we close the hearing, just have a couple letters.  
We did, we did not have any letters in support. We had nine opposition  
letters, and none in the neutral capacity. That will close our hearing  
on LB717 and our hearings for the day.