

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: Good afternoon, ladies and gentlemen, and welcome to the Government, Military and Veterans Affairs Committee. My name is Tom Brewer, I represent the 43rd Legislative District, and I am the chair for this committee. We will start by introduction of committee members starting on my right with Senator Blood.

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

LOWE: John Lowe, District 37, the southeast half of Buffalo County.

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

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

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

KOLOWSKI: Rick Kolowski, District 31, southwest Omaha.

BREWER: To my right, Dick Clark, the legal counsel. To my left, Julie Condon, the committee clerk. Senator La Grone is the vice chair. And our pages today are Michaela and Lorenzo. Right over there. Let's see. Be aware that we will have some folks that need to be going to different committee hearings to testify. Senator Hunt, Senator Kolowski, and Senator Lowe all have other requirements at some point. So they'll be coming and going. So that they know when to come and go, you'll see them working with their electronic devices. I would ask, though, that you silence any of your cell phones or electronic devices so we don't have interruptions. If you wish to record your attendance, there are white sheets on the table. If you wish to testify, please fill out one of the green testifier sheets and bring it up and give it to the committee clerk before you testify. Let's see. If you have materials to hand out, please try and provide 12 copies. If you don't, get with the pages and they will help you to make copies. Letters that will be put into the official record need to arrive by 5:00 p.m. the day prior to the public hearing. Each of those letters should include your name, address, bill number, and your position on the bill: for, against, or neutral. We will not take any mass mailings. When you get ready to testify-- this will make things a lot better now. That was all on memory before [LAUGHTER]. All right, I ask that you be seated

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

in the front of the room for the bill that is currently being testified on. Please speak clearly in the microphone. We're going to ask that you state your name and then spell your name. The senator that is opening on the bill will start. Then we'll take proponents, opponents, and those in the neutral. And then we'll have the presenting senator return to give a closing. Just so I get a count today, could I see how many are here for LB1167? OK. And that's both opposition and support. That's everybody? OK. Well, I think, I think we can do the five minute here. The other bills, I'm thinking are gonna go fairly fast. So with that said, we will have your green light for four, amber for one, and the red will go on. And as you know, we have Dick Clark's nice loud alarm that will go off in case you're not paying attention to the red light. With that said, Senator Albrecht, welcome to the Government, Military and Veterans Affairs Committee. And you may open on LB1167 whenever you're ready.

ALBRECHT: Thank you very much. First time I've been in front of these friendly faces. Nice to see everyone. Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. I introduced LB1167 after hearing numerous times from individuals and organizations who often do not feel their voices are being heard by officials that they have elected and who are spending their money. LB1167 promotes transparency and accountability in government and offers members of the public an opportunity to trust that they will be heard. LB1167 makes two simple changes within the Open Meetings Act found at the Nebraska Revised State Statute 84-1412 (1), Section 1, LB1167 adds one sentence. "A public body shall allow members of the public an opportunity to speak at each meeting." (2) in Section 2 [SIC], LB1167 deletes one sentence that reads: A body may not be required to allow citizens to speak at each meeting, but may not forbid the public participation at all meetings. The change is simple, the goal is clear. If you've been elected by the people and/or if you are able to decide how to spend the people's money, then you are expected to listen to the voices of the people. Members of your public deserve it, and this change requires it. Furthermore, governing bodies will benefit from it. Good ideas, in fact, some of the greatest ideas, come from listening to the people on items being considered by a governing body and items that are not being considered, but perhaps should be. I'll give you a quick example. I served on the Papillion City Council and they wanted to put a Super Walmart in the, in a cornfield behind some very nice houses. I've got to tell you, those people in those very nice houses were not very happy about having a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

Walmart in their backyard. So we sat through 15 hours at the planning board and listened to the public and 15 hours at the city council level. We got a nicer project, all their concerns were met. We probably had the nicest Walmart in the state of Nebraska. So there are good things that come about it. We get compliments, you know, from the public on, on how the policemen did, the firemen did. Maybe a public works person, a parks person. So there's a lot of positive that can come out of this. There are some discomfort-- there, there may be some discomfort for elected officials as the public testifies, but not listening should never be the answer. The body is free to schedule time at the beginning, middle, or the end of the meeting. The body is free to allow time for each speaker in accordance with the number of people expected to speak. And by putting it on an agenda every meeting, the public knows that there is that opportunity. And they know that if for some reason they miss the opportunity at one meeting, because they were late or something else, they can trust that they'll have an opportunity again at the next meeting. In exploring this issue, my office found that there are some governing bodies that already have public comment as an item on their-- on each agenda. However, we've also found examples of bodies suspending public comment for an undetermined amount of time and others where public comment is infrequent or inconsistent, or where members of the public have to jump through hoops to be assigned a place on the next agenda. Many people don't know whether or not they are or will be allowed to speak at a meeting. After testifying, you will hear-- after I testify, you'll hear others who will share their stories about the need to have an opportunity to speak in front of their governing bodies and how it would affect their lives. I invite you to listen. I believe that we can all agree that many people feel frustrated by the current state of politics. This opportunity to know that they will be heard can serve to give people more confidence and trust in their government. And I'll stay to close, if you like.

BREWER: All right. Well, thank you for your opening. Thank you for this bill. We'll see if we have questions. Senator Blood.

BLOOD: Thank you, Chairman Brewer. And it's nice to see you in our committee, Senator Albrecht. I don't think we've seen you at all this year.

ALBRECHT: I know.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BLOOD: So I'm gonna ask a couple quick questions. So I'm on my third time reading this. So I've gone through the outline of the Nebraska Open Meetings Act that is available on our Attorney General's page, which has a really great breakdown of everything. And what I'm not seeing is, I mean, the definition is: it guarantees that every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies. So and I read through it, and what I see is that it allows the public to speak at open meetings. So I'm not sure-- I feel like there's a disconnect. I don't understand why we need the additional language because it's already in statute that public meetings are open to the public and they may speak.

ALBRECHT: OK, so if I can answer that.

BREWER: Please.

ALBRECHT: OK. On page 2 of the bill, line-- starting at line 3, "Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies". I'm not changing that. I just highlighted that because they do have the right to be there and the right to speak.

BLOOD: Right.

ALBRECHT: "And all or any part of a meeting of a public body, except for closed sessions called pursuant to Section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing." And then on page 2, line 9, I simply added, "A public body shall"-- we know the difference between a shall and may. But they "shall allow members of the public an opportunity to speak at each meeting." Because up above it just said they had the right to attend and the right to speak. But also then we go further on down to the next paragraph that I help-- I think clarifies what I'm taking out and why. So line 11 on page 2, "It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings." So I took out the next sentence that says: A body may not be required to allow citizens to speak at each meeting, but it may not be-- but it may not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

forbid public participation at all meetings. So if I take that out and I add that they just need it on their agenda, whether it's at the beginning, middle, or end, that if somebody just simply wants to come in and comment like everybody is gonna do today, you listen to them. You're gonna have frequent flyers, you're going to have people that, that might stick around for months, they might stick around for two or three meetings. But, but they should know that they can, they shall be able to speak.

BLOOD: So are you, are you implying that there's public bodies that are not allowing people to speak?

ALBRECHT: Yes. Yes, there are.

BLOOD: I'm sorry. Only the senator can answer that question.

ALBRECHT: I think you'll be able to hear from those behind me that will let you know when they-- some do, some don't.

BLOOD: Because I know, as you do, that when you have a bill in a, at a municipal level, we'll say, that you have the first reading, the second reading, then the third reading.

ALBRECHT: Correct.

BLOOD: And, and the-- I believe the second reading is for public comment. And then having both of us sat on municipal, and you also on the county, I believe, that we also have the ability to open it up to public comment. So that's an additional opportunity to speak. And then there's usually a public comment section for anything that was on the agenda, because as we all remember, we were always told legally that we shouldn't talk about things with that person who is, who is--

ALBRECHT: Correct.

BLOOD: --talking on anything that isn't on the agenda because it could create liability, which of course costs taxpayer dollars. So I, I'm a little confused, but I'm gonna listen atten-- very closely to everything, because I'm still not hearing what I need to hear.

ALBRECHT: OK, can I, I would like to respond to that as well.

BREWER: Please.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

ALBRECHT: OK, so if somebody does come in, I'm not-- this isn't talking about agenda items, this is public comment. Just public comment. And I don't believe you should engage with the person. If there's a situation and they're your, your constituent, you're probably going to go get out of your seat and go talk to him and say, we need to talk more. Why don't you call me or, or-- because if some people won't come to you before the meeting, or they've tried to get a hold of you, or they just can't seem to get on the agenda, I mean, there's all kinds of things that can happen. But if you have that opportunity to say to them, you know, I really want to hear more about this, but they only had three minutes to talk about it, then you could talk to them during the week and figure out is this something that needs more attention or is this just a comment. Or-- but you, but I just feel that, you know, I pay a lot of taxes. And I'm telling you what, I should be able to go to the meetings and talk about my concerns, or if I'm even asking a budget question, you're not going to be able to talk to me about it. You're gonna have to get a hold of me later and discuss that issue. But, but you're just there to listen, you're not there to respond to them. They need to know that. You can lay it out in your, when you enforce your reasonable rules and regulations regarding the open comment. So everyone will know when they get there that, jeez, this happens right after they open. So if I'm not there, I'm going to miss an opportunity, I'll have to come back next week and talk about it. So that's the idea.

BREWER: Additional questions? I do have to, I guess, share with you when I went through the, the written testimonies that were sent in, I did take note that over half of them were from my district. So when I pursued some of that, it, it had to do with them actually being restricted from being able to participate in the meetings. So what I didn't realize was it was as big of a problem as there must be out there, but I'll be anxious to hear some of the testimony too.

ALBRECHT: Great.

BREWER: All right. Any additional questions? If not, you'll be staying around for close?

ALBRECHT: Yes.

BREWER: All right, thank you. OK, we'll start with proponents. Welcome to the Government Committee.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

DOUG KAGAN: Thank you, Senator, senators. Good afternoon. Doug Kagan, D-o-u-g K-a-g-a-n, representing Nebraska Taxpayers for Freedom. LB1167 is very important to our group and its members who, including myself, frequently speak at local government counsel, board, and commission meetings. Although the current Open Meetings Act does not require such entities to allow public comment at all meetings, we have actually found that most local subdivisions in the Omaha metro area do allow comment, not only on agenda items, but otherwise, even if not specifically noted on their agendas. In fact, we found that some officials encouraged voicing of an issue and actually seek to work with public comment speakers on issues. Nonetheless, having said that, we believe that the Legislature should mandate allowing public comments at every meeting only because of entities we have found that refuse to allow it or make it very difficult. Our members relate problems occurring in several categories. Some public officials we find feel restrained because an opinion from our Attorney General's Office prevents them from replying to public comments, even if such officials want to reply to or assist the speakers or defend themselves against unwarranted criticism and verbal abuse. We believe that such opinion is an impediment to the purpose of public comment time and should be reversed. Other problems include public comment speakers voicing concerns about matters not remotely germane to the governing body, going beyond reasonable time limits, and verbally abusing public officials. Local officials themselves, however, foster resentment when they remove discussion items from the agenda at the last minute or add them shortly before a meeting, thereby depriving the public of the opportunity to comment on these issues. Unfortunately, there are elected officials who simply do not want to hear or listen to public rebuke and unreasonably deny public commentary or declare speakers out of order. They consider themselves public masters rather than public servants. And what we have found this does is it makes people feel so unwelcome that they no longer wish to participate in the political process. So nevertheless, we do not believe that the Legislature needs to micromanage the rules governing public comment, that local officials consulting with constituents can implement reasonable rules enabling individuals to exercise their First Amendment rights adequately without needlessly delaying the meeting itself. If someone wishes to pursue an issue at length with a public official, however, public comment time would offer a place to introduce a topic and request for a personal meeting with an official. Therefore, we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

encourage you to advance LB1167 for full discussion by the Legislature. Thank you.

BREWER: Thank you, Doug. OK, questions? While I got you in the hot seat, Doug, when I went through some of written testimony, it appears as though how they get around or they make it difficult to have public comment is they'll say, OK, we'll have 15 minutes for public comment. But you may have several dozen people there to speak. So they simply-- when you burn through the 15 minutes, then they're done and they move on. And everyone who doesn't get to speak basically is left hanging. I mean, is that a scenario that you're familiar with, or, or is that just a few letters?

DOUG KAGAN: We haven't seen that happen unless it would be a, a really crucial, important issue to the community. In that, in that case, we could see it occasionally. But some of the other difficulties are some, some of these local subdivisions will say, well, if you want to get on the agenda for an item that's not on the agenda, on the written agenda, you have to come in and fill out a form or call someone before the meeting, so that we know what you're going to talk about. And some people just, you know, they will read the agenda the night before in the paper or hear about it on the radio and say, I'm, I'm going to go down and speak at that city council meeting and I'm going to speak at that county board meeting. And they, they can't do it because they didn't make a reservation in advance.

BREWER: I think that would limit who can actually come in and openly discuss issues. So thank you.

DOUG KAGAN: Okay.

BREWER: OK, next proponent.

DANIELLE CONRAD: Hi. Good afternoon, senators, Chairman Brewer. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, I'm here today on behalf of the ACLU of Nebraska. First of all, I just want to really thank Senator Albrecht and her office for their strong leadership in bringing forward this legislation and for reaching out and assembling, I think, a really broad co-- coalition that you're going to have an opportunity to hear from today about the importance of this legislation that's before you. I can tell you that we think this is a great bill. It's in line with Nebraska's political culture, which prides itself on open government and transparency and public

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

participation. And this just strengthens and clarifies those traditions throughout our, our various entities of government. I also want to just let you know that from the ACLU perspective, we receive all kinds of intakes from all over the state when people feel aggrieved by their government as government watchdogs. And there's kind of three main buckets, and then sometimes we get a trickle of other things. We get a lot of intakes from incarcerated Nebraskans, we get a lot of feedback about things happening in our schools, particularly around bullying, and we get a lot of inquiries about public comment and public meeting and open records. That's really the other big area that we see a lot of traffic on in our, our legal intake program. And it's statewide. It's not regulated to just one certain community. But we frequently are assisting citizens who are trying to engage their government and who are running into barriers, many times arbitrary barriers, in that peaceful, free expression and petitioning their government, which of course, is protected by the First Amendment. So I'm happy to answer any questions. I thank you for your time and consideration. And I also really want to, again, thank Senator Albrecht for her leadership.

BREWER: Well, thank you for coming in and for your testimony. Questions? I'm going back to some of the comments here from the written testimony. I think as you get away from Lincoln and Omaha, it can be more difficult for folks to really have an avenue if, if the--

DANIELLE CONRAD: That's right.

BREWER: --ones who control the meeting want to control the meeting and not necessarily hear the voices. You can narrow it down. So you did have an open period. But if you tailor that so the people can't speak, you technically you check the block. The problem is, there's a lot of voices who will never be heard because of the way you tailored it. So that's the part I'm gonna be anxious to hear about but--

DANIELLE CONRAD: Yeah, and I think that's in line with what we're hearing in our offices as well, Senator Brewer, that citizen concerns around these issues take a lot of different forms. It can be the, maybe the arbitrary limitation on time that crowds people out from really being able to speak out. It can also be dramatic shifts and changes. I'll give me a recent example from Douglas County. Actually, twice in the past years the county board has tried to eliminate public comment. And then there was an outpouring of concern and opposition from citizens across the political spectrum that found that misguided.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

And the county board rightly pulled back from that. But we also, we're concerned about how the timing of that proposal was put forward. And you have to be very careful, I think, as government leaders about whether or not you're engaging in viewpoint discrimination. If you seek to shut down public comment during a period of great public interest, that, that's also troubling. And we see that happening, not just in Douglas County, but in other public meetings across the state. So it can be time limitations, it can be kind of burying it on the agenda, it can be a complete try and shut down or move maybe from every other meeting to every fourth meeting. And so it takes a lot of different formats. And I think one thing that's really cool about this legislation is that it provides some uniformity and clarity so that everybody is on the same page. The last piece I just want to note is that particularly when there's breaking news or something that, that is happening in real time in our communities, it's hard to sometimes work through the process to get on the agenda beforehand. And we really need to have that opportunity and that safety valve for people to speak out and petition their governments when there's a matter of public concern that's hitting the newspapers or hitting online.

BREWER: Senator Blood.

BLOOD: Thank you, Chairman Brewer. It's nice to see you, Senator.

DANIELLE CONRAD: Nice to see you always. Yes.

BLOOD: So how is this more effective than the criminal sanctions that are already put in place? Because when a body does not follow the open meetings statute, then they are open to multiple criminal sanctions. And so I'm confused how just changing, I mean, I understand the intent, and I respect the intent and I agree with the intent, but I also believe that you don't change something that doesn't need to be fixed. So what I'm hearing is people are getting screwed over in smaller towns, it sounds like. More rural towns, I should say, and not being allowed to speak. And so the next step, according to state statute, criminal sanctions. So, so how can change, I mean, if they're not going to do it, they're not going to do it, whether we change a sentence or not. Why aren't we holding them accountable through the criminal sanctions that are already in statute?

DANIELLE CONRAD: Yeah. Well, thank you, Senator Blood. There's a lot of questions to unpack there, so I'm gonna try--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BLOOD: I'm sorry, I thought of it as one big question.

DANIELLE CONRAD: --my best in a short period. But I, I think you're right. I think, A, there are serious penalties involved in our open records and open meetings laws. And that's for good reason, because it's a clear statement of how seriously we take these issues in Nebraska right?

BLOOD: Absolutely.

DANIELLE CONRAD: Now, how I see Senator Albrecht's proposal working within that current statutory framework is within and complementary to. But I think what you see happen is that there's also a lot of gray in terms of how some of those existing state laws are implemented. And what Chairman Brewer and, and what I was trying to explain, perhaps imperfectly through some of our intakes, is that there is a lot of different ways to implement those laws to subvert and suppress public comment and to not have it be clear, uniform, and robust in practice. And that's what her, Senator Albrecht's legislation is seeking to do, is to provide clarity and uniformity for that component within the existing statutory framework with the existing criminal penalties that are attendant there too.

BLOOD: And I do understand that that's the intent. I'm not sure I agree with the intent yet, but I'm gonna listen to everything, so thank you.

DANIELLE CONRAD: I know you always do. And to be clear, too, it is also-- we see it as a statewide organization, as a statewide issue. It, it doesn't just pop up in small towns and it doesn't just pop up in Lincoln and Omaha. But I think this would actually provide a lot of support and clarity to local officials as well, so they can, you know, really meet those, those obligations that they're under with the open records laws. And, and do it in a uniform and clear way. That would be good insurance against any sort of liability.

BLOOD: I guess if I were a lawyer, and if I throw a rock, I know I'll hit one in this room, I would stand outside that door and talk to everybody who tells them today that they weren't heard because they should, they should seek legal action. That's why it's in the statute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

DANIELLE CONRAD: Right. But the statute, the existing statute does not provide for public comment at every public meeting. You can always speak to agenda items, right?

BLOOD: Right.

DANIELLE CONRAD: And maybe that's what the murkiness or the distinction is here. This is the open comment period that provides for citizens to come in and talk about issues that maybe they couldn't get on the agenda or that weren't on the agenda for a host of different reasons. So I think it works together in that regard.

BLOOD: Well, and I'm guessing that the League is here today and they'll explain there's actually a reason for that. So I'll let-- they're the experts, I'll stay out of that part.

DANIELLE CONRAD: Well, perhaps. And we may have a difference of opinion about that. But I think that we can all agree that we have a proud tradition of open government in Nebraska.

BLOOD: Without a doubt.

DANIELLE CONRAD: And I think we're all eager to work together to strengthen that. And so Senator Albrecht has given us a truly wonderful vehicle to, to do so.

BLOOD: Thank you.

BREWER: And just to follow up on your comment, the situation they talked about was you have 15 minutes. They're giving each person five minutes. There's a sign-in sheet. The first three that sign get to speak, the other 20-some--

DANIELLE CONRAD: Right.

BREWER: --are not gonna ever have a chance. And if you are the first ones in line, you're heard. If not-- so you can't help but stop and say, you know, there's gotta be a better system. I mean, just, just like here, I'm sure there's days we'd like to have shorter days.

DANIELLE CONRAD: Sure.

BREWER: But--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

DANIELLE CONRAD: Yes.

BREWER: --the voice needs to be heard on the issues. And you can't understand the issues if you don't listen to people. So if it's a two-hour day, it's a two-hour day. If it's a 10-hour day, it's a 10-hour day. And, you know, it's hard not to kind of hear their pain when they start describing their situations.

DANIELLE CONRAD: Yeah, and it really exacerbates the situation and really breaks trust with government when people don't feel heard and when they feel like the system is not fair and open to them. So when you take the time out of your busy day to come down and testify at your local city council, and then you get there and you realize, oh, there's no public comment period. I didn't get there early enough to get in line, like, it just, it, it's really a detriment to a democratic society.

BREWER: And you could, you could almost see that if it was manipulated to be an abuse of power, because you can keep the ones you don't want to have speak from speaking.

DANIELLE CONRAD: Yes, that's true.

BREWER: All right. Thank you for your testimony.

DANIELLE CONRAD: Thank you so much.

BREWER: All right, next proponent. He's quicker than you are.

DOUG OERTWICH: Younger too.

BREWER: Younger too. Welcome to the Government Committee.

DOUG OERTWICH: Good afternoon, Chairman Brewer, members of the committee. My name's Doug Oertwich, D-o-u-g O-e-r-t-w-i-c-h. I come here, I read the bill and I looked at it, and I decided it was a good bill, it should go through. And then Saturday, when I come out of church, I serve on five separate boards, which happens in a small town, because if you're willing to do it, they just give it to you. I come out of church and he said, how are you going to vote on that hearing Monday? And I got to thinking, well, what if I told him-- I said, after we got done talking, I said, come to the hearing, tell us what you think, we have public comment. Now, how do you suppose that would have went if I said, we have no public comment? You can come to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

the hearing, you can listen, but we're-- you can't speak. That would have changed the whole outcome of how that evening finished up as I, as I drove home. So I thought I better come and tell you how, how it works. And a planning commission I've been on 24 years; power district, 9 years. The other board, 15. And so some are monthly, some are quarterly. We all have public comment. We have comment during hearings. We go to three minutes, so thank you. I wrote a three-minute speech, so you gave us five today. But we always went on three minutes, so everybody got a chance to speak. And in a small town, if you don't, it comes back to bite you, because these are the people you meet at the grocery store and we meet in town. So just to bring up, and you said a lot of your comments came from your area. And not to pick on you, but in the last year I've attended two meetings, one city council and one planning commission, and it happened to be in your district that we had a chance to speak, but they didn't make it part of the record. So if it doesn't get to be part of the record, how does it go back to the commissioners to know that 40 people spoke against something? And then the other one was a city council meeting, and they sat there three hours and we didn't get to speak. That, I've never seen that before in my life. I've never been to a meeting that I couldn't speak, whether it was public comment or on just that issue. So I think-- and I thank the senator for bringing that up, because I think this is something that is needed and you should be able to speak. They passed part of the budget, did a trash contract, some other stuff, and nobody got to speak. So part of that is, and I think Senator Blood brought it up, it's, it's part of that statute says you have an option at some meetings. We want it at every meeting. You should be able to speak at every meeting. You were elected, you're serving the people. If you don't want to serve the people and listen, sometimes it could run an hour, two hours. We've had meetings run to midnight, we had to cancel them until next Monday because our official document says the day-- that day. Well, when you run past midnight, you know? So and now it's some livestock issues and things that got heated. But that happens in small towns, and that's the way it is. So I just, part of it's public comment, part of it's agenda. But the main thing is, is transparency. So I think it's a good bill and I ask you to greenlight it and move it forward. Thank you.

BREWER: All right, thank you, Doug. All right, questions? Senator Blood.

BLOOD: Thank you, Chairman Brewer. Thank you for your testimony. Just a quick question. I just wanted to make sure I heard you right. So you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

went to the city council meeting, and I'm sorry, where is this council meeting at?

DOUG OERTWICH: Columbus, Nebraska.

BLOOD: Columbus? I've been there. So you said that they passed all these things and they didn't allow for public comment. But do you know, because you talked about things like the budget and I think some contracts, did I hear you correctly? Were there not three readings on the budget?

DOUG OERTWICH: You know, I don't know that. I was invited to that meeting to speak so, but I--

BLOOD: Because usually, I'm not, you-- I can't talk for every municipality in Nebraska, but it's always been my understanding with budgets there's usually three readings and, and public comment has to be allowed.

DOUG OERTWICH: Well, and there was some major expense items, too, that some stuff that was bought or some stuff. But it was just the idea that there was a lot of-- it wasn't just me. There was a lot of people showed up, and it was cold February night a year ago, or March, and people showed up and then they found out they didn't get to speak. So if it's what meeting do they decide to get to speak at and which one you don't, you know? On the public power side, we have every meeting you can attend, you can speak. There's always public comment. And as the senator brought up, we don't put a time limit on, we just have public comment, you know? Sometimes we have 10 people show up, sometimes nobody.

BLOOD: Well, and but you do know that the body has the right to waive the rules at any time and allow people to speak as well?

DOUG OERTWICH: Yes. But they also have the option to not allow it, which I don't think they should be able to do. I think they should take public comment at every meeting on, on whatever it is.

BLOOD: Yeah, and I'm not, I'm not disagreeing with you. I'm just trying to dissect what everybody is telling me.

DOUG OERTWICH: Well, and some people, like the guy that was sitting beside me that day, I think he worked night shift. He switched with somebody to come, and he didn't realize that it's only certain

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

meetings that you get to speak at. Like you said, it might have been the first and second hearing, and they pass it on in the third. But he didn't know that they didn't-- this was one of the hearings that they didn't get to speak at. You know, so.

BLOOD: And they didn't ask anybody in the body to waive the rules?

DOUG OERTWICH: Oh, no. Well, you couldn't speak. I wanted to call them out of order on a couple of things. But, you know, that comes back to my FFA days and Robert's Rules of Order. And, you know, I thought--

BLOOD: Does your city go by Robert's Rules?

DOUG OERTWICH: What's that?

BLOOD: Does your city go by Robert's Rules?

DOUG OERTWICH: Well, I mean, all my committees do so.

BLOOD: Everyone's different, that's why I ask.

DOUG OERTWICH: Yeah. All the ours, we've asked everybody, and we actually send them to training if they don't have it so.

BLOOD: Fair enough. Thank you.

BREWER: All right. Additional questions for Doug? Thank you for your testimony.

DOUG OERTWICH: Thank you.

BREWER: All right. Welcome to the Government Committee.

JACK GOULD: Thank you, Senator Brewer. Senator Brewer, members of the committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d. I'm here representing Common Cause Nebraska. We support the bill. I only want to deal with one aspect of it, and that's the concern that we have about giving the public body the opportunity to decide when and where they will have public input. It seems to us that discretion is the better part of valor. To allow it at every meeting is, is a better way to go. If it looks like there is a huge number of people wanting to speak to an issue, I would think it would be-- and it's not in the rules, but you would think that the public body would want to have a forum of some sort to allow the public to speak. It's understandable that when they have meetings and they have business to transact, that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

they're concerned about how much time to allow for public input. But they should allow some, and they should also be prepared to hold meetings that are open to the public so that they can hear all of the people speak and not just have a select number that sign up in time, as the gentleman before me said. I think Danielle did a great job talking about the bill and I don't want to drag it out here. But if there are any questions, be glad to answer them.

BREWER: All right, let's see if we got some questions. Any questions for Jack? All right. Thank you, Jack. All right, now you, you were quick enough. You're gonna make it this time.

LARRY STORER: I'm sorry?

BREWER: You're going to make it this time.

LARRY STORER: I'm submitting something for your record.

BREWER: All right.

LARRY STORER: I didn't have time or money to copy for everybody.

BREWER: That's all right. We got that. We got a copier that needs work. So no worries. Welcome to the Government Committee.

LARRY STORER: Thank you, sir. Thank you, ladies and gentlemen. My name is Larry Storer, I'm from Omaha, Nebraska. It's 5015 Lafayette, 68132. I'm here--

BREWER: Larry?

LARRY STORER: --for myself.

BREWER: Could we get you to spell that for the record?

LARRY STORER: S-t-o-r-e-r.

BREWER: L-a-r-r-y?

LARRY STORER: L-a-r-r-y S-t-o-r-e-r.

BREWER: Gotcha.

LARRY STORER: I'm here for myself. But I think in the greater good, I'm here for the citizens of these colonies that used to go down in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

the town square and post bills on the telephone. Well, they didn't have telephones. On the trees, the liberty tree. They also used to tar and feather loyalist subjects of the king when they wouldn't listen, when they didn't have input, and when they did lots of things. They finally declared that we were throwing that government off. They also come up with a constitution later on that declared that we have a right to petition our government. Under the constitution, no body, no legislative body has a right to eliminate citizen comments. Reasonable rules, yes. But words matter. What's reasonable to you is not necessarily reasonable to the Douglas County Board. There is a sample of their agenda. If you have not been there and you go down there on that day and pick up that agenda and try to understand where it is that you can or cannot comment, you will have a very difficult time. The first thing is they separate it by Board of Equalization versus county commissioners. They never used to have anything more than a sentence. Now they have a whole paragraph. When you read that paragraph, it says, oh, hell, I can comment on everything under the sun. But that's not what happens. It does not say anything about your ability to comment later on, on all the agenda items. It does not spend-- spell that out for you. It's not clear. So my purpose today, I'm a proponent, but I think you need to expand your, your bill to make sure that the state and local bodies out there that are trying to do this, and some have, clarify their rules so that everybody can understand it, whether a teenage citizen or a law professor. I'm not a lawyer and I'm not a 501(c)(3). I am a citizen under the United States Constitution. Now, a rapid fire. Please ask me questions, I promise not to sue [LAUGHTER]. But I do want to compliment-- compliment this body and this state. Yeah, because this is reasonable. And something else, it is very reasonable. And I think Douglas County and others maybe should take note of this. It's a lot more friendly than to have a red-coated gentleman back there as a coat-- as a Sergeant of Arms than it is to have a state highway patrolman sitting here or Douglas County deputy sitting there or a police officer sitting there, to be called upon by one of you to escort me out of that room for maybe upsetting them a little bit. I'm smart enough to know that when that gentleman stands up, the next step is that he will call the deputy sheriff or the highway patrolman. And that's on my, my tax dollars, by the way. Limit me, limit my freedom using somebody that's paid with my tax dollars, consuming your time, not for-- I have been escorted out. I have been told by a detective, I'm going to have to do a intervention on you. That's not very fun. Try it. This is not going to be in sentences, but it's just a short run-back of history going back at

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

least two years to when they put the paragraph in there. Citizens were walked out of a courtroom, juvenile courtroom on the assumption that somebody said this gentleman, this old gentleman had a recording device. The judge came into the courtroom after I went in, stood up and declared me out of order and sent me out. Not too long after that, they sent in a number of deputies to walk the other people out, because they objected to what just happened. Court was not in session. Open Meetings Act is for who? Is it for you? Is it for the Douglas County Board or for the citizen? I would appreciate when before you close your amendments that you go back at least four or five weeks and watch the Douglas County Board antics. Mr. Rogers sat there and shook his head at me like this as I was speaking. You don't see that on the videotape. And you also maybe you don't see two bodies are the same circular table that are get up and try to talk as a citizen and they're ruled out of order and told to sit down and shut up. But they didn't lock them out under arms of police power.

BREWER: All right, Larry, we're out of time here. Now--

LARRY STORER: OK, real quick. Two of those gentlemen have risked public scorn in front of the camera to protect citizens rights to come down there. And finally, those are-- those rules on there are not understandable. They need to clarify them so people can understand them. Thank you.

BREWER: Hey, just a second, Larry. Let's see if we have any questions for you before we go. Questions? All right, thank you for your testimony. They made copies and we just got this.

LARRY STORER: Thank you.

BREWER: You bet.

LARRY STORER: You just look that over and try to understand what they're--

BREWER: All right, thank you. All right. Next testifier on LB1167. Welcome to the Government Committee.

MICHAEL J. O'HARA: Chairman Brewer, members of the committee. I'm Michael J. O'Hara, M-i-c-h-a-e-l, middle initial J., last name O'Hara, O-'-H-a-r-a, I represent the Sierra Club. Senator Albrecht, thank you for introducing this bill. The Sierra Club supports LB1167. We're a grassroots organization, and we know exactly how hard it is to get

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

anyone to show up at any public meeting. And to have them show up and be disappointed by not having access really defeats the whole process of having that opportunity for input. I previously served as an OPPD director, and the first conflict I had with them was they told me all the real work was done on Tuesday, the committee meetings, where, under the definition of an open meeting, it was an open meeting, because the entire board was present and they would talk. But the public was not allowed to talk. And then on Thursdays, you would have a meeting where all the board just sat there silently and they would go, do you want to spend a hundred million dollars? And they go, yes, yes, yes, yes. And the public never knew what was really going on, because it was all done at the committee meetings. This type of activity would allow the public to attend. They aren't that way now. They now videotape everything, have it online, stream it, and allow public contact. And we would-- I think that makes it work better. One thing you might want to think about is on page 3, line 7, and page 3, line 24, you have teleconferences. And it is not particularly difficult today technologically to have public input via teleconference, but you will need to have some thought to how you're going to do that. If they're on, on the Web, it's easy. But otherwise, it's difficult. If you have any questions, be glad to answer them.

BREWER: All right, thank you for your testimony. It's refreshing to hear that from when you started to when you left it--

MICHAEL J. O'HARA: It got much better.

BREWER: --got better. All right, Senator Blood.

BLOOD: Thank you, Chairman Brewer. Thank you. It's nice to see you again. I got to ask this question. So doesn't Senator Preister belong to your organization?

MICHAEL J. O'HARA: Sierra Club?

BLOOD: Yes.

MICHAEL J. O'HARA: Yes.

BLOOD: Was it his idea about the page 3, line 7? Just kind of curious. That sounds like something he would suggest.

MICHAEL J. O'HARA: No. I retired as a professor at UNO in the College of Business, and one of my areas of research had been

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

telecommunications. And I helped do some of the original drafting of this. And then it was very hard, you were doing everything by telephone line.

BLOOD: Right.

MICHAEL J. O'HARA: And it would be very hard to set up a two-way communication. Now that you have web conferencing, it's very easy.

BLOOD: Yeah, I think we need to update all of our statutes--

MICHAEL J. O'HARA: Right.

BLOOD: --that pertain to that. So I appreciate that comment. Thank you.

MICHAEL J. O'HARA: Yeah, the only stuff that I think has been updated is telehealth.

BREWER: That's--

BLOOD: We have a long ways to go.

MICHAEL J. O'HARA: Yeah.

BREWER: That's a, that's a good point. That's something we struggle with in my district, just because it's so far from anywhere. But to their defense, they are running underground fiber optic cable right now and we still got a long ways to go. But I agree, we're going to have to update so that everything reflects our abilities anyway.

MICHAEL J. O'HARA: Yeah. We now have a lot more bandwidth than we used to have in the rural areas. But we don't have anywhere near as much. We need a lot more bandwidth in rural areas.

BREWER: Yeah. There's pretty good stretches where we don't even have cell service. So you can't give up your hard line. All right, thank you for your testimony.

MICHAEL J. O'HARA: Thank you.

BREWER: OK. Next proponent. Come on up. Welcome to the Government Committee.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

SUSAN GUMM: Thank you. Good afternoon, Mr. Chairman and committee members. My name is Susan Gumm, S-u-s-a-n G-u-m-m. I support LB1167 because I want the people of Nebraska to be guaranteed the right to be heard at any meeting subject to the Open Meetings Act. Public comments or citizens' comments ensure that every Nebraskan has the right to speak, speak freely about issues that are important to them. Without public comments, a Nebraskan may not have an opportunity to speak when a governing body controls the meeting agenda. LB1167 would allow the public to speak at every meeting with the governing body setting the rules concerning the public's right to speak. The rules determine when and how long the public may speak. Boards, councils, commissions, and other local governing bodies should not control who can and cannot speak. Free speech is under attack. Colleges and universities limit freedom of expression to tightly regulated free speech zones, and speakers with a different viewpoint are banned, disinvited, or shouted down. College campuses are no longer a place for the exchange of ideas and debate, and are becoming ever more intolerant of opposing views. There is a total unwillingness to listen and respect views that are different. People today want to silence others because free speech hurts their feelings and challenges their beliefs. Internet giants like Google, Facebook, Twitter and YouTube hold the ability to censor content and limit speech. Opposing views are labeled as hate speech, and people are intimidating others into silence. Elected officials should be willing to listen to the thoughts and concerns of the people they were elected to represent. Public comments give citizens an opportunity to not only share information, but to explain what an issue means to them and/or how it has affected them personally. Hearing from constituents provides elected officials with valuable input to better serve their district. Today, public debate on some of the most important issues of the day is being controlled or shut down. We live in a time of censorship, the stifling of free speech, and silencing people for their opposing views. Because of these endless attacks on free speech, it is now more important than ever that we are able to have our voice, voices heard at every meeting, especially at the local level where the public has the most influence. I urge you to support LB1167 and thank you for your time.

BREWER: Thank you, Susan. All right, questions? All right. Seeing none, thank you again for your testimony. All right, any additional proponents for LB1167? Before you start, if there are more proponents that want to speak, if you could come up to the front, I can have a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

head count to figure out how many more I got to go with. I know that guy. All right, you may open anytime you're ready.

SHAWN MELOTZ: Thank you. Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Shawn Melotz, S-h-a-w-n M-e-l-o-t-z. I want to thank Senator Albrecht for introducing LB1167, and as such, I respectfully come before this committee to testify in support of this bill. To provide a little background, our family actively operates a registered Holstein dairy farm in northern Douglas County. I am a certified public tax accountant and I am the current president of the Papio Valley Preservation Association. The PVPA is a grassroots organization with over 500 members who have faith in free speech. I became involved in testifying at meetings of public bodies when the Papio-Missouri River NRD first reported openly their intentions to condemn our farmland to build lakes for developers. I'm paraphrasing. I attended my first Papio NRD meeting in September, 2004, testifying before a public body for the first time in my life at the October, 2004, subcommittee meeting. My testimony was presented under the agenda item: other items of interest. I have attached a copy of that agenda to my testimony. Over the ensuing months, myself and others regularly testified at Papio NRD meetings. As you may surmise, the subject matter was not congenial. I believe it was for that reason, less than a year later, in July, 2005, other items of interest was removed from the agendas. Attached is a copy of the June, 2005, which had the other items listed on its agenda, and the July, 2005, subcommittees meetings where it no longer appeared. And to this day, it does not. I'd like to note that Senator Rick Kolowski served on this board during this transition. Since that time, myself and others have attempted to bring to light concerns about agenda items that we believed were related to our testimony. Unfortunately, the board chairman would rule us out of order, citing Robert's Rules, and demanded that citizen testimony cease. Our interactions with the Papio NRD have been frustrating, to say the least. Leaving us with a little faith that the Papio NRD welcomes free speech. In fact, many of our constit-- our members have stopped attending meetings out of this frustration. In contrast, I had a positive experience testifying before for the Omaha City Council. In 2016, the Omaha Police Department proposed building a controversial outdoor gun range within two miles of my home. Even though me and other affected residents live outside the city jurisdiction and have no representation on the city council, council members welcomed public comment and were open to collaborate with us. This open dialogue

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

resulted in an agreeable solution which proves how vital it is to welcome public comment. I've had similar positive experiences testifying before a number of other government bodies, including Douglas County Board, Washington County Board, various city councils, and this body. In conclusion, by passing LB1167, the Papio NRD board and other governmental bodies across the state will no longer be allowed to ignore the issues of public concern by controlling its agenda items. The enactment of LB1167 will remind elected officials that they serve the public. Based on my testimony, I respectfully request that this committee advance LB1167 to floor debate. Thank you.

BREWER: Thank you, Shawn. All right, questions? All right, seeing none. Thanks. Wow. About time you come back and see us.

EDISON McDONALD: Yeah, it's been a while.

BREWER: Welcome back to the Government Committee.

EDISON McDONALD: Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, I'm the executive director for the Arc of Nebraska, a nonprofit with 1,500 members and 9 chapters covering the state. For 60 years, the Arc of Nebraska has provided advocacy to people with intellectual and developmental disabilities and their families. We're here today in support of LB1167. The bill helps to clarify sections of the public meetings law to ensure opportunities for citizens to engage. We'd like to thank Senator Albrecht for introducing this bill. Public comment is absolutely vital to our civic engagement process. We see how regularly the opportunity to have open and collaborative communication has a tremendous impact. Citizens, nonprofit organizations, businesses, academics, and other involved stakeholders are able to ensure far greater levels of efficiency in the process when they're allowed to be involved. We've seen several techniques used to skirt around the clear intent of the open meetings law. In particular, in particular, we've seen-- in particular, we've seen regular improper use of subcommittees, trainings that aren't really trainings, and meetings that should be subject that have not followed the open meetings law. We're glad to see this effort to ensure that all of our citizens are able to accurately, accurately participate in our government process. We fully support LB1167. Questions?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: All right. Thank you for your testimony. Questions? All right, thank you, Edison. All right, next testifier. Welcome to the Government Committee.

THOMAS J. GIST: Thank you. My name is Thomas J. Gist, I'm from Rulo, Nebraska. Used to be nine miles east in Falls City, Nebraska. But anyway, I just wanted to mention a few things about--

BREWER: Thomas, could we have you spell your name for the record?

THOMAS J. GIST: OK. G, like in George, i, like in Idaho, s, like squirrel, t like in Tom.

BREWER: T-h-o-m-a-s?

THOMAS J. GIST: Yes. And I'm a former and retired county attorney and judge for the state of Nebraska. But many years ago when I was a young prosecutor, I was sitting in my office and some people came to see me and said, say, up there the school district is about 20 miles north. They say they're gonna have a school board meeting and, at 7:00, and if you're there, the school board is there, but they're, they're, not having a meeting, they're down having another meeting down the hallway. And about 25, 30 minutes later, they come in and start the school board meeting. And I said, oh, really? That can't be right. And so a couple weeks later, I drove up the road and went to the meeting. And sure enough, they were right. So I had to inform the school board up there that, hey, I was the new county attorney in this county. And, you know, they're violating the open meetings law. And, you know, this shouldn't be happening anymore. And if it did, I guess I would just have to prosecute them. And apparently, that seemed to work because I never heard any more about it.

BREWER: That better do it.

THOMAS J. GIST: Yeah, so anyway. But since that time, I've seen various things over the years where people have trouble getting on the local city agendas and things like that. And all kinds of artifices are used. Usually that you, you know, you have to talk to the clerk, the city clerk or city administrator to get on the agenda. He wants to know, what are you going to talk about? And, you know, if this doesn't work, you just don't get on the agenda. And that isn't exactly right. And then sometimes you can get on the agenda, but people don't like, I guess, what you're saying or something. So you get kind of the shepherd hooks back out with the chief of police or something like

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

that. This is not good. So I think they need to understand-- I say they, I mean the public bodies involved here. They need to understand that all these people have a right to show up and be heard regardless of what they may think, what they're gonna be talking about. Whether it's offensive to the board or not. And so that's, that's kind of the way I look at it. And it's, Senator Blood is asking some other witnesses about what do you, what do you need this for, because there's criminal penalties here? How does that happen? People have to go to the county attorney. When-- and how many people who get shut out of the city council meeting are going to be bold enough to go do that? They're just going to say, oh, we're just out of luck. And so the process repeats itself. So anyway, that's, that's about all I've got to say, except that it's nice that the senator has proposed this bill. Because I think it's badly needed myself. And that's, that's just who I'm representing, is myself.

BREWER: Well, thank you. Thank you for your testimony. I'm kind of glad we had you come in because we kind of needed someone who had that type of experience in life that, you got to admit, your, your time as a judge is a little bit unique. We don't get a chance to have someone who we can talk to. And understand that some of the written testimony, the problem was the county attorney was part of the process that kept them from being able to testify in the meeting. So when you have that situation, you can see why people get frustrated and discouraged that they're essentially hopeless in how they can move forward with--

THOMAS J. GIST: Yeah, where, where was the situation where the county attorney was part of the problem?

BREWER: Well, I don't want to go into those details, but suffice to say, there's a lawsuit going on. There's issues so.

THOMAS J. GIST: It must be a county board meeting.

BREWER: It was.

THOMAS J. GIST: OK.

BREWER: But the point being, your situation, you had a way of fixing it because of the unique position you had.

THOMAS J. GIST: Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: You would need, for one, a county attorney who would be motivated enough to want to take on additional challenges, which most of them have a pretty full plate. And therein lies the problem, because people tend to try and find open spots in their schedule to do things like this and they just don't have either the money, the time, or the ability to pursue anything if there's injustices being done to whatever the meeting is that they're trying to be a part of. So, you know, I-- you can't help but feel a little bit sorry for them when they get to the point they give up because the system is just too broken.

THOMAS J. GIST: That's right.

BREWER: OK. Questions? All right, again, thank you for your testimony. And Rulo, I've, I've been there. I ran a marathon that went through there years ago, and the hills between Rulo and Falls City are not my friend [LAUGHTER].

THOMAS J. GIST: Yes, they're, they're steep. I can look out my window across the Missouri River into Missouri.

BREWER: Well.

THOMAS J. GIST: Yeah, there, there's some hills down there. Thank you.

BREWER: Thank you. All right, the next proponent for LB1167. Seeing none, we will transition to opponents. Oh.

LYNN REX: Thank you.

BREWER: Lynn, welcome back to the Government, Military and Veterans Affairs Committee.

LYNN REX: Thank you. Thank you, Senator. Senator Brewer, members of the committee, my name was Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. I'm gonna wait until everyone gets a copy of my handout. First, I would just like to say that I fully understand this bill is well-intended, but this bill undermines transparency and accountability. I understand that's the reason, one of the reasons why Senator Albrecht wanted this bill introduced. And let me tell you why that is. Because first of all, I'd like you to turn the second page of the handout. What you see is the underlined language in-- it's highlighted. This is the foundational concept of the Open Meetings Act, and the League of Nebraska Municipalities has

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

been involved in negotiating this for the last 45 years. And let me share with you why that is. It's about each public body giving reasonable advanced publicized notice. Why? So that I know as a citizen whether or not the city of Columbus or Douglas County or any public body, what are they going to be talking about? What is reasonable advanced publicized notice? Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which will be kept continually current, should be readily available for public inspection of the public office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Some of that language that, especially the last sentence, was negotiated, oh, just a few years ago. Probably some of the most recent language. And the reason for that is so that I as a citizen or anyone, even if I'm a cit-- not even a citizen of Chadron, Nebraska, I can look at their agenda and say, OK, are they going to be discussing my property? Are they going to be doing anything that impacts me that I care about, so I know whether or not to take time to go. Or is it just going to be a free-for-all at the end? I have attended some of those public participation comment sessions at the end of a meeting in my years. I've been with the League full-time since 1978, and I can tell you of the myriad of meetings, and we've encouraged municipalities not to do that. We've encouraged them to give meaning to reasonable advanced publicized notice, to give meaning to public participation. We strongly support public participation. That's not the issue. The issue is how do you give public participation in a way that's fair to everybody? So I don't have to worry about my property being attacked or I'm going to be attacked in a public comment session. And believe me, if you don't think that doesn't happen, it happens. And so how do you do that? Grand Island has developed a process, and this is the handout, the front, the front page. A number of cities across the state are using this. We do training workshops all across the state of Nebraska encouraging and fostering how to have basically public participation that matters and so the people really know what's going on. Because frankly, allowing public participation at all meetings sometimes just doesn't work. Let me give you a couple examples. There may be a meeting that's simply a personnel-related meeting. In fact, what's going to happen is there will be a motion to go into closed session to protect the public interest of the reputation of individual who does not want it in open session, as allowed under Chapter 84, Article XIV. And so there's not going to be public participation. There's not going

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

to be, quote, public comment. So there are many other times, you may have a consultant. And so the only purpose, especially during the time frames when cities were regulating natural gas rates, and Senator Blood may remember some of those times, and you're having a consultant, that's going to fly in, that's going to give a presentation. Now, there will be a time for public participation, but not that night. Not that time. So what Grand Island has developed, and many other cities are using this, is they basically say, look, this is available, this form is available while we're open for public business. It's available at the meeting. I can fill it out. If I want to talk about I don't think that the city has an effective junk car ordinance, I can fill this out and say, I want to talk about that. The staff, most of the time, cities that use this will tell you, that about 95 percent of folks will actually get back to you and say, from the staff, and say, look, here's the junk car ordinance. Here's how it works. But if you want this as an, is an agenda item, we'll put you on in an upcoming meeting and you can get it on. So let me share with you very quickly here, because I'm running out of time. Even today, think about how you would address this. If I'm here to talk about death penalty, Jack Cheloha is here to talk about school financing. And you're saying, wait a minute, that, that's not what we have scheduled today. This was to give the public notice that this is a bill we're going to be considering, not all those other bills. There's a time and a place for that. But not today, not now. And so I would just submit to you that the most important thing that matters is to make sure that people understand what their public body is doing and then how they participate. We encourage municipalities to put on their agendas, here are the items where you're going to have public participation. Here is the items where public comment will be allowed, here are the times when on the other items you will be allowed to have public comment at a different time. And unfortunately, I'm out of time, so I won't be able to finish up. But I hope somebody asks me a question.

BREWER: All right. Thank you for your testimony. Questions? Senator Hilgers.

HILGERS: Thank you, Colonel Brewer. Thanks, again, Ms. Rex, for being here. I appreciate your testimony. Just trying to distill your objections specifically. So one, one was pretty clear to me. I'll address that secondly. But the first one-- so I'm sort of taking two pieces of your testimony and combining them. Just tell me I've done

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

this accurately. So when you, you were talking about 84-1411 and the reasonable notice that has to be given.

LYNN REX: Yes. Yes.

HILGERS: And I was trying to determine what would, what would-- how would this implicate that? And I think what I heard from the second part of your testimony was that you're going to-- there's going to be notice as to certain topics, but this statute would allow people to come up and talk about anything that they want to talk about. Is that the-- is that a fair distillation?

LYNN REX: That's essentially it. And let me give you a really good example. And we use this, and I'm not going to get-- be specific on the person or the city. An individual in a public comment, this was open comment period in a particular city. An individual came forward and said, I don't understand why the police department isn't going to my neighbors house. I know that there's drug-- they're doing drugs there. Here's the name of the person, here's the address. They're doing drugs. There are packages and people coming in and out of that house all the time. And the police does nothing. Well, guess what? Of course, people find out the next day. Here's, here's what was happening. The person whose address was mentioned, the person whose name was mentioned didn't know. Of course they weren't there. She's a Mary Kay salesperson. So, yes, lots of packages coming in and out. But she's selling Mary Kay. Had somebody known that that's what the situation was going to be, they could have addressed that. And you think that doesn't really matter, but it does when it's you. You know what I'm saying, Senator? So the idea is that we really believe that, if anything, there needs be more public participation in this state, not less.

HILGERS: So--

LYNN REX: But the question is how to do it.

HILGERS: No, I appreciate that. So I under-- so does that-- and so I appreciate the anecdote. Is that a widespread concern that people-- and I'm not-- this is a very straightforward question. You're-- you represent the League, so you would know, I mean, that there will be people, as I understand you're saying, people will come to these, potentially come to these hearings if they have the right to speak and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

will speak about all sorts of things, including things that could harm other individuals?

LYNN REX: That's exactly right. And there's another element, too, if I may. And that is developers. And we love developers, we love development. Cities grow because of developers. We love that. But if you get a good developer that can do a three-minute presentation and outline what they're going to be doing in this open comment period. So and this happened in a pretty big city in the state of Nebraska. And so they're outlining, here's what, here's what we're gonna be doing. We're looking forward to working with your city, if you're the city council. Can't wait to meet with you, Council Member Hansen, can't wait to talk about this. This is what we're going to do. This is where we're going to locate it. They never had a planning permit. They never talked to anybody. But the next day in the paper the headline reads: X, Y, Z major superstore is going to be located on X, Y, Z street. They haven't even done anything, there's been no public process.

HILGERS: That's fair. I guess the question I would have then is maybe there's some anecdotal-- maybe this happens and I'm--

LYNN REX: All the time.

HILGERS: But isn't, but I mean, isn't it a fundamental right? I mean you've heard testifier after testifier of proponents saying, I want to be able to petition my government, I want to have the opportunity be heard.

LYNN REX: Exactly.

HILGERS: Doesn't that outweigh some of the, some of that possibility of people saying something that's negative that they could do in any other forum, on Facebook or, or through any other means of communication? Isn't it, isn't that a balance that we as citizens sort of say, we're going to strike the balance in favor of allowing people to petition and discuss things [INAUDIBLE]?

LYNN REX: And I think that's why the statute is written the way it was. The provision, the language is being stricken here, the reason why that was put in was so they, in fact, municipalities are being told as other public bodies, you don't have to allow public comment on every item, on every meeting, but you do have to allow it at some point. And so that's what this form is about. This form is about not just trying to have people jump through hoops, because again, 95

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

percent of the people in Columbus and Grand Island and other cities using this format, they get their issues resolved. They actually, it never probably even results in an agenda item. But I do think there is a need to provide a way in which people understand process. I will also tell you how bad it was in one particular area. The cities themselves took turns going to this particular other public body that I will not name because they couldn't rely on the fact that the public body's agenda, that that's what they were going to do. Those agendas need to mean something. Reasonable advanced publicized notice needs to mean, needs to mean something. And I think the balance is process, participation, and how to do it so it's fair to everybody. But the examples I've given you, those are-- those happen all across the state, except in those cities that have now developed a process so they have meaningful public participation. People know-- it's not the question of do they get on the agenda? They will. If I fill out this form and I'm not satisfied that I care about their junk car audience, I say no, I want on the agenda. I will get on the agenda.

HILGERS: The second, if I might, Mr. Chairman, just one follow up. So the second objection that I heard was regarding having, having a public meeting where there's some-- discussing something that's confidential or sensitive. I think that was one of the objections that I heard from-- is there, is that addressed in 84-1412, where there-- it seems like there's an exception for closed session.

LYNN REX: Yeah.

HILGERS: So if you wanted to talk about something that was a confidential personnel issue would that, is it your read of the language of the bill that that exception that appears to currently exist would be somehow-- would not apply in this circumstance?

LYNN REX: Well, 84-1410 is the one that provides the provisions for closed session. I'm just saying what's fair? As a citizen, because I go to, I go to a number-- we've had some issues in our little neighborhood. So I've gone to a number of city council meetings myself. And all I can tell you is I want to know-- if I find out that city X, that their, their one and only agenda item is going to be a personnel matter regarding the utilities superintendent, and there will likely be a motion to go into closed session. So I know they're probably gonna go into closed session. That's their one item, I'm not going to that meeting. I'm gonna wait and go to the meeting when my agenda items are up. And I just think from a fairness standpoint, when

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

you do have people that take time to go, they ought to be able to look at the agenda-- and I'm making up the numbers. So give me the flexibility of that if you would, please. But we've got, for example, in Norfolk, Nebraska, they'll say something like, OK, we're going to allow public comment tonight on items 2, 4, 6 and 8. Items 1, 3, 5 and 7, those will be another date. We'll tell you when that's going to be. So it's not about not having public participation. It's about doing it in a way that is most respectful and fair to everybody. And I don't want to go to a public meeting when I know they have one agenda item and I'm not-- they're going to go into closed session. And then the question should be, should I be able to then have an open forum, Senator, where I can get up, they go into closed session, they come out, they do what they're to do on that one agenda item. But yet now there's open comment, I can say anything I want to say. I can talk about Senator Hansen's barking dog and then find out he probably doesn't even have one. But it doesn't matter, I can say whatever I want to say. And if you think that those moments aren't done across the state and those types of issues don't happen, they really do. And also on the development side, it really matters. And so I just think it's a fairness issue for everybody. So the issue is never about public participation. It is about transparency, so I know what's going to be on the agenda. It's about accountability.

HILGERS: Can I, can I just push back on that one last point?

LYNN REX: Sure.

HILGERS: The point about account-- transparency as to what's on the agenda, I mean, what I'm taking your argument is that there is an agenda item, but some member of the public comes and speaks about something that's not on the agenda, that that sort of transforms it into a new agenda. That's how I'm read-- that's how to interpreting your argument. Is that what-- is that the argument?

LYNN REX: My argument is, how do you provide--

HILGERS: The agenda is the agenda.

LYNN REX: How do you provide reasonable advanced publicized notice?

HILGERS: Of what, the agenda?

LYNN REX: How do you provide that, OK, of what the agenda items are if one of the agenda items is open comment? So does that mean then as a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

citizen of Lincoln, I've got to go to every Lincoln City Council meeting?

HILGERS: Well, but, but I guess I would just say we, we have these hearings and people come up and share anecdotes or stories and sometimes it's not precisely on the bill, it's about something else. I wouldn't interpret that as a member of the public to say, well, oh, gosh, now that the, now the agenda is broader than the topic. Some member of the public wants to testify at a hearing or come to a public body and share their story, and if it somewhat goes off track, that doesn't modify the agenda. That's not, that's not a new agenda item that the council or anyone or the Leg-- this body is going to act upon. It's just input from the public that might go beyond the subject matter in some cases, but that doesn't strike-- that strikes me as different from a mod-- a true modification of the agenda, which is what I, what I'm hearing you suggest is occurring.

LYNN REX: I'm just saying you don't have transparency if I don't know what they're going to be talking about, what the subject matter is. And the, I mean, to be a ludicrous example. But, you know, you're on a committee and let's assume that on a different committee, I know you've got a bill coming up next week. So today I'm gonna come here and I'm gonna testify about that bill next week. Why? Because I want to influence you for next week. It's not on the agenda. The other people that may be coming to that hearing next week, they're not here to hear it, even if they cared about it. So I'm just suggesting it ought to matter, that the agendas ought to matter, and that people ought to have a way to get public par-- public participation. There ought to be a way to have a way to get agenda items. And the issue ought to be how to foster more public participation, not have a free-for-all at the end of a meeting or whenever they choose to do it.

HILGERS: All right. Thank you.

BREWER: All right. Additional questions? Senator Blood.

BLOOD: Thank you, Chairman Brewer. It's nice to see you again, Lynn.

LYNN REX: Nice seeing you.

BLOOD: So, I mean, I want to be clear that I believe in transparency, I believe in public input. But I think the point that's not coming across, and it was something that, I sat on the League of Municipalities municipal committee for eight years. And the thing that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

I'm not clear on, that I'm hoping that you can address, is the liability issue. You've talked about it a little bit. We-- you and I are very aware of some things that have been said about people, addresses, false accusations, false accusations, false accusations that, especially in some of the smaller communities have created large amounts of fear and misinformation, which in the long run costs taxpayers' dollars because it took extra staff time to try and to, to squelch it. Attorneys sometimes have to get involved. I think what's not coming across is that there is a cost to taxpayers when we don't follow the existing statute and the way that it's written and make it as transparent as you're talking about with agendas and when we allow people to come in and say whatever the heck they want, whether it's anything about the agenda, their next-door neighbor, the dog across the street, we're just, I mean, I'm using the examples that I've heard. Aren't there some, some legal ramifications? Aren't there some liability issues?

LYNN REX: Well, I know one of our cities has faced that, just by comments that were made at that point. So, you know, it is-- it can be. But I think predominantly to me what the, what the overriding issue is, the liability issue is important, but what's also overriding is just so there's a fairness. So people really do understand. Senator La Grone, you understand if I'm gonna be talking about your property or your business, or if I'm making an accusation that somebody else that has a business. If I get up, and I've heard this in a public comment period: business X, Y, Z, they're going bankrupt. I don't know if you're aware of it, but they're going bankrupt. Well, maybe I, maybe I'm a competitor. Those things happen, and that's why agendas ought to matter.

BLOOD: So actually, that did answer my question. I just, I have concerns. I think there's-- I, I think part of the issue is that obviously there are certain communities, boards, committees that aren't following state statute. And if they were following state statute, we wouldn't even be having this discussion today.

LYNN REX: I think that's right, too.

BLOOD: So I think that's my concern.

LYNN REX: And for those communities that do have the open session, the open remarks and open comment, what they've been told and what they've been directed is that as city council members, as village board

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

members, they are to listen. They are not to have any facial expression, they are to say nothing. So people can get up and say anything they want to say, but you are to have no response, nothing. And somehow that's OK. I'm just telling you, it's not OK if they're chastising or saying something that's offensive to neighbors, to businesses, and other sorts of things. That's all I'm suggesting. So I think this is well-intended. I just think it does just the opposite of what's intend-- of what it is intended to do. And all of these items in here may not look like the most perfect bill, but lots of hours and decades went into negotiating all the principles of this bill along the way.

BREWER: All right, I got to jump in here and make a few comments, though. On the issue of libel and slander, we have laws. So if a bad actor comes in and he wants to just get stupid and make comments that aren't true or are just vicious, there's laws against that. So to take and take away other people's free speech in order to allow this bad actor from being a bad actor, we can't hardly build our rules around the bad actor, I guess is where I'm concerned here. And I understand what you're saying. But when I have people that say, listen, you know, if you want to take some of these names and contact them, feel, feel free to, because it's in the record. But when you have a county board and they won't respond to email, they won't respond to written letters, and they won't give you a voice, there is a point where you've got to, you've got to have a way to affect that so they're not just totally ignoring the public and doing whatever they want. And I think there are cases where it is severely neglected as far as their willingness to listen to the people of their particular county. Now, I understand you work primarily with cities, but I, I struggle that we don't have a way to enforce this and that we can be more effective. And that's where you can't help but go through some of these. And like I said, I'll give you a chance to and feel sorry for them. It's not right. And, and, and, and I think Grand Island probably has a great way of doing this. Unfortunately, we don't have a perfect model that everyone uses and, and so for those rogue cities or counties or whoever is neglecting that ability to give an open, free speech to people, that's the ones where I think this law could be effective.

LYNN REX: I don't think this law would be effective in doing that. I think that it would have just the opposite effect. What I think does-- would be effective, we're happy to work with this committee and others, other interested parties to try to make sure that people do have a voice if they feel like they're not being able to basically

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

talk about items that are either on the agenda or items that they can't get on the agenda. To me, the answer is not have a free-for-all, the answer is make sure that people have the opportunity to get something put on the agenda in a way that makes sense so that it ties in with basically good governance and that they have an opportunity to be heard. And I can understand the frustration if people feel like they're not being heard. I get it. I'm not here to say that every public body, Senator, in the state of Nebraska is doing an exemplary job on Open Meetings Act issues. I'm here to say we spent a great deal of time training municipalities across the state on how to get partici-- on how to give basically effective and constructive participation in a way in which cities can do something. And I will also share with you the tremendous frustration that a lot of folks have when they come up in those open comment sessions and then their city council members, their village board members just sit there and look at them, because they've been told by legal counsel: Don't have a facial expression, don't respond. And so they're saying, can't you say something? And nothing's happening. And I think it's almost rude, but that's what cities have been told to do if they want to have an open comment session.

BREWER: Thank you, for your testimony.

LYNN REX: We're happy to work with you.

BREWER: All right.

LYNN REX: I just don't think this is the answer. I think there are problems. I think there are issues that need addressed. This isn't it. Thank you.

BREWER: We'll just have to agree to disagree. All right, our next opponent. Welcome to the Government Committee.

JIM VLACH: Thank you. Shall I wait?

BREWER: No, you're good. You got a green light, you're good to go, sir.

JIM VLACH: Chairman Brewer and members of the Government Committee. Good morning, Senator Brewer and fellow members of the committee, and thank you for the opportunity to comment on LB1167. My name is Jim Vlach, J-i-m V-l-a-c-h. I'm a three-term school board member from Lyons-Decatur Northeast Schools, and prior to that was a secondary

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

teacher in the same district for over 30 years. I'm also on the board of directors for the Nebraska Association of School Boards and, as a duly elected representative of both bodies, I am here to speak in opposition. There is no doubt that communication and transparency are of great importance in any discourse, especially in regard to the operation of any elected body. But my frame of reference is education. The functions-- excuse me, the functions of a school board are many, among which are open communications, which should be followed by due deliberation of the facts presented. Following an agenda is necessary so that we may be prepared to act efficiently. Part of our responsibility is also to protect the reputations and privacy of our teachers and our students. Allowing someone to speak intentionally or unintentionally about personnel or students in a way that may be accusatory or uninformed or misleading in a public forum would be irresponsible. If the comments are false, the damage is done. Our career is tarnished, or a child needlessly humiliated. If a patron's comments are true, they can be directed to the proper person, beginning with the classroom teacher, the administration, and finally the local board. Every patron has a right to pursue their concerns through the process which aids in efficient communication without denying anyone the opportunity of commenting on or raising pertinent questions-- excuse me, at the appropriate time to the appropriate officials and the appropriate place. A school patron's rights are already protected. LB1167 would not guarantee a right that is already protected. And after I wrote this, one other thing came to mind. Last year, with the passage, with the change of the American, Americanization Committee to the committee that deals with civics, one of the options that students have is to attend a meeting such as this or any public meeting, observe our democracy in action and write a report. I have been involved in education on both sides of the desk since I was five, and I have seen comments from people that have quickly segued into personal attacks of teachers, students are mentioned often in the heat of the moment, and in some cases the, the comments were inaccurate. You talk about the bad actor. Well, it's like putting the genie back in the bottle. Once the damage is done in a public forum, the retraction never gains as much attention as a headline. And so it seems to me as though we need to protect them. Now, granted, if there is a pertinent issue that needs immediate action, there is-- you go directly to the superintendent and they are enabled to act immediately. And so it isn't as though you have to wait another 30 days for a school board meeting. Or if you have questions on curriculum or anything else that deals with, with school, you go to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

the people that are in charge of it, the evaluators, the principals, the superintendents, the curriculum directors, and they may be able to answer your questions. And so it seems to me as though as important it is for there to be communication and transparency, we also have to give due consideration to people who can be damaged by incorrect information, whether it's deliberate or accidental. Thank you for your time and consideration.

BREWER: All right. Thank you. Questions? All right, well, I'm going to have to ask a few. All right, so you're, you're trying to set a worst-case scenario that someone would come in and say something that would be slanderous or it would be a libel type thing, and that somehow we have to keep this from happening.

JIM VLACH: If we stick to-- I'm sorry.

BREWER: No, go ahead.

JIM VLACH: If we stick to an agenda for which everyone is prepared to respond, do due consideration to all the information necessary before the meeting begins--

BREWER: OK.

JIM VLACH: --then we can handle almost any, any question pertinent to an agenda item.

BREWER: And on the issue of the, well, take it to the superintendent, there could be scenarios where it's the superintendent that's the issue.

JIM VLACH: Right. And then, then if necessary, I'm not exactly sure the legality of it all, but you certainly could approach other administrators. Or if necessary, the board itself. I don't think that's encouraged. But if the superintendent is the issue, they're-- that can also be put on the agenda. And if it's something that has to be taken care of right away, I'm sure there are issues. I'm not aware of it ever happening that way. If there have been people who have been unhappy with the superintendent's performance or what have you, budgeting procedures or what have you, it comes to the public attention very quickly.

BREWER: I guess the concern is that we can, we can come up with scenarios where bad actors, whatever term you want to use, can say and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

do things. But we do it at the expense of the right for free speech. So, you know, that's where I, I guess I, I struggle with that part of what you testified on. I just wanted to kind of--

JIM VLACH: Well, it's the old cliché about screaming fire in a crowded theater. At what point do you have to seriously weigh the damage that could be done by something that's deliberately or accidentally misleading or false?

BREWER: I understand that. But to believe that everyone will scream fire in the theater--

JIM VLACH: No, I'm not believing it will. But I'm saying it can happen. And if you simply adhere to an agenda, and as it's pointed out, everybody has an opportunity at some point to speak. It may not be the night that they're there, but if they're truly interested, agendas, in the school board anyway, are duly published well in advance. If there's a question, they can call the school, they can know what the agenda items are and then, yes, as was said prior to this, that they may choose to attend or not to attend.

BREWER: And-- Senator, please go ahead.

HILGERS: That's all right, I didn't mean to interrupt your-- to your point about yelling fire, fire in a crowded theater. We don't respond to that by don't letting-- by prohibiting people from going to the theater.

JIM VLACH: Exactly.

HILGERS: The way that we respond to that is by punishing the wrongdoer. And what I am hearing from opponents here so far is that what we're going to do, because there's some concern about someone saying something bad at some point, or that might waste time or something else, what we're gonna do is we're going to cut off the ability of other people to speak about legitimate concerns because we're concerned about this. And I agree that we ought to take due consideration for the points you made. I can-- I do agree. But why-- but my question is, why should that due consideration lead us down the road of concluding that the answer to the problem you've articulated is to not let individuals ensure-- not ensure those individuals the right to be able to speak?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

JIM VLACH: If they never had an opportunity to bring their concerns to a board of any kind where it could be placed on the agenda for discussion, I would agree. But if you have situations where they may deliberately, then I think it's something that needs to be limited. But if you have a disgruntled patron, school board patron, patron from a school district that's unhappy, there's a multitude of ways for this to be brought to the board's attention.

HILGERS: But--

JIM VLACH: And it can be discussed.

HILGERS: And I guess the point that I'm hearing from proponent after proponent is that there's not a multitude of ways, necessarily, to be able to get in front of their school board or city council and have their voice heard.

JIM VLACH: I can't speak for any other board. As I said in my prepared statement, my frame of reference is education. And so I am not aware if the district in which I've lived and taught anyone has been denied the opportunity be put on the agenda. I'll have people ask me, we know how small towns work, in the post office or the grocery store, or if you linger too long and look sick in front of the mortuary, they're going to stop and ask you. And yep, you tell them how to do it. You contact, you contact the main office and you're put on the agenda.

HILGERS: Well, and I commend the work that you've done to let people be in front of you. And same thing with Grand Island. But I think what we're hearing is not every-- unfortunately, not every, not every board or city council does it the way that you've done it. And for those, those, why should we allow the possibility of some bad actor trump other citizens who are good actors?

JIM VLACH: I agree 100 percent, but, but there are legal restrictions that can be placed on the people who, who-- the bad actors. Why it's not enforced, you had mentioned this prior. Maybe it's a matter of enforcement. But I do believe in the case of school boards, and I've never had any trouble with my small town city council or planning commission, etcetera. The planning commission needs to see me walk in the door, but I'm there. But the point is, is that, that I've never had any trouble making my voice heard as in it-- but I've always given them the courtesy of being on the agenda.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

HILGERS: Thank you. Thank you.

BREWER: All right, any additional questions? Seeing none, thank you for your testimony, sir. All right, any additional opponents? OK. We need a page to pick up those materials there. All right, welcome to the Government Committee. Whenever you're ready.

JACK CHELOHA: Thank you. Good afternoon, Chairman Brewer, member of the committee. My name is Jack Cheloha, that's spelled J-a-c-k, last name is C-h-e-l-o-h-a, I'm the registered lobbyist for the city of Omaha, and I thank you for the opportunity for testifying this afternoon. I'd like to register the city of Omaha's opposition to LB1167. When we first read through the bill, we were trying to understand the meaning of it and what the purposes of, of the bill were. And I think it was confirmed by the multitude of proponents that what we're looking for basically is an open mike period at a public meeting. And the Omaha City Council doesn't feel like that would be a good opportunity or a good, good addition to a public meeting and agenda. I'm handing out a letter from-- signed by the majority of our city council in opposition. The city of Omaha is roughly 450,000 people. We have seven elected city council members, each one represents roughly 61,000 people. Our city council typically meets every Tuesday with exceptions for holidays and other things. But, but typically they'll have about 45 meetings a year out of the 52 weeks. And with that, we go through a multitude of issues relative to managing a municipal corporation. Typically, each week's agenda can have anywhere from 100 to maybe 120 items before the city council. And it's important to note, you know, as you've heard before, for transparency and other issues, that we publish that agenda, we get that out to the public that they see which items will be having the public hearing. The items that typically go before a local governing body of a city are typically in the form of resolution or they're in the form of an ordinance. On a resolution, each item will have a public hearing on each item, and they can be passed that very same day. Typically, on ordinances, they need three readings before the city council. And that's typical to have the public hearing at the second reading. And that's noted within the agenda. And sometimes there's a rare exception where it could be a really hot topic or there could be, you know, a new development where amendment was filed or something. And a lot of times that public hearing will be even continued onto the third reading where you can take some more testimony. Just so that covers mostly why we were concerned. I wanted to let you know that, you know, public input is important and we do

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

all we can now to hear from the public. I mean, we're in a representative democracy. Citizens take an active interest in the governing body, and we encourage that. We want to hear that. However, we feel that-- I want to read this part of my letter to you. Open comment periods are of less value, and in fact, can be counterproductive. Constituents could become frustrated when complaints cannot be immediately resolved. In addition, open comment periods can have the unintended consequences of providing a forum for comments unrelated to city business, as well as inappropriate or purposely divisive commentary. That's something that you've already heard from the two witnesses before me. But in terms of being counterproductive, if you, if you don't know what a citizen is going to talk about, obviously it may take some research or it may take a certain person from the city department that has expertise to look into that matter. And so for, for those reasons, we don't think that an open mike situation would be helpful to the public. You see, I made a couple other notes as we were going along. I've talked about how we continue public hearings, the length of our agendas. Sometimes, another thing to let you know, that if there is a disconnect with government, a lot of times there's a third conduit that the citizens can approach. And it hasn't been mentioned so far. But that's the press and the media. And sometimes they're a valuable tool relative to what's going on with a certain elected official or even not an elected official. So we wanted to make sure you knew that. We just don't think an open mike is, is a good part of effective government. And for those reasons, we're against LB1167. And I'll try to answer any questions.

BREWER: All right. Thank you, Jack. All right, questions? I understand what you're saying. We have rules and regulations that keep the subject germane for whatever. I mean, I don't know the intent and what, we'll be able to talk to Senator Albrecht when the closing comes. I think the intent is that it's a free-for-all that where we're having problems is X county, X county commissioners are meeting to discuss X bridge or bridges or roads or whatever the issue is. And they're not providing the opportunity for public comment, or if they do, it's such a sliver that all the rest of them are left out in the cold without an opportunity to share their thoughts. Your meetings are normally on the 6:00 news, so they're pretty open and they're, they're, you know, they're for scrutiny and all that. Unfortunately, as you get to, you know, a Grant or Thomas or Hooker County, their hands are kind of tied. If there is truly an abuse of power, that person can kind of rule however they want. And, and there lies the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

concern that that, that ability to, to express your concern about a particular way that funding is being used or something is being handled.

JACK CHELOHA: Right. Can I comment?

BREWER: Yes, please.

JACK CHELOHA: Is that OK? Well, thank you for that. First, I, as I also listened to the proponents, I was somewhat relieved that there weren't any direct shouts coming at the Omaha City Council relative to this. And so, so that gives me comfort in the fact that I think my elected people are doing a good job. If I could offer a suggestion, and I, see, I can only speak for Omaha and how our process works. But one thing we did find to be somewhat effective at least is, is citizens know, you know, that they have one elected representative. You're one of the, you know, that this is my council member. And so they, most feel that they can approach them. Or if not, we have, you know, administrative staff that they can approach. And so we've, we've set up in the past 10, 15 years, if you will, something, something like the Legislature does. We have committee meetings now and citizens, you know, approach us and then they ask to get on the agenda. And we're typically almost always accommodating. I can't think of anything that ever was pushed away. And then if it's into whichever committee would have jurisdiction or domain. And then if it's something that needs to go before the full body, then we usually act on it. And, and I don't know if that's available to the Hooker Counties or other counties, but we find it to be somewhat effective at least.

BREWER: Yeah, I think it does. The problem is when you're in a scenario where it's, it's a 200-mile round trip to go, you kind of hate to have extra meetings because, well, it's, it's a pretty good inconvenience for folks.

JACK CHELOHA: One last point I thought of, too, though. It's-- as we write the bill, I know it's hard to write a bill to make one-size-fit-all. And so in this instance, the language LB1167 would affect the city of Omaha. And because of that, that's why they asked me to be here to testify here today. Where as you know, we haven't heard any direct commentary saying we're the problem or why we should have it. And so, you know, that's kind of the rub, too, sometimes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: Sure.

JACK CHELOHA: All right.

BREWER: All right. Any additional questions? Seeing none, thank you for your testimony.

JACK CHELOHA: Thank you.

BREWER: All right, next opponent. Welcome to the Government Committee.

SCOTT McHENRY: Thank you. Good afternoon, Chairman Brewer and the members of the Government Affairs Committee. My name is Scott McHenry, S-c-o-t-t M-c-H-e-n-r-y, and I am an elected board member of the Lower Elkhorn Natural Resources District, and also serve on the Nebraska Association of Resources District Board. Our district office is located in Norfolk, Nebraska, and our district encompasses all or parts of 15 counties in northeast Nebraska. First, I would like to thank the committee for allowing me to testify this afternoon in opposition to LB1167. I want to make it perfectly clear that I am not opposed to allowing the public to speak at a meeting. The current law allows for public comment, but in an orderly fashion, allowing the chairperson to control the meeting and keep it on subject. We would prefer to keep our meetings orderly and on subject. The reason why I am testifying in opposition is because this late-- legislation takes away the ability, the ability of a local chairperson to conduct an orderly meeting by allowing individuals to speak on any matter. If it does not even have to be related to the subject matter, the pol-- the political subdivision deals with, for example, we could end up having people come in and want to talk about the unidentified drones that were reported last fall, which has nothing to do with the NRDs. I would like to give you some background of how our meetings are run. At the beginning of each meeting, our chairman reads when and where the public meeting notice was printed. Followed by that statement is an announcement of the Open Meetings Act, which is, which a copy is posted on the wall of every room we conduct public meetings. After that statement is made, our chair, our chairman announces the same script at every meeting to encourage public participation, participation. And you can see that statement on the handout. It reads, quote, Prior to beginning tonight's meeting, I would like to announce the procedure that will be used for this meeting to preserve order. With respect to each agenda item, the directors will first hear any staff comments, then the public will be given the opportunity to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

speak to the item. Comments are limited to three minutes per person. Lastly, the directors will discuss the item and take action as needed. We ask that the public not interrupt the directors' discussion. Also, if anyone in the audience wishes to speak on any agenda item, please make sure you sign the attendance sheet located near the doorway. Unquote. This is like the process used by the Legislature with the sign-in sheets at hearings. If a person did not sign the attendance sheet, the chairman lets everyone wishing to address the board a chance to do so. To further encourage public participation, the staff has incorporated an open house format to some of the more controversial subjects. These open houses take place prior to a meeting and the public is encouraged to attend to speak directly with the experts and staff on the given subject. During these open houses, the district has also hired a court reporter to document public statements, and seating is set up for anyone wishing to listen to comments directly. This format has also been used for public hearings. These transcripts are then forwarded to all board members for them to review prior to any decision being made. The general manager has also encouraged board members to be present during these open houses to further engage them with the public who attend. Another avenue that the public can take if they wish to address the board is to visit with any of the board members. Our contact information is made available to the public and board members have brought subjects to the chairman or general manager to get addressed. These items can be addressed through current policy or may not even be relevant to the NRD. The district has 24 staff working full time who are very responsive with helping the public connect with other government agencies to address the concern they may have. Lastly, I would like to address another concern I have with the legislation. Our meetings typically run two, three, sometimes four hours. We have had meetings run close to the midnight hour. If this additional requirement mandates public comment without restrictions, it would be difficult to maintain an orderly meeting and finish before the midnight hour. The current law works fine and allows the chair to conduct orderly meetings. Please allow us to continue conduct-- conducting as such. I would be happy to answer any questions that committee may have, and thanks again for giving me this opportunity.

BREWER: Thank you for your testimony. And yes, I'm sure we will have questions. Questions? Well, I'll jump in. Let's go to your statement. The legislation takes away the ability of the chairperson to conduct an orderly meeting by allowing individuals to speak on any matter,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

does not even have to be related to the subject matter of the particular subdivision, what they're dealing with. I'm looking at the bill, I'm trying to read through where that's verbalized in the bill here. But do you have a copy of the bill, or if I give you one, do you know where it's at?

SCOTT McHENRY: I do not. I don't think it says it in there, it's just, it's leaving the door wide open for anything.

BREWER: So once again, we're going through worst-case scenarios. All right, that's all I had. Thank you.

SCOTT McHENRY: Thank you.

BREWER: Welcome to the Government Committee.

JON CANNON: Thank you, sir. Chairman Brewer, esteemed 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 Association of County Officials, otherwise known as NACO, here to testify in opposition to LB1167. First, I do want to thank Senator Albrecht for having brought this bill. These are the conversations that we know, we are having them with our board, with our county board members, and other elected officials. They are necessary to have. It's a good reminder as to why we have the Open Meetings Act and the reasons that underpin the Open Meetings Act, and why we do these sorts of things. However, our objection primarily is the fact that the language in this is broad, and by vir-- by necessity, is going to be a little bit vague as well. You know, as a for instance, every person has to be able to speak at a public meeting. You know, if, for instance, we had a system that was involved in a public meeting that was somewhat like the Legislature's, perhaps, where you've got five minutes or three minutes, depending on how many people are in the hearing room. And if someone is just getting wound up and they say, well, I didn't really get the opportunity to speak my piece, you know, that's not really covered by this bill. And that, we think, would be a problem. But more than that, the vagueness that strikes us is that there are a number of meetings that would be considered public meetings that all of a sudden you're not going to be having access for. For instance, Lancaster County this morning, they had a staff meeting, which was a public meeting, it was televised. It was something that any member of the public was welcome to attend. And oh, by the way, they weren't taking public comment because these are just

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

staff meetings. Department heads that are reporting on what's going on in their individual departments. To the extent that we're going to say every public, every public meeting you have to give the public an opportunity to speak, then all of a sudden someone says, well, I didn't really like what the clerk in the assessor's office had to say when I was bringing in my exemption form. All of a sudden that becomes a little bit of a problem. And I'm not trying to anticipate bad actors. What I'm saying is, is that there are some unintended consequences that I think that could be borne out by this bill. For instance, Lancaster County has a pension monitoring committee, they have a general assistance review committee, they have a visitor's promotion committee. And the list goes on. I don't think that these are the sorts of things that we're saying this is a necessary evil that we need to correct. And if it's not an evil that we need to correct, I don't think we should trying to fix what is not broken. Also, you know, there's a certain amount of flexibility that this takes away from the people that are in charge of, of conducting an orderly meeting. These are elected officials, from the county's point of view, there are close to their constituents, probably very, very close to the-- their constituents in those smaller counties. Squelching debate in those smaller communities is done at one's peril. And actually, you heard testimony from a proponent of this bill, even in Douglas County, when they suggested cutting off public comment for a particular action. The outpouring of, of angst was such that the Douglas County reconsidered its position. So I would suggest humbly that county officials are going to be responsive to the needs and the wants of their constituents. Also, this creates a perverse incentive where, if I know that someone's going to be able to have a public comment on our staff meeting and they might be angry with, with the clerk in the treasurer's office, maybe I go into closed session or maybe I, I have a subcommittee meeting or maybe I have fewer meetings. I don't think this is serving the public the way that we want to. I think that we have systems in place that counties and cities and other public bodies are doing fairly admirably. And I think that the perverse incentive would lead some unintended consequences. You know, and finally, I'd just like to say that, that I think most of the people in the room, I don't wanna speak for anyone but myself, but I think most people appreciate the concept of ordered liberty. And while I've heard a lot of people say, well, you know, we're fine with, with reasonable regulations, what I've heard a lot of people testify to so far is, I don't like it when those regulations have been applied to me. So which is it? If, if for instance, if I say that, you know, if

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

you want to speak on the agenda, if you want a space on the agenda, you want to speak during the public comment period, please contact the clerk prior to 5:00 the next day, that is not so much different than from saying, if you want your letter read into the record, you have to have, have to have it to the chair by 5:00 the day prior. And with that, I have nothing further. I'd be happy to take any questions you have. Thank you.

BREWER: All right, questions? Senator Hilgers.

HILGERS: Thank you. Thank you, Chairman. Good to see you. Thank you, as always, for your testimony. And I hear you on the regulation order liberty point, but I mean the argument that I'm hearing from proponents is it's not about regulation, some reasonable restriction on my ability to talk about whatever the heck I want. It's I don't get the chance to speak on some things. Isn't that, isn't that a different in kind?

JON CANNON: Well, that could be. And certainly that's, that's something that I think has been addressed by some of the other folks that have testified and also by some of the senators on the, on the committee. You know, for instance, if we have a set up where on the-- and Senator Blood, I apologize. I'm going to, I'm going to misconstrue what you had said earlier. But if it's the second meeting that we have that's, that's available for public testimony on a budget item, and I know I mangled that, I'm sorry, ma'am. But, you know, and a member of the public shows up at the first or the third meeting and say, well, I wanted to talk. They have the opportunity, that's at that second meeting. If a person says, you know, if they get fired up because they hear about the public meeting that's on the radio that morning and they say, I'm gonna show up there and speak my piece. Oh, by the way, the rule was you had to-- you have to have spoken to the clerk beforehand by 5:00 the prior day. I've heard that complaint from the testimony as well. I've not really heard complaints of there's just no opportunity for me to speak ever. It's just, I don't like the rule that was set up that says that you-- that I'm going to speak at this particular time on this particular day, during this particular meeting.

HILGERS: And I take your point as the letters, but we don't turn away anyone walks in here today, they can testify on this bill, right?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

JON CANNON: That's absolutely correct.

HILGERS: I think that's-- I do want to make sure the record is clear that, if you want to send in a letter, that's one thing. But we're not going to turn away anyone here who wants to speak today at this particular hearing.

JON CANNON: You're ab-- you're absolutely right, Senator. And while I have not been at NACO when this had happened, I'm old enough to have been able to observe this. We didn't always have the light system. We didn't always have the time limitations. And so I think the Legislature has noted that there is a place and a time for reasonable regulations on when people may speak. And so I think that's what we're saying is, when you say everyone has a right to speak at every single meeting, there are a lot of things that, that that takes into that, under that rubric, that I don't think was what our intention is. And so to the extent that this is legislation that, that could use some work, we're certainly willing to visit with anybody and everybody that, that wants say these are the meetings I want to be able to speak at. If you're talking about the budget and want to be able, you know, OK, I'm not here to talk my, my property taxes, I'm here to talk about the budgetary items. So, I mean, things like that.

HILGERS: Thank you.

JON CANNON: Yes, sir.

BREWER: Additional questions? Senator Blood.

BLOOD: Thank you, Chairman Brewer. Just clarification. So you were talking specifically about when we have an ordinance, the second reading is the public hearing. So to put that in comparison, today is the public hearing for this bill, just like it would be for the ordinance. So it's, it's mirroring. It's identical. We're both allowing opportunities for public hearings.

JON CANNON: Yes, ma'am.

BLOOD: All right. Thank you.

JON CANNON: Yes, ma'am. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: All right. Since we got you in the chair, since you're the county guy.

JON CANNON: Uh-oh.

BREWER: Since I almost snapped my gavel in two when you were speaking, I'll have to pick up here. All right. What I'd like to do, because we don't have the time now to go into the details-- but I have a number of, of, and these are of county issues. And since you're the county guy, I'm gonna put this hot potato in your lap and simply ask that you maybe contact them and try and understand why they feel like they have really been done an injustice with the current system, because I can't blame them for not wanting to drive 800 miles to come here to testify. But I also can't ignore the fact that they're saying, I don't get a chance to speak as the rules are now. I need a way to have a voice. And you may become that conduit to help that happen because you address county issues. Is that reasonable to put that burden on you?

JON CANNON: That is entirely reasonable.

BREWER: That is a good answer.

JON CANNON: Yes, sir.

BREWER: All right. No, no additional questions. Thank you.

JON CANNON: Yes, sir.

BREWER: All right. Any additional opponents? Any in the neutral capacity? With that, Senator Albrecht, welcome back.

ALBRECHT: OK, first, I'd like to thank you for the five minutes that you gave everyone to speak, because you didn't have to. You could have gone two minutes or three minutes. Right? But I want to introduce myself, because I didn't in the beginning. I am Senator Joni Albrecht, I'm from District 17, representing Thurston, Wayne, and Dakota Counties. And I'm happy to be before you to talk about this. I appreciate everyone who came up to-- as a proponent to testify. I didn't call any of them, and I'm just happy they all showed up. Great. I guess I was missing a few proponents that I thought maybe would have been here. But anyway, here's, here's the, what I'm hearing. This liability issue that Senator Blood is talking about. Again, if you have enforcing reasonable rules and regulations regarding the conduct of the person attending, you would simply let them know that if you're

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

going to talk about a person or an incident that, you know, I mean, you can word it however you wish. But most people should know. I mean, I've sat before public comment for 16 years and, and very seldom, I could probably count on one hand if that ever even happened. Mostly it happened in Board of Equalization where people would want to talk about what their neighbor has in their house that they don't have in theirs. And why is the figure on one different than somebody else's? But when, you know, when I went out and I started to think about this because I had a lot of people talk about this in the last, you know, since I left, you know, over the summer and visiting different people. You know, I asked my counsel to, to look into minutes and agendas, and not just in my district. And what I found were situations that, you know, they just didn't have it listed on their agenda that they had open comment or public comment of any kind. But more importantly, it wasn't in their minutes that they even allowed it. And again, I mean, the way I would look at this, I mean, and I think about it, too, people take off work. People drive long distances to, to talk to their elected officials. And we are elected by the people, for the people. We are their voice. We are, we are the ones that, that take into consideration their concerns. And we, we can decide whether there has to be something done about it. Once it got to the level of people suspending meetings because they just didn't want to hear from the same people all the time. We all had frequent flyers from the city council, county board. There's a lot of people that come here all the time and testify. But you know what? There's always a time that they have something for us to hear and it resonates with us, and we need to act on it. So, again, they should have the ability with reasonable rules and regulations if people see it on their agenda and they know what's going to happen as soon as they get there and they want to come in and compliment somebody or, you know, it could have been during the floods. What if, what if they needed somebody to talk to about the flooding? If you're a county board and you're concerned about what's going on with FEMA or whatever, you are not there to, to visit with them about it. You are simply there to listen. And then if you need to get up out of your chair, and you know that that's your constituent, you're going to go find out more information and talk to them about it and see what you can do to make things better. But I don't believe that anybody who's voted in by the people and is spending the people's tax dollars and not willing to listen to them. It's just not the right thing to do. So I would hope if anyone has any concerns, you'll see me before you exec on this. But I just want to close with Laura Ebke wrote a letter to us, and I don't know if you all got it or not, but I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

think the public needs to hear this. She is representing the Platte Institute, but I think this is excellent. She says: We are pleased to offer our support of LB1167. While the changes of the Open Meetings Act found in this bill appear to be quite simple, one sentence added and one sentence deleted, we believe it to be prudent addition to help citizens feel more connected with governing bodies at all levels. When I served on the Crete School Board from 2002 to 2014, from time to time we would have citizens attend our meetings but never say a word. People could ask to be added to the agenda, but I'm afraid we didn't make it very easy or comfortable for them to let them know what we were thinking. In 2019, I took a group of boy scouts to a school board meeting and I found that the way of doing business had changed. Several citizens got up at the beginning of the public comment time and offered their opinions on several issues that the board had on the evening's agenda, as well as on things that they thought the board should consider in the future. It was a little time made available in the meeting so that citizens knew that they could speak. Transparency and accountability to the public have always been vital tenants in Nebraska politics. The north side of the Capitol is inscribed with the sal-- the quote, The salvation of the state is the watchfulness of the citizens, unquote. We would argue that most go beyond where the meek watchfulness and enable our citizens to be engaged. LB1167 is an excellent step in that direction of helping local governing boards to engage their constituents regularly and encourage your favorable consideration of LB1167. And I concur.

BREWER: All right, thank you. Questions for Senator Albrecht? All right, seeing none, let me read into the record here. We have no letters in opposition, no letters in the neutral. Proponent: Carolyn Semin, Kilgore; Leroy Semin, Kilgore; the Platte Institute; Mickey Coffman, Halsey; Marilyn-- Marlene [SIC] Coffman, Halsey; Vickie May, Lynch; Jerry Pascale, Omaha; Merrial Rhoades, Valentine; Brent Steffen, Kearney; Larry Storer, Omaha; Twyla Gallino, Valentine; Tom Witt, Thedford; Twyla Witt, Thedford. And that closes our hearing on LB1167. We'll switch out numbers here. And we have Senator Walz with LB878. And Lynne, why don't we just let them clear out a little bit here, won't be quite as hard to hear.

LORENZO CATALANO: Sorry about that.

WALZ: That's OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: No worries. If that's the worst that happens today, we're doing good. All right. There was, there was a few more people testified last time than raised their hands. So I'm going to try this one more time. If you're testifying on LB878, could you raise your hand? That is good to see, that you're testifying in this. All right, with that, Lynne, whenever you're ready.

WALZ: I'm just number two?

BREWER: You're number two. Yeah. We got five.

WALZ: I'll move along then. Good afternoon, Chairman Brewer and members of the Government Committee. For the record, my name Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent District 15. Today I am-- today I am presenting LB878 relating to the Nebraska Political Accountability and Disclosure Act, amending Sections 49-1425 and 49-14,103.01. In order to redefine immediate, immediate family and change provisions related to an interest in contracts and to repeal the original sections. In addition, I have handed out an amendment that would include the language "or a spouse of such child." This was an oversight in the drafting of the original bill and was also part of the issue. To make things simpler, I've also handed out some information that indicates every section of the statute this bill would affect and a short description of what that statute says. Currently in statute, immediate family is defined: as a child residing in an individual's household, a spouse of an individual, or an individual claimed by the individual or that individual's spouse as a dependent for federal income tax purposes. Whew, got through that sentence. This vague distinction caused a problem in my district. The Dodge County assessor recently hired her child, who was, who had no prior experience when there were other qualified applicants, with a salary more than the average rate of assessors. While judging options to improve the statute, our options were either to change the specific accountability statute regarding the county officials, regarding county officials, or to make it a definitional change that would affect the entire chapter. The latter can help improve governmental accountability, not only from county officials, but also for senators, lobbyists, and all public employees. These changes would result in the definition of the business of an individual being defined as an individual or a member of the individual's close, close fam-- sorry, close family as a stock owner of a close corporation under the Nebraska Political Accountability and Disclosure Act, ensuring that no committee shall provide funds for the individual nor the individual's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

immediate family's personal expenses. Meanwhile, any authorized funds for campaigning may include the lodging for the Governor, the Governor's staff, or the Governor's immediate family. In the event of hiring an immediate family member, one may be hired if the official is not abusing official power through hiring an immediate family member that is not qualified, offering an unreasonably high salary, or is not requiring that hiree to perform all duties of the position. An immediate family member may also be hired if the official makes full disclosure on the record to the governing body of the political subdivision in a written disclosure to the person in charge of keeping records for the governing body and the governing body approves the employment. No official may terminate, terminate an employee in order to make funds or a position available for an immediate family member. This section does not apply to an immediate family member who was employed in a position subject to this section before the official was elected or appointed. As I previous, previously stated, the bill came about due to an issue in Dodge County, and I was asked to address it in statute. Instead of simply addressing it for the county officials, I felt that the standard should apply all public officials to help improve transparency in government and accountability to our citizens. In what could be considered a troubling time in our nation's history, advancing this bill would be a, would be a strong show of both trust and pride made by the Unicameral and, and its representative to once again set it apart from the rest of the country. With that, I would be happy to try and answer any questions.

BREWER: Thank you.

WALZ: I know that was a lot.

BREWER: Thank you for that opening. It's nothing short of a miracle that you got through that tongue twister without getting twisted up. That was well done. All right, questions? All right, are you going to stick around for closing?

WALZ: Sure.

BREWER: Good, because I don't think it will be long. All right, first proponent. Yes. Frank, welcome back to the Government, Military and Veterans Affairs Committee.

FRANK DALEY: Thank you very much, Chairman Brewer. My name is Frank Daley, D-a-l-e-y, I serve as the executive director of the Nebraska

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

Accountability and Disclosure Commission. And I'm appearing today in support of LB878. LB878 does two simple things. Thing number one is that it expands the definition of immediate family member. Currently, an immediate family member is the spouse of the official, children of the official or spouse living in the household, or someone claimed as a dependent for federal income tax purposes. That is a very, very narrow definition. The bill, the green copy, expands that by including within the definition: the adult child of the public official. And I admit I haven't seen the amendments, so I can't actually speak to that. This very, very narrow definition generally surprises people. I think that the expectation of the person on the streets is that an adult child of an official should be considered an immediate family member. But currently under statute, it's not. And because this is a definition, it resonates throughout the Accountability and Disclosure Act. So a public official has a conflict of interest if they're faced with taking an official action or making an official decision that has a financial effect on the public official or a member of his or her immediate family. So under the current statute, that would not include an adult child, only a child living in the household. It also has the, an effect when talking about hiring situations. People in political subdivisions can hire immediate family members, but there's safeguards built in if an immediate family member is going to be hired. There has to be a public disclosure, there has to be a reasonable solicitation of applications, and there has to be approval by a governing body. So if someone does not fit the definition of immediate family members, such as an adult child, none of those safeguards come into play. And that's why the changing of the definition becomes significant. So it's a very, very simple thing that it does. But the definitional change probably is closer to what the public would expect would be the definition of an immediate family member. The second thing the bill does, it's really a technical change to cure an internal conflict within a statutory provision dealing with an interest in contracts. Currently, public officials and certain political subdivisions are prohibited from having an interest in a contract with their own governing body unless they jump through certain hoops, which include public disclosure, abstaining from voting on the matter, abstaining from voting on any payment under the matter. And the statute describes very clearly in paragraph (4) what constitutes an interest. If the official, parent, spouse, or child is going to be paid, that's an interest in a contract. If a business owned by any of those, official, parent, spouse, or child is going to be paid, that's an interest in the contract. However, two paragraphs later in the same statute, it

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

says the official does not have an interest if he or she is not going to be paid or a business they own is not going to be paid. It leaves out the whole concept of parent, spouse, or child. It just doesn't make sense. You have two paragraphs in the same statute saying two different things. This clarifies that by simply striking paragraph (6) and leaves the comprehensive definition of interest within the statute. So at any rate, that's all I really have. I want to thank Senator Walz for introducing LB878. And thank you for the opportunity to testify today.

BREWER: All right. Thank you, Frank, for your testimony. Questions? So-- oh, go ahead.

M. HANSEN: Thank you, Chairman Brewer. And thank you for coming here, Mr. Daley. So, so related. Kind of I, similarly, was surprised of the definition of immediate family, and I noted that as, as Senator Walsh is changing it, it would apply for a parent to their adult child but wouldn't apply to an adult to their parent. But later on, as you just said, there's another section that deals with contracts with your parents in some sections.

FRANK DALEY: Correct.

M. HANSEN: So are we applying, even now we're applying two different standards in these two different sections?

FRANK DALEY: There is-- the answer is yes.

M. HANSEN: OK.

FRANK DALEY: In the conflict of interest section, there's one category of applicability of family members. In the contract section, it extends to a greater extent to other people. That is the result of the Accountability Act being passed in 1976. But prior to that time, there were different types of provisions and different sections of the statute, one applying to cities of the first class, another applying to counties. And some of those were sort of brought in, so the definitions don't always quite match. However, each individual statute has its own built-in definition of what applies. So it works.

M. HANSEN: OK.

FRANK DALEY: But you're right. They, they are two different standards.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

M. HANSEN: I just wanted to-- just listening to your testimony, I just wanted to make sure, I guess, that was clear to me and clear on the record.

FRANK DALEY: You are correct.

BREWER: All right, any additional questions? Seeing none, thank you, Frank, for your testimony.

FRANK DALEY: Thank you, Mr. Chairman.

BREWER: All right, additional proponents? Any opponents? Anybody in the neutral? Senator Walz, you're going to waive the close. We appreciate you waiving the close. All right, that will close our hearing on LB878. We have no letters in opposition, no letters in the neutral and no letters in as proponents. So now we move to LB935, Senator Hunt. And the room has cleared out pretty good, so I feel a little safer asking this question. How many are here to testify either on LB935 or LB936 as the following one? That's good. We, we, we're still, we're still in a pretty good rhythm. Well, welcome to your committee on Government, Military and Veterans Affairs.

HUNT: Thank you, Chair Brewer and my fellow members of the Government, Military and Veterans Affairs Committee. My name is Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I'm here to present LB935. This bill amends section 49-1446.03 of the Nebraska Political Accountability and Disclosure Act to allow campaign fund expenditures to be used for childcare services incurred by a public official when they are involved in their legislative duties. LB935 is about making it easier for low-income and unmarried parents to offer public service and do the work they were elected to do. I introduced this bill, LB935, and another bill, LB936, around the topic of modernizing our Accountability and Disclosure Act because campaign finance laws in Nebraska were not written in anticipation of single or low-income parents in public service. Women spend nearly twice as much time as men on childcare, according to the Pew Research Center, and are running for office in greater numbers than ever in the history of the United States. The National Conference of State Legislatures recently reported the nationwide share of female legislators was around 28 percent in 2019 and it was nearly three percentage points higher than in 2018. So the number of women elected grew 3 percent in the year that I was elected. And I'm one of the many of these women whose public service has brought new challenges to light. In my research, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

was not surprised to learn that, in 2019, several states introduced legislation to approve bills just like this, including Illinois, Rhode Island, and California, and more. Bills like mine to allow campaign funds for childcare related to the duties of the officeholder were signed into law in states as politically dissimilar as New York, Colorado, and Utah. And I'd like to note that both of my bills introduced today, LB935 and LB936, have bipartisan support. On the federal level, the Help America Run Act proposed to amend the Federal Election Campaign Act of 1971 to allow campaign expenditures on childcare. This House bill is currently in committee. While there are many reasons behind the rise in legislation authorizing the use of campaign funds for childcare expenses, including the fact that fathers are also spending more time on childcare than they have in the past, it makes total sense to see these two issues emerge alongside one another. As more young parents are running for office, we're seeing a rise in legislation to permit the use of campaign funds for necessary and reasonable childcare needs. Simply put, officeholder-related childcare expenses are unavoidable for parents who are elected. This measure could clear the way for parents of young kids to seek elected office. If we allow parents to use campaign funds for childcare, we will see a more diverse field of people seeking public office. I can speak from experience about how this bill would work in practice. I'm an unmarried parent of a young child. We live alone. I pay a woman who lives down the street for me to take my child to school, and if necessary, depending on our schedule here, to pick her up from school and make dinner for her, depending how long things are going on for us down here. Sometimes the expenses for the services of this babysitter are \$10 or \$20 a week. Sometimes they're over \$100 depending on how much she's needed. For me to pay that out of my own personal funds is necessary for me to do the work that we have to do down here. But it's also cost-prohibitive. Parents who are elected will be better public servants if they don't have to say, I can't go to this breakfast or I can't go to this conference or this event related to my work because I can't afford to pay a babysitter. Of course, there are many elected parents who will choose not to use campaign funds for this purpose, perhaps because they're married and their spouse can provide the childcare, or perhaps because they make enough income to afford the babysitting that they will need. Or maybe it's because they want to keep those funds in their account for those campaign purposes. For me, I can tell you that my income level isn't there. I can't afford to pay a babysitter to take my daughter to school everyday when we are in session or when we have events that I have to go to. I'm sure that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

many of us have heard from other Nebraskans who said they would like to run for office and serve Nebraska, but the cost is too high and the pay is too low. This would alleviate that problem for many people and increase the number of folks who have the ability to engage in public service. I'll also add that it is not really in the best interest of an elected official generally to use campaign funds for childcare to fulfill the duties of their office. For example, if an elected official who is a single parent or a low-income parent is paying for childcare or a babysitter out of their campaign account, then that's taking away funds that they have for literature, for yard signs, for paying staff, all the other campaign expenses that go along with that. But it will help them do the jobs that they were elected to do. All of these expenditures, of course, would be accountable to the Accountability and Disclosure Commission. Donors and voters and everyone would be able to see what a candidate spent on childcare. And this goes without saying, but sometimes you have to make it clear, none of this would cost anything to taxpayers or to the state. It makes no sense to me that I could use my campaign funds to take the entire Legislature out to dinner tonight, but I can't pay my next door neighbor to take my child to school so I can come here and do the job I was literally elected to do. Whether you as an elected official are someone who could personally benefit from this legislation or not, something like this will have the effect of allowing more people to serve, allowing more people to enter elective office, and help the people who are here be more effective at their jobs.

BREWER: All right. Thank you for your testimony. Thanks for bringing this bill. Questions on LB935? All right, and you're going to stick around for close?

HUNT: Thank you.

BREWER: Good, because you're the next bill after this one. OK, first proponent. Welcome to the Government Committee.

KELSEY WALDRON: Thank you. Chairperson Brewer, members of the committee, my name is Kelsey Waldron, K-e-l-s-e-y W-a-l-d-r-o-n, and I'm the research and policy associate for the Women's Fund of Omaha. The Women's Fund testifies in full support of LB935, promoting equitable representation in our elected bodies by allowing for childcare expenditures. We recognize that access to affordable childcare is a critically needed investment for our state. With 80 percent of Nebraska children having a mother in the workforce,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

childcare is a necessary precursor for our state's workforce, workforce participation. It is a cost of doing businesses for families, and they negotiate it in their choices about workforce engagement. The cost of childcare impacts what kinds of jobs they choose, how many and what kinds of hours they work, and whether it even makes financial sense. In that, can working produce more money than the cost of childcare? The costs of childcare pose significant barriers for prospective officeholders. Nebraska holds particularly high costs of childcare, with our state ranking in the top 10 least affordable states for infant and toddler childcare at over \$12,000 per year. The high costs of childcare create barriers to running for office and contributes to mock-- policymaking bodies that are not always wholly representative of our communities. For example, although for, although women represent 50 percent of our state population, only 28 percent of our state's legislative body identify as women and 0 percent are women of color. Women of, women of color face additional barriers to entry, childcare being one of them. Furthermore, economic inequalities are created in our lawmaking bodies as the financial burdens of candidacy and holding office often require unique financial situations that all-- not all Nebraskans can afford. We believe greater childcare access could address these inequalities. A 2018 report found that fear of economic stability as well as caregiving responsibilities are two of the top four reasons women do not run for office. This study also found that providing childcare to current officeholders was a primary policy recommendation to achieve greater gender parity in our elected bodies. Our policies are strongest when they are reflective of the average Nebraskan and when our lawmaking process is accessible. By allowing such childcare expenditures, LB935 would curb economic barriers of public office and increase representation. Our comments likewise extend to our support of LB936. The Women's Fund of Omaha urges this committee to prioritize economic security and equitable representation of Nebraskans in public office by supporting LB935 and LB936. Thank you, and I'd be happy to answer any questions.

BREWER: Thank you for your testimony. Questions? I have one, but I'm going to save it for Senator Hunt at the end, because it wouldn't be fair to ask you, unless you know do, do, do any of the other states have a policy that allows to pay? She's already giving me head and arm signals like this so.

KELSEY WALDRON: Yeah, so I know that there are two states that specifically have statute for current officeholders allowing campaign

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

fund usage. Then there are five additional states that allow it for candidates. So those are the ones that I know of that have specific statute on it. I know that I believe nine additional states have rulings from, from their local disclosure and accountability commissions that have ruled in favor of allowing it. So, so a--

BREWER: You did your homework. Thank you.

KELSEY WALDRON: Of course.

BREWER: OK, no other questions. Thanks for your testimony.

KELSEY WALDRON: Thank you.

BREWER: All right, next proponent. All right-- oh, come on up. That's being a good gentleman, proud of you. Welcome to the Government Committee.

CAROLINE SOJKA: Good afternoon, Chairman and members of the committee. My name is Caroline Sojka, C-a-r-o-l-i-n-e S-o-j-k-a. I am a third-year law student at UNL College of Law, but I am here today as a law clerk for the ACLU of Nebraska. Thank you, Senator Hunt, for bringing this bill. The ACLU of Nebraska continuously supports efforts to provide greater opportunities for Nebraskans. The ACLU of Nebraska promotes women's rights and lessens the gender and class inequality get gaps found in the political infrastructure. This bill promotes these efforts. It is important to recognize that not all caregivers are women. However, we must also acknowledge that the work of caring for children has traditionally been assumed to be and often is women's work. All Nebraskans, no matter their economic status, should be given access to participate in Nebraska politics. Some Nebraskans deal with the financial strain of childcare, which can prevent active political participation. Childcare is expensive and requires strategic financial planning for any individuals wanting to use it. Individuals of a lower socioeconomic status may feel limited in their ability to run for political office. There is a choice that must be made: childcare or political participation. The implementation of this bill eliminates this difficult choice. Individuals of all incomes can focus their efforts on the political process without considering whether it is financially feasible. This bill breaks down the assumption only certain individuals may run for public office. For many years, women have not participated in public office due to parental barriers such as childcare. However, childcare is not always an option for families.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

Some women may need to stay home and care for their children and actively choose not to participate in running for an elected position. Women may delay their political participation until their children reach an age where childcare is no longer required. There is a balancing act between a political career and childcare. Without this financial burden, more women can run for public office, and childcare will no longer hinder this participation. Not only will more women be able to campaign, but single parents and guardians will be given a greater opportunity, opportunity to serve in public office. Finally, a more diverse population will campaign for public office, Nebraska will benefit from an un-- from individuals coming from various backgrounds and sharing different viewpoints. This will help the Nebraska political infrastructure grow and change for the better. The ACLU of Nebraska offers our support for this bill, and I would be happy to answer any questions.

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

CAROLINE SOJKA: Thank you.

BREWER: Next proponent. Welcome back to the Government Committee.

WESTIN MILLER: Thank you, Chairman Brewer, members of the committee. My name is Westin Miller, W-e-s-t-i-n M-i-l-l-e-r, I'm the director of public policy of Civic Nebraska. Rather than subject you to repeat testimony, I might apply this to both LB935 and LB936, if that's OK with everyone. It's very brief. As you've heard me say several times this session, Civic Nebraska supports legislation that encourages public trust in elections and encourages civic engagement. We also consistently seek to remove unnecessary bureaucratic barriers to political participation, and that includes running for office and holding office. So as all of you know much better than I do, the barriers to running for office, the financial barriers, can be staggering. And I think Senator Hunt has found a low-controversy, but highly effective way to remove one of those barriers, particularly for candidates and officeholders with dependents. Now, obviously, the use of campaign funds for anything other than campaigning should be very strictly scrutinized. But it's our opinion that these bills are written responsibly, they have clear limits, and they solve a very specific and real problem. So thanks again to Senator Hunt and her team for bringing both LB935 and LB936. Thanks for your time.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: And thanks for your briefness.

WESTIN MILLER: Any time.

BREWER: Any questions? All right, seeing none, thank you. Next proponent. All right, we'll switch to opponents. Anybody in the neutral? I had a hunch we'd have one here or two. Good choice. Let him go first. Frank, welcome back to the Government Committee.

FRANK DALEY: Thank you very much, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y, I serve as the executive director of the Nebraska Accountability and Disclosure Commission. And I'm here testifying on behalf of the commission in a neutral capacity as to LB935, which expands the permissible uses of campaign funds. The reason the commission is not taking a position on this is because this is really a pure public policy question. Shall we expand the use of, permissible uses of campaign funds or shall we not? And I thought what I would do is I would provide a little context into which this bill falls or the whole idea of the use of campaign funds falls. Currently, the Accountability and Disclosure Act recognizes three broad categories of the use of campaign funds. The first is campaign purposes. That is using the funds for the purpose of advancing the nomination or election of a candidate. And into that category falls all of the usual things, such as campaign signs, brochures, mailings, consultants, and pretty much anything else the human imagination can come up with as a way to advance someone's message. So that by its nature is intended to be a very, very broad category. The second category would be uses related to the duties of one's public office. And under current law, the use of campaign funds for purposes related to public office is prohibited unless there is a specific statutory exception. So an example of a statutory exception would be that the act provides that you can use campaign funds for conference fees, meals, lodging and travel associated with the duties of one's public office. The third category of uses would be personal uses, using campaign funds for purposes that are strictly personal. And there the act prohibits the personal use of campaign funds, and there are no exceptions built into the Accountability and Disclosure Act. The restriction on the use of campaign funds is the result of things which became apparent in the 1970s when campaign finance disclosure laws really came into their own. And what we began to see were things such as the use of campaign funds for medical expenses, dental expenses, and home mortgage payments, and car payments, college tuition, and even to fund one's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

divorce. And so it was, became clear that some sort of cap or some sort of restrictions needed to be put on the use of campaign funds. And I guess one of the thoughts was, was that when campaign funds can be used to finance a lifestyle, it can be kind of corrupting because you always have to be dialing for those dollars to maintain that lifestyle. Having said that, I want to bend over backwards to say I'm not saying that anything about this proposal is corrupting, or looks corrupt, or is intending to be corrupt. What I am saying is that in the past, when the Legislature has expanded the use of campaign funds to things which are more related to the duties of one's public office, it has done so very, very cautiously and very, very judiciously so as to ensure that it's not opening the floodgates to essentially the use of campaign funds for lifestyle maintenance or things of that nature. So I guess all I'm hoping is that whatever you do, it's not going to open the floodgates and that you'll look at it very cautiously and judiciously. And so I want to thank Senator Hunt for bringing this bill, and the committee members for the opportunity to speak on one of my favorite topics,

BLOOD: Women? [LAUGHTER]

BREWER: All right. Question? Well, son of a gun, we've got a lot of questions here. We'll start with Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Thank you, Director, good to see you. Just one question, really. So I appreciate the context of the different categories. How would you describe what the category in which this would fall? Would it fall more in category two, where the Legislature has made some exceptions in the past? Or would you categorize it as more falling in category three?

FRANK DALEY: Well, the language of the proposal relates specifically to childcare services when related to the duties of public office. I mean, I take that at face value.

HILGERS: Thank you. Go ahead, Senator Blood.

BLOOD: He didn't make you Vice Chair, I got to wait for him.

HILGERS: The gavel is right here.

BREWER: You are the closest. No, please, Senator Blood, go ahead.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BLOOD: Thank you, Chairman Brewer. I, I just want to clarify, first of all, what was your favorite subject? The women or the, or the NEDC stuff?

FRANK DALEY: No, it was clearly the use of campaign funds.

BLOOD: Oh, I'm sorry. I misunderstood. So--

FRANK DALEY: It is one of those professional topics that people in my position--

BLOOD: Women are good topics, too.

FRANK DALEY: Yes.

BLOOD: So I just wanted to clarify something. I just want to make sure we get it on the record. So currently, if, say, I were young enough to still have children and I had to go to an event at night for, we'll say the, the craft brewers, because I was there performing my duty at 9:00 at that, at-- the way it's written right now, I could utilize campaign funds to use that time for childcare, yes?

FRANK DALEY: Under the bill or under current law?

BLOOD: Under current law.

FRANK DALEY: If the event is a campaign event--

BLOOD: OK.

FRANK DALEY: --the answer is yes.

BLOOD: So a campaign event, but not as acting as a senator?

FRANK DALEY: Correct. Correct.

BLOOD: So, gosh, it's not a big surprise that less than a fourth of people in most bodies are female then, huh? All right, thank you.

BREWER: Quick question for you, Frank. The bill that Senator Hunt has would be evenhanded in and it would be available for both a male or female for childcare?

FRANK DALEY: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: All right. Now we shift over to the campaign part. If, if the bill was passed as it is, during the period that you're campaigning, you're traveling across Nebraska, you would be able to then pay for childcare wherever, whether you're at home or, well, I guess most people don't have as big a district as I have. But you're, you'd be able to have childcare. And when you say that, what does that encompass? Or, I mean, anything that directly is supporting the care of the child would fit into that?

FRANK DALEY: Well, I mean, I think with any new legislation, you have to think ultimately of the outer parameters of what it means. And that comes with experience. But I think what the bill is essentially saying is that while currently if you're traveling your district, which is the size of two states, Massachusetts and Connecticut combined, but if you're traveling your district on campaign purposes, campaign funds could be used for childcare. Whether it's leaving the child at home or perhaps if you are in another town and someone's going to take care of the child while you're in the other town, whatever it happens to be. Under the bill, I believe if you're traveling on official business, the same would apply.

BREWER: So if I was campaigning across my district, say I was riding a mule and I fed the mule, could I pay for the feed for the mule.

FRANK DALEY: On campaign purposes? Yes. Yes.

BREWER: So if I had a child, I could feed the child?

FRANK DALEY: Yes. Actually, under current law, if you're traveling for campaign purposes, you could still feed the child because you can use-- another provision of the act is you can use your campaign funds for meals, lodging, and travel for you, the candidate, and your immediate family member when engaged in travel related to campaigning.

BREWER: So I can feed my mule, I just can't feed all the other mules?

FRANK DALEY: Well, I'm not sure I'd go that far. But certainly you can feed your mule.

BREWER: All right. Thank you. Matt, did you have a question?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

M. HANSEN: Yes, I guess. Thank you, Chairman. Mr. Daley, kind of comparing, is this the same definition that-- of immediate family that Senator Walz was just proposing to amend in her prior bill?

FRANK DALEY: Yes.

M. HANSEN: OK. Thank you.

FRANK DALEY: Which sort of completes my point that when you change your definition, it resonates throughout the accountability disclosure act.

M. HANSEN: Gotcha. Yes, it does. All right, thank you.

BREWER: Just so you know that my legal counsel was pointing out my failure to fully understand that this is for officeholders--

FRANK DALEY: Correct.

BREWER: --not if you're campaigning.

FRANK DALEY: Yeah. So, so if you are-- right now, you can use campaign funds for childcare when you're involved in campaign events. You can use campaign funds to pay for your child's travel expenses, food, lodging when you're involved in campaign events. However, under current law, if you're traveling in connection with the duties of your public office, you can pay for your own expenses and those of your government staff, but not your immediate family members.

BREWER: And just so we have you on the record, if the way I travel is by mule, not by car, feeding that mule is the same as feeding the car?

FRANK DALEY: I agree.

BREWER: All right.

FRANK DALEY: I agree. Food is fuel, wouldn't you say?

BREWER: It is. All right, thank you. Any-- yes, Senator Lowe.

LOWE: Just to be clear, because I was out with my bill and I got in here late, this would be not only for travel. This would be for, say, if I had a child and I needed a babysitter for while I was here on the floor. This would be the whole time I would be in session?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

FRANK DALEY: If you are engaged in duties related to your public office, you could use your campaign funds for childcare. Correct.

LOWE: OK. Thank you.

BREWER: All right. Any other questions? Seeing none, thank you.

FRANK DALEY: Thank you.

BREWER: Next.

JACK GOULD: Am I last, but not least of--

BREWER: You're a proponent, opponent, or neutral?

JACK GOULD: I am neutral.

BREWER: That is it, that's exactly what I was looking for. All right, thank you. Welcome to the Government Committee.

JACK GOULD: Thank you, Senator Brewer. My name is Jack Gould, that's J-a-c-k G-o-u-l-d, and I am here in a neutral capacity for Common Cause Nebraska. I am in great sympathy with what Senator Hunt is saying, and I'm in great sympathy with all the people in the state that struggle with childcare and have, need help and don't have campaign funds. But what I am concerned most about is, is the source of the funds. I would say it was maybe more appropriate if this was funding coming from the per diem, because it involves a daily responsibility of senators and elected officials. Campaign funds, as you know, and I've testified many times on, I always look to the donor and what is the intent of the donor? And the donor's intent is campaigns. If you look at the bill, and I hope, hope you'll do that, items 1 through 7 specifically refer to campaigns. When you get to items 8 and 10, you find that this is referring to a lot of possibilities of using campaign funds for travel, for family use, and it's not directly related to campaigning. It's directed to all kinds of activities related to responsibilities, which is-- I have no problem except for the fact that those are not related to campaigning. And I would just want to give you a little bit of history on those two sections of the bill. Back long ago, Senators Nelson and Senator Johanns, one a Democrat, the other a Republican, had something called the governor's council. And in going through campaign finance reports, and also statements of financial interest, we ran across this item, whatever was the governor's council. And we found out that the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

governor's council never counseled. As a matter of fact, it didn't meet. And in reality, it was a fund. And we had three lobbying firms donating \$50 a month, and we had a number of corporations that had contracts with the state donating a thousand dollars a year into the fund. And when I first found it, it was \$22,000 in the fund. So I went to the most logical person to deal with this, Senator Chambers, and Senator Chambers brought a bill. And the bill was very critical of this, having councils of this type. And so when the bill came up for a hearing before this body here, we-- he brought the bill, I testified for the bill. And as I finished for the first time, I think, and maybe the last time, standing behind me was Governor Johanns. And Governor Johanns sat down in this chair and he said, these people are absolutely right. I apologize. This is the wrong thing to do, I was in error. But remember, it was Senator Nelson's fault [LAUGHTER]. Sorry, Governor Nelson's fault. So I, I didn't argue with him at all. But this was one of the fastest bills I ever saw go through this, this body and through the floor of the Legislature. But it passed. And shortly after that, I don't know whether it was a floor amendment, I'm not sure. But the two provisions that you're looking at at 8 and 10 suddenly appeared in the Campaign Finance Act. And it was a real concerning item at that time because we have always felt that campaign money was for campaigning. But I also believe firmly that, that childcare is a very important thing, that not having it discourages people from running for office. So that everything that Senator Hunt has said, I can't disagree with. I-- only thing I say is, why not use the per diem, where you're actually using public dollars that could be done without really getting into the question of campaign finance. Thank you.

BREWER: All right. Thank you for your testimony. Senator Blood.

BLOOD: Thank you, Chairman Brewer. Thank you, Jack. So if I hear you correctly--

JACK GOULD: Yes.

BLOOD: --you feel that it might be questionable to utilize it as an elected official, and your preference would be per diem. But one of the things that I've noticed, I follow everybody's social media, all other 48 senators. Sometimes it's fun, sometimes I want to pull my eyeballs out. But one of the things that I notice that Senator Hunt does, and I hope this is OK to say, is that whenever she does raise funds, that she specifically says what she uses those funds for. As do

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

I. We say, it's used for to pay for canvassing, it's used to pay for phone banking, it's used for mailing, it's used for educational opportunities. So she's very specific in how she spends her money. Knowing that, do you change your opinion at all?

JACK GOULD: Well, if that was in the, in the bill, saying that that was required. What I'm concerned about is seeing people go to an ALEC convention, for instance.

BLOOD: To a what?

JACK GOULD: To an ALEC convention.

BLOOD: Never been to one.

JACK GOULD: Using campaign funds for, for that purpose. Frankly, I don't know whether that's legal or not, but you could argue that it's a government event that, that that falls under the act. I think if you're going to, if you've got to use this and you're going to force everyone to say, I'm using campaign money for my childcare, you're gonna specifically itemize that and make everybody aware of it, it would be difficult for everyone to do that. But at the same time, I would feel a lot better about it if you did.

BLOOD: But, Jack, don't we already do that every time we turn in our, our forms? I know that I have to account for every single penny that I spend. So every lunch I buy, every coffee I buy.

JACK GOULD: Well, \$250 disclosure. Yeah. So that leaves a lot of leeway.

BLOOD: But if you go-- so for instance, in my case, I use the same coffee shop as my satellite office. So I'm guessing there's probably hundreds of dollars I've spent on coffee in the last year.

JACK GOULD: Well--

BLOOD: I'm embarrassed to say but, but because I, I don't want the citizens to buy me coffee, I don't feel comfortable doing that. So, you know, I'm sure that that does show up. And obviously childcare is going to be more than \$250. So aren't we being transparent in that? And I'm not trying to argue with you, I'm trying to get this on the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

record. I just want to make sure that we have a clear understanding that everything we do is very transparent.

JACK GOULD: It should be. I mean, I go through those records. Sometimes it's, it's, it's very clear and sometimes it's not. Keep in mind, too, that you are report-- when you report your totals, you're been reporting a lot of cash sums, which is usually the contributions under \$250. So there's a considerable amount of cash that comes into campaign accounts that's not really identified.

BLOOD: But aren't you worried more about the outgoing, at what it's being spent on? That's what I heard you saying.

JACK GOULD: I am. I am.

BLOOD: And we have to figure all of that.

JACK GOULD: I, I should point out, one thing I should point out is the fact that after we were-- we got the governor's council eliminated, that the lobbyists and the corporate donors just continued making contributions to campaign funds and were able to accomplish the same thing, win favor and at the same time provide funding. So and they just disclosed it as campaign contributions. The use of that money is-- I, I would feel great if you would want to make legislation and said you would have to, have to explain. But as Senator Hunt said, many of the expenses are under \$20, or \$20 or \$40 or \$50.

BLOOD: Certainly not childcare.

JACK GOULD: Not the total, I agree. And I don't know whether, I don't know that the total amount spent would show up. I think what would show up is if you spent \$250 or \$500 or whatever, that would show up.

BLOOD: And that's the point I'm trying to make. Thank you.

JACK GOULD: Well, it's, it's not, I mean, I thought you were saying it would all show up, and I don't think it would.

BLOOD: I, I think that we have a lot of senators, not all the senators, who are really clear on how they spend their funds.

JACK GOULD: I don't deny that. I think a lot of them are very careful in how they spend it. But not all of them.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BLOOD: I concur. Thank you.

JACK GOULD: OK.

BLOOD: All right, thank you.

JACK GOULD: Thank you.

BREWER: Any additional questions? Again, thanks for your testimony.

JACK GOULD: Thank you.

BREWER: All right, any additional neutral? Seeing none, Senator Hunt, welcome back.

HUNT: Thanks, everybody. And thank you very much to all the testifiers. This act, I'm really familiar with the history of the different items in here, especially 8 and 10 that Mr. Gould was talking about, because I actually read the transcripts of when those bills were originally passed in preparation for this bill. And it is really interesting. Really, the political nature of how these things come in to be and, like, who decides what's OK that we spend our campaign money on and what the background is of why they fought for that and how they were able to coalesce support for that. And I, I share concern about the source of the funds, which is why this would be fully transparent and accountable. You know, if people make a donation to you, you have to report that. If you spend the donation, you have to report that and you have to keep track of that for accounting purposes. The reason I do not support finding a solution by increasing the per diem is because that's public dollars. And I don't think it's in the public-- I think it's in more public interest for me, for anybody-- I'm talking about myself here but, like, of course, this is generalizable to anybody who would take advantage of this bill in the future as well. It would be more transparent for me to campaign and say this is something that I use my campaign funds for, than to say, hey, taxpayers, this is what you're paying for when I'm in session. And that's something I also wouldn't support as a taxpayer myself, because that's not something that would apply equally across all senators. But if I am in charge of raising my own money, you know, maybe I raise not very much money, maybe I raise a ton of money, but that still creates a personal, private pool of funds that I have to allocate in a way that helps me campaign. And then in many ways, according to statute now, helps me do my job by going to things like Council of State Governments or National Council of State

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

Legislatures, by continuing my education, by traveling to these opportunities. And all of us do that, and I think that we should. And I'm glad that we're allowed to in statute. So reporting of the use of funds is required. And that's why I think this is probably the best public policy solution, to let it come from campaign funds, because then there is that transparency. It's all out in the open, and this is not being put on taxpayers, which I'm, you know, I'm a tax and spend progressive. But, like, that's not something that I support personally. The need for a babysitter does not go away when you're elected. And to your question, Senator Brewer, I think Mr. Frank Daley pointed this out, but when you're traveling for a campaign, you can already pay for childcare out of your campaign funds when you're campaigning. Yeah. And to his point, about the three things that we use funds for, for election, for stuff related to the duties of the officeholder, and for personal use. The question about if this is personal use, I think that when we can use funds to go to a conference, \$10 dollars to pay babysitter, so someone can-- so I can drive from LD8 to Lincoln, that to me would fall into the same category as the type of funds that we spend to go to a conference to educate ourselves. And there are, there are six other states that have passed this into law in terms of the use of campaign funds for childcare expenses related to official campaign or officeholder duties. And those states are California, Colorado, Minneapolis, New Hampshire, New York, and Utah. And there are other states that permit the use of these funds for these things. But they have that through rules and regulations, not through statute, so it was kind of hard to track all of that down. The reason we can do this in Nebraska is because, in 2018, the Federal Election Commission concluded that a campaign committee can use campaign funds to pay for the childcare expenses incurred as a direct result of officeholder activity. This isn't something that Nebraska has chosen to do. So since we have a range of responsibilities that go from being on the floor during session, to meetings with constituents, which is campaign work, and traveling to different locations around the state to learn about issues addressed in the Legislature, which, you know, to maybe Jack Gould's point, that can be a little bit gray sometimes. Like am I doing campaign work or am I doing officeholder work? But it's not uncommon nowadays either for state senators to serve on committees that meet nationwide and have travel expenses for those duties. And I think that if childcare, when the official state duties of a parent are involved, is deemed to be in the public interest, then we need to have a mechanism to fund such childcare. And this bill says that we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

should allow campaign funds to be used for those costs because they have to report it and they are transparent and there is no cost to taxpayers. I also want to say to be realistic, it's not really likely or realistic that an officeholder would be spending thousands of dollars on childcare, would be taking like, oh, my kid goes to this daycare every day and I'm using my campaign funds to pay for daycare every day. Because all of us have campaign committee accounts and not all of them have a lot of money in them to pay for something like that. So I think that for an officeholder to make these expenditures, it would be like a babysitter situation, to make this expenditure when it's necessary and reasonable. And that would increase the quality of representation that we have here. Yes, that will be my closing.

BREWER: Thank you. Thank you for that closing. Questions? So basically you're saying they elect me and they know that I have a child.

HUNT: They knew all about my kid. Yeah.

BREWER: And so if they're contributing money, and the rules are the rules, then that's where they full-well know the money would go. And if they have a problem, they don't contribute money.

HUNT: Yeah, if someone says, I don't think she should be spending money on that, don't donate to me and don't vote for me. No problem.

BREWER: They would vote for you, just won't donate. All right, one more time. No questions? Thank you. And then you will transition to LB936. Oh, letter. Oh, yeah, I got letters here. Oh. We have zero in the neutral, zero opponents, and two proponents: Nebraska Association of School Boards and First Five Nebraska. Thank you. And if you're, if you were gonna testify the same testimony, what you can do is just fill a second green sheet out and turn it in and you're good to hook. With that, you may open on LB936.

HUNT: Thank you, Chairman Brewer. Some of this will be a little repetition, but it's for the record, because I relied so much on the record and the transcripts when I was preparing for these bills. So if anyone is doing this in the future, I want them to have the same advantage. My name is Megan Hunt, M-e-g-a-n H-u-n-t, and I'm here to present LB936. This bill amends section 49- 1446.03 of the Nebraska Political Accountability and Disclosure Act to allow campaign fund expenditures to be used for conference fees, meals, lodging, and travel by and officeholder and his or her staff and the officeholder's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

children when involved in activities related to their legislative duties. LB936 is about making it easier for parents in public service to do the work they were elected to do. I introduced this bill, LB936, and another bill, LB935, around the topic of modernizing our Accountability and Disclosure Act because campaign finance laws in Nebraska were not written in anticipation of single or low-income parents in public service. There's a precedent for allowing campaign funds to be used for necessary travel for family members related to the duties of the officeholder, because that's something the Governor can already do. In statute, it currently says that, quote, In the case of the candidate committee for the Governor, conference fees, meals, lodging and travel by the Governor, his or her staff, and his or her immediate family when involved in activities related to the duties of the Governor, are permitted use of campaign funds today. The Legislature currently does not have that same right, and it's a barrier to providing services to our constituents. Of course, there are many elected parents who would choose not to use campaign funds for travel. It's honestly not in the best interest of an elected official generally to use campaign funds for anything other than direct campaign costs, because we worked so hard for those funds and we want those to go toward electing us. It's not really an expense you want, but it might be necessary and reasonable from time to time. For example, if an elected official is paying \$300 or \$400 for a plane ticket out of their campaign account, that's \$300 or \$400 less than they had for yard signs, literature, canvassing staff, things like that. But this bill would make that an option for people who really need it, and it would align the campaign expenditure laws between the Legislative and Executive Branches. As a practical matter for a lot of people who have legislative campaign accounts, they don't even have large enough funds to even think about doing this in the first place. I can honestly say in my case, if I could leave my kid at home when going to a conference, that would be my preference. That would be ideal. But once in a while I have to bring her along and that comes at great personal cost. I think that we do have an arbitrary standard that's not evenly distributed between the Executive and Legislative Branches. And if you go look back in the transcript of when this section of the code was passed, it really was kind of like this is something the Governor wants and nobody had an objection to it, but it wasn't applied evenly to the Legislature. All of these expenditures would, of course, be accountable to Accountability and Disclosure Commission. Donors, voters, everyone would be able to see what a candidate spent on travel. And, of course, this would cost nothing to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

taxpayers or to the state. Again, it makes no sense that I could use campaign funds to take everyone in our body out for drinks tonight, but I couldn't use the same funds I worked hard to earn to bring my kid with me to a Council of State Governments conference that I'm required to attend because I serve on a committee, for example. Today, it's typical for state legislators to have responsibilities on national committees through groups like the National Council of State Legislatures or the Council of State Governments, which are important to state business and to the professional development of our state leaders, especially with term limits. It's a travesty when a state senator can take 15 employees but can't take their own child, especially when they're leaving no spouse or anyone at home to care for that child. Whether you as an elected official are someone who needs this bill to do their job, it's something that will benefit us all because it will have the effect of allowing more great people to serve and allowing the people who are here to be more effective at their jobs. This bill aligns the ability of legislators to serve at the same capacity as the Governor in terms of using campaign funds for the travel of a child when it's reasonable and necessary. If this is going to be allowed, then let that be allowed across the board for everybody. That's it.

BREWER: All right, thank you for that opening. Questions? All right, I assume you're gonna stick around for the--

HUNT: Yes.

BREWER: --closing, since it's your committee.

HUNT: Thank you.

BREWER: All right. We'll start with supporters. Proponents. Come on up.

CAROLINE SOJKA: Hello, again.

BREWER: Welcome back to the Government Committee.

CAROLINE SOJKA: Good afternoon, Chairman and members of the committee. My name is Caroline Sojka, C-a-r-o-l-i-n-e S-o-j-k-a, I'm a third-year law student at UNL College of Law. But I'm here today as a law clerk for the ACLU of Nebraska. Thank you, Senator Hunt, for bringing this bill. I would just like to acknowledge that points that were made in LB935 are similar for this bill, specifically all Nebraskans, no

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

matter their economic status, should be given access to participate in Nebraska politics. More women can actively participate in their political duties if they are given the opportunity to bring their children with them to conferences or other related duties. This alleviates the financial strain of childcare and promotes political participation. The ACLU of Nebraska offers our support for this bill, and I would be happy to answer any questions.

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

CAROLINE SOJKA: Thank you.

BREWER: Thank you. OK, additional proponents? All right, we will switch over to opponents. And quickly switch over to those in the neutral capacity. Frank, welcome back.

FRANK DALEY: Thank you, Chairman Brewer. My name is Frank Daley, D-a-l-e-y, I serve as the executive director of the Nebraska Accountability and Disclosure Commission, appearing in a neutral capacity as to LB936. I will not repeat my analysis that I made in LB935, I'll just mention that current-- under current law, campaign funds can be used for meals, lodging, travel and conference fees by the officeholder and his or her government staff when engaged in the duties of public office. The bill would extend it to immediate family members except the spouse. And as I said in LB935, because we are creating an exception to something that's generally prohibited, that is use of campaign funds for officeholding-related expenses, I simply ask that the committee move judiciously and cautiously. So once again, thank you very much for the opportunity to testify.

BREWER: All right. Questions for Mr. Daley? Senator Lowe.

LOWE: Thank you, Chairman. I have three adult children, they are 21, 24, and 29. Because they are my children, and the conference is in Orlando, they would be able to go with me on my campaign funds with this?

FRANK DALEY: Currently?

LOWE: With, with this?

FRANK DALEY: With this bill? No.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

LOWE: OK.

FRANK DALEY: Unless under, I believe it was LB878, you expanded the definition of immediate family. But under the current definition of immediate family, your adult children who are not your dependents for federal income tax purposes and not living your household, you could not pay for their expenses.

LOWE: OK. What happens if they were 15, 16, 17?

FRANK DALEY: OK. If they are living in your household or they are your dependents then under this bill you could pay for their expenses if you were attending a conference related to the duties of your public office.

LOWE: All right. Thank you very much.

BREWER: All right, any additional questions? Thank you.

FRANK DALEY: Thank you.

BREWER: OK. You are testifying in the neutral?

JACK GOULD: Capacity.

BREWER: Just double-checking. Hang on, she needs to grab your green sheet there. Got to have the paperwork.

JACK GOULD: Senator Brewer, members of the comm-- committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d, and I am here representing Common Cause Nebraska. And I did try to spare you my comments because I, I really am saying the same thing I said on the last bill. And I was captured over here, you saw me. She was really rough with me, and requiring me to, to speak to you again. So here I am. If you have any questions, I will say the same thing, just ditto. And if you-- but if you have any questions, I'd be glad to entertain them.

BREWER: I understand that the system is, if we like you, then we let you do it once. If we don't [LAUGHTER].

JACK GOULD: Thank you very much.

BREWER: All right. Any questions? No, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

JACK GOULD: OK. Thank you. Thank you very much.

BREWER: OK. Any additional in the neutral? With that, Senator Hunt, would you like to close on LB936?

HUNT: Yes. The timing of LB878 was, like, a little bit unfortunate for me, but that's OK. When this bill comes out, we will have an amendment to make sure that only dependent children and not the spouses of your adult children can be paid for these things. I agree with being judicious and being reasonable, and when this is necessary. And that's why I drafted this in a way to exclude spouses. When I was talking to people on the floor about this, trying to drum up support from our colleagues, some people were like, well, why not include spouse? The reason for that is the intention of my bill isn't to say you can go on vacation with your husband or wife. Their intention is to say if the, if you having a little kid is prohibiting you from being able to attend a conference, you can bring your kid and make it work. And then you can participate in the things that are related to your duties as a legislator. If travel, when the official state duties of a parent are involved, is deemed to be in the public interest, we should allow campaign funds to be used for such travel because then the expenditures have to be reported and then we have transparency. I can use campaign funds to buy a hotel room here when the weather is bad, I can use campaign funds to take all of you out. But if you were going on a trip in connection with your official duties as a state senator, you could not use the money you have raised yourself in a completely accountable and transparent way to cover the travel expenses for your child. In the case of the bills I've introduced today, I will also want to make a point about civics education. In the past four or five years, the Legislature has advanced bills and policy that clearly communicate that exposing children to civics education and enhancing their connection with U.S. government and history is a shared priority that we have. This legislation also recognizes the sacrifices children make when their parents are elected, which is not something that they can choose. It would be supportive of families and supportive of healthy children to take these measures so kids can spend more time with their parents, especially in special cases where the child only has one parent and is prevented from accompanying their parent but for the passage of this law. I don't think we should do anything to prevent the young children of elected officials from being with their parents when it's necessary and appropriate. And that's what these bills do. When the state's business is being taken care of, we should not restrict a state senator from having their child with them if it's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

necessary. It's a simple bill, what it attempts to do is very clear, and I don't want to talk about it to an extent that I confuse you about an issue that is not confusing at all. But I would be happy to answer any questions.

BREWER: All right. Thank you for that closing. Questions? All right, then that will close our testimony on LB936. We will have one letter to read in the record as a proponent: Nebraska Association of School Boards. Zero opponents, zero in the neutral capacity. All right. Senator Williams, thank you for your patience, and welcome to the Government, Military and Veterans Affairs Committee. Whenever you're ready.

WILLIAMS: This is the first time I've had the opportunity to testify here. And just so you know, we still have two bills left across the hall in HHS today.

BREWER: Good, I do, do feel better.

WILLIAMS: So I know you might feel better. Well, good afternoon, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36. And I am here this afternoon to introduce LB1136, which pertains to public powers entities formed under Chapter 70 of our statutes, and to Nebraska Accountability and Disclosure Act provisions pertaining to public officials who may have an interest in a contract with a governing board on which they serve. LB1136 is not a con-- a controversial bill. It was prepared in consultation with the Accountability and Disclosure Commission, and the commission's executive committee has voted to support this bill. I introduced LB1136 on behalf of Central Nebraska Public Power and Irrigation District, a unique public power entity that was formed under Chapter 70. Central is the state's largest irrigation district. As an irrigation district, Central delivers irrigation water to over 100,000 acres in central Nebraska, using standard-form water delivery service agreements with irrigators. It also provides for long-term leases to cabin owners on district land located on district lakes like Johnson Lake south of Lexington. The genesis for LB1136 lies in an advisory opinion Central requested from the Accountability and Disclosure Commission last year after a third party questioned whether two of the board members who hold long-term leases at Johnson Lake could lawfully participate in board discussions and vote on the lease terms. The question was also then extended to six board members who

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

also hold water delivery service agreements with Central. Over the course of Central's 80 years of history, numerous board members have had water service agreements, and in more recent history there have been board members who have had long-term land leases. Current board rules that they follow require board members with leases or agreements to notify-- or agreements. They have to notify the Accountability and Disclosure Commission of their possible conflict of interest in order to participate in a discussion about the leases, but the rules prohibit members from voting on leases or agreements in which they have an interest. Contrary to years of board policy, the advisory opinion concluded differently, and it stated and I will quote, Board members who have present or perspective leases may not participate in discussion or vote on standard form leases and board members who have present or prospective water service agreements with the district may not participate in discussions or vote on standard-form water service agreements, end quote. The Accountability and Disclosure Act subjects state and local public officials to conflict of interest provisions in the Act and generally prohibits participation in discussions and voting on issues in which officials have a financial interest. According to the Accountability and Disclosure Commission's website, there are categories of conflict provisions, and not all conflict provisions apply to all categories of public officials. The advisory opinion cites section 49-1499.03 of the Act pertaining to public officials affiliated with political subdivisions and relates to conflict of interests. In general, there are other conflict provisions in the Act that deal specifically with an interest in a contract. Entities that come under those provisions are set out and subject to Sections 49-14,103.01 to 14-14,103.06. The requirements for dealing with an interest in a contract are slightly different. A board member must still notify the Accountability and Disclosure Commission and abstain from voting, but allows the board member to participate in discussions about the contract. That's exactly what Central does now. Central's issues with leases and agreements properly fits under contract provisions dealing with an interest in a contract, and Central's current board policies comport with these requirements. The executive director of the Accountable and Disclosure Commission recommended add-- adding public power entities formed under Chapter 7 to the entities listed under Section 49-14,103.01. That comes under conflicts dealing with an interest in a contract. And that's what we're accomplishing with, with this legislation. We're moving this conflict from one area of statute to the other that changes the standard. Upon another suggestion of the executive director, LB1136

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

would also repeal section 70-642.01. This subject-- this section subjects public power board members with an interest in a contract to removal from the board and voids such contracts. This statute is rooted in events that took place decades ago and not-- is not in keeping with the standards that are now before the Accountability and Disclosure Commission and Act. It seems unreasonable for the statutes to prohibit anyone living within Central Public Power and Irrigation District who has a lease or agreement with Central from ever serving on Central's board. Who's better suited on the board, those that are receiving irrigation water and dealing with those contracts and those landowners or cabin owners that have those leases? Without the changes proposed in LB1136, Central has a significant obstacle to attract potential board members in the future. Further, absent LB1136 existing, Central board members are subject to removal from the board and leases and agreements could be voided. The bill will have no effect on irrigation districts formed under Chapter 46, where in most cases only those individuals who are irrigators and customers or landowners within the district vote on the candidates running to serve on the district's boards. With all that, I urge your advancement of LB1136 to correct this critical issue for board members that have been functioning this way for over 80 years. Thank you, Mr. Chairman.

BREWER: Thank you. And I apologize. If I had known how exciting this bill was, I would have had you first.

WILLIAMS: I can understand that. But we'll be enjoying ourselves soon.

BREWER: Yeah. Well, let's, let's run through any questions? All right, you're gonna stick around for close?

WILLIAMS: Yep.

BREWER: OK. We'll start with proponents. And if, if there's more than two, move to the front here, so we've got kind of a headcount to work off of.

JEFF BUETTNER: We'll not overwhelm you with proponents.

BREWER: Do feel a little overwhelmed. But that's OK, we're here to listen. Whenever you're ready. Welcome to the Government Committee.

JEFF BUETTNER: Good afternoon, Chairman Brewer and committee members. My name is Jeff Buettner, that's spelled J-e-f-f B-u-e-t-t-n-e-r, and I'm a government and public relations manager for the Central Nebraska

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

Public Power and Irrigation District. I also serve as the district's lobbyist. Because Senator Williams provided such an excellent description of the issue and the bill to remedy that issue, I will not go into that any further. I've also had the opportunity to discuss the bill and the issue with many members of the committee and described Central's project and operations. However, I'll take just a moment because I think it's pertinent to the issue to refresh everybody's memories. Central is a political subdivision of the state of Nebraska. The public in six counties, Keith, Lincoln, Dawson, Gosper, Phelps, and Kearney elect representatives to our 12-member board. And Central is probably best known as the operator and owner of Lake McConaughy, out in Keith County, which is one of the most popular recreational and tourism destinations in the state. However, the lake is also Central's primary storage reservoir for its hydro irrigation project. And it also stores water for a number of other smaller irrigation projects along the Platte River. It also is the source of water for our four hydroplants that provide renewable emissions-free electrical power to the state. Water, of course, is the cornerstone of the project. Its conveyance from Lake McConaughy through the system, which stretches from Lake McConaughy through the Platte Valley all the way to Minden, is managed from our control center in Gothenburg. We have a supervisory control and data acquisition system which uses computers to operate our unmanned hydroplants and controls the networks of control structures, pump stations, canal gates, etcetera throughout the system. In short, Central is one of the most efficient and modern irrigation and hydroelectric projects in the western United States. As Senator Williams mentioned, we're relatively unique in Nebraska. We function as both an irrigation district and as a public power district. But all of our hydropower plants, all our generation is sold to other utilities for distribution, to the end use customers. We don't have any transmission lines, we don't have any retail customers. We just own the four hydros and those reservoirs associated with them. This issue is not about electric ratepayers. Its focus is on permitting those board members who are irrigation customers or lessees at the cabins or at the lakes to use the knowledge and experience that comes from also being customers of the district and to represent their constituents as they were elected to do so. As Senator Williams mentioned, the bill became necessary after we were form-- informed by the commission that our board members who are either irrigation customers or lessees could not participate in discussions nor vote on standard-form water service agreements or the lot lease agreements. We believe this prohibition disenfranchises the very voters who elected

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

these board members, and precisely because they share those interests with their constituents. I'd like to add that the benefits Central provides are not limited only to those customers who are delivered irrigation water or those who own homes or cabins at the lakes. Farmers who are not customers, who irrigate with groundwater using wells that are recharged by Central's operations benefit from our project. The general public who engage in recreational pursuits at Lake McConaughy or Johnson Lake, or many of the other lake-sort or reservoirs along our supply canal benefit from the project. And they're all-- and there's also benefits to aquatic wildlife habitat up and down the Platte River Valley. So I'll stop there. I'd like to thank Senator Williams for introducing the bill, as well as his staff for getting us to this point. I'd like to thank the committee for its attention to this issue. And at this point, I'll answer any questions that you might have.

BREWER: All right. Thank you, Jeff. All right, questions? I have one quick one for you. You said you had five-- or four hydroplants. Where are the locations on them?

JEFF BUETTNER: OK, the first one is at Kingsley Dam.

BREWER: All right.

JEFF BUETTNER: Lake McConaughy. There is one right below Jeffrey Reservoir, south of Brady.

BREWER: OK.

JEFF BUETTNER: And then there are two below Johnson Lake, south and east of Lexington.

BREWER: All right, thank you. Seeing no more questions, thanks for the testimony.

JEFF BUETTNER: Thank you.

BREWER: All right, the next proponent. Welcome to the Government Committee.

DEANNE PETERSON: Thank you. Thank you, Senator Brewer and your committee, for taking the time to listen. I am speaking on LB1136. My name is Deanne Peterson, D-e-a-n-n-e P-e-t-e-r-s-o-n, I am representing myself. We, as a farmer, have a water service agreement

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

irrigation holder and we are also a Johnson Lake tier 1 lease lot holder. So who really wants to be elected to a board of directors? Well, not many people have the time or the means to run or be elected to a board of directors beyond their full-time occupational-specific boards. The district is made up of a low-population area. For example, not only in our church, but several churches around us, work hard to just get people to run for our councils. And that's just local people. They don't have to drive across several counties to attend meetings and spend lots of times filling themselves with the knowledge to-- about everything that Central needs to know. How would you vote for a candidate to represent you and your district on a board of directors if they had no interest, no experience or knowledge on what the board represents? Now we have to establish our small group of candidates that want to run for a low pop-- from a low-population area covering five counties. As you can tell by the terms and the ages of our Central board, that there are not people wanting to run for the board that takes time to travel to be the best-informed board, board members possible. The district is very lucky to have a team that is working for them. They are reelected term after term because of the knowledge that they have in regards to reservoirs, hydroplants, canals, laterals, hydropower production, delivery of irrigation water, recreation, groundwater recharge, and environmental enhancement. As a farmer, I am looking for a board member that is knowledgeable on irrigation, water recharge, and agriculture. Of the 12 members of the current board, 6 individuals are directly connected to water service agreements. Fifty percent of our board cannot have input, input or vote on irrigation issues. If you would ask farmers that voted for these candidates, they probably thought they were representing and voting in their views. As water users, we vote for the voice to be heard and to vote for our interests. Inputs for farmers have skyrocketed, and if a board water user can somehow affect their bottom line so much just by the cost of water, which is a minimal input, more power to them. Being a cabin owner at Johnson Lake, I cannot vote for the candidates from that district, but would hope with negotiations of leases we would be fairly represented by the two members elected holding properties and shared input on the knowledge they bring from that area. Just because they hold a property, the lease on its own is only a small part of living at the lake. I'd like to thank you for this opportunity for me to testify. And if you have any questions, I'd like to answer them.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

BREWER: All right, thank you for your testimony. Questions? Yes, Senator Lowe.

LOWE: Thank you, Chairman Brewer. And thank you for testifying today. How are the eagles at Johnson Lake this year?

DEANNE PETERSON: So, so.

LOWE: So, so.

DEANNE PETERSON: Not the best.

LOWE: All right, that's all I had.

BREWER: No other questions? Thank you for your testimony.

DEANNE PETERSON: Thank you.

BREWER: OK. Next proponent. Welcome to the Government Committee.

GREG HEIDEN: Good afternoon, Senator Brewer and the committee. My name is Greg Heiden, G-r-e-g H-e-i-d-e-n. I am an irrigation customer of the Central Nebraska Public Power and Irrigation District, headquartered in Holdrege. I am representing myself and my fellow irrigation customers in this testimony. We need good, educated, well-informed board members. There are none better qualified than those who might also find themselves in a position to utilize the services that the district provide. My experience are that the board members are very cognizant of their oaths as public servants. Invariably, they always put any personal interests aside. They already abstain from voting on matters that directly concern them. Standard-form water service agreements are just that: standard for all irrigation customers. They listen to and interact with their fellow board members, neighbors, and constituents. They vote according to what is best for the general public, the district, and their customers. Even though having abstained from voting on standard-form water service agreements silences them, LB1136 at least allows them to represent customers with the knowledge and perspectives they bring to the table for discussion. Our board members serve not only their customers and constituents, but the public in general. Central's hydroelectric and irrigation project benefits not only irrigation customers, but those who depend upon groundwater recharge, take part in the many recreational opportunities provided by the project, or enjoy the enhancement to wildlife along the rivers, canals, and many

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

lakes within the district. LB1136 only puts us on par with the NRDs, town boards, school districts, and other political subdivisions. The board members deserve all the tools we can give them to make them effective board members. Thank you for your time. I'd entertain any questions.

BREWER: Thank you, Greg. All right, questions? Questions? All right, I guess you get off easy. No questions. OK, next proponent. Welcome back for the last time today.

FRANK DALEY: Thank you, Chairman Brewer. Is that a prayer?

BREWER: No, I just-- you're the last bill. I got nothing left.

FRANK DALEY: Fair enough. Fair enough. Chairman Brewer and members of the committee, my name is Frank Daley, D-a-l-e-y, I serve as the executive director of the Nebraska Accountability and Disclosure Commission. I'm here to express the commission's support of LB1136. LB1136 does two things. First of all, it repeals a provision in Chapter 70 applicable to public power districts, rural public power districts, public power and irrigation districts. It's not part of the Accountability and Disclosure Act. However, it touches on something which affects the Accountability and Disclosure Act. This provision which is being repealed essentially states that, if you were a member of one of those boards and you have an interest in a contract with that board, you are subject to removal and the contract can be voided. This is a statute which dates back to a situation that occurred in the 1930s when public power districts were first coming into their own. At that time, there is no infrastructure. Generating plants were being created. Power lines were being strung, poles were being erected-- erected. And what was occurring was that people were running for office to serve on these boards for the specific purpose of awarding contracts to themselves and to businesses that they were associated with. So in 1943, the Legislature enacted what is now 70-642.02, which essentially prohibits any interest in a contract. So what we have right now is a situation in which the last time we looked, there were two members of the Central Public Power and Irrigation District Board who were leaseholders at Johnson Lake or with one of the lakes. And so they had an interest in a contract with the district. We had at least six that were water service agreement customers, and so they had a contract with the district. Currently, under Chapter 70, these folks are subject to removal. I don't think that's what anyone intended. This statute was intended to deal with a situation that occurred 77

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

years ago and is no longer a situation. And so we shouldn't put these folks in a position different from all other public officials and public employees of political subdivisions. What it also does is it specifically puts members of these district boards into section 49-14,103.01, where if you have an interest in a contract, you disclose. You don't vote on the contract. You can do all of those things. But there's nothing that prohibits you from discussing issues surrounding the matter. And that puts them on par with folks like county board members and city council members and school districts, things of that nature. It's a much better fit. It, I think, it's a much better situation. I think the best description for this bill is that it simply realigns how the interest in contract statutes would apply to people under-- who are public power district members, that sort of thing. So thank you, Senator Williams, for bringing this bill. Thank you for the folks at Central Public Power and Irrigation for working toward a solution of this matter. And thank you to the committee for the opportunity to testify.

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

FRANK DALEY: Thanks.

BREWER: All right. Any additional proponents? Any opponents? Anybody in the neutral? Senator Williams, would you like to close?

WILLIAMS: I will, very quickly.

BREWER: Thank you.

WILLIAMS: I would, first of all, like to thank Jeff Buettner for helping me with my testimony. And we should have just had Frank come up here and open and close on this--

BREWER: Could have.

WILLIAMS: --to start with. But clearly what we are doing is not ignoring that a conflict exists. We are simply moving that under a better section of the law; the board members would still have to report their conflict to the Accountability and Disclosure Act-- or Commission. They could not vote on an issue that affected them on their contract, but they were open-- would be open to participate in the discussion. That's, that's the difference of we're talking about here. I appreciate your time this afternoon, and a special thanks to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 20, 2020

Frank for his testimony in helping us find the solution to this, too, so that we can move forward. Thank you, Mr. Chairman.

BREWER: Well, today was kind of Frank Daley day. Just so you know, we do it, we do it that way so he doesn't make a lot of trips over here. But are there questions for Senator Williams? All right, seeing none. We have no letters in the neutral, none in opposition. And we have three letters that are proponents: Nebraska Rural Electric Association, Nebraska Power Association, and North Loup River Public Power and Irrigation District. With that, we will close our hearing on LB1136 and our hearings for the day for the Government Committee. Thank you.