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Executive Board February 25, 2021
Rough Draft

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HUGHES: Very good. Welcome to the Executive Board Committee. I am Senator Dan Hughes. I am from Venango, Nebraska, and I represent the 44th Legislative District. I serve as Chair of the committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the room when it is necessary for you to attend the bill hearing in process-- progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. Please utilize the identified entrance and exit doors to the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chairs between-- and chair between testifiers. Public hearings for which attendance reaches seating capacity, I don't think we're going to get that far today. I would ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn on your cell phones, move to the front row when you are ready to testify. The order of testimony is introducer, followed by proponents, opponents, neutral, then closing by the introducing senator. If you are testifying, please fill out a green form found in the back of the room. Hand in your green sign-in sheet to a page or the committee clerk when you come up to testify. Spell your first and last name for the record as you begin testifying. Speak clearly into the microphone and be concise. And because this committee only is a hour and a half over the lunch time, I will limit testimony to three minutes per testifier. When you see the yellow light come on, that means you have one minute remaining. The red light indicates your time has ended. Questions from the committee may follow. We ask that you please limit or eliminate handouts. If you do not-- if you do have handouts, the materials may be distributed to committee members as exhibits only while testifi-- testimony is being offered. Please make sure that you have 13 copies and give them to the page when you come up to testify. They will be distributed to the committee and staff. The committee members with us today will introduce themselves beginning on my left.

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VARGAS: Tony Vargas, District 7, downtown and south Omaha. I serve as Vice Chair.

SLAMA: Julie Slama, District 1: Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

McCOLLISTER: John McCollister, District 20, central Omaha.

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

HUGHES: And committee members to my right.

LOWE: John Lowe, District 37, Kearney, Gibbon, and Shelton.

GEIST: Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

HUGHES: Senator Patty Pansing Brooks, who is also a member of this committee, serving Legislative District 28 is currently quarantining at home due to a COVID exposure. She will be watching on NET and asking questions through me as they arise. Committee staff with us today to my right is committee counsel, Janice Satra, and to my far left is committee clerk, Mandy Mizerski. Our pages today are Noa and Claudia. Thank you, ladies, for joining us. With that, we will open our first hearing on LB212, Senator Machaela Cavanaugh. Welcome to the Executive Board Committee.

M. CAVANAUGH: Thank you, Chairman Hughes and members of the committee. I am Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I have the privilege of representing District 6, west central Omaha, Douglas County here in the Nebraska Legislature. I'm here today to introduce, introduce LB212. LB212 would eliminate fees charged for providing public records when a member of the Legislature makes a public records request in their official capacity as a member of the Legislature. It also sets a window of 15 business days for fulfillment of the request unless an agreement is reached for a longer time frame, the request is narrowed, or the request is withdrawn. When concern, when concern was voiced over the breadth of agencies and the entities this would apply to and how much it would cost-- cost would be associated, I had AM307 drafted to make the fee provision apply to state agencies. The time frame would still apply to all public records requests. Part of our duty of oversight can necessitate public records request of state

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agencies. It's appropriate for us to be able to provide that oversight without fees charged for information. And I, I believe you all received the handout, so this would-- the initial draft included county and municipalities. This would remove them from, from that. It only applies to the fee. The removal of the fee only applies to state agencies. And since he was not here yesterday for the introduction of LB123, just want to again state for the record that I will bring an amendment for LB123 that is whatever Speaker Hilgers wants. And with that, I will take any questions.

HUGHES: Very good. Thank you, Senator Cavanaugh. Are there questions from the committee? Senator McCollister.

McCOLLISTER: Yeah, thank you, Mr. Chairman. You're aware that in Government Committee, there's a very similar bill, LB557?

M. CAVANAUGH: I am not. Obviously, LB212 came first.

McCOLLISTER: I mean, many of the, the topics are exactly the same. So we may need to harmonize that.

M. CAVANAUGH: We can pick and choose whichever one we like. But I will say this has bipartisan support, my cosponsor, Senator Erdman. So--

McCOLLISTER: You can't beat that.

M. CAVANAUGH: [INAUDIBLE]

McCOLLISTER: Wonders never cease. Thank you.

HUGHES: Senator Slama.

SLAMA: Thank you, Mr. Chairman. And thank you, Senator Cavanaugh, for being here today. I, I just had a quick question. When we're talking about transparency and the importance of transparency in government, I think that's one of the cornerstones to how we operate things here at the Nebraska Legislature. Do you have a take or an opinion on certain legislative communications not being open or accessible to FOIA requests?

M. CAVANAUGH: Do you have something specific in mind?

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SLAMA: Certain emails, communications are excluded from those requests. What-- what's your take on that?

M. CAVANAUGH: Oh, you mean as far as the Legislature itself's communication?

SLAMA: Yes.

M. CAVANAUGH: Well, our communications are, are exempt because we deal with sensitive communication with our constituents. And so I think that that's important for providing privacy to our constituents.

SLAMA: And those state agencies don't have similar sensitive communications?

M. CAVANAUGH: They do not have to provide anything that would be sensitive to revealing any information about constituents, about citizens of the state.

SLAMA: I think under this bill, they, they would within 15 days.

M. CAVANAUGH: No, this doesn't change what, what is considered a public record.

SLAMA: OK, thank you.

M. CAVANAUGH: It just, it just ensures that they don't have to, that we are not charged and that there is a time frame, but it doesn't change what is under the open records statute.

SLAMA: So, so wouldn't you say that this opens the door to legislative offices kind of weaponizing this, making all sorts of-- there's no reasonable standard tier implemented. Who's to say, I couldn't request all the records DHHS has for all foster care placements ever. And I couldn't be charged a fee and they'd have to get that information to me in 15 days.

M. CAVANAUGH: So you could request that information. You would likely be denied that request because that would not fall under what is acceptable under the open records request. You wouldn't be charged a fee. You would most likely be denied the request. You could then pursue repealing the request if you wanted to. But the 15 days is

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really-- it's negotiable, as, as it stated that they can come back to you and say we need additional time, which I--

SLAMA: But if you don't think they're being reasonable, what's your recourse on that front?

M. CAVANAUGH: So I have never been charged a fee and I have made a substantial number of requests to state agencies and they have come back to me with needing more time. And that has never been an issue between myself and state agencies. But I know that others over the years have had this issue. And I know that Senator Erdman has had some issues with state agencies, which is why he wanted to join me in this endeavor. So I think that this is just enabling us another tool in our toolkit for oversight. And if somebody is abusing the tools that we have as oversight, I think that's something that we as a Legislature should look at in our rules and regulations. But as far as our ability to do our jobs, I think this is an important step.

SLAMA: Sure. And if you think that a state agency is not negotiating in good faith, that they don't really have a good reason that you can see for going beyond those 15 days, like, what's the next step after that?

M. CAVANAUGH: So I did have a records request last year that a significant portion of it was denied. And so I went to the AG's office and submitted what my records request was and what the response was back from DHHS in this particular instance. And then the AG's office came back to me with their opinion of what was appropriate. And from that point, I had to make a decision as to whether or not I wanted to pursue legal action to obtain the records or if I thought that the AG had satisfied my, my concerns. And at that time, I felt that the AG had satisfied my concerns. And so I didn't pursue it any further. But there are already all of those steps in place.

SLAMA: Sure. So as a consequence of this agency not fulfilling your request within 15 days and you don't believe they're reasonably negotiating fulfilling that request, the next step is then to through the Attorney General's office pursue legal action if that's the choice of course of action.

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M. CAVANAUGH: I believe so. I, I don't know of any other action, but that's something that we probably would need to consult with legal counsel on.

SLAMA: All right, thank you.

HUGHES: Any other questions? I guess I want to follow up just a little bit in thinking about this. I know there is some frustration, but I do, following up on Senator Slama's line of, of weaponizing, I guess, is the, the word she used that would you be possibly interested in limiting it to committee chairs of agencies within their jurisdiction? Would be possibly-- so if, if--

M. CAVANAUGH: So--

HUGHES: --Senator Erdman wasn't on that committee, but he was able to convince a committee chair to forward that records request, you know, as a possible compromise.

M. CAVANAUGH: Well, as it stands right now, any committee can-- or any individual can make these requests.

HUGHES: True.

M. CAVANAUGH: So it's just a matter of if we feel that we as legislators can do our job while being charged these fees. And so I don't know why having-- eliminating it to a certain person would make any sense.

HUGHES: OK.

M. CAVANAUGH: Because I pursue topics that don't necessarily relate to even committees that I'm on, just like I introduce bills that don't relate to committees that I'm on.

HUGHES: OK, very good. Any other questions? Seeing none, you'll stay for closing?

M. CAVANAUGH: Yes.

HUGHES: Very good. With that, we'll open it up to proponents to LB212. Go ahead and wipe it down, we're, we're waiting for you. Not that we're all watching. Are there any proponents to LB212? Seeing none,

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are there any opponents to LB212? Seeing none, anyone in the neutral position to LB212? We do have one letter in the neutral from Jon Cannon of NACO. Neutral?

AMARA BLOCK: Neutral.

HUGHES: OK, very good. I've got to be faster.

AMARA BLOCK: Sorry.

HUGHES: Welcome.

AMARA BLOCK: Thank you for having me. My testimony-- my prepared testimony is a bit longer than three minutes. It's about four, so I'll try and talk as quickly as possible. Good afternoon, Chairman Hughes and members of the board. My name is Amara Block, A-m-a-r-a B-l-o-c-k, and I am the general counsel for the Department of Administrative Services. I am here today in a neutral position on LB212. LB212 would alter public records law in two ways. The first is that public records requests made by state senators in their official capacity must be fulfilled within 15 business days unless the senator permits extra time. And the second is that members of the Legislature cannot be charged fees for records request. I'll speak to the timing item first. It's important to understand our typical records request process. The legal division oversees and coordinates public records requests received by the department. When a public records request comes in, it gets forwarded to my team for review. We identify and reach out to the persons and divisions we suspect or no have documents. Those persons and divisions then provide my team the records. After we have collected the records, my team organizes them and prepares them for my review. I review these records to make sure they are complete, respond to the request, and do not include any information that we should withhold, such as protected health information, privileged information, or personal information of employees. After I finish my review, I then pass the records on to the leaders of the organization for their awareness. Once they have had time to review them, we then send the response to the requester within the legal time frame. This process is typical for both large and small state agencies. Current law requires this process to be completed in four business days unless we notify the requester otherwise. Now for just a couple of pages of records or for records that are already published online, we can usually run this through the process and produce these records within

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four days. For extensive records requests, however, 4 days is impossible and 15 days is questionable, especially if the request is for thousands of pages of records. To give the committee some context on how large these public records requests can be, we received a public records request from a senator in April for various materials, including two months worth of correspondence. This response ended up being 726 pages and was provided in 10 business days. We received another request last September from another senator for various records and six months worth of correspondence. We could not provide the total request within four days, so we worked with the senator to prioritize certain items within the request to have those items delivered by a certain date. We delivered the prioritized items which ended up being 723 pages to the senator in 10 business days and by the date the senator needed them for a hearing. The remainder of the request, which was 2,673 pages, was delivered 20 business days after that. The total records request was 3,396 pages and that took 30 business days to deliver. I realize that on paper, 15 days may seem reasonable. However, in addition to how large some of these requests can be, please keep in mind that the time the agency spends on records requests is in addition to the regular, run-the-business work we perform for the citizens of Nebraska. Providing records pursuant to law is an important aspect of transparency in government, and agencies take this duty very seriously. However, sometimes agencies cannot drop all of those other duties to immediately fulfill an extensive records request. And our current law recognizes that by providing public servants with the flexibility and time to complete the request. To wrap up, I'll touch just briefly on the second point regarding charging senators for public records requests. Since I have been at DAS, we have never, ever charged a senator or a member of the public for a public records request. Even those that I just mentioned that were thousands of pages were provided for free. Charging senators is not in line with our values. Thank you for your time. I'd be happy to answer any questions.

HUGHES: Very good. Thank you, Miss Block. Are there questions? Senator Slama.

SLAMA: Thank you, Chairman Hughes. And thank you, Miss Block, for being here. It's different to see you on this side. So--

AMARA BLOCK: Yeah.

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SLAMA: --just a quick question for my perspective. You went into one of those larger public records request, a few thousand documents. What kind of man hours does that take to complete from getting the request, processing what they're asking for, to the end, where you have a product that you're giving to the public that is fully redacted and passes all the different tests before putting it out?

AMARA BLOCK: Sure. So I, I don't have a hard and fast rule or number for you, Senator, but I can tell you that, you know, in talking about that process, right, there's several people involved in this, right? There's the people who actually have the records. There's my team who oversees it. We redact things, we look through it, and then there's leaders who also have to review it just for awareness purposes. My particular portion of that process can be quite lengthy, especially for these thousands of pages, because I do have to evaluate it to make sure we're not giving personal information of employees or protected health information or things that like we really shouldn't be releasing, right? Pursuant to law. Some of those larger requests have taken me and my team hours. And part of that is technology. Right? It's-- you have to go through and actually redact everything. It's gotten better, but it still takes time. So for those large ones, several hours, at least just on my part, that's not even on collect, you know, people collecting it or reviewing it.

SLAMA: That's at a pretty high expense to the agency, right? Because that's your time away. That's whoever else is involved, time away from duties. That's something that can be pretty expensive, right?

AMARA BLOCK: Right. Yeah, I-- and, yeah, as I said, we don't, we don't charge. But it's I think that's the, the main concern is when we have to do public records requests, it's, it's taking time away from those other-- our other duties. Right? And so it's, it's time away from that. And then it's time spent on the records. We're happy to produce the records. We just-- we need some time and flexibility.

SLAMA: Absolutely. And that can present some special issues, especially if you're set up against a 15- day window to get it fulfilled.

AMARA BLOCK: Right. Yeah, so four pages could easily be done in, in four days, but thousands, right, in 15 days that I mean, it could be,

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you know, tens of thousands. I just-- it would, it would put a lot of stress on me and my team.

SLAMA: Thank you.

AMARA BLOCK: Yeah.

HUGHES: Very good. Senator Geist.

GEIST: It kind of tagging off of Senator Slama's questions. How many records request do you get a month?

AMARA BLOCK: That's a good question. We've-- we typically-- I don't, I don't know the exact numbers, Senator. I can get that for you. We typically get a lot in the beginning because the Department of Administrative Services has all the salary information.

GEIST: In the beginning of a year or--

AMARA BLOCK: Yes, in the beginning of a year. Right? So we have a lot right now because various agents or various companies request salary information, which is public. And then so it kind of, it kind of ebbs and flows. But I don't have the exact number for--

GEIST: OK.

AMARA BLOCK: --in a [INAUDIBLE].

GEIST: Just wondering if it's frequent or infrequent. Do you-- is this a regular part of your job?

AMARA BLOCK: Sure. So we don't usually get too many from senators that I'm aware of, but it is-- it's enough of a part of my job where I have to spend time on it. I would, I would say I, I probably if I had to guess, but I can get you more exact figures, that maybe handle two or three a week.

GEIST: OK.

AMARA BLOCK: Right? But typically those don't take very long. It's just a referral to the website or something.

GEIST: OK, thank you.

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AMARA BLOCK: Yep.

HUGHES: OK, very good. Any other questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Mr. Chairman. You don't typically charge state senators for their, their request, is that correct?

AMARA BLOCK: Yep, that's correct. We do not.

McCOLLISTER: But if an outside body, a news organization or some other third-party request, you, you, you do charge for those services?

AMARA BLOCK: We have not charged anybody, senators or public news report or otherwise, since I have been there, in, in, in a year and a half since I have been there, I can't say that it's never happened, but I have not seen our department charge anybody for any records.

McCOLLISTER: OK, thank you very much.

AMARA BLOCK: Yep.

HUGHES: OK. Any additional questions? Seeing none, thank you, Miss Block.

AMARA BLOCK: Yeah, thank you.

HUGHES: Any additional neutral testimony? As I stated, we had one written testimony submitted in the neutral capacity of-- for LB212 from John Cannon of NACO. We had three position letters in opposition from Bruce Prenda, Nebraska County Attorneys Association; Shelley Sahling-Zart, Nebraska Power Association; and Timothy Burke, Omaha Public Power District. So, Senator Cavanaugh, you're welcome to close.

M. CAVANAUGH: Thank you. I think that those may have come before the amendment because I spoke with all of those entities about the amendment. So hopefully. I will follow up with them and see if that still stands that they have opposition. I want to thank Miss Block for coming. I actually misspoke, it wasn't DHHS. It was DAS. And when she came up, it reminded me and I sought the AG's council on the portions of-- sorry, I'll speak up. I sought the AG's counsel on the portions of the rejected request, because as I am not a lawyer, I wasn't entirely clear on, on the, the feasibility of executing this. And I appreciate the work that Miss Block does. She's been very helpful to

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me over her tenure here. And so thank you for that. This is just another tool in our toolkit. It's something that I have used on a few occasions when I haven't been able to get the information just by request, simply requesting it. I've had to go through the records request process and sometimes now even when I request information from an agency, they automatically send it to the records request process. And so I haven't had an issue with fees being charged, but I know that in the past that has happened. And so this is just a way to ensure that that doesn't happen when we are doing our jobs. So I'll take any other questions that you might have.

HUGHES: Very good. Are there any additional questions for Senator Cavanaugh? Seeing none, thank you.

M. CAVANAUGH: Thank you.

HUGHES: That will close our hearing on LB212, and we will open our hearing on LB25 [SIC]. Senator Arch, welcome to the Executive Board.

ARCH: Thank you. Good afternoon, Chairman Hughes, members of the Executive Board. My name is John Arch, J-o-h-n A-r-c-h. I'm here to open on LR25, which was introduced by the Health and Human Services Committee. LR25 would require the Executive Board to appoint a Youth Rehabilitation and Treatment Center Special Oversight Committee, effectively extending the special committee created by LB1144 in 2020, which terminated on December 31, 2020. Many of you are very familiar with the YRTC Special Oversight Committee. Senators Lathrop, Lowe, Pansing Brooks, Vargas all served on the Oversight Committee, which I had the privilege of chairing this past interim. I won't give a lengthy history of the events that brought the YRTCs into sharper focus in the summer of 2019. I think it is very well documented. But as we all know, in August 2019, the conditions at YRTC-Geneva reached a crisis point. In the weeks and months that followed the crisis at Geneva, it became apparent that the breakdown within the YRTCs had been many months in the making and that long-term planning and oversight were lacking. In October 2019, DHHS released a draft YRTC business plan. Among other things, this new plan proposed to create a new YRTC in Lincoln at the Lancaster County Youth Services Center and to make Kearney the hub of the YRTC system. Within days after the release of the draft business plan, the Legislature heard from the juvenile court judges who expressed concerns with these changes, as well as frustration that the plan was developed without input from the

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courts. Additionally, many of us in the Legislature were concerned the DHHS plan to reorganize the YRTC model on a condensed timeline without consultation or input from the Legislature or other key stakeholders with experience and expertise in youth rehabilitation and treatment. In response to the crisis at Geneva and the department's proposed changes to the YRTCs, the Legislature enacted a series of measures during the 2020 session. Among other measures, we required DHHS to develop a five-year operations plan. The need for a special oversight committee really arose from the fact that the YRTCs involved the subject matter of a number of different committees. The Judiciary Committee, Education, Appropriations have all important roles to play with respect to the YRTCs and the programming, education, and future of the youth who are sent to these facilities. Last session, the Executive Board and the body agree that this combination of expertise and oversight was needed. So the YRTC Special Oversight Committee was created. However, because of our prolonged recess period last year due to COVID, the YRTC bills were not signed into law until August, which meant the Oversight Committee had only a brief window of time to carry out its duties. Despite this tight timeline, the committee engaged in a very deliberate fact-finding process, which included a series of briefings, tours, and a public hearing. Our fact-finding culminated in the YRTC Special Oversight Committee's December 15, 2020 report to the Legislature, which included a number of thoughtful recommendations for the Legislature and the Department of Health and Human Services. One of the Oversight Committee's recommendations for the Legislature is to extend the YRTC Special Oversight Committee. I will tell you, I'm excited about some of the opportunities that we've identified for future positive change at the YRTCs, which highlight the need for continued involvement of the Oversight Committee. For example, DHHS and the Department of Education have been collaborating to develop a plan for the future of the schools at the YRTCs. The Oversight Committee has seen some of the challenges with educating youth in these settings, including funding and special education issues. And planning for the future would undoubtedly benefit from the continued guidance of oversight members of the Education-- on the Education Committee. Another recommendation of the Oversight Committee was to survey, survey the juvenile court judges regarding the perception of the, of the program at the YRTCs and their reasons for committing or not committing a youth to these programs. I think it's appropriate for oversight committees on the Judiciary Committee to be involved in these discussions relating to the juvenile justice system.

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Additionally, DHHS will present their five-year operations plan for the YRTCs to the Health and Human Services Committee on March 9. We know there are issues with facilities and that these changes won't happen overnight. Continued oversight is appropriate as they begin to implement that plan. Nebraska has made some significant strides toward improving our YRTC system in the last couple of years. However, we know from the events in August 2019 that a lack of oversight can undo a lot of, a lot of progress in a short amount of time. Extending the YRTC Special Oversight Committee through the end of this year will ensure continued involvement and oversight by the Legislature as the state works to rehabilitate the youth in our juvenile justice system. With that, thank you for your time and I'd be happy to answer any questions.

HUGHES: Thank you, Senator. Are there questions?

LATHROP: Can I just make a comment?

HUGHES: Sure, Senator Lathrop.

LATHROP: Thank you. I appreciate that you brought this to us, Senator. I know that when we did the Beatrice State Developmental Center, also known as the DD Oversight Committee, that committee continued for three or four years after, after we had the initial investigation into BSDC and I think that was beneficial for the developmental disability community and, and this is important.

ARCH: Thank you.

HUGHES: Thank you, Senator Arch-- or Senator Lathrop, I apologize. Are there other questions? I guess I do have one. Senator Arch, were you on the committee last year?

ARCH: I, I chaired the committee, the Oversight Committee.

HUGHES: OK, can you tell me who else was on the committee just to refresh my memory?

ARCH: Sure.

HUGHES: I think, Senator Lowe, you were on that as well.

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ARCH: Senator Vargas, Brandt, Machaela Cavanaugh, Senator Groene, Howard, Lathrop, Lowe, Murman, Pansing Brooks, and Wishart. There were nine.

HUGHES: OK. Thank you. Any other questions? Seeing none, you'll stay for closing?

ARCH: I will.

HUGHES: Very good. We will open it up to proponents to LR25. Anyone wishing to testify as a proponent? Anyone wishing to testify in opposition to LR25? Anyone wishing to testify in the neutral capacity to LR25? We do have one letter of written testimony submitted by Jason Hayes from NSEA and they-- as a proponent. Senator Arch, you're welcome to close. Senator Arch waives closing. That will close our hearing on LR25 and we will move on to LR28. Senator Hilkemann. Welcome to the Executive Board.

HILKEMANN: OK. Good afternoon, Chairman Hughes and members of the committee. My name is Senator Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, I represent District 4 in west Omaha. I'm here to introduce LR28. LR28 accomplishes two actions. One, it would rescind and deem null and void any and all resolutions previously passed by the Nebraska Legislature petitioning Congress to call a federal constitutional convention. Two, it establishes a sunset for all resolutions that petition Congress to call a federal constitutional convention passed by the Nebraska Legislature in the current or any subsequent legislative session. The sunset would occur when a convention is not called on or before the seventh anniversary of the date the, the last legislative vote is taken on any such resolutions. The most recent application in Nebraska was passed more than 40 years ago. None of us who make up the Legislature today voted on any of the pending applications. The resolution promotes good governmental practices by cleaning out antiquated resolutions that are treated by law as the will of the current Nebraska Legislature and allows future Legislatures to approach the possibility of a constitutional convention with a clean slate. As you can see, I think it's a rather straight forward type legislation. I do have a handout here with-- if you're interested in the, the 11 pending applications dating back to 1893. We will get-- do you have those? They've been-- OK. Great, great. So I'd be happy to answer any questions you may have.

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HUGHES: Thank you, Senator Hilkemann. Are there any questions from the committee? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Thank you Senator Hilkemann. Good to see you again on this one. I understand the logic between, on the one hand, having what you determine antiquated calls for amendments maybe that are over 100 years old or have already now been with the constitution as amended-- been amended to incorporate those. But how do-- how does that logic then apply to maybe more recent calls, say, for a balanced budget amendment that maybe people don't find, either don't find antiquated or have not-- the constitution hasn't been amended to include them?

HILKEMANN: Well, this, again, is a cleanup type measure. And it's a-- there's nothing to keep a present Legislature or future Legislature from once again calling attention to the fact of the, of the budget amendment, the, the balanced budget amendment. I have a feeling there's a whole bunch of Nebraskans don't even realize that this, this was called for almost 45 years ago.

HILGERS: Thank you. Do you-- well, just one other question. What's the logic behind the 7 years, choosing the sunset provision for 7 years versus 10, 5, 20?

HILKEMANN: Well, if they haven't done it in that seven-year period of time, they're probably not going to get it accomplished. We have-- that's-- in, in the past-- it requires two-thirds of the states to require it to, to move this forward anyway. So it's-- I would be negotiable on that if, if that, if that would be the-- a stumbling block, but seven was the years that we kept coming.

HILGERS: Thank you.

HUGHES: Any additional questions? Seeing none, you'll stay for closing.

HILKEMANN: I'll be here.

HUGHES: Very good. With that, we'll open it up to proponents to LR28. Welcome.

GAVIN GEIS: Good, good afternoon, Chairman Hughes, members of the committee. My name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm the

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executive director for Common Cause Nebraska. We're here to testify in support of LR28. Common Cause is a grassroots nonprofit that is dedicated to upholding the core values of American democracy. To that point, we're issuing our support for LR28 because it's a commonsense resolution that will send previous calls Nebraska's made for an Article V convention and will include sunset provisions for any future calls we make. We say it's common sense because in the running of government business, it comes from time to time our responsibility to clean up what we've written in the past. We do this when we change pronouns from he to include every gender. We do this-- we did this just recently in 2020 election cycle when Nebraskans voted to remove a mention-- the mentions of slavery and of the use of forced labor as punishment for crime. So Nebraskans understand the value in cleaning up our laws in updating all our standards to modern day. This is the same case with LR28, it's simply looking at our past actions as a state, the past resolutions we've made and saying we should be discussing these today. We shouldn't be allowing for old sections of law passed by Legislatures 40 years or more ago dictate the conversations and the position our state will take today. And I will note that in cleaning up Article V conventions, going back and rescinding these is not out of the norm. Over the past several years, states like Delaware, New Mexico and Maryland have all done the same thing to rescind their previous calls, even if they are having ongoing discussions around Article V conventions. It is the act of going back and saying this is not our current discussion and we should update this for our modern standards. The last thing I'll say is that this is a particularly-- Common Cause believes it's a particularly important area of law to clean up, because Article V conventions, the constitutional convention process is as a whole up for debate. It is a legally unknown and precarious area. There are proponents, there are opponents to the issues, some that would argue you can keep it to one subject matter. Others like Common Cause, who say there are no legal rules that allow you to do that. And so simply looking from that angle of is this a legal unknown? Is this a complication? We'd argue that the constitutional conventions that we've called for in the past are past applications should draw additional worry and additional scrutiny from us simply because we don't know for sure what the process would look like. And we shouldn't hold Nebraska to the standards and to the issues we discussed 100 years ago. We should keep our discussions current and we should keep those debates before us right now. Thank you.

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HUGHES: Thank you, Mr. Geis. Are there any questions? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. Good to see you, Mr. Geis. We-- you and I have had lots of conversations on Article V conventions. I won't rehash those here, but you use similar language, similar, not the same, similar to the antiquated language would clean up. That was a primary argument I believe you made. I can understand that for the old resolutions. But, but for, say, for instance, 2010 LR538, which relates to a balanced budget amendment, how would you respond to the argument that that, that would, that people would not perceive that as a clean up, but really a, a policy decision to not no longer call for a balanced budget amendment to the United States Constitution?

GAVIN GEIS: I think that's a, a completely valid question, right, in the sense of, sure, there are some that have been more recent than those we passed in the early 1900s. But I would also point to the discussion we are having right now as a Legislature that involves a balanced budget provision with a, a new call for an Article V convention. So I would point to the discussions we're having today to say we should continue to have those debates. We shouldn't hold ourselves to debates that no one in the Legislature had. Even if they do seem recent, we are still having those discussions. A balanced budget amendment hasn't disappeared from our dialog. It's still there. I just think that those debates should happen today in front of today's Legislature and through today's eyes.

HILGERS: So is there any scholarship that you're aware of that would describe when a call might become stale by virtue of time without the need to rescind?

GAVIN GEIS: No, not none that I hold to at least of the scholarship in this area seems to allow for states to jump on board a Article V call for as long as it remains on the books of a state. So the things that we have in our books could suddenly become live again. There is no expiration date stamped on these by the constitution. And as a state we haven't stamped, stamped an expiration date on these. So there's no reason to believe that they would expire naturally by any measure, but could be brought up again.

HILGERS: The Nebraska Legislature, as you know, has term limits. So the logic of your of, of sort of-- the logic that I heard you argue, which is we should be doing this with a new Legislature, right, when

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in an era of term limits that, that is every two years or every four years. So isn't the logic of that argument suggests that the sunset ought to be four years or two years? And if that's true, isn't that really just sort of nullifying Nebraska's ability to participate in an Article V process because realistically, you can't get two-thirds of the states to join a call in two years or four years?

GAVIN GEIS: So, right, there is a practical argument there. Is it possible to do this in a seven-year period? But I would point to the fact that you are now serving your second four years, as are most of the legislators who are elected to this body. They get to serve a second term. They are-- they serve four eight years within this body. So in that seven-year period, you could theoretically, you will have turnover, you will have overlap of new legislators and old legislators. So in a sense, yes, we're adding new members to the body. We're adding different perspectives. But we as a body retain a lot of the old, people don't-- many legislators don't lose their reelection bid. That's not common in Nebraska. To say that people are serving two or four years, the reality is they're serving eight usually, and that a seven-year limit on something like this doesn't seem outside of what we can realistically talk about and have a dialog on as a state.

HILGERS: So the last question, if I may, Mr. Chairman is really just-- it's a, it's a question of line drawing. So I understand the line that's being drawn in LR28 and the other-- another line would be just to do not do anything. I can see the logic of cleaning up, truly cleaning up old 100-plus-year-old calls or calls that, that are really rendered not void, but because there's been-- maybe moot because there's a, there's a amend-- the constitution's been amended through other means. If I were to ask you, and I know you're not-- you're arguing for this line. But if I were to ask you to draw a line somewhere in between LR28 and no line at all that would capture true cleanups, how would you draw that line?

GAVIN GEIS: I would keep the line where 28-- where LR28 keeps at, because I believe we should start fresh. I think if we're going to establish sunset provisions, if we're going to establish limitations around Article V convention calls in Nebraska, we should start now. We shouldn't point to some theoretical point in the past to say that's when it begins. But today should be-- honestly, it's the-- simply because it's the easiest, but also because it's fair, it's fair to all of the previous calls that we would rescind and start now, set

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for sunset provisions now instead of, like you said, drawing some arbitrary line in the past that people are going to disagree on.

HILGERS: But that line wouldn't-- sorry, Mr. Chairman, I'm-- but that line would, would not then-- that would, that would include within that sweeping away LR538, which is a reaffirmation of a previous LR. Right?

GAVIN GEIS: So you're referencing the-- is that the 2010?

HILGERS: I'm sorry. Yeah, I've got Senator Hilkemann's very helpful chart in front of me and you don't. I apologize.

GAVIN GEIS: Making sure we're talking the same thing.

HILGERS: I'm sorry.

GAVIN GEIS: So that's the 2010 reaffirmation of a previous call, right, for the balanced budget.

HILGERS: Yes, that's right.

GAVIN GEIS: And that would be included in the rescission by this bill. Correct?

HILGERS: Right. And the line you're drawing would-- you would just-- the fact that it's been reaffirmed recently within the last 12 years by this Legislature,--

GAVIN GEIS: Right.

HILGERS: --that would still-- you think that that line should be still drawn where that-- even though the reaffirmation, if it was reaffirmed still might be the way.

GAVIN GEIS: If it falls within that, within the limit we're setting, right, if we're saying it's seven years, if we're saying it's ten years. That no matter how we look at that reaffirmation, it was 2010, that is more than the seven-year sunset as being proposed here. Even if we increase that sunset to a ten-year provision, it would include that. So I understand the tension with this particular resolution and why it is a sticking point for the body right now. But it seems immensely arbitrary to say that that one is special in some

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way and should be excluded from cleaning up simply because it was kind of recent. Now if this bill included a 20-year provision, 10-year provision or 15, does that make sense?

HILGERS: I follow your argument. I disagree with it, to be candid, but I, I follow your argument. Yeah, thank you, it does make sense.

GAVIN GEIS: That's your right.

HILGERS: Thank you, Mr. Geis.

GAVIN GEIS: Yes, of course.

HILGERS: Thank you, Mr. Chairman.

HUGHES: Very good. Any other questions?

GAVIN GEIS: I've missed our discussions.

HUGHES: Whoa, whoa, whoa, Mr. Geis, please, if you don't mind.

GAVIN GEIS: Oh, sorry, thought I was done.

HUGHES: Senator Lowe.

LOWE: Thank you, Mr. Chairman. And, Gavin, good to see you.

GAVIN GEIS: You too, Senator.

LOWE: Are there other states that have sunsets on the resolutions?

GAVIN GEIS: Other states that have sunsets. I believe in the states that I listed, they've included sunset provisions on their future ones. I can find that fact for sure for you to make sure that they didn't exclude that. But that's been a pretty key provision and a key part of the rescission in other states like Delaware, New Mexico, Maryland. But I will make sure that that is included and hasn't been cut.

LOWE: OK.

HUGHES: Very good. Any other questions? Seeing none, thank you, Mr. Geis.

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GAVIN GEIS: Thank you.

HUGHES: Next proponent. Welcome.

RENEE FRY: Thank you. Good afternoon, Chairman Hughes, members of the Executive Board. My name's Renee Fry, R-e-n-e-e F-r-y. I'm the executive director of OpenSky Policy Institute here in support of LR28. A lot of my testimony has already been covered. So I'm going to skip down. And I also want to address the conversation about LR528-- or 538, excuse me. We are concerned for a number of the reasons that have been brought before you about cleaning out antiquated resolutions. We also are concerned about a balanced budget amendment which would worsen economic downturns and reduce federal funding that many, many Nebraskans benefit from. We agree that it is really critical to use care with taxpayer dollars at all levels of government. However, several-- 1,000 economists have found that actually a balanced budget would make recessions deeper and longer. And so, and it would eliminate the federal government's ability to go into debt, which stabilizes the economy during recessionary downturns such as what we're facing now. It would also have severe consequences for nearly all Nebraskans by reducing federal government support for communities throughout the state, including farmers, including retirees and veterans. In FY '19, federal dollars accounted for more than 27 percent of appropriations of all funds sources in Nebraska and 31.5 percent during the Great Recession in FY '09. I do want to stress why this matters now. There is an active effort to aggregate applications for a balanced budget amendment and combine those with plenary applications to call for an unlimited convention in an effort to reach the required 34-state threshold. So if the strategy succeeds, Nebraska could serve as a tipping point for whether a convention is called or not. As 27 states have an active BBA and an additional 6 states have plenary applications. Promptly rescinding our state's outdated applications would move us further away from that threshold and ensure that Congress cannot call a constitutional convention. I would note also that if a constitutional convention were called that Congress would set the rules for that convention. Nebraska wouldn't be alone in rescinding prior Article V convention applications as Gavin stated. Nevada would be added to the list of states that he mentioned earlier. In terms of LR538, so I've read the transcript. And if you-- when you read the transcript, you see actually Senator Harr starts out and he is very adamantly opposed to LR538. He's asking lots of questions. And then all of a sudden, so there's this rigorous debate

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going on and all of a sudden it stops. So I thought this is really bizarre. And they move forward to, to a vote. So I, so I went and asked what happened. And I talked to a couple senators and I talked, talked to the Clerk. And what I found out was that basically they had been advised that it didn't have any legal standing. And so reaffirming the BBA was actually just a political statement, didn't have any legal standing, didn't go to Congress. And so they determined that, you know, what the heck, we can always tell the federal government that they need to, you know, spend more wisely. So that's what happened. And with that, I see my time's up. I'd be happy to answer questions.

HUGHES: Thank you, Miss Fry. Are there questions from the committee? Senator Hilgers.

HILGERS: Thank you, Mr. Chairman. I think I've got a question, but let me first say thank you for the, for the, the history on that. I do appreciate that very much. I know you and I have dialoged about this issue before, and I do appreciate the candor in that a big part of the support of maybe from what I hear, a significant portion of support for this resolution, the prior one is because the concern of the balanced budget amendment, is that right?

RENEE FRY: It is.

HILGERS: In the absence of that amendment, so if we were to take that out and we're just in a theory, abstract stage, is there a line that we could draw that would clean up old amendments and not maybe capture recent ones that were five or six years ago? Is there a reasonable line to draw or is that just LR28 in your view?

RENEE FRY: I think it's really important for the current Legislature to be voting on these and to have a stake in them. There are states where they have rescinded their applications and then come back and passed a BBA and that would be up to the Legislature to determine, but at least they had the opportunity to weigh in. And so those were two separate events. They did a full rescission and then came back. And that way you would actually give the current Legislature the ability to have a say. If I understand your point about seven years, I think if you went to nine years, you would make sure that you would have a completely new Legislature, with the exception of anyone who may have returned, such as Senator Lathrop. But I do think it's important

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because these calls stay on the books for a very, very long time that the current Legislature has had a say and is actively engaged in and wants to continue to ask Congress for that call, because as we know, things change, right? We have a new administration now and, you know, so things are ever evolving. And I think it's really important that, that the Legislature is up to date on these calls.

HILGERS: Thank you.

HUGHES: Any additional questions? Seeing none, thank you, Miss Fry.

RENEE FRY: Thank you.

HUGHES: Any additional proponents to LR28? Anyone wishing to testify as a opponent to LR28? Anyone wishing to testify in the neutral capacity? Seeing none, Senator Hilkemann, you're welcome to close. While you're coming up, we do have position letters as a proponent from Kelly Keller, National Association of Social Workers; proponent Kathy Wilmot; proponent Shirley Niemeyer; opponent David McPhillips; and opponent F. Jon Howard. Senator Hilkemann.

HILKEMANN: So just wrap it up. Other states have rescinded their past applications. Other states have reapplied-- adopted new applications. This continues to do the same thing for Nebraska, we can do that. This is not unprecedented in any way. And I'd ask you to move forward on LR28.

HUGHES: Very good. Any questions for the senator? Seeing none, thank you, Senator Hilkemann.

HILKEMANN: OK.

HUGHES: That will close our hearing today on LR28 and we are adjourned.