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BREWER: Good morning and welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer, representing the 43rd Legislative District, and I serve as Chair of this committee. For the safety of our committee members, staff, pages, and the public, we ask that those attending the hearing abide by the following procedures. Due to social distancing requirements, seating in the hearing room will be limited. Shouldn't be a problem today. Let's see, we'll be taking a pause between bills to allow time to reset the number and clean the tables. And some of you may be sticking around for the second bill, so no concerns there. I request that everyone utilize the identified entrance and exit, request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during the testimony to assist members, transcribers, everyone in properly recording or hearing their testimony. For committee members, I will leave it up to your discretion on wearing a face covering. Because of the Plexiglas and the separation, we should be fine. Public hearings for which the attendance reaches capacity-- shouldn't be a problem. We'll just skip over that. The committee will take up bills in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your opinion and position on legislation before us today. Committee members may come and go during the hearing. It's just part of our process because we have bills to introduce in other committees. We will have the senators on their computers and cell phones updating and-- and getting notification where they've got to be and when. I ask you abide by the following procedures to facilitate today's proceedings. Please silence/turn off your electronic devices. No food or drinks in the hearing room. Please move to the reserved chairs that are designated prior to testifying, Introducers will make their initial statements followed by proponents, opponents, those in the neutral. Closing remarks are reserved for the introducing senator. If you're planning to testify today, please pick up the green testifier sheet at the table at the back of the room. Please fill it out, sign it, and write clearly. All letters of support need to be in by 12:00 noon Central Standard Time the day prior. If you have handouts, ask that you have 12 copies of those handouts so we make distribution. Mass mailings will not be included. When you come up to testify, please speak clearly into the microphone. Tell us your name, then spell your name, first and last, to ensure accuracy in our records. We will be using a light system here today. You will have five minutes to

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make your initial remarks to the committee. The yellow light will come on with one minute and the red light when your time expires and there will be an audible alarm. No displays of support or opposition to a bill, vocal or otherwise, will be allowed in this public hearing. Committee members with us here today will introduce themselves starting on my right with Senator Blood.

BLOOD: Sorry, I was reading the bill. Good morning. Senator Carol Blood, representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

McCOLLISTER: John McCollister, District 20, central Omaha.

SANDERS: Rita Sanders, District 45, the Bellevue-Offutt community.

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

HALLORAN: Steve Halloran, District 33, Adams and Hall County.

HUNT: Megan Hunt. I represent District 8 in midtown Omaha.

BREWER: Dick Clark, to my right, legal counsel; Julie Condon, on the end, committee clerk. And our pages this morning are Jon Laska-- Jon is a senior at UNL from Genoa-- and Ryan Koch, and Ryan's right over the top there and he is a senior at UNL also, from Hebron. With that said, our one missing committee member happens to be the presenter today. So with that, Senator Hansen, it is all yours.

M. HANSEN: Thank you. Thank you. And good morning, Chairman Brewer and fellow members of the Government, Military and Veterans Affairs Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent LD 26 in northeast Lincoln. I'm here today to introduce LB557, a bill that would update Nebraska public record statutes to make public records more accessible. Currently, state law provides that the first four hours of staff time required to complete a public records request is not included in the estimated cost to the requester when charged. LB557 would bifurcate this requirement and distinguish between two different types of requests. For residents of Nebraska and the news media, it would increase the limit to eight hours before costs occur. For others outside Nebraska, public bodies could charge for the full cost of the staff time required to complete the records request. This change strikes a delicate balance between making sure that the public records are truly public and accessible, while also

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considering the potential burden large requests can have on local governments and agencies. Local bodies could-- would cover more of the costs when retrieving public records for Nebraska residents, but would be able to recoup more for requests coming from out of state, who many times are companies looking to aggregate and monetize that data. I will note that this particular concept is not a new concept. It has components to-- similar to bills by-- both-- brought by both Senator Blood and Senator Brewer to this committee in the past. Second, when a records request is made, the custodian of the records then puts together a cost estimate that-- of what the requester will have to pay to have the access to the records. LB557 requires that larger estimates be attested to under oath by the entity providing the records. Finally, this bill increases access to certain records, providing that police body cam recordings that involve the death of a person who's being apprehended or in the custody of law enforcement are considered public records within our public records statutes. In my view, this is of vital importance, as we've seen the recent instances where a death of a person connected to law enforcement often spikes the height of mistrust in government. Making any avail-- video available quickly could help ease the concerns, providing a specific account of what happened directly to the public. I'll close with this. Over the past year, we've seen increased scrutiny of local government both by the media and a variety of groups. And the scrutiny has prompted public records requests of a number of places, including law enforcement agencies and the cities. Some of the cost estimates were so high that it essentially made them unavailable to the public. This is not the first time I've seen this happen, and I believe it goes against our intent of our public records laws. This bill would be a small step in addressing that problem. With that, I would close and be happy to answer any questions the committee may have.

BREWER: All right, thank you for that opening. Committee, any questions for Senator Hansen? All right, I assume you're sticking around because--

M. HANSEN: Absolutely.

BREWER: --you're next one up after this, so thank you.

M. HANSEN: Thank you.

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BREWER: All right. We will start with proponents to LB557. Welcome to the Government Committee, Spike.

SPIKE EICKHOLT: Thank you. Members of the committee, my name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB557. And we want to thank Senator Matt Hansen for introducing the bill. Senator Matt Hansen explained the bill really well, and I'm not going to repeat, or maybe I will a bit, I guess, what he says. But I think this bill is important for a variety of reasons. One, it does piggyback on a concept for a bill that Senator Brewer introduced, I think, in 2019, and I think before that Senator Blood did, and that is to recognize the cost to local, particularly smaller government agencies when they are inundated with out-of-state requests, primarily from commercial interests that seek to use our relatively open public records act to gain information, as Senator Hansen explained, to monetize that information. It makes a distinction between that, while at the same time providing for greater accommodation for Nebraska residents to have access to public records. That distinction between residents and nonresidents exists in other parts of Nebraska law, really in other states' laws. For instance, people in Nebraska pay less for fishing and hunting licenses. You pay less for other services. You pay less for tuition and so on. And the recognition of the distinction is, is that you pay, living in the state, the incidental costs in taxation, and so on and so forth, to the government entities. Accordingly, you ought to have some greater right of access to those public records that you have the privilege of paying for. And that's really what this bill-- this part of the bill does. It increases the sort of noncharge rate of four hours to eight hours for residents who are requesting records from government agencies. And that's-- I know the four hours has been in statute for a while. I think somebody might speak to that selection of that number later on today when they testify. Eight hours is doubling it. If that's too far to go for some agencies, this committee could always consider increasing it maybe to six hours, or even more than the four hours, but I think it's an important recognition. Another part that the bill does, and it's on page-- page 6, lines 12 to 14, if a government agency is-- receive-- it receives a record request and it's going to cost that agency a significant amount of time and money to comply with the records request, one of the things they can do, in addition to inquiring with the person who requested the records and try to figure out exactly what they want, is

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they can request a deposit be paid for the cost of the agency to retrieve and find those records. Working at the ACLU, we regularly see, and we have other people who contact us who have been sort of priced out of getting public records before. The deposit has to be paid before the records are provided. The deposit can be refunded if it's too high of an estimate. I don't necessarily think it's deliberate always, but I think it gives the government agency an opportunity to ballpark a significant amount of money, and that makes the records just at that point unavailable for many people. In other words, the records are no longer public. The public is priced out of it. Just to give you an example, before I came over, last year, we requested from Lincoln Public School some information relating to their standard sex education materials. On July 16, 2019, they gave us a request of \$30,000-- over-- slightly over \$30,000 to comply with that request because it was in excess of 50 hours. Now we were able to work that down. The ACLU can pay for some of these things, but private citizens cannot afford that. If they're priced out of it, then, therefore, the records are just not available to the public and that nullifies the entire purpose of the public records act. So what this bill does, at least requires that if they are going to give an estimate, that there be some deliberate step on behalf of the state agency or the government agency to give that estimate. We sometimes get these estimates via email, somewhat informal. And I would argue, and this is anecdotally perhaps my opinion, that it's very easy for someone just to ballpark a number and hopefully that somebody just goes away and doesn't follow up on it. Finally, the other part of the bill relates to the body cam footage. It's limited, the body cam footage, for in-custody police death. We already have a model act with respect to body cam footage that requires different police agencies to comply with certain standards with their model body cam policy. Having this information available to the public as a public record is consistent with that. The public has a right to know always what the police do, particularly when the police kill someone in custody or while they're taking someone into custody, and that's an important component of the bill as well. I know there's probably some concern and opposition to that from the law enforcement agencies, particularly how it relates to the grand jury process, and perhaps some accommodation needs to be made to accommodate the grand jury process that follows an in-custody death. But I think it's important to recognize the public does have a right to know. The police, for instance, in this Lin-- recent Lincoln shooting, have been sharing of

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types of information. The public has a right to know that, as well as to see that material firsthand as to what happened in that incident and others. I'll answer any questions if anyone has any.

SANDERS: Are there any questions? Senator Lowe.

LOWE: Thank you, temporary Chair Sanders. Good to see you today, Spike.

SPIKE EICKHOLT: Thank you.

LOWE: How are these files given out to-- as far as public record? Are they electronic or are they-- are they printed or are they-- why would the cost be so high?

SPIKE EICKHOLT: Most of the cost is-- is just the staff time to look for them, is what it is, and it depends on sort of what you ask. To answer your first question, many times, it's a digital format, if you ask for all email communications relating to the development of the sex ed policy, for instance. A lot of times that's just provided electronically. The estimate is sometimes based on staff time to retrieve all those documents, to research it. If you look at the statute that exists now, there's sort of-- it envisions a way where the public agency can suggest that the requester refine or narrow their request. And we do try to work with agencies in that regard, right, where you ask for something that's very general, the state agency will say, well, we've got lots of records relating to this, but I don't think you want all of them, what is it that you're looking for exactly? And we want to encourage that. But if it's beyond four hours' staff time, they're allowed to request a deposit for that. And that's one of the proposals in the bill, to increase it to eight hours for residents of Nebraska, and we would submit that's a fair compromise, particularly since they can charge for nonresidents of the state.

LOWE: Thank you.

SANDERS: Thank you. Senator Blood.

BLOOD: Thank you, Senator Sanders. How are you today, Spike?

SPIKE EICKHOLT: Fine.

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BLOOD: I was trying to remember if ACLU came out against my bill or not. Didn't you guys like come out against my bill?

SPIKE EICKHOLT: I don't--

BLOOD: We were trying to keep bad guys from stealing information and reselling it, and I think-- I think you guys were opposed.

SPIKE EICKHOLT: Well, I hope we weren't.

BLOOD: [INAUDIBLE] figure that. OK, that's not my question. So I'm reading the bill, which is what I was doing when I was-- you said my name: relating to recordings created by body-worn cameras as defined in Section 81-1452, so all 81-1452 really says is that body-worn cameras, and it defines the terms, right?

SPIKE EICKHOLT: Right.

BLOOD: There's law enforcement and--

SPIKE EICKHOLT: That's an actual law enforcement body-worn camera, not just any other person's-- any private person's--

BLOOD: Right.

SPIKE EICKHOLT: --or non-law enforcement agency-purchased body cam.

BLOOD: Which I understand.

SPIKE EICKHOLT: OK.

BLOOD: So moving forward, it says: which depict or record circumstances in which a person dies while being apprehended by or while in the custody of a law enforcement officer or detention personnel, including but not limited to a recording or duplicate of such a recording. What does that-- I mean, I obviously know a duplicate means. Are they saying if I record you wearing a body camera? What does that sentence mean?

SPIKE EICKHOLT: Are you looking on pages 2 and 3?

BLOOD: I'm looking at line 26.

SPIKE EICKHOLT: On page 10?

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BLOOD: On page--

LOWE: Page 10.

SPIKE EICKHOLT: Ten? OK.

BLOOD: --10.

SPIKE EICKHOLT: OK. You know, that-- that language, that recording or a duplicate of recording, I think, exists in the body camera statute already. And if I remember right, the technology provides that. What-- law enforcement officers have their body cams and their cruiser cam sort of going. And when they come to work, at least here in the bigger communities, they have an automatic sort of download that happens when they actually sort of end their shift. And I think that was to capture that duplicate recording of that. We're not trying to capture private people's recordings or anything like that, so it just--

BLOOD: No, and I understand that. I'm just trying to make-- have this make sense to me. I'm not sure-- that's what-- because I went back and looked at statute and looked at definitions, and I'm not sure I'm understanding what they're saying in that sentence.

SPIKE EICKHOLT: Yeah, and if it needs to be clarified, then obviously I think Senator Matt Hansen would want to do that. But I think what that's meant to capture is that the little, individual body cam has some memory capability, but it gets uploaded to a cloud and is stored on the--

BLOOD: Right.

SPIKE EICKHOLT: -- police department's server. And I suppose those are technically duplicates or copies of that recording, and I think that's what that's meant to capture.

BLOOD: And so where in state statute does it cover other body-worn cameras when it comes to when people have pressed charges or there's an investigation? Do we have that in statute already that they don't have to relinquish it until the investigation is completed or--

SPIKE EICKHOLT: If you look at-- and I don't know if this is in the bill itself-- 84-712.05, paragraph (5), that's on page-- it's on the very top of page 10. That includes that 1-- lines 1 through 8 is the

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commonly referred to-- actually, lines 1 through most of the whole section that we got to talking about. That section talks about the police records exception to the public records act. So if it's not an in-custody death but there's a body cam recording and there's a police investigation relating to that case that there's a body cam recording, then arguably it falls into this exception of the public records act right now where the public does not get that. For instance, if I have just a regular drug possession case, for instance, and the law enforcement officer has a body cam on when he arrests my client, they tag that recording into evidence, it's marked as an exhibit, it's tagged with a case number, and that would fall under the exemption of paragraph (5), where the public's not going to get a copy of that until the investigation is complete.

BLOOD: So like the paragraph on the bottom of page 9? It's con-- considered confidential communications?

SPIKE EICKHOLT: I don't know-- that's a little bit different. That's when the public body is an actual party to a litigation, which could be, I suppose, after some of the police report because the state is charging somebody.

BLOOD: So, I mean, I keep going back and forth and looking at different parts of state statute, and I'm not sure that all of this-- I know when you write a bill, you know what it's supposed to say--

SPIKE EICKHOLT: Right.

BLOOD: --because I've been there, but I'm not sure that it-- for somebody to look at it the first time and read through it, if-- especially if I was law enforcement or a city attorney, county attorney, I'm not sure that it's clear.

SPIKE EICKHOLT: I mean, that's fair. I mean, the public records act, there's a series of exceptions or exemptions that keep getting added each-- year after year. Generally, the law is that everything is public unless there's an exception that says it's not.

BLOOD: Right.

SPIKE EICKHOLT: This is an exception to the exception, and that's where it does get confusing.

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BLOOD: I-- I would concur, so, all right. Thank you.

SPIKE EICKHOLT: Thank you.

SANDERS: Are there any other questions? Seeing none, thank you very much. Are there any other proponents? Opponents? Welcome.

KEN SCHILZ: Thank you, Senator Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here today as a registered lobbyist for the Consumer Data Industry Association, or CDIA. CDIA's membership includes three national consumer reporting agencies, nationwide credit bureaus, regional and specialized credit bureaus, background check companies and others. CDIA opposed to changes made in Section 2 of LB557 because of increased costs that would impose on our members who provide critical services for consumers, financial institutions, and employers, including most Nebraskans. Currently, Nebraska Revised Statute 84-712 requires the fee for providing copies of public records be calculated based on the actual cost of making those copies when the request does not take more than four hours to complete. For requests that require more than four hours of work, the fee may also include a special service charge that reflects the labor cost for completing the request. That four-hour time limit was established in 2013 through Senator Avery's LB363. Excuse me. As I understand it, Senator Avery negotiated with and had the support of several interested entities, including the ACLU, Nebraska Association of County Officials, and the League of Nebraska Municipalities when LB363 became Law. CDIA believes that the current law strikes a fair balance between the need for reasonable access to public records and the cost for those custodians of those records. We understand that there are entities out there who send-- who send broad public records requests as part of a fish-- fishing expedition or for political purposes. These requests can place a heavy burden on small offices. Unfortunately, LB557 as written may be a case of throwing the baby out with the bathwater. CDIA's largest members are out-of-state entities but provide critical services to Nebraska's residents and businesses. Increasing costs for our members to operate will ultimately hurt the very Nebraskans the bill is designed to protect. As I'm sure many of you have experienced in your day-to-day life, credit reports are playing an increasingly important role in a consumer's life. Our members rely on those public records, such as court records regarding bankruptcies and foreclosures, to accumulate credit reports and credit scores. That information is used

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every time we apply for a mortgage or a car loan or a credit card. Nebraska's-- Nebraskans need CDIA's members to be able to affordably access public records. And with that, I would urge you to vote no on advancing LB557 as written, and I will do my best to answer any questions you may have. Thank you.

SANDERS: Thank you, Mr. Schilz. We apologize, but thank you for working through the construction truck noise.

KEN SCHILZ: That's all right. I don't know if it's ever stopped, has it? I think 15 years ago when I got here, it was like that.

SANDERS: Thank you. Senator McCollister.

McCOLLISTER: Thank you, Senator Sanders. How is it you interface with governmental bodies that you use their services?

KEN SCHILZ: Right, yeah, and mostly-- mostly what happens is that they-- they do a lot of these things on a-- on a program-type thing, so this stuff is coming through pretty much on a regular-type basis. I mean, this-- this stuff is-- is constantly moving. So they've got processes and systems set up to be able to handle that. They don't have too many special requests, but I-- I would assume that every once in a while, depending on what-- what's going on, they would have a special request that would get larger.

McCOLLISTER: So you-- the credit agency would make a request of the government body?

KEN SCHILZ: That's correct, yes.

McCOLLISTER: So that does occur.

KEN SCHILZ: Yes.

McCOLLISTER: How-- why-- why would that-- cost increase the way--

KEN SCHILZ: Well, it de-- it--

McCOLLISTER: --with this bill?

KEN SCHILZ: Again, well, it just depends. If it's an out-of-state entity, like all of the credit institutions are, the credit bureaus

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are, then they would fall under that-- that exception of having extra charges charged to them, including attorney's fees, to look over stuff according to the bill. So we're-- we're concerned about that because, depending on-- depending on what kind of information you need, ultimately those costs would go back to the Nebraska consumer that would be-- that would be required to use those or the credit agency would be required to use those to, you know, base what a mortgage fee would be, to base what interest rates would be, things such as that. And so as costs for those inquiries go up, costs for-- for doing those loans and other things also go up, so we want to be really careful with that.

McCOLLISTER: Are you certain those costs would go up?

KEN SCHILZ: No, but we know how that usually works. As costs go up one place, it tends to move down the line.

McCOLLISTER: Thank you.

KEN SCHILZ: Yeah.

SANDERS: Thank you. Are there any other questions? Senator Lowe.

LOWE: Thank you, and good to see you today, Ken.

KEN SCHILZ: Thank you, Senator.

LOWE: How about if a credit service had an office here in Nebraska? Would-- if that Nebraska office would request information?

KEN SCHILZ: You know, that-- that's a good question and they may be able to do that if-- if that's the way that it would turn out and this bill would go through. But we don't-- we don't know that for sure. We don't know if a satellite office would work or if the headquarters is where they would figure that out. We just-- we don't know any of that either.

LOWE: OK, thank you.

SANDERS: Are there any other questions? Senator Halloran.

HALLORAN: Thanks. Thank you, temporary Chair Senators. Good to have you here, Ken.

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KEN SCHILZ: Thank you.

HALLORAN: So you mentioned the special service charge beyond four hours. I assume that's a variable depending on the complexity of the request.

KEN SCHILZ: Yes, absolutely. They-- they have quite a bit of discretion on what they can do with that.

HALLORAN: OK, thank you.

SANDERS: Any-- any other questions? See none, thank you for your testimony. Are there other opponents? Welcome.

CHRISTY ABRAHAM: Senator Sanders and members of the Government Committee, my name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities, as well as the Nebraska Power Association. The NPA is a voluntary association representing all of Nebraska's approximately 165 consumer-owned public power systems. And I first want to thank Senator Hansen for introducing this bill. As a couple of testifiers have already mentioned, Senator Brewer and Senator Blood introduced a bill with similar provisions that the league strongly supported, one of them being the one that Mr. Schilz doesn't like. Usually, Mr. Schilz and I are on different sides of this bill, but today we're on the same side. We had a situation where we had a lot of communities who were having very large requests for data, and they were mostly from out-of-state companies that were then turning around and selling that data, and so we had asked for a situation where perhaps, if you're an out-of-state company, you don't get those first four free hours of staff time, that you're going to be charged from the beginning for any staff time that is used to submit those requests. So we certainly want to say we continue to support that. That's in this bill. Unfortunately, the provision that gives us the most concern is the increase from four hours to eight hours. I know this committee is so sick of hearing my ancient history with this committee, but in 2013, I was legal counsel at the time that this bill got passed through the Legislature, and the four hours was a great compromise. The bill started out at six hours and on Select File it was changed to four. And as Mr. Schilz mentioned, there were a lot of groups involved in compromising that down to four hours. And what it comes down to for the league is that, if it's going to take a clerk half of her workday to fulfill a

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request, maybe she can do that. If it's going to be an entire day of her time to fill a public records request, that's pretty burdensome. We have a lot of clerks that maybe only work ten hours a week total, so eight hours is a bit too much for us. We certainly appreciate ACLU's comment about they're willing to compromise and work with us. I just wanted to let you know that that four hours was very carefully compromised in 2013 and we would like it to stay where it is. I guess I will end there. I understand there's also some negotiations going on about the body camera language. The league would like to be involved in those negotiations. I believe you've received a letter from the city of Lincoln expressing some concerns about that, and we would like to work with the city of Lincoln and this committee on that language as well. So I'm happy to answer any questions that you have.

SANDERS: Are there any questions? Seeing none, thank you for your testimony.

CHRISTY ABRAHAM: Thank you, Senator Sanders.

SANDERS: Are there any other opposition? Welcome.

BETH BAZYN FERRELL: Good morning.

SANDERS: Good morning.

BETH BAZYN FERRELL: Senator Sanders, members of the committee for the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing in opposition to LB557. Our opposition is very similar to the opposition that was expressed by the league. We appreciate the fact that the bill allows for an additional service charge for out-of-state entities because particularly those are the ones who we typically see a request for I'd like all of your records on thus, and it would be helpful to be able to-- to pass more of those costs along to the out-of-state entities. We do have similar concerns about the body camera recordings. Counties are in charge of prosecution and there are concerns that if the body camera footage was disclosed at an inopportune time, that there may be a possibility of tainting a grand jury pool or even another jury pool. We do realize that a lot of times there are sort of bystander recordings that are out there and you can't walk those back, you can't put pause on those. But sometimes the actual body cam footage is a little bit different

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and that may be helpful for prosecution or, as I said, for the juries. We also have concerns about shifting from four hours to eight hours for the-- the public records. And it is a bit more of an extension. The existing language talks about it being a disruption to the office for four hours and we think extending to eight hours is just a bit more disruption to the office and that it would be helpful to be able to pass along the fee at-- at four hours rather than eight hours as-- the four hours, as it is currently. So I would be happy to answer questions.

SANDERS: And questions? Seeing none, thank you for your testimony.

STEVE CERVENY: Good morning.

SANDERS: Welcome.

STEVE CERVENY: Thank you. Senators of the Government, Military and Veterans Affairs Committee, my name is Steve Cerveney, S-t-e-v-e C-e-r-v-e-n-y. I am a captain with the Omaha Police Department, I oversee the criminal investigation section, and I'd like to thank you for the opportunity to speak with you today. The Omaha Police Department has some concerns about this proposal. Allowing immediate release of footage related to an in-custody death can derail the process of justice by fracturing the ability to obtain and deliver the truth. Potential body-worn camera footage of an officer-involved incident resulting in death is a valuable piece of evidence which must have its integrity maintained in order for prosecutors and members of a grand jury to reach a decision based upon unprejudiced facts that are not tainted from a rush to judgment, influenced by biased opinion and conjecture. Actions pursuing a premature release of sensitive evidence footage would obstruct justice by circumventing the grand jury process and not allowing jurors to make a pure decision based on consideration of evidence that has not been predisposed or solely by public opinion. Not only is the sanctity of the grand jury process potentially violated by this idea, but the importance of the criminal investigation regarding an in-custody death would also be severely compromised. Investigators and prosecutors need to maintain some privacy regarding the investigative process of these tragic incidents in order to verify the authenticity of witness and suspect statements. Immediately releasing video footage evidence could result in the inability to comprehensively and effectively obtain all the pertinent evidence needed for the complete picture. This bill could prejudice

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the entire truth-seeking process by immediately releasing one portion of evidence related to a critical investigation and does not allow for the deliberate, measured consideration of all contextual evidence, evidence that is critically needed to make a judiciously prudent decision based on all the evidence and facts, not just one snippet of footage illustrating a single perspective from a specific point in time and does not chronicle what circumstances occur before the camera began recording, what viewpoints were perceived from other vantages, or what knowledge is obtained from pertinent physical evidence gathered at the scene. This bill will also tremendously overburden all law enforcement agencies across the state of Nebraska, both large and small, by overwhelming the inadequate infrastructures currently in place to competently address its extravagant requirements needed for storing, cataloging, processing and providing appropriate staffing in order to handle the issues related to increased public records requests. The Omaha Police Department alone had approximately 850 public records requests in 2020. We believe this proposal would tremendously increase that amount for all agencies across the state. And as a tragic consequence of this bill, we fear the potentially tremendous cost, time, and additional staffing requirements will end-- in the end, dissuade and even prevent agencies from obtaining body-worn cameras for their officers, which would have a catastrophic effect on transparency, trust, and the ability to obtain critically important evidence needed to allow prosecutors and grand jurors the capacity to discern the truth. I was also contacted by the Police Chiefs Association of Nebraska, and they asked me to convey during my testimony that they also oppose this bill. Thank you.

SANDERS: Thank you, Captain Cervený, for your testimony.

STEVE CERVENÝ: My pleasure.

SANDERS: And thank you very much for your service as well.

STEVE CERVENÝ: Thank you, appreciate that.

SANDERS: Are there any questions? Senator Lowe.

LOWE: Thank you. And thank you for being here today.

STEVE CERVENÝ: Thank you, Senator.

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LOWE: How soon after an event do you get a public request for body cam footage?

STEVE CERVENY: Right away. I could-- I would say almost immediately.

LOWE: So it may inhibit what might happen in court?

STEVE CERVENY: It-- absolutely, absolutely. That's a-- that's a great point.

LOWE: And when it goes out to these sources, do they show the footage in full or do they take just snippets out of that footage?

STEVE CERVENY: Well, it-- it just depends. I've seen both.

LOWE: OK. All right. Thank you.

STEVE CERVENY: Thank you.

SANDERS: Senator McCollister.

McCOLLISTER: Yeah, I just so I understand, Captain-- thanks-- thank you for being here.

STEVE CERVENY: Thank you, Senator.

McCOLLISTER: When you get a request for a video cam, an officer's video cam, you generally don't give it and-- and-- and tell people it only occurs during a grand jury investigation? Is that the way it works?

STEVE CERVENY: If I understand your question, yes, that's accurate. Now then, the-- there's the ability to release that footage after the grand jury process is over, and-- and that has happened.

McCOLLISTER: OK, it's open after-- after that.

STEVE CERVENY: Right.

McCOLLISTER: How soon after an incident does the grand jury typically meet?

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STEVE CERVENY: That's a good question. They convene as needed and ideally months. During this COVID environment, it-- it's been more than that, unfortunately.

McCOLLISTER: OK. Thank you, sir.

STEVE CERVENY: Thank you.

SANDERS: Any other questions? Seeing none, thank you for your testimony.

STEVE CERVENY: Thank you. I appreciate it.

SANDERS: Good morning and welcome.

COREY O'BRIEN: Good morning, Madam Chair, members of the Government Affairs Committee. My name is Corey O'Brien, C-o-r-e-y O'B-r-i-e-n, and I'm here today representing the Nebraska Attorney General's Office in opposition to a portion of LB557. That portion relates to the body cam footage, similar to what Steve Cerveny just testified to. I have had the opportunity to conduct nearly 100 grand juries into officer-involved custodial deaths, and I'm here to relate my experiences related to the-- to the premature dissemination of body cam footage, as well as any evidence related to the grand jury. First of all, I will tell you that I'm a prosecutor. I'm not well versed in public records law. However, as I understand it, under existing law, body cam footage is considered a public record. However, it is exempted, like police reports, criminal histories, under that portion of the public records laws that makes it fall into the category of investigative materials. What LB557 does is remove that exemption and create an exemption upon the exemption, making just body cam footage as it relates to custodial deaths now public record. Let me take the opportunity, because I don't want to assume that everybody here on the committee knows the process whenever there is a custodial death in Nebraska. When there's an officer-involved shooting, generally, there are two investigations that actually take place. One is usually an internal investigation performed by the law enforcement agency, an internal affairs investigation. And then the second is related to what's required by Nebraska law, which is a mandatory investigation and presentation to a grand jury. To answer Senator McCollister's question, no-- under statute, a grand jury is supposed to convene within 30 days after the death of the person that died is certified.

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Now that can vary depending on how fast we can get an autopsy result, toxicology results. But ordinarily, by statute, it's supposed to take place 30 days after the event. Sometimes that's delayed at the request of the special prosecutor, because we need more time to amass our investigation and conduct our investigation. And sometimes, like we were in the midst of the COVID situation, courts are not convening to the point where they want to have a larger group of people come into a courtroom and decide these matters, so there has been some delay. Once the grand jury process is finished and the grand jury has arrived at his-- its decision, Nebraska law currently provides, under Section-- I'm sorry, Nebraska Revised Statute 29-1407.01, subsection (2) (b), that the evidence that's presented to the grand jury must be made available to the public for their review. So any testimony will be transcribed that occurred in the grand jury because the grand jury is a secret process where only the grand jurors, the witnesses that I call, and the court reporter are basically present. There's no judge, just the prosecutor and those parties. There's a transcription of the witness testimony that's typed up and then we offer exhibits. It is the practice of myself and most other special prosecutors that appear before grand juries to present every shred of evidence that's collected by the law enforcement investigation so that there is absolute transparency. That includes all body cam footage; that includes a cruiser cam footage; that includes every police report and every photograph that's taken. And so all of that, once the grand jury has reached its conclusion, is made available to the public. As Steve said very articulately, our biggest concern is that decisions with these kind of cases must be made upon nothing more than the facts and the law. They cannot be influenced by bias, sympathy, empathy, emotion. And my biggest fear, having had cases in which footage was actually available before I actually went to court, it does compromise not only the investigation, but the grand jury process. And in-- in one case that I had up in Omaha involving the death of Zachary Bear Heels in 2017, it was not helpful in my prosecution because the grand jury did indict that officer. So we would ask that the bill not advance with that portion of the change to-- changes to Nebraska law because, simply, they are going to get that information eventually pursuant to Nebraska law. Thank you. I'd be happy to answer any questions anybody might have.

BREWER: Thank you for your testimony.

COREY O'BRIEN: Thank you, Mr. Chairman.

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BREWER: Was there any questions? Oh, I'm sorry. Senator Hunt.

HUNT: Thank you, Chairman Brewer. Thank you for being here today. I wish that I had gotten a chance to bring this up with the police officer who is here, but you spoke to it a little bit and so I'll maybe see if I can get some of your thoughts. It concerns me when we hear law enforcement talking about transparency, which is a value that I share, certainly, but then we see them take actions in the public that really actively undermine transparency. For example, you mentioned the Zachary Bear Heels incident, which was really traumatic in my community, in Omaha. What-- what records from the ACLU showed recently-- it was just released today-- is that at a memorial walk that was planned for Zachary Bear Heels, there was an officer there assigned to "pepperball and tank." And records also showed that police were monitoring specifically the actions and movements and gatherings of Black Lives Matter protesters and what-- what the record showed was that it wasn't any criminal action or any suspicion of criminal action that actually motivated the surveillance. It was just that these people they were surveilling had stated an interest in police oversight. So it was almost-- I mean, I can only conclude that the police saw these activists as, you know, enemies, basically, instead of just private citizens, because they were actually monitoring like people's birthday parties or, you know, their-- their places of business where they're employed, and this was not motivated by any criminal action or knowledge of any impending criminal, you know, behavior. It was just-- you know, it kind of feels like a-- like a watch list, like almost like a McCarthyesque-type thing that we really don't want government to be doing, especially if-- you know, in the interest of transparency and in the interest of policing communities. So that's something I wanted to speak to and that's something I hope my committee members and colleagues look into a little bit more. And if you had thoughts on that, please share. But I-- I did want to speak to that.

COREY O'BRIEN: Nothing-- nothing other than we are great-- we are greatly interested in transparency, and we're also greatly interested in holding officers accountable, because a officer that breaks the law is no good to us, it's no good to the community, and they should be held and, frankly, we hold them to a higher standard. And I think that if you ask most law-abiding law enforcement officers, which I do on a constant basis, they want to root out the bad actors as much as

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anybody. So I hope we're all towards that goal, and if not, let's get them out.

HUNT: I agree with you and I think-- I think reasonable people agree on that. You know, it's not-- it's not that there's just one or two bad apples. You know, the saying is a bad apple spoils the bunch, and we don't want any bad apples in our law enforcement. But we also want consistency with transparency, and reasonable people, of course, can disagree and debate about how we get there. So I'm grateful for you to-- to you for being here today to do that.

COREY O'BRIEN: Thank you, Senator.

BREWER: All right. Any additional questions?

COREY O'BRIEN: Thank you, Mr. Chairman.

BREWER: Thank you for your testimony. All right. We are on opponents. Any additional opponents for LB557? All right, do we have anyone here that is in the neutral capacity? All right. Let's see, I think I've got a couple of things to read in here. LB557, written testimony, we have three opponents: Richard Otto with Nebraska Retail Federation; Katie Zulkoski with Nebraska County Attorney Association, and Korby Gilbertson with Media of Nebraska, Inc. And we have no letters in-- as proponents, one as an oppon-- opponent, and none in the neutral. With that, we'll have Senator Hansen close on LB557.

M. HANSEN: Thank you, Chairman Brewer, and thank you, members of the committee, for hearing this. So one of the difficulties with this bill is obviously is it had multiple different components and we saw that from the amount of testimony. Each group was opposed to maybe a different part, one of-- one of the difficulties, I suppose, with doing an overall bill. But I should say my intent behind this bill is obviously I worked with the ACLU, but I've had, "Fix open records law?" written on a, written on a Post-it note on my desk for a couple of years now, and this is my attempt at it. A couple things, addressing the-- apologize-- addressing the things as we heard them, one, I think the difficulty we heard from some of the consumer data agencies illustrates kind of the point or one of the, in my mind, problems we have to solve where you could have-- and it's nothing against them being an industry; it's something against them being out of state. But you have a situation in which massive amounts of public

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data are routinely given kind of without issue, just on the regular to some groups, and then other groups, an individual private citizen, a member of the media makes a comparable request and all of a sudden you get \$100,000 fiscal note because they haven't built up the system, they haven't built up the time. They don't have the connection or-- or-- or the way to phrase it correctly or whatnot. That's something I wanted to address. Similarly, and I don't-- I'm not going to share it with the committee. But, you know, I've seen public records requests where the exact same request went to two different public bodies and the estimates were about \$100,000 different, which is something that I wanted to kind of mitigate at some outset by just saying, you know, doing that-- that-- that window in the beginning. Honestly, and I-- I appreciate-- the more and more I hear about it, I appreciate Chairman Avery and former legal counsel and all the committee members' negotiations on it, because normally in a negotiation you're maybe going, two parties, trying to get them to the middle. Here, between kind of the public, the media, you know, that grouping of the-- the-- the public interest, you know, the actual expenses of local government and then, you know, third parties that, you know, profit and monetize, you've got more than just a back-and-forth negotiation. I'm happy if there's a way to kind of-- I mean, honestly, six hours would be an improvement and-- and be happy to go that way. I do want to address that we're not adding an extra barrier for out-of-state in the sense of we're not like creating a new requirement for them to go through. We're eliminating the kind of free hours, so we're not necessarily inventing a new standard to hold them to. We're just not giving them the benefit of something, which I understand why they're not supportive, but, like, I wouldn't frame that way. Specifically to the body cams, one of the reasons I was so interested in bringing this, and I'm kind of thankful it hasn't happened to this point in Nebraska yet, but we've seen in other states where-- and I know under-- other states will have different open records laws, different policies, but we see where if a body cam is-- paints the agency, paints the officer in a favorable light, it gets released incredibly quickly, and if it doesn't, it takes years and potentially a court case. And that was something I wanted to start heading off in Nebraska by looking at it, by ensuring that it is something the public can access. I understand that it's not a definitive account of what happened, but it is-- especially when it is unedited and it's just what happened that day, it is an account, granted, from one perspective, from-- from one point, but it is an account. And I bring this up because a lot of what

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we've heard about is the grand jury investigation, the grand jury process. I'd like to remind the committee that there's not no information that goes public before the grand jury process. It's incredibly common and routine for prosecutors, law enforcement agencies to have press conferences, to make public statements, to do those. And I think we've had some issues in, frankly, Nebraska, not necessarily in officer-involved deaths, but where people probably crossed the line and made extrajudicial statements, law enforcement did or prosecutors did, that, you know, crossed the line, made extrajudicial statements that could have corrupted or tainted the jury pool. So that's something that I think we're going to have to-- if-- if it's the sanctity of a grand jury, it's the sanctity investigation, maybe that's the other direction we should be trending is limiting-- you know, if all information has to be shielded from the public till it's done, let's maybe trend that way and not allow, kind of, other-- you know, just the information that the side conducting the investigation, the side conducting the grand jury wants to release. With that, always happy to work with committee members and stakeholders, and with that, be happy to take any questions.

BREWER: All right. Thank you. Questions for Senator Hansen? Senator McCollister.

McCOLLISTER: Mr. Chairman, thank you. Have there been occasions where either the police department or the prosecutors have released body cam film before the grand jury process has occurred?

M. HANSEN: I can't answer that for certain. I will note that the-- that the open records requirement doesn't necessarily prevent them from releasing this information, and that's part of the reason this section is tricky. And I've actually amended this specific section with a different bill in the past where it's-- it's up to the decision of the law enforcement agency what they consider a record relating to an investigation, and so they can decide a-- a record isn't related to an investigation and release it quicker than others. It's-- since they're the custodian of the record, they're the one who ultimately gets to make that determination. I know the courts get to weigh in at some point, but again, we're talking about John Q. Public making a request and not necessarily having a team of lawyers backing him up.

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McCOLLISTER: In the statutes now, is there a provision that says that those agencies are not required to provide that information until the grand jury is met?

M. HANSEN: I can't speak to that. I'm-- I'm not sure.

McCOLLISTER: Thank you.

BREWER: I guess I got a quick question for you, reference just the body cams. And-- and again, this is your opinion. I'm not asking for policy ideas. But on the issue of body cams, where do we draw the line and who should have one and who shouldn't? I mean, all of the Nebraska State Patrol? Cities above 100,000? How do we-- how do we put a-- a clarification to that so we kind of have some idea of when we should expect they would be available?

M. HANSEN: Sure. You know, I would probably be in favor of making it as expansive as possible, maybe not necessarily a state requirement, but certainly encourage that and recognize that as good policy. I think if you would talk to law enforcement, I think they have been generally supportive of law-- of-- of body cams because it often does, in fact, corroborate their account. You know, it is-- it is a good piece of evidence often for, you know, law enforcement, for the prosecution. So from a policy perspective, I'd probably be generous but also--

BREWER: Well, and-- and I was-- I was with you on this, but they did sit me down and said, just understand, here's our challenge. And this was the-- the 13 county sheriffs from where I'm from.

M. HANSEN: Sure.

BREWER: So I understand these are smaller counties in population, not-- not necessarily in size, but they kind of revealed some things about the body cam I didn't understand and that was, well, obviously, cost involved with it. But they said really the cost that-- that kind of is the hidden part is the ability to take that data and store it and have it available and-- and then having the expertise to-- to be able to manage that. And so they said, listen, if you're going to require us to do this, it would be an incredible burden; you know, we're trying to run jails, you guys are taking extra people and giving us for our jails, so that-- that puts a burden on us; we're trying to

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maintain vehicles and-- and pay for the-- the deputies and jailers and all this and at a point, something's got to give. And-- and so I think they're a little concerned that-- that we could task them in a way that would really put them in a difficult position.

M. HANSEN: Sure. No, I appreciate that and I-- you didn't get the benefit of seeing this because it was in Appropriations. But I was working with a lot of law enforcement on supporting our Crime Commission, our training center, because that's what we're hearing is a lot of the backlog, you know, for training is just that we've probably underfunded our Crime Commission. And so they've got six months, a year, wait list to get-- to get a Trooper in unless they're willing to pay the upfront cost.

BREWER: And--

M. HANSEN: Just kind of spit-balling here, just off the top of my head, I mean, that might be something that if-- if the barrier is just kind of some of the-- the data farm, this holding of servers, having some sort of co-op or state-maintained system that other-- that, you know, other counties could assist with or help out with or join together might make some sense.

BREWER: Well, and-- and I think, too, if-- if we have a uniform system as best we can, then as-- as a officer would change from one department or another, or one sheriff's department to-- to the State Patrol, how to operate it, how to record and-- and, you know, collect data would have some degree of crossover so that you're not just pigeonholed in a particular department with one particular kind that may or may not be useful in years to come. But I commend you for trying to work with the Crime Commission, because I think ultimately that's what we've got to do. We've got to figure out some way to make it so that it's-- it's fair to them and it's universally going to be usable. All right. Other questions? All right. Thank you.

M. HANSEN: Thank you.

BREWER: And that will close our hearing on LB557, and we'll not have to clean up for our next bill. And we are now going to LB443. And with that, Senator Hansen, the floor is yours.

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M. HANSEN: Thank you. And based on sound, hopefully I've cleared the room behind me. All right. Good morning again, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name, again, is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent LD26 in northeast Lincoln. I'm here to introduce LB443, a bill that would exempt local foster care review boards from the Open Meetings Act. There are currently 54 local foster care review boards across the state that conduct case reviews of children in foster care placement and consist of volunteers chosen by the executive director of the Foster Care Review Office. This is a small part-- this system is all a part, excuse me, of the FR-- FCRO, which was created in 1982 to be an independent state agency responsible for the oversight and permanency and safety, well-being of all children in out-of-home care in Nebraska. I believe the executive director of the FCRO contacted me over the interim to discuss these local boards and ask if it would be possible to remove them from the requirements of the Open Meetings Act. I'll let her go into more detail when she testifies, but I wanted to briefly explain why I think this change makes sense. These boards already have an exemption for discussing child-specific and family-specific information regarding mental health and behavioral health under Section 43-1308. Because the purpose of the local foster care review boards is to discuss individual cases involving children, this exception already covers virtually all of their business and, thus, removing them from the Open Meetings Act entirely, in my mind, would have minimal impact on the amount of information available to the public. Additionally, the makeup and purpose of the board clearly does not fit the intent of the Open Meetings Act. These are not policymaking boards. Their sole purpose is to conduct case reviews of children in foster care. All of their findings from the case reviews, along with the recommendations, are already submitted as a report to all legal parties of the court. Additionally, the FCRO submits a report to the Legislature each quarter and a comprehensive annual report that aggregates all the case data. An interesting factor in this to me is that the Legislature in the '90s also created what are called, quote, child abuse and neglect-- neglect investigation teams, end quote, neglect investigate treatment teams in each county that also conduct case reviews of child abuse and neglect cases. To me, these teams are very similar to the foster care review boards, but they are already explicitly exempt from the Open Meetings Act under a different section, 28-731. In my mind, whether or not a team is called a team or board should not determine whether or not they fall under

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the act. Also, according to Nebraska case law, the primary purpose of public meetings law is to ensure that public policy is formulated at open meetings. Since no public policy is formed by these local review boards, I would argue that exempting them from the Open Meetings Act does not harm our goal of a more open, accountable government. With that, I'll close and be happy to answer any questions.

BREWER: All right, thank you. Questions for Senator Hansen? Let me-- let me hit you with one before you leave. Now you said there was 54 boards.

M. HANSEN: Yes.

BREWER: So those 54 boards have oversight on the 93 counties and all of those that-- and-- and would that include the-- the different Indian reservations? Would they fit into the-- or is there a separate-- and that may be for a follow-on question here if you don't know.

M. HANSEN: That would be a good follow-up question--

BREWER: Gotcha.

M. HANSEN: --because I can't say I'm an expert in ICWA, so.

BREWER: That's-- I fully understand. All right. And you'll stick around for close?

M. HANSEN: Absolutely.

BREWER: All right. Thank you. All right. There's Jonathan. Welcome to the Government Committee.

MONIKA GROSS: Thank you. Chairperson Brewer and members of the Government, Military and Veterans Affairs Committee, my name is Monika Gross, spelled M-o-n-i-k-a, last name G-r-o-s-s, and I am the executive director of Foster Care Review Office. I offered this testimony in support of LB443. LB443 would exempt the 53-- there-- we only have 53 the current year, local volunteer citizen review boards, also known as local foster care review boards, from the Open Meetings Act. Local FCRO boards are currently considered public bodies, even though they do not discuss any public business or formulate any public policy. I discussed the FCRO's local board meeting process with an

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attorney-- with an assistant attorney general recently who advised that the FCRO seek a legislative exemption from the Open Meetings Act. The Foster Care Review Office is an independent state agency not affiliated with the Department of Health and Human Services, the courts, or any other child welfare entity. Our role is to independently track children in out-of-home care, review children's cases utilizing local volunteer citizen review boards, collect and analyze data related to the children, and make recommendations on conditions and outcomes for Nebraska's children in out-of-home care. The FCRO is governed by a separate five-member Foster Care Review Office advisory committee, which is a public body subject to the Open Meetings Act. LB443 would not exempt the FCRO's advisory committee from the Open Meetings Act. Our 53 local boards are made up of approximately 300 citizen volunteers from across the state, consisting of professionals in the fields of medicine, nursing, mental health, education, law, social work, and law enforcement, in addition to experienced foster and adoptive parents, CASA volunteers and military retirees. Each board consists of four to eight volunteers who meet monthly to review cases of children in the foster care system. Prepandemic, our local boards met in person in Bellevue, Columbus, Fremont, Grand Island, Kearney, La Vista, Lincoln, Norfolk, North Platte, Omaha, Papillion, Scottsbluff, Gering, York, and two virtual statewide boards. During state fiscal year 2020, these local boards reviewed 4,382 individual cases during 599 meetings and donated more than 30,000 hours of their time. Prepandemic, our volunteers also donated about \$20,000 annually in unreimbursed mileage. We're grateful to our citizen volunteers. During those individual case file reviews, the local board members discussed confidential information such as the children's school attendance, academic performance, behavior and any disciplinary actions, medical, dental and vision care, mental and behavioral health diagnosis and treatment, all of which are subject to state and federal privacy laws. All legal parties to a child's juvenile case are invited to participate in the local board meetings. Parties would include the parents and their attorneys, youth over the age of 13, caseworkers, foster parents, county attorneys, guardians ad litem, CASA volunteers, school officials, and service providers. Local boards also discuss the issues that brought children into the foster care system. These are family issues that are sensitive in nature, such as mental and behavioral health of the adult caregivers, substance use issues, domestic violence, physical neglect, physical abuse, sexual abuse or abandonment. After each case is reviewed and

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discussed, the local board makes findings and recommendations to the court and legal parties based on the information that is provided to and reviewed by the local board. And included in your packet, I included some templates for the actual reports that go to the court so you can see the level of detail that's included and-- and the items that are discussed at the meetings. Although local board reviews often point out blind spots in children's cases and make insightful recommendations that can help children reach permanency sooner, their role is merely advisory to the courts. Local board findings and recommendations are required by statute but are not binding on the courts, DHHS, juvenile probation, or any other party to the case. In 2015, the Legislature passed LB265, which contained a provision recognizing confidential and protected nature of child-specific and family-specific information regarding mental and behavioral health issues discussed by the local boards, exempting the portion of the meeting at which such information is discussed. The process that was followed was essentially that the entire local board meeting was an executive session for each case reviewed. There's no other business that comes before the local boards. While we appreciate having a partial exemption from the Open Meetings Act, it is difficult to know how to operationalize a partial exemption. In October 2020, it came to my attention that local foster care review boards were not authorized to conduct meetings via Zoom, since they are created by statute and are, therefore, considered public bodies subject to the Open Meetings Act. And at that point in time, we were conducting all our board meetings virtually. This was during a period of time when no executive order was in effect waiving public meetings requirements. And this is the point in time when I discussed the issue with an assistant attorney general who advised us to seek a legislative solution to our dilemma. Subsequently, and currently, we are conducting all our local board meetings virtually under Executive Order 20-36 and Executive Order 21-02. So we're here today to ask that you advance LB443 to the floor in-- to exempt our local boards from the Open Meetings Act. And we wish to thank Senator Hansen for sponsoring LB443 on behalf of the Foster Care Review Office. I'll be happy to answer any questions.

BREWER: All right. Thank you. Questions? Well, I have some. Let's start with the boards. Are they a set size?

MONIKA GROSS: They're-- they're four to eight, so they're-- the boards vary in size and people, you know, come and go and we're constantly recruiting volunteers.

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BREWER: So under the Foster Care Review Office, how many children, estimate ballpark, do you-- you kind of have, I guess, accountability or oversight of?

MONIKA GROSS: On any given day, there are about 30-- 3,300 children in out-of-home care in Nebraska. And so the-- they, again, they come and go. They enter and exit on a daily basis, but it's around that number.

BREWER: OK, that's-- that's a lot to keep track of. And then the question that I asked Senator Hansen, is there a special separate oversight on the foster kids that-- that are coming and going from the-- the actual Native reservations?

MONIKA GROSS: So currently, we do not review any cases of children who are under the jurisdiction of a tribal court.

BREWER: OK.

MONIKA GROSS: We also do not receive any administrative data from the Department of Health and Human Services on any children who are under the jurisdiction of the tribal courts.

BREWER: That's--

MONIKA GROSS: So the number I gave you is actually an underestimate because we-- it does not include those children who are under the jurisdiction of the tribes.

BREWER: Thank you. OK. Any other questions? Seeing none, thank you for your testimony. Thanks for the packet; there's a lot of good information here.

MONIKA GROSS: Thank you.

BREWER: OK. No additional proponents, no additional opponents, and unless Burdette's going to say anything, I think we can invite Senator Hansen back up. Tell you what, if you don't want to demolish the chair for-- for Jonathan--

M. HANSEN: I'll waive.

BREWER: If there's no questions, we'll just go ahead. And I need to read in-- oh, no letters, no written testimony, so I don't have to

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read anything in there. That will close the hearing on LB443 and the hearings for this morning. We'll see everybody at 1330 and start it all over again.

[BREAK]

BREWER: Good afternoon and welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer, representing the 43rd Legislative District and I serve as Chair of this committee. For the safety of our committee members, staff, pages, and the public, we ask those attending the hearings to abide by the following rules. Due to social distancing requirements, seating in the hearing room is limited, but today we're not going to worry about that. Well, we were not-- well, we're not changing bills today, so we won't worry about that. Moving right along, committee members, I'll leave it up to you on discretion for face covering because of our Plexiglas and social distancing. Those in the crowd, we ask that you wear your mask, but you can remove it for the period that you're in the chair so that we can better hear your testimony. And we won't worry about a Sergeant-at-Arms because he won't have to shuffle anybody around. I ask that you limit handouts. The committee will take up bills in the order that are posted on the agenda and outside. Our hearing today is your public part of the legislative process. It is your opportunity to express your position on the proposed legislation before us today. Committee members may come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I will be stepping out. I have to go to Appropriations, but I'm planning to not close, so I should be back relatively quickly. Senators will be on their computers or cell phones, checking on information or finding out if they have to go to present in another committee. Asking that you abide by the following rules to facilitate today's procedures: Silence or turn off your cell phones or electronic devices. No food or drinks in the hearing room. Please move to the reserved chairs when you're ready to testify. The introducer will make the initial statement, followed by proponents, opponents, and the neutral testifiers. Closing remarks will be reserved for the introducing senators. If you're planning to testify today, please pick up a green sheet at the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print clearly so that we can properly record it. Any letters for the record will be required to be in by 12:00 noon Central Standard Time the day prior to the hearing. And when you come up, please give your green sheet to one

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of the pages. If you have handouts, we request 12 copies and again, hand that to pages and they will make distribution on those. Any letters that are sent in need to have the bill number, proponent, opponent, or in the neutral in the letter, and no mass mailings. When you go to testify, please speak clearly into the microphone. Tell us your name and then please spell your first and last name to assure it gets accurately in the record. We are using the light system for all testifiers. You will be given five minutes to make your initial remarks to the committee. Yellow light will come on with one minute remaining; the red light when your time's expired; there will be an audible alarm. No displays of support or opposition to a bill, vocal or otherwise, will be allowed during the hearing. Committee members here with us today will introduce themselves starting on my right.

BLOOD: Good afternoon. Senator Carol Blood, representing District 3, which is west-- western Bellevue in southeastern Papillion, Nebraska.

McCOLLISTER: John McCollister, District 20, Omaha, Nebraska.

SANDERS: Rita Sanders, District 45, the Bellevue-Offutt community.

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

HALLORAN: Steve Halloran, District 33, Adams and parts of Hall County.

HUNT: I'm Megan Hunt, from District 8 in midtown Omaha.

BREWER: To my right is Dick Clark, the legal counsel; on the right, at the end of the table, is committee clerk Julie Condon. And let's see, we've got Taylor-- or Peyton Larson. Peyton's a sophomore at UNL, and substituting for Caroline today is Kate-- is it Kissane?

KATE KISSANE: Yeah.

BREWER: She's a sophomore at UNL, so they'll be our pages here today. And if you see a real tall gal come in, that will be Caroline Hilgert. She is a junior at UNL and she's our other page that may be with us. With that said, our opening bill today, LB257, Senator Hansen, welcome to your Committee on Government, Military and Veterans Affairs.

M. HANSEN: Thank you. And good afternoon, Chairman Brewer and fellow members of the committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent LD26 in northeast Lincoln. I'm here today to

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introduce-- introduce LB257, which would change the way vacancies on public power district boards are filled. Currently, the way a district fills vacancies depends on how many cities and villages are in its service area. In those under 25, the other board members appoint a new member. However, in those districts with 25 or more cities and villages, the Governor steps in to appoint someone. LB257 would eliminate this distinction and would have all vacancies filled by the board, regardless of size. Currently, only 4 of the 32 power districts reach the 25-city threshold and applying such a different standard for otherwise similar political subdivisions is concerning to me. Public power districts in Nebraska are political subdivisions with an elected board of directors. It's my opinion that an independent political body, like a board of directors, should not have its members chosen by an individual who likely lives outside their boundaries. This conception of authority is especially concerning to me, considering, as I said, the vast majority of power district boards appoint their own fellow board members when a vacancy occurs. Finally, it is not as clear as you would think to determine which power districts reach that 25-city threshold. Over the interim I asked Legislative Research what I thought was a relatively easy question: How many power districts have at least 25 cities and villages? To determine this number, they had to contact League of Nebraska Municipalities to go city by city to determine which power districts served each city. There was no one keeping an official tally, and I worry that confusion may occur in districts that are around the 25-city threshold. I would like to thank Legislative Research Office for their help with this bill, especially Travis and Tim. In addition to diligently contacting power districts and cities for information, they also put together maps of each power district with the cities served in each. With that, I will close and be happy to answer any questions from the committee.

BREWER: All right, thank you for that opening, Questions for Senator Hansen. I might have just one. Do-- do you know, is there kind of a rough number of how many they have to appoint a year because of-- of losses for whatever reason?

M. HANSEN: No. I-- I would imagine, I mean, it kind of ebbs and flows. Usually--

BREWER: Yeah.

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M. HANSEN: --it's a death or a rec-- resignation. So some years, you might have none; some years, might be a couple.

BREWER: Once in a while you hear about in the news, but it seems fairly rare. All right, again, questions? All right. Seeing none--

M. HANSEN: Thank you.

BREWER: --we will go ahead and let the crew hit the cleanup. And we'll have proponents first. Welcome to the Government Committee.

RICK YODER: Why, thank you. Good afternoon, Chairman Brewer. May I start?

BREWER: Yes--

RICK YODER: Yes.

BREWER: --please.

RICK YODER: Good afternoon, Chairman Brewer and members of the Government Committee. I am Rick Yoder, R-i-c-k Y-o-d-e-r. I'm here before you today to support LB257. I am a member of the Omaha Public Power Board, but I need to make it very clear that I am here today representing my own view on 2-- LB257 and not that of the Omaha Public Power District or the board. LB257 is a simple piece of legislation that, frankly, I'm surprised has not-- has not been made into law already. Public power board members are elected officials in their own right and perfectly capable of making prudent and careful decisions on who to best fill vacancies on their own boards. Fundamentally, this is an issue of local control. I wouldn't question that a state office holder knows best the rigors and demands of what it takes to serve in state government. I ask only that the state extend the same trust to public power boards. The current process is needlessly confusing. There are public power boards right now that if they experienced a board vacancy, would struggle to tell you if the position would be appointed by the board or the Governor. I also believe that the current process of gubernatorial appointments of public power board vacancies needlessly injects politics into a situation where it is not needed. There is no left or right way to run a utility, and the politics of state government should be left out of the dynamics of public power board vacancies. The boards themselves know best what they need to fill these spots, and I ask that you trust the elected

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officials chosen by the voters to know what is best for their own boards. Thank you for your time today, and I-- and thank you for your consideration. I encourage you to support LB257 and I would be happy to answer any questions you might have.

BREWER: All right. Thank you, Mr. Yoder. Questions? Senator McCollister.

McCOLLISTER: Yeah. Thank you, Mr. Chairman. Do you know of any other publicly elected offices where the Governor appoints the-- if a vacancy or a death would occur?

RICK YODER: I personally do not. I do not.

McCOLLISTER: Having come from MUD, I know that board selects a successor board member in the event of a vacancy.

RICK YODER: As does an NRD. I'm sorry to interrupt.

McCOLLISTER: Yeah. No, that's--

RICK YODER: Yeah.

McCOLLISTER: That's absolutely right. So, yeah, thanks, Rich.

BREWER: I would just-- as a-- as a point, if one of us that are currently in Legislature would have to resign or pass away, it would be the Governor that would appoint that?

McCOLLISTER: That is correct and--

BREWER: OK.

McCOLLISTER: --and I stand corrected, so.

BREWER: All right. So I-- I agree with you on the-- you guys being elected. The only issue was that you would be appointing someone from a district that you weren't elected from to represent that district, correct?

RICK YODER: That's up-- yeah, correct.

BREWER: All right, just---

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RICK YODER: And--

BREWER: OK, any--

McCOLLISTER: One more question.

BREWER: Yes, sir.

McCOLLISTER: In the case of an appointed director, do they have to live in the district where the vacancy occurred?

RICK YODER: Yes, that-- I believe that is correct.

McCOLLISTER: OK.

RICK YODER: I've been on the board for four years and there was one appointment made and he did live in the district where the-- where the vacancy was.

McCOLLISTER: OK, thank you.

BREWER: I guess we'll have to check on that. I want to say that we've done legislation to look at making it a requirement to have them live in the district, so I'm not sure--we'll double check on that and see-- I'm not sure if it's absolutely a requirement or not, but that's a-- that's a good point to bring up. OK, anything else? All right, thank you, Mr. Yoder for your comp--

RICK YODER: Thank you very much.

BREWER: --testimony. OK, got cleanup done. Next proponent to LB257. OK, seeing none, we will go to opponents to LB257. Oh, I got a read in-- we do have one written testimony is a proponent, and that's Al Davis from the Nebraska chapter of the Sierra Club.

_____: Thank you.

BREWER: Come on up. Welcome to the Government Committee.

JULIE DeBOER: Well, thank you. Good afternoon, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Julie DeBoer, J-u-l-i-e D-e-B-o-e-r, and I am here to testify in opposition to LB257 on behalf of the Norris Public Power District and the Nebraska Rural Electric Association. I have been involved in

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the public power industry most of my career, having been employed with Dawson Public Power District, Seward County Public Power District, and currently with Norris Public Power District as the supervisor of customer service and the grassroots coordinator. LB257 seeks to remove the language that requires vacancies that occur on the boards of directors of public power and irrigation districts serving 25 or more cities and villages be appointed by the Governor. This would change-- this would impact Omaha Public Power District, Norris Public Power District, and Nebraska Public Power District, who is our wholesale power supplier. Norris currently has four board positions that have been filled over the years by past Governors Nelson, Johanns, and Heineman. These appointees have been reelected numerous times and remain active and de-- dedicated board members. The four appointed directors have served 14, 16, 20, and 25 years, respectively. The larger power districts that are impacted under this statute carry more of a statewide presence than smaller systems and, therefore, it is appropriate that the Governor appoint open positions to these boards. The appointment of directors by the Governor removes any favoritism or prejudice claims that may be made against the existing board of directors if they are tasked with making the appointments. The Governor provides an impartial appointment to the board while maintaining a strong conviction to make the best selection for the state's valued public power system. We feel the process is working well and see no need for change. For these reasons, it is our preference that the statute remain as written.

BREWER: All right, thank you. Let's, real quick, see if we have any questions. I guess I got-- I've got one for you. Obviously, the concern, from outsider looking in, is if you have a board and they are thinking the same on issues, you are going to have them then pick someone like them, so there's potential for essentially to have a good-old boys' society where they're going to they're going to have someone who wants whatever they want as policy, and a-- a person who is dropped in there, who may not be of the same mindset, might not be a bad thing, that that might actually force debate on issues that-- that we need to--

JULIE DeBOER: Discussion, yeah.

BREWER: I mean, am-- am I off base with thinking that way? Or help me out here, the-- the idea that-- that if you have that very board

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select who that replacement is, that they, in essence could have a good-old boys' society where they--

JULIE DeBOER: Exactly.

BREWER: OK. Well, that--

JULIE DeBOER: I think that's the concern.

BREWER: All right. Any other questions? Thank you.

JULIE DeBOER: Thank you.

BREWER: All right. We are on opponents to LB257. Any additional opponents? All right. Do we have anybody here in the neutral? All right, well, wow, this is going to be a short afternoon. Senator Hansen, welcome back.

M. HANSEN: Thank you all, and thank you, committee members. Thank you, testifiers. I'll just say, when I went-- started going down this track, to me, this seemed like a-- always in the danger of saying something simple because it ends up not being-- but I'm kind of a little surprised at-- at the stakeholders, including we've had, you know, public power districts that have the current system write in opposed to other districts joining their system, which I've found odd, and I guess there's some dynamics and some politics at play that I don't fully understand or appreciate. For me, it's-- you want to talk about local control, you know, pointing out that, for example, the Governor does appoint a vacancy in the state Legislature, now, to me, that's the same level. You know, we're a coequal branch with the Governor, you know, and it makes sense that for, you know, a Supreme Court, you know, for the Legislature, we're all on the same level. If we-- we're talking about a different political subdivision. You know, if the Governor got to appoint a mayor when a vacancy occurred, you know, rather than leaving up to whatever the cities have chosen, usually the city council, that would probably-- propose that legislation that would seem very odd to me. So to me, this was just kind of one appointment that was kind of an odd situation that I was seeking to fix. Senator McCollister, your question, are there any other gubernatorial appointments of local officials, election commissioners in about eight counties are the other one, and--

MCCOLLISTER: Oh, I've heard that.

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M. HANSEN: And I will also point out, I do have a bill to eliminate that, as well, so I can at least be consistent. With that, I'll close and be happy to take any questions.

BREWER: All right. Thank you. And that was a fair point on-- on the Legislature. Thank you. All right. Additional questions for Senator Hansen on LB257? Senator Blood.

BLOOD: Thank you, Chairman Brewer. And, Senator Hansen, I-- I think when you went down the rabbit hole, you probably had to do a lot of research on this, so I'm hoping you know the answers to this, because I'm trying to compare one way of doing things with the other way of doing things. So do you remember, when Tom Dowd passed away, what happened?

M. HANSEN: I'm not familiar with Tom Dowd specifically.

BLOOD: So these are the two examples that I found.

M. HANSEN: OK.

BLOOD: So on MUD, Tom Dowd passed away at the age of 81. It took the board one month to accept the names of individuals willing to serve [INAUDIBLE] and come to a unanimous decision to appoint Senate-- previous Senator Tanya Cook. Right?

M. HANSEN: Yes, this is more familiar now. Thank you.

BLOOD: OK. So the board made sure, based on all the documents that I found, that the newest member was invested in the district they would serve and deeply committed to the mission of MUD. So in 2020, I think she was reelected without opp-- opposition? Does that sound right?

M. HANSEN: Um, I--

BLOOD: She's on there now?

M. HANSEN: Yes, I believe so.

BLOOD: Yeah.

M. HANSEN: Yeah.

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BLOOD: So in 2017, on the flip side. OPPD board member Richard Hurley passed away. I don't know what is about these boards and people dying, by the way. The Governor was tasked with interviewing applicants to fill a seat on the OPPD Board. He had a dozen people to consider and appointed somebody named Mark Treinen--

Treinen.

--a retired Valmont executive. In 2018, he was defeated by somebody named Amanda-- Amanda Bogner, and she finished Hurley's term on the board, so now she is the chair of the OPPD Board. Does that sound right?

M. HANSEN: I would believe you've said that, yes.

BLOOD: So I-- I guess what I'm seeing in the research, and-- and-- and I'm not sure that this is what you're trying to get across to us, is that it's confusing to have two geographically similar utility districts that have very different processes.

M. HANSEN: Certain-- certainly that's-- that's kind of more of my approach. If I could expand on that, for example--

BLOOD: Absolutely.

M. HANSEN: --recently, in my district, somebody I've known well for years who served on the natural resources district passed away last fall and the Lower Platte South Board of Directors got to appoint and fill that vacancy, and it was a pretty streamlined process. They're a pretty diverse board in terms of how people view about natural resource district, and it seemed to work well. It would have been odd for, you know, the Governor to decide who's going to represent a small section of northeast Lincoln on a natural resource district board. So that was-- that was something that I had-- I had considered. You know, in terms of I'm a little wary to get into whether or not a local appointment or a Governor appointment will be more popular or more likely to be elected or reelected, I know just among our own colleagues in the Legislature, you know, gubernatorial appointments have a mixed bag in terms of whether or not they get reelected or not, so that's always something I could be a bit philosophical. That's not necessarily my main motivation though.

BLOOD: Your motivation is to make it equitable, fair?

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M. HANSEN: Yeah.

BLOOD: All right. Thank you.

BREWER: All right. Any other questions? Senator Sanders.

SANDERS: I do, thank you. To eliminate the Governor's appointment process in this situation, is it part of the Nebraska Constitution that he can do that, so we would have to remove it as a constitution?

M. HANSEN: I don't think there's a constitutional concern. I would be happy to double check. I know-- and that's part of the thing I'm trying to rectify with, you know, there's 32 boards and 4 do it one way and 28 do it the other way. And so I wouldn't necessarily support doing-- the Governor doing all appointments, but, you know, if it was consistent across all of them, it would make me feel comfortable, so--

SANDERS: Thank you.

M. HANSEN: --it was a bit of an odd answer, but that's how I view it.

SANDERS: We'll look into it.

M. HANSEN: Yeah, absolutely.

SANDERS: Thank you.

BREWER: That was a great lawyer answer. All right. Any other-- yes, Senator McCollister.

RICK YODER: Yeah, one more. I'm intimately aware of the MUD process, and when another director died, we appointed a guy by the name of Leon Evans, who is a-- a black banker, turned out to be a great board member. So all I can say is that process works fairly well and MUD selects its own successor directors, whereas OPPD, just across the street-- formerly across the street was-- does it much differently, so.

M. HANSEN: Um-hum. And this-- yeah, I appreciate you saying that, and this local boards fill local vacancies is common, as far as I know, across county boards, city councils.

McCOLLISTER: Yep.

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M. HANSEN: There's very few local appointments by the Governor.

McCOLLISTER: Correct.

SANDERS: Are there any other questions for Senator Hansen? I see none.

M. HANSEN: Thank you very much.

SANDERS: We'll go ahead and close LB257. Oh, did I-- we didn't-- OK, so on LB57-- LB257, position letters, pro is zero; opposition is seven; neutral was zero.