

Transcript Prepared by Clerk of the Legislature Transcribers Office
Urban Affairs Committee February 2, 2021
Rough Draft

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WAYNE: Good morning, and welcome to your Urban Affairs Committee. My name is Justin Wayne. I represent the 13th District, which is North Omaha and northeast Douglas County. I serve as the Chair of Urban Affairs. We will start off having members of the committee and committee staff do self-introductions, starting with my right, with Senator Blood.

BLOOD: Good morning. Senator Carol Blood, representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

BRIESE: Tom Briese, District 41.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

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

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

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

WAYNE: Also-- also assisting the committee are committee pages, Emily Loftis from Kansas City, who is a economics major at UNL, and Keenny-- Kennedy Zuroff from North Dakota, who is a political science and psychology major at UNL. Due to the ongoing COVID pandemic, the Legislature has adopted additional safety protocols that have-- that apply to all committee hearings, which are posted outside. Due to the social distancing requirements, seating-- seating in the hearing room is limited. We are asked that you-- we ask that you only enter in the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside of the hearing room, and the list will be updated after each hearing to identify which bill we are currently-- currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilizing-- utilize the identify-- identified entrance and exit doors to the hearing room. The entrance door is on my right and your left side of the room, and the exit is on my left, your right side of the room. We request that you wear your mask and face covering while in the hearing room. Testifiers may remove their mask during testimony to assist the committee members and tribes-- transcriber's in the-- clearly hearing and understanding the testimony. Pages will sanitize

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the front of the table and the chair between testifiers. In the event that the hearing reaches seating capacity or is near capacity, the entrance door will be monitored by the sergeant at arms who will allow people to enter the room based upon the availability of seats. Persons waiting outside the hearing room are asked to observe social distancing. This morning we will be hearing three bills and will be taking them in the order listed outside of the room. On the table near the entrance, you will find a blue testifier sheet. If you are planning on testifying today, please fill out and hand one to Angenita when you come up. This will help us keep the accurate-- the record accurate. Please note that, if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during the bill's hearing. If you do not wish to testify, but would like to record your position on the bill, please fill out the gold sheet near the entrance. Also, I would note that the Legislature's policy that all letters for the record must be received by the committee noon the day before the hearing. Any handouts submitted by the testifiers will be included as part of the record, as exhibits. We ask that, if you do have any handouts, please bring ten copies or give them to the page if you need additional copies. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from the supporters of the bill, then from opposition, followed by those speaking in a neutral capacity. The introducer of the bill will be given an opportunity to make closing statements, if he or she wishes to do so. We ask that you begin your testimony by stating and spelling your first and last name. We will be using the four-minute light system. When your testimony begins, the light will be green. If there is one minute left, it will be yellow. And at the red light, please wrap up your thoughts. I remind everyone, including senators, to please turn off or silence your phones. With that, we will begin today's hearing with LB228. Welcome, Senator Morfeld, to your Urban Affairs Committee.

MORFELD: Thank you, Senator Wayne, members of the committee. My name is Adam Morfeld. For the record, that's A-d-a-m M-o-r-f as in Frank-e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB228. And I have some handouts here for the committee to kind of explain what the PACE is. Thank you. LB228 amends the Property Assessed Clean Energy or PACE Act, which was adopted in

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2016 and later amended in 2017 and 2019. The PACE Act allows cities and counties to authorize PACE financing within their jurisdiction for energy efficiency, water conservation, and renewable energy projects for commercial, agricultural, industrial, and residential properties. PACE loans are nonrecourse, long-term, fixed rate and are attached to the property with an assessment contract that stipulates the manner of repayment will be similar in status and priority to property taxes. For a project to utilize PACE loans, a city must have passed an ordinance establishing a PACE district and a structure under which the PACE program is administered. More than a dozen Nebraska cities and at least one county has adopted PACE programs. These loans are offered by private capital providers and municipalities that collect administrative fees, meaning the PACE programs have no cost to the state or local governments or their taxpayers. LB228 would allow PACE to be used retroactively or following the completion of an eligible project. Today's PACE laws have been interpreted not to allow retroactivity or lookback period, which is out of step with a lot of other states which is out of step with how a lot of other states use PACE. Most active PACE programs in other states allow for retroactivity up to 36 months after the completion of the project or longer. LB228 would give Nebraska's PACE programs the same flexibility when it comes to retroactivity or lookback policies that PACE programs in most states already allow. LB228 does not change the requirement that qualifying PACE projects meet certain minimum energy efficiency standards. Under LB228, whether an energy project has yet to be built or has already been built, an energy analysis will still be necessary to identify the required energy conservation measures and their projected energy and cost savings. So that does not change. In other words, with the adoption of LB228, the Legislature would make clear that any property with qualifying energy efficiency improvements is eligible for PACE financings before, after, or during construction. This change would be useful for property owners who utilize short-term financing for construction and then say months later, or even a few years after construction, refinance with longer-term financing. If qualifying energy conservation measures were part of that construction project, the property owner should be able to have access to PACE financing for that project after completion as a part of the refinance to long-term financing. For instance, a property owner in Madison, Wisconsin; Washington, D.C.; or Salt Lake City, Utah, where refinance or retroactivity is allowed, could do that today. A property owner in

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La Vista, Bellevue or North Platte could not. This change would also help a property owner who said-- say, needs a new roof or HVAC units and wants to add solar panels to the roof at a cost of \$250,000. That total amount of \$250,000 is low for PACE lenders who typically lend \$500,000 or more. But let's say that we had other energy efficiency improvements to the building that were completed in recent years, including new windows, LED lighting, replacement of aging elevators, and new and more efficient elevators totaling \$250,000. Combining the new work with the already completed work would allow the property owner to have 500,000-- \$500,000 in qualifying energy conservation measures and secure a PACE loan. A property owner in Kansas City, Colorado Springs, or Fresno, California, where refinance retroactivity is allowed, could do that today. A property owner in Lincoln, Papillion or Omaha could not. With the adoption of LB228, Nebraska property owners could use PACE financing retroactive-- retroactively or following the completion of an eligible project. This not only puts us on a level playing field, but also incentivizes environmentally sound building practices. I urge the committee to advance LB228 to the full Legislature for consideration, and I'd be happy to answer any questions that you may have.

WAYNE: Thank you, Senator Morfeld. Any questions from the committee? Senator Blood.

BLOOD: Thank you, Chairman Wayne. And thank you, Senator Morfeld. Sounds like a fun bill, but I do have one question.

MORFELD: Um-hum.

BLOOD: So you referred to other states that had the retroactive funding. Are we aware of what the default rate is at all on those types of loans?

MORFELD: I'm not.

BLOOD: All right. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you. Are you sticking around for closing?

MORFELD: Yeah, probably.

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WAYNE: First, we will have proponents. Any proponents?

CHRIS PETERSON: Good morning, Mr. Chairman and members of the Urban Affairs Committee. My name is Chris Peterson, C-h-r-i-s P-e-t-e-r-s-o-n, testifying in support of LB228. I do have handouts with my prepared testimony as well as some charts. Some of you know me in my capacity as a registered lobbyist, but today I am not appearing on behalf of a client. I am appearing on behalf of myself. I want to start by thanking Senator Adam Morfeld for introducing LB228. I approached Senator Morfeld late last year about this issue and described the opportunity to help provide the same access to PACE financing in Nebraska, already available in many other states. Since 2016, PACE bills have been carried by Senators Heath Mello, Tyson Larson, Sue Crawford, Mark Kolterman, Adam Morfeld, and Carol Blood, a diverse group of urban and rural senators seeking to improve Nebraska's PACE financing law. In 2016, I was retained to lobby for passage of a-- of a PACE financing law in Nebraska. I was subsequently hired as a consultant to help launch PACE programs in Nebraska and identify potential PACE projects. Today, I'm an independent PACE program and project consultant who has assisted nearly all of the 14 Nebraska communities that have adopted PACE ordinances with the development and implementation of their PACE program. I work with property owners and developers to secure approval for more than 20 PACE project applications totaling approximately 60 to 70 million dollars in PACE loans in Lincoln, Omaha, La Vista, Columbus, Hastings, and North Platte. In addition, I have consulted on approved projects in Colorado and Missouri. My experience with this economic development tool in Nebraska and elsewhere leads me to believe Nebraska should amend its PACE law to allow a lookback period or retroactive use of PACE financing. If a property owner plans to install, is installing, or has installed qualifying energy conservation measures, that property owner should be rewarded by being allowed to access PACE financing before, during, or after a project's completion. They should have the choice as to when it makes the most sense for their financial situation to bring PACE financing into their capital stack. But this isn't the case in Nebraska, where our state's PACE law, because of its silence on this issue, has been interpreted to limit access to this financing tool up until a project has received a final certificate of occupation or completion. Today, there are just two states that I could determine with active PACE programs that don't have any lookback

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or retroactivity provision. Those states are Texas and Nebraska. The other 21 states, plus Washington, D.C., with active PACE programs allow PACE financing to be accessed after a project has been completed. LB228 would explicitly allow for retroactive financing. For some projects, it may make sense to close on a PACE loan at the front end of construction. For others, it may make sense to close on a PACE loan during construction. And yet-- and it may make sense for yet other PACE, other projects to close on a PACE loan in the years following completion of that project. LB228 gives Nebraska's PACE program administrators, city and county governments, the flexibility to approve a PACE application, an application for PACE financing retroactively as in the case of better than 95 percent of the states with active PACE programs. I urge this committee to give borrowers and lenders and local PACE program administrators the flexibility to evaluate individual projects and determine the best timing to apply for a PACE loan. Included with my written testimony are two charts. One lists the lookback provisions by PACE programs in each state. The other chart identifies the most flexible lookback rule in each state with an active PACE program, and at the bottom totals the number of states offering certain degrees of flexibility. I want to wrap up my remarks, I see the red light's on, by urging the committee to advance LB228 to General File and I'd be glad to answer any questions.

WAYNE: Thank you. Is there any-- Senator Blood.

BLOOD: Thank you, Chairman Wayne. Thank you for your testimony. So I'm-- I'm trying to read everything here and get caught up. So say that I have a project I want retroactive funding then. Would the term be set based on the remaining useful life of the equipment installed? Is that how it works then?

CHRIS PETERSON: Great, great question, Senator. Thank you. And so in order to determine how long a PACE loan, the maximum length of a PACE loan in Nebraska, the items that are eligible for PACE funding are evaluated, their individual life span is identified, and then those life spans of those items and it could be HVAC, windows, lighting, etcetera, are blended in to determine the length of the loan. And what we've seen in Nebraska is oftentimes when you-- when you blend those together, these are long-term energy efficiency measures and we're seeing lengths of 20 to 25 years, usually averaging about 22 years. And so if-- if there was a lookback provision in Nebraska,

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retroactivity in Nebraska, and say two years after a project was completed someone wanted to use PACE and that analysis was completed, if-- if there had been 22 years of useful average life at the-- at the point the project was completed, two years later there would still be 20 years of useful active life, average active life on those items. And so that could be the maximum length of the PACE loan, 20 years. And PACE lenders want to loan for long term. They often resell these loans to insurance companies or pension funds that like the fixed rate over that long-term period. And so it would be unique, a unique case where a PACE lender would lend for a much shorter period. And so we're really talking about, for the most part, allowing retroactivity in those two, three or four years after a project is completed when there's still a lot of useful average life left in those items.

BLOOD: And isn't, I mean, kind of the average lookback about three years?

CHRIS PETERSON: The average about-- among states with active

BLOOD: Right.

CHRIS PETERSON: --programs from what we could identify based on research on a variety of sites, Web sites, is about 36 months. Some are longer, a few are shorter.

BLOOD: Right.

CHRIS PETERSON: All of-- all of the states that we've been able to look at their statutes as we've been thinking about this issue, none of those states put a restriction in statute as to the time frame. They all leave it up to the local governing body or the PACE program administrator. And so that's-- that's what LB228 would also do is-- is put-- put that decision-making in the hands of the local PACE program administrator.

BLOOD: And I have two more questions. Can you describe, just so we have it on record, the difference between what's known as C-PACE and PACE?

CHRIS PETERSON: Oh, sure, absolutely. They're often-- the terms are often used interchangeably, the C in C-PACE standing for commercial. And so sometimes people will refer to this as PACE financing, other

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times C-PACE financing. And of course, although we don't have it in Nebraska today, the statute does allow for residential PACE financing and so that would not be C-PACE financing per se. Residential PACE is only allowed in three states or there's only active programs in three states today and it just hasn't taken off like commercial PACE has.

BLOOD: And then I had asked Senator Morfeld a question and I researched it in the interim. So I'm going to ask you if this sounds correct. So what I found is that the rate of default is very low on these types of loans. Would you say that that's accurate?

CHRIS PETERSON: Absolutely. In fact, prepandemic, I would answer that question by saying that I'm not aware of any. There has been, I want to say 2,000 or more, maybe it's 2,500 commercial PACE loans approved around the country in the last 10, 12 years. And those figures are a few months old. And-- and not every approved loan or closed loan may have ended up in those figures. So that may be a little low for about \$2 billion. These-- these loans are reviewed in a pretty thorough, very thorough underwriting process. And so the-- the PACE lenders are really risk averse. And so they look for projects that are going to be stable. Now, everything's changed with the pandemic. And so we may see some properties that have PACE loans run into trouble. But it has not been the case that there's been many and I'm not aware of any that I've heard of that are defaulted.

BLOOD: But hasn't this also opened up opportunities in other states, creating fewer hurdles for people during the pandemic?

CHRIS PETERSON: I'm sorry, could you repeat the question, Senator?

BLOOD: I'm trying to figure out how to frame that. So-- so we're talking about how people have been struggling since the pandemic, but hasn't it also been proven in other states that for some people who have been struggling with the pandemic, that PACE has been a way to lift those businesses up?

CHRIS PETERSON: Um-hum. Thank you for-- thank you for that question. What-- what I've observed and-- and I've had conversations with at least one hotel developer is that in the hospitality industry in particular, which a large percentage of PACE loans end up on hotel projects, that the hospitality industry in particular, which has been

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so hard hit this year amongst the many industries that have been hard hit, that they see some potential for PACE to-- to help them with cash flow to-- by bringing a PACE loan into their capital stack at this time. And-- and so retroactivity can certainly open that door. And again, to your prior question, these PACE lenders don't want to get into a project that is doomed to fail.

BLOOD: Right.

CHRIS PETERSON: And so they're going to be careful to make sure that-- that their investment and the investment of their backers is going to play out long term and be fruitful for everybody. And so there really could be opportunity. And again, I've talked to a developer here in Nebraska who has struggled with some of his hotels and sees this as a potential opportunity to use to help him get through 2021, maybe-- maybe a little longer until things stabilize in the-- in the hospitality industry.

BLOOD: Thank you for answering all my questions.

CHRIS PETERSON: Thank you.

WAYNE: Senator Arch.

ARCH: Thank you. I've just got three questions here and a couple of them are just refreshing my memory. Who determines eligibility for the loan?

CHRIS PETERSON: So after an ordinance has been passed by a city or in the case of Sarpy County, the first county to adopt PACE, a resolution, a-- a PACE administrator within that governing body, within that city or county, is identified. That program administrator would publish guidelines in an application. The application would be submitted from a property owner to the city. That-- the major pieces of that application would include an energy analysis. That energy analysis would call out the energy conservation measures that would qualify under-- under the statute, under the ordinance, under the guidelines. And again, these have to be-- in Nebraska, they have to be measures that are energy efficient, water conservation measures, or renewable energy systems. And for a new construction project, all of those have to be above minimum code, minimum city code. For a

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renovation or rehabilitation where you're probably replacing things that are many years, if not several decades old, as long as you're bringing those items up to current code, you can qualify. And the energy report, which is provided by a licensed engineer in the state of Nebraska, again, calls those items out, identifies them, lays out the-- the utility or the energy savings over the useful average life, identifies the cost savings in terms of utility bill savings over that life span. And that ultimately shows you, tells you the maximum amount of PACE funding that could be available.

ARCH: So they determine qual-- they determine qualification. They determine eligibility qualification. Now they go shop the loan?

CHRIS PETERSON: They--

ARCH: The builder goes and shops the loan?

CHRIS PETERSON: In Nebraska, we have an open market. And so a city or PACE program administrator, if they are approached by a builder or a property owner, they might tell that building or property owner that they should search the Internet, Google for potential PACE lenders. They might say, hey, perhaps you should call Chris Peterson. He has a lot of familiarity with this. He has relationships with some PACE lenders and he might be able to advise you on that. And as opposed to some other states, Senator, where the-- the project or the property owner would be directed down a specific path to a specific lender. We have an open market so anybody can compete here for-- for PACE loans. And I just conclude by saying in Nebraska, I'm aware of at least three PACE lenders that-- that have funded loans here and two others that should, within the next few weeks, fund loans here. So by the end of February, I expect we will have had five different PACE lenders that will have funded loans in Nebraska.

ARCH: And the advantage to the builder is what, lower interest rate? The longer term?

CHRIS PETERSON: There could be-- there could be a lot of reasons why a builder or a property owner would want to use PACE. One could be the fixed interest rate over the life of the loan. So it's going to be the same rate interest rate they're going to pay for the entire 20, 22, 25 years of the loan. Another could be the nonrecourse status of PACE.

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And so this is not on that individual property owner's balance, personal balance sheet because it is attached to the property. Another reason could be a pass-through concept because PACE loans are repaid as a special assessment on the property and have attributes similar to a tax. Some property owners have taken advantage of the ability to pass through some of this cost to their tenants or to a hotel guest. And so some of that has occurred and could be attractive. It could be attractive in terms of general tax treatment. The IRS, even though this program has been around for ten or plus years nationally, the IRS has not opined on how you're supposed to treat PACE payments. And so because, again, these have attributes similar to a tax, is a special assessment, those-- some CPAs have looked at PACE and said it looks like a tax. We're going to write off 100 percent of the PACE payment as if it was all tax. Some less aggressive CPAs may not feel that same way. So there could be a lot of different reasons. And sometimes what I find is a property owner will zero in on one of those reasons and that's the one that-- that puts them over the top and causes them to use PACE. Sometimes it's the combination of two, three, four, or five reasons--

ARCH: OK.

CHRIS PETERSON: --that collectively cause them to do it.

ARCH: OK, last question. The lookback provision obviously strikes to this question of wasn't this originally supposed to be an incentive for-- for doing that? How do you respond to that question?

CHRIS PETERSON: Yeah. I would say, first of all, I think it is-- I believe it's absolutely valid for someone to feel like PACE should be an incentive and that's-- and because of that lookback is possibly, doesn't comport with that, doesn't fit with-- with that. I would argue a couple of-- a couple of points. One is instead of viewing PACE as an incentive, as I suggested in my testimony, view it as a reward. If you have used-- if you've installed qualifying items or plan to install or are installing those items, whether it's before a project starts, during a project, or after a project, if you've-- if you use those items, those energy efficient, energy conservation measures, you should be allowed to use PACE. The second thing I would-- I would share with you is although the incentive argument I believe is valid, as you look across the country, the prevailing view, overwhelmingly,

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90, 95 percent of-- of programs in states around the country have adopted an allowance for retroactivity. And-- and so let's not tie Nebraska developers' or property owners' hands behind their back. Let's-- let's let them have that same flexibility that-- that property owners have in other states.

ARCH: Thank you.

WAYNE: Any other questions from the committee? I have I guess a couple. What-- other states according to your handout, had set years. This bill doesn't address the set years. So what is the lookback?

CHRIS PETERSON: Senator, thank you for the-- for the question. The-- what we found in reviewing statutes in other states is we have not been able to find another state that specifically in statute said you can-- you can use PACE up until 30 months or 48 months or-- or 8 months after a project is completed. What we found in other states is, is they are silent on that and they have left it to the governing body or and/or the PACE administrator when they set up the guidelines to determine whether or not they're going to allow retroactivity and for what period. And if I could give you one example, when Colorado launched their program a few years ago, they did not allow retroactivity. And after they dipped their foot in the pool, so to speak, and-- and got some experience with the program, and it had several dozen projects across the finish line, they decided this past summer to begin allowing retroactivity. And this was a decision by the overall governing board for the-- for the program for Colorado. And they decided to allow retroactivity for 24 months. The other neighboring state to Nebraska that allows retroactivity or has an active PACE program is Missouri. They allow retroactivity and the PACE program administrators, and there's several of them that operate around the state and some of them are in the same jurisdictions together, and so every PACE program is structurally a little bit different. Those-- those PACE administrators in their program guidelines do not limit PACE retroactivity for PACE loans. And so it's really open ended. And so you could take them a project that it completed-- been completed six months ago and they're likely to approve it or something that was complete-- completed 46 months ago. And they may very well agree to allow it to be-- to move forward for funding.

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WAYNE: So, I mean, you talked about other states, but did the statutes actually allow for retro-- do they actually have enabling language in or just silence and that's what they kind of do?

CHRIS PETERSON: It-- they're silent from what we've seen. I can't name an example where somebody has-- where a statute explicitly indicates that PACE financing is available retroactively. What I will share with you is five years ago, when the first PACE law was passed in Nebraska, we-- we took a lot of the statute from Missouri as a starting point. And I believed and my client at the time believed that what we had ended up with in Nebraska would allow for retroactivity because it was silent on the issue and it talked about being able to finance these loans. And it wasn't until we had conversations with the city of Omaha about setting up their PACE program that we heard from then city attorney Paul Kratz, who looked at the statute and said the statute is silent, doesn't say you can use it retroactively. And so that's-- that's not a policy we're going to allow here.

WAYNE: So would this take away local control for the city to, any city to decide or county to decide not to do retroactivity? So this is going to say they have to if you apply?

CHRIS PETERSON: I believe the way this is written, it says that they shall allow for retroactivity, but is open ended whether they want to-- whether they would allow it for one day or 6 months or 36 months. And so it does leave that decision really in the hands of the local PACE administrator. The where-- where the language on page 5 of the bill exists to allow for retroactivity, it's in a section that spells out what needs to be in the city or the county ordinance or resolution when they allow for PACE. And so if LB228t passes, each city that has a PACE program would need to amend their PACE ordinance to allow for retroactivity. And they could certainly at that time address this issue in their ordinance by placing a time certain or they could leave it to the program guidelines to give themselves more flexibility in terms of implementing this.

WAYNE: So where I struggle with this [INAUDIBLE] struggle, I've struggled with it for a couple of years now, is if you stack this on top of TIF and everything else, right, there is a requirement in TIF for but for, right? So if you-- if you-- if you wait for the but for test to happen and the city or, yeah, the city would finance you on

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TIF, then you come back and do the financing, then we're getting around the but for test because that financing wasn't even discussed or part of the TIF package.

CHRIS PETERSON: Um-hum.

WAYNE: What do you say to that?

CHRIS PETERSON: There's no-- there's no prohibition today that I'm aware of if a property owner has a-- a TIF for them to change up elements of their capital stack. And so if they have a loan with a-- with a bank that's 60 or 70 percent of the cost of the project and TIF is helping them with 15 percent of the project, there's nothing that says they can't change the amount of that bank loan a year from now, five years from now, seven years from now with that TIF still being there. There's also nothing that says if-- if someone has a mezzanine-- has a mezzanine financing at 10 or 12 or 15 percent interest that was part of their capital stack, there's nothing to say that they can't change out that mezzanine debt for-- for some other kind of debt or some other investor equity. And so there-- there are other components of the capital stack that can be changed going forward if you have a TIF. And so this would be another component of the capital stack that could change.

WAYNE: Is there anything that's a city approved by the same government entity that's authorizing a TIF that can be changed in that capital stack?

CHRIS PETERSON: I would-- I would suggest you-- you probably know better than I would. I--

WAYNE: [INAUDIBLE] now, so I don't know the answer yet. I will before we Exec on it. But, I mean, that's my big concern, is that we are-- we are financing something that's already built. That would be no different than, let's say, if a city started-- a company started a construction project on 108th and Dodge and had three stories built and then they decided to TIF it. That would be a problem with me because you've already started the project. And I feel like this is kind of the same situation. The building is already built and we're going to provide an incentive for something that's already done then it's not an incentive anymore. So that's what I'm struggling with it.

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But we continue to have these conversations. Any other questions from the committee? Seeing none, thank you for being here today.

CHRIS PETERSON: Thank you.

WAYNE: Next proponent. We will move to opponents. Any opponents? Anybody testifying in a neutral capacity? Welcome to your Urban Affairs.

JENNIFER TAYLOR: Good morning, Senators. My name is Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r, and I am a senior city attorney with the city of Omaha. I'd just like to say the weather was better driving down today than it was last Tuesday. The city is neutral on LB225 [SIC] and primarily is testifying here today because I know this bill was brought due to the fact that the cities [SIC] of Omaha's administrative guidance on administering their PACE program limits applications to certificate of occupancy for the pro-- for the installation. So we don't allow retroactive PACE financing. And it is because of that I think this bill has been brought today. They disagree with how we determined that. In looking at the purpose of the original PACE law, it actually, if my memory serves correct, specifically said that oftentimes developers or owners will not install energy efficient installations or projects or facilities because they are cost prohibitive up-front. And because that installation is cost prohibitive up-front, they-- the intent was to provide financing that would take that-- that obstacle out of the way so that when that developer can finance, they can take that cost prohibitive upgraded HVAC system, green roof, water cleaning, any of those things and install it where they wouldn't have otherwise because it wouldn't have made financial sense for them. So the way we read the intent of the law was that it was to be, as we-- as you have discussed at length with Mr. Peterson, an incentive. And again, as Senator Wayne suggested, we looked at an incentive to be something that you should be contemplating up-front. And so that was the reason why we set up our program the way that we did. To the extent that the Legislature wants to entertain requiring PACE districts to allow for retroactive financing, I understand there can be local control as to how long or how far back that lookback provision would go. Although I think we-- we have some concern that if we continue to administer our program in a way that maybe is not favorably looked upon by applicants, we'd be back here again having the same conversation. So I think the city

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would be interested in some guidance from this committee and the Legislature on if they want to approve a lookback provision to putting some sort of guidance to what that limitation would be. Again, most of the laws in neighboring states are silent on-- on lookback. So we interpret that to not allow it. If we're going to put that requirement in the state law, then maybe the Legislature would want to weigh in also on how far back they think that retroactive provision should go. You know, the city understands that there are applicants or possible projects that have recently built and recently financed and are currently struggling because of the pandemic and would like a short-term lookback provision. And I suppose, you know, that that's a reasonable request. But we seem to think that the 36 months or the 3 years seems to be reasonable if that's something the Legislature wanted to entertain. I'm here otherwise mainly to answer some questions, if I can. And it sounds like the other concern we generally primarily have is the interplay with TIF. And that is a little bit of an aspect with a lookback or the retroactive possibility. When we look at tax increment financing, we look at the project's financing and we look at the capital stack. Mr. Peterson is correct. There is nothing in the law or in any of our past practices that prohibits swapping out financing mechanisms within your capital stack if you have a TIF project. What our concern would be and we-- we put in all of our applications that if you intend to apply for PACE financing, you need to let us know during the TIF process. One, we have some adjustments to our fees as to whether or not if it's going to be a PACE and a TIF project, we do actually adjust our fee schedule. But also because when you look at the capital stack, you also evaluate for tax increment financing projects your return on investment. So we look at how much money the investor or the owner or the developer puts in of their own into the project and how much return they get on that funding. So if we were to evaluate I'm sorry, there's a-- my time has finished. If you'd like me to finish, Senator Wayne, I can.

WAYNE: Anybody have any questions? Senator Arch.

ARCH: Could you please finish?

JENNIFER TAYLOR: Thank you. Sorry. My apologies. But the issue becomes when we look at that, that ROI then all of a sudden is different if that capital stack now has PACE financing, which has taken that out of their-- their debt, out of their expense side and moved it to an

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operating expense or something else. So that does-- that would potentially change our-- our ROI calculation and might hypothetically impact whether or not we would approve either the TIF project itself or the full amount of the TIF financing that was awarded. So having not done this yet, we're not entirely sure how that would work out, but that is-- that is one of the concerns that we would have, is how that would impact our-- our-- our analysis of the financial need of that project. I'm happy to answer any other questions you might have for me and our program and how we administer it.

WAYNE: Any questions on behalf of-- from the committee? If we were doing a lookback, what additional costs would the city have to incur?

JENNIFER TAYLOR: I don't know if it would increase the number of applicants we have. We actually have just entered into an interlocal agreement with the city of Papillion. The city of Papillion has recently created a district, and the city of Omaha has agreed to help them administer that district for them. I was actually informed recently that the city of Papillion was not interested in their guidelines and entertaining retroactive PACE. So we will have to work with Papillion on that as well. I don't know the extent. We had six projects last year. We haven't had any inquiries directly to the city about retroactive PACE so I don't know if it would increase our administrative costs or not. I do believe we probably would have to take some extra time to make sure we understand how to evaluate already installed projects versus the engineer's reports we get for what is to be installed. We are also required to verify that projects are installed the way they were intended to be and are operating the way they were intended to be. So I would imagine with retroactive PACE we would have to at least verify that whatever is being applied for has been properly installed and is working the way that's being presented to the city in its application. So there's that issue as well. And I think that possibly a cap on that lookback would minimize or at least lessen that concern. I know when I spoke to the Missouri PACE administrator back in 2019 when this last came up, he had indicated they didn't do a lot of retroactive PACE because it was silent. But they did allow 60, 90, 12 months I think was at the time. But he did remind us, and I-- and I would remind this committee too, the city would still require the same SIR ratios and everything else would have to be met for these projects. So projects that get over the SIR ratio with LED lighting or some things like that, low-flow

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plumbing, that don't have quite as long of a life span or project might cause some issues in retroactive PACE with meeting the SIR ratio.

WAYNE: So you were a part of the conversations in 2017 and '18 where we-- we updated our TIF statutes. And one of the major issues were the reimburse-- reimbursement of previous expenses. I feel like we're just, if we were to pass this, we would just put that upside down because we would-- we would be allowing those previous expenses that we just said, no, we're not going to allow cities to do, but they could do it underneath the PACE. Am I reading that wrong?

JENNIFER TAYLOR: Well, I think there's-- there's something to be said for that. You know, again, TIF is under the community development law; PACE is under a different statute. So it's not necessarily required to adhere to those specific. However, the concept, I think, is what you're going on is the same. If we look at PACE as an incentive and the intent was to incentivize installation of energy efficient projects or facilities, then, yes, I think your question is the one that we had originally when we decided to draft or put up our program the way we did, which is if it's an incentive, then it makes sense that you would know that you want to put that in ahead of time as opposed to a reward. And so that I think is-- is a consideration in allowing this or at least in considering if you want to entertain retroactivity, how far back do you allow that reward to go?

WAYNE: Thank you. Senator Briese.

BRIESE: Thank you, Chairman Wayne. Thank you for your testimony here today. But notwithstanding your perception, the intent of this was to incentivize projects, you know, stabilizing your business base, trying to ensure your existing businesses are economically viable. That's a legitimate goal of local government policy, isn't it?

JENNIFER TAYLOR: It can be. And if this is a tool that that it is intended to be used towards that, then that is an option

BRIESE: Sure. And I think I heard Mr. Peterson talk about the ability to possibly, depending on your tax man or woman, to write off these payments. Also, the fact these things aren't on your balance sheet,

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those-- those are tools that could help or those are reasons this could help businesses that are struggling I would assume.

JENNIFER TAYLOR: That is-- that is exactly correct. And that is one of the benefits to PACE financing is that you can actually address your debt stops being put as a liability on your books. And now it's an operating cost that you can pass through to your customers and to your client base. Although we find ourselves so many times with our-- our economic development tools affording a tool that you pass on to someone else to pay. So there is some concern there. But really that-- that issue I would, within our program, be concerned about how that interplays with TIF. So if you have PACE and you have TIF and you have other economic development tools utilized in the same project, you-- how much do you minimize the developer's actual investment in that project of their own?

BRIESE: OK. Thank you.

JENNIFER TAYLOR: Um-hum.

WAYNE: I guess there's nothing stopping Kearney to do a three-year lookback in the statute if they wanted to.

JENNIFER TAYLOR: If Kearney's district wanted to interpret the statute differently than the city of Omaha has, I guess to Mr. Peterson's point, they would be free to do so because the statute is silent. The city of Omaha has taken our program and addressed it the way that we have-- we have done. So I don't suppose there's anything that would prevent Kearney from doing so. There's, as we-- as we well know, various different municipalities administer TIF differently depending on the needs of their local community.

WAYNE: Thank you. Any other questions? Thank you.

JENNIFER TAYLOR: All right, thank you very much.

WAYNE: Any other people testifying in a neutral capacity? Seeing none, Senator Morfeld waives closing. We have, for the record, we have-- you know, I got in the habit of saying that after my first year because everybody on the floor would say it, but everything's on the record. So why do I have to say for the record? We have one, two, three, four, five, six letters of support. No letters in opposition. The letters of

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support are RV--, REV Development; support from-- letter of support from Nebraska Chamber of Commerce; support letter from City+Ventures; support letter for Sai Properties; support, Lincoln Chambers of Commerce. And there's a support-- letter of support from the Nebraska Sierra Club. That concludes the hearing on LB228. Next we will hear LB265. Senator Blood. Welcome to your Urban Affairs. Sorry, I thought you were going.

BLOOD: Waiting for permission.

WAYNE: Oh, OK.

BLOOD: So good morning to Chairman Wayne and the entire Urban Affairs Committee. My name is Senator Carol Blood, and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska. My name is spelled C-a-r-o-l B-- as in boy-- l-o-o-d-- as in dog. I appreciate the opportunity to present LB265, which amends State Statute 13-3211, the Property Assessed Clean Energy Act, otherwise known as the PACE Act. This is not a remotely difficult bill, so I'm going to keep the opening very brief. As you all know, the PACE Act was originally created so that any municipality that creates a clean energy assessment district under the statute has to submit a report that is very specific in nature. These municipalities must submit a report-- excuse me-- these municipalities must report the total dollar amount of energy projects, the total dollar amounts of outstanding bonds, the total dollar amount of annual assessments collected under PACE, and how many energy projects, total, undertaken. I've brought a letter sent, reporting these statistics in the city of Grand Island, to demonstrate exactly why I brought LB265. If you review that letter that we handed out, you'll note the response was-- response, just can't talk today-- the response, which says zero, zero, zero, zero, and zero. This bill is not going to set the world on fire. It's not revolutionizing a process. What it makes is that it-- what it does is it makes sure that very busy people are not wasting their time sending a letter with a message that can be delivered just as well with no letter at all. LB265 would simply grant an exemption for municipalities that don't want to take advantage of the PACE Act. It would change the statute so that only those who actually partake must report how they engaged. If they didn't participate, they don't have to send a letter. If we don't receive one from Grand Island next year, we know their answer is the same as this year. LB265 is as simple as

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that. This doesn't change any other policy relating to what is a very important program, as you just heard. With that, I stand ready to answer any questions, should there actually be any. Thank you, and please move this out of committee and to the full Legislature for debate so we can continue to cut unnecessary red tape in Nebraska government.

WAYNE: Any questions from the committee? Seeing none, will you be around for closing?

BLOOD: I-- I will, but I'll tell you in advance, I'm going to waive closing.

WAYNE: OK. First we'll have proponents. Welcome back to your Urban Affairs Committee.

CHRIS PETERSON: Chairman Wayne, members of the committee, my name is Chris Peterson, C-h-r-i-s P-e-t-e-r-s-o-n, appearing this morning in support of LB265. Many of you know me as a registered lobbyist, but I'm not appearing on behalf of any client. I'm appearing on behalf of myself. I just want to echo Senator Blood's testimony and thank her for bringing the bill. This is, I think, something that your legal counsel-- committee legal counsel-- and I have discussed previously as a small way to reduce paperwork and eliminate a report for those cities that have adopted PACE, or counties that have adopted PACE, and yet had no activity and no need to submit a report. And so if the committee so chooses, it is a way to eliminate a small paperwork issue for some local governments, and could also eliminate because, if a entity has had no activity, it may not be on top of mind for them to file this report. And so it eliminates the situation where a municipality or county may fail to submit a report with zero activity. Thank you for your consideration, and I urge your vote for LB265, sending it to General File.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

CHRIS PETERSON: Thank you.

WAYNE: Any other proponent? Anyone testifying in opposition? Anyone testifying in the neutral capacity? Seeing none, Senator Blood waives

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closing. We have one letter of support from the Nebraska Sierra Club, and that will close the hearing on LB265. Next we have Senator Long--Lowe with LB405. Welcome to your Urban Affairs.

LOWE: Thank you, Chairman Wayne and fellow members of the Urban Affairs Committee. My name is John Lowe; that's J-o-h-n L-o-w-e, and I represent District 37, which is made up of Kearney, Gibbon, and Shelton. Today I'm happy to introduce LB405. LB405 clarifies that members of a village board may receive compensation to perform seasonal or emergency work for the village upon approval of the village board. LB405 also cleans up and simplifies the provisions by creating one subsection that outlines the provisions relating to when-- when village offices and employments may be combined or merged in one sub-- subsection, outlining the provision about when a village board member can be compensated for-- for performing work for the village. Finally, the bill replaces the phrase "volunteer firefighters and ambulance drivers" with the phrase "volunteer firefighters and volunteer rescue squad personnel," which is more frequently found in the statute. The reason this bill is necessary is because there was uncertainty and disagreement about the current statutory language. Many villages and the League-- and the League of Municipalities interpreted the current language one way. The Nebraska Accountability-- Accountability and Disclosure Office has a different understanding. Uncertainty of this nature is not good for anyone. So this bill is designed to make very clear what is and what is not allowed. Thank you. and I'll be happy to answer any questions,

WAYNE: Any questions from the committee? Senator Blood.

BLOOD: Thank you, Chairman Wayne. I just have a quick question. Can you tell me what the compensation is? It says, "No member of the village board of trustees shall receive compensation from the village in excess of the maximum amount provided by law." What is that maximum amount?

LOWE: I'm not sure. I'm sure there's somebody behind me that can give you that amount.

BLOOD: Do-- do you know how we would find that in statute?

LOWE: Off the top of my head, no, but I can probably get you that.

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BLOOD: I appreciate your honesty.

LOWE: All right.

BLOOD: Thank you.

LOWE: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you. First we'll have proponents. Any proponents? Welcome to your Urban Affairs Committee.

CHRISTY ABRAHAM: Thank you, Senator Wayne and members of the Urban Affairs Committee. If I could just take a personal moment and say, it's just so nice to be back with you. I'm so sorry we missed you last week. I also want to thank Senator Lowe for introducing this bill for us. This has been an issue that started a little over a year ago with our good friend, Frank Daley, who is a wise and wonderful man. Unfortunately, we had a disagreement on what village compensation looked like for him as opposed to us. So when we met with Frank, Frank read the language to say, look, a village board member can do seasonal or emergency work within the provisions of the Accountability and Disclosure Act, which means there's a series of steps that they would need to do in order to do this work, and that's the only kind of contract work that they could do. The League has always interpreted this section to say that villages, because they're smaller, they have sort of this special exception. I like to use the example of Mary Jones, who sits on the village board member, and she's the only one in town who has a snowplow. So it seems to make sense to let her be compensated for-- by the village if she goes out and clears the village streets. So we had this difficulty of interpretation, and we worked with Frank and we came up with the language in LB405. And I want to be clear that the League feels for both villages and every other class of city that, if they want to do contract work under the Accountability and Disclosure Act, that those steps need to be followed. If a village board member-- again, I'll go back to Mary. Not only does she own the only snowplow, she owns the only hardware store in town. So if she wants to contract with the village board on plumbing supply contract, then she needs to go through the provisions of the Accountability and Disclosure Act in order to do that. The only exception for village board members is seasonal and emergency work. No

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other class of city has this exception. First class cities, second class cities, they don't have this exception. Again, we believe this was put in years and years ago because the only village board member was the only lifeguard in town. And so we made this exception for seasonal emergency work because the only lifeguard sat on the village board. So we want to thank Frank for all of his work on this. It's through the League and his work that I think this-- the language in LB405 is just so much better. It's so much cleaner. You can see it's been broken out, as Senator Lowe explained. The language has been updated. It's a much better section of law for having gone through this. But as Senator Lowe mentioned, we just wanted to clarify this, because this is a question the League gets a lot. So we just want to make sure that our villages that are out there are following the law and doing it according to-- to what Frank Daley and the League think is appropriate. So thank you again to Senator Lowe, and thank you for the committee-- for this committee. I'm happy to answer any questions.

WAYNE: Can you state and spell your name? You forgot.

CHRISTY ABRAHAM: Oh, my goodness. I was so happy to be here, I forgot to tell you who I was. My name is Christy Abraham. I represent the League of Nebraska municipalities-- should've said that at first-- C-h-r-i-s-t-y A-b-r-a-h-a-m. Thank you, Senator Wayne.

WAYNE: No problem. Any questions from the committee? Seeing none, thank you for being here today.

CHRISTY ABRAHAM: Thank you so much.

WAYNE: Next proponent. I just want to note-- I was about to say "note for the record," but I'm not going to say it for the record. I'm just going to say it, 'cause it's already in the record. We have a NADC thing now in our committee. We're expanding; appreciate it. Welcome.

FRANK DALEY: Thank you very much, Chairman Wayne and members of the committee. It's been a long time since I've been before Urban Affairs. My name is Frank Daley, D-a-l-e-y. I served as executive director of the Nebraska Accountability and Disclosure Commission. And I'm here to express the Commission's support of LB405. This is a good bill, and the reason it's such a good bill is that the current statutory language is utterly abysmal. The first sentence goes on for six lines,

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contains multiple dependent clauses, and addresses at least four subjects in a single sentence. No one understands precisely what it means, and so almost any change would be good [LAUGHTER]. The real strength of this bill, though, is that it provides clarity for members of village boards. I just strongly feel that our statute should not be full of "gotcha" provisions, because people don't understand what they mean. By my estimate, there are 190 villages in the state of Nebraska that have fewer than 300 residents. That's not a lot of people to perform the functions that need to be performed in any municipality. And many times its members of village boards were the businesspeople or the doers and shakers, and make things happen. And LB405 clearly states that these folks can step up and perform seasonal and emergency work for the village as long-- and be paid for it-- as long as the village board approves it. So it's a good, solid provision. The current statutory provision includes a cross-reference to the contract provisions of the Nebraska Accountability and Disclosure Act. LB405 removes that cross reference. My understanding and my estimation is that the removal of the cross-reference does. not-- does not mean that, if a member of the village board of trustees enters into a contract with the village, that the contract provisions of the Accountability and Disclosure Act still apply. I think part of the idea was to carve out a special thing for villages and also to harmonize the provisions of this statute with similar provisions applicable to municipalities of other classes. So at any rate, this is a good bill. I think it certainly clarifies things, eliminates a trap for village board members. I do want to thank Senator Lowe for introducing this important clarifying legislation. And thank you, members of the committee, for the opportunity to talk with you today.

WAYNE: Any questions from the committee? Senator Blood.

BLOOD: Thank you, Chairman Wayne. Thank you, Frank. So I'm-- I'm guessing you know the answer to the question I asked earlier, because now that I know that it's under the-- the umbrella of the NADC. What is the amount, the maximum amount provided by law?

FRANK DALEY: Actually, the maximum amounts are typically set by ordinance of the city or village.

BLOOD: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Urban Affairs Committee February 2, 2021
Rough Draft

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FRANK DALEY: So if the city or village sets the village board compensation of \$1,000 per year, that's the maximum amount until such time as the ordinance is changed.

BLOOD: Thank you for that clarification.

FRANK DALEY: Certainly.

WAYNE: Any other questions from the committee? Seeing none, thank you for coming today.

FRANK DALEY: Thank you very much.

WAYNE: Any other proponents? Any opponents? Anybody testifying in the neutral capacity? Seeing none, Senator Lowe?

LOWE: No, I'll waive.

WAYNE: Senator Lowe waives closing. There are no letters of support or opposition or neutral on this bill, and that will conclude LB405. And that concludes today's-- well, this morning's hearings. We won't have an Exec or anything.

WAYNE: Good afternoon, and welcome to the Urban-- are we on? Good afternoon, and welcome to the Urban Affairs Committee. My name is Senator Justin Wayne. I represent Legislative District 13, which is North Omaha and northeast Douglas County. I serve as the Chair of Urban Affairs. I will start off by having the members of the committee, starting with my right, and staff, do self-introductions.

BRIESE: Tom Briese, District 41.

HUNT: I'm Megan Hunt. I represent District 8.

TREVOR FITZGERALD: I'm Trevor Fitzgerald, committee legal counsel.

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

ARCH: John Arch, District 14: Papillion, La Vista, in Sarpy County.

LOWE: John Lowe, District 37.

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

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WAYNE: Also assisting the committee will be our committee pages: Noah-- Noah Boger, from Omaha, who is a political science major at UNL; and Sam-- Samuel Sweeney from Omaha, who is a political science major at UNL. Due to COVID, the on-- sorry. During-- due to the ongoing COVID pandemic, the Legislature has adopted additional safety protocols that apply to all committee hearings, which are posted outside. Due to social distancing requirements, seating in the room is very limited. We ask that you only enter the hearing room when it is necessary to attend the bill that's currently being heard. The bills will be taken up in the order posted outside the hearing room, and a list-- the list will be updated after each hearing to identify which bills we are currently hearing. The committee will pause in between each bill to allow the public time to move in and out of the hearing room. We request that everyone utilize the identified entrances and exit doors of the hearing room. We request that you wear a mask or a face covering while in the hearing room. Testifiers may remove their masks during the test-- during testimony to assist committee members and transcribers, to clearly hearing and understanding the testimony. Pages will sanitize the front table and the chair between each testifier, so give it a little bit of space or a pause before the next person comes up. In the event that the hearing reaches seating capacity or near capacity, the entrance of the door will be monitored by the sergeant at arms, and we will allow people to move in and out accordingly, if there is availability. We also ask you, please limit-- or can limit your handouts. We can e-mail them and I can pass them out to the-- to the committee. This afternoon we'll be hearing three bills. We'll be taking them up in the order listed outside the room. Each of the tables in the back of the room, you will find a blue testifier sheet. If you are planning to testify today, please fill out one of those sheets to make sure-- and hand it to Angenita before you come up, to make sure that we have the record correct for your-- your-- your name. Please note that, if you wish to have your position-- your position listed on the committee statement for a particular bill, you must testify during that particular portion of the bill. So there'll be proponents, opponents, and neutral. If you do not wish to testify but would like to record your position on a bill, please fill out the gold sheet in the back of the room. I will also note the Legislature's policy is that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will be part of the record, as

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exhibits. Testimony for each of the bills will begin with the introducer's opening statement. After the opening statement, we'll hear the supporters of the bill, followed by those in opposition, then, followed by neutral testimony. The introducer of the bill will have the ability, if they choose, to make a closing statement. We ask that you begin your testimony by stating your first and last name, and please spell both for the record. We will be using the four-minute light system today. When you begin your testimony, the light on the table will be green. At one-minute mark, that will be yellow and, at the red, we ask you to wrap up your final thoughts. I remind everyone, including senators, please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB-- I don't know, I had my list in front of me. Ah, here it is-- LB515, Senator McKinney. Welcome to your Urban Affairs Committee, Senator McKinney. We're glad to have you here.

McKINNEY: Thank you, Chair Wayne and members of the Urban Affairs Committee. My name is Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y. I represent District 11, which is North Omaha. Today we acknowledge that state law currently requires Nebraskan municipalities to create a variety of boards and commissions, including civil service commissions, planning commissions, plumbing boards, and boards of adjustment. This bill to adopt the Municipal Police Oversight Act. Under the act, each city that employs a full-time police officer will be required to appoint a police oversight board to monitor, investigate, and evaluate police standards and practices. The intended effect of this bill is to have an entity that will serve as a liaison between the public and the police departments, and various issues that arise pursuant to such interactions. In the wake of continued racial tension and civil protests following the killings of multiple individuals during police encounters in Nebraska and across this nation, individuals have cried out for a variety of criminal justice-- criminal justice reforms. Right here in Nebraska, Zachary BearHeels, a man of Native descent who was in need of assistance after being asked to vacate a bus en route to Oklahoma, was killed by officers employed by the Omaha Police Department. Kenneth Jones, a resident of Omaha, was also killed by an officer employed by the Omaha Police Department, during a traffic stop, mere steps away from his mother's home. While extremely devastating, these type of stories are not new to me, nor-- nor members of my-- in various communities across the state. I

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personally know far too well the damage that the lack of accountability in policing has done to communities and how it exacerbates issues between policing entities and the communities they are tasked with protecting. I have been pulled over multiple times throughout my life with no expectation for being stopped. I've been frisked and searched for guns and drugs that I've never had, and then allowed to proceed to my destination, once those items were not found. I've been assaulted by officers from which I have permanent scars on my head where such force was neither warranted nor necessary. It's time that we intentionally and actively do something about this. In the age of social media and camera phones, it may be a fad for some to scream "Black Lives Matter" or "Say Her Name" but, to many people, these hashtags and mantras derive from real-life experiences, experiences that are-- that are a way of life. As a Black man, I was taught by the age of five how I needed to act-- not if, but when I-- when I encountered a police officer. Young people, laypeople are tasked with needing to overcompensate in interactions with trained professionals to help ensure that something as mundane as a traffic stop doesn't end in unnecessary death. The thing is, this bill I'm giving right now is not new information to anyone, and that is a large reason why I'm here today. I share these things not to be accusatory, but to shed light on an issue that needs to be addressed. My office has received a broad spectrum of concerns about this bill, including concerns about communities who employ smaller police departments and don't fit the criteria for this bill, concerns for domestic violence victims whose safety hangs in anonymity. These are all concerns that we're willing to engage in dialogue to find solutions for. However, there are also been opposition regarding the mere oversight itself. I've always been taught that transparency shouldn't be an issue for anyone who doesn't have anything to hide. What harm is there in taking steps to make it unnecessary to have to tell a preteen to just comply, no matter what, or just do what you need to do to make it home safe. Transparency and taking an extra step to help manage expectations is a huge part of being in any position of authority or higher bargaining power, similar to the processes we have here at the Legislature. There's often a deficit in what people think happens here and what actually happens within the walls of the Capitol. To this end, we respond with more information, we respond with ways to engage, we respond with transparency. We are the individuals who are in positions of expertise. It would be irresponsible of us not to take a role of

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overexplaining to people who are-- who we are here to serve. The same is true for entities and individuals that are tasked to protect and serve. We must act and take steps to sift through policies, both past and present, and find solutions to remove the obstacles that promote accountability. This would include making it easier to receive civilian complaints and information about pending investigations, penalty determinations, and record keeping. The Municipal Police Over-- Oversight Act will improve community relations by fostering communication between the community and police agencies. Oversight agencies, by their very nature, promote transparency and accountability. This would help reduce public concern about high-profile incidents, as well as increases-- as well as increasing the public's understanding of law enforcement policies and procedures. The community deserves a voice that offers them reassurance and the power to advocate for their concerns. The transpar-- transparency goes both ways. Because the oversight committee will be a liaison between police and communities, all actions and policies imposed and executed well-- and executed well will be communicated and made clear to the public. I ask that you cast a vote in favor of this bill and allow it to advance to General File. Obviously, there's a number of individuals here to testify, but I'll-- I'll let them come, and I'm happy to answer any questions.

WAYNE: Any questions from the committee? So I have a question for you. Years ago, there was a fire in Bellevue and, at that time, we, as a body, required any city over 50,000 to have a full-time fire chief 'cause the localities were not responding the way that we, as a body in the Legislature, felt we should. So while the community oversight is a great idea, my question to you is, are you amenable to maybe just establishing a public-- they call it a public auditor, but maybe we call it a public safety-- well, I'm just going to use the word czar that would oversee both police-- and I hate the word czar, by the way-- oversee police and fire. I think, if we look at it from a public safety standpoint, although our interactions with police are one thing, but I do think fire should be looped into this. Would you be amenable to having that discussion and looking at, maybe, a possible solution that way instead of the public committee? Or both-- or a-- yeah, community oversight or both, would you at least be amenable to having that conversation?

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McKINNEY: Yes, I'm open to having a conversation. I know in the past Omaha had an auditor, but that auditor was relieved of her duties because she released a report. And I would just say that, in my openness to that, that individual would have to be independent from the city and the police, for me to support it.

WAYNE: So have you had any broad conversations or any feedback from the community regarding not just police oversight, but like I said, fire, like all interactions? My office has been contacted. We've had people say, well, why not include fire? What happens when you do a fire complaint? Would you be amenable to that kind of broadening to-- to maybe not just police, but to public safety in general?

McKINNEY: Yes, because I-- as you have, I've heard issues with fire and other public safety officials from our community.

WAYNE: Thank you.

McKINNEY: Yeah.

WAYNE: Any questions from the-- Senator Lowe.

LOWE: Thank you, Chairman. And thank you, Senator McKinney, for being here today and bringing us this bill. As one who has also had run-ins with law enforcement, and then had a 12-gauge shotgun pointing at his-- at his head, I was a young man, too, at one time. And after a short-- and this was before cell phones, so the communication was a little-- little bit tougher at the time. But after a short period of time, an understanding was-- was made and-- and we left shaking hands. Don't we already have committees set up to do this? And aren't they called city councils or county boards?

McKINNEY: I don't think the city council or county boards could be tasked with this-- with this role, because currently cities have, you know, community boards, but they don't have the power to actually do what needs to be done to really have transparency and investigate situations like these that we're talking about.

LOWE: So-- so this-- this board that you would set up would have more power than the city council or the county boards?

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McKINNEY: It wouldn't have. It-- it wouldn't serve the same role as the city council or the county boards. It would be a community oversight board. Usually-- some members of the city council, you know, from-- from my experience as a community member and just, you know, sitting through, you know, council meetings and commissioner meetings and things like that, they don't usually side with the views of the public. So I don't think it's-- it's a role for the city council or the county commissioners because they usually side with-- it's-- it's not balanced, is what I'll say.

LOWE: But aren't the city councilmen and-- and commissioners elected by the people?

McKINNEY: They're elected by the people, but, you know, they don't always vote in favor of what the people seek. I've seen that throughout all of last year. There were cries for more to be done by the city council and the county commissioners. Instead of doing something, they sat idle.

LOWE: So what would be the difference if somebody on this new oversight board didn't do what the people want?

McKINNEY: It's possible. I'm-- I'm-- I'm not going to say it's going to be perfect. It's possible, but I would hope that individuals elected from the community would do what the community wants.

LOWE: Thank you. Thank you very much.

McKINNEY: No problem.

WAYNE: Senator Blood.

BLOOD: Thank you, Chairperson Wayne, and thank you for bringing this bill forward. I know we're going to have a lot of bills that are in this vein this year. So I just want to clarify something that Senator Lowe touched down on, having served on a city council. Reading the bill and hearing what your discussion just was, would I be correct in saying that a board or-- or organization and oversight committee like this, that their job is to funnel information to people who make decisions, such as a city council or a board, so they could have an outside source filter through the community responses, then share it with the decision-making body? Would you say that that's accurate?

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McKINNEY: I would say that would be a part of it,--

BLOOD: OK.

McKINNEY: --as well as sharing with members of the community.

BLOOD: So not necessarily taking the place of the people who are elected,--

McKINNEY: No.

BLOOD: --but being a conduit of information to utilize and allowing that body to have one more tool in their toolbox when it comes to creating a better community.

McKINNEY: Correct.

BLOOD: All right. Thank you.

WAYNE: Any other questions from the committee? Seeing none, will you be staying around for closing?

McKINNEY: Yes.

WAYNE: OK, [INAUDIBLE]. As we said, we're going to use the four-minute light system. I'm sure there will be a dialogue back and forth between the committee and those who are testifying. I look forward to that. Please remember that we're going to clean in between. We'll go proponents, opponents, and then neutral testifiers. First-- first up, proponents. You never get to come in this committee. Welcome.

SPIKE EICKHOLT: I know.

WAYNE: Welcome to your Urban Affairs Committee.

SPIKE EICKHOLT: Thank you. Good afternoon, Chair Wayne and members of the Urban Affairs 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 LB515. We want to thank Senator McKinney for introducing the bill. This bill, as Senator Blood alluded to in her questioning, is one of many bills that I sort of relate to the really unprecedented civil rights movement that arose last summer. It was

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sort of sparked by the death of George Floyd, but it really took off, not only in this state, but really nationwide. And a lot of the protesters, a lot of the people who were demanding change and to address systematic-- or systemic racist-- racism and racial injustice, one of the issues that sort of came to light was this idea when looking at police/citizen relations was to have meaningful civilian oversight over police departments. And that's really what I would argue is the genesis of this bill. The bill probably most directly impacts Lincoln and Omaha. And I think that many people, or at least some people were surprised to learn that we actually already have civilian oversight boards for Omaha and Lincoln. But I would submit and I would argue that this bill drastically improves both of those bodies and really aspires to the best practices when it comes to having a regulatory agency looking at the police departments in the state. To kind of touch on what Senator Lowe asked about, this is not intended, nor would I think it would replace city councils. I understand that city councils and village-- village boards are to be accountable to the people. And if there's an issue of really whatever it is that the people are unhappy with, their elected leaders should be responsive to it. I think it's more appropriate to look at this, as Senator McKinney indicated when he introduced it, as this is a type of regulatory board, like any other type of regulatory board, like a board that looks at plumbing compliance codes or construction and zoning matters. In other words, you have cities and you have counties-- at least I'm pretty sure, I'm not, however, in the Urban Affairs Committee that much-- that sort of have entities or bodies that do that work. And this is something that would apply to police departments. This has three or four components that I think are really important. And to kind of pick up on Senator-- what Chair Wayne asked about, maybe we could go through an auditor or some sort of statewide body or entity that could do this. I think as long as these three or four components were addressed in that new body as they are addressed in that bill, and I think it was to serve the same purpose. One of the things that's important about this bill is it provides that a oversight board is actually going to be independent, that it's not going to be within the police department, but it's going to be a separate entity where members are appointed by the mayor, approved by the city council, and not only has independence from the police department, but it has some independence from the mayor and the city council that appoint them. I think it's also important, as this bill

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envisions, that whatever sort of oversight entity you have, it has some autonomy. And this bill provides that board with subpoena power and the power to look at police reports and do its own separate and independent investigation regarding complaints. And finally, what's also very important about this bill is it, in-- it provides for transparency in the process. It clearly states that the meetings that these boards have, that the oversight committee has, are public meetings, that the records that they produce and the reports they produce are public records that the people can see. And that's a significant increase from particularly what was done in Omaha and, to a certain extent, was also done in Lincoln, as well. So I would urge the committee to advance this bill, at least in some form. I think that Senator McKinney has indicated that perhaps some allowance could be made for the smaller police departments. That might make some sense because you have a seven-member board and there's some departments, police departments in the state that don't even have seven members. So that would probably make some sense to make some sort of allowance for the smaller police departments. But really for the bigger municipalities, we would argue that this bill is important, and we'd urge the committee to advance it.

WAYNE: Thank you. Any questions? Senator-- Senator Blood.

BLOOD: Thank you, Chairperson Wayne. And thank you for your testimony. Spike, I-- did you attend the hearing in Jud-- front of Judiciary, in reference to-- can you hear me? I'm sorry.

SPIKE EICKHOLT: I can.

BLOOD: Did you attend the hearing, the interim hearing, Judiciary, that actually addressed these issues this summer?

SPIKE EICKHOLT: Yes.

BLOOD: And when law enforcement came and testified, what did you hear from them that was their biggest concern?

SPIKE EICKHOLT: Well, they wouldn't appreciate if I spoke for them, so it's probably not [INAUDIBLE] for me to say, but--

BLOOD: What was your interpretation?

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SPIKE EICKHOLT: But what I remember, I think-- I think, if I remember-- and I don't know if Chief Schmaderer was here. If I remember, Chief Schmaderer explained-- and maybe it wasn't at the interim study hearing, maybe it was at another public hearing-- is that they are being responsive to some of the issues that were being-- were addressed last summer. And I think that, in some respects, that's probably a true statement. I know they've got a new Restorative Justice Program they're going to be doing next year, which sounds pretty encouraging. They didn't really address-- the Omaha Police Department defended their own citizens' committee that they have now. That's a creation of an executive order of the mayor that's explicitly not public. They meet in-- the meetings are confidential. The reports are confidential, although Mayor Stothert did amend it slightly to provide that reports that are confidential are submitted to her and she may-- the mayor may make those public if she chooses. So-- so I think that their response is, and perhaps Lincoln as well, is that what they have now works. There's no reason to have a mandate from the state to make it any different. And-- and they can speak for themselves. Obviously, they're here.

BLOOD: Yeah, I'm sorry to put you on the spot, but I thought--

SPIKE EICKHOLT: That's OK.

BLOOD: --that you had attended that. And-- and so I think it's going to be interesting to hear both sides, to hear where we're really at, because we definitely have moved the needle a bit. But is that enough? I guess that's what the hearing was about. So thank you.

WAYNE: Any questions? Any other questions? Senator Lowe.

LOWE: Thank you, Chairman. And thank you, Mr. Eickholt, for being here and for testifying. You stated that this would be similar to the plumbing boards, the electrical boards that we have in our cities, and-- but this would be an independent board. When I've dealt with the plumbing boards and electrical boards, they're made up of plumbers and electricians. So is this independent board, will it be made up of law enforcement officers if it will be like the plumbing and electrical boards, and not just-- and not be independent?

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SPIKE EICKHOLT: Right. I don't-- I didn't see anything in the bill that explicitly prohibits somebody who is appointed on the board, if they have any any experience in law enforcement. And I think it's probably likely to expect that anyone who would apply that'd want to be on the board might have some sort of experience in law enforcement somehow. So I don't think that's the intent of the bill, although Senator McKinney could maybe speak to that. I think this is natural. I mean, you can't really-- it's not like jury duty where you sort of pick people, right? And make them serve on the board. I think naturally, you're going to have people who are going to submit their names or express interest in being on the board, just like you do on plumbing boards and zoning boards.

LOWE: But it-- yeah. It just seems like this is coming from the side that we want the other opinion from law enforcement on this board, so that the voices are heard of the people and not from the law enforcement officer who has already given their opinion. It-- it just does not seem like law enforcement officers would be on this board, coming from that view. Now, maybe-- maybe Senator McKinney will-- will clarify that later in his closing. And I noticed that it goes down to the population of 5,000 people, and that gets down to our smaller communities where everybody knows everybody. And do we really need another committee when we have trouble getting people to volunteer for anything in a small community? Just-- so the numbers aren't there, and you know who everybody is.

SPIKE EICKHOLT: Yeah, that's-- that may be-- that-- as I acknowledged earlier, that may be a legitimate point.

LOWE: All right. Thank you.

WAYNE: Any other questions from the committee? Senator Briese.

BRIESE: Thank you, Chairman Wayne. Thank you for your testimony here today. I assume many municipalities across the country have something somewhat similar to what we're talking about here?

SPIKE EICKHOLT: Some do, yeah. They vary, sort of, in-- in how independent they are or whether they're a public body, and that sort of thing.

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BRIESE: Results, and reports, and investigative reports of this commission or of these committees are going to be subject to the Open Records Act, correct? There's not going to be an exception there.

SPIKE EICKHOLT: As proposed by LB515, that's right.

BRIESE: Yeah, and they'll have subpoena power, and they'll be able to examine internal law enforcement documents. Is that commonplace across the country in similar arrangements? Do you know?

SPIKE EICKHOLT: I don't know if that's necessarily common. There are a few jurisdictions that have such broad subpoena power, like New Jersey-- the city of New Jersey-- and I can't remember which one it was that actually, off the top of my head-- that has what many, with people, sort of the most robust oversight entity, with subpoena power and access to all records. And there may be some sort of-- I think Senator McKinney indicated when he introduced the bill-- and maybe some concerns if you have access to all records and the complaint relates to perhaps a sexual assault investigation or a domestic case or some similar thing, that there might be some necessity to modify the bill's provisions to allow for some sort of limited access the board has and not make simply everything public. So--

BRIESE: Elsewhere, do these board members-- do they have immunity from a lawsuit of any sort?

SPIKE EICKHOLT: You know, each state is different for their different immunity provisions they provide, so I really couldn't answer that. I'll tell you what we have now in Omaha is kind of an-- the inverse of immunity, sort of an explicit exposure. When they sign up to be a member, they have to sort of acknowledge that they could be somehow, if they violate the confidentiality provisions on the Omaha board, that they could be subject to civil liability of some sort.

BRIESE: According to this amendment, they're-- they're potentially subject to civil liability for negligence and beyond. Correct?

SPIKE EICKHOLT: I-- I-- that's what it looks like.

BRIESE: And that would in-- well, negligent and intentional torts, etcetera. That would include slander, things of that sort?

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SPIKE EICKHOLT: Well, you know, I don't know how the interplay would work [INAUDIBLE]. I hadn't thought about the interplay with the Tort Claims Act. There's a couple of cases that have really, sort of, provided for some exceptions in our [INAUDIBLE]-- our tort liability when it comes to criminal and intentional acts, so I can't really say how that would impact that. But that's something that perhaps-- perhaps we had looked at. I know there's a couple of bills that look at general tort liability for local and state officials.

BRIESE: But it seems like this does open them up to exposure for some of those things. Anyway--

WAYNE: Any other questions? Senator Hunt.

HUNT: Thank you, Chairman Wayne. I just wanted to-- to mention, Section 3 of the bill states that the act would only apply to cities of the metropolitan and primary class. And so that wouldn't be the small communities under 5,000, which is not a question.

SPIKE EICKHOLT: No.

HUNT: So thank you.

WAYNE: Any other questions? Senator Arch.

ARCH: Thank you. As-- as you opened your comments today, you said that we already have-- we already have civilian boards in Omaha and Lincoln, but this would-- this would strengthen them.

SPIKE EICKHOLT: It would. As a practical matter, it would. I think it would, yes.

ARCH: OK. Could you help me understand, what-- what are those components? And you don't have to go through every single one of them.

SPIKE EICKHOLT: Sure.

ARCH: What are those-- what are those large ones that you would say would strengthen those civilian boards or perhaps create something a little bit different? But--

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SPIKE EICKHOLT: Omaha has a six-member board. It was just expanded from five to six. The Omaha entity, the Civilian Complaint Review Board, was established by mayoral-- mayoral executive order, in response, when the auditor was fired or resigned. They meet in secret. They meet-- there's no public body. You can't-- they don't issue reports. They have limited-- the board itself has limited, if hardly any independent access to any sort of records, cannot question interview witnesses, nothing like that. This bill would, in my opinion and many others' opinion, would bolster that and provide that you have the mayor appoint somebody. The council would have some say over whether they serve on the board. The meetings that they have would be public. There'd be reports issued by the board, explaining what happened regarding each complaint, maybe a total of complaints. Lincoln has a nine-member board. It was just expanded from seven to nine. They do have some-- they have quarterly meetings, and they do issue quarterly reports and annual reports that just generally summarize the number of complaints, maybe a general description of types of complaints, and whether they were founded, unfounded, sustained, and what sort of general discipline, if any, was imposed. So in our-- and again, as I said before, LB515 would further flesh out what that board would do, and provide for a little more transparency to the public regarding what Lincoln's version of a city board-- a civilian board would do.

ARCH: Are you concerned at all with the-- that balancing of privacy? I mean, the investigation, privacy, assumed guilty-- as-- as the investigation rolls on with all the evidence rolling out, are you concerned at all with the protection of privacy of the individual and the need for transparency?

SPIKE EICKHOLT: It depends on who you're talking about, the individual. I mean, if you're talking about a police officer or a police department acting in their official duty, I would argue that the privacy interest is pretty minimal. We spend a lot of money on police departments. They have a very difficult job to do, and-- and they should be given the authority and power to do that. But at the same time, the public has a right to at least examine what they do. And if they're unhappy, they should have a meaningful way to address that unhappiness other than taking to the streets, other than protesting. When you're talking about private people who are impacted by police conduct or police misconduct, then there is a privacy

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interest there. And perhaps, as Senator McKinney indicated, there might have to be some modification to the bill to accommodate for that privacy protection.

ARCH: OK. Thank you.

WAYNE: Any other questions from the committee? Thank you. Next proponent. Any other proponent? Seeing none, first opponent. Welcome to your Urban Affairs Committee.

TODD SCHMADERER: Thank you. Excuse me. Thank you, everyone. Todd Schmederer, S-c-h-m-a-d-e-r-e-r, chief of police for the city of Omaha. So let me-- let me speak for myself. He did a pretty good job of-- of capsulizing what I want to say, but there are some things that were missed. And I think I can add some of the questions that were posed to our last speaker; I might be the best to answer. Look, I just want to add to this conversation. I found it interesting, the-- the concept of the czar to oversee public safety. That definitely needs to be added to this mix of the conversation. So I am a proponent, a strong proponent of police oversight. Look, it makes my job easier, makes policing better. When it's done correctly, it can aid with transparency, accountability, and public trust. So I do appreciate the intent of LB515 to try and improve public trust. And I want to say I have great respect for the two Omaha senators, Terrell McKinney, Senator Wayne. Nothing against anybody else here, I just-- I just don't know you as well. As it is written, my concern-- my concern surrounding LB515 is that it doesn't appear to conform with what the experts in the field-- who are criminology experts, who have studied police oversight-- say it should look like. it misses a couple fundamental tenets. And there are experts in the field. The University of Nebraska at Omaha has professors that are experts in police oversight. They have a professor emeritus who may be the world's foremost authority on this subject. We should reference them as we craft a bill. So the litmus test for any oversight committee is: Do they change the quality of policing because of the body? Research-- research will show that doesn't always do that. Our experts that we talk to-- 'cause we did reach out to the criminology field where these are studied and tested-- tell us that a review body that can recommend discipline as the ration-- that the review body that recommends discipline is not conforming to best practices. The rationale is, the chief should be held accountable for the department, not a separate

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body. Civilian boards, in addition, are-- historically administer less discipline than the chief will, historically will administer less discipline. There was the key-- there was a traumatic case that was mentioned earlier that occurred in Omaha, involving Zachary BearHeels. Eventually that went to a board that reduced my findings, upheld the main portion of it but reduced it. Oftentimes you're going to find the chief to be more disciplined. There's a reason for that. They understand the profession and they have high standards, just like any CEO in the corporate world or any CEO or any-- any chief or-- or leader of any entity. They're going to have those high expectations. They're going to understand the nuances of that profession. They're going to know what can be done and what can't be done. And you will see, historically, that civilian boards do not rise to the level of discipline that police chiefs do. Undermining the authority of the chief of police does not improve policing in any-- in any shape or form. The best oversight allows for transparency and oversight of the chief's actions and decisions. So let me just close with this-- I'm on yellow. We are-- we are not divergent in thought here as much as you might think. It's a matter of how this is crafted. It's a matter of furthering this discussion. But we are-- we are not as divergent in thought as you may feel. OK, so I am available for any-- any questions you might have.

WAYNE: Any questions from the committee? Senator Blood.

BLOOD: Thank you, Chairperson Wayne. And thank you for your testimony. You heard my question to Spike earlier, and I know you-- I believe you participated as well this summer.

TODD SCHMADERER: I did.

BLOOD: If you were to put in a very brief synopsis of what your stance was, when you went to testify on what could be done better, could you share that with us?

TODD SCHMADERER: Right. So in-- in part, you know, we set up a civilian review board in Omaha because we wanted that civilian oversight. And of course, when we set it up, it was-- it was self-generated and-- and nobody had done that. And we wanted that for ourselves. But when we set it up, you have to conform to what the-- the labor agreements are, and you have to conform to whatever

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compromise comes into play at that moment in time. So the best that we could do was the board that we have. And it's been-- it's been functional for the city of Omaha, but that does not mean that it can't get better. It does not mean that we are sticking a flag in the ground and saying this is the best, everybody go about your business. So that is where I am here today. Let's further this conversation. Let's-- let's see if we can't get something in place. Let's consider the czar. Let's consider all the-- the talking points that we're going through here, because I think even Senator McKinney will tell you he-- he didn't draft something that he felt would never be changed, OK? He drafted something to start a conversation on this.

BLOOD: And so if I hear you correctly, you are willing to work with the senator to make it a better bill than what you feel it is right now.

TODD SCHMADERER: Yeah, I think that-- I think that this-- there's a lot of room for-- for amendments and tweaks on here that could satisfy a lot of the issues that have been the questions that have been posed. And you know, there-- if you talk to some of the experts and everything, the czar is an interesting concept. But some type of oversight needs to take place.

BLOOD: And--

TODD SCHMADERER: And if we can improve the transparency with that oversight, all the better.

BLOOD: And if I hear you correctly, you do understand that this is pressing for a lot of people, especially in North Omaha, that you'd be willing to make sure that this is something that could be amended yet this session.

TODD SCHMADERER: Well, of course, we are here to help. OK? And I'm a little-- I'm a little unnerved that we're the only ones that reached out to experts in this field of police oversight. OK? And it--unless somebody has that-- 'cause-- 'cause we did, because we wanted to see what is best practices, what exactly is occurring with these oversight boards. How can we make it better? And I'm referencing those talking points.

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BLOOD: Um-hum. I-- I do know that there are senators that have been researching that. And I can't speak on behalf of anybody else, but I think this is something that's been brought to light to-- to many, many offices, just to kind of set your mind at ease. But I do hear your concerns, and I appreciate your testimony.

TODD SCHMADERER: Thank you.

WAYNE: Any other questions from the committee? Senator Lowe.

LOWE: Thank you, Chairman Wayne. And thank you, Chief Schmaderer, for being here. What are your concerns toward this legislation, because we've heard concerns about information getting out that shouldn't be out there, testimonies and things like that? What-- what-- what do you think can be done about that?

TODD SCHMADERER: Well, first of all, my con-- my concerns are just unintended consequences. Let's not make things worse as we pursue to make things better. And there are a lot of unintended consequences that will, that could potentially come from the way this is crafted. And again, I-- sometimes a document is meant to be morphed. And-- and I have a feeling this one is meant to be morphed. So as far as the transparency piece, as far as confidentiality, is that what you're getting at?

LOWE: Yeah.

TODD SCHMADERER: Well, there-- there are a lot of laws that have to do with employment rights.

LOWE: OK.

TODD SCHMADERER: And there are-- you know, there-- there's issues with policing that have to be understood in the context of the policies, procedures, and the laws. And when you're talking about somebody's employment-- for instance, if-- if you were facing a disciplinary board, would we know about that? Would we be there? Would we-- we-- would we attend that? In the private sector, you know that's not the case. So the question is: How do you balance that employment right, because officers have to have some employment rights, just like anybody else? OK? I don't know how I can get around that. So we can't just strip them of employment rights. So the question is: How do we

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balance those employment rights but still provide a measure of transparency to the public that things are being done appropriately? If it can be done in that manner, as chief, I think that just benefits me. The question is: How do we nuance that? And I'm open to anybody that might have a suggestion on that, because that-- that's[-- that's a talking point on this.

LOWE: OK. Since this summer's activities that went on--

TODD SCHMADERER: Um-hum.

LOWE: --across the state and across the nation, has-- have-- have you implemented new policies and procedures since then, that maybe might handle some of this?

TODD SCHMADERER: Well, we have. We did a complete, in-depth analysis that-- 70[-some pages long-- we released to the public of our analysis of our-- our handling of the-- the protest events. And that was something that we turned over to the media, even held a press conference on it. We, of course-- and something that we haven't faced in 50 years-- found great room for improvement. And we've initiated policy changes to-- to address those as-- as we continue to see, there in the-- the actual protest events, police operations got better and better each day as we learned-- as to what was going on. So we made a number of changes on those fronts. Incidentally, we dove into every piece of disciplinary matter, every-- every use of force we could locate associated with those protest events. And-- and one of them even culminated in a termination for something I didn't care for. OK? It would be great for me, is if the public didn't have to rely on me to tell them that. It would be great if there was something that could oversee something and-- and sort of give the data, but without violating all the employment rights that are necessary. In addition to that, we worked in cooperation with the ACLU to come up with a moving-forward plan that encompassed change in a city ordinance that wasn't productive for us as a way to enforce protesters in the street, etcetera, and then also how we can better improve our handling of protests that-- that start to become unruly. So there was cooperative efforts and leaps and bounds made. And I think one would expect that of a professional police agency, because the whole-- the whole premise is to try to prevent it from occurring in the first place. And I will say this: Omaha-- we were one of the first major cities, if not the

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first, to come out and say publicly the George Floyd incident was ridiculous. OK? We were completely, 100 percent against that. So as we-- as we're crafting this and as we're morphing this, let's not assume that we're totally against everything that's being brought forward. Let's-- let's realize that we are-- have a little better divergence of thought on this than-- than everybody might-- than might think. We just think that this needs to be done appropriately and right. And then we don't have any unintended consequences.

LOWE: Thank you very much. And thank you for your-- for your service.

TODD SCHMADERER: Thank you.

WAYNE: Any other questions? So I have a few. And I do appreciate the work you guys did over the summer and the-- and the reports and things that are going on. Clearly, there is a distrust. Right? Let's just-- not everybody in the community, I think the 360 meetings and some of the other things have built trust within certain segments, but there's still a majority-- at least in the two areas we represent-- a distrust. And let's take a scenario where somebody commits a crime and gets shot, let's just say.

TODD SCHMADERER: Um-hum.

WAYNE: It's true that you guys would investigate that immediately. If you knew who that person was, you would bring them downtown and you would ask them questions.

TODD SCHMADERER: Right.

WAYNE: But that can't happen to a police officer.

TODD SCHMADERER: It does.

WAYNE: You can bring them down immediately or do they have to wait 24 hours and provide them notice?

TODD SCHMADERER: Well, they have the option of coming down on the criminal and speaking to us immediately. It's what their attorney wants to do at that point. So there's two-- so-- so I'm not lecturing you 'cause I know--

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WAYNE: No, I'm asking [INAUDIBLE]--

TODD SCHMADERER: --you know the system here. There's two-- two separate investigations that would occur. There's the criminal investigation. And oftentimes the attorneys will say, look, we'll let them talk tonight, just like any other criminal suspect. Sometimes they wait; that's-- that's up to the attorney. But the personnel side, the internal affairs investigation, they get-- by police officers' bill of rights, they get 24 hours. After that, they have to come down and they have to answer my questions. They have no choice. Under-- under their career, they cannot come in and say: Chief, I'm not going to answer your questions. They have to.

WAYNE: No, I understand that, but let's say--

TODD SCHMADERER: So-- so the ultimate subpoena power-- you hear subpoena all the time, everybody's-- that's a legal term and it perks your ears up. The ultimate subpoena power is the chief of police. There is not one employee that can dodge any question that I force them to answer.

WAYNE: No, I agree with that. But let's take a officer-involved shooting, 'cause that's-- I mean, yeah, there are some-- some minor discipline that-- or issues that occur. But what gets the communities is usually your offer-- officer-involved shooting or something like that.

TODD SCHMADERER: Um-hum.

WAYNE: But if I was an everyday citizen and I was involved in a shooting, I can get immediately questioned.

TODD SCHMADERER: Right.

WAYNE: Can you-- can you do that, as an officer? Can you immediately question that officer?

TODD SCHMADERER: Well, that citizen doesn't have to be immediately questioned. Their attorney can tell them, do not talk to us or they can say they're not going to talk to us. And that officer would have those same rights. Now, 24 hours later, the difference between a police officer and a civilian is, 24 hours later I can't force that

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civilian to talk to me, but I can force that police officer to talk to me under the internal affairs preview, which deals with employment.

WAYNE: Right.

TODD SCHMADERER: And then anything set in there, by law can't be used against them in any criminal.

WAYNE: Is it safe to say that most of-- if-- if there is ever criminal activity on the part of a officer, you wouldn't really learn about that until after the internal investigation?

TODD SCHMADERER: If there was criminal activity?

WAYNE: Criminal, like typically, it would start with the employment side first and then maybe result in criminal investigation after that.

TODD SCHMADERER: It can go-- it can go all three ways.

WAYNE: OK.

TODD SCHMADERER: It can be simultaneous. Sometimes we-- we learn about it in the-- in the internal, and sometimes we launch the internal based on the criminal investigation.

WAYNE: As any discipline imposed-- and this is, I'm only speaking from-- me only speaking for Omaha,--

TODD SCHMADERER: Um-hum.

WAYNE: --but is any discipline that's imposed-- is that a public document?

TODD SCHMADERER: So the-- if it's a-- if it's a civilian complaint, the-- the person who made the complaint will get a-- get a report from us. That's obviously a public document. And-- and personnel matters are, as to what their status is on the job, is public knowledge. So if somebody asks, what is the status of Officer X, we have to reply, Officer X no longer works for the Omaha Police Department, employment was terminated, resigned in lieu of termination, whatever the case may be. So that is that-- that part of it is-- is public knowledge. The details of it or-- or anything less than that employment status

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ending, that's the part that's-- that's lost. That's-- that's not public,--

WAYNE: So if there's a suspension, that's not public knowledge.

TODD SCHMADERER: Right.

WAYNE: --that's not public record.

TODD SCHMADERER: Unless certain things take place that would afford me the ability to make it public.

WAYNE: What would be those kind of things?

TODD SCHMADERER: There are occasions when an appeal is made that I can say, no, this-- I cannot talk about this; you elected to appeal. There's waivers that the officer can make. And there's also-- I can always talk about what's already in the public's realm. So if there's video out there or something, I can always talk about what's already been out there and seen.

WAYNE: And so-- and just so the public, for their attention of how this bill got created-- obviously, I drafted something similar last year. And for those who are outside the Legislature, you really can't draft bills prior to getting sworn in. And you have ten days to figure out how to do a bill. And I think that's part of the reason why I initially started this conversation with Senator McKinney-- are you amenable to any of these changes-- is because, to your point, I think it's a living document. So I want people to understand that's part of our process with a ten-day limitation. But with-- with that being said, I think part of the issue that Senator McKinney and I have been struggling with is this idea of transparency.

TODD SCHMADERER: Um-hum.

WAYNE: And when you look at child care providers, doctors, anybody else who-- attorneys, anybody who else has a license, if there is any discipline imposed on that license, I can go search it publicly.

TODD SCHMADERER: Um-hum.

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WAYNE: So I-- I can have record of-- man, that officer who did X, Y and Z, I can go look. I mean, DHHS has lia-- I mean, and it's true for Fire, which I didn't know until recently, because they all have EMT license. It's only officers that we don't ever know what that discipline happens.

TODD SCHMADERER: Right.

WAYNE: I think that's part of the big issue. So I just want to kind of hear your thoughts on that. I'm sorry to put you on the spot, but it's just--

TODD SCHMADERER: No, it's--

WAYNE: I think it's part of this broader conversation of, if this committee isn't the right structure, how do we do something else?

TODD SCHMADERER: Yeah, and-- and no problem putting me on the spot. I mean, we-- you know, whether I'm here or-- or other conversations, you don't have a problem putting me on the spot [LAUGHTER]. Look, that-- that issue is something that we're facing across the country. It's not an Omaha-borne issue. So we really need to find out what is-- what is the nuance and the way to splice that, because it's that-- it's that transparency piece of not knowing what takes place during the disciplinary process that is so problematic all across the country. In-- in Omaha, the best way we could slice it, until it can be improved upon, was to do a civilian review board independent of us. We present the case to them. They're allowed to ask for any information that they want, any access. Then we'll give it to them, and then they make their decision. What I-- what I would leave everybody with is: How can we improve upon that? We did that on our own because that was the system we could come up with within the rules. How can we improve upon that? And I'll just kind of leave this with everybody is-- you know, chief of police, when you sit in my chair, OK, you're on an island. OK? We all wouldn't mind some oversight. OK? That's good for everything. The question is, can we do it in such a way, can we morph it in such a way that we don't have great unintended consequences? And also, we don't want a severe detriment to policing, as well. I mean, they-- they have to be treated fairly. They can't be treated more aggressively than-- than anybody else would be treated. OK? They're-- they-- I wish I could get into all the layers of things that we do

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with law enforcement officers. But a trip to internal affairs is about the worst thing that can happen to their career. And they will tell you that. So I would-- I do want to open it up for other questions here, because I-- I have a feeling that we could probably talk for hours and, at least, like talk a few more minutes.

WAYNE: Well, that's-- you know what? And you call me down and I get the-- I get grilled. So I'm going to take a little bit more time. No, there's nothing-- nothing crazy. But like, so the recent changes with the Omaha-- you guys worked on it with the Omaha prosecutor--

TODD SCHMADERER: Um-hum.

WAYNE: --and the judges and everything. Do you feel like there could be a consequence or unintended consequence of maybe everything getting blurred, that we're-- we're not-- that maybe the prosecution and the police relationship is too close, that there's not that demarcation point?

TODD SCHMADERER: On-- so can you define what-- what example we're talking about?

WAYNE: Well, because the diversion program, according to the press release, was a joint effort and it was police--

TODD SCHMADERER: Oh, the Restorative Justice Program?

WAYNE: Right. Correct. And what's odd to me about that is, the police and the county-- and the prosecutor standing together. And I feel like maybe there's not a demarcation point anymore. So sometimes you're getting looped into the county attorney or attorney problem, and they're saying police and county attorney are all the same. It--

TODD SCHMADERER: You know,--

WAYNE: I feel like those lines are getting blurred. And how do we fix that?

TODD SCHMADERER: So-- so we felt that, in order to improve police-community relations, we had a space to do that, that it's-- it's a pretty-- it's a pretty, pretty new concept. And we're getting a lot of attention for it, in a positive sense. Across the-- across the

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country, a lot of agencies are asking what made you think of that? But our Human Rights and Relations office, Police Department, and the city prosecutor, I wouldn't say that we're connected, but our three entities touch the Restorative Justice. And what that is, is if an officer makes an arrest for, let's say, a misdemeanor crime, and that officer makes that arrest, knowing that he or she did so to get out of the moment, to get peace on the streets for that night and then, on the way down to jail, realizes this-- this person committed a law violation, I had to arrest them, but they're not somebody that should suffer from this forever, they're able to say: Can we take a look at this diversion program? And then the prosecutor's office will say yes or no, depending on what the background is of that person. It can also go the other way. The prosecutor can reach out to law enforcement and say these candidates may be open to diversion. What do you-- what do you think? And the-- the beauty of that is there's mediation. The officer gets to talk to the-- this-- the-- the arrestee. The arrestee gets to express their feelings, finally get to see somebody that's not in their worst moment of life. And with that mediation, that Human Rights and Relations will moderate, they can take a community service class and have it expunged from the record. And so we feel, on a microbasis with that one arrestee, we're making big strides. And we hope to extend that to a macropiece to-- to enhance police-community relations. And that-- that's our intent of it. If it bears out that, we think it's great. If there's unintended consequences that force us to pull it back, we're asking UNO to study it for six months to see how that plays out.

WAYNE: My last question is-- is pretty simple. How-- how much-- how many times has your imposed discipline been appealed? And the second part is, how many times it's been reduced or changed. And we can just say the last two years.

TODD SCHMADERER: Last-- yeah. So we-- yeah. So I've been chief for eight and a half years now, and we-- based on the last time that I came to the board, I had a good question from one of the senators. I think it was-- I think Senator [INAUDIBLE] asked me that question. He asked me how many people have been terminated or forced to resign, based on our investigation. WE-- So we went back and looked, and it was-- it was almost 40. OK, so you-- you're talking about a police department that's a-- that does take what we do seriously. If I don't have the highest of standards, just they-- things will snowball and

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snowball and snowball, and I have a department that I don't want. OK? There's 900 police officers. Not everybody is going to be perfect. Not everybody is going to be perfect ten years into their career, after they've been through the rigors of a very tough job. So we have to make sure that we have our best people in play. Over the last two years, I would say that-- that my discipline has been overturned probably--

WAYNE: Or reduced, I mean, I think there is a [INAUDIBLE]--

TODD SCHMADERER: Probably three times.

WAYNE: About three times?

TODD SCHMADERER: Yeah.

TODD SCHMADERER: And that--

WAYNE: OK.

TODD SCHMADERER: --and over the-- over the discipline in those two years, you're talking any-- when you talk of reprimand all the way up to termination, I would venture to say hundreds, just because Omaha is so big.

WAYNE: Any other questions from the committee? Seeing none, thank you for coming down today.

TODD SCHMADERER: All right.

WAYNE: Next opponent.

JIM MAGUIRE: Afternoon, Chairman Wayne Senators, the Urban Affairs Committee. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm here representing the Omaha Police Officers Association, but I'm also the state president of the Nebraska Fraternal Order of Police. We're here in opposition of-- of this bill. And just to give you some-- some reference, I've been a-- a street cop for 29 years. The majority of it was with Douglas County Sheriff's, but I'm-- I'm now an Omaha police officer. And when we talk about this bill, we're talking about police oversight. And in our opinion, it's a bit of an overreach. And-- and here's why. When it comes to police oversight, as police officers, we

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have body cams, there are in-car cameras, there are other officers. Then you have the sergeant, lieutenant, captain, deputy chief, then the chief. You also have civilians out on the street that are-- that are also watching us. So you have civilians that have cameras. Then you have a city prosecutor, you have a county attorney, you have a city council, you have a mayor. You have the Nebraska Crime Commission that oversees police officers. You have the Police Standards Advisory Council that oversees. And then on top of that, you also have the federal authorities. When looking at this bill, there are unfunded and unlimited budget mandates to Omaha and Lincoln. This-- in my opinion, this bill undermines the authority of the Internal Affairs Department. It also undermines the authority of the police chief and his or her administration to do their own investigations and to dole out their own discipline. There are legal issues when you come to the statements that police officers have to make. And you'll hear the word from any-- any union leader is going to say those statements are Garrity-protected. And what that means-- and the chief went over that, saying you have a criminal investigation, but then you have an administrative investigation. I'm being told I have to comply, I have to give those statements. But those statements cannot be used against me in a criminal setting because I have to be completely honest. If I choose not to make any kind of a-- a statement for my job, I'm immediately terminated; that's how it works. So when we-- when we talk about police oversight, it's already here. This bill, in reality, is looking to solve a problem that doesn't exist in Nebraska. There is plenty of oversight. Senator Lowe, you were asking partially on who would be on that board. This-- this is actually in the bill: The oversight board shall employ dedicated staff investigators, none of whom shall have previously been even affiliated or employed by any law enforcement agency, department, or office of such city or of the county which the city is located. What this-- these investigators are given the authority to investigate all officer-involved shootings. So now they're the investigators. You're basically taking away the IA Department that's going to come in and do the investigation that has the authority to write search warrants, that's going to follow up on this stuff. If an officer has done something wrong, they will be disciplined. It's-- it's-- it is simply not occurring where there is not oversight in the state of Nebraska. And a lot of these problems that occurred, thankfully, have occurred in other jurisdictions. So I can-- I can tell you, in the 29 years that-- that I've been doing this

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job-- believe me when I say this-- if cops do something wrong, they will be disciplined. Thank you. I'll stand for any questions if you have.

WAYNE: Any questions from the committee? So you made the statement that we're doing a good job of police oversight. There where is the disconnect between the communities that we represent and that statement?

JIM MAGUIRE: Well, I don't think they-- they truly appreciate what goes into an investigation from an internal affairs standpoint. That's where I think the disconnect is. And the disconnect might be, well, nothing's happening to them. And that's not true. There's plenty of-- of discipline that is being doled out. The chief just-- it-- he just said, I think it was in the last eight years, he's fired 40 cops. There is plenty of-- there are plenty of officers that are getting let go, not just in Omaha, not just in Lincoln, but around the state. There are bills tomorrow that are going to be talking about police improvement. I refuse to say the word "reform" because we've been doing improving-- improvements in police for years. So this is just one component. If it's not as if there isn't a civilian oversight board already occurring in Omaha and Lincoln. So all you're-- you're doing is-- is again, looking for a problem that doesn't exist. The National Fraternal Order of Police did a study on what they believe is the best practice for civilian oversight. And the one they came up with is the one that the city of Omaha has employed.

WAYNE: So if there's a officer-involved shooting, why is there a 24-hour requirement before they can be asked any questions? and are questioned immediately?

JIM MAGUIRE: If there's probable cause to arrest them, they will be arrested.

WAYNE: Even if there's no probable cause--

JIM MAGUIRE: But there's still an investigation. I'm sorry, Senator.

WAYNE: Even if there's no probable cause, if there's a shooting and we're all witnesses and we're involved, we get questioned immediately. Why is there a 20-- I guess, why is there a special protection for a

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24-hour, 24 hours? If the science backs that it should be 24 hours, shouldn't that apply to criminals just as much as it applies to cops?

JIM MAGUIRE: Well, we know that there's that-- that that's what the science says. And it's-- the citizens can always say, I'm not talking. But we can't say that; we are going to have to talk. And all we're saying is 24 hours. A lot of it is just we need to get somebody with a sleep cycle because it is traumatic. And we're just asking the officers, you know, there's-- nothing's being hidden. Again, there are body cams, there are in-car cameras. There are cameras everywhere in this state. And so they will get that the-- the intent is just to get a true and accurate picture of what occurred.

WAYNE: So if the science backs 24 hours, while the officer gets to sit at home, make phone calls and be comfortable, a criminal is detained and questioned over and over again. So do you think it should be a state law that, if the science backs it, that we shouldn't ask any criminals for 24 hours?

JIM MAGUIRE: We have no idea during the investigation if that officer had done any kind of a criminal act. For this-- for the-- if you want to call it the citizen, if there is probable cause, we're going to make that arrest. There might not be-- if even if it's a questionable shooting, if we don't have probable cause, we have to kick them loose and continue the investigation.

WAYNE: But are they even questioned?

JIM MAGUIRE: I'm not going to-- I don't work in the homicide department. So it would be unfair for me to start basically making guesses on how they're going to do their own investigations. Every investigation is going to be done on their own.

WAYNE: I understand that,--

JIM MAGUIRE: Everyone is a little bit different.

WAYNE: --but this is part of the contract. That's why I'm asking you, as a union, can they even be questioned to find out what happened?

JIM MAGUIRE: Sure. They-- they have to-- they-- they can be if they want to waive that.

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WAYNE: Waive the contract or waive their-- the process

JIM MAGUIRE: If they-- if they say, I'm just going to waive that 24-hour, I'm just going to do it. I'm just going to answer the question now.

WAYNE: OK. You said there's body cams. Who controls the cams?

JIM MAGUIRE: Well, the-- the city of Omaha is the ultimate owner of the-- of the body cam. The footage goes to a third party vendor who puts it basically up in the cloud.

WAYNE: Well, yeah, because the reason I ask that is because a body cam was turned off but the audio wasn't turned off where there was a recent Supreme Court decision where the officers said, yeah, we finally got the felony we were looking for, and-- and the Supreme Court overturned it and said, no, that's illegal search and seizure. So my point is, one, that the police control the body cams in some degree, but my bigger question is, if there's an illegal search and seizure that our state Supreme Court has overturned, should that officer be disciplined for violating that constitutional right?

JIM MAGUIRE: Well, it all depends on did they intentionally do it because the Supreme Court, for years-- and-- and not to get too technical on how they do searches, search law changes almost-- almost yearly, almost daily. There's always some kind of a-- of a ruling that comes out and says what you could do yesterday, you can't do today.

WAYNE: That's fair.

JIM MAGUIRE: And a lot of it used to do with searching a car. If you arrest somebody, you know-- let's say-- I'll just throw this out there. Ten years ago, you have somebody under arrest, you're going to search and you're going to impound their car, you could search it. The Supreme Court came down with a ruling that says not necessarily. You have to have certain parameters that you can go in there and search. If not, you're going to have to get a search warrant. So it's up to the individual agencies and the officers to make sure that they are informed of recent Supreme Court rulings when it comes to those sort of things. So they may have thought that what they did was a legal search, and the Supreme Court and the-- and the-- all the-- the

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rulings that come down says, not so fast, not anymore, it's-- that-- that taints the evidence and it's no longer valid.

WAYNE: And-- and-- and again, we go back to this idea, this disconnect. And you said that maybe the community doesn't appreciate it.

JIM MAGUIRE: I don't know if I said appreciate it; I just don't think they quite understand the--

WAYNE: That's all right.

JIM MAGUIRE: --the process.

WAYNE: I'm not offended at that word. But how-- how-- how can they understand the process if it's so secrecy?

JIM MAGUIRE: Well, I don't think that there's-- there's a whole lot of secrecy when it comes to the policies. I mean, you know, there are certain rules they have to-- to take place. But that's really in the best interest of fairness for not only the officer, but to make sure that the departments, when they're doing investigations, are doing a proper investigation.

WAYNE: So then, would you be opposed or would you support the idea of any discipline imposed being a public record?

JIM MAGUIRE: I would be opposed to that, yes.

WAYNE: And why would that be?

JIM MAGUIRE: Do you really want to know if a-- if I was driving my car and I was-- I was speeding five miles over the speed limit, or if I backed my car up and I backed it up into a tree?

WAYNE: Well, but we know--

JIM MAGUIRE: Or are you just talking about specific, because there are-- there is a national database for officers that have been decertified?

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WAYNE: For decertification. But we know, if you want to-- if you want to look up a day care, you-- you'll know if there was a complaint filed, you'll know if they had bedbugs, you'll know if they-- I mean, even a day care. So-- and a day care doesn't have a license to shoot. We have a public database on any complaint filed in that day care. But yet when it comes to officers, we don't know that they were suspended for three days.

JIM MAGUIRE: I would just-- I would say that in this instance, unless it was narrowed-- and we can-- we can certainly talk more about should we have some kind of a database. I'm not-- I'm not-- unopposed to exploring that so long as it's done correctly, with fairness to both the officer and the citizen.

WAYNE: Understood. I appreciate that. And although this might seem like we're going back and forth, we've actually met multiple times at Early Bird and all these other restaurants. We work well together. We're just-- it's a good conversation I think this committee needs to have. Any other questions from the committee? Thank you. Oh, Senator Hunt. Sorry, good catch.

HUNT: Thank you, Chairman Wayne. Thank you for being here.

JIM MAGUIRE: Thank you.

HUNT: You talked about police body cameras as being part of the accountability that already exists for police officers. Would you support laws to clarify that those body cameras, that the records should be available to the public to ensure that accountability?

JIM MAGUIRE: I think that we would-- I'm not going to say that I'm not unopposed to it, so long as it's done in a proper way, because you're going to run into situations where you may have to go into a house and there's a naked child running around. Are you going to-- are you going to have that exposed to that? You may have body cams where, you know, somebody is working as a-- well, we'll call-- a confidential informant, and they're going to have their-- their face plastered and now it can get to the wrong people. And now they're in-- their-- their safety is in jeopardy. I mean, there's-- again, I'm not unopposed to it on, you know, in front of me. But there's-- we have to be very careful with that.

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HUNT: Thank you.

WAYNE: Thank you. Any other questions? Seeing none, thank you for coming down.

JIM MAGUIRE: Thank you.

WAYNE: Just gave free advertising to the Early Bird. Welcome to your Urban Affairs Committee.

BRIAN JACKSON: Thank you, Senator Wayne and the members of the Urban Affairs Committee. My name is Brian Jackson, B-r-i-a-n, and that's J-a-c-k-s-o-n. I am the acting chief of the Lincoln Police Department. I know Chief Bliemeister had the opportunity to testify on Senator Wayne's bill over last summer. We're here again to present information as to the processes the city of Lincoln uses, as well as answer any questions that you may have. Thank you for the opportunity to present testimony and submit information on this bill. The Lincoln Police Department is opposed currently to LB515. LB515 is well intentioned, designed to improve police accountability in the state of Nebraska. LPD embraces spotlight of accountability on our actions. Incorporating the public into our policy decisions, promotional processes, and oversight is embedded into our agency's culture. However, this bill has several-- several critical flaws, including disregard for existing local oversight, threats to the integrity of ongoing criminal and civil investigations, and the expansive, unfunded mandate and the lack of evidence supporting the efficacy of such measure. In 1975, almost 45 years ago, elected representatives from the city of Lincoln passed an ordinance that established the purpose, powers, and duties for the Citizen Police Advisory Board that-- that is in effect in Lancaster County for the city of Lincoln. For the last 45 years, mayoral-appointed representatives from this committee have investigated complaints, listened to public concerns, influenced the development of Lincoln Police Department policies and procedures, and, in general, strengthened the relationship between the Lincoln residents and our agency. This board has evolved as the agency has evolved. Increasing the board's size from seven to nine just recently, increasing the days afforded to the board for investigations, and ease in filing of complaints are all examples of how our elected representatives have remained in touch with the needs of our community. The nine CPAB members serve without remuneration [SIC],

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steadfastly represent the interests of those we serve, and provide an additional layer of police accountability. Moreover, the ordinances, rules, and regulations that govern the CPAB are part of our locally controlled process that accounts for the public's interest, labor laws, and agreements, LPD policies, and any criminal or civil processes. Parts of LB515 duplicate existing oversight and fail to consider the intersection of these important local factors. I believe in the ordinances, the rules and regulations, and the work of the dedicated members of Lincoln's CPAB. During my tenure at the Lincoln Police Department, which is since 1987, the PAR officers have fully participated in the independent investigations conducted by the CPAB. Each complaint received by the CPAB initiates a separate and distinct internal affairs investigation. The CPAB process, while separate, runs parallel and serves as an independent review of the complaints brought forward. The outcomes of the CPAB investigations are presented quarterly in public meetings. The results of all LPD internal affairs investigations are also described during that forum. The ordinances governing the CPAB address the jurisdiction of complaints. The rules specify the board shall not have jurisdiction if: civil or criminal action related to the complaint is pending; regardless of whether the complaint is a party of-- to the action; the complainant has filed a civil action based on police misconduct alleged in the complaint. These rules are designed to prevent compromising the integrity of ongoing criminal and civil investigations. The release of information prior to trial in criminal investigations has the potential to circumvent rules of discovery and will compromise the safety of victims and witnesses. While existing Lincoln municipal-- municipal ordinance provides these safeguards, LB515 currently does not in its current form. LB515 would also inhibit the cooperation of witnesses. The rules and regulations guiding the hearings of complaints from Lincoln's CPAB state: Throughout all complaint hearings and in all reports of the board, the names of the complainants and officers shall remain confidential to the extent permitted by law. The public release of information, as described in LB515, may not only jeopardize an individual's constitutional right to a fair trial, but also dissent-- deinceivize the cooperation of complainants and witnesses, as well as undermine the public trust in the CPAB by releasing private and very personal information provided by victims of crime or misconduct to the media and, ultimately, to the public. LB515 is an unfunded mandate, placing the financial burden on local government, a cost that

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could reach into the hundreds of thousands of dollars by requiring compensation of independent investigators and legal counsel.

WAYNE: I need you to-- I need you to wrap up, sir.

BRIAN JACKSON: Yes, sir. In addition, it requires all costs associated with the oversight board be covered, negating budgetary quality assurance methods, an unfunded mandate with an exorbitant price tag that dismisses the relevance of existing sides.

WAYNE: Thank you.

BRIAN JACKSON: Essentially, we-- we oppose it,--

WAYNE: Sir.

BRIAN JACKSON: --but we are willing to have ongoing, additional conversation.

WAYNE: Thank you.

BRIAN JACKSON: That's it.

WAYNE: I'm just trying to be a little consistent. Somebody-- I'm pretty sure somebody will ask you a question, if you have anything else. But do you have any questions? Senator Hansen.

M. HANSEN: Thank you, Senator Wayne. Since you're from my city, are there any final thoughts you'd like to share?

BRIAN JACKSON: I don't hear-- I don't hear as well as I should, so--

M. HANSEN: Sure. Are there any final thoughts you'd like to share?

BRIAN JACKSON: Again, just to stress that we're more than willing to have further conversations reference this. We believe we have a strong foundation in Lincoln, and our Citizen Police Advisory Board has worked very well for our community, our police department, and our citizens, and-- which is why we-- we can support such a-- such a police oversight, because we do know it works 'cause we see it every day.

M. HANSEN: OK.

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WAYNE: Any other questions from the committee?

BRIAN JACKSON: My apologies if I went over.

WAYNE: Nah, you're OK.

BRIAN JACKSON: No. Thank you.

WAYNE: Try to be consistent. Thank you.

BRIAN JACKSON: No, absolutely.

WAYNE: Next opponent. How many other opponent testifiers are we going to have here today? Just two? Three? OK.

BRUCE FERRELL: Good afternoon. My name is Bruce Ferrell; that's B-r-u-c-e F-e-r-r-e-l-l. I'm the police chief for the city of Wahoo. I'm also the second vice president for the Police Chiefs Association of Nebraska. I want to thank Chairman Wayne and the members of the Urban Affairs Committee for allowing testimony today in opposition to LB515. Again, while LB515 proposes the metropolitan cities of a primary class will be subject to this bill, PCAN's concern is that, once this legislation moves out of committee, that other size cities, county sheriffs' departments, and even the Nebraska State Patrol could be added now or in the future. You know, they've talked-- we've talked about unfunded mandates, especially for smaller communities such as Bellevue, La Vista, Kearney, and Districts 37 and 41, which are all represented by this committee. It's an exorbitant price tag. I think if you were part of the discussion under LB1222 last fall, Mayor Black, from the city of Papillion, testified that his community indicated, for a city of his size, it would need over \$300,000 that would not be annually budgeted for, to pay for the advisory board staff and investigator. We also have concerns about where will these investigators come from, as they cannot be affiliated or-- and have any part with any city legal, law enforcement, county or city or municipal government. Where will these investigators come from? Where will they be trained? Where will we be-- where will the training come for the advisory board? Because they are-- these are complicated and-- complicated policies and procedures that law enforcement and the city officials deal with, both at the criminal level, as well as the internal affairs level. It also is-- the chief from Lincoln has said

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just recently, it also appears to undermine investigation of criminal conduct as a way to bypass law enforcement's ability to investigate, substitute for grand jury proceedings, as well as establish Garrity protections to officers involved in the alleged criminal investigation. We also know that we constantly review policies and make changes. As an example, many agencies have adopted the duty-to-intervene policies. Many smaller communities, outside the metro areas, use other organizations like LARM, NIRMA to review their policies, ask for research in training best practices and policy development. Agencies have policies to investigate citizens' complaints. And other agencies ask other agencies for assistance with conflicts of interest and criminal complaints of officers and staff. Another concern that we have is, we already have a number of-- of-- of oversight that the chief has mentioned. But I'll just mention right now, for each municipality of the first class, the civil-- the civil service commissions. For cities just below first class, we have the mayors and city councils, the Nebraska Crime Commission, Police Standard Advisory Council, the Nebraska Attorney General's Office, the Nebraska State Patrol, as well as the FBI. So there are a number of other avenues in which these conflicts of interest can be resolved, and people have other opportunities to voice and have their opinions heard. And I applaud the city of Omaha and the city of Lincoln both, because they've already committed and put in place additional transparency and modifications to existing oversight boards and changes in their policy. PCAN believes that many of the issues and responses to a citizen's complaint of officer misconduct can also be addressed in upcoming bills, such as LB51, which is scheduled for tomorrow in the Judiciary Committee. I would urge you not to vote this and send this bill out of committee. We would be happy and be willing to take a look and work with Senator McKinney and to address potential issues that are upcoming. One of the ones that we've just heard about recently was body cameras. Right now, under the state statute, the state--the Nebraska Supreme Court, body cameras are considered investigatory. They can be released if the agency choose to, but the state Supreme Court, under-- under the Phillips case, said that we don't-- they're investigatory, we're not allowed to release those. We also have grand jury protections. I'd urge you also to understand what exactly-- and how many of these police misconduct cases are there, really, around the state, outside possibly Omaha and Lincoln? There are very relatively few. In my case in my city, I've been the chief of

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police for over three years. I've had four citizen complaints, none for misconduct. And I think-- would say that many of those same situations are across the state. Again, I see my time is up and I'd be happy to answer any questions that the committee may have.

WAYNE: Senator Blood.

BLOOD: Thank you, Chairperson Wayne. Thank you for your testimony. So if I heard-- thank you-- if I heard you correctly, you are very familiar with what's going on across the state in some of the other municipalities?

BRUCE FERRELL: Yes.

BLOOD: So Senator Arch and I were fortunate enough to sit in on a Zoom call with the Sarpy County authorities, and they were concerned about a lot of these bills that are coming forward, and the fact that they didn't want to see them throw the baby out with the bathwater. I think it's an exact expression that they used in that call. Knowing that this bill is about metropolitan class cities and primary class cities-- Omaha and Lincoln are the only two that we have that fit that criteria-- and that it wouldn't apply to first class cities, does that change your opinion about the bill at all?

BRUCE FERRELL: Well, Senator, what I will say is, originally this bill was for cities of 5,000 or more. Once it leaves this committee, any senator can make an amendment and we can have first class cities, county sheriffs. So 30 to-- 30 to 32 cities of the first class could be affected, 56 out of the 93 counties would be affected, and the Nebraska State Patrol. So that-- that could be amended at any time, now or in the future, to add those municipalities and those counties and those organizations under the-- the parameters of this bill.

BLOOD: So if I hear you correctly, your concern is that, once we open the gates, more will happen.

BRUCE FERRELL: There's that potential, yes.

BLOOD: Although when we look at county-- and don't worry, I am leading to a question. When we look at counties like Sarpy County, we-- we're very unique in the fact that-- name another county where municipalities touch. I mean, La Vista touches Papillion, touches

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Omaha, touches Bellevue. Bellevue touches Omaha, touches Pap-- you know, it's-- it's very different. We can literally walk across the street and there's another municipality. And so the benefit in Sarpy County has been that we've been able to share resources to our benefit. In fact, I feel, in Sarpy County we've got the-- no offense to anybody else-- the best of the best, because we are always striving to be better. So-- so knowing that these issues, at least at this time, don't appear to be problematic in Sarpy County specifically, are you not confident that senators would look at the facts before they would make that type of decision?

BRUCE FERRELL: I'm saying that they-- they would look at the facts. But what I'm saying is that originally this bill was for cities of 5,000 or more. There is nothing that says that it couldn't be changed back to that once it leaves committee, once it gets on the floor for open debate. And even in Sarpy County, under the old bill, each individual municipality of 5,000 or more would be required to have a police oversight board. So Bellevue, Papillion, La Vista, the county, if they included the county sheriff, as well as any other city of-- which I think those are the main cities in Sarpy County.

BLOOD: Right. And-- and-- and I'm not questioning your opinion in any way. I just want to make sure that we get some of this on the record, because, if indeed we were to go back and reconsider something, we would want to have something that's positive on the record, as well as the negative.

BRUCE FERRELL: Sure. And like I said, I'll echo what Chief Schmaderer and the chief from Lincoln, and I'm sure all the other speakers would say, is we're open to looking at how to make this better. But what it looks like is, in both LB1222 and how this is-- is a-- is a process that-- again, Chief Schmaderer has already talked about talking with the-- one of the premier entities in the country that talks about police oversight, and they're recommending the oversight as to what the Omaha Police Department is doing. That-- that is different than what this bill is. So, again, how do we make the-- either a melding or compromises or such that would work towards that goal?

BLOOD: And-- and it is your understanding that the senator that presented this, though, was willing to work with you on that?

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BRUCE FERRELL: I understand that, yes.

BLOOD: All right. Thank you.

BRUCE FERRELL: I'm just voicing both, our concerns now and in the future, for the Police Chiefs Association.

BLOOD: Which I would expect from PCAN-- absolutely. Thank you.

WAYNE: Senator Hansen.

M. HANSEN: Thank you, Senator Wayne. And thank you for being here. Following up, at the end of your introduction, you talked a little bit about the status of body cam footage.

BRUCE FERRELL: Sure.

M. HANSEN: And you talked about the Supreme Court decision that ruled that it is not currently a public record.

BRUCE FERRELL: Well, again, that-- that at that time, that was for in-car camera videos.

M. HANSEN: Yeah.

BRUCE FERRELL: I think that would also stand as a-- as the precedent for body cameras. What I will say on the body cameras is that they are tightly controlled. There's audit systems to--

M. HANSEN: Sure.

BRUCE FERRELL: --make sure that those cameras are not-- and that footage is not tampered with. And I know that-- that there-- there-- it's a sound process that all the agencies that employ body cameras in the state have.

M. HANSEN: Sure. I appreciate you saying that and laying that history down, 'cause my question is kind of the next step. I-- I didn't miss-- you might have said this in your testimony, which I was trying to get to. Is-- is that current standard-- did you bring that up because you believe that was a good thing and it should stay or that you thought

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that changing body cameras to be more accessible could be a bit of transparency?

BRUCE FERRELL: I think that we need to have lots-- lots of discussion about that, because as with the-- with the-- what President Maguire had to say, as well as the chief from Lincoln, is there are issues, both victims, witnesses,--

M. HANSEN: Right.

BRUCE FERRELL: --types. What can be released under state statute that can't-- grand jury proceedings, a number of other issues that, if we-- and again, I know that agencies, including the Omaha Police Department, have released body cameras once the investigation has been completed.

M. HANSEN: Right. OK, thank you.

BRUCE FERRELL: You bet.

WAYNE: Any other questions? So has this organization reached out to myself-- well, I know they haven't-- or Terrell McKinney-- Senator McKinney regarding anything you want to see in the bill?

BRUCE FERRELL: Not-- not at this point, no. We-- we saw the bill. Like you said, it's a ten-day term with that. We've been-- again, there's the big-- there would be time, I would imagine, between now and, should this make it out of committee, to sit down to-- with your-- either yourself or Senator McKinney and the other organizations to try and see where we can make this a potentially better bill or maybe split it up into other-- other bills, like LB51 or other bills that talk about training policies, procedures, misconduct, etcetera.

WAYNE: Because, I-- I mean, so it's interesting to me, as I introduced LB12-- LB1222, which did apply, and that was in August. And here we are in February and there's been no dialogue. So-- so that's interesting to me. What, in the bill, do you like?

BRUCE FERRELL: Well, I will say that what I can see in the bill, between LB1222 and this version, is that there's only been two changes. One change is we're moving from the 5,000, which I think is a positive thing. The other thing was the changing of the selection of

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the board members. Under the original bill, LB1222, board members could not have any affiliation with the city, county, etcetera. That would be totally for-- especially in its previous form, would be totally unattainable, because in smaller communities, everybody knows the police chief, they know the-- the mayor, they know the city council. They're related to them, they've worked with them. It's very difficult to find that person who does not have that affiliation.

WAYNE: So part of your reason for not wanting to support the bill is that we could open this up to anything else. But you're going to support LB51-- not LB55, that's my bill-- but LB51. But now that we've had a hearing, there's nothing stopping me from putting this on LB51. So why would you support that bill but not support this bill, if the fear is I can open it up to first class or smaller communities?

BRUCE FERRELL: Well, there's-- there's-- again, we-- we're ready to discuss what our position is tomorrow, in support of LB51 or not, or as what more changes in LB51, as well as LB551.

WAYNE: So we can always-- I'm just-- I guess my point is we can always put an amendment on any bill, as long as I have 25 votes.

BRUCE FERRELL: That's correct, you can.

WAYNE: It's going to happen. So not-- not supporting the bill or supporting the bill because of the fear of the unknown, it's always the camel's nose under the tent, no matter what bill we have. It's a-- it's a slippery slope [INAUDIBLE].

BRUCE FERRELL: Well, I-- I think what it is, it-- it boils down not only to the fear of the unknown, but also the issues that were raised by Omaha and Lincoln, that there are some fundamental issues with the bill that they've already stated, that whether it stays in-- just with first class or metropolitan is going to be the same issues, even if it goes to smaller communities.

WAYNE: That's fair.

BRUCE FERRELL: So we're-- we're supporting the-- the metropolitan area in the primary first class when it comes to that, with also our concerns that, if it were to-- move to a different phase where it'd go to smaller jurisdictions, as well.

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WAYNE: What was-- what's your thought on the idea of-- of discipline being public as part of-- as part of the license?

BRUCE FERRELL: You know, I-- I haven't really thought about the public aspect of it. I know you were talking about other organizations, like the Bar Association having their public discipline online.

WAYNE: Actually, there isn't any other license in Nebraska where you can't search the discipline, except for police.

BRUCE FERRELL: Right. The concern that I mostly have with this bill is that it would also open up the process to the public. If you had the same bill come before, for the Nebraska Bar Association, I would think you would have a line of opponents, as well, about the process. Whether discipline is public or not, that's something we can discuss. And I don't have the expertise when it comes to the-- the labor law and personnel law to say whether that's a good thing or a bad thing. I'm certainly willing to talk about it and become more educated about it. But it's the process, I think, that's more concerning to me, that it-- there's no other professional organization that doesn't quote police itself and where they use the expertise of that profession because they want to have that profession be the most professional and both most responsive to its community or to its participants, than the police, than police officers. And so I-- that's my concern is no other-- whether it's the bar association, doctors, the judges commission, their process is secret, as well.

WAYNE: It's-- it's secret, but there is-- well, you wouldn't say that the police is a public servant, though. Right? I mean, I think-- I think we would agree with that.

BRUCE FERRELL: But the same as judges? The same as other doctors? They're public servants.

WAYNE: I think judges are a little different. And-- and-- and-- but if I have a complaint filed, I go before a public board. The NADC is a-- is a part-- partially public board for my public service that the public gets to decide on a discipline if I appeal it up that far. So--

BRUCE FERRELL: That's one of them, yeah.

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WAYNE: One of them, right. So if we took this whole process and got rid of "the community" and put it all inside of the Nebraska Crime Commission, would that change how you felt about it? And there's also--

BRUCE FERRELL: I'm not-- I'm not sure what--

WAYNE: There's also-- I guess my point is there's also public on the Nebraska Crime Commission, too. So what-- what's the issue with the public?

BRUCE FERRELL: Well, the investigations done by the PSAC and/or the Nebraska Law Enforcement Training Session-- Center are not public, the investigation itself. The-- the rulings, I believe, may be-- they may be public, as far as whether they're decertified or not.

WAYNE: Right, right.

BRUCE FERRELL: But-- and that's covered under LB791. But we don't-- again, that's why I think, prior to this bill being brought forth to this committee, maybe we could have sat down as a group, all the-- it's all the groups, as well as yourself and Senator McKinney, and come to some, you know, positive processes before, again. But maybe that's the-- that's the way it should work, is--

WAYNE: Yeah.

BRUCE FERRELL: --the bill gets introduced--

WAYNE: OK.

BRUCE FERRELL: --and we have this discussion, and then we determine later on how it works.

WAYNE: No, I-- I appreciate you being here. I won't ask any more questions, but I will tell you that trying to have discussions before bill introduction, from a senator's standpoint, is very difficult. People don't take it seriously until a bill is introduced. And then everybody wants to actually sit down and talk. So I do appreciate it.

BRUCE FERRELL: I certainly understand.

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WAYNE: And thank you for coming.

BRUCE FERRELL: But that-- it's-- certainly it's a- a new way to-- maybe we'll look at it, so--

WAYNE: I agree. I appreciate it. Thank you, sir. Any other questions from the committee? Seeing none, thank you for being here today.

BRUCE FERRELL: Thank you.

WAYNE: Next opponent. Is anybody testifying in a neutral capacity? I hope that we won't be here that late. Welcome to your Urban Affairs Committee.

JASON WESCH: Thank you. Afternoon. My name is Jason Wesch, J-a-s-o-n W-e-s-c-h, and I'm here on behalf of the members of the Lincoln Police Union, speaking in opposition to LB515. And I want to be up front with all of you right away. This is my first time here. And I learned something after the first two testifiers: I should have went first [LAUGHTER] because-- and I'm not making light of your bill. I- I apologize, but it's always good to learn. Right? So I-- I'll try not to echo too much of what my chief, Chief Jackson, said. I think he went three hours, or so, ago. But Lincoln has had a oversight board since 1975. We've been very happy with it. The union is in no way opposed to the oversight board. I think we've worked well with it, the way that it currently functions. It may have changed in form and function over the years, but we believe it provides a voice to our citizens, and we appreciate the work that they do. Some of the things that an oversight board, under LB515, that the union as opposed to-- we believe that the board, under LB515, would simply have too much power. It would have no systems of checks and balances. It seems to have unlimited funding, subpoena power. As I'm reading the bill, I wonder about who the members would be. Chosen by the mayor, approved by the city council, but what would their background be to determine, for example, if police misconduct is a crime or not? Under LB515, the board, with that, would have complete access to case files and personnel files, including on open cases, the ability to take findings to the media if they-- at their sole discretion, even if they disagree with the agency investigating the case. And the members of the board would not be subject to civil liability. We believe that some of these aspects could hamper investigations by the police department. There

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seem to be no repercussions for the members of the board, despite having access to so much information from their local department. We think that the system, the oversight board in Lincoln has worked well for years, and, if it's needed statewide, that the rest of the state should look to Lincoln as a model. And that's all I have. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for coming here today.

JASON WESCH: Thank you.

WAYNE: Next opponent. Welcome to your Urban Affairs Committee.

BUD SYNHORST: Good afternoon. If I make a good joke, does that mean I get less questions? Good afternoon. My name is Bud Synhorst, B-u-d S-y-n-h-o-r-s-t, president and CEO of the Lincoln Independent Business Association, representing over 1,000 businesses, primary-- primarily located here in Lincoln and Lancaster County. And a significant part of our mission is to communicate the concerns of business community to elected and appointed officials at all levels of government. Chairman Wayne and members of the committee, thank you for the opportunity to be here today and testify in opposition of LB515. First and foremost, we want to affirm our belief that police oversight boards provide a great sense of transparency, and enhance trust between local law enforcement and the public. It is important to have members of the public involved to assist with policing policy. However, opposition to LB515 comes from the fact that both the city of Omaha and Lincoln already have police advise-- citizen police advisory boards, which are coordinated by their respective mayoral offices in Lincoln, and CPAB was established in 1975 to resolve citizen complaints regarding police performance. Complaints to the CPAB may be filed in person or in the mayor's office. Within working-- within 30 working days of a complaint, two members of CPAB meet with the complainant and the officers involved, and two members of the department. Recommendations on discipline and policy are based on these reviews and given to the Lincoln Police Department Internal Affairs Unit, who ultimately handles each complaint. Similarly, in Omaha, Mayor Stothert created a new Citizen Complaint Review Board this summer, which will identify areas of concern regarding the thoroughness of investigations, violations of procedures, and absence of necessary procedures. They will also submit commendation and reports to the mayor. We are in

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opposition of giving a police oversight board statutory power to subpoena and independently investigate such complaints. The citizens selected to serve on such boards would not-- would likely not have previous experience in law or existing police policies to both adequately judge and determine recommendations to the local police department. By giving a board such authority, infers that existing police departments' internal affairs units are incapable of providing fair outcomes to complainants, whereas in Lincoln, the relationship between the CPAB and LAPD is mutually respectable and both parties work well together. I would say, Senator Wayne, regarding your comment on the czar earlier, in previous years in Lincoln, we had a director of public safety which actually oversaw both police and fire. I don't know if that's a model that you are aware of, but I wanted to share that on the record so that you were aware that that position was in existence. It was created by, I believe, Mayor Beutler and was in existence. So we urge the-- the committee-- so, again, senators, we-- we believe there are some opportunities there to have a conversation. But as it's written, that's where our opposition comes from. Thank you.

WAYNE: Thank you. Any questions? In four years you have never supported one of my bills [INAUDIBLE].

BUD SYNHORST: I've always been a year and a half, Senator, so we have some [INAUDIBLE].-

WAYNE: No, it's-- you're fine, you're fine. I was just giving you a hard time.

BUD SYNHORST: And I know who the last opponent is. And I wanted to get out of here before [INAUDIBLE] came up here. Thank you all.

WAYNE: Have a great day. Welcome to your Urban Affairs Committee.

LYNN REX: Thank you. Senator Wayne, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First of all, we do appreciate Senator McKinney introducing this bill to have this discussion. I think it's a good follow-up to LB1222 and the hearings that were held by the Judiciary Committee on October 15, 2020. We take these issues very seriously. We do appreciate the fact that this bill, as drafted, only applies to

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Lincoln and Omaha. I think that is a great point, to look at the overview boards that they already have. They constitute sort of best practices in the country in terms of how you have citizen overview. And I think that's a great starting point. And I don't know, Senator Wayne. From the indication before, you've had a number of discussions, apparently, with Jim Maguire and others-- I'm guessing Sean Kelley, Julia Plucker, and many others along the way. So-- and perhaps Senator McKinney has, as well. But the League of Nebraska Municipalities stands ready to also work with this committee. I think there are some very important things, and I won't go through all of the issues because you've had a long afternoon. But certainly undercutting the role, and the responsibilities, and accountability of the chief of police is critically important. The buck has to stop someplace, and in a municipal police department, it is the chief. And so I think that's extremely important to not undercut that. In addition, I think some of the issues that were brought forward before also apply here, which is not to undercut the ability and willingness of witnesses to come forward. Under this bill, when these reports then become public record and the entire transcript becomes public, how likely is it that witnesses are going to come forward if their names are going to be public? Secondly, how likely is it that a police officer will come forward and basically-- I don't know how else to say it-- out another officer that's not using best practices or not following protocol? The league's president and immediate past president is Mayor-- former Mayor Dwight Livingston, of North Platte; he chose not to run again, which we regret. But one of the things he testified about at the hearings, both on LB1222 and again on October 15, and based on his experience of over 40 years of law enforcement as an assistant police chief in the city of North Platte. And one of the issues that he undercut repeatedly and, I think, emphasized was the fact that the importance of having individuals who really do understand what the protocols are and what the police officers are trying to do. I mean, one of the concerns here, cost is always important. But let's look at what's happened to George Floyd; that matters, that is profound. And something, I think, in terms of trying to what this committee can do, and in consultation with Judiciary Committee and other committees, is look at what we can do to improve upon what we have. And I guess what I'm trying to suggest to you is that what we have in Omaha and Lincoln really are some of the best practices in-- in the United States. The National League of Cities has looked at best practices. Basically, I'm

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sure the Biden administration will continue looking at best practices, as well. And these are things that are important, but to strengthen what we do have and not try to undermine-- and I know that's not the intent of this, and I know that's not been the intent of LB1222 and other provisions, as well. But in North Platte, for example, they tried to intentionally look for people on their Civil Service Commission that governs police departments and what happens in Chapter 19, Article 18, governing first-class cities. So again, we do have a concern about this effort and what the amendments might be. But as you indicated, Senator Wayne, amendments happen all the time. We understand that, but we do hope that the committee will not advance this bill, certainly in its current form. And we look forward to working with you if there's any information that we can provide. With that, I'm happy to answer any questions that you might have.

WAYNE: Any questions from the committee? Seeing none, thank you for coming today.

LYNN REX: Thank you very much. Thanks.

WAYNE: Next opponent. Everybody's here for inland port authority-- woo-hoo [LAUGHTER]. Anybody in that neutral capacity? Seeing none, Senator McKinney, you are welcome to close.

McKINNEY: Thank you. First, I would honestly like to point out that we heard a lot about oversight and being OK with transparency, but what was left out of the conversation was the relationship that police and law enforcement have had with my community for centuries. That's what left out of the conversation. There's-- there's other communities across the state that may not have misconduct cases and situations. But in my community, I invite you all to join me and walk-- we can walk through North Omaha, and we can hit every corner. And I guarantee you, you will find somebody that will tell you that an officer mistreated them. That should not be left out of the conversation. There is an amendment that states: A member of-- a member or employee of an oversight board shall not be held civilly liable for any reasonable action taken or decisions made under the missable-- under the missable-- Municipal Police Oversight Act, unless such actions or decisions are negligent or amount to recklessness or intentional misconduct. I would also like to state that the job descriptions between the city council and oversight committee are different. It--

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it may seem like it's circum-- circumventing the city council, but it isn't. It's not adding-- it is not taking away power from the city council. And-- and also, what we don't want to continue to have is people in a position of having to shake hands with individuals that point 12-gauge shotguns at their heads. I was a kid living in the projects in Omaha, being woken up to an assault rifle at my head by the police, and then to be walked downstairs and watch them talk to my mom like she was less than human. That's not uncommon in my community. I would-- I would like to restate something that I've said in my open-- opening statement. Transparency and taking extra steps to help manage expectations is a huge part of being in any position of authority or higher bargaining power. Similar to the processes we have here at the Legislature, there's often a deficit in what people think happens here and what actually happens in the walls of the Capitol. To this, we-- we respond with more information. We respond with ways to engage. We respond with transparency. We are the individuals who are in positions of expertise. It would be irresponsible of us not to take a role of overexplaining to people what we do. The same is true for entities and individuals tasked to protect and serve. Why does the process have to be secretive if there's transparency? How can you say we're OK with oversight and transparency but still seek to have it secretive? It makes no sense to me. Chief Schmaderer mentioned the diversion program. And I'm sitting here listening, and he's like, if an officer makes a mistake, he can advocate for an individual to get diversion. Why does an officer have to make a mistake for somebody to get diversion? Why does somebody have to be mistakenly arrested, put through the traumatic situation of being booked in a county jail, to only be given diversion? Where's-- where's the justice in that? The-- and the science actually says that the sooner you, you know, you tell your story or your memory, the better off you are. I'm sitting here thinking, waiting 24 hours is crafting a state-- crafting a story that isn't similar to what happened. I'm not trying to undercut the chief of police or anybody on a police force, but I do need, and the individuals, the individuals that have oversight over me, the people that elected me are seeking oversight, independent of the police chief, the mayor, and the city council. And I'll-- I'll be happy to open-- answer any questions.

WAYNE: Any additional questions for Senator McKinney? I do think it's important that the context-- one, why I didn't ask questions about the

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history. Unfortunately, it probably didn't serve no purpose because, at the end of the day, people have to understand that it was my father's generation where-- where a beating by cops-- and cops were part of organizations that discriminated and were racist. So when people say, why is there this issue of community trust or of this disconnect between police and the community, that was just one generation. It doesn't change the fact that I've been pulled over, and you've heard Senator McKinney's stories about things that happened to him. That's just one generation removed from documented racism in the police department-- in Omaha. So there's a disconnect. There is a disconnect between the community and the police. And I think that might have not been mentioned, Senator McKinney, not as a default to our history or to be negative towards our history. I just felt, as Chair of this committee, it probably wasn't going to go anywhere with me and Schmaderer, or many having that conversation. Right? It doesn't go anywhere. But that is the context of which we're talking about. And to what you're saying is, part of the community we represent-- and I'll-- I mean, Senator Hunt does a great job of posting and making sure that people know the process. And we've been doing it more because it is. In Lincoln, it's-- it's you walk in, the community kind of forgets about it. But if you take a negative history of police interaction with the community, then we have to overemphasize not only communication, but accountability, even if it's for a short period of time to build that trust. And I look forward to working with you on this bill to provide oversight. And I do think we can get it out of this committee and I do think we can get it to the floor. I don't know what necessarily that looks like in shapes. But we would do a disservice to communities if we don't try-- right?-- at the end of the day. And for people that come in and testify that things are good and we may have the best model, none of that matters with this disconnect. I know some of the best professors in the world, but if they can't connect with the student, it doesn't really matter. And that's what I think is being lost in these conversations and why I'm happy this bill came to Urban Affairs, because Judiciary is just so busy, and I don't think they can have the full conversation that we'll have over the next 30 days. But that's the context. And so I'm telling you that because I don't want you to think I intentionally left it out for some negative reason. It's just that, that wasn't going to go anywhere positive today. So-- and we both know that. And with that, there's not any more questions. We have lots of letters. We have written

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testimony: proponent, Angela Amack; neutral, Joe Kohout with the United Cities of Sarpy County-- and oh, Angela Amack with Everytown for Gun Safety. We have letters of support from: Nebraska Appleseed; a letter of support from National Association of Social Workers; a letter of support with Angie Phillips; a letter of opposition, Susan Gumm. And with that, that will close the hearing on LB515. I guess I'll turn it over to Vice Chairwoman Hunt.

HUNT: Thank you, Senator Wayne. Next we have LB156 introduced by Senator Wayne. Welcome to your Urban Affairs Committee.

WAYNE: Good afternoon, Vice Chairwoman Hunt and members of the Urban Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the Legislative District 13, which is north Omaha and northeast Douglas County. I'm smiling because I never thought this bill would be here in the state that it is today. As many of you recall, in 2018, I first introduced this crazy idea of a port authority. It's-- wasn't sure what it was going to do, but we knew that most people think port authorities as strictly on the coastal states and a number of states have successful inland ports, believe it or not, for river, river barge traffic. My focus initially was increasing the river bar traffic to develop the airport area in north Omaha, which I've talked about for four years now. And then we started doing more research and talking to more people and we found out about the Port of Huntington in the Tri-State of West Virginia, the Port of St. Louis, Missouri, Port of Pittsburgh, Port of Memphis, and the Port of Kansas City. So it wasn't a foreign idea, but we were still doing more research. Then in 2019, the concept of developing an inland port in Nebraska was among the recommendations by Blueprint Nebraska and that led to the identical bill that's introduced in LB156. And I have no idea how Blueprint got my idea, but I'm glad they did because since then, it's been highlighted by a lot of people. But I was never given credit and that's fine. I don't need credit. I just want this passed. So LB156 is about a Municipal Inland Port Authority Act. Similar to the concept that was envisioned by Blueprint, the bill is designed to facilitate the development of major logistics and industrial hubs. The bill-- under the bill, the city of a metropolitan class, city of the primary class, or the city of the first class could create an inland port authority in eligible areas within the corporate boundaries or within their extraterritorial zoning jurisdiction. Eligible-- eligible areas must be greater than 300 acres and within certain distance of

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two forms of existing transportation infrastructure: navigable rivers or navigable waterways, major rail lines, the interstate highway system or a four-lane divided highway, or a major airport. Under LB56 [SIC], an inland port authority would be governed by an elected board of commissioners on varying size and depending on the classification-- city classification. Most of the powers granted to inland port authority under the bill are based off of port authorities in other states. In fact, this bill was based off of Missouri and Utah. Several individuals behind me will-- will testify about what their vision is or what they think the port authority could be or should be. And with that, I will answer any questions.

HUNT: Thank you, Senator Wayne. Any questions from the committee?

WAYNE: Senator Arch.

HUNT: Senator Arch.

WAYNE: Oh, sorry.

ARCH: It bounces around in here. So where do you see-- in the state of Nebraska, where do you see possible use of this?

WAYNE: So Omaha, Sarpy County, Norfolk, but I've always envisioned-- when I got down here, what-- and I guess to answer your question directly, I've always envisioned that Nebraska should have, like, a "bell bar" where we got Omaha and we got to have a bigger anchor out, out west, so North Platte-- and that's why we picked two other forms-- and even Scottsbluff, I think, are areas that, that would qualify. And that's how we drafted it because we are looking for the next major Toyota or Tesla or whoever wants to bring a-- some type of heavy industrial or major industrial here. We got to have the land and they got to have transportation.

ARCH: OK, thank you.

HUNT: Thank you, Senator Arch. Any other questions? Senator Blood.

BLOOD: Thank you, Vice Chair Hunt. Senator, I, I love your bill by the way. So we talked a little bit about what this would affect. So let's talk Bellevue. Bellevue, which we have a bill, LB9, which would partner so well with this on a Christmas tree bill-- get that

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plug-in-- being by-- not only by the Missouri River, but also by a rail line. So as a community that is basically landlocked and trying to find ways to go south, sounds like this would be a good support system-- yet another tool in our toolbox to-- to mobilize Bellevue.

WAYNE: Yes. Yes and so, you know, the idea came about because of, of Eppley Airfield, but Iowa has a port authority--

BLOOD: Right.

WAYNE: --and that hindered Council Bluffs and Omaha ever trying to do something jointly. And this was back in the '50s and '60s and there was kind of a bill in the '70s. Bellevue was mentioned in the '70s around Offutt, trying to figure out how to do more navigable water and things like that when Offutt started growing. Military shifted a little bit and the conversation stopped, but I do think this is an opportunity for Bellevue, Omaha, the metropolitan area, two-county areas to really go out and develop and really try to bring in some major jobs.

BLOOD: And so the purpose is maybe to take some areas that are currently kind of stagnant and helping them not be stagnant?

WAYNE: Correct.

BLOOD: All right, thank you.

WAYNE: If you'll recall, one of-- some of you might have been around-- that there was a major manufacturer, car manufacturer who was looking here-- to come here and part of the issue was trying to get the land and they would-- the chamber and everybody went out and kind of got conditional buys, but that process ended up itself. What this authority would be able to do is start building that conditional buys or buy the land if, if they have the revenue stream to do it, but so we can-- if a major manufacturer like Toyota wanted to come here, they could actually do something instead of dragging out that process to three to five years and which could hurt Nebraska's development.

HUNT: Thank you. Any other questions? Senator Briese.

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BRIESE: Thank you, Vice Chair, and thank you for bringing this, Senator Wayne. Why limit it to those areas in proximity to rail lines and navigable waters or-- we wouldn't have to do that, would we?

WAYNE: No, we don't have to limit it. I didn't want to go as far as "Schumachistan" that we had a couple of years ago by Senator Schumacher. So it was trying to find a balance between creating a place that had no taxes-- that was just, you know, their own little thing-- to not allowing it to be just in Omaha. So we were-- we, we looked at the map and tried to figure out where else could we tie things to? That's all.

BRIESE: But we could do this anywhere, right?

WAYNE: Theoretically.

BRIESE: [INAUDIBLE]

WAYNE: We could amend it to do it anywhere, yes.

BRIESE: OK, just curious. Thank you.

HUNT: Senator Arch.

ARCH: I, I find-- I mean I really do find this concept very intriguing and I-- so does the, does the authority have-- the-- the authority has the right to levy sales and use tax, right--

WAYNE: Correct.

ARCH: --and for bonds if necessary?

WAYNE: Yes.

ARCH: Is there-- is, is that like blanket authority? Is there-- they're elected?

WAYNE: They're-- we, we-- yes because, because if they can levy a tax, they have to be elected.

ARCH: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Urban Affairs Committee February 2, 2021
Rough Draft

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WAYNE: This has been an ongoing conversation with all the, the chambers.

ARCH: OK. We've got, we've got requirements on public hearings for levying taxes, sales taxes, that type of thing. All that would apply to the authority of, of this particular entity?

WAYNE: Correct. They would fall into the Political Subdivision Act as far as notices and open budget and all those--

ARCH: OK.

WAYNE: --hearing requirements.

ARCH: All right, thank you.

WAYNE: If you, if you need anything added to get your vote in support, I have no problem.

ARCH: Anything?

WAYNE: I'm-- I--

ARCH: OK.

HUNT: Any other questions? Senator Lowe.

LOWE: Thank you, Vice Chair Hunt and Senator Wayne for bringing this intriguing bill. In, in the past, you mentioned "Schumachistan" and, and that, so would this port authority be called Wayne's World?

WAYNE: I kind of like that. I appreciate it.

HUNT: Any other important questions from the committee? Thank you, Senator Wayne. First proponent for LB156. Welcome to your Urban Affairs Committee.

MARK NORMAN: Thank you. Good afternoon, glad to be here. My name is Mark Norman, M-a-r-k N-o-r-m-a-n, and I serve as the senior director of business attraction and expansion for the Greater Omaha Economic Development Partnership. We're located at 808 Conagra Drive, Omaha, Nebraska, 68102. I'm also here on behalf of the Lincoln Chamber of Commerce and we're here to offer our support for LB156, as introduced

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by Senator Wayne. As part of our economic development efforts across the region, we have learned through experience working with projects that we need to be really proactive about developing sites in order to be prepared to offer these sites to new and expanding existing businesses in the state. We-- working with typically about 200 different projects a year, we determined we were losing out on a lot of projects due to the lack of developed sites. And these are mainly looking at manufacturing, warehouse distribution, assembly type projects where we were losing out because of site, site development. You know, because of the COVID-19 supply chain issues, there's really been a movement, you know, over the last year, but this-- this movement has been happening for a while of increased logistics efficiencies. And those-- those communities that are able to offer these improved multimodal logistics facilities are going to be the winners when it comes to economic development as we move forward in, in, in the future. Again, Senator Wayne mentioned the Toyota-Mazda site search from about four years ago. The state submitted several sites across, across the state and this was a \$1 billion auto assembly facility with-- with 4,000 jobs plus a great number of trailing suppliers. The-- this proposal that was submitted was very competitive financially, but when it came to the site, we weren't in the game at all. We didn't have an ability to get it done in a timely manner. We didn't have the financing tools to do it, so we really need to have this economic development tool to make us competitive. Senator also talked about the Tesla Giga truck factory from last year. We threw our hat in the ring for that one as well. Again, I think from a, from a distribution area facility, we were competitive, but from the site, again, we were years away from really having a site that would be competitive. So we really need to be proactive in developing these-- these logistic sites and give local governments the tools to attract these businesses. The port authority would not only benefit our existing exporters across the state, but also strengthen our trucking and other transportation industries and allow us to bring new companies to the state to expand our tax base. You asked the question about where would these logistic hubs be located? I could see a string of these logistic hubs located across the state, basically from Scottsbluff, Sidney, North Platte, Grand Island, Lincoln, Greenwood, and, and the Omaha area. I know we're limited to five, but I could see that happening. I would recommend just one change as the bill stands right now and that's, again, due to the need to be into that proximity

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of those multimodal trodes-- modes of transportation, having a site minimum of 300 acres, I could see that we would have a need maybe to have counties also have the ability to partner either through interlocal agreement or be able to create these on their own to have these. There's a couple of sites that I'm thinking of that would-- probably a little farther out than the local city, but, but again, it would be, I think, ideal to-- to be able to have counties do that. So that's it. Again, we're here to answer any questions and we're supportive of passage of the bill.

HUNT: Thank you so much. Any questions from the committee? Senator Arch.

ARCH: Thank you, Senator Hunt. I, I have a-- I have one question and that is-- as I'm trying to get my head around this-- we're, we're talking about developing land or at least having the ability to develop land for large projects, correct?

MARK NORMAN: Correct.

ARCH: I have that correct?

MARK NORMAN: Yes.

ARCH: So bonds would be issued, perhaps.

MARK NORMAN: Perhaps.

ARCH: Debt would be incurred, but not necessarily guarantees of, of the use of the land and, and the development of the land. This is to-- this is to get it ready and recruit to this piece of property? How, how does that work?

MARK NORMAN: Yeah, it's-- typically, it's, it's a financing tool for a project that is looking to come in. So the ability to issue bonds, the ability to have the sales tax kind of helps. The project then repays those bonds, repays-- you know, serves as that sales tax stream. So you've got to do some work ahead of time, but it's the project itself, which really drives the development and provides the revenue to do the project.

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ARCH: Because I know when we-- when, when these large projects were being discussed, as you, as you read in the paper, one of the, one of the problems was we just didn't have that piece of land secured. It wasn't--

MARK NORMAN: Correct.

ARCH: --wasn't there. We could get it. Don't worry, we'll get it, but it wasn't there.

MARK NORMAN: Right.

ARCH: So I, I guess, you know, again, what comes first? How much, how much, how much risk would these, would these port authorities take with taxpayer dollars in anticipation they build it and they will come, right? I mean, that's--

MARK NORMAN: Right and, and typically-- and again, each project is going to be a little bit different, right, and so you're going to have to take that with a grain of salt. But typically, you're going to have to do some ground work, work first, get options on the ground. You're going to have to spend a little bit of money on due diligence, but when it comes to the infrastructure development, you know, water, sewer, roads, very-- I'll say kind of very similar to an SID and how that works in that you're able to generate that, that payback through that project. But yes, you are going to have to do some preliminary work to-- to do that, so it's not, it's not the only answer. You're going to have to do some other things in preparation.

ARCH: And I, I appreciate that and I'm-- by, by any means, I'm not saying that business development comes without risk. It, it, it-- there's always risk involved, it's just, it's just managing that risk, which, which these entities will have to do, so--

MARK NORMAN: Right and typically-- again, you're not going to, you're not going to take that risk unless you know that project is committed and moving forward.

ARCH: Sure. All right, thank you.

MARK NORMAN: Yeah.

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HUNT: Any other questions? Seeing none, thank you, Mr. Norman, for being here.

MARK NORMAN: OK, thank you very much.

HUNT: Next proponent for LB156. Welcome.

JOEY SPELLERBERG: Thank you. Feels good to be sitting up here now, you know? Members of the Urban Affairs Committee, my name is Joey Spellerberg. That's J-o-e-y S-p-e-l-l-e-r-b-e-r-g. I'm the mayor of Fremont, Nebraska, and I am testifying today in support of LB156, establishing the creation of inland port authorities. Nebraska currently lacks economic development tools to create and develop large industrial sites and attract these types of businesses to the state. The creation of inland port authorities provides a tool to develop large sites and improve the state's economy. Fremont is positioned on a vast transportation network of three four-lane divided highways, Highway 275 and soon U.S. 30 and U.S. 77, and the first and second-largest railroad system in the United States, Burlington Northern Santa Fe and Union Pacific. Because of our central location, Fremont is often referred to as the transportation hub of northeast Nebraska, considering our central location to populate-- population centers. We're just 25 minutes from west Omaha, one hour from Lincoln, one and a half hours from Norfolk, and one hour from Columbus. Our local economy is growing rapidly and our trade reach is developing globally. Our large production manufacturers and robust ag-based economy require cost-effective and efficient access to the global marketplace. The aim of developing an inland port authority in Fremont is to leverage our transportation network, our location, our labor force to improve Nebraska's global trade connections, and to aid in the movement of goods through Fremont. The movement of agriculture goods from rural areas in eastern Nebraska will specifically benefit from an inland port authority. So establishing an inland port authority would position Fremont as a leading trade and logistics hub, continue to help stimulate the growth of our local and state economy. Our accessibility to first and second-largest railroad system in the U.S., vast four-lane highway transportation network, centralized location, our growing economy, and access to workforce make Fremont a prime location for an inland port authority. So for these reasons, Fremont supports LB156, establishing the creation of inland port authority. At this time, I'd take any questions.

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HUNT: Thank you, Mayor Spellerberg.

JOEY SPELLERBERG: Thank you.

HUNT: Any questions from the committee? Seeing none, I appreciate you coming here today.

JOEY SPELLERBERG: Thank you very much.

HUNT: Next proponent for LB156. Welcome.

KRISTEN HASSEBROOK: Hello, members of the Urban Affairs Committee. My name is Kristen Hassebrook, K-r-i-s-t-e-n H-a-s-s-e-b-r-o-o-k. I'm a registered lobbyist for the Nebraska Chamber and I'm here today on behalf of our members, as well as the Nebraska Economic Developers Association to express our support for LB156. NEDA is an organization dedicated to growing Nebraska's economy and is comprised of more than 200 economic developers representing counties, communities, service providers, educational institutions, and other statewide organizations. The Nebraska Chamber is a statewide business organization representing employers and businesses of all sizes and communities across the state. One of the primary and most expensive needs in economic development is infrastructure. Nebraska is well situated when it comes to transportation and logistics opportunities and has a lot to be proud of in this area. However, as you've heard, one economic development tool that is lacking is the ability to establish an inland port authority. An inland port authority can really be a nexus between infrastructure and economic development and bridge the gap between what government's role is and private industry's role in driving the economy. Inland ports are not a new concept. In fact, there are many successful inland ports, including among our, our bordering states like you heard in Missouri, and they've been active for decades and are proven catalysts in transforming states' economies. Port authorities across the country and the globe how-- are situated strategically to be a lynchpin between private industry and the public sector, a clear example of an impactful public, public-private partnership. Inland ports would provide Nebraska the opportunity to become a contender in an increasingly competitive environment to attract national and global businesses. The creation of inland ports, as you've heard, aligns well with Blueprint Nebraska, which identifies an initiative to develop one

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of the nation's leading inland logistics and industrial hubs. And obviously this would help us be a competitor for economic development projects, leading to new industry employers and attracting skilled talent. Nebraska has few tools and programs focused on this particular area and the ones that we do have very limited funding and are oftentimes just not enough to bridge the gap on significant infrastructure projects and these large projects that can transform our state. Economic development is a competition for jobs and investment and we must have the right tools to compete. Other states have the ability to offer lucrative discretionary funds or tax abatements to overcome some of these challenges for projects. With the creation of an inland port authority, we believe this local tool is a responsible approach to spur development here. It will give us more capabilities to compete with surrounding states, overcome those same challenges, and can be a catalyst in economic development projects here. The opportunity that exists with this legislation has the potential to impact the entire state. From Sidney to York, Omaha, South Sioux City to Holdrege, economic developers and industry across the state are supportive of the creation of this inland port authority, knowing the tremendous potential economic impacts and assets it could bring to our state. With that, I'm happy to answer any questions.

HUNT: Thank you so much. Any questions? I appreciate your testimony today. Next proponent for LB156. No takers, are there any opponents for LB156? Seeing none, anyone here to testify neutral? Seeing none, Senator Wayne, you're invited to close.

WAYNE: Thank you all and I guess what I would just encourage every member, don't give up on any bill, just keep working with people because eventually you might get a bill that you might get on the floor. And with that, I'll answer any questions.

HUNT: Any questions from the committee? Senator Lowe.

LOWE: Thank you, Vice Chairman. Why do you laugh?

WAYNE: No reason.

LOWE: You know, I, I, I travel between Omaha and Lincoln occasionally and, and I see that great expanse of land that-- you know, in here it

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says metropolitan or first-class city, primary-- or primary class city and I, and I think the land that might be between the two cities of Omaha, both of those cities may benefit, but it's tough to find the railroad and the, and the-- where it stops and-- but there is the Platte River and the interstate feeding. And the Platte River is known as a navigable highway, even though most of the time, it's a narrow boat or an inner tube. Do you think that would qualify?

WAYNE: Yes, so-- I'm going to over say something that I probably shouldn't say. We intentionally left our counties because if I put the word "county" into my bill, it goes to Government. And so as long as a testifier mentions county, I can now amend it, which one of the testifiers did. But we are looking at counties for that reason. There's-- there's some land in Sarpy County and, and some land in Lancaster and Cass County that would probably fit. But it was-- we drafted it that way to make sure that this committee, who has spent the last two years on it, got it. I mean we, we talked about it for two years, so we wanted to keep it here. But that is some of the land that we are talking about.

LOWE: Land may be a little more reasonable and if you're able to buy a section of land where-- in a municipality, you're going, you know, lock by lock or block by block.

WAYNE: Correct.

LOWE: Thank you.

WAYNE: Yep.

HUNT: That's how it's done. Any other questions? Seeing none, that will close-- do we have any letters? We have several letters for LB156. Letters in support, we have City of South Sioux City, the Nebraska Cooperative Council, the York County Development Corporation, Phelps County Development Corporation, the City of Sidney/Cheyenne County Economic Development Partnership, the League of Nebraska Municipalities, 59 Investments, LLC, the Nebraska Sierra Club, and Adams Industries, all in support of LB156. Next I'll open the hearing on LB332 from Senator Wayne. Senator Wayne, you're welcome to open.

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WAYNE: Thank you. And thank you all. Good afternoon, Vice Chair Hunt and members of the Urban Affairs Committee. My name is Senator Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is North Omaha and northeast Douglas County. The sizes of municipalities or political subdivisions have kind of been my thing since on the school board. I came down here, and we shrunk OPS from a 12-member board to a 9-member board. I think how boards work and how the size of them determine how well they interact with their constituents. Prior to 1981, the city council was elected-- was elected on a at-large basis. All seven members in the city of Omaha were elected citywide. The result of the elections-- basically nobody from North Omaha, particularly African-American, could get elected. And it wasn't until Senator Chambers, in 1979, passed LB329 that required cities of metropolitans to have a city council district. Fred Conley was the first one elected in 1981, I believe-- yeah, 1981-- 1981, yes. In a similar way, I introduce LB332 to improve the proportional representation of the city of Omaha. Under LB332, beginning in 2025, city elections-- cities of the metropol-- 2025 city elections, cities of the metropolitan class would be required to have nine city council members instead of the current seven board. As you will see from the map that was distributed, current city council districts in Omaha range from a size of 57,000 people to seven-- 77,000 people. Even if the districts were evenly populated, the average city council district would contain more than 64,000 people, which is nearly double the size of many legislative districts. By adding two additional seats, this-- this-- the size of each district would decrease to just under 50,000 people, which is much more manageable and increases the likelihood that all communities within Omaha would receive adequate representation. I do expect the city of Omaha to oppose this bill on the grounds because they have a home charter rule, and that the Legislature has no business changing their elections. This argument actually has no basis in legal fact because, in 1992, the Supreme Court held that ensuring proportional representation to-- to protect the right of the vote is a matter of statewide concern. So the Legislature can override the home rule charter in this instance. In 1979, the Legislature adopted legislative findings that specifically found that fair and adequate representation of all areas, of all socioeconomic segments of the population of a city of the metropolitan class, is a matter of statewide concern. That is true today. The reason why this map is also important is, many of

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these blank spots you see are SIDs that also will be incorporated probably within the next ten years, as the city of Omaha has grown tremendously with annexation over the-- in the last 10 years. The reason I brought this bill is because, when we shrunk the school board-- this body did-- to a nine-member board, we still have Elkhorn, we still have Millard, we still have Westside, and we even have a little bit of part of Ralton Public School that kind of goes into the city-- it's weird, but it is-- and a little bit of Bellevue. And I say that to say that it's a nine-member board for our area that is smaller than the city. The city has almost a billion dollar budget. And to put that in perspective, we have a \$4 billion biennium budget. So having a nine-member board during a year of redistricting is why I introduced it this year. I think it's important for us to keep mindful of how people are represented in the city of Omaha, and really, any city, but particularly the city of Omaha, because that's where I'm at. So trying to make these districts a little smaller so people can interact with their city councilman or woman is very important, I think, to the city of Omaha. And that's why I brought that. So if you think about it, the-- the districts would be just a little bit smaller or a little bit bigger than the legislative district. And for many of us who are in the city, 40,000 to 50,000 is often hard to manage. I can't imagine 70,000, trying to communicate with those individuals. So with that, I'll answer any questions.

HUNT: Thank you, Senator Wayne. Any questions from the committee? Senator Blood.

BLOOD: Thank you, Vice Chair Hunt. Thank you, Senator Wayne, for bringing this bill forward. I was making an observation how part of the Omaha City Council supports this and part of the Omaha City Council doesn't. It's very telling, I think, when you look at their reasoning about what they believe and don't believe. And looking this over, you get into a question.. Looking this over, the question that comes to mind for me is, we've already had a bill today that talked about how there's a certain-- excuse my notes, by the way-- there's a certain sector in Omaha that, in many cases, feels that it's invisible and it's voice isn't heard. If we were to utilize facts, such as the most recent census, to-- to create the new districts so they were well represented, do you feel that this would give certain populations a greater voice on the city council than what they have now?

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WAYNE: Yes. I do.

BLOOD: Sorry, that was a long question.

WAYNE: No, I do-- and I appreciate the question. I do believe that smaller districts-- city council districts do give voices to people who sometimes feel left out of-- out of the process. And-- and as you see-- I mean, the city has been growing, the city has been annexing. And it-- it really-- it really forces the conversation that if we have multiple school districts with multiple boards, to make sure people can be in contact. That's one of the things with their constituents. But we have one city, one Omaha City Council that is seven members that it's-- it's very hard. And if you look at my district, which is District 1, just to give people a frame of reference, Florence area is-- which is up by the northern part of this area-- and Ponca is completely different than Dundee. So it's essentially takes-- has taken Legislative District 13 and Legislative District 8, and put them into the city-- same city council district to try to legislate. And my district is completely different than Senator Hunt's district. And I would argue District 2, which is also part of my district, is more like District 2 but it can't-- they can't encompass all of that. It-- it'd be over 100,000 people. So we are trying to give a more fair representation of the people who are in Omaha to have their voice on the city council, of which a budget and taxes, as Senator Arch brought up, there's cell phone tax or occupation tax. There's a lot of dollars that are being used in Omaha on taxpayers' dollars, and I think two more people is a way to make sure it's more manageable.

BLOOD: And wouldn't you say that, especially 1 and 2-- my folks live in Florence, we've had this discussion-- that the demographic has changed substantially over--

WAYNE: Absolutely.

BLOOD: --since the last census? So--

WAYNE: Absolutely. Dundee and Midtown has-- has a younger, urban crowd. Ponca is a more older, retired area. In fact, Ponca School has been struggling to stay open. Well, they're-- they're-- they have been doing good staying open because people are going there from outside of the area, because those families are-- all those kids have left. It's

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just a completely different demographic. And so again, I know the city will probably come in on a soft note because we have some council members who are in favor of it. But I think it's a great discussion to have, and I think it's something that is needed in Omaha.

HUNT: Any other questions? Senator Arch.

ARCH: Thank you. Does-- does the city council itself-- if it wanted to do this, would it have the authority to expand to nine itself?

WAYNE: No.

ARCH: It has to be the Legislature?

WAYNE: Yeah, it's in-- and so that's kind of how this started when I said, Trevor, why don't we have more on on city council? And I thought about the OPS School Board, and I said it can't be state statute 'cause of the-- the home rule. And then I remember Ernie--Senator Chambers passed the bill for districts, so I said there might be. And Trevor-- of course, Trevor knows it off the top of his head; he was like Section 19 [INAUDIBLE]. And so-- so legal counsel knew that that was it. And so it's already in statute. The only way they can do it is through-- through changes with statute. And that's just stuck like that.

ARCH: OK, thank you.

HUNT: Thank you, Senator Arch. Senator Lowe.

LOWE: Thank you, Vice Chairman Hunt. This doesn't take effect until 2025.

WAYNE: Correct.

LOWE: Is-- is that so that elected officials can maybe move-- not move-- so that they may be elected into the area that-- where the new city council district is? Because, you know--

WAYNE: No. It's[-- it's simply because elections already started this year in 2021. So Lincoln and Omaha have elections after the primary-- I mean, after the general election. So there's a current mayor and city council race going now. And so I felt the only responsible thing

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to do is to let them-- 'cause underneath my bill, the city still draws their districts. So they still draw it. But it'll be for the new-- the new term. I didn't want to create confusion by adding nine in the middle of a-- an election.

LOWE: What-- what happens, though, if-- if an elected official is sitting on the board and-- and-- and his district has actually moved away from where he resides?

WAYNE: So that could happen in redistricting right now as a Legislature? But what I will tell you, you have a con-- if you run, you have a constitutional right to finish out your term. So they would finish out their term. But I mean, I guess, theoretically, the city all could vote to do a special election, but I don't know why they would. But the way it's written in statute, it'd have to be 2025, so they would have to change it in statute, 'cause I think the way it reads-- and I don't have the exact language in front of me-- but there was a date in which-- can I have a copy of the bill? I didn't [INAUDIBLE] it's up there. I usually have it in front of me.

TREVOR FITZGERALD: Sure.

WAYNE: Trevor, can I see the copy?

TREVOR FITZGERALD: Yeah.

WAYNE: So, yeah, 32-536 basically says: they shall be elected to a term of four years. And so with the election going on right now, I couldn't change it unless I changed that statute. And that would cause confusion. So that's why we pushed it out to 2025.

LOWE: All right. Thank you.

HUNT: Thank you. Any other questions? Seeing none, we'll move on to proponents of LB332. Seeing none, we'll move on to opponents. Welcome.

JACK CHELOHA: Good afternoon. Senator Hunt and members of the Urban Affairs Committee, my name is Jack Cheloa. That's spelled J-a-c-k; last name is C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha, and I've been tasked this afternoon to testify in soft opposition to LB332. You've-- and you've heard people before say strong opposition, but today is soft opposition. The reason why I'm here is, the

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committee, I think, has already been submitted some letters. Right now, the city of Omaha has seven council members. With that, when this bill was introduced, I immediately sent it to them to survey them and get their opinion on the issue. And as you found out, there's two of our council members think it's a good idea and they would be supportive of it. And they've offered some reasons relative to all the meetings they have and-- and the neighborhood association meetings, constituent issues, etcetera. And then there was a group of three council members that sent a letter of opposition. And their reasoning was, we feel that in the next few years we're going to be having a constitutional-- or I'm sorry, a charter convention in Omaha. We have to have one every ten years. And we think if-- if there's a consensus amongst the council members and the charter members, that we would put the issue before our 450,000 residents and let them vote on it, and see if we should, you know, increase the number of represent-- representatives or leave it the same. It-- it's been looked at before by the charter review committees, but it hasn't been, you know, changed. Senator Wayne testified, you know, we've been at seven for a long time now. The Omaha adopted their home rule charter in 1957, and we've-- we've moved forward since then. We did have members elected at large. And that was challenged, as was testified to, as well. And-- and the court said that we should have election by district because of certain reasons. Whether or not that court case upends our home rule charter would be up for discussion and debate amongst legal authorities. Whether or not, you know, the number of council members can be set by the state, is that a matter of statewide interest? I'm not sure. But to have them by district is a matter of statewide concern. What else did we look at within the bill? Finally, there was a little bit of concern if we did go forward with the bill, because this would allow the election commissioner to draw the districts that would go into play for 2025. And currently, under existing law, if you take a look at page 2 of the bill-- page two, line 28-- that the current council is responsible for redrawing their city council district boundaries now. And so there's a concern that, you know, who would have a better interest in-- in terms of determining where the district should be? Would it be the Governor's appointed election commissioner or would it be the seven council members that are close to their constituents now in-- in deciding? This Legislature has spoken before and said it's a matter for the city council to decide. So I guess if you decide to go forward, we'd-- we'd want to take a

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look at how the initial districts would be appointed or partitioned, if you will. And like I said, because there's a disagreement amongst our seven council members-- two of them didn't even weigh in on the issue-- we have soft opposition today. I'll try to answer any questions you might have.

HUNT: Thank you, Jack. Any questions? Senator Blood.

BLOOD: Thank you, Vice Chair Hunt. Jack, would you say that, if they did take that particular paragraph out and left it in the hands of the city council to do the districts, that that would relieve some of the opposition, the soft opposition?

JACK CHELOHA: I'm not sure on that. You know, they didn't point it out within their letter itself. I mean, that was something that I observed as a member of the city law department. And I remember this issue, too, because I've worked for the city for 26 years. And when this-- this bill was revised relative to who drew the city council districts, so about 20--some years ago, I remember it was Senator Doug Kristensen had a bill relating to that. And he was the one who gave the authority back from the election commissioner to the city council to do that. And-- and-- and so I know it was important for that council, but whether or not it's-- it's important now, I can't say. Sorry.

BLOOD: Would you say-- yeah, I-- I think back to-- I want to say it was like '64, and I can't remember both names-- it was of Sims versus something, and-- and it had to do with redistricting. There was like several court cases; that was one of them.

JACK CHELOHA: Um-hum.

BLOOD: But ultimately, one of the things that was decided that year when all those cases were brought forward is the importance of how, if I'm a person of color, that I have the ability to vote for somebody who looks like me.

JACK CHELOHA: Right.

BLOOD: In some ways, do you feel that maybe that's what Senator Wayne is-- I know you can't get in Senator Wayne's head, but-- but can you see the importance, maybe, of why this bill maybe needs to move forward?

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JACK CHELOHA: Well, it-- maybe. And-- and-- and I understand why the court mandated that we have to have districts and not at[-large, because-- because we did want representation--

BLOOD: Right.

JACK CHELOHA: --for various people. But maybe-- maybe in his closing, Senator Wayne might have some-- some answers for that. I can't really get into it. Although, you know, relative to the municipal issues, you know, we provide police, fire, public works, street, garbage, etcetera. And-- and so every district, you know, has the same municipal services and-- and interests. I mean, they may have some variance relative to, you know, types of policing, etcetera. But-- but in the end, I mean, we're-- we're-- we're providing the same service to everybody in our city. So hopefully, each council member is astute to that and they represent their citizens well.

BLOOD: Well, and ultimately, the citizens vote on those services, though. Right?

JACK CHELOHA: Right, exactly-- through their members.

BLOOD: Thank you.

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

JACK CHELOHA: Thank you.

HUNT: Next opponent for LB332. Seeing none, anyone here in the neutral capacity? Seeing none, Senator Wayne, you're invited to close.

WAYNE: So thank you, Vice Chair Hunt. The-- the reality is, these numbers are based off the 2010 population. The city has grown. When we get the data, probably in July or August, my fear is that these populations, some of them are going to be maybe 100,000. And we're talking about not having two because of our session. We'd have to wait a whole nother year to do something. I just feel like now is the time. They have an election going on, we can move forward. This isn't an election issue for this city council. We move forward and then, four years from now, they get all this data and can redraw maps. While they're redrawing current maps, they can actually draw the maps for

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the nine. So it's a simplified process versus passing the bill after they draw their seven and then realize we got districts that have 90,000 people in it. We probably do need two more. Then we're stuck. So that was my thought. It was really that simple why I dropped the bill. And I look forward to kicking this out and putting it on consent calendar.

_____ : Sure.

HUNT: Thank you, Senator Wayne. Any other questions from the committee? Senator Lowe.

LOWE: Couldn't let you go. Let's say that, 15 years from now, Wayne's world takes off and Omaha grows by 200,000 people. But that's-- that's a far fetched deal. But how do larger cities handle the growth? And how many council members or committee members do they have in a larger city? Because you had stated that, you know, 30,000 people was a lot easier to manage than 70,000. I'm going to guess Chicago has--

WAYNE: Right. I will-- I don't know that off the top of my head. I know some of them have 11, some of them have 13, some of the bigger ones. But what's interesting about Chicago, actually it's-- Chicago is not as big as what people think it is. It's all the suburbs that have their own. It's like Ralston. I mean, they all lump that in Chicago, but really it's not. But I-- I can get you that. Some have 13. I think that's part of the issues-- this is something we're going to have to continue to deal with. And I'd rather do it every 10 years and-- or maybe every 20 years. But this hasn't changed in over 50 years, so I think it's about time for some change.

LOWE: Should we put the control back to the cities on how many council members that they have?

WAYNE: We don't do that for any other political subdivisions. We do it for-- the only one could be a three or a five on the smaller ones; we give them a choice. But for everywhere else, we-- we outline how many they have, from school boards to villages to this-- to this primary-- I mean, all of them, we kind of outline them.

LOWE: OK. Thank you.

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HUNT: Thank you, Senator Lowe. Any other questions? Seeing none, thank you, Senator Wayne. We have two letters on LB332: one in support from Omaha City Councilmen [SIC] Chris Jerram and Pete Festersen [SIC]; and a letter in opposition from Omaha City Council members Brinker Harding, Aimee Melton, and Colleen Brennan. And that will close our hearing on LB332 and our hearings for the day.