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Government, Military and Veterans Affairs Committee  
February 04, 2010

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[LB948 LB978 LB980]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 4, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB978, LB980, and LB948. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Bob Krist; and Kate Sullivan. Senators absent: Rich Pahls. []

SENATOR AVERY: Welcome to the hearing today of the Government, Military and Veterans Affairs Committee. My name is Bill Avery, Chair of the committee. I am from District 28 here in Lincoln. Before we get started, let me introduce the members of the committee. Starting at my extreme right over there is Senator Janssen is expected to be here any moment. He is from Fremont. Next to him is Senator Bob Giese from South Sioux City. Seated next to him is Senator Scott Price, the Vice Chairman of the committee from Bellevue. To my right is Christy Abraham. Senator Karpisek from Wilber will be here shortly. He's giving testimony in another committee. Senator Kate Sullivan from Cedar Rapids; and Senator Bob Krist from Omaha; and on the very extreme end there is Sherry Shaffer, the committee clerk. If you are planning to testify on any of the bills that we will be taking up today, you need to fill out this form. These forms are available at the entrance, both entrances to the room. We ask that you print clearly all the information asked for on the form; and then when you get up to testify, just hand that to Sherry, the clerk; and we will file it. If you are here and wish to be recorded for or against any of the bills that we will hear but you do not wish to testify, please fill out this form. It is also available at each entrance, and we will collect those at the end of today's hearing, and it will go into the record. The bills will be taken up in the order posted outside the room, starting with LB978, followed by LB980 and LB948. Please, if you are testifying, you need to clearly spell your name for the record no matter how simple it is. We want to get it in the record clearly and accurately. Also when you testify, try not to be repetitive, try not to repeat things that others have already said, because it is all recorded. And if the points have already been made and you feel that you must make the point again, try to do so very briefly. I will not use the light system unless it becomes necessary, but normally I try to avoid that. The procedure is that the introducer makes the initial introduction and initial statements, followed by proponents and then opponents and those who wish to testify in a neutral position. Closing remarks are reserved for the introducer of the bill. Please understand that we ask you questions. You do not ask us questions. We will take any testimony you want to give, but we try to avoid getting into a give-and-take debate. The...one thing, if you have any printed material that you wish to offer us by way of additional information to your testimony, please have 12 copies; give that to the clerk, and she will have them distributed by the pages. Our pages today are Lisa Cook from Omaha and Mark Woodbury from Oswego, Illinois. One other thing, please turn off your cell phones or silence them in some manner so as to not disrupt our proceedings. If you have cameras, we do not allow any videotaping or photographs to be taken during the hearings. With that, we will invite

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Senator Mello to come forward and introduce LB978. Welcome, Senator. [LB978]

SENATOR MELLO: (Exhibits 1-5) Welcome, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District. LB978 is a bill that would require any appliance purchased or leased by the state of Nebraska to be Energy Star certified, with an exception that the material administrator may exempt the purchase or lease of an appliance from this requirement if he or she determines that the cost of compliance would exceed the projected energy cost savings. Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy. Energy Star-certified appliances meet strict energy efficiency guidelines set by the U.S. EPA and the U.S. Department of Energy. Purchasing Energy Star appliances, when it is financially practical, benefits the state because it saves taxpayer dollars on state utility bills. By using less energy, the need to build new power plants is also delayed, saving additional funds. And energy efficiency has health benefits. By using fewer utilities and forgoing the construction of a new power plant, less harmful emissions are in the air and the environmental air quality is improved. While Energy Star appliances do have some up-front costs, the payback period is relatively short. To illustrate, an Energy Star refrigerator will provide a 20 percent energy savings compared to a basic refrigerator and has a payback period of between two to six years. Members of the committee, during my tenure in the Legislature, government efficiency and budget cuts have dominated conversations. We've spoken at length about how to emerge from this permanent fiscal crisis successfully, and it's important to recognize that solutions need to be innovative and looked to the long term. Using resources efficiently is a powerful cost savings tool and must be part of any solution as we move forward. According to the letter I distribute now from Director of Administrative Services, Carlos Castillo, energy costs for state agencies during the fiscal years 2008 and 2009 were over \$70 million. This includes the use of natural gas, water, and electric utilities. On more than one occasion, state agencies have approached the legislative body with deficit requests to cover the cost of overuse of utilities. During the 2006 legislative session, one state agency alone asked for a \$12 million deficit request to cover the cost of utilities overuse. I'm concerned that if the state does not begin to address energy efficiency, the legislative body will continue to be asked to pay for the overuse of utilities, losing out on potential cost savings and unnecessarily taking hard-earned tax dollars from our districts. Please see the letters, the numerous letters, of support for LB978 from the Omaha Public Power District, the Lincoln Electric System, the U.S. Green Building Council, and Health and Energy Company, who were not able to be here today. In closing, requiring our state government to purchase energy-efficient appliances is a long-term budget solution that is already being embraced locally by institutions like Creighton University in Omaha. The state's \$70 million energy bill is no small sum, and LB978 presents an opportunity to reduce what we spend on utilities over time as we purchase energy-efficient appliances when it is financially practical. Otherwise, we will continue to pay energy bills of the \$70 million magnitude and state

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agencies will continue to request budget deficits. LB978 provides efficiencies in government that save hard-earned tax dollars, reduce the state's use of utilities, and improves our air quality. The purchase of Energy Star appliances is a responsible choice and provides an opportunity for the state of Nebraska to lead by example. With that, I would take any questions from the committee. [LB978]

SENATOR AVERY: Thank you, Senator Mello. Senator Price. [LB978]

SENATOR PRICE: Thank you, Chairman Avery. Senator Mello, thank you for bringing this bill. A couple questions I have. One is a question; one is a statement. When you say: exceeded the project energy cost savings--do we have a threshold of how much of an exceed is, because, as you stated, your initial cost may be higher but your payoff could happen in a couple of years. What's the number? Is it one penny over, or is it a threshold? You know, a life-cycle cost of any device--I mean, if it's a refrigerator, the seal goes on it a little bit; do you just shot the whole thing? That's in a perfect laboratory. It's like, we get our cars, and they say they get 35 miles to the gallon. You never seem to really get that 35 miles a gallon. But I want to know by how much--is there a sensible threshold to say: At this point we'll go no further? [LB978]

SENATOR MELLO: You know, I didn't specifically lay that out in the bill for a reason, in part because there are various appliances that provide different cost savings. A refrigerator cost savings compared to a flat-screen monitor offers different savings of payment, frankly, of the use of that appliance. So... [LB978]

SENATOR PRICE: But as a percentage, I mean. [LB978]

SENATOR MELLO: You know, once again, I think that's up for debate. Energy Star--I mean, in general, Energy Star appliances and anything that's Energy Star certified guarantees a certain savings of energy. And I think the point being that depending upon when it's financially feasible for the state to do that--since it's not state policy or in state statute to require us to purchase energy-efficient products--when it's financially feasible, that this language would allow individual departments when making their bids in contracts to determine that on their own, based on individual programs or individual agency utility usages. [LB978]

SENATOR PRICE: Okay. Great. And then finally, in the \$70 million that you threw out, do you have a rough (inaudible) or magnitude of how much of that is appliance versus total (inaudible) gas usage? [LB978]

SENATOR MELLO: I think if you can...in the letter from the Department of Administrative Services, they were...this was what they could get me. I wanted it...I asked for breakdowns for utilities in trying to break that down further. And I think, in part just due to the time, they were unable to do that. So the best that they were able to

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provide was this information here that lists it off by agency in regards to utility usage.  
[LB978]

SENATOR PRICE: All right. Thank you. [LB978]

SENATOR AVERY: I see two others. Senator Sullivan. We'll work our way around.  
[LB978]

SENATOR SULLIVAN: Okay. Thank you very much, Senator Avery. Thank you, Senator Mello. Just a couple questions. Do you have any idea even though you don't have this...I see what you got from DAS, but do you have any idea what kinds of appliances we're talking about and how much turnover is there in any given year of new appliances? [LB978]

SENATOR MELLO: Most appliances...I think, you know, taking just a first glance at our own Legislative Council, if you looked within our own offices--computers, television monitors, television screens, refrigerators--those are the main products that are used--laptop computers. Those are things that obviously change on a semi-regular basis, depending upon the agency or department, because technology changes. So I don't have a list, a complete list, of every appliance, so to speak, that might qualify. Once again, this is more...I didn't want to make this bill so restrictive to say what they can and cannot do. Energy Star appliances in general are a widely accepted energy-efficient brand or certification that is used not just in residential and commercial but obviously in government and industrial purposes too. So there might be situations that we could find Energy Star appliances for every appliance in an office or in an agency. There might be some situations where that's not feasible to get any Energy Star appliances at all, depending upon what that individual agency needs to operate. So I don't know if that's able to directly answer your question, but I hope that answered some of it. [LB978]

SENATOR SULLIVAN: Okay. Okay. All right. And then along those lines, I guess I'm looking at this--should it be legislation or should it be just simply an agency directive? And I assume, and correct me if I'm wrong, that you're feeling you need legislation because in some cases in the bidding process the selection would be higher than if they chose an energy-efficient piece of equipment. [LB978]

SENATOR MELLO: My office--when developing this legislation, my office contacted the Department of Administrative Services to find out what they currently do in regards to trying to purchase or they're bidding for energy-efficient products. And it's only...it was our understanding in conversations with DAS that it's only when they put it in their bid specs specifically mentioning Energy Star certification do they actually look to purchase Energy Star-certified products or lease Energy Star-certified products. So that was...that is kind of how this bill was developed, knowing that it is a proven cost saver. Energy

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Star is a certification, you know, by the federal government that is proven to save money on the life cycle of the product and well beyond that, too, depending upon a non-Energy Star-certified product. So to answer your question, I think the state, by making this law and not just up to the discretion of a program director or an agency director, I think, ensures the long-term cost savings for the state, because it makes it part of their overall bidding process and their overall operating procedures, so to speak, when they buy and/or lease products in the future. [LB978]

SENATOR SULLIVAN: Okay. Thank you. [LB978]

SENATOR AVERY: Senator Krist. [LB978]

SENATOR KRIST: Thank you, Chair. You know how serious I am about this subject. This is great legislation. It's a great idea. I specifically like the fact that you're not shoving it down their throat. You're allowing the material administrator to make that decision based upon a cost effectiveness, and I think that's great. Just for my edification and for the committee's, define material administrator. What levels are we at? [LB978]

SENATOR MELLO: I...you know, Senator Krist, that's a good question, and I can't give you an answer to that, because I don't...I think that's the language that has been used in other statute. [LB978]

SENATOR KRIST: Is that the decision level? [LB978]

SENATOR MELLO: Yes. [LB978]

SENATOR KRIST: Okay. [LB978]

SENATOR MELLO: And I think in part, I mean, to try to make it--we could have put agency director, program director, but that seemed to be the universal language that Bill Drafters had used regarding the existing statute that this would be inserted into. [LB978]

SENATOR KRIST: I think you've given them plenty of opportunities to do the right thing on both sides. Good language. Thank you. Thank you, Chair. [LB978]

SENATOR AVERY: Senator Janssen. [LB978]

SENATOR JANSSEN: Thank you, Chairman Avery. Senator Mello, I like the idea. I'm not probably as sold as Senator Krist on it being legislation as opposed to it being a directive. Some reasons I think I feel that way is I think we're moving that way, and I think we agree that's the correct way to be moving. It's just how we would move there. But there are some variables. And you've mentioned that in the past, Energy Star energy--it has proven to be less expensive over the lifetime. But that variable could

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change. And past performance does not necessarily predict, you know, future results, as we found out in the market here recently, but--because your variable costs could change. The cost of natural gas, the cost of coal could really come into play here, and you could be spending a lot more on...but I guess I'm talking against my own side on that, too, as I understand. But, I mean, there is a variable here of unpredictability, isn't there? [LB978]

SENATOR MELLO: I think with anything regarding energy there is a variable of unpredictability. I mean, energy costs could skyrocket next year, which would save the state--if we had all Energy Star products--significant amounts of money. Energy could also, for some reason or another, decrease in cost. That's highly unlikely, though, in the sense that we've seen rising energy costs over the last decade from all of our utilities, and it's because the general cost of doing business has gone up. But to some extent, yes, you can never guarantee a certain cost that will always be there, static, for the lifetime--particularly dealing with energy--for the lifetime of a product or a lifetime of a measure or a program. But I think, you know, in a sense of what this bill's intention is to do, is to supersede where the legislative branch and the executive branch kind of meet in the middle with regards to helping provide guidance for them to carry out this directive--where, right now, as the fiscal note does note, some agencies already do do this. But in conversations with DAS, it's only if they put it in a bid contract. So they're not required to do it; they don't have to do it. And it's frankly up to an individual--essentially administrator--to choose if they want to put it in a bid. So it's just a proven cost saver in other state governments and other local governments. I think it's something that--it's something worthwhile and innovative that we should at least look to in the challenging times ahead. [LB978]

SENATOR JANSSEN: Senator Mello, thank you, and I agree. Would you be open to something that would basically say what has to at least be in the bid but we don't necessarily have to take that? [LB978]

SENATOR MELLO: I think that's...well, I hope--and I'm more than willing to work with the committee on this. I thought that the language that is in LB978 was--hopefully, would cover that. We're knowing that we're not going to require every agency to purchase everything Energy Star, because there might be cases where it's just not feasible and it's just so astronomically out of the realm of being cost efficient that no way would I want to hamstring an agency or a program or a director, for that matter, in regards to purchasing one kind of product. But I think it needs to be prioritized; and that's, I think, the point of LB978. And I know Senator Avery has some legislation later in the committee that this kind of also deals with a little bit as well--where it just prioritizes something that is widely accepted in the federal government in regards to saving energy and saving money, that they make that as part of their overall bidding processes or overall--I guess--perspective of how they go about purchasing or leasing products. [LB978]

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SENATOR JANSSEN: Thank you, Senator Mello. Chairman Avery. [LB978]

SENATOR AVERY: Thank you. Any other questions? Senator Krist. [LB978]

SENATOR KRIST: Not to belabor this, but on the DFARS level, at the federal government level in the contracting, it's a requirement that's written into law that the contractor has to put this language in and doesn't give them the flexibility that this bill would do--so just for information purposes. [LB978]

SENATOR AVERY: I would just note that you have submitted several letters in support of this. One is from Lincoln Electric System, another from Health and Energy Company, another from the Nebraska Flatwater Chapter of something--it's unclear. [LB978]

SENATOR MELLO: I believe the U.S. Green Building Council. The U.S. Green Building Council, Flatwater Chapter. [LB978]

SENATOR AVERY: (Exhibit 6) Okay. Yep, you're right. Yep. And then the Sierra Club local chapter. I would like to ask you...oh, and there is another. This is in the neutral position from the Omaha Public Power District. I would just note, having read the letter from Lincoln Electric System, that they support the concept of energy conservation but they are not exactly nailing their support onto your bill, LB978. I don't know if you want to comment on that or not. Obviously, they're affected when people save--when consumers save money on electric costs. [LB978]

SENATOR MELLO: And I think...I mean, I think I've...I mean, LES...I took that as a general support, maybe not in the similar sense of what I stated--which is if the committee looks to make changes to this piece of legislation or incorporate it into maybe a broader piece of legislation that's already in front of the committee. I think LES and OPPD are in that similar position of supporting energy efficiency, and that's what this bill does. It promotes energy efficiency through state contracts and purchasing and leasing through Energy Star-certified appliances. So, you know, I think the letters do speak for themselves in that sense, but by no means do I have a problem with what either entity said. [LB978]

SENATOR AVERY: The Green Builders might want to change their letterhead so you could actually read the words. (Laughter) Any more questions? Senator Price. [LB978]

SENATOR PRICE: Thank you, Chairman Avery. At the risk of sounding ignorant...but I'm okay with that, you'll make me smarter: Do windows falls under appliance? [LB978]

SENATOR MELLO: You know what, Senator Price, you would have to probably talk with someone through the Department of Administrative Services. I would assume

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windows would probably fall somewhere in the building--the building construction component. [LB978]

SENATOR PRICE: I would think so, too; but we just know how much energy is lost through windows and... [LB978]

SENATOR MELLO: I think they might fall more--windows might fall more in the building codes. I had another bill dealing with high performance buildings earlier this week, and usually windows fall within that realm of the building construction in the entire--the building organization or the building makeup, so to speak, more than an appliance. [LB978]

SENATOR PRICE: Design in the green...okay, sure. Great. [LB978]

SENATOR MELLO: Yeah, green building design and similar to what the U.S. GBC has kind of discussed in their letter. [LB978]

SENATOR PRICE: Just wanted to make sure. Thank you. [LB978]

SENATOR AVERY: Any more questions from the committee? Seeing none. Are you going to stick around? [LB978]

SENATOR MELLO: No, I waive my closing. [LB978]

SENATOR AVERY: Okay. Thank you. [LB978]

SENATOR MELLO: Thank you. We're now moved to proponent testimony. Welcome, Mr. Clark. [LB978]

DOUG CLARK: Thank you, Chairman Avery, members of the committee. My name is Doug Clark, C-l-a-r-k. I am vice president of marketing and government affairs for the Metropolitan Utilities District. We're here in support of the bill today, mostly for the reason that it provides flexibility and it requires a review process. Energy efficiency is going to become more and more critical to us as a society and as a nation. And Senator Mello's bill provides us a framework for which we can move forward and does not require the use of a product if it doesn't fit the need. And as a business, we go through many bidding prospects, because we're a political subdivision in the state. And in those bids we have to evaluate whether that makes sense for our customers to pay for that or not pay for that or to do that in a different way. Allowing this process, I think, is the proper way to go forward when you're looking at energy efficiency; allowing the managers to review this and make appropriate decisions is a good way to go. That really kind of concludes my testimony, because mandates can often cost more money than they save. So, hopefully, this is a common-sense method of moving forward.

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[LB978]

SENATOR AVERY: Thank you. Any questions from the committee? Seeing none. Thank you. [LB978]

DOUG CLARK: Thank you very much. [LB978]

SENATOR AVERY: Any more proponent testimony? Any opponent testimony? Anyone wish to testify in the neutral position? Okay, that will end the hearing on LB978, since Mello has waived his closing. We'll now move to LB980 and invite Senator Wallman to come forward. Welcome, Senator. [LB978]

SENATOR WALLMAN: Thank you. Members of the esteemed committee, Chairman Avery, I've come before you today--I'm Senator Wallman from District 30--and bring before you LB980, which states the director of the Department of Administrative Services could not approve a privatization contract, which is a contract with personal services by a person other than a state employee to provide human labor valued at \$50,000 or more annually, and it would result in a reduction in force of at least one permanent state employee unless the following are met: The state agency involved in the contract provides written notice to the collective bargaining agent 35 days prior to the beginning of an open bidding process and during the 35-day window the collective bargaining agent is provided an opportunity to discuss options to the contract; the proposed contract is projected to result in overall cost savings to the state of at least 10 percent. And the bill also further defines what would go into projecting the cost savings. It would include the cost of the services currently provided and the cost incurred as a result of the contract. I have recently met with the representatives from the Department of Health and Human Services, and I know they have some concerns regarding the bill. So I'd be happy to meet with them to come up with an amendment to make some changes. So far they are the only department that has come to me to voice their concerns. And I will have, following me, some people that might be able to answer your questions regarding the impact of privatization better than I could. Thank you. [LB980]

SENATOR AVERY: Thank you, Senator Wallman. Any questions from the committee? That's a rare thing from this committee. [LB980]

SENATOR WALLMAN: Thank you. (Laughter) [LB980]

SENATOR AVERY: Are you going to stay for closing? [LB980]

SENATOR WALLMAN: Yes, I'll stay. [LB980]

SENATOR AVERY: Okay. We'll now move to proponent testimony. Anyone wish to testify in support? [LB980]

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JOE FUXA: (Exhibits 1 and 2) Good afternoon, Chairman Avery and the other members of the committee. My name is Joe Fuxa, J-o-e, and last name is F-u-x-a. I'm currently a contract administrator with the Nebraska Association of Public Employees, Local 61, which is also affiliated with the AFL-CIO. And I was formerly a supervisor with the Department of Health and Human Services in Omaha. I'm here today just to express my thoughts about privatization and support LB980. I would also like to thank Senator Wallman for introducing this bill. This is an issue that has come to the forefront in recent years. Looking as an agency that represents public employees, particularly state employees, obviously we're concerned when privatization is an issue. What this bill does is further promotes openness and honesty in the privatization process. Taxpayers always want to know where their tax money is going. They want accountability, and they want to have the best public service that is possible. Privatization can actually cost states and communities, as we've seen in recent years. Contracting out frequently can cost more than in-house services. Governments usually, when they consider contracting out--real costs of the entire contracting process are not taken into account. For example, it costs additional money to administer that contract and to monitor the results. It also takes additional money to train and supervise the new personnel; and also one thing that's rarely talked about is the use of public facilities, public property in that process. There are still costs--utility costs, the cost of maintenance, etcetera. And those are rarely reported when we talk about privatization. In the information that I gave you, I'm just going to go over a few of these points--and then if you have questions. When looking at layoffs, privatization often leads to layoffs of public employees. And that has a ripple effect throughout the economy and the local communities. Number one, primarily the individuals that were state employees--their total compensation package is usually drastically diminished when they move to the private company, if they're hired in the first place. This reduces tax revenues for our state. Oftentimes, the private companies are not even located here in Nebraska. They could be in Texas or California or New York. Therefore, the primary amount of the money is being transferred out of the state. And they have a responsibility to their shareholders and to their employees. And most of that is not a vested interest here in our state; it's with their company, their CEO, their board of directors. There's also the aspect of unemployment compensation, the use of other public services such as the food stamp program, Medicaid, Medicare when individuals lose their job. Layoffs also reduce district or jurisdiction tax revenues. People without jobs generally do not provide much in tax revenue for the state, and that's something to keep in mind. There's also the loss of in-house employee morale. And with the information I gave you, I also gave a written statement from a current state employee at Mahoney State Park. They're in the process of the privatization process right now. She couldn't be here to speak, but I wanted to submit that to you as well. Just a few other points. In the last ten years there's been a lot of research done on privatization of public sector work. It often jeopardizes the quality of the services. Again, the contractor's primary goal is profit. And it's very difficult to take what was a public service that doesn't generate revenue--for example, when you're providing childcare assistance--it's very

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difficult to move that to the private sector and make money. And the only way to make money is to either pay personnel less, cut corners, or find loopholes in the existing contract to increase costs. And, over time, what you see in the bidding process is, with privatization, the initial contract might be low; but because of loopholes in the contract or lack of enforcing language, those expenses often increase in the next bidding cycle, depending on the length of the contract. There's also the opportunity for corruption. The less public involvement and the less openness there is, the more likely there are to be things that are not putting the taxpayers' best interest and the citizens' best interest forward. And with that, I'd just like to close and hope that all of you would be interested in supporting this legislation. The current legislation has been in place for quite some time. It's just never been utilized. I don't think I've ever seen a cost-benefit analysis done by any state agency when looking to privatize. So. Thank you. [LB980]

SENATOR AVERY: Thank you for your testimony. I'm going to start with Senator Krist, and then I'll be back here. [LB980]

SENATOR KRIST: You get to start at this end of the table this time. Let me see if I understand your point. Because if we have to define contracts and privatization... [LB980]

JOE FUXA: Yes. [LB980]

SENATOR KRIST: ...as in terms of the style of services...to me a services contract is people. [LB980]

JOE FUXA: Usually, yes. [LB980]

SENATOR KRIST: I'm...in the federal and the DFARS on the federal side of it, the services contracts basically define services provided for the institution or for the agency. So your point is that when you outsource, when you privatize, you're going to cost yourself more or you're going to drive the price of the labor down. [LB980]

JOE FUXA: Typically, yes. [LB980]

SENATOR KRIST: How do you support the life-cycle cost argument? [LB980]

JOE FUXA: It all depends on the type of contract. It depends on the situation. These things are all varying factors depending on the circumstances. [LB980]

SENATOR KRIST: Okay. So if a contracting officer or a contracting officer's representative manages a contract on the services side and watches those life-cycle costs, it is my experience that life-cycle costs on a outsource or a privatized contract is less than managed as government employees. Is that not true experience? [LB980]

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JOE FUXA: It depends again on the situation, whether it's a municipality, a locality, county, state, federal government. [LB980]

SENATOR KRIST: So it depends. [LB980]

JOE FUXA: They all work slightly different. [LB980]

SENATOR KRIST: Okay. The other question I have is, would you...in your argument would you say that continuity equals efficiency in any way? [LB980]

JOE FUXA: In what are you referencing? Meaning... [LB980]

SENATOR KRIST: If you have a team of people that are doing the same job over a period of time and they're very good at doing it, the continuity of the effort or the expertise or--particularly in a professional contract--equals efficiency, and therefore you do have some cost savings? [LB980]

JOE FUXA: Usually, yes. [LB980]

SENATOR KRIST: Okay. Thank you. [LB980]

SENATOR AVERY: Senator Price. [LB980]

SENATOR PRICE: Thank you. Mr. Fuxa, I have a couple questions. You've had opportunity, obviously, to read over LB980, correct? [LB980]

JOE FUXA: Yes. [LB980]

SENATOR PRICE: And we see in here--page 6, Section 8, line 23, subparagraph (1)--we talk about 35 day prior to the beginning of any open bidding process. I'll wait until you kind of get there. [LB980]

JOE FUXA: Which page did you say? 6? [LB980]

SENATOR PRICE: I have page 6--but Section 8, subparagraph (1), wherever that falls in, in your copy. [LB980]

JOE FUXA: Sure. Sure. [LB980]

SENATOR PRICE: All right. So we're talking about the 35 day prior to, correct? All right. And then we say, if we go further down to roughly line 5, on page 7, it says: Notices regarding the bid opportunity may not be issued during such a 35-day period. If I'm

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running an outsourcing of \$30 million organization, you're not going to let anything come out 35 days prior to--or no notification for solicitation, no sources sought, no...that's going to hamstringing you, right? I mean, if we're bidding, as we say in here, maybe one body in one area, you might get by the 35 day, but you're basically saying no one outside of the government will know anything until 35 day prior to a major, potentially major, reorganization? Do you find that could harm the process to getting the best-quality product in a competitive bidding situation? [LB980]

JOE FUXA: I'm not sure if that's the intent of the language--and we'd have to discuss that with the senator. And I think this might be directed towards a larger mobilization of a privatization. You know, maybe more than one employee we might be talking about, you know, 20 to 30 to 50 employees. [LB980]

SENATOR PRICE: That's even more so my point. [LB980]

JOE FUXA: Yes. [LB980]

SENATOR PRICE: I mean if you're going to do...so that's one point. The other part is in the 10 percent, where you're going to say--basically, you're going to give a 10 percent premium to your most efficient organization or your current government contractor. It strikes me--even at the federal level, and now here we see this--kind of interestingly that the same people that are doing the job might be able to come in 10 percent or more lower, but they're not doing it today, for one. And two, that's a pretty big margin, 10 percent, when you're talking about...so I'm just wondering why the 10 percent? [LB980]

JOE FUXA: I think as a margin of error. There are national cases. Lockheed Martin, for example, would be a primary case in California. They were given a contract to come in and change the child support services there. They had a \$4 million cap on their costs. They ended up costing the state of California in taxpayers almost \$400 million. The project was shut down after two years, and the contract was eliminated. And the counties had to revert back to the process they were using prior to that. And prior to that, California did not have any openness or accountability when it came to privatization, and that kind of opened their eyes to the need to have some kind of process in place where the public is made aware of what is going on--how the cost savings are going to be enacted, where they're coming from, and the long-term goals of this contract. Looking down the road, it affects tax revenues. I mean, there's a whole spectrum of things that come into play when you talk about privatization. And I'm not saying I'm against privatization. Just want it to be out in the open so that when a state agency says we're going to save this much money, we'd like to know where that's coming from and have that put on paper so that the general public has an idea of where those cost savings come from. [LB980]

SENATOR PRICE: But what we're really kind of saying in the obverse, then, is that

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everybody else has to be 10 percent more efficient than the people who are currently doing the job to even be equal. You know, that's my question came out. And as far as your example for California, an order-of-magnitude difference points to me two things: poor program management for one and requirements-creep, number two. You know, so in how you set up, that's a debate for another day. Thank you very much, though, for your input. [LB980]

JOE FUXA: Thanks, Senator. [LB980]

SENATOR AVERY: Any more questions of the committee? Seeing none, thank you, sir. [LB980]

JOE FUXA: Thank you. [LB980]

SENATOR AVERY: Any other proponent testimony? Anyone wish to testify in opposition? [LB980]

LAURA PETERSON: Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Laura Peterson, L-a-u-r-a P-e-t-e-r-s-o-n. I'm appearing on behalf of the Department of Administrative Services in opposition to LB980, which makes changes to the service contract statutes. As you know, the Legislature passed service contract language in 2003, and we've had a number of bills related to service contracts since that time, including LB902 in 2006, LB408 in 2007, and LB645 in 2009. Each of the prior bills were similar to LB980 in that they would have evolvment and requirements for agencies to complete a cost-benefit analysis comparing costs and benefits of using state staff to complete work versus the costs and benefits of the proposed contract for services. However, LB980 goes much farther than those prior bills and would implement the requirements for cost-benefit analysis for every contract for personal services rather than requiring the analysis only when replacing state employees or jobs previously conducted by state employees. Currently, under current law, agencies must complete a cost-benefit analysis and obtain DAS approval to enter into a contract if on the day the contract is executed the labor to be performed by the contractor is being performed by a state employee. Under LB980 agencies would need to complete this cost-benefit analysis and obtain DAS approval for every contract for personal services, whether it's replacing a state employee or not. This greatly increases the work required of a state agency before entering into a contract, and it significantly increases the role of DAS in the contracting process. In many instances, the type of contracts the state enters into do not need a detailed cost-benefit analysis to determine that the contract is the best way to obtain the service. For example, the state purchases telephone services, health insurance claims administration, insurance brokerage services, software maintenance services, specialty actuarial or auditing services, and other things. Without completing a detailed cost-benefit analysis, it should be obvious that it would not be feasible for the state to do

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things like create its own telephone company. It will be very difficult for state agencies to estimate the cost to conduct some of these activities in-house and unnecessary when the answer seems a foregone conclusion. In another example, for every provider agreement that HHS signs to expand our Medicaid provider network, we would be required to perform this analysis. This is both unnecessary and contrary to public interest. Finally, this places Administrative Services in a position of judging the adequacy of an agency's analysis and decision to contract, a position that should be reserved for agency directors, who better understand their agency operations and who are ultimately responsible for the implementation of the agency's mission. LB980 also creates a definition of a privatization contract, which is any contract where an agency is replacing a state employee, labor similar to that done by a state employee, or a vacant position with a contract. For privatization contracts, the agency would be required to complete several extra steps and obtain DAS approval of the contract. These new steps include, as you've heard, notice to and consultation with the union, even though it applies whether the employees or duties being replaced are covered by the union or not. The union contract already provides for consultation with the union anytime there is a layoff or reduction enforced by an agency. And this would give the union additional authority over the management and operational decisions of state agencies. We support the current law that requires the completion of a detailed cost-benefit analysis when the contractor replaces a state employee, which, in my tenure of tenures, has never actually happened. From a management perspective, we object to these provisions that would require agency directors to consult with an agent of the union over the management and direction of the state agency. It also requires that, to be approved, a privatization contract must save at least 10 percent over completing the work with state employees. In order to know the actual amount of savings, the bid must be completed. Thus, LB980 would require both potential contractors and the state to complete a bid, in many cases knowing we may never actually use that then. In addition to the general issues raised in my testimony, there are several technical or drafting concerns with the bill. I'm not going to go through those now. But if the committee decides to advance the bill, we would recommend several revisions prior to advancement. We oppose the bill as it reduces agency discretion to enter into contracts when it isn't an agency's best interest to do so, which may be for financial or other valid reasons. The bill unnecessarily increases paperwork requirements for contracts where the decision to contract is intuitive and in the best interest of the state. The bill increases both time and cost for contracting. Thank you for allowing me to testify. I'd be happy to answer any questions. [LB980]

SENATOR AVERY: Thank you, Miss Peterson. Senator Krist. [LB980]

SENATOR KRIST: Thanks for testifying. Just a quick question. Does your cost-benefit analysis--when you do perform them in those situations where they need them--do they include life-cycle costs for a state employee versus a contractor? [LB980]

LAURA PETERSON: I'm not sure that we actually call it life-cycle costs. But, yes, the

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cost-benefit analysis that is required under the current law--if you are going to replace a state employee or a position that's been done within the last 12 months by a state employee--does require an analysis of the overall cost over the life of the contract of doing it with a state employee versus doing it with a contractor. [LB980]

SENATOR KRIST: I'd be very interested in seeing how those are compared and what factors are involved. Could you get that to me? [LB980]

LAURA PETERSON: I can get you what is required to go--and then--into the analysis. What I can't get you is one that's been completed, because, as I said, we're not aware of any instances where a state employee has actually been replaced by a contractor. [LB980]

SENATOR KRIST: Parameters would be great. [LB980]

LAURA PETERSON: But, yeah, we can get you the format. [LB980]

SENATOR KRIST: Thank you. [LB980]

SENATOR AVERY: Senator Price. [LB980]

SENATOR PRICE: Thank you, Chairman Avery. Miss Peterson, thank you very much. I wouldn't be...I picked up on that vacant permanent position also, because if you replace one...if it's a one-person shop that is on the books for four people, it could...like, it's a huge contract, and it's actually still one body. But I was wondering--in Section 3, page 3, paragraph 2, line 15--is that...I'm still trying to understand how to read the things. Does that paragraph deal strictly with 73-301, i.e., contract for personal services, because it starts out: "Each contract" is subject. So I didn't know if that...I mean, if there's a contract outside of personal services that fall under this statute that don't...but aren't personal service. [LB980]

LAURA PETERSON: I'm not aware of any other contract to which this particular section applies. But then if you go through later in the bill, there used to be several sections of the current law--73-303...73-302 and 73-303--so you see the change on the top of page 4 and sort of line 8 on page 5, where it used to refer to the cost-benefit analysis being done if the contract was described in 73-301, which was contracts limited to where you're replacing a state employee. Now that is required for all personal service contracts, and then later there's a requirement--I think it's in 73-305--for the director to report out the approval or disapproval of those contracts. [LB980]

SENATOR PRICE: Right, that's what I was looking at... [LB980]

LAURA PETERSON: So that's kind of where you get to the expansion of all--to all

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personal services contracts as opposed to just ones where you're replacing an employee or...in current law, as an employee...there's another section of law that's not covered in this bill--73-509--that requires you to do a cost-benefit analysis if the position was filled in the last 12 months. [LB980]

SENATOR PRICE: Great. And then to my question of the 35 days: Do you think that 35 days is...a 35-day prior...or 35 days is enough to award a contract that could potentially be...? [LB980]

LAURA PETERSON: The way I think I read that provision is that you're sort of stalled from even beginning the letting process for 35 days. So you have to talk to the union for 35 days, and then you can start the bidding process. But I didn't...but my understanding was you could still take as long as you needed after you've given them 35 days pre-notice, so to speak, to complete your process. [LB980]

SENATOR PRICE: Great. Thank you. [LB980]

SENATOR AVERY: Senator Sullivan. [LB980]

SENATOR SULLIVAN: Thank you, Senator Avery. Do you know, have we seen an actual increase in privatization contracts? [LB980]

LAURA PETERSON: Like I said, the current law requires that an agency submit to the Department of Administrative Services this cost-benefit analysis that's in current law. In two different instances--one where on the date of the contract you're replacing an employee with a contractor, or a separate provision requires if that position has been filled anytime in the last 12 months by an employee...and we have never had one of those submissions. We've had one agency in the past two years discuss it with us and then decide not to do it. And I think there may be an agency discussing it right now, but that contract is not finalized. But, no...I mean, not as far as we're aware. And we're not aware that we've taken any state functions and privatized them, like you, you know, might hear described. [LB980]

SENATOR SULLIVAN: Okay. [LB980]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you for your testimony. [LB980]

LAURA PETERSON: Thank you. [LB980]

SENATOR AVERY: Anyone else wish to testify in opposition to LB980? [LB980]

MARK POHLMANN: (Exhibit 3) Good afternoon, members of the committee. My name

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is Mark Pohlmann--that's spelled M-a-r-k P-o-h-l-m-a-n-n--and I am the chairman of the legislative committee for the American Council of Engineering Companies of Nebraska. ACEC, as it's better known, is the business association of Nebraska engineering firms, and it represents 44 companies with over 2,500 employees and offices across the state of Nebraska. And we are the only association devoted exclusively to the business and advocacy interest of engineering companies. ACEC is opposed to LB980. And although the bill does not affect the Consultants Negotiation Act, ACEC/Nebraska opposes efforts to restrict the ability of state agencies to essentially contract or outsource their services. Contracting out actually can lead to efficiency gains while maintaining or increasing service quality levels and can be used as an opportunity to re-evaluate both the rationale for existing tasks and the processes used to carry them out. Contracting out an activity does not diminish the responsibility of the agency for the performance of that particular service. Employee unions argue many times that outsourcing costs more than in-house government employees. I provided you a study that was completed by the Polytechnic Institute of New York University in 2008 that showed it was beneficial for the New York State Department of Transportation to outsource design work. Some of those same findings can be applied to Nebraska agencies in political subdivisions. I have brought a copy of the Executive Summary as--have distributed to you. The study objectively analyzed and compared the cost of having public sector design work performed in-house with contracting out the same work to private engineering consulting companies. It might be anticipated that the cost of an employee would be the same whether he or she is in the public or private sector. This study found that because of the generous benefits package provided, the large amount of paid time off, and a reduced work week compared to the private sector, the public sector employee actually expected to cost the taxpayer--exceed the cost of a private design engineer by about 14 percent. The report identified several reasons why it's beneficial for the public sector to outsource work, and I'll go through these. The government...one, the government is not meant to perform functions that private organizations can perform equally as well. Secondly, state agencies cannot staff up every time there's a substantive increase in workload. The public can't afford to staff an agency to handle those peak workloads when they do come along. Contracting allows state agencies to handle increased workloads without unnecessarily bloating government offices and staffing levels to meet fluctuating workloads in varied technical, capability, and needs. If a project is outsourced, those employees are only paid for the time they're contracted for the work. Additionally, it may be beyond the capability of in-house staff to accommodate schedule constraints. Oftentimes, the private sector has a lot more flexibility to meet fast-track deadlines than government agencies. The need for innovation may affect decisions about outsourcing as well as the need to manage risks and provide for special expertise. Outsourcing can also improve the quality of the work being performed since those seeking the contracted work compete against one another for work and cannot submit a poor-quality end product and expect to be selected again by that agency. In other words if we don't perform on one contract, we're not going to get repeat work. In summary, the study found that all state agencies should take advantage of the lower

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costs and the enhanced benefits that the private sector can provide. The benefits are immediate and can be long term to the taxpayers of Nebraska. And I'll state again that ACEC/Nebraska supports policies that maximize the use of Nebraska's private sector and opposes efforts such as LB980 that would restrict the ability of state agencies to contract out for services, and we urge the committee to kill LB980. I'm happy to answer any questions you may have. [LB980]

SENATOR AVERY: Thank you, Mr. Pohlmann. Questions from the committee? Seeing none, thank you for your testimony. [LB980]

MARK POHLMANN: Thank you. [LB980]

SENATOR AVERY: Anyone else wish to testify in opposition to LB980? Anyone wish to testify in a neutral position? Okay. Senator Wallman, you wish to close. [LB980]

SENATOR WALLMAN: Waive closing. [LB980]

SENATOR AVERY: Senator Wallman waives closing. That ends the hearing on LB980. We'll now move to LB948. Since that is my bill, I will turn the Chair over to Senator Price. [LB980]

SENATOR PRICE: Well, Senator Avery, the floor is yours. [LB980]

SENATOR AVERY: Thank you, Senator Price. Good afternoon, committee. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I am here to introduce to you and ask for your support for LB948. This bill actually came out of an interim study that this committee approved last year, a study that looked into the competitive bidding statutes for the purchase of machinery and equipment for the state of Nebraska. The study that we conducted over the interim included consideration of the total cost of ownership during the competitive bidding process. The total cost of ownership is sometimes referred to as life-cycle costing, which I believe Senator Krist used in his questioning earlier. Life-cycle costing considers all of the owning and all of the operating expenses throughout a machine's working life, including the initial purchase price, scheduled maintenance costs, repair costs, resale value. If it's a gasoline combustion engine, it would include the cost of operating the machine, the cost of gasoline, that kind of thing--miles per gallon. Current law governing state purchasing, which includes machinery among other items, provides that all purchases that require competitive bids are to be made to the lowest responsible bidder, taking into account consideration of the best interests of the state, of course: the quality or performance of the property proposed to be supplied, its conformity with specifications and times of delivery, and things of that sort. The law also outlines several other elements that are given consideration, and there is where the life cost of the property comes into play. The legislation that I'm proposing here, LB948, expands the language regarding life costing.

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The bill provides that the Department of Administrative Services, in determining the lowest responsible bidder for purchases, will require competitive bids. It will give consideration to the life-cycle costs of all classes of equipment, evidence of expanded life and resale value, repair and maintenance costs, energy consumption including fuel on a per-year basis. The bill also requires bidders to provide data relating to life-cycle costs for heavy equipment, including, but not limited to, motor graders, wheel loaders, paving equipment, backhoe loaders, etcetera. Currently, DAS, that is the Department of Administrative Services, will consider information on life costing when it is provided by the bidder. With this bill, bidders will be required to provide information on life-cycle costs for heavy equipment. Let me say that this bill has the potential to save the state significant money over the life of machinery acquisitions. It is also possible and likely that this legislation can be an important tool to help some Nebraska suppliers and will encourage purchases from within our own state. Right now many of the purchases that we make in heavy equipment are made out of state. And that is because the Department of Administrative Services feels that they are required, after considering other factors, to go for the lowest bidder. What I'm suggesting in this legislation is that the lowest bidder may not be, in the long run, the best purchase. It may not be the most responsible purchase. It seems to me that there are some good reasons to advance this bill, because it would save the state money over the life cycle of the piece of machinery and because it would contribute to the economy of our state. This is a good bill, and I urge you to agree with me and advance it. (Laughter) [LB948]

SENATOR PRICE: Thank you. Yes, Senator Krist. [LB948]

SENATOR KRIST: Lowest bidder would imply that they would buy something for 10 cents less in another state than they would buy it here because they're compelled to look at the lowest price. In the contracting world outside the state there's a term called best value. And the best value concept is what I hear coming from this... [LB948]

SENATOR AVERY: Right. [LB948]

SENATOR KRIST: ...and I totally support that, because in the life-cycle cost of a piece of machinery in particular, there's going to be a factor involved with: Is it inside the state of Nebraska? Because if it is, those taxes, those people who are employed--all of that--is going to stay here inside the state. And although I don't want to violate any interstate commerce laws, I still think by reminding the agencies inside the state that buying Nebraska is going to be good for Nebraska, it's a good thing. [LB948]

SENATOR AVERY: Right. [LB948]

SENATOR KRIST: So I have to agree with you, even though you are my Chair, that this is good and it's a good step in the right direction. I wonder if we're being clear enough in the language to say that this is the intent. Because I'm not ashamed to say that the best

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value is the piece of merchandise that's purchased from a Nebraska vendor or a veteran or any other category that on the government--on the U.S. government level is clear policy. [LB948]

SENATOR AVERY: Right. It's--best value purchasing is something I believe Senator Price has expressed an interest in, in the past. We have distributors here in the state of Nebraska that sell some very, very good items. The problem is that the initial cost of those machines may be a bit higher than they would pay another provider. But if you look at the life of the product, then the state will save money paying a little bit more at the front end. Because once you look at the total life cost of that product, then you wind up saving on maintenance, you wind up saving on repairs, you wind up saving on fuel. [LB948]

SENATOR KRIST: Thank you. [LB948]

SENATOR PRICE: Any other questions? I have one for you, Senator Avery. And it's a great segue off of what Senator Krist has...say, in--in that as we look at this and have an opportunity to look at defining this cost of ownership, one thing I'd be interested in seeing and would be agreeable to is words like the meantime between critical failure on something--like, in other words, how reliable is something and its up time. You know, it's always good in your contracts if you can call out more of that specificity so you can measure apples to apples there, because your cost could be a critical piece on something that...you know, like a belt or a pulley or whatever it is on a large piece of equipment. They may not make that bearing or something, so that--we'd want to know that, because the cost of that bearing might not be the "limiting" factor as opposed to the availability. So all of those things should be rolled up, if at all possible. But I didn't know if you had an opinion on that. [LB948]

SENATOR AVERY: Well, actually that sounds pretty good, and it sounds like you have experience with this. [LB948]

SENATOR PRICE: Had a little bit. Yes, sir. [LB948]

SENATOR AVERY: And you will have an opportunity in Executive Session to make those points if we were to draft any committee amendments. I would like to say that we have some guests with us today who know a lot more about this than I do. Maybe not more than Senator Price or Senator Krist, but they're going to be available for technical questions of the sort you just asked. [LB948]

SENATOR PRICE: Thank you very much, Chairman Avery. No further questions? Thank you. May I have a proponent, please? [LB948]

CHRISTOPHER AMOS: (Exhibit 1) Good afternoon; I'm Christopher Amos, A-m-o-s. I'm

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a certified automotive fleet manager. I have got 30 years of experience managing fleets, and I'm currently the president of the NAFA Fleet Management Association, and it's in that role that I appear here today before you. And I enjoyed the discussion you just had. I think you may have had a bug in my office over a few of these conversations about what life-cycle costing is about. The NAFA Fleet Management Association is an international association of professionals in the fleet business. We have over 3,500 members covering all of the states in the United States, all the provinces of Canada, and five other nations--a smattering of folks that are doing what I do every day. My day job is as the commissioner of equipment services for the city of St. Louis. My experience includes managing fleets as an army officer or as running accounting and running the city now for the last 15 years. As you've already heard, fleet management and the use of life-cycle cost analysis is something that's a fairly intuitive process. In fact, almost everybody goes through that process in their head when they're making a major purchase. And using it in a public bid situation is nothing short of what I would term due diligence in purchasing the proper thing for the taxpayers. Unless you take into account all of the costs, cradle to grave, you could be wasting money. It's always possible that the lowest initial acquisition price choice will be the lowest choice in a life-cycle basis, but it's also possible that it may end up being only a mediocre choice when you consider everything involved. And so I believe fleet management procurement officials owe the taxpayers the best job they can do in selecting that. That term, lowest responsive bidder--you know, what that means in most people's interpretation is that, in the specifications that are provided for the competitive bid process--who provides the lowest price considering all of the elements that are in the bid. Therefore, whoever releases the bid is determining what will be considered. So if the life-cycle cost elements are in the bid proposal that are--force the response to, then you get a full picture of what it's going to cost. And it does include all those fixed and operating costs that you've discussed, as well as things like reliability uptime, because that's what really the operators are interested in: Is the vehicle going to be available to do the job? Will it do what it was purchased for? The problem comes when you have silos of interest. And you're always going to have that in a major government, and you're going to have it in big corporations as well. If one group is only worried about how much you spent up-front and another group is only worried about whether the job gets done, and then you have the fleet guys like me in the middle, where we're responsible for fixing and fueling everything that somebody else bought and somebody else is using--unless you put all those interests together and marry them with the corporations and the dealerships that are providing it, and those services, then you don't have the full picture. So by using a bidding process that has life-cycle cost analysis elements to it, as discussed in this bill, that is the optimum way to make choices. It's the best practice in the fleet industry. It is a core competency in the Certified Automotive Fleet Manager program. It was adopted as part of the Wharton School of Business, University of Pennsylvania, starting in 1988. So the fact that the state of Nebraska is not using that technique puts you about 22 years behind times as far as the documentation of where it should be. The state of Missouri, where I reside, uses it--use it in multiyear

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procurements. If the state doesn't provide something on a bid, then I'll do it myself as part of the city of St. Louis or previously as part of the county. The real shame here is that if the state fails to take leadership in this area, then all of the subordinate municipalities and counties of the state can't take advantage of that work. Because you can piggyback onto those bids, and then you...so the situation you have now, if the state does not take this initiative to do this and help lead the way for everybody else, then individual communities have to do it on their own. And they may not have quite the skill level that the state employees should have in this area. It is true that the easiest way to buy equipment is just to say what you want and take the lowest initial price. But how much more difficult is it to do it correctly using life-cycle cost measures? Well, having done it myself for multiple decades, I can tell you that once you learn the technique--which you can learn in a weekend seminar on a self-taught CD that NAFA provides, complete with spreadsheets to use for examples--that it adds about two hours per specification on bid. So if you're spending \$1 million buying four motor graders, it's two hours' labor difference between getting the one that's going to be the lowest cost on a life-cycle basis and getting the one that has four wheels and a blade that will get the job done. So it's not a lot of effort involved in doing that. Another critical element is, where do you get the information to compare? This bill has an interesting provision to it to force the suppliers to provide the critical information. I think that's a good approach. You could also use approaches that involve full-service leasing, using rentals as a basis for making decisions, use multiyear contracts so that people can't lowball bids. So there are a lot of techniques that we teach that would make this an effective program. But by forcing the suppliers to provide the data, even if there's not an independent source to verify that data--like your mileage may vary numbers from the EPA, which don't mean much anyway; the dealers that provide the data as an affidavit that it is true are the ones responsible for providing it. So if the state makes a decision based upon that information, the state's made...has done its due diligence and has made a proper selection. If, in fact, that data is suspect or should be challenged, it's up to the person supplying that data to defend it to the person who believes it's not true. So in some cases where you're not doing a lot of procurement, some states, municipalities will use a multistep procurement process, where there's a required bidding meeting in the middle where everybody gets a chance to look at the bids and question any data that's there. So there are ways to get around all of the problems that you may hear about life-cycle costing and implementing it. The bottom line is, it's the right way to do it. Now, it's not only NAFA that--my association--that supports this. Also the National Conference of State Fleet Administrators is a proponent of CAFM program; the Rocky Mountain Fleet Management Association, which has all of the states just to the west of you; the Florida State Fleet Manager Association, for all their governments there, and it's a college accredited program. So this is not something that's new, and it's not something that's untested. It's something that has been in existence for a couple of decades now; and it really is the responsible way to do business, and it's the responsible thing to do for taxpayers. I guess the final thing I wanted to say about it is that even though it's not rocket science...I mean, anybody who understands how to do a budget and do a bid

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now could certainly learn how to do it just in a few hours of time. And the resources are available there to do it, and it's relatively inexpensive. In NAFA, our philosophy is we teach people how to fish; we don't provide them the fish. So you could hire a consultant to come in here and do all your specs for you and spend the money one time, or you could spend \$3,000 to \$4,000 for each of a couple of people who will teach them how to do it, and then they'd be able to do it forever and pass that information along to their folks. So it's a relatively inexpensive, relatively quick fix to a problem that would pay dividends to your state for many years to come. That's all I had. Do you have any questions? [LB948]

SENATOR PRICE: Thank you, Mr. Amos. And I want to state that we appreciate you making the drive up, particularly in inclement weather, and coming up here to share your expertise with us. Obviously, we're not doing it now, so outside information helps. Are there any questions from the committee? Yes, Senator Sullivan. [LB948]

SENATOR SULLIVAN: Thank you, Senator Price. Do you have any idea how many other...or how many state governments use this life-cycle costs analysis in their bidding? [LB948]

CHRISTOPHER AMOS: I think the majority of them do. I know personally of at least, I think, 27, 28--that I know the fleet managers themselves, and I know that they're doing it. I believe that many more are doing it. Now, they may not do it on every category of equipment. I'm proposing that...this bill specifically talks about off-road construction equipment, which is actually the most difficult one to do just in terms of getting outside data; but the comparison part of it will still work. But when I say that they're not all doing it, I'm saying they're not all doing it on everything. But really, this same technique works. It doesn't matter if you're talking about buying cars, trucks, airplanes, computers--anything that has a residual value and an operating cost associated with it--a life-cycle cost analysis is an appropriate way to do it. So I know personally of at least that many that are performing on a regular basis. And then within, you know, the counties and the states--even within states that don't do it, as you'll hear today, you have counties that are doing it--within Nebraska as well. [LB948]

SENATOR SULLIVAN: And if I understood you correctly, to really implement this effectively, there would need to be some training, right? [LB948]

CHRISTOPHER AMOS: Yes. [LB948]

SENATOR SULLIVAN: And at what levels across the...I mean, I'm just trying to get a handle on how many people would have to be trained to get this implemented. [LB948]

CHRISTOPHER AMOS: Well, it depends on where you want the decision to take place. And I get the impression that your procurement, centralized, is done through the

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administrative office. And if that's the case, then they...whoever is going to handle vehicle procurements needs to have at least a working knowledge of what's going on. They could probably just go through this sit-down CD that costs \$60 and know what they need to know. Like in my case, I've been through five or six procurement commissioners in the time I've been the city's equipment service commissioner. And every time they come in, I take the initiative as the fleet manager to teach them what they need to know about it. But I write the specifications, and I do the math on it; and then they put it out for bid and ensure that the public process is open and that everybody gets an opportunity to bid. But once the bid opening is done, which I'm always present for, then I do the number crunching. I provide it back to the procurement officer. The procurement officer validates the final findings that I come up with and then awards the bid. So there are roles there. So if you have...I don't know how many agencies you have that have fleet managers--probably your Department of Highways or Department of Roads, whatever you call it there, probably your...well, that would be the ones that would have most of your equipment--but maybe parks, recreation-type folks that will have construction equipment. If you do all of the vehicles, then you certainly are going to have to include other administrative types of vehicles, even light-duty stuff. So you might have five or six fleet managers within the state, if they're not consolidated, that should be trained in the details. So you could either top-train the procurement folks and then they just get the fleet input for the operators or you could train the fleet managers and then the procurement folks could just trust their experts. [LB948]

SENATOR SULLIVAN: Okay. Thank you. [LB948]

SENATOR PRICE: Senator Krist. [LB948]

SENATOR KRIST: I just want you to say it again for the record. One of the most important parts of what you said, to me, is that the silos have to disappear. The people who are managing the fleet need to be part of the analysis, which is what you just said. [LB948]

CHRISTOPHER AMOS: Absolutely. We're teaming this, and it should be that way in any part of government. But the folks who operate, the folks that maintain, the folks that specify, the folks that do the bidding, and the corporate sector that's providing the items all need to work together in order to accomplish what's best for the public. And ultimately the government employees are responsible for getting the most bang for the tax dollar, and they have to work together. So it can't be, you know, us against them. If that's what's going on, then that explains the entire problem. [LB948]

SENATOR KRIST: I need the company that makes that tie. [LB948]

CHRISTOPHER AMOS: Non Conforma Ties in Denver, Colorado. [LB948]

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SENATOR KRIST: Thank you, sir. [LB948]

SENATOR PRICE: Well, again, Mr. Amos...are there any further questions? I'd like to thank you for coming up and sharing your expertise with us and appreciate your service, too, to our country. Thank you. [LB948]

CHRISTOPHER AMOS: Thank you. [LB948]

SENATOR PRICE: Now, the next proponent. [LB948]

TOM MEYER: (Exhibit 2) My name is Tom Meyer, T-o-m M-e-y-e-r; and thank you, Senator Price and the rest of the committee, for hearing me today. I am a Pierce County Commissioner, and I think most of you have probably seen my little letter that I had in my local paper, that I had to somewhat defend myself as far as a purchase was concerned on a motor grader that I did more research than looking at the low bid on the purchase. I looked at the fuel consumption; I looked at parts availability; I looked at past records of equipment that we had in our fleet already. And to make a decision--which we actually purchased a higher-price machine versus taking the low bid. And our recent weather issues that we've had--it made me more aware of that also, that we had very good service out of our equipment, that it held up well--which was very abusive, I think, as far as out pushing snow or whatever. We had, I'm going to say, some emergency situations where we had people without power, we had people that were running out of propane to heat their homes. We had some medical issues with people that had to get to dialysis to...and some other issues or whatever that they had to get to their jobs. So basically, these pieces of equipment turned into emergency pieces of equipment--and that we need that equipment out there to do the jobs that we do. And if...you probably know that on most cases that if you go out and buy the cheapest possible thing out there, sometimes you do not get the best value out of it. That you need to invest, I'm going to say, in the future, that you know this piece of equipment will do the job that you ask of it and it will do it for a longevity portion of time. And to, you know, end up still having value in the end and--other than a piece of equipment that is used up and worn out. So that is all I've got to say today. If you guys have any questions or...? [LB948]

SENATOR PRICE: Thank you, Mr. Meyer. Are there any questions from the committee? Seeing none, thank you very much for your testimony today. [LB948]

TOM MEYER: Thank you. [LB948]

SENATOR PRICE: Next proponent, please. [LB948]

DARLA SVOBODA: (Exhibit 3) Senator Price and members of the committee, I am Darla Svoboda. I am Hamilton County highway superintendent and zoning administrator. [LB948]

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SENATOR PRICE: Could you spell your name for the record, please? [LB948]

DARLA SVOBODA: Oh, I'm sorry. D-a-r-l-a, and Svoboda, S-v-o-b-o-d-a. I have been with Hamilton County for 37 years, and I've been the highway superintendent for 27 of those years. I was hired in 1972, and the reason for that was they were needing to...they had a request that we set up bookkeeping--a bookkeeping process to comply with the changes that were mandated at that time by the federal government to make counties accountable for their highway allocation. And every county in the state receives highway allocations, which makes up a major part of their budgeting. This money is extremely important to the counties, because the more highway allocations that we receive, the less local tax dollars we're requiring. At that time the counties were also receiving federal revenue sharing. And, once again, that wasn't really...it wasn't being made accountable for. It was a great source of revenue, and we were able to do a lot with it; but that didn't last too many years. Highway allocations is very important that we do become accountable for it. And in order to be accountable, there's a lot of reports required annually in order to keep receiving the highway allocation. There have been...not counties but villages and cities in the state of Nebraska that did relinquish some of their highway allocations because these reportings were not done. Last year, in 2008 and 2009, my highway expenditures--and this will give you an idea of how much the highway allocations is important is--my expenditures in Hamilton County were \$1,731,349. My state and federal highway allocations was \$1,153,380. So you can see how much of a portion of our spending dollars is highway allocations. Highway allocations comes from motor vehicle fees, incentive payments, and other fees with regard to motor vehicles. And, by all means, counties do need to be accountable for that. That is our main source of revenue. Required reporting for this in counties is done in many different reports. But the one that is...so directly relates to this bill is the annual report which includes equipment costs. Now...and it is itemized out on a spreadsheet. You know, every piece of equipment--we tell how much the cost is per hour per mile. It asks separately for fuel, oil, grease, tires. It is very specific. And what that particular report showed me was, it became a very useful tool to know what should be the decision making in regard to buying this equipment. And it was all the decisions, then, that we made in the years to come were based on facts, facts that came out of this report. I spent ten years keeping records before I became the highway superintendent. It became very clear to me that over those ten years what kind of decisions needed to be made for Hamilton County to be in the best interest of our taxpayers. And the county board at that time, you know...I understood all of that, and we began that process. Low bid is not necessarily the answer to less spending, and Hamilton County is an example of that. Hamilton County owns eleven motor graders, two loaders, one excavator, one dozer, one backhoe and one scraper, all made by the same manufacturer. That wasn't the case when we began. Does this allow me to continue making comparisons with other counties or with other manufacturers? Yes. I turn to my neighboring counties, and this is...the handout today is a copy of what Casey Sherlock put in the paper a few

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years ago showing a comparison during his bidding process to purchase a machine. I do turn to him on a regular basis because he has more than one manufactured piece of equipment that does do a comparison for me. Not that I really need that, though, as I go on. We maintain in Hamilton County 1,017 miles. We have 57 blacktop roads. We build our own bridges. We own and operate our own gravel pit, and we have the fleet of trucks to gravel those roads. We also have a construction crew that regrades several roads for us through the year. I mentioned that low bid is not necessarily the answer to less...answer to less spending. And that was proven to us very recently, as there was a seven-county survey done in the surrounding counties in our...around Hamilton County. The survey was done with wage comparison in mind, but there was so much more to that survey. It confirmed that the method that Senator Avery is asking for in LB948 is working for us. Hamilton County operates on the smallest budget of all seven counties. Hamilton County made a decision in...a decision a long time ago to include your life-cycle costs--which we called, back then, operating costs or operating expenses--and resale value. And we certainly are seeing the benefits of doing so today. The durability of the equipment we have showed it in the last few weeks with all the snow removal. Just to show you how many, you know, hours we have, you know--we put in a tremendous amount of overtime. I owe 20 employees \$44,000 in overtime alone. And all those hours they were in this equipment, and this equipment proved that it could do what it needed to do. It was very much tested, abused, and it met all of our demands. You know, do I have bills to pay? Yes. Are they small things? Yes. You know, I'm very...we were all very pleased--with all the added expenses that we have today based on that storm, just with even paying our people--that we don't have this cost in repairing our equipment. Adding life-cycle costs and resale value languages will definitely help to determining that lowest responsible bidder. And that may not be the lowest dollar bid. We certainly found that out many, many years ago and...but now it's proven to show that we have the lowest county budget in the seven counties around me. The language Senator Avery is proposing to add to the competitive bidding process is factual findings that will only lead to better decisions by everybody. I believe that only a positive effect can happen from this legislation, and I urge you to move this bill forward and pass it into law. Thank you. [LB948]

SENATOR PRICE: Thank you, Mrs. Svoboda. Are there any questions from the committee? Well, I'll just ask one question. It seems that you were able to overcome the intricacies of trying to build a bid process to take into account these various factors and that that was borne out by existing requirements in another report, so you don't really think...would you think it too much of a burden to add these requirements in a bid if you were other counties? [LB948]

DARLA SVOBODA: No. [LB948]

SENATOR PRICE: All right. Thank you very much. Next proponent, please. Just for (inaudible), how many more people do we have who plan to testify on this bill today?

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Thank you very much. Please go ahead, sir. [LB948]

TERRY TWIESTMEYER: Senator Price, committee members, ladies, my name is Terry Twiestmeyer, T-e-r-r-y T-w-i-e-s-t-m-e-y-e-r. My company is Twiestmeyer & Associates. We're a manufacturers' rep firm and distribution firm out at Grand Island, Nebraska. We cover Nebraska, Kansas, and Colorado. We sell heavy industrial equipment and farm equipment to the industrial and farm equipment dealers in those states. Business is very good. I sell snowblowers. (Laughter) I love the snow. Let it snow. But one of the product lines that I want to visit with you about today is the...or one of the problems, I should say, that we've been encountering is when you drive down the highway you see these mowers mowing the highway side, and they're a very grayish light green. That's my mowers. Schulte Manufacturing--I represented them for a number of years. And our problem is, and it boils down to really one line in the...it's paragraph 81-161, and it's lines 22 and 23; it reads: its conformity with specification. For quite a number of bid letting times we have met or exceeded the bid. No one has come close to meeting or exceeding the specification for the bid, but they still take the lowest price. And I'm asking for consideration in this that there would be some teeth put into things, that if there is a spec let's live by the spec. That's the gist of my remarks today. Life cost cycles for equipment--we're very, very familiar with that. And on the industrial side of things, our manufacturers are working towards that goal, that ultimately when we deal with municipalities, state levels, and what have you, this is going to be the criteria that we use. [LB948]

SENATOR PRICE: Thank you very much, Mr. Twiestmeyer. Are there any questions? Yes, Senator Krist. [LB948]

SENATOR KRIST: Do you feel that it would be cumbersome for you to be required to submit the data that would be specified as life-cycle costs? [LB948]

TERRY TWIESTMEYER: No. [LB948]

SENATOR KRIST: Thank you. [LB948]

SENATOR PRICE: Are there any further questions? Seeing none, thank you very much, sir, for your testimony today. Are there...there no further testifiers in...one more. Thank you. For one more proponent, correct? [LB948]

JASON WALKER: Yes, sir. [LB948]

SENATOR PRICE: Thank you. [LB948]

JASON WALKER: (Exhibit 4) I'd like to thank everybody for their time today. My name is Jason Walker. I'm here on behalf of Caterpillar, Inc. I am currently in the role of sales

support consultant within our Governmental and Defense Products Division. I am going to be brief, for the simple fact that many of the folks who have previously testified have presented a lot of the points that I feel very strong about. One thing that I would like to show you today is an article that may give you some sort of relevance to some of the costs that may be saved by incorporating a life-cycle costing methodology into your purchasing process. The city of Winnipeg...this is an article published in August of 2007 by the APWA Reporter. The APWA is the American Public Works Association. It is probably the largest trade organization in North America for public works. In this article, again, this is stated: "Winnipeg paves the way in fleet management." In 2003 the city found itself in a position that it had 2,300 light- and heavy-duty vehicles. Many of the vehicles that they had in their fleet were actually supplemental vehicles in case those primary units were to go down. Obviously, there was a lot of additional maintenance costs associated to those; their fleet was aging; they realized that something needed to change. What they did was that they centralized the purchasing departments, and they also incorporated life-cycle costing into their procurement process. In doing so, in a four-year period, in 2007, they were able to reduce that fleet from 2,300 vehicles down to 1,600. They professed to have a much-higher-quality fleet, less down time, less units required for backup. At the end of the day, they were able to return over \$10 million back to the city by incorporating those two elements. Some of the other things that I want to hit on today is simply that--as Senator Price mentioned earlier, the apples to apples comparison. It is very difficult for manufacturers such as ourselves to compete in an environment where not everything is taken into consideration. So if we take into consideration some of these elements that were previously discussed--such as the maintenance costs, the repair costs, the residual values--it brings everything to light and provides a much more level playing field for those vendors that are looking to participate. In conclusion, I guess what I would say is that having been in this position for about three or four years, I guess, at this point, it's very ironic to me traveling down the highways that we see in the private sector how many of those private contractors tend to be using higher pieces...higher-quality pieces of equipment. And I'm not necessarily stating that those pieces are all Caterpillar, but it tends to be that they have much higher level of quality that they're operating with. I guess if at the end of the day I was to sit there and try to give justification to those folks who are responsible ultimately to those people sitting at their dinner table at the end of the day, that I would sure to think that those of us who feel that we are responsible for doing the best things for our constituents would also probably take a few more things into consideration than just what the initial purchase price is of some of these items. [LB948]

SENATOR PRICE: Well, thank you very much, Mr. Walker, for your testimony. Are there any questions? Senator Krist. [LB948]

SENATOR KRIST: Would Caterpillar find it cumbersome to add that additional data, if required, to any purchase? [LB948]

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JASON WALKER: If the additional data is...if you're talking about the additional numbers with regards to repairs costs and maintenance costs and things of that nature, that information is available. Each manufacturer has a performance handbook that is published that publishes the fuel consumption numbers. They have owning and operating manuals that is published to describe all of the scheduled maintenance costs, which is basically a fixed number. That machine needs to undergo those procedures at a given point in time, so there's a fixed cost associated to that. That information is available. [LB948]

SENATOR KRIST: So if the form went out and said we're considering buying three widgets, that information is already available and you could fill in the form to compete for Nebraska's business? [LB948]

JASON WALKER: Absolutely. Yes. [LB948]

SENATOR KRIST: Thank you. [LB948]

SENATOR PRICE: Any further questions? Seeing none, thank you very much for your testimony today, Mr. Walker. [LB948]

JASON WALKER: Thank you. [LB948]

SENATOR PRICE: Okay. Are there any further proponents? Seeing none, we will move to opponents. Are there opponents? [LB948]

LAURA PETERSON: Good afternoon, Senator Price and members of the Government, Military and Veterans Affairs Committee. My name is Laura Peterson, L-a-u-r-a P-e-t-e-r-s-o-n, appearing here in opposition to LB948 on behalf of the Department of Administrative Services. LB948 relates to the gathering and use of information related to life-cycle costs when the state purchases heavy equipment. As I explained during my testimony in the interim hearing on this topic, the state buys from the lowest responsible bidder, not necessarily the lowest cost bidder. Life-cycle cost is one element in a list of elements current state law--which, you can see those on page 3 of the bill, subsection (6) and subsection (9)--requires us to consider in determining the lowest responsible bidder when we're purchasing goods, including heavy equipment. Each of the elements is considered if they are appropriate for the type of commodity being purchased; and depending on the type of commodity, different elements may be prioritized. For example, one of the elements considered in that list is compliance with the time requirements of the bid. Delivery dates may be extremely important for commodities such as road deicer, which is needed for the safety of the traveling public in winter months. Another element is performance of the personal property, including commonly accepted tests of usability. Performance is critical for commodities such as bulletproof vests for law enforcement, and testing is critical for equipment such as tractors, where a

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separate state law mandates such testing for tractors which are going to be sold within the state of Nebraska. Recently, when we bid the statewide contract for vehicles--which is utilized by the state fleet, other state agencies, and political subdivisions--the state did consider some components of life-cycle costs, primarily fuel efficiency and cost over the time the state anticipates retaining the vehicle. To use fuel efficiency, the state asks bidders for the mileage per gallon expectations in the city and on the highway. The state then verifies the data provided by the bidders using EPA published data. If the EPA data verifies it varies from that provided by the bidder, the EPA data is used in place of the bidder's data. The buyer then calculates the expected fuel costs over the period that vehicles will be retained, adds that to the bidder's base price for the vehicle, and awards the contract based on the combined price. If there is not independently verifiable data, the fuel efficiency data would not be used in making an award, because we cannot guarantee the accuracy of the data supplied by the bidders. Other components of life-cycle costs were not considered in this bid by the state because they were not appropriate. For example, life-cycle cost analysis sometimes contains consideration for maintenance costs, useful life of a vehicle, or expected commercial resale value. The state did not consider these components because the state uses state employees to complete maintenance on a regular schedule that is the same for each vehicle, meaning the cost is the same regardless of the vehicle that is purchased. The state retains vehicles for a set period of years rather than until the end of the vehicle's useful life, and this is based on cost recovery schedules which are monitored by the federal government to ensure federal funds are properly collected and allocated. And the state sells vehicles at state auctions in accordance with state laws governing the sale of surplus state property rather than in the commercial marketplace, making most data related to resale price irrelevant to the ultimate sale of the good by the state. LB948 would mandate that when bidding on heavy equipment the bidder must provide data related to life-cycle cost. And it clarifies that life-cycle costs must include resale value and fuel consumption. As I just explained, the state generally does not consider resale costs, because state law mandates a specific disposal process; and we only consider fuel consumption if the consumption data can be independently verified as accurate. Thus, the bill would require bidders to submit data even in instances where we know at the time of the bid the data will not be utilized in determining the winner...the winning bidder. We anticipate that this could increase costs to bidders if they had to complete testing or obtain data to be submitted or that it might eliminate bidders from competition if they did not have the specified data available. There has been some discussion of buying from Nebraska businesses. However, we operate in a global economy; and when we give priority to Nebraska companies in our award of contracts, our Nebraska companies then suffer the effects of the reciprocal laws in many states. The current process works for a myriad of goods the state purchases. We receive quality goods and equipment in response to our bids, and it allows state agencies, with the assistance and oversight of the Department of Administrative Services State Purchasing Bureau, to consider all relevant elements of a bid, including life-cycle costs or components of life-cycle costs, as appropriate, resulting in the best overall deal for the state. If there

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were relevant, independently verifiable data on the relevant components of life-cycle costs available for heavy equipment now, the state would be taking those into consideration as we do for vehicles. However, to date, we have not been able to find a source for such data. This bill places an unnecessary mandate on bidders without providing a corresponding benefit to the bidding process. Thank you for allowing me to testify. I would be happy to answer questions. [LB948]

SENATOR PRICE: Thank you, Miss Peterson. I'm going to take a moment here--privilege here. I've got a question for you. Do you think we do business with Missouri at all? Do we ever buy stuff from the state of Missouri? [LB948]

LAURA PETERSON: I can't give you a specific example, but I know we buy goods and services from all over the United States. [LB948]

SENATOR PRICE: Because, from my understanding, Missouri--they do recognize small businesses, disabled veteran-owned businesses, AA. They have, like, a buy-Missouri type of thing. So that was a reciprocity question, sometime (inaudible). And the other part--am I to understand, in the vehicle fleet management statement you made there, that we maintain vehicle predicated on a cycle we choose, outside of what a manufacturer says? A manufacturer says you could go 50,000 miles before you do, but our state, our threshold says 25,000 miles. We just perform it because that's what we say we do? [LB948]

LAURA PETERSON: No, I don't think that's necessarily correct. [LB948]

SENATOR PRICE: Okay, great. Thank you. Senator Krist has a question. [LB948]

LAURA PETERSON: But did you want me to address the reciprocity question before, or... [LB948]

SENATOR PRICE: Okay, please. [LB948]

LAURA PETERSON: Many states...I don't know about Missouri. There are some exceptions in some cases for various specific products that are grown in a state or something like that. But overall, a significant number of states have a reciprocal law, including the state of Nebraska, which means if the state of Missouri, let's say, has a 10 percent preference for their own bidders--when a Missouri company bids in Missouri, they get a 10 percent preference over out-of-state bidders. Then if a Missouri company comes to the state of Nebraska to bid, we hold that 10 percent against them for our own bidders. That same applies to Nebraska. If we would start to create a preference for Nebraska businesses and buy Nebraska products with a 10 percent or a 20 percent or some kind of preference, then when our Nebraska companies go to those other states--many of which have reciprocal laws--that 10 or 20 or 25 percent preference is

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held against the Nebraska bidder who is bidding in the other state. [LB948]

SENATOR PRICE: Great. Thank you very much. Senator Krist. [LB948]

SENATOR KRIST: I have three questions. The first one is, the system you're describing to me sounds a lot like the United States Air Force did 20 years ago. And what they have adopted is very similar to these programs that we're talking about, and they're actually leasing a lot of their vehicles. Does the state look into life-cycle costs in terms of lease versus buy when it goes out and does these things? [LB948]

LAURA PETERSON: You know, I can't tell you about heavy equipment specifically, but for vehicles there's actually a state law that prohibits us from leasing them. We are required to purchase them. And there's even an Attorney General's Opinion on that, that we're not, so we would do no analysis of leasing, obviously, because we're statutorily prohibited from that. [LB948]

SENATOR KRIST: I think that's dumb, but that's my personal opinion. [LB948]

LAURA PETERSON: That may be another bill, but...you know... [LB948]

SENATOR KRIST: Yeah, it probably will be. If you're telling me that you buy a truck...let me understand this one. You buy a truck, and regardless of how bad it proves its lifetime to be at a certain point, you're not going to get rid of it until that truck is up? [LB948]

LAURA PETERSON: I think if it fails, we would get rid of it. I'm not aware of any significant problems we've had either with vehicles or heavy equipment where they were failing before the end of the scheduled life. But, for example, with vehicles, what happens is, we're required to set rates, but we charge the agencies for the cost of using the vehicle, and those rates are oftentimes paid by state agencies in part with federal funds. And so we have a cost allocation schedule of--we intend to retain this vehicle over X number of years. Oftentimes that's not what would be the absolute end of its useful life. We're going to sell it before it would be done. [LB948]

SENATOR KRIST: You're going to use it until it's all used up. [LB948]

LAURA PETERSON: And then if we would keep it longer or less, we have to justify, for example, to the federal government, who has A-87 rules, that our allocations schedule was not flawed and that we don't owe any money back to the federal government because we retained at less or more than we were required to on the cost allocations schedule that was approved by them. [LB948]

SENATOR KRIST: I guess what I'm getting at here is that on the federal side, if the

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piece of equipment starts to demonstrate the fact that its cost value is going down--that is, you're basically, in laymen's terms, throwing good money after bad--you get rid of it and you upgrade your equipment, because you don't use it up until the end, when there's no residual value. And I'm assuming that we don't do that. Also, do we have any kind of preventive replacement investment fund at all? When we buy a piece of equipment, we don't put any money aside right now for the reinvestment in that equipment later one? [LB948]

LAURA PETERSON: There's no separate fund where the state is doing that centrally. Individual agencies may be doing that on their own. I can't answer that. The question about, you know, the end of the useful life--there's actually, within purchasing, there's a process if a piece of equipment is failing sooner than it was required to, if it's not performing up to the required specification--there's a vendor complaint process. There can be penalties and requirements for the vendor to make it right. And certainly agencies, whatever agency purchased the equipment, should be monitoring that and going through that process if there's being a failure. I'm not aware, though, that we've had that kind of report on, for example, the heavy equipment that we're purchasing now. [LB948]

SENATOR KRIST: Thank you. [LB948]

SENATOR PRICE: Senator Giese. [LB948]

SENATOR GIESE: Thank you, Senator Price. Miss Peterson, thank you for coming today. You do a great job explaining the service, or the work, that you do. The question that I have is, you can't...if you want to do this now, you can't come to us and say: You know, we'd like to add this to our specs that we do. You can't do that now without us? [LB948]

LAURA PETERSON: Actually, we are required to consider life-cycle costs in every bid. And that's what I was saying, if you look at page 3 of the bill, you see a list of things that are in current law that we are required to consider if they are appropriate. And life-cycle costs is one of those things. So certainly, we can require life...and have required life-cycle data and considered it on bids where the buyer and the agency involved, who have sort of a partnership in developing the specs, consider it to be both relevant and appropriate. [LB948]

SENATOR GIESE: Okay. And then my other question would be, then, can you tell me...I'm assuming that because you're not in favor of this bill that you're not...you didn't come to Senator Avery with this. Can you tell me when the last time the Department of Administrative Services came with a bill that said, you know, we'd like to do this because I think this is going to help the bottom line with this? [LB948]

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LAURA PETERSON: Well, I know that Senator Avery has several bills that are on behalf of the Department of Administrative Services this year that make several, you know, changes, not so much in the purchasing area. I think that the Department had a cleanup sort of bill to help us out with some purchasing things, maybe two or three years ago. I don't recall exactly. That would have been heard in this committee. [LB948]

SENATOR GIESE: All right. Thank you. [LB948]

LAURA PETERSON: Really, though, I mean, I would say that the purchasing statutes are relatively flexible for and give the buyers and the state agencies the ability to really create within the specifications most of the things that we think we need to consider the lowest responsible bidder. And I use that term, meaning not necessarily lowest cost, because we're not mandated to consider lowest cost but rather lowest responsible bidder. And we can consider a variety of things and what makes someone responsible. In my testimony I gave you a couple, you know: Do the bulletproof vests perform to the tests that are required? Does the tractor meet the requirements of the other state laws? I mean, there are several...and then the using agencies may have several specific requirements that are specific to the nature of their business. And really, the law is relatively flexible to allow us to put in those requirements in the specification. [LB948]

SENATOR GIESE: Thank you. [LB948]

SENATOR PRICE: Senator Sullivan. [LB948]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you very much for coming. In previous testimony it appears that states that use life-cycle costing are able to do that even in light of federal statutes. You say that you use life-cycle costing now in your bidding process, so I'm wondering why you're opposed to this legislation, and is it because we...you are limited by other statutes? [LB948]

LAURA PETERSON: I wouldn't say that we're limited by other statutes. I think what we're saying is that currently the law provides for us to consider life-cycle costs but also allows us the flexibility where we know for some reason or other that life-cycle cost is not going to be an appropriate analysis for that particular piece of equipment. There's not independently verifiable data that we want to use to ensure that what we're getting from the manufacturers is legitimate--you know, those kinds of questions, whatever that may be...and that current law provides us more flexibility. In this case, even if we knew--let's say, for example, we...I can't think of a good example right now--but we knew we didn't want to consider resale value, for example, because the manufacturer's data on resale value is relatively irrelevant to what we're going to resell it for because the state is mandated to use a surplus auction process to dispose of property at the end of...when we're done with it, okay? So we're not going to take into consideration anything that the bidder submits related to resale value. But the way that this bill is

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worded, regardless of the fact that we may not consider it and the bill doesn't require us to really use it, the bidders are now mandated to supply it. Well, you know, we're sort of taking away the flexibility of the buyer and the using agency in identifying what is necessary in the specifications for that bid--although we really haven't heard, you know, a lot of concern that we're getting bad-quality products or either overpriced or underpriced products, or, you know, we haven't seen a failure of the quality of the things that we're buying. And we are implementing life-cycle costs in many cases. [LB948]

SENATOR SULLIVAN: Okay. Thank you. [LB948]

SENATOR PRICE: Senator Krist, you had a question? [LB948]

SENATOR KRIST: I think I'll save it for Exec. Thank you. [LB948]

SENATOR PRICE: All right. Senator Karpisek, please. [LB948]

SENATOR KARPISEK: Thank you, Senator Price. Thank you. You don't think even at the auction that maybe some pieces of equipment--one brand--will bring more than another, and then do you track that? [LB948]

LAURA PETERSON: You know, I don't know that we track it by brands. I can't tell you that for sure. But I do know that if you were going to consider resale price, you presumably would not take the manufacturer's data about commercial resale value, because oftentimes commercial resale value is not going to be the same as what we would see it at state auction. [LB948]

SENATOR KARPISEK: Just curious if you could correlate that somehow to look back and say, well, yeah, a Caterpillar always sells better than New Holland. If I see a state sale and it's a bunch of Fords, I'm not going to go even. But I don't go anyway, because I might come home with too many vehicles. But I would just be a little curious about that if we could... [LB948]

LAURA PETERSON: Presumably, one of the problems would be, you know, equipment moves forward, and so, you know, would you use all Caterpillar data? Or does it have to be that specific--you know, model, type of equipment, that kind of a thing? And would we be inclined to have enough data to be able to include all manufacturers? So if a new company comes to bid and we're required to use resale value and we're going to use the resale value from state auctions from the prior, you know, five or ten years, and we don't have data for that one manufacturer, then, you know, what exactly do we do with that one manufacturer? Do we throw them out because we don't have resale data? Do we take the data that they've estimated even though they're new and they don't know for sure either? You know, exactly what do we do there? [LB948]

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SENATOR KARPISEK: She is good. Thank you. [LB948]

SENATOR PRICE: Okay. Thank you. Are there any further questions? I'd like to just ask: In your testimony you were saying--you used the words "relevant" and "if appropriate"--you'll consider elements of life-cycle costs in a certain elements. And how is it again that you determine relevance and appropriateness? [LB948]

LAURA PETERSON: Some of the examples--the one that Senator Karpisek and I were just talking about, for example, is resale value. Commercially, resale value is almost always considered as an element of life-cycle costs. But today we have not been considering resale value--and primarily the commercial data available from manufacturers related to resale value--because we're never going to sell that piece of equipment in the commercial market. We're going to take it to state surplus. So I would argue that in my language of relevant and appropriate, we've determined that resale value isn't relevant and appropriate in our bids as it might be in a commercial bid. [LB948]

SENATOR PRICE: Okay. Great. And the last part there, you said that you hadn't seen any failures. And I think the conversation here hasn't been seeing failures; it's seeing costs--the life-cycle costs. I don't suggest you could see any life-cycle costs if you're not maintaining life-cycle statistics--I mean, those types of things. So I think maybe more as we heard in earlier testimony from our testifier Miss Svoboda, in going back and looking at cost, the data suggested there are life-cycle things that they needed to consider. So I would submit that to you. But thank you very much for your testimony. And do you have any closing comments you want to make? [LB948]

LAURA PETERSON: No. Okay. Thanks. [LB948]

SENATOR PRICE: All right. Thank you very much for your testimony. Are there any further opponents? Anybody like to testify in the neutral? Seeing none, Senator Avery, the floor is yours. [LB948]

SENATOR AVERY: Thank you. Well, I think this was a valuable discussion, because I'm sitting there and I realize that the last testifier really revealed that we have some problems with our procurement process. For example, resale value is irrelevant because we don't do it that way. Well, maybe we should change the way we do it, because resale value might be pertinent. It might be useful in how we dispose of surplus equipment. We also, I think, learned that lowest bidder does, in fact, rule the day. One testifier even suggested that lowest bidder sometimes trump consistency meeting specifications. Is that a way we want to do business in the state? I don't think so. Currently, life-cycle cost estimates are not routine and requested. So it's up to the bidder to include the information or not. So the state, even though they may have the option of including life-cycle costing in their purchasing process, if the information is not

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there they can't use it. So what happens in many cases is that you have what I would consider incomplete information to allow the Department of Administrative Services to make the best judgment, the best choices, in which purchases to make. LB948 requires life-cycle costing data in the bids. I don't see this as an unreasonable or too costly expectation from bidders. In fact, companies that resist including this information might be the companies that don't have full confidence in their ability to compete on a life-cycle cost basis. And that you should keep in mind. LB948 does not require the state to buy-Nebraska, by the way, as was implied, but it does put in place a bidding process that will give our companies at least a fighting chance. And life-cycle costing is one of the ways to do that. We're not saying in this bill you have to buy-Nebraska. But what we are implying in this bill is, at least give our companies a fighting chance; and if you're not requiring life-cycle costing data in the bids, then DAS doesn't even have that information even if they wanted to include it in their decision process. And so let me just sum up by saying this bill offers us a double win. The state of Nebraska can save money over the life of the products that we purchase, and we might be able to create more business for some of our companies. Thank you very much. [LB948]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions for Senator Avery? Seeing none, Senator Avery, thank you very much. That will conclude the hearing on LB948 today and concludes today's hearings. Thank you very much. [LB948]