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Government, Military and Veterans Affairs Committee
January 18, 2007

[LB5 LB7 LB16 LB50]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 18, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB50, LB5, LB7, and LB16. Senators present: Ray Aguilar, Chairperson; Mick Mines, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Rich Pahls; and Kent Rogert. Senators absent: None.

SENATOR AGUILAR: (Recorder malfunction)...Government, Military and Veterans Affairs Committee hearing. My name is Ray Aguilar, Chair of the committee, I'm from Grand Island. And I'd like to introduce the rest of the committee to you. I'll start with Senator Greg Adams from York on my far left. I'm sorry, Senator Bill Avery from Lincoln on my far left, and then Greg Adams from York; Senator Rich Pahls from Omaha; and sitting next to me, on my left, is Sherry Shaffer the committee clerk; on my right is Christy Abraham the legal counsel; and next to Christy is Senator Russ Karpisek from Wilber. []

SENATOR KARPISEK: Good job, Senator. []

SENATOR AGUILAR: Thank you. Next to him is Senator Kent Rogert from Tekamah. Bills will be taken up in the following order: LB50, LB5, LB7, and LB16. Sign-in sheets are at both entrances. Sign in only if you are going to testify, and put the sheets in this box sitting up here on the table. If you're not going to testify and would like to be on the record either as a proponent or opponent of the bill, there's another sheet you can fill out, and those are on the table at the entrances as well. Before testifying, please spell your name for the record. Even if it's a simple name, we have to have it. Introducers will make initial statements, followed by proponents, then opponents, and then neutral testimony. Closing remarks are reserved for the introducing senator only. Listen carefully to the testimony ahead of you and try not to be repetitive. If you have a prepared statement or an exhibit, give it to the page and we will distribute copies to the senators. Please turn off all cell phones and pagers. And our pages today are Adam Morfeld of Sioux Falls, South Dakota, and Kristin Kallsen from Big Springs, Nebraska. Thank you for being here today. Okay, I think we're ready to go. Senator Hudkins, to introduce LB50. []

SENATOR HUDKINS: (Exhibits 1, 2) Thank you, Chairman Aguilar and members of the Government, Military and Veterans Affairs Committee. I am Senator Carol Hudkins, C-a-r-o-l H-u-d-k-i-n-s. I represent District 21. And it is my puzzled pleasure to be here today to introduce LB50. Now why am I puzzled? In this day we currently have a branch of our government imposing a rule that appears to be contrary to the laws of the day and, if not, is certainly contrary to the morals and beliefs of the day. This summer my staff found this rule and brought it to me. I'm speaking about a rule implemented by the

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judicial branch of our state government. Being handed to you are the Rules Relating to Official Court Reporters. I would direct your attention specifically to Rule 13 on page 5, entitled "Leave." The language in question is in the middle of the fifth line of that paragraph. It reads: "If the official reporter is permitted to take vacation at a time other than when the appointing judge takes vacation and the services of a substitute reporter are required by such judge, it shall be the obligation of the official reporter taking vacation to arrange for the services of a substitute reporter at no cost to the state, unless otherwise determined by the State Court Administrator." In other words, the court reporter has to find and pay for a substitute reporter. When I became aware of this rule, I was amazed that we would even be thinking of making an employee of the state of Nebraska pay for the costs associated with having a substitute present during a period of earned vacation. In reviewing this issue, it seems that the administrator, on occasion, has in fact waived the requirement, but on other occasions the administrator has not. And quite honestly, the only reason I can think of that this rule has been around for any length of time is because of the imbalance of power between the employee and the judge. None of us are so naive as to believe that in a balanced situation this rule would have lasted any longer than it took for the ink to dry on the paper. I also learned that, after this bill was drafted, several members of the Court Reporters Association met with representatives of the Supreme Court to discuss this rule. The representatives of the court informed the reporters that this rule would not be changed by them. So instead of common sense prevailing, I am here to make sure that the rule is repealed and that no one implement such a rule in the future. And perhaps to make my point, would the judges like to have to take vacation when the court reporters take vacation, and the judges would then have to pay for their own replacements? I don't think so. This rule treats one subset of state employees differently than all of the other employees in the state. I'm unaware of any similar rule in either the legislative or executive branches of our state government. In reviewing the wording of the bill, the Department of Administrative Services raised a concern that the bill might impact the current practice of allowing employees to take vacation leave before it is earned for certain reasons of an emergency nature. It's not my intent to have that happen. While I don't believe that the language does impact that issue, I want to make sure that it doesn't. So I am willing to work with DAS and this committee to make sure that this bill only impacts the narrow issue raised by Rule 13 of the rules relating to Official Court Reporters of the Nebraska Supreme Court. Thank you for your time. And I would ask you to advance this bill to the floor for full debate and passage. [LB50]

SENATOR AGUILAR: Thank you, Senator Hudkins. Questions for Senator Hudkins? Seeing none, thank you. [LB50]

SENATOR HUDKINS: Thank you. [LB50]

SENATOR AGUILAR: Will you be around to close? [LB50]

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SENATOR HUDKINS: Yes. [LB50]

SENATOR AGUILAR: Okay. Now testifiers that are proponents of the bill, please come up. [LB50]

ANDREA FREENY: Mr. Chairperson, Mr. Vice Chairperson and members of the committee, good afternoon. My name is Andrea Freeny, A-n-d-r-e-a F-r-e-e-n-y. I am an official court reporter, that is a court reporter who works in a courtroom as an employee of the state. I work for Judge John Samson in the District Court in Fremont, Dodge County, Nebraska. And I am one of the 63 full-time and 4 part-time official court reporters appointed by the judges of the separate juvenile courts and district courts throughout Nebraska. I also am the current president of the Nebraska Official Court Reporters Association. Our association did not propose this bill, nor request this bill be drafted, though we do support it. We have met with the State Court Administrators' Office regarding Rule 13 of the Supreme Court rules relating to official court reporters, and we're hopeful that the rule could be amended. And though that had not yet occurred, we continue to work with the Court Administrators' Office regarding this issue as well as other issues affecting Nebraska's official court reporters. In practice, when a substitute court reporter is hired, the substitute is paid directly by the official court reporter out of the official court reporters personal funds. The state is not involved in this transaction and thus does not reimburse the official court reporter for this expense. We are not aware of other state employees having to pay for their own substitute in order to use their earned vacation leave. Official court reporters have a unique position in the state's courts and we try to match our vacations to the judges, but this can't always happen. There are other factors that we have no control over that can cause problems for official reporters trying to utilize their earned vacation leave. In my particular case, Judge Samson's wife is a school teacher and they have school-age children and take their family vacations during school breaks. I do not have school-age children and would like to use my vacation leave at other times of the year. The reverse situation is also true and maybe more common, that is the official reporter has children or a spouse whose schedule dictates the best time for the reporter to use vacation leave, but the judge may have different considerations. In the past, the State Court Administrators' Office has granted paid vacation days, in some instances, to some official reporters on a case-by-case basis, but there is no uniform policy in this regard. Nebraska's official court reporters would like to be able to choose when they use their earned vacation leave. And on behalf of the Nebraska Official Court Reporters Association, I respectfully request you vote in favor of LB50. And I would be glad to answer any questions you may have. [LB50]

SENATOR AGUILAR: Thank you. Questions from the committee? I just have one. Have you always had to pay for your own replacement when you go on vacation, or does that vary for you, personally? [LB50]

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ANDREA FREENY: I have done it on occasion, but not as a rule. [LB50]

SENATOR AGUILAR: Okay, thank you. [LB50]

ANDREA FREENY: You're welcome. [LB50]

SENATOR AGUILAR: Next proponent. Are there any opponents? Neutral testimony? Senator Hudkins, to close. [LB50]

SENATOR HUDKINS: Since the court is unwilling to simply remove the requirement from their rules, this bill has been introduced to strike the rule and to require the state to pay for the costs associated with the absence of a court reporter due to authorized vacation leave. The court still retains the authority to determine when the vacation leave may be taken so that they can control any additional costs associated with paying for the services of a substitute reporter. The bill also will allow the rule to continue to require the reporter to arrange for the substitute. You don't plan for an illness or a funeral, so requiring the reporter to find a substitute is reasonable, requiring them to pay for the substitute is not. Now if you look at the fiscal note, it takes a worst case scenario. It looks at all court reporters taking two and a half weeks off when their judges are not taking vacation time. The problem with that assumption is that there is nothing in this bill that stops the court from making the reporters take vacation at the same time as their judge, unless special circumstances exist. It just prohibits the state...the practice of making the court reporters pay for their substitute when they take vacation that is approved by their boss. And I handed out an amendment, and I believe that's the one that on page 2, line 3, strikes the words, "or reimburse any cost to the state." There was a little confusion there. And so we have inserted instead, "for any of the costs associated with the employment of any substitute who is retained to perform the job of the employee while the employee is on vacation." So I would urge you to advance this bill. It's just not fair to ask these court reporters to pay for their own substitutes. Are there any questions? [LB50]

SENATOR AGUILAR: Senator Rogert. [LB50]

SENATOR ROBERT: I have one. Senator Hudkins, if you said it, I missed it. What year was this rule adopted, or how long has it been there? [LB50]

SENATOR HUDKINS: Don't know. [LB50]

SENATOR ROBERT: Okay. [LB50]

SENATOR HUDKINS: But it's been in practice for some time. [LB50]

SENATOR ROBERT: Okay. Thanks. [LB50]

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SENATOR AGUILAR: Senator Mines. [LB50]

SENATOR MINES: I do thank...I'm sorry for just coming in late. There is no fiscal note attached. It has to cost something. [LB50]

SENATOR AGUILAR: Yeah, there is. [LB50]

SENATOR ROBERT: Yeah, there is. It's here on page...one page back. [LB50]

SENATOR MINES: Oh, I'm sorry, I apologize, I apologize. [LB50]

SENATOR HUDKINS: And I addressed that, Senator Mines. And I didn't see when you came in. So this...the fiscal note assumes that all court reporters will always take all of their vacation other than when the judge takes his, and that's not going to happen. [LB50]

SENATOR MINES: Okay, thank you. [LB50]

SENATOR AGUILAR: Senator Hudkins, as far as the bill is concerned, it only applies to vacation time, is that not true, or not to illness or funeral leave? [LB50]

SENATOR HUDKINS: This applies to vacation time. But maybe the employee has used up their sick leave, and so they're sick and so they'll go ahead and use a vacation day. [LB50]

SENATOR AGUILAR: Okay, okay, I see what you mean. Thank you. Any other questions for Senator Hudkins? Seeing none,... [LB50]

SENATOR HUDKINS: All right, thank you. [LB50]

SENATOR AGUILAR: ...thank you. And that closes the hearing on LB50. We're now ready to open on LB5. Senator Pahls, to bring that forward. Before we get started, can you tell me how many people intend to testify on LB5? Can I get a show of hands? Thank you. You're on your own, buddy. (Laughter) [LB5]

SENATOR PAHLS: (Exhibits 1, 2, 3) Setting me up there, Chairman. Good afternoon, Chairman Aguilar and members of the committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s. I represent District 31, the "Millard of Omaha." Today, I'm going to talk about something that is, to some degree, is already in place. I want to think about the times you were out there campaigning and people were saying, there's waste in government, things are happening that shouldn't be happening. Well, the system already has something in place. And my intent here is to bring it back alive. The continued growth in

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the state's General Fund is a concern to each of us. We need to approach this issue in a variety of ways. We need to be innovative and we should encourage our state employees to help us operate efficiently. Their experience can be valuable, if we listen, but they ought to be rewarded. LB5 recognizes the efforts that our state employees make in helping us, as elected officials, do our job. This bill increases the amount of award state employees become eligible for when they submit suggestions that can save tax dollars. I'll just give you a few of the major points. State employees are currently eligible to receive an award of \$25 to \$5,000 under the Employee Suggestion System administrated by the Department of Administrative Services. LB5 increases the range to \$100 and to \$6,000. Under our system an award is based on the amount saved by a suggestion that is submitted to the Department of Personnel under DAS and then implemented. The amount of the award is 10 percent of the savings within the range that has been specified. Right now \$25 is, but I don't see that as much of an incentive. The number of employees who have been taking advantage of this system has decreased over the years. We need to get this system functioning again, and we need to make sure that all state employees are included. In the handouts, I'm providing you a list of employees who have won awards and their suggestions since 1996. I have a chart that shows how the interest in the program has died, and I have copies of pages from the DAS web site describing the program. First of all, I would like to have you take a look at the chart. This would be the chart. And you can see in 1996, when this was first initiated, we received...we had 18 people who applied and were awarded. Have all of you received the information yet? [LB5]

_____: No. [LB5]

SENATOR PAHLS: I'll wait just a second. [LB5]

_____: Sorry, Senator. [LB5]

SENATOR PAHLS: Not a problem. Then as you go down through '97, 21, and it looks like in 2001 we had an exciting year happening. But you look at last years 2006, we had two. So what I'm saying is we need to rejump the program. That's why I'm asking us to take a look at increasing the awards. I've also given you a copy of basically the web site it pays off. It shows you all the rules and...that the individuals must follow. I just want to bring your attention to...I would like to have you look on page 4, at the very bottom. Who may participate? Now this is one of the issues you're going to see in my updating the bill. Every state employee is eligible to participate in the Employee Suggestion Award Program, except employees of the University of Nebraska System, and the Nebraska state colleges, constitutional officers, department heads, and elected officials. Now I can understand some of those, like elected officials. But I am concerned about a few of the other groups that are left out. I do know, and DAS has informed me that they do not have jurisdiction over the university system and, of course, we should not, as elected officials, should receive it. But I do think there are employees that are missing. And I

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would like to have us take a look at that perhaps as you delve more into the bill. And again, I'll just have you flip now to page 5, just...if you look in the middle of the page it says, Unacceptable Suggestions. Then, of course, if you go down to the fourth dot from the bottom, again it states, University of Nebraska, Nebraska state colleges, the legislature and the judiciary cannot be a part of this. Now I've been told they'd like to clean some of this up through their rules and regulations. I do think they sent a letter, did they not, to the committee? So I think that's something we need to take a look at. But I am concerned that we are excluding some individuals. Again, I've been told that the university system goes under another chapter. This is dealing with Chapter 81. I did talk to somebody and I asked the question, does the university system have an award or reward system? And I was told they do not. Now I know we have a former professor...is there...do you... [LB5]

SENATOR AVERY: No. [LB5]

SENATOR PAHLS: Okay. And I'm challenging all of the organizations that if they do not have one, maybe it's...in the future we should be taking a look at promoting that concept. And the reason why I think it's very interesting, I also gave you a list of the people, the third, of the people who have received some of these rewards. A number of them just received a certificate and \$25. And you say, oh that's not, but you compound some of these things over the years, for example, there is one that I read in here from Beatrice. Somebody learned a different way of working the laundry system. They received \$2,000, so that must, to me, mean that there was a significant savings. That wasn't 1 year, let's say that's 20 years. Well, if that savings runs into the thousands of dollars, you have to look long-range. Another one where the Highway Patrol, apparently at one time, and I don't understand because they don't put that much detail in here, they would bring their cars in to be worked on for some electronic component. They found out that they could save a significant amount of money by sending the technician out. Now I'm assuming those cars need this type of work every year. So you can see how this can really compound. Initially, it starts out like those two individuals, or that individual saved...received around \$1,700. He does not receive \$1,700 every year, but if that person saves, you know, say \$5,000 to \$10,000, that would compound. So it's the little things that possibly could add up. Another one, just to give you an example, in the Revenue Department where they saved \$1.25 for every certificate that they would not send out, well, that person received, as I can recall, \$1,500. So that means in one year they had to save again there a significant amount of money. Now I know there are other issues if you look at the...other...very, very minor, but then you're looking for efficiency. And in my past experience, as I've always had trouble with a lot of bureaucracy, so I think sometimes it is just a natural phenomenon of bureaucracy to create some issues that if somebody was looking at it they'd say, hmm, this could be done better. So if you look at these you can just see there are some significant. And I think if we personally would tabulate them over the number of years, we would be truly surprised. But as you go back, now you can see last year we only had two people. So that means we still

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have some things that we need to correct. To me jumping from \$25 to \$100 and from \$5,000 to \$6,000 is not a significant increase. But again, like I say, there have been some questions by my wanting to include the university system and some other people and personnel. And I think we need to look at that because if it can be handled by rules and regs, to me that would be acceptable. But I want to see something done. Don't tell me it's going to be handled by rules and regs without seeing something. And if the university system is not on this, they ought to be taking a look at that because I know for those...I've worked in the state colleges in the past, so I know that there are probably some things that we can be taking...or could be taking a look at. I was told today, at the community college, this was an example given to me, at Southeast they, once a year, they do promote this concept. I don't know if it is as rigorous as this. But we don't have to reinvent the wheel, it's done, we just have to make it a little better. [LB5]

SENATOR AGUILAR: Thank you. Questions for Senator Pahls? Seeing none, thank you. [LB5]

SENATOR PAHLS: Thank you. [LB5]

SENATOR AGUILAR: (Exhibit 4) Proponents of LB5? How about opponents? Neutral? Seeing none, I would have read into the testimony that we received a letter in neutral capacity from the Department of Administrative Services. And that closes the hearing on LB5. We're now ready to open on LB7. Senator Preister. We'll just stand at ease a little bit, until Senator Preister gets here. I think he's supposed to be on his way. []

BREAK []

SENATOR AGUILAR: All right, Senator Preister is coming up. Can I get a show of hands of how many people are going to testify on LB7? I see one, two, three, four, five, six, seven, eight, nine, ten. Thank you. And I'd ask proponents to move up towards the front so we can expedite this as quickly as possible. Thank you. Senator Preister, welcome. []

SENATOR PREISTER: (Exhibit 1) Thank you, Chairman Aguilar. Members of the Government Committee, it's a pleasure to be back before you today. I am here, I'm Don Preister, P-r-e-i-s-t-e-r, represent the 5th Legislative District and am here as the primary introducer of LB7. Last year, I introduced LB898, which amended the Open Meetings Act. You can see what those changes were on the handout. It as passed by the Legislature by a vote of 41 to 0. During the interim I learned that there is some confusion over the bill's language, its intent, and the effect on the rights of citizens to speak at meetings. LB898 made only the four changes that you see in the handout, none of which had anything to do with public comment. I learned during the interim that some of the political subdivisions across the state had interpreted the new language to require changes regarding the public's right to speak at meetings. As a result, they have

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changed their rules regarding the public's right to comment. The result is that some political subdivisions are now requiring members of the public to first make a prior request to be placed on the agenda in order to comment on agenda items. As you see from the handout again, there were no provisions regarding the public's right to comment at a meeting. And it was never my intent to limit the public's right to comment or to make it more burdensome for the public to participate. My intent in introducing last year's bill was to make government more accessible rather than less to interested citizenry. When I became aware of these concerns, I contacted former Government Committee Chair, Senator Schimek. She allowed me an opportunity to present this issue during the Government Committee hearings on November 8. At that time, I presented a draft of the legislation before you which had been shared with a number of interested parties, including Dale Comer in the Attorney General's Office. Since then, I've gone through several drafts of language to get to what's drafted in the language before you. You may hear arguments in opposition to this language; they range from examples of specific instances that have occurred in citizen testimony, to policy arguments against letting someone testify, during open mike, without giving public notice of the topic. As you can see from the language highlighted in the overhead, public bodies have had and continue to have the authority to make and enforce reasonable rules and regulations regarding citizens speaking at meetings. I'm attempting to make absolutely no changes in that area. The control still rests with the local body in how they structure it, and how they enforce it. In the list of specific examples you may hear, ask yourself whether that situation could have been dealt with by the presiding officer, taking control of the situation, by imposing a limitation on inappropriate behavior as authorized under statute. You may also hear the following policy arguments presented: If a member of the public is allowed to address an issue to the body without someone having notice and opportunity to provide their input, then the person addressing the body has the advantage of having the first contact with the body and, with that, the power of first impression on an issue. The problem with this argument is twofold. There is nothing that prevents a citizen from contacting one or all of the public body members individually, by phone, in person, or by mail, and sharing with them an opinion about an issue. This is done all the time. (B) Such contacts also constitute a first contact, and carry with it the power of first impression. However, in the instances where the members are contacted in person on the phone or by mail, there's no record of the contact. If a statement is made by at a public hearing, at least there is a record of the minutes of the testimony and the issue presented to the public body. We have to trust our elected and appointed officials to weigh the information provided to them at whatever point in time. You may also hear that there is a requirement for public bodies to provide reasonable advance publicized notice in the Open Meetings Law. The purpose of this provision is to give people an opportunity to know in advance and thus be able to attend or provide comments on issues on agenda items on which the body is going to take action. If a new issue is raised under new business and put on a future agenda, the notice of the future agenda will meet this requirement and provide reasonable advanced publicized notice of the bodies discussion and possible action on

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the issue. Finally, no court has ruled that open mike public comment periods are unlawful. The language in this bill would clarify that as a public policy we consider these public comment periods to be part of open government for those public bodies who choose to schedule public comment periods under new business. There's nothing in this bill which would require public bodies to schedule public comment periods during new business. This remains a decision left to each public body. In conclusion, as specified in LB7 issues raised under new business at public meetings are issues which a public body may not take action on at that meeting. We're trying to balance the rights of citizens to attend meetings and address public bodies at those meetings. A door closes on open government if citizens have a right to attend meetings, but must go to extraordinary means in order to address matters being considered by a public body, or even just to address the body on issues of concern. The Nebraska Supreme Court has ruled repeatedly on cases involving open meetings laws that the open meeting statutes are to be broadly interpreted and construed to obtain the objective of openness in favor of the public. I think what might be helpful is just to go through the bill itself and to let you know what we've done and why we've done it, other than the testimony. On page 3 of the bill, it states, "New business means any item not on the agenda of a meeting which is not of an emergency nature." The purpose of that, and that came out of the discussions and the interim study hearing that we were told this would be a useful thing to add. The purpose for that is to delineate between what's already on an agenda and has been properly noticed and something that may not be, maybe something that comes up in an open mike discussion, it may be something else, but it wouldn't necessarily have been noticed and it wouldn't necessarily have been on the agenda, maybe, but may not have been. So we're adding a definition, I think for the benefit of the public body, as well as for the public. Then on the bottom of page 3, "If a citizen speaks on an item of new business, members of such body may engage in discussion with the citizen but shall not take any action on such business that requires a vote of the body at that meeting." For the same reason, we're adding clarity. You don't always know what may come up as a topic. But if it hasn't been noticed, if people aren't aware that it's going to be a topic of discussion, there shouldn't be any action taken, again in fairness for the public notification. But, and this language was also modified because we heard from some public bodies that to just sit there and say nothing wouldn't be right either. So there can be some dialogue. There could possibly be discussion with this language, but there would be no actual vote, no actual action that would be taken. So we were trying to be accommodating there again. And then the other provision, basically, "No public body shall require members of the public to identify themselves as a condition for admission to the meeting," is current statute. And we add, "nor shall such body require that members of the public be placed on the agenda prior to such meeting in order to speak to the body regarding items on the agenda or any new business." I think, part of the key word there is "placed on the agenda." And we heard from citizens that public bodies were telling them they could not speak on an agenda item that they attended the meeting to speak on because they were not on the agenda. So they had to get put on the agenda for a subsequent, later meeting, after which the vote and action had already

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been taken, and would absolutely do no good for them to appear on because the issue is moot at that point when the vote and the issue has already been addressed. So this clarifies that you can still have people sign in, you can still make a list of testifiers. The public body could do any of those things that they chose to. But you would not be able to require that people be put on an actual agenda. So I think that's fairly clear. And all of those changes came and were modified through the discussions after the bill was passed and this came to our attention, but also after the interim study hearing. With that, I would be happy to entertain any questions and thank the committee. [LB7]

SENATOR AGUILAR: Thank you, Senator Preister. Any questions for the Senator?
Senator Adams. [LB7]

SENATOR ADAMS: Senator, in the open mike session, you still, when someone comes to the mike, the presiding officer of that public body still has the latitude, do they not, to address the decorum of the delivery, whether it's going to be two minutes, five minutes, yes, it's your turn to talk, no it isn't? You don't intend to inhibit the presiding officer's ability to deal with those kinds of things, do you? [LB7]

SENATOR PREISTER: My language in this bill, my language in LB898 didn't do anything to change that section of statute. And again, Senator, that's right here, "Any public body can make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, video taping, televising, photographing, broadcasting, or recording its meetings." We're doing nothing to change that. You can limit the time, as a presiding officer; you can limit the topic. If someone starts bringing up slanderous things, you can have them removed. You remain having all of that control. And so we didn't change anything prior to this bill, and we're not attempting to change that in this one. So all control still resides with the presiding officer. [LB7]

SENATOR ADAMS: May I ask another question, Mr. Chairman? [LB7]

SENATOR AGUILAR: You may. [LB7]

SENATOR ADAMS: In the incidence you described, where people were asked to, in effect, contact the public body and let them know that they wanted to be part of a public hearing, is that what I heard you say? [LB7]

SENATOR PREISTER: Yes. [LB7]

SENATOR ADAMS: What was the rationale behind, do you know, of having people do that? [LB7]

SENATOR PREISTER: They said that it came as a result of the passage of LB898 and specifically in the bill it required more specific agendas. And somehow there was a

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stretch, and I can't make that stretch in my mind, but a stretch from more specific agendas to requiring people to actually be on the agenda to speak. Now that's a pretty long stretch, but... [LB7]

SENATOR ADAMS: I guess that's what I was wondering about? If you could fill in the stretch for me. [LB7]

SENATOR PREISTER: I can't fill it in, because...and it wasn't just one particular body. We heard from different bodies doing the same thing from across the state. And they were from different aspects of political subdivisions. [LB7]

SENATOR ADAMS: Thank you. [LB7]

SENATOR PREISTER: Thank you for your questions. [LB7]

SENATOR AGUILAR: Further questions? Seeing none... [LB7]

SENATOR AVERY: I have one question. [LB7]

SENATOR AGUILAR: Wait, one more. Senator Avery. [LB7]

SENATOR AVERY: Senator Preister, are you at all concerned that the more complicated the Open Meetings Law becomes, the less likely you are to have rigid adherence to it? I'm a big supporter of this law. And I have a history of supporting it before I got here. But I hear sometimes people say, it's so complicated; I don't know exactly how to follow this rule, you know. And sometimes there is a chilling effect on one's willingness to be careful about adhering to them all. Does that concern you? [LB7]

SENATOR PREISTER: That does concern me, Senator. And your question reminds me of one that Senator Wehrbein asked when we had the hearing on LB898. We don't want to make it difficult for the public bodies. Public bodies are elected officials, normally. And they don't always have the training or the legal background to understand these things. So one of the requirements in LB898, that you see on your handout, was to have a copy of it posted where the meeting is held, hopefully, so the public bodies get familiar with it, hopefully so the public gets familiar with it. And my intent is to avoid complicating it more, but to attempt to add clarity. If it isn't doing that, then I'm missing the goal of what I'm attempting to do. I don't want to make it more complicated, I want to make it easier for the public bodies to comply with, and I want to make it easier for the public as well. [LB7]

SENATOR AVERY: Thank you. [LB7]

SENATOR PREISTER: Thank you. [LB7]

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SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Preister. [LB7]

SENATOR PREISTER: (Exhibit 2) Senator Aguilar, I would just read into the record that there are letters of support here that I will give to you for the committee from Marcia McGill, Linda and Roger Tederman, Rich and Marty Buckingham, Teresa Lake, and Trevor Kruger for the committee. [LB7]

SENATOR AGUILAR: Thank you, Senator. First proponent of LB7? [LB7]

PAMELA DALY: (Exhibit 3) Good afternoon, Chairman... [LB7]

SENATOR AGUILAR: Aguilar. [LB7]

PAMELA DALY: ...Aguilar. I'm sorry, I did practice it, and members of this committee. Thank you very much for letting me testify. My name is Pamela Daly. I'm a 30-year... [LB7]

SENATOR AGUILAR: Spell your last name, please. [LB7]

PAMELA DALY: I'm sorry? [LB7]

SENATOR AGUILAR: Spell your last name, please. [LB7]

PAMELA DALY: D-a-l-y. [LB7]

SENATOR AGUILAR: Thank you. Go ahead. [LB7]

PAMELA DALY: I am a 30-year rural resident and promoter of sustainable agriculture in our beautiful and historic Washington County. Many of our rural county governments are experiencing growing pains and are encountering sustained public dissent for the first time. Our officials are clearly good people, but they are not used to being held accountable or having to collaborate with the public on issues they used to be able to decide without opposition. For county citizens who don't even have the right in this state to put issues on the ballot through the initiative or referendum process, we are in great need of the Open Meetings Act and LB7 to help us forge an opening in the closed doors of our local governing bodies. This act with LB7 is a lifeline to those of us in rural counties who have encountered resistance to public participation in our county board and planning commission meetings. This resistance has taken the form of inadequate notice of meeting (see Exhibit A), difficulties and delays in getting public records, failure to place submitted testimony on the record (see Exhibit B), items being discussed in closed session without justification of the need (Exhibit B), lack of substance being

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reported in the minutes (see Exhibit B) and direct orders to sit down and not speak if our name was not on the agenda. This also happened once to a person whose name was on the agenda. There are many ways to thwart public input besides preventing their speech. We have found through the last year that disagreement with the board or planning commission is often responded to with complete silence or even hostility. Our officials have quelled public disagreement by refusing to respond to questions or discuss issues raised as if the testimony was never heard. A simple example speaks volumes. In our county the public is not allowed to have our supervisors' or planning commissioners' e-mail addresses. LB7 gives us the right to speak, but we hope the announcement of this amendment will be coupled with equally strong guidance on the intended spirit of this law welcoming public input. We thank Senator Preister, his staff, and this committee for your efforts to make government throughout Nebraska more open and transparent. And I just wanted to respond to, I believe, was it your question about the complication? [LB7]

SENATOR AVERY: I'm Senator Avery. [LB7]

PAMELA DALY: Senator Adams. I'm sorry, he's not here. But my experience with the boards not understanding the Open Meetings Act has not been due to complication of the wording, but rather due to vagueness. And this amendment is much needed because it's clarifying. And detail, I don't think, equals complication, it actually helps it in this case. So thank you very much. [LB7]

SENATOR AGUILAR: Questions, please? Senator Mines. [LB7]

SENATOR MINES: I do, thank you. Pamela, thanks for coming in today. [LB7]

PAMELA DALY: Thank you. [LB7]

SENATOR MINES: If I could add, this is the...Washington County is in my district. And I'm curious about Exhibit B. Could you fill me in on what the problem is? I know that there has been some discussions and concerns about the way they handle their meetings. I've not been to one in a long time. Could you help me with what you've highlighted and how you were affected? [LB7]

PAMELA DALY: Okay. Not all of these relate to LB7,... [LB7]

SENATOR MINES: Yeah. [LB7]

PAMELA DALY: ...but they relate to the Open Meetings Act. The first one that's noted there in the margin I've written, "justification for closed session?" And at this particular meeting, which I attended, there was no justification for it, other than unused vacation time. This did not sound like an emergency, it didn't sound like a personnel issue, it

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didn't sound like something to protect the public. And my understanding is they need to justify closed session, relating the issue to one of the...one of those reasons. The next issue underlined is, "Pam Daly and Robin Jeffries voiced their concerns. Wes Petznick also spoke." One of the big problems we find is the minutes do not give the substance. And this is one of those issues, the word "substance" is in the Open Meetings Act. And I think it's unclear to the board and Planning Commission what substance means. We could use clarification on that. When I've brought it up, they've said, we don't have a court reporter; we don't record this; we can't go into every detail. And I've responded that we don't want every detail, we just want, for example in this case, Wes Petznick spoke in favor of the issue, or Pam Daly and Robin Jeffries spoke against the issue. I'm not sure that's what was going on there, but something that was a little bit more substantive than just this person spoke. And that's very important, because in our county there is a lot going on right now. And the public doesn't...is not alerted to it, except through the minutes. So on the second page I have underlined, "Visiting the board on this date, but not on the agenda was Paul Cerio." Paul Cerio was a citizen who submitted for the record and discussed, for about ten minutes in fact, issues pertaining to the Open Meetings Act that he believed were in violation, that the board had violated. And because he was not on the agenda, all they say there is that he was there. And the two things he brought up were very important. [LB7]

SENATOR MINES: So it's recordkeeping, is what I'm hearing? [LB7]

PAMELA DALY: It's part of it, it's part of it. [LB7]

SENATOR MINES: Is part of it. Yeah. In this instances that appear (inaudible). And probably information when a public body goes into Executive Session it can do so for three reasons. They can do so for litigation, for real estate and personnel matters. Now I don't know when the county board actually met. Unused vacation could relate to personnel, you know, I don't know. But it doesn't sound like they're taking very good minutes and providing that information to you or the citizens of Washington County. I was just curious of your experience. And I appreciate that. Thanks for coming. [LB7]

PAMELA DALY: Thank you. [LB7]

SENATOR AGUILAR: Thank you. Further questions? Thank you for coming down today, Pam. [LB7]

PAMELA DALY: Thank you very much. [LB7]

SENATOR AGUILAR: Next proponent. [LB7]

KARA HARBERT: (Exhibit 4) Good afternoon, Chairman Aguilar and members of the committee. My name is Kara Harbert, K-a-r-a H-a-r-b-e-r-t, and I'm representing the

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Great Plains Environmental Law Center. The Great Plains Environmental Law Center, a 501(c)(3) nonprofit, supports LB7 and its amendment to the Open Meetings Act. As a nonprofit public interest group, we value the right of public participation at open meetings. It allows the opinion of the general public to be expressed, heard, and considered in the formation of policies that will directly affect them. Nebraska's open meeting laws are designed to engage the public, not discourage it. The fact that some political subdivisions are requiring members of the public to make a formal request to be on the agenda to address the body, or even comment on agenda items, discourages members of the public rather than encourages them to participate in the public system. Hence, it is necessary to make the amendments suggested by Senator Preister to clarify the open aspect of the open meetings law. Members of the public deserve the ability to express opinions without having to jump through hoops to do so. There are three proposed amendments: the definition of new business; the clarification of discussion versus action regarding new business brought forth by the public; and declaration that public citizens need to ask to be put on the agenda to speak at meetings. The Open Meetings Act was created under the motivation of engaging the public, making government more accessible to us, the public, and better facilitating our interaction in the decisions that affect us. The development of this act was a step forward; the motions that some bodies are making to distance public participation are steps backwards. Requiring members of the public to ask to be put on the agenda to speak about items or new business distances and prevents public participation--the opposite of what this act was created to do. We want encouragement of public participation not discouragement. If safeguarding public participation means putting more specific language into the Open Meetings Act to clarify its intention, then this language today suggested by Senator Preister is absolutely necessary. Senator Preister's suggested amendments strongly clarify the purpose of the Open Meetings Act. With these amendments accepted, they will safeguard the public's right to participate in the government system and encourage ongoing participation. Please support LB7 and the benefit it will bring to public participation and insight. [LB7]

SENATOR AGUILAR: Thank you. Questions for Kara? Seeing none, thank you for coming today. [LB7]

KARA HARBERT: Thank you. [LB7]

KEN WINSTON: (Exhibit 5) Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Kenneth Winston. Last name is spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB7. The Sierra Club supports openness and access to government, and we believe that LB7 promotes this. And it's been my personal experience that if the members of the public believe that they have contact and that they can work with their government, that they're more likely to support that government. And I indicated often an individual, and in this case the individual would be

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me, I've gone to public meetings and without any intention of speaking on an agenda item, and during the course of the meeting became aware of the fact that it might be beneficial, I believed it was beneficial to the members of the public body to hear from me. And so I wanted to be able to relate that information, to be able to provide that information at the meeting without placing my name on the agenda prior to the meeting. And I believe that that helps promote public trust. Similarly, sometimes people want to talk to a public body about something that isn't on the agenda. And it may be something, a matter that hasn't been considered yet, but it's a matter that the public body ought to consider for a future issue or just for their own edification. And it may benefit them by having this happen. And, I guess, the converse of that is, as we're all aware, there have been a number of petition actions recently, and that's likely to continue. But it's my impression that the more that people feel their public bodies are tuning them out, the more likely they are to seek to take government into their own hands and to govern by the ballot box as opposed to govern through their elected representatives. Then finally, I just want to indicate as I...that I was on a public body for several years, and we did allow people to speak on agenda items without previously having their name submitted, and also had an open forum at the end of the meeting. And I don't recall it ever being abused. I mean I certainly will say that there were times when people said things that I didn't particularly want to hear. But that's part of public service. So for those reasons, we would encourage support and advancement of LB7. And I would be glad to answer questions, if I can. [LB7]

SENATOR AGUILAR: Thank you, Mr. Winston. Questions? Seeing none, thank you. [LB7]

KEN WINSTON: Thank you. [LB7]

SENATOR AGUILAR: Next proponent. [LB7]

LYNN MOORER: Good afternoon, Chairman Aguilar and members of the committee. I am Lynn Moorer, L-y-n-n M-o-o-r-e-r, a Lincoln attorney who works on public interest cases, representing citizen groups and individuals who deal with all levels of government in Nebraska. Today I'm speaking in an individual capacity. I support LB7 and thank Senator Preister for introducing it. LB7, in essence, helps foster free flow of information to governmental bodies without undue burdens or hindrances. The Legislature, just to remind you, has declared that the primary purpose of the Open Meetings Act is to ensure that public policy is formulated at open meetings. And the first section of the act declares, in part, "Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies." As the Nebraska Supreme Court has repeatedly held the objective of the Open Meetings Act is openness in favor of the public, it doesn't say that the act is for public officials, it's for the public. If members of the public are required to first make a request to be placed onto the agenda to address the body, this

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is likely to have a very chilling effect on public input. The public body will wind up losing open, unrehearsed, off-the-cuff remarks that are frequently the most helpful to governmental bodies. They're likely to hear mainly only from lobbyists and attorneys, like myself, and tenacious citizens who have built up a big head of steam regarding their concerns and are generally pretty exercised or angry by the time they're finally allowed to speak. And that, obviously, is a relatively unproductive situation. It's important that citizens at public meetings do have the opportunity to speak and respond to information they've heard for the first time at that meeting. Many times, citizens attending meetings will not know whether there's anything that needs comment until they've heard the information presented. To allow public bodies to require that citizens must ask prior to a meeting for permission to speak at that meeting is extremely restrictive and will have a very stultifying effect on information exchange, information exchange which can be very useful for public officials in their decision-making. I should also point out that such a requirement is also clearly undemocratic. It opens up the possibility that public officials can tightly control what subjects are discussed at public meetings, reminiscent of the former Soviet mode of government, which I'm sure we all want to avoid. Such a requirement would work to ensure that public officials will be largely influenced in their decision-making by private communications, such as letters sent to individual members, phone calls, and one-on-one contact, rather than adding into the mix information that is provided in an open forum. This certainly would work to make government much more closed than open, and it would work to make it much harder to hold government officials accountable. As Senator Preister so helpfully pointed out, Section 84-1412 subsection (2) of the current Open Meetings Act provides public bodies with the power already to adopt an enforce reasonable rules with respect to citizens speaking at meetings of public bodies. There is no risk of the public hindering the body from getting its work done through lengthy public comments, if the body adopts and enforces reasonable rules. In my experience, which is broad, all across the state at all different levels of government, the few times that problems have occurred are when the public body either does not adopt reasonable rules or doesn't enforce reasonable rules. It's unfair and contrary to the spirit of the Open Meetings Act, in my view, to place unreasonable strictures on the public when the real problem, in reality, is that the public body and/or its chairperson or presiding officer does not use the tools already available to conduct a meeting that allows free flow of information while also getting the bodies business done. Now I urge you to not be persuaded by the fallacious argument that the mission of some groups is to talk and talk, so that nothing is accomplished by public bodies. From my experience, that is both untrue and silly. Rather, this argument is a thinly veiled effort to cut off the public's ability to influence their elected officials in a public forum and hold them accountable. We all know it makes a big difference whether or not it's in a public forum or not. I urge you to support and advance LB7 and wisely decline to be distracted by claims regarding circumstances that the Open Meetings Act already provides the tools to solve. To allow public bodies to require that citizens must ask prior to a meeting for permission to speak at the meeting will create numerous problems, including constitutional problems, and will not solve anything. Now to address a point that you

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raised, Senator Avery, about whether or not this clarification in LB7 adds more complication to the act, I want to respectfully point out that this is a piece...that the Open Meetings Act is an act which is to be interpreted on its face. And there isn't another administrative body that issues clarifying rules and regulations. Most laws that you all pass and your predecessors have passed do have some sort of an administrative agency like, for example, environmental laws then have rules and regulations promulgated by the Environmental Quality Council to spell out in more detail how those laws are to be carried out; the Open Meetings Act is not one of those. And I agree with the previous speaker who said that the most difficulties with respect to understanding the intent, in my experience, is because it isn't clear enough, it doesn't provide sufficient detail. And so, in my view, LB7 will help clarify and explain that the changes that the Legislature enacted last year, in LB898, in no way required the speakers to get on the agenda prior to the meeting. Finally, in balancing the interests of the public versus the responsibilities of public bodies, the public versus public bodies, I think it is far better to err on the side of openness. When you have to choose, choose to be open. There is a far greater potential jeopardy to the public if government is too closed than to public officials if government is too open. I appreciate this opportunity to speak. I'll be happy to answer any questions, if you have any of me. [LB7]

SENATOR AGUILAR: Questions from the committee? Seeing none,... [LB7]

LYNN MOORER: Thank you. [LB7]

SENATOR AGUILAR: ...thank you. Next proponent? [LB7]

ALAN JACOBSEN: (Exhibit 6) Good afternoon. [LB7]

SENATOR AGUILAR: Welcome. [LB7]

ALAN JACOBSEN: Senator, this is not my testimony is this whole packet. [LB7]

SENATOR AGUILAR: Thank you. [LB7]

ALAN JACOBSEN: (Laugh) It's...but it is...there's quite a few attachments to it to support what I'm here to support. I'm here to support LB7. My name is Alan Jacobsen. I reside at 5649 Southwest 112th Street in Denton, Nebraska. And I'm here to support LB7. First of all, I became acquainted with the Open Meetings Act as an elected board member to an educational service unit. In the course of this service on the board, I came to the belief that Open Meetings Act enforcement may need to be restructured because of possible conflicts of interest, staffing, workload demands, causing lengthy delays before potential violations are addressed, and the belief that neither the Attorney General, nor the State Auditor has the authority to investigate interlocal agreements. Delays in enforcement action may allow months of additional violations to occur. If I may

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explain in how this fits in? While attempting to carry out our responsibilities as ESU board members, our board became concerned about the workings of the ESU Administrators Association, known as the ESUAA. The ESUAA was formed as a professional organization and was supported by the ESU boards. However, it appeared that over the years the ESUAA took on the power to control public monies using ESU's as fiscal agents, the power to make or influence educational policy, and to act as the governing board of the ILA's, Interlocal Agreements. It appeared that the ESUAA exercised these powers without holding any meetings that were compliant with the Open Meetings Act. After our ESU board made numerous unsuccessful diplomatic efforts to resolve these issues, I filed a complaint with the Attorney General of Nebraska regarding these violations. Eight months later, after the Attorney General ruled that the administrators had in fact violated the Open Meetings Act, there were no penalties assessed, with the reason given that there was a case pending in district court in Ogallala against the administrators for also violating the Open Meetings Act on May 10 of last year. During the eight-month period, while my complaint was pending, the administrators continued to conduct business, including the 1 Percent Core Service ILA business in nonpublic meetings, denying a chance for the public to know what was being done. A letter from Assistant Attorney General Leslie Donley stated that the administrators and their attorney would receive a copy of this ruling, which is included in my packet, and would be admonished to follow the Open Meetings Act. In the meantime, they would wait for the district court in Ogallala before taking additional action, if any. Since that letter was sent out on December 12, 2006, and with proceedings still...proceedings still pending in district court in Ogallala, the administrators met here in Lincoln, on January 4, 2007, and appear to have violated the Open Meetings Act again by conducting the ILA in closed session and the Distance Education Council, which was created by the Legislature, in a meeting that was advertised as an administrator's meeting, thereby not giving public notice that the 1 Percent Core Service ILA board and the Distance Education Council Board would meet. There have been complaints filed with the Attorney General since that time, and waiting for those decisions. If the time frame for resolving these new complaints is again 8 months, then administrators will have had 16 months to conduct additional business out of public view before an enforcement agency puts a stop to it. Those 16 months are on top of the 5 years that the ESUAA has already conducted 1 Percent Core Service ILA business in nonpublic meetings. I believe that the eight-month time frame to reach a resolution of my first complaint was at least partly caused by heavy workloads in the Attorney General's Office. Perhaps the committee could consider additional staffing in the Attorney General's Office, or consider transferring Open Meeting Act enforcement to another agency, such as the Office of the Ombudsman. Transferring that enforcement to another agency would also address an inherent conflict of interest in the Attorney General's Office. My initial complaint involved...included questions about the Education Commissioner's involvement with the administrators meetings. He was cleared by the Attorney General's Office. But since the Attorney General's Office is responsible to defend the commissioner as head of the state agency in court actions, we had a

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situation where the Attorney General's Office was investigating and clearing someone they would also have to defend in court, a conflict of interest. Another area of concern is the apparent vacuum in oversight of the interlocal agreements. [LB7]

SENATOR MINES: Point of order, Mr. Chairman. [LB7]

ALAN JACOBSEN: Yes. [LB7]

SENATOR MINES: May I ask what this testimony has to do with the bill? [LB7]

ALAN JACOBSEN: It has to do with supporting it, but also giving some additional information on why the Open Meetings are so important and why people should have the opportunity, like me, to come and testify. [LB7]

SENATOR MINES: But your testimony has to do with the Attorney General and staffing, and I'm just curious what the nexus is with this particular bill? [LB7]

ALAN JACOBSEN: I just...it just... [LB7]

SENATOR AGUILAR: Point taken. I would ask you to stay directly to the subject matter. [LB7]

SENATOR MINES: Thank you. [LB7]

ALAN JACOBSEN: I understand, I appreciate that. I wasn't trying to be obstinate either, Senator Mines. [LB7]

SENATOR MINES: Sure. [LB7]

ALAN JACOBSEN: I guess, in conclusion, and would encourage you, if you would please, to read all of my testimony and to consider the suggestions because in the efforts that we have made in our boards to try to find out who oversees these areas we have been unsuccessful. The Attorney General said they don't oversee it; the Auditor doesn't oversee it. And so it's difficult to find someone who can. And so, I bring that to your attention. And in conclusion, the Open Meetings Act hopefully is more than just a legal notice that's filed in the local newspaper attesting to a meeting about the people's business. I believe, it's the fabric that supports the democratic republic that our forefathers created so many years ago. It is being violated and trampled upon. And while I am fighting for the letter of the law where it comes to the people's business, I am equally concerned that the infrastructure that we have in place is kept intact, and that is why I'm here to support LB7. Thank you very much. And I appreciate...would appreciate if you would consider some of the suggestions in this testimony. Thank you very much. [LB7]

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SENATOR AGUILAR: Thank you, Mr. Jacobsen. Questions for Mr. Jacobsen? Senator Mines. [LB7]

SENATOR MINES: Thank you. No disrespect intended, Mr. Jacobsen. [LB7]

ALAN JACOBSEN Didn't take it. [LB7]

SENATOR MINES: In fact I think, you're point on, you are absolutely point on in your concerns. But this bill doesn't address any of those. And I would appreciate any other information you could get my office, because that is a problem. Thank you. [LB7]

ALAN JACOBSEN Senator Mines, no offense was taken, sir. I appreciate the point of order. [LB7]

SENATOR MINES: No, no. Thank you. Okay. [LB7]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Jacobsen. [LB7]

ALAN JACOBSEN: Thank you, Senator Aguilar. [LB7]

SENATOR AGUILAR: Next proponent? [LB7]

RAY TYRAKOSKI: Hi, my name is Ray Tyrakoski. And I'm a Washington County resident, have been for approximately six and a half years. I don't have anything written down for you folks. [LB7]

SENATOR AGUILAR: Ray, would you spell your name, please. [LB7]

RAY TYRAKOSKI: Yes. T-y-r-a-k-o-s-k-i, Ray or Raymond, either way. What I'm here to speak about is the people that have been talking to you are talking about me. I was the citizen that approached the Planning Commission, first of all, bringing to light a situation that was totally intolerable, and had hired an attorney, and had to hire also an engineer to even get them to listen to me. [LB7]

SENATOR AGUILAR: Can I interrupt you just a minute, Ray? Are you able to sit down? Because... [LB7]

RAY TYRAKOSKI: No, I've had nine back surgeries and I've had about all the sitting down I can take. [LB7]

SENATOR AGUILAR: Okay, could you move as little closer to the mike then. Just move a little closer to the mike. [LB7]

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RAY TYRAKOSKI: Yeah. [LB7]

SENATOR AGUILAR: It's being transcribed. Thank you. [LB7]

RAY TYRAKOSKI: To make a long story short, I appeared before the Planning Commission, first of all, with my problems. And was told by the chairperson, after I spoke about what the problems was, and basically asked if I was done, and I said, yes. And I was walking away and she said, caveat emptor, to me. I turned around, I'm a graduate of Creighton University Pharmacy School and I knew what caveat emptor meant. And I said, I take great offense to that statement, and I think it's very unprofessional and has no place in this meeting. For those of you that don't know what caveat emptor means, it means buyer beware. And it's pretty bad when a citizen has to not only worry about the home he's buying, but the road in front of the home and the lack of the county making sure everything was done to code, as it were, and things were done legitimately and correctly, which in the situation where I live has not happened. And unfortunately, I'm one of those irate citizens that the attorney from Lincoln spoke of. I'm really irate. So I went to the next step, that was to appear before the Board of Supervisors. I appeared there, was told by the chairperson that I...you know, that I wasn't on the agenda, I couldn't speak. I said, it's not going to take me long, just let me show you what I have, so you can see. No, won't listen to you. Got on the agenda, another month goes by. Get up there to speak again. This time the assistant county attorney, Mr. Talbot, told me I couldn't speak. And I'm like, what? I'm on the agenda, why can't I speak? He said, because I've contacted your attorney over what's going on, and we're going to work together to get resolution. I said, I don't care if you've talked to my attorney, I want to speak. So I tried speaking, and he proceeded to yell over me that I wasn't going to speak, no matter what I did, and basically was going to be thrown out if I kept talking. That was just way over the top for me, way over the top. So I'm leaving, and as I'm leaving a person from the press from the town there approached me, and I just let it go, knowing full well they could hear me. Well, when I got home my phone was ringing, it was my attorney. He said, you can't go to the press with this. I said, what? He said, you can't go to the press with this. I said, why not? He said, if you go to the press with this, all this is going to be exposed and you're not going to get what you want. I said, I have worked with Mr. Cook, who's in charge of building permits, for four years I complained to him; I took pictures to him, I had neighbors go to him. And when I got on the agenda and appeared before Mr. Wilcox, who's in charge, his first words were, I've never heard of this before. And I said, well, I've worked with Mr. Cook for the last four years and got nowhere. Now what do I do? Now in the meantime, I've hired my own attorney; I've hired my own engineer out of my own pocket because these people will not listen. And I am up to here with this. And the problem with me is I happen to be the ignorant person that bought a house right where this little discharge chute is, it's a little circular thing in the road, which is about 14 inches across, which takes the drainage from 1,500 hundred feet in...north to south, if you will, from both directions. Well, you

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can imagine the amount of water on a paved road that's going to go through that. Well, it overflows, washes out my yard. I've struggled with this. I've done all kinds of things. And finally, my lawyer got with the developer and he got with his engineer and I just got that proposal yesterday. Now what they're proposing to me is they take up one-half of my yard, which is over an acre, and put this drainage thing in, which they say is going to cost them \$1,500, and that's their best proposal. And they're taking this area of my yard away from me by, I guess, some kind of eminent domain, if you will, where they have 25 foot. But it's my whole, entire side yard. I had to put a berm up there. I don't know if you know what a berm is? It's like a raised area, because the water rushed down the street so hard it washed out my whole side yard. I had to have it sodded and have curbing laid in there at my own expense just to maintain my yard. I've got pictures, I've got documents, I've got everything and they won't even look at it, they won't even listen to me. And the only reason I know Pam is I was at a meeting one time to their...to speak, jumping through one of their hoops. And Mr. Cook addressed her with such disdain that it personally offended me. I couldn't believe that a public official would address a taxpayer and a member of the county with such a tone, it was sickening. So I'm not going to go on any further because I just...I am so upset with this. Like I said, I've lived there six and a half years, I've been fighting this for four years. I've hired my own attorney; I've hired my own engineer, and still nothing gets done. And the problem...the main problem is with this developer that I have here, he didn't follow his own engineer's basic information in how to put the road in and where the drainage should happen and all of that. And the county realizes they're responsible, and they never went out there and inspected anything, absolutely nothing. The road is not the thickness it's supposed to be. The drainage is not where it was supposed to be originally. This is what my engineer has told me. And what they want to try to do is wait until the engineer has sold enough lots, or not engineer, excuse me, developer... [LB7]

SENATOR AGUILAR: I think we're getting the point, Ray. And I... [LB7]

RAY TYRAKOSKI: ...well, so he can take off and leave the people in the SID holding the bag. Which, by the way, he's already done. There's a west and an east addition. The east one is the one that he left them holding the bag for all the expenses. And I'll be damned if he's going to leave the addition that I'm in holding the bag. So I appreciate you listening to me. I hope to God that something can get done. But I'll tell you what, I'm not going to hold my breath because I'll be long gone. [LB7]

SENATOR AGUILAR: I appreciate your story rather than read it from a prepared statement. That's a... [LB7]

RAY TYRAKOSKI: But...you probably don't want to hear, but I would describe the Blair governmental body as a plutocracy, to say the least. And another good word is nepotism to the max. Thank you for your time. [LB7]

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SENATOR AGUILAR: Questions from the committee? Seeing none,... [LB7]

RAY TYRAKOSKI: Thank you. [LB7]

SENATOR AGUILAR: ...thank you. [LB7]

JACK GOULD: (Exhibit 7) Senator Aguilar, members of the committee, my name is Jack Gould, that's G-o-u-l-d. I'm here representing Common Cause of Nebraska and I'm going to be very brief. LB7 is simply a safeguard protecting the public's right to be heard. When public entities begin to throw up roadblocks that are designed to limit and discourage public speech the Government Committee must protect the public's most basic right. There is no question that meetings can be made more efficient without public input, but our democracy expects the public to be vigilant and involved. Any hurdles erected by government entities will undoubtedly discourage participation. Paid lobbyists will always get their letter in a week in advance because that is their business. The average citizen is giving voluntarily of his time because he cares and wants to be heard. Don't let government discourage you. I must say that this body, the Government Committee itself, has always shown great respect for the average citizen coming in to speak. I just hope, and I think the intent of LB7 is to ensure that that same respect is guaranteed throughout the governing bodies of this state. Thank you. [LB7]

SENATOR AGUILAR: Thank you, Mr. Gould. Questions for Mr. Gould? Seeing none, thank you. Anymore proponents? [LB7]

THERESA PETERSON: My name is Theresa Peterson, that's T-h-e-r-e-s-a P-e-t-e-r-s-o-n, and I reside at 7301 Maple Street, and that's in Omaha, Nebraska in Douglas County. And something that the previous speaker just mentioned that I'd like to pick up on is in the few times I have been before these different committees I've always...I've felt that I've received respect. And, I guess, that didn't occur to me until he had said that. But that's what I'd like to see at a local level as well. And I feel, in my experiences with probably three different county boards, in at least two of them I feel like I have not received that. And that hadn't occurred to me, and so I just wanted to say that. And I forgot to say good afternoon, too. Got to get my glasses. I am here today because I value the opportunity to participate in the public process, both here and at the local level, as I already mentioned. I'm also here because I'm concerned about an atmosphere of distrust that I think is developing towards public officials in Sarpy County. I hope that this amendment proposed here today can help alleviate some of that distrust that I think is developing. I believe that there have been many instances in recent months in which county board and planning commission members have not upheld the laws of that county. I'm not a Sarpy County resident, as I already mentioned. I'm a Douglas County resident, but I have followed closely the actions of the Planning Commission and County Board in Sarpy County in regards to the Schramm Park area conservation plan. And I mention this just by way of interest, the Schramm Park area

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has always been an area that is near and dear to me; I hold it in high regard and I think it's very unique environmentally. So that's my association with the board members or the boards. As I understand it, this bill would allow members of the public to speak at hearings about agenda topics without being on the agenda prior to that meeting. And I understand that it would also extend to matters of new business. I believe that this is essential as it upholds the intent of the public process. Representatives, as you know, above all else, need to be able to impartially receive testimony and information, and uphold their county laws. It's been my experience, as an at-large public attendee of these meetings, both of...that both of these responsibilities have, at times, been neglected. A significant incident arose in May of 2005 in which the Planning Commission of Sarpy County denied a public participant, a Mr. Vinduska, the opportunity to comment on a proposed change to the Comprehensive Plan that specifically dealt with the Schramm Park area and Sarpy County at large. And in fact, in actuality they had a different plan entirely, so it was something that had not been put before the public or the public hadn't had an opportunity to comment on it. So it's very significant that that was allowed at that time. But in any event, Mr. Vinduska was not allowed to speak, even after several overtures on his part, and when he tried to, he was shut down. And again, I don't think that...I value the public process, and that's really not in keeping with the spirit of the law. I think everyone here would probably agree with that. I believe that this significantly curtails the democratic process and it doesn't uphold the intent of the law. This is essential, I think, in public processes, especially ones in which the public may feel that there's questionable board practices. And I'd like to mention just a couple of things that I've witnessed at these board meetings, not because they deal specifically with the amendments that are before you today, but it's because I think that the process is so important, and I want to ensure that the public has the feeling that they can participate. Because it's true if they have to jump through too many hoops, or if it becomes so burdensome, or so worn down, simply they will cease to participate. And that's not good for any of us. But I have witnessed, at some of the county board and planning commission meetings zoning laws that have absolutely not been upheld. I have seen special interest groups developed that have reported directly to the board where that have been conflicts, very obvious conflicts of interest. I can't imagine that anyone would see these as groups that have been impartial and unbiased. I've also seen...and this is...I probably...I'm probably here today because of this point more than anything else. I've actually witnessed ridicule and out-of-order comments by Planning Commissioners of Sarpy County towards expert witnesses. And to me it's ridiculous, I mean it's just uncalled for. And in those situations the person giving the testimony, obviously, had an opinion different from that of the planning commissioner. Finally, these breaches by county officials make it essential for the state to step in and allow citizens to speak in the public forum. They need to be on the record publicly, and that's essential, it has to be public. Otherwise, an atmosphere of distrust and partiality grows and that effectively circumvents this process. And it makes officials appear inadequate for the task to which they're appointed or elected. And at the very worst it creates an unseemly atmosphere of corruption and partiality. I can't think of anything

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else. You know one other thing I just want to mention real quickly, I don't have it in my notes here. I had a different experience, some years ago, with a different county board. And at that time, without going into any detail at all, I was...even though I was on the agenda, I was told to literally be quiet and sit down. Now I've never been discourteous to a board member or to anyone at a public hearing. And in fact, I've never heard any public person giving testimony act discourteous at anything I've attended. But I was truly told to be quiet and sit down because I was not held...what I was saying was not held in favor. And those things form...that give you a body of experience that make you feel like you really have to protect what you have. So that's why I'm here today. Thank you.
[LB7]

SENATOR AGUILAR: Thank you. Questions for Ms. Peterson? Seeing none, thank you. [LB7]

THERESA PETERSON: Thank you. [LB7]

JAREL VINDUSKA: (Exhibit 8) Good afternoon, Senator Aguilar and members of the committee. My name is Jarel Vinduska. First name is J-a-r-e-l, last name V-i-n-d-u-s-k-a. I'm here in support of LB7, in fact, as usual, I think Senator Preister should be commended for his continued diligence to allow the public to participate in the public process. I'm here to represent myself and also a group in the Sarpy County area, called the Schramm Association for a Viable Environment. We've had a lot of experience with Sarpy County Planning Commission and County Board in the last couple of years. And some of the experience has not been too pleasant. And not to say that there isn't good people on the Sarpy County Board and Planning Commission, but I think this amendment will do some good to improve the situation there and in other places. I gave you this letter as an example. I'm going to try to stick to an example, I think an example is always useful, that pertains precisely to this amendment that we're talking about here today. As a previous testifier said, you know the public generally doesn't have the time or the money or the ability to get access to lobbyists and stuff to do it on a professional level. So it's generally time off of work and spur of the moment deal where they have to comment on things that affect them. And so this example that I gave you by this letter that I turned out to you, this is a letter from the Sarpy County Board of Commissioners to the Sarpy County Planning Commission. And what precipitated this, you've probably heard about it in the news, and you will hear about it more in the future in the Omaha World-Herald, is this Pflug Road interchange on the interstate. There is some...the developer that owns a large piece of land on the...1,000 acres on the interstate, and he spent...he said this publicly, \$200,000 in Washington getting money earmarked for this. And as a result, the southern part of Sarpy County was in the agriculture district. And that ag zoning needed to be...district needed to be eliminated because, to accomplish what was needed for that...the surrounding area of that interchange, which is a side issue, but it's a boondoggle that one side of the road is flood plain, the other side is hills that shouldn't be developed. But anyway, that district

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needed to be changed. And up until that point, I had participated on the first comprehensive plan... (Recorder malfunction)...county and ag districts specifically because we knew, with the urban sprawl from Omaha, unless there was some specific district, that all the agriculture of Sarpy County would be eliminated. Well, when this development came into being the powers that be, he was able to influence them and say we need to change this zoning. Well, up until this May 10 letter, the Planning Commission always went by the comprehensive plan, which was 20 acre minimum if you broke up land. And they always said we're not going to spot zone in the ag district. But when they received this letter, and the highlighted part, I think, tells it all, where it says, technically...the current comprehensive plan is technically and legally the guiding document in force. And the proposed new plan may be extremely relevant to your decision-making process, although it not be mentioned as the reason, they're talking about mentioning it to the public, I thought it was a legitimate thing to ask in a meeting. Even though the comprehensive plan wasn't on the agenda of the Planning Commission meeting, it seemed logical to me if one plan was technically and legally the guiding document, and this new plan can be extremely relevant that has a different goal, one plan's goal was to preserve agriculture, the other plan's goal was to urbanize the area, how can one be technically and legally, and the other be extremely relevant? So I thought even though the plan, the comprehensive plan wasn't on the agenda, it was a legitimate question to ask the planners, since the public had never seen a new plan yet, because it didn't exist yet. There was just private stakeholder meetings where there was personal invitations by these developers sent to it, only they knew about the new plan. So I asked, which comprehensive plan are we using? Are we using the technically legal one, (laugh) or the extremely relevant one? And the chairman took offense by that and said, that's not on the agenda, so you can't ask that. But I don't know how you can comment on something unless you know which plan you're using. So it was impossible to comment on it. And that's just an example right there where, like I said, most of the people on these boards are good citizens. But it only takes a couple persons in key positions of power, this being the chairman of these boards, if they are the presiding officer, and they are biased, without rules saying things like this amendment are, they've got the power to squelch public comment. Well, in this particular instance, there was 20-some people there that came to comment on this particular subdivision. But if they're not able to comment on this comprehensive plan, because that wasn't on the agenda, those citizens were squelched, in some cases, you know, took off work, took their time. And that just isn't right to squelch public testimony in that way just because you have that power. And so I think this will take a step toward...you know, it won't be the answer to everything. But it's an improvement of what we had before. And it's a step in the right direction. And I appreciate your support with it...support on it. Thank you. [LB7]

SENATOR AGUILAR: Thank you. Questions? Senator... [LB7]

SENATOR KARPISEK: Thank you, Mr. Vinduska. I just want to say to remember that you can ask to be put on an agenda. Correct, Mayor? That's how I would have run all

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my meetings and...I mean, we get this, definitely. But don't forget, you can ask to be put on. [LB7]

JAREL VINDUSKA: Um-hum. [LB7]

SENATOR KARPISEK: Thank you, Mr. Chairman. [LB7]

SENATOR AGUILAR: Thank you. Next proponent? How many proponents after this? Well, then will the opponents move forward. Please go ahead. [LB7]

DENNIS McCORMICK: My name is Dennis McCormick, M-c-C-o-r-m-i-c-k. I'm a resident of Washington County and have been for 40 years. I've got an article here from the July 11 paper that I would like to read. It's...it started out this is a letter that I wrote to the editor of the Blair paper. In regard to the article about the new law, LB898 the Open Meeting Act, that was passed and in Tuesday, July 11 Blair paper, the County Clerk, Charlotte Petersen said, we've always had to do all these things that the board agendas were specific enough, then why did the supervisors go on record opposing LB898 at their meeting on February 28, '06? I've been to several boards and several board meetings, and I'll tell you what, when I come out of there, I mean it's frustration. You can't find nothing out. If you ask them people anything, they don't want to answer. They hand it over to their attorney, Mr. Ed Talbot. They'll tell you, we can't answer that now. You can be on the agenda and still can't speak, raise your hand, they don't recognize you. It's absolutely terrible. A few years back, I was at a meeting, I wanted to speak. One of our board members said, oh, he's...under his breath, but I happened to hear it, oh, he's always got something to say. That's the reason I went to the board meeting, so I could say what I wanted to say. If I'm not right, tell me I'm not right and explain to me why we can't do that, and that's good. But at least let me speak and recognize me when I want to speak. I've heard our chairman, when people speak to him and ask him something, say, oh, you...oh, that's offensive to me, you're offending me. Nobody is there to offend anybody. All we want to do is have a voice in our government in our county to say what we want to say; that's all we're asking. You treat me with respect and I'll treat you with respect. We don't have to agree on everything. And that's the way this country and our government works, we don't have to agree on everything. It would be a hell of a country if we all had red cars, if that's all we could get. But this...the problem is their agenda are too specific in terms of who can speak. And LB7 is an excellent clarification on this issue. And, Senator Preister that brought this forward, I thank him immensely. And I hope that this committee and the rest of this body takes a good, hard look at this because we need some help and we need it from the Legislature of this state. [LB7]

SENATOR AGUILAR: Thank you. Questions for Mr. McCormick? Seeing none, thank you. [LB7]

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DENNIS McCORMICK: Thank you for your time. [LB7]

SENATOR AGUILAR: I think we're ready for opponents. [LB7]

LYNN REX: (Exhibit 9) Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We're here today opposing this bill, but actually we support the reason that Senator Preister told us why he wanted this bill in. But we think his bill goes far beyond what he at least indicated that he would like to have this bill do. And so let me talk to you for just a moment about a few things in the Open Meetings Act that you would not see in the bill because it's in the law itself, in current law. On the handout, if you look on page 1, about the middle of the page, I've highlighted it, the definition of meeting. The definition of meeting says, all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of public policy, or the taking of any action of that public body. That's important to understand because as many of you that have been involved in local government know, and many of you on this committee have, the bottom line is the issue is not just whether or not you present it, it's not just whether or not you discuss it, and it certainly isn't that, well, it doesn't matter what we did because we didn't take action. It's not about that. I've been told that this bill, we shouldn't worry about it because we're not going to have them take action, we're just going to be discussing it. Our concern with this bill gets to the next item that I've highlighted for you, which is on page 2, 84-1411 in current law. This is the underpinning of the Open Meetings Act, which passed and then called the Public Meetings Law, which passed in 1975 with passage of LB325. And what this talks about, and I've highlighted these words, "reasonable advance publicized notice." It is all about public participation by the public knowing what is on the agenda, not just the public body knowing what's on the agenda, but the people know what are the issues, so I know, am I going to take off work and go to that meeting or not? Is it an issue...are they going to be talking about my property? Are they going to be talking about my business? Are they going to be talking about something that may impact any other number of facets that we're involved in as citizens? It's about reasonable advance publicized notice. And I would respectfully encourage all those that testify in support of this bill, that testified in support of LB898 last year, and at the end we certainly supported LB898, to look at the language that they wanted in and that they have in here as basically all it did was basically stated again, in a more definite way. If you look on page 3 of this handout, this is just simply a continuation of Statute 84-1411 dealing with reasonable advance publicized notice. And this is the language that LB898 put in. It did some other things, too, which were positive. This was something else it put in. Which again, in our view, didn't change anything because the law has always said reasonable advance publicized notice, but because people, many of them here today testifying in favor of this bill, said the public needs to know what's on the agenda, they need to know. They need to be able, and we agree with them, to read the agenda item and know not just that it's street improvements, but it's street improvements on your street. It's street improvements

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dealing with something that may involve you ripping up part of your street or part of your landscaping, any number of things. This is the language that LB898 inserted, in part. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Why? So the public knows what's being discussed. And I would submit to you that what LB7 does is, in essence, create a free-for-all. This basically codifies what many city attorneys, many of them across the state, feel you cannot do, which is have an open forum at the end. Why can't you have just an open forum at the end and a come-as-you-are party? Is because basically, how do you give reasonable advance publicized notice? And as all of you know, and the item of this, if you want to look at the actual statute, starts on 84-1414, page 5, is if there is an allegation of a violation brought within 120 days, then the court has no choice but declare it void. After 120 days, then it's voidable if it's something that wasn't that substantive or at least the judge thought it was technical. But the point being there's a reason why the league has had a long-standing position that reasonable advance publicized notice means something. We supported LB898. We provided at no cost, obviously, to our members, which I think was a great idea, having posted a copy of the Open Meetings Act so that it's actually in the meeting room, lots of other things. But the point is, what does this bill do? Let's talk about what the bill does, because the bill undercuts reasonable advance publicized notice. If LB7 passes, it is going to be government by surprise, basically, confirmed, stamped and approved by the Nebraska Legislature. And I think that is not what citizens want. I don't think they want government by surprise by members of their public body, and I don't think they want government by surprise by citizens that come forward, or developers that come forward and announce where they're going to put a Super Wal-Mart, or where they're going to put any other kind of item. People want to know what's on the agenda so they know whether or not they have to come. So let's look at what this bill would do. If you look on page 3 of LB7, it says, new business. I'm looking on lines 9 through 10, which are underscored. New business means any item not on the agenda or of an emergency nature. So basically, we're talking here about new business meeting, items not on the agenda. So if you happen to be following, for example, if your city is looking at whether or not to have a smoking ban, whether or not they're going to change their junk car ordinance, any number of things that folks are involved in, in cities, the reality is if it's under new business, well it's not on the agenda, you don't know if it's going to be discussed. By the same token, you don't know if folks may have a position different than yours may want to show up in the new business part of the meeting. And one of the questions we would have for the committee and for Senator Preister to consider, in his closing perhaps he can respond to this, if you look again on page 3, lines 26 and 27, how is this implemented? Does it mean you have to have a new business? Does it mean at the end of the meeting or sometime during the meeting somebody stands up and says, I'm talking about new business, which is an item not on the agenda, but it says if a citizen speaks, this is on line...page 3, lines 26 and 27, if a citizen speaks on an item of new business, again defined as items not on the agenda, members of such body may engage in discussion with the citizen and shall not take any action or such business that

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requires a vote of the public body at that meeting. Well, the fact is does that mean that...who activates that, if this bill would go into effect? Because you also have to look at other provisions that are already in current law. And I would reference you, on the handout, to page 4, if you'd be kind enough to turn to page 4, 84-1412; 84-1412 says the following: a body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings. If this bill passes, what does this mean? Does this mean that at certain meetings the public body says that we will have new business and we will have items not on the agenda? Because this would certainly make that, obviously, lawful. But again, I'm suggesting to you respectfully, pick a policy and stick with it. Is the policy reasonable advance publicized notice? Do we want citizens to know the issues that are going to be presented and discussed, whether it's by a member of the public body or a citizen? But pick one. If the answer is yes, then let's stick with that. And we think the answer ought to be yes. We think the answer ought to be reasonable advance publicized notice, whether it is somebody that wants to bring an issue forward. We don't believe in government by surprise. We believe this really ought to be an issue where people can look at an agenda and know if my neighborhood issue going to be discussed or not? Is my business going to be discussed or not? Is my city going to be annexed or not? Those are issues that ought to be there. And you can look through any of the Supreme Court Opinions, and the court will talk repeatedly about the importance of notice, and what constitutes reasonable advance publicized notice and what does not. In addition, I would suggest to you that I think the issue that Senator Preister raised with me, a couple of days ago in the hallway, and I told him we'd strongly support it, but that's not what his bill does, but we support this part of what I think he was after. If you look on page 4 of his bill, (3), this talks about the fact that no public body shall require, this is current law, no public body shall require members of the public to identify themselves as a condition for admission to the meetings. And then it's adding this new requirement: nor shall such body require that members of the public be placed on the agenda prior to such meeting in order to speak to the body regarding items on the agenda or any new business. Now that, to me, tells me that if you basically implement this, as I think they intend to implement it, it means they...basically the citizens get to decide when they show up what they say. And we are a government of the people, for the people. But the bottom line, it is about governance--elected officials governing. That doesn't mean you don't want public participation. It means you want to facilitate that. And we appreciate the fact that Senator Mines put in LB391 for us, which we think codifies the process. The city of Grand Island uses it, other first class cities use it, it basically allows for a process by which items can be placed on the agenda by citizens. And in fact, we can even strengthen that even more if the committee chooses to do that. This says, basically, that bill provides that you could...what occurs in Grand Island and Senator Aguilar is probably the most familiar with this because he's from Grand Island, but you can fill out a form saying that in fact here's an agenda item, it's not on the agenda tonight, but here's something I'd like to have considered. You can go to city hall and pick that up, you can fill one out any time, within ten days somebody gets back to you and says, here's how this can be resolved. If it isn't resolved to your,

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basically, to your satisfaction, it's still up to the public body to set that on the agenda. Something we would be happy to do is say that if it's not resolved to their satisfaction that it shall be placed as an agenda item at a future meeting. But the notion of saying you're going to have testimony and receive testimony on items that are not on the agenda, those of you that have been involved in local government in particular, how pleased do you think it would be to take some of the controversial issues that your city councils and village boards have discussed, and maybe you don't put them on the agenda, but a citizen does that, and then the next day in the paper, assuming the press is even there, somebody picks it up and reads that, wow, that's what is going to be happening next to my property; I didn't even know that. Who do they get angry at? Not the citizen that brought the new item, they get angry...who do you think? The mayor and council, the village board, and why did you do it? And I'm just suggesting to you that current law, by most attorneys in this state that are city attorneys, would tell you that it doesn't allow public forums now because you can't give reasonable advanced publicized notice. I realize that there are some folks, perhaps even some in the press and elsewhere, that love the open mike. It is the quasi Jerry Springer show. It is incredibly entertaining in many cities and villages. It is the best show in town. I don't think this is about entertainment. This is about governance. And if you want to provide and give credibility, and I think you've had some great testimony, by the way, in favor of this bill, and some issues that tell me that this issue does need to be addressed, and here is how I would suggest that you address it. And we would be happy to place this...and I'll have an amendment drafted, and work with your committee counsel on that, as an amendment to LB391 for your consideration when that bill is considered by your committee. Where it says that no public body, current law, shall require members of the public to identify themselves, pardon me, shall require members of the public to identify themselves as a condition for admission to the public, and then this is inserting new language, nor shall such body require that members of the public be placed on the agenda prior to such meeting in order to speak to the body regarding issues on the agenda. We would strike the words "on any new business," because those are not agenda items; we would insert the words "identified on the agenda on which the public body will be receiving public comment." What does that mean? That means, under the current law you cannot change an agenda within 24 hours of a meeting, or 48 hours if it's outside the city. But if it's within your local governing body area, then it's 24 hours. So 24 hours ahead of time I can look at that agenda and I can say, okay, on items 2, 4, 6, and 8 they're going to take public testimony. I can go testify on those items. And I absolutely agree. I don't think there is any way you could read LB898, I don't think there's any way that you can read any law that says that if you're receiving testimony on an agenda item that anyone can say, well, sorry, you didn't register a week ahead of time. By the same token, because the law does allow public bodies, and should, to pass reasonable rules and regulations regarding the conduct and the speaking and when they can speak at public meetings, most city councils, most village boards have a procedural ordinance which says that unless you get some kind of extension from the chair or the presiding officer, you get five minutes, no more than five minutes on agenda

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items is allowed. So you don't have somebody who gets up and talks for whatever. But what I'm telling you, let me tell you some of the things that I see, like I'm doing now and Senator Aguilar is thinking that as we speak (laughter), so what I'm suggesting to you... [LB7]

SENATOR AGUILAR: You're reading my mind. [LB7]

LYNN REX: But all I can tell you is I'm probably your only opponent actually testifying today, and you've had a whole lot of testimony from the other side. So what I'm suggesting to you again is LB7, on its face, I think is hard to implement. I think on its face it says that you're going to have new business, nonagenda items, that's what it says. The legitimate issue that I think is here, that's been brought forward to you today is the fact that you should not have to, where the items are identified for testimony, no one should have to identify themselves a week ahead of time, five minutes ahead of time you simply go up, you have to write your name and you testify on those items. By the same token, I think that you look at what can occur if in fact you just simply have, quote some people call it the open mike, we've called it other things. But I've been at hundreds of city council meetings and village board meetings over the last 30 years. And I do understand what Senator Preister says. Yes, your presiding officer can say, please don't say that, that's out of order. But when the agenda item is street improvement projects on streets X, Y, and Z, that doesn't invite someone to come up and trash their neighbors. That doesn't invite someone to come up and say, I said, as I testified earlier during your fall hearing on this, and I've heard these types of comments. I see that in senator...well I won't say a senator. Let's say that Senator Jones, I see that there are all kinds of activity coming in and out of his house at eleven o'clock at night. And I've actually heard people come during the, quote, open mike period, which we don't think is lawful in any event, but they come forward and say, why don't you have the police go there? We know he's doing drugs. We know that's what's happening. Why aren't you taking care of that? Well, maybe his wife is selling Mary Kay, who knows? But the fact is the issue being that well, yes, you can stop that. You can say, okay, stop, that's inappropriate, please stop that. But it is far different, and people understand if it's...yes, it's street improvement districts you're talking about as opposed to open mike. If you say open mike new business, believe me, it's going to be something as, frankly, it may be benign, unless you happen to be Senator Jones, or Harry Jones, or Sally Sue and you're the one being charged, or if someone says, I mean the quintessential barking dog issue, the quintessential...I mean, you name it. And nobody does anything about it. Well, you know, maybe Harry and Sally didn't know their dog was going to discussed that night. Maybe they don't even have a dog and the person doesn't even know what they're talking about. But the reality is notice means something. Reasonable advance publicized notice is supposed to mean something. And so in closing, what I'm suggesting to you is this, I think that the legitimate issue raised in this bill is that nobody, when you have items already identified on an agenda for public testimony, nobody should have to identify prior to a week before or ten minutes before that they're going to

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speak on those. By the same token, we do have a process in LB391, which will be a different hearing, to talk about how you can get items on the agenda and how you can resolve that. I do think that the issue of first impression is important. I disagree with Senator Preister. I think it is a huge difference if I'm here presenting issues to you today versus talking to you individually. And the same thing cuts for them, their folks can also talk to people individually. If they want, if they've got issues, they can talk to people individually. I think that that's an important issue. So again we don't believe in government by surprise. We think, if anything, you should strengthen the open meetings law to actually provide processes by which people can get items on the agenda. But the agenda ought to mean something. And just on a personal note because sometimes it always means more when it's you, and I think I've told this to Alan Peterson and several others, my little neighborhood group, we've hired an attorney. That attorney is commissioned to look at every agenda for the city of Lincoln, as well as the Planning Commission, because we don't want our little neighborhood impacted. Well, if the agenda means nothing, then what? And on some of these sessions you can easily see that in five minutes somebody can come forward and give a virtual reality presentation on what's going to happen on a major development. And the next day they read in the paper that the property next to theirs is the landfill, the property next to theirs is the waste water treatment plant. Please give strength to the Open Meetings Act. Don't gut it. And if you choose to gut it, then by all means strike the words "reasonable advanced publicized notice", and let's not pretend to tell the public that they can read an agenda and it means anything. With that, I'm happy to respond to any questions you have. [LB7]

SENATOR AGUILAR: Questions? See none. [LB7]

LYNN REX: No questions? Shoot. [LB7]

SENATOR AGUILAR: No questions. [LB7]

LYNN REX: Thank you very much. Thanks for your time. [LB7]

SENATOR AGUILAR: You've answered everything, Lynn. [LB7]

LYNN REX: No, I'm sure I didn't. [LB7]

SENATOR AGUILAR: Any more opponents? Neutral testimony? [LB7]

ALAN PETERSON: Mr. Chairman, Senator Aguilar, members of the Government Committee, I'm Alan Peterson. I represent Media of Nebraska, which is the coalition of the broadcast and print media, both, but limited to issues of open government, free speech, First Amendment type stuff. This is right in the arena where we have the most interest. I testify neutrally today, and I have to explain. And I'm going to be brief. Like the league, as Ms. Rex just testified, I think that the heart of this bill, which tries to avoid an

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abuse of citizens who want to talk, is excellent. Having people have to come and sign up may be intimidating to some. There is no reason for that. And I absolutely agree with Senator Preister that nothing, either in the preexisting open meetings law, nor in LB898, which contained a number of good improvements last year, is any excuse for any public body to make that new requirement. And let me be honest. Sometimes I feel badly about how some public bodies, and there's only a few, but there are some who are bad actors with regard to public meetings. And every time you write something new, instead of taking it in the spirit in which it was intended, which is open government, instead look at it as a new little puzzle to find a way to oppress part of the open government purpose. And anybody requiring this identification a week or a day in advance of a member of the public who wants to contribute to the discussion is simply offending the whole purpose of the law. And I hope it will stop. This law would make it stop, and Media Nebraska supports that part completely. The difficulty is this, I tend to agree personally with a lot of what Ms. Rex said about we still need notice of what's going to come up. My clients are split, it is true. Some of the news media, particularly some of the larger papers outside of Lincoln and Omaha like the open mike at the end of the open meeting of the county board or the school board or whatever because, in fact, it's lively, things come up that weren't expected, can be very interesting, and sometimes the underbelly of what's really going on in town might come up there. It's news. And they say, yeah, we don't get much notice of that, but we attend anyway, so we're going to be there, so we don't care so much about notice. That is the position of some of the papers. And I'm here to tell you the reason we're neutral on the bill is because I think most of the other media feel we can't attend every meeting, nor can members of the public. And so we do depend on the agenda to know whether any of our oxen are in danger of having holes put in them. Remember a little earlier this afternoon on this bill, I thought one of the most tactful and courteous handling, illustrations of handling somebody who's clear off the point took place. And you did it, this committee did it with a point of order and a ruling or at least a tactful suggestion from the chairperson that the speaker get back on the point of LB7. As I read LB7 now I think the danger is that you would have no such point of order. I might come here, if I were not for the media, if I were here for Alan Peterson and say, oh, I'm glad to be here at this open mike, this is nice; I don't really want to talk about LB7, but let's talk about repealing the death penalty, or let's stop this boiling of people in executions from the inside out, that's what I really care about. So I know you've got limited time, but that's what I want to talk about. Now you...a point of order might come up, hey, we're on LB7 and we've got a lot of business. Well, you're just like any other public body. You do have a limited time, you practically give it away, and while it's important to see what people are thinking about, they could request that such an item be put on the agenda. And if it's within the jurisdiction of the particular public body or the right committee even, maybe they get it in, maybe they get it in by a resolution for a study session or something. But you couldn't have me...I guess you couldn't tell me to get back on the point of LB7. Well, that's a very good illustration of what I'm afraid could happen if the current language of LB7 passed. And a number of the media feel that way, like I told you others don't. I wanted to explain both sides of it. We're neutral on the

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bill. We think some good suggestions of changes were made by Ms. Rex a moment ago, and I look forward to answering any questions or working with the committee or counsel, if you wish. Thank you. [LB7]

SENATOR AGUILAR: Thank you, Alan. You made some enlightening points. Senator Pahls. [LB7]

SENATOR PAHLS: I apologize, I've been at several other bills. I'm curious, is there anyone monitoring any of the meetings? I mean I heard some of you hired an attorney. Does your organization, do they monitor agendas and... [LB7]

ALAN PETERSON: Yeah. My organization does not, but it consists of five organizations. It's the Nebraska Press, which is really all the papers, the Nebraska Broadcasters, which is a TV and radio news site mainly. There's an association of the weeklies, newspapers, and then the Lincoln and Omaha papers. Those are the five constituents of my group. And they do check the agendas and sometimes make a decision whether or not to attend based on what's on them, so, yes. [LB7]

SENATOR PAHLS: Okay. Because even when we just went over the open meeting law, Executive Sessions last year, I still notice that there are still some organizations that are not being very clear, you know, on letting people know what's actually happening in Executive Session. They have the same three, four words that they use all... [LB7]

ALAN PETERSON: Right. [LB7]

SENATOR PAHLS: ...they just run it on (inaudible). [LB7]

ALAN PETERSON: LB898 really attacked that. Senator Preister's, I think, excellent bill of last year said you've got to not only state...say why you're going into Executive Session, but then just before you actually go in, the chairperson has to read it and say, we're limited to this, and it's supposed to be specific and clear. I think this committee worked with exactly what language to try to use to do that last year. You made progress, I think. [LB7]

SENATOR PAHLS: Yeah, yeah. Okay. Are most of these large organizations, are they...do they have attorneys who work with them? I mean, like I'm sure like school boards have attorneys so they know what's going on because, see, I heard that from, to be honest with you, not (inaudible) thing. And (inaudible) they didn't understand it. And I'm very, very concerned when an attorney does not understand what the meaning was. I just...I mean this was passed, but I still cannot believe that we're paying money for people (inaudible). [LB7]

ALAN PETERSON: Attorneys, yeah, usually the larger entities do. The county board

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has the county attorney, the city council or village even, many of them have attorneys. They may not attend every meeting, but they do most. The truth is attorneys tend to be advocates. And if they have some inkling from their client that that client might like to close something without being very clear, they can kind of skate the edges of how much clarity is given and the reason. I can't do much about that, but it does happen, you're right. [LB7]

SENATOR PAHLS: Okay, I got. Okay, thank you, thank you. [LB7]

SENATOR AGUILAR: Further questions? [LB7]

SENATOR MINES: I have one, Mr. Chairman. [LB7]

SENATOR AGUILAR: Yes. [LB7]

SENATOR MINES: Alan, you are the authority on constitutional law in this state,... [LB7]

ALAN PETERSON: No. (Laugh) Thank you. [LB7]

SENATOR MINES: ...in my opinion. In your opinion, does the open meeting...excuse me. Does the open mike concept, does it stand muster? [LB7]

ALAN PETERSON: I think it...I don't think that it would pass the current open meetings law, if people get off agenda items. But if open mike is done and the people have said, okay, we're here to hear you now, please stay on any one of the agenda items, I think that would be just fine. [LB7]

SENATOR MINES: Okay, okay. But a bitch session, let's visit, in your opinion, that's off target, off subject? [LB7]

ALAN PETERSON: Let's spend some time working over the Attorney General and his deputy, even though that doesn't happen to be on the agenda, perfect illustration. [LB7]

SENATOR MINES: Exactly. Okay. Thank you. [LB7]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Alan. Any more neutral? [LB7]

CHRIS DIBBERN: Good afternoon. Members of the committee, my name is Chris Dibbern, and that's C-h-r-i-s D-i-b-b-e-r-n. I'm the general counsel for the Nebraska Municipal Power Pool and I won't bore you and repeat anything that you've heard. We're neutral on the bill because our board meets next week in North Platte. Three out of our four organizations are under the Public Meetings Act. And again, I don't want to

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repeat anything that you've heard from Lynn Rex or Alan Peterson, but we think the new business is problematic, that new business not on an agenda should not be addressed at the meeting. We also, though, believe that members of the public need not be placed on the agenda prior to the meeting in order to speak. And we appreciate that Senator Preister brought that issue up to light, and that's how we address our board meetings, the members of the public do not have to be on the agenda. And we encourage members of the public to participate. It does get to be a little confusing, as Lynn pointed out, on page 3, line 24, when a body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings. So if you put one in the statute, you have to be very careful how you address page 3, line 24. With that, Senator Preister's goals, I think, are admirable and we look forward to working with the committee to address the issues. [LB7]

SENATOR AGUILAR: Questions for Ms. Dibbern? Seeing none, thank you. [LB7]

CHRIS DIBBERN: Thank you. [LB7]

SENATOR AGUILAR: Neutral? [LB7]

JOHN SPATZ: I will be short, I'll try to be anyway. Hi. My name is John Spatz. It's spelled S-p-a-t-z, and I am the legal counsel with the Nebraska Association of School Boards. And we are taking a neutral position on this as well. We would like to thank Senator Preister for his attention to the open meetings law. I just want to let this body know whenever there is a change in the open meetings law, I get a lot of questions from school board members all across the state. There probably is not another issue that gathers a bigger crowd at the workshops I put on than open meetings law. My advice to the school boards across the state will not change a whole lot based upon this bill. A lot of the testimony heard in support of this bill had to do with openness. Well, this bill doesn't really address openness. This deals more with the meeting administration. The courts, historically, and correctly so will err on the side of openness if there's a question in an open or Executive Session or a notice to the public and things of that nature. But it's my position that the courts will historically err on the side of the board when there's an issue with the public participation. They'd say, we know your board, and it's difficult for you to do all these activities in public; you have a certain amount of wiggle room to control your meetings. As it was said, the boards do not have to allow public comment at each meeting. And it's always been my position that these are meetings in public, not necessarily public meetings. But the actual changes, my advice to the school boards will not change a whole lot, in my opinion. But we will stay involved with this process and offer any help where we can. And just to let you know, we do...we came up with a book for our school board members, and I believe I gave one to Senator Aguilar. And I'll certainly make one available to any of you, if you'd like. So are there any questions? [LB7]

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SENATOR AGUILAR: Questions for Mr. Spatz? [LB7]

JOHN SPATZ: Thank you. [LB7]

SENATOR AGUILAR: Seeing none, thank you. [LB7]

JON EDWARDS: Good afternoon, Mr. Chairman and members. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, with Nebraska Association of County Officials. And we're here today in a neutral capacity. Much like was stated before, our board hasn't met yet to take official positions on bills. But based on conversations we've had with county officials across the state have not mentioned that this would be real problematic in their eyes. So we are here neutral and we iterate a lot of what was just said previously and will do what we can to help in any changes that need to be made here. So with that, I'll conclude my testimony. [LB7]

SENATOR AGUILAR: Questions for Mr. Edwards? Senator Mines. [LB7]

SENATOR MINES: Thank you, Mr. Chairman. Jon, you represent the organization that many of these folks are here complaining about process and procedure. Is...in your opinion, should they contact your organization? Should the public contact your organization? What's their recourse? Who do they go to? [LB7]

JON EDWARDS: Well, they can certainly, you know, air their grievances to our organization, our association. We're mainly in place representing the county officials, all 93 counties, so have 93 different boards operating. And it's very difficult for us to oversee all 93 county board operations. However, we do take this issue seriously. We have engaged in educational activities at our conferences and meetings and county board meetings and so on and so forth. So we do what we can. But we can't please all situations. But certainly, if I'm a chair of a board, I'm going to try to operate that or a public body in the most open way I can and most favorable way I can towards the public. But, of course, that's...I am not... [LB7]

SENATOR MINES: Some people...yeah, some of them don't. [LB7]

JON EDWARDS: Exactly, but certainly... [LB7]

SENATOR MINES: And I think that's really what folks are concerned about is those that don't do it. [LB7]

JON EDWARDS: And I can understand that they may feel like they're up against a brick wall at times. They can certainly contact our association and we'll take that information and... [LB7]

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SENATOR MINES: Right. But you're there to educate your members and... [LB7]

JON EDWARDS: That's exactly right. [LB7]

SENATOR MINES: ...Washington County is one of those. [LB7]

JON EDWARDS: We certainly can't hold the hammer over boards. [LB7]

SENATOR MINES: Right, okay. Thank you. [LB7]

JON EDWARDS: Okay. [LB7]

SENATOR AGUILAR: And as a follow-up, when you have your educational seminars, are those meetings required? [LB7]

JON EDWARDS: Typically, when...last year, I believe, we did in a general session for county board members this was a topic discussed when all members were together, as opposed to a breakout session or something like that. So in terms of requirement, yes, those that were there, are they required to attend the events? They're not required to attend the events. [LB7]

SENATOR AGUILAR: Um-hum. Thank you. [LB7]

JON EDWARDS: Okay. [LB7]

SENATOR AGUILAR: Further questions? Senator Adams. [LB7]

SENATOR ADAMS: Would it be fair to say within your county organization, and again we seemingly are picking on counties right now, and... [LB7]

JON EDWARDS: It seemed that way today, yeah. (Laughter) [LB7]

SENATOR ADAMS: I mean, but across the board, I'm sure there's violations can be identified everywhere. [LB7]

JON EDWARDS: Certainly, that's right. [LB7]

SENATOR ADAMS: In the course of your education of county officials, do county clerks and county attorneys, are they part of that, too, given that they often give direction to their boards? [LB7]

JON EDWARDS: Certainly, and county clerks have been a part of that. And I'm sure attorneys, while many times they have their own educational agenda based just on the

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nature of their work, I'm sure they've also been brought up to speed or had, you know, presentations made to them on the changes in the open meetings act and are aware of those changes. Educating them and how they implement those changes are two different things. But we certainly try to uphold our end in providing that information, which is really the objective of our association is to make better county officials and to help them and to educate them. So I think we do hold up our end in that sense. [LB7]

SENATOR AGUILAR: Thank you. Further questions? Thank you very much, Mr. Edwards. [LB7]

JON EDWARDS: Thanks. [LB7]

SENATOR AGUILAR: Any more neutral testimony? Senator Preister, to close. [LB7]

SENATOR PREISTER: Thank you, Senator Aguilar. I will be brief because I appreciate the indulgence of the committee. This has been a long hearing. One of the very best things that's come out of LB898 or this hearing today is the education process so people are more aware of what the open meetings law does and understanding that it's important, and valuable, and they need to pay attention to it and get educated on it. I appreciate the cities and the counties sending out a printed, laminated version of it so it's available. I think this has been a wonderful process. And today has been a wonderful example of what we do with open meetings. The state of Nebraska does an exceptional job. But as you heard, and unfortunately...and I wasn't here to beat up on the counties. There were examples of situations in counties. But we've gotten, from one end of the state to the other, examples from all different kinds of boards, school boards certainly. We've heard about the I-80 Commission, the list goes on and on. We're trying to clarify so that...and I didn't hear one person, neutral or in opposition, say that the component that says people don't have to be listed on the agenda in advance is bad or wrong. Everybody said that's right and that's right on point and we should do something about that. I agree with that. When Ms. Rex says reasonable advance public notice is extremely important, I totally agree with that as well, and we do need to have that. I'm not changing the open mike. And just as Mr. Peterson said, some cities and some bodies choose to do that for whatever reason, and some newspapers and media support that. The sensationalism, the information, that's their prerogative. I'm not saying that you have to do an open meeting...open mike or not do it, that's still left to their discretion, so they can make that choice locally. Government by surprise, I don't like that either. But I don't think it should be government by surprise to the public either, and that's what we're frequently seeing. Things are done, information comes forward that the public isn't aware of and it's government by surprise to the public. So that knife has a two-edged sword, it cuts both ways and that's my concern. Democracy works well here in the legislative body. I would like to see that mirrored more in other bodies, this process has helped that. When you open up to the public and give them an opportunity to speak, you do get a lot of information. Sometimes that's problematic. That's exactly

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why reasonable rules can be set, they can be administered. But if you don't do it, if you allow things to get out of hand, it does happen. So establishing those reasonable rules in advance so that people know about them know what the expectations are and then you give people a chance to express themselves. When you try to suppress the public, when you try to keep people from having their say, what you do is make them more desperate, and then they have to go to more desperate means to be heard. I would rather avoid that and I would rather avoid putting the onerous on the public for going to court, to get an attorney, to find other means of resolving those conflicts where the body is not responding to them. Democracy is messy whenever you open it up to people, but isn't it a wonderful system. I like it, I think it should continue to work, and I think this is a modest proposal to help add clarity to what we did in LB898. I really appreciate the committee's time. Again today, for the new members, welcome to the Government Committee and open meetings and open records. To those of you who have sat through it before, I appreciate your indulgence and I thank all of you very much. I'd be happy to entertain any questions. [LB7]

SENATOR AGUILAR: Thank you, Senator Preister. Any questions for the senator?
Senator Mines. [LB7]

SENATOR MINES: Thank you, Mr. Chairman. Senator Preister, that was a passionate closing. Much of it didn't touch your bill. There are...the one point, I think, that I heard here is that open mike or discussion of any topics outside of those listed on an agenda are probably not constitutional. Your proposal would actually, as you heard, would put reasonable advance notice in conflict. So which do you want? Do you want reasonable advance notice, or, you can't have them both, or do you want discussion of topics that are not on reasonable advance notice? [LB7]

SENATOR PREISTER: I don't think it is so simple as you say. [LB7]

SENATOR MINES: But it is, I heard more than one person say that you can't have them both. You can't have a chat session, or you can't have someone go off on a tangent about some other topic than you're talking about and expect that reasonable advance notice has been given; you can't have both. [LB7]

SENATOR PREISTER: You can control the direction of the discussion. You can also control whether you have an open mike. You don't have to have an open mike. You can control that. [LB7]

SENATOR MINES: You heard people from Washington County suggest that that's not happening, that the people that are running these meetings aren't necessarily conducting the meetings the way that you or I would intend. [LB7]

SENATOR PREISTER: Correct. [LB7]

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SENATOR MINES: And from what I've heard today, you cannot have both. And that's it. Thank you. [LB7]

SENATOR PREISTER: My response would be that I think you have within the statute currently the opportunity to establish the rules, and you currently can either have an open mike or not have it. So you do have... [LB7]

SENATOR MINES: But procedurally you can. Constitutionally, and I heard Mr. Peterson say that, and I'm sorry to drag you into this, Alan, that in his opinion, and I value his opinion, that probably it does not stand muster. And I'm just saying to you that I believe that you can have one or the other, and I'm asking which one you want? [LB7]

SENATOR PREISTER: I respect your opinion and appreciate your opinion on it. [LB7]

SENATOR MINES: You don't have an opinion on either way? [LB7]

SENATOR PREISTER: I think I just expressed it. [LB7]

SENATOR MINES: Okay. [LB7]

SENATOR AGUILAR: Any further questions? Senator Karpisek. [LB7]

SENATOR KARPISEK: Thank you, Mr. Chair. Senator Preister, I tend to agree with you on where it just says that they cannot take any action at that meeting. Is that your bottom line? [LB7]

SENATOR PREISTER: Senator, that wasn't even my language. Some...as I said, this was an ongoing process, and much of this language came from other people. And I tried to be accommodating and agreeable and concede on things. So the language has evolved to this language. But my intent is to allow people...would you restate your question. [LB7]

SENATOR KARPISEK: On the open mike, just to say that it does not require...or it requires that there would be no vote taken on the open mike part, something that is not an agenda item could be brought up, but no formal vote taken. [LB7]

SENATOR AGUILAR: No action. [LB7]

SENATOR KARPISEK: ...no action. Thank you, Mr. Chair. That, I guess, is what I'm getting from this, that people could or couldn't come to a meeting, voice an opinion on, on the way up here a fire hydrant just blew up, we need to do something about our leaky mains. Well, we're not going to take a vote on our leaky mains, but we will say,

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hey, get somebody out there to fix the fire hydrant. [LB7]

SENATOR PREISTER: Yeah, they... [LB7]

SENATOR KARPISEK: I'm not trying to put words in your mouth. I guess I'm stating what I get out of that is to say that people should be able to voice an opinion that isn't on the agenda, if it's allowed in that circumstance, but, by God, no action taken on that. [LB7]

SENATOR PREISTER: Well, I think, Senator, that was the intent of the way that language was drafted. So rather than not having the notification, rather than people not being informed and action actually being taken, this was designed, if something comes up and somebody does mention something the board doesn't take a vote and it clearly says no action will be taken, then that doesn't happen. So you don't get the government by surprise kind of approach. [LB7]

SENATOR KARPISEK: Exactly. Then on the next agenda it will show up... [LB7]

SENATOR PREISTER: Right. [LB7]

SENATOR KARPISEK: ...and be an agenda item. [LB7]

SENATOR PREISTER: It's noticed, it's on the agenda and people are informed. You're exactly right. And that's what the intent was. [LB7]

SENATOR KARPISEK: Correct. Thank you, Senator. Thank you, Mr. Chair. [LB7]

SENATOR AGUILAR: Thank you. Senator Preister, I'm sure this is going to be a lengthy discussion even when we get into Exec Session on this. And I hope you'll be willing to work with us in the future to try to come to a final, finished product. [LB7]

SENATOR PREISTER: I appreciate the committee's indulgence, and I will be happy to work with you. [LB7]

SENATOR AGUILAR: Any more questions? Last chance. And that closes the hearing on LB7. Thank you very much. [LB7]

SENATOR PREISTER: Thank you. [LB7]

SENATOR AGUILAR: Senator Mines, to open on LB16. [LB16]

SENATOR MINES: Chairman Aguilar, members of the committee, my name is Mick... [LB16]

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SENATOR AGUILAR: We'll give it just a second, Senator Mines. [LB16]

SENATOR MINES: Oh, please let me get going. (Laughter) Hey, you're restricting my rights to speak in public. [LB16]

SENATOR AGUILAR: We want to hear what you have to say. Proceed. Please take your conversations outside. Go, go. [LB16]

SENATOR MINES: Can I go? Thank you. Chairman Aguilar, members of the committee, for the record, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I'm here to introduce LB16. This has to do with zoning for airports. LB16 amends Sections 3-303 and 3-304. Current law provides for airport zoning to prevent hazards that endanger lives and property and those things. You got to have zoning around an airport for obvious reasons. Airplanes run into tall structures. The Department of Aeronautics issues guidelines for airport zoning, and currently, Section 3-303 provides that a political subdivision that has an airport hazard area within its zoning jurisdiction may adopt zoning regulations for the area. In most situations, when an airport is owned by a political subdivision, and any part of that hazard area is outside of the zoning jurisdiction of that political subdivision, a joint airport board is established as provided by that section. So if you have an airport that's outside, let's say it's a municipal airport, it's outside the city limit in the county. You then, under today's statute you can establish a zoning commission or board made up of four people, two appointed by the county, two appointed by the city. And it's allowed where an airport is owned by let's say a city, and the joint zoning board is formed by the political subdivision owning the airport and the political subdivision where the airport is located. Okay. Creation of a joint zoning board is cumbersome and it adds just another level of zoning. Now you've got county zoning, city zoning and, oh, by the way, you have airport zoning. LB16 eliminates the need for a joint board in most cases. It requires that the political subdivision where the airport is located will do the zoning for the airport. Seems logical. A joint airport zoning board would only be used if a political subdivision, where the airport is located, has not adopted zoning regulations. Example, you've got a city that has an airport wholly located in the county; the county doesn't have zoning. We have those in Nebraska. And I believe that there is a representative here from the Department of Aeronautics, if any questions come up. The department has not taken a position on this matter. And we also have testifiers behind me that will give real life experience and be able to answer any questions you might have on this subject. With that, I am through and will answer any questions. [LB16]

SENATOR AGUILAR: Any questions for Senator Mines? Yes, Senator Rogert. [LB16]

SENATOR ROGERT: Senator Mines, I just...what's the motivation behind this? [LB16]

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SENATOR MINES: The city of Blair has an airport in Washington County outside of the Blair city limit, and there are...their zoning and clumsy. And there is concern that cell towers can go up in flight paths. They don't have the ability to control that three-mile area around their airstrip. I believe Tekamah is outside the city or abuts the city. And I'm not sure if Burt County has zoning or not. [LB16]

SENATOR ROBERT: We do. [LB16]

SENATOR MINES: They do. So you would have a joint zoning authority and this would apply to that. So this was brought by the city of Blair, they have unique, not necessarily unique issues with zoning. You've got several layers, and I'll let them explain. [LB16]

SENATOR ROBERT: What does this do to the housing development going up around that airport? [LB16]

SENATOR MINES: The development would fall within that three-mile zoning, unless, and I believe this is right, unless the municipal...unless, in your case, city zoning would overshadow the airport. But I'll let Rod Storm answer that. That's a good question. [LB16]

SENATOR ROBERT: Thank you. [LB16]

SENATOR AGUILAR: Further questions? Senator Adams. [LB16]

SENATOR ADAMS: Senator, does...in these situations, does Nebraska Department of Aeronautics or FAA regulations preempt in any way county or municipal zoning? [LB16]

SENATOR MINES: No, in fact, I think they offer standards for zoning. But they...the zoning is established either municipal, county, or an airport. [LB16]

SENATOR ADAMS: Okay. [LB16]

SENATOR AGUILAR: Thank you. [LB16]

SENATOR MINES: Thank you. [LB16]

SENATOR AGUILAR: Proponents? [LB16]

ROD STORM: (Exhibit 1) Mr. Chairman and fellow committee members, my name is Rod Storm, S-t-o-r-m. I'm the city administrator for the city of Blair and I also serve as the airport manager for the Blair Municipal Airport. The city of Blair and Blair Airport Authority support LB16 as introduced by Senator Mines. LB16 will change current state statutes to help protect the hundreds of millions of dollars the taxpayers have invested

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and that will invest it in the future in our public use airports by improving zoning requirements and reducing the different levels of government that individual landowners must deal with in the development of the property in the vicinity of the airport. First, current Statute 3-302 states in part that, it's hereby found that an airport hazard endangers the lives and property of the users of an airport and the occupants of land in the vicinity, and also that if the obstruction type in effect reduces the size of the area available for the landing, taking off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. This bill will help improve the protection of our airports by requiring the Nebraska Department of Aeronautics to develop minimum standards and regulations for the protection of the airport hazard areas. It will further then require that the city, any city or county that adopts a comprehensive plan and zoning regulations and has an airport hazard area within that jurisdiction, that it shall adopt zoning regulations that meet the minimum standards adopted by the Department of Aeronautics. By requiring a zoning regulation be adopted as part of the city and county regulations, it will eliminate the need to have joint airport height zoning boards and airport height zoning commissions, as well as any additional administrative requirements. In the case of the Blair Municipal Airport, the airport is located approximately seven miles south of Blair along Highway 133. The city of Blair's zoning jurisdiction extends two miles from the city's south boundary, thus making the airport's hazard zone almost entirely within the county zoning area. And I say almost entirely, because a portion of the hazard zone on the south end of the airport is in Douglas County. I have given you a copy of that hazard zone in there, and you can see the area that's in Douglas County. And again, in Blair's case, the city and county have set up a joint height zoning board and commission. The commission has adopted regulations and the city staff must enforce those regulations. When an applicant for a building permit goes to the county zoning and permits department to get a permit, they are then required to go to the city to file for a height zoning permit. This bill would reduce that governmental interference by making it the county's responsibility to review their zoning regulations and determine if the permit is...can be issued based on zoning regulations that exist in their code. It will help reduce the frustration of taxpayers being sent from one governmental entity to another. I've attached a copy of the aeronautics guidelines that are now available to airports, a copy of the Blair zoning regulations, and a map showing the Blair hazard area. Again, Mr. Chairman and fellow committee members, I urge you to support LB16 to help protect the investment that we have in our airports and help promote efficiency in local government and thus reducing unnecessary need to bound taxpayers from one governmental entity to another. I'd be happy to answer any questions in more specifics that you might have relative to the airport zoning. [LB16]

SENATOR PAHLS: Do I see any questions? Thank you, Mr. Storm. [LB16]

LYNN REX: Senator Aguilar, members of the committee...you're not Senator Aguilar. Senator Pahls, members of the committee, my name is Lynn Rex, R-e-x, representing

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the League of Nebraska Municipalities. We are also in strong support of this and we appreciate Senator Mines bringing this measure. We have a larger cities legislative committee comprised of every first class city in the state, Lincoln and Omaha. We also have a smaller cities legislative committee comprised of representatives, about 40 of them, of second class cities and villages. And both committees thought this was an excellent idea in terms of just streamlining government and trying to make it clear that you don't have to go back and forth to do all this, but basically, who's ever got the comprehensive plan and the zoning, they're the ones that are going to be responsible. So I'd be happy to answer any questions you have, if not, thank you very much for your time this afternoon. [LB16]

SENATOR PAHLS: Any questions for Lynn? Thank you, Lynn. [LB16]

LYNN REX: Thank you. [LB16]

SENATOR PAHLS: Opponents? Neutral? Senator Mines, closing? Senator Mines closes. Thank you. [LB16]

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Disposition of Bills:

LB5 - Advanced to General File, with amendment.

LB7 - Indefinitely postponed.

LB16 - Held in committee.

LB50 - Indefinitely postponed.

Chairperson

Committee Clerk