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Government, Military and Veterans Affairs Committee
January 19, 2007

[LB13 LB18]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, January 19, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB13 and LB18. 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: Welcome to the Government, Military and Veterans Affairs Committee. We'll start off by introducing the committee. On my far right is Senator Kent Rogert from Tekamah, Nebraska; to my immediate right is our committee counsel Christy Abraham; to my left is committee clerk, Sherry Shaffer; to her left is Senator Rich Pahls from Omaha. Next to him is Senator Greg Adams from York. And I'll introduce the other senators as they return. Bills will be taken up in the following order: LB13, and LB18. Sign-in sheets are at both entrances. Sign in only if you are going to testify, and put the sheet in the box up here on the table. If you're not going to testify and you would like to be on the record either as a proponent or an opponent of a bill, there is another sheet you can fill out. These are the tables near the entrances. Print your name and indicate who you are representing. Before testifying, please spell your name for the record. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. Listen carefully to the testimony before you and try not to repeat. If you have a prepared statement or exhibit, give it to the page who will distribute copies. We ask that you have at least ten copies. Turn off your cell phones and pagers. Our pages today are Adam Morfeld of Sioux Falls, South Dakota, and Michael Shaeffer of Lincoln. Senator Mines, please begin.

SENATOR MINES: (Exhibit 1) Thank you, Chairman Aguilar, members of the committee. It's nice to be here today. I am Mick Mines, M-i-n-e-s, and I represent the 18th Legislative District. I'm the primary introducer for LB13. This is a change in the Interlocal Agreement Act...or Interlocal Cooperation Act. And let me just start by saying that I treasure the Interlocal Cooperation Act. I have been involved in using it. I think it's a valuable tool, it's a wonderful tool. However, there are some areas that I believe need improvement and we will run through those. Let me talk first about the Interlocal Cooperation Act that was established in 1963. Section 13-802 states that the purpose of the Interlocal Cooperation Act is to permit local government units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on the basis of mutual, and I will use quotation marks, basis of mutual advantage, and thereby to provide services and facilities in a manner pursuant to the forms of government or organization that will accord the best geographic, economic population and other factors, influencing the need and development of local communities. Right now the process under 13-804, states that any two or more public agencies may enter into agreements with one another for joint or cooperative action.

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

Appropriate action by ordinance, resolution, or otherwise, so they're going to create...they will participate by ordinance, resolution, or otherwise, pursuant to law of the governing bodies. The participating public agencies shall not necessarily before any agreement may enter into force. This agreement...the agreement that they enter into must specify how long it's going to last, the duration, the general organization, how you're going to create and organize, and compose the interlocal agreement. You can have separate legal or administrative entity may be created by the agreement, why it's being created, the purpose, the manner for financing, the joint cooperative undertaking, and the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement. So how are you going to get in the agreement? How are you going to administer it? How are you going to get out of it? And finally, the manner of levying, collecting and accounting for taxes that are authorized. The only oversight provided in the act is under Section 13-804(8). And it says that any governing body which is a party to an agreement made pursuant to the act must provide the information to the auditor regarding such agreements as required in the section. Section 13-513 states that the auditor shall, on or before December 1 each year, request information from each governing body in a form prescribed by that auditor regarding agreements to which the governing body is party under the Interlocal Cooperation Act. And then the governing body has made...has to respond to the auditor on or before December 31. So they have 30 days to respond. It would be my contention the auditor has only, in the last several years, done that; it's not an annual, although it's prescribed by statute, it's not happening. We're not...the auditor is not requesting this information on an annual basis. So that's the way it is today. Here's what LB13 proposes, and let me also preface this by the language or the intent that I'm reading here came from our Joint Public Agency Act that's in statute today. So we're merely asking that interlocal agreements fall under the Joint Public Agency Act. LB13 would change, by adopting procedures again, the joint entities under the act, and it allows more and I think more effective insight. LB13 would require that the governing body of each public agency participating in the creation of the joint entity adopt a resolution determining that there is a need for this joint entity, and setting forth the names of the participating public agencies. Right now and as you can already look ahead, if you have a resolution that's a matter of public record. Certainly, an interlocal agreement is a matter of public record, but it's not published. There's no need to publish that, so the public doesn't understand that there is an interlocal agreement. Any existing entity would be required to complete an application and certification process. In determining the need for the joint entity, the governing body would take into consideration the future and present needs of the public agency with respect to materials, goods, property and services which a joint entity may utilize or provide, the adequacy, suitability, and availability of such materials, goods, properties and services to meet the needs of the participating public agency if no joint entity is formed. And very importantly and as well as economic or other advantages and efficiencies which may be realized by cooperative action through a joint entity. Very key, the resolution must be published. And after publication, the resolution could then be adopted by the governing body. This allows the public, and we heard yesterday two and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

a half hours of--we want more information as the public will want to know what is going on. By publication of a resolution, the public is informed about interlocal agreements. Then, if it's adopted by the governing body, the bill would then...would then allow for the issuance of a certificate of creation by the Secretary of State. Upon issuance of the certificate, each participating public agency, say that three times in a hurry, would appoint representatives for the creation of the joint agency. The representatives would constitute the board in which all powers of the joint entity are vested. Each representative would serve a term of four years. Each representative would have one vote. LB13 also outlines procedures for the board, including the manner of scheduling meetings, electing officials. And the board would be subject to the Open Meetings Act. Right now interlocal agreements, again they're not publicized, nor are they subject to the Open Meetings Act, or the process of adopting is not open. Within 30 days after the adoption of the resolution by the creation of a joint entity, this bill would require that the board file with the Secretary of State a statement signed by the proposed representatives. And it would set forth that the names of the proposed participating public agencies, a certified copy of each of the resolutions of each participating agency, and proof of publication, as well as a brief description and the name of the joint agency. Here's why I think this is important--certainly I believe it provides more oversight rather than the auditor, the Secretary of State would receive information and coordinate that information. And there are examples, and unfortunately when you talk about abuse of any statute or abuse of anything, like yesterday we heard, it's because a very few organizations don't act in a responsible manner. There are abuses, in my opinion, abuses of the Interlocal Agreement Act. And I have...I'll explain one for an example. And I'm not identifying the Omaha Public School System because they are the only bad actor. This is an example that I know of that I believe is an abuse of the Interlocal Cooperation Act. Omaha Public Schools has an interlocal agreement with Omaha Public Power District. Both are public entities. That agreement is for the provision of power to Omaha Public Schools. As such, as an interlocal agreement, power...the cost of power is outside the limit, the levy limit or the lid. So, in effect, property taxes are not...it's not identified within the lid limit, and certainly property tax still pays for that, but it's shifted from underneath the lid. There is another example, and you'll see both of these examples in a bill that will come before you later. Another example is in the Blair Community Schools, in my district, the school district has an interlocal agreement with Educational Services Unit Number 3 to provide the school with substitute teachers, with personnel. And those personnel costs are then shifted from underneath the limit of the levy. And those are two examples I know of, and there are certainly more within municipalities and counties. Those are two examples and why I believe that if the public had more oversight and there were more public accountability, it would be best, I believe, for all. Now you're going to hear from a number of organizations, and I have talked with many of them. I can tell you that I am going to ask that this be introduced and am not going to pursue advancing the bill until I have worked with all the entities and come up with what I would believe is a reasonable compromise. And then I would seek your advice. But until then the bill, quite frankly, isn't 100 percent ready. So I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

offering it for your consideration. I know that there will be testimony from NACO and the league, MUD, school districts. There are concerns with reporting, and frankly I have...after I've talked to some of these organizations, I, too, have concerns about the reporting requirements. The Secretary of State, we've worked with them and they've offered an amendment. And if I could have a page distribute that, the amendment insures that the notice required would be published by the joint entities themselves rather than the Secretary of State. So it just simply says that the joint entities would be better suited to know in which publication notice would be made to the public. It's not quite ready. I believe in the concept. I think some changes need to be made for accountability and for...call them abuses. I just...they're...that's a harsh term. I think some entities in our state have overextended the intent of the act. And with that, I will close my opening and answer any questions that you might have. [LB13]

SENATOR AGUILAR: Thank you, Senator Mines? Questions for the Senator? Senator Adams. [LB13]

SENATOR ADAMS: Senator, remind me again, in the Interlocal Cooperation Act when interlocal agreements are created, they're created by resolution now, aren't they, of the bodies? [LB13]

SENATOR MINES: They are created...it depends on the body. Counties don't do resolutions, school boards don't necessarily. There's not a public, joint public identification by all parties involved in creating an interlocal agreement. So there's not one publication that says this is what all these entities are going to do, and here's why it is a good thing. And I believe that that's important as opposed to some organizations publishing notice. If a municipality has a resolution, that resolution is published by title, doesn't have to be published in total, I don't believe. So this...that's what I would seek with this. [LB13]

SENATOR AGUILAR: Further questions? Senator Mines, I had one. Are you absolutely sure that interlocal agreements aren't subject to the Open Meetings Act? [LB13]

SENATOR MINES: An interlocal agreement is an agreement between two or more public entities, that's certainly discussed...I don't know that it even has to be discussed in a public forum at a city council meeting, or a school board meeting, or a county board meeting. I'm not so sure that the agreement can't be signed...agreed to by the council or whoever and then signed. I don't know...you know, I don't know that yet. And, again, I'm not up to speed on that, I'm sorry. [LB13]

SENATOR AGUILAR: Thank you. Further questions? Senator Adams. [LB13]

SENATOR ADAMS: Mr. Chairman, one other thing. In light of that, if there is an interlocal agreement and the two bodies have agreed to issue bonds, one of those

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

bodies or both, aren't they still going to have to go back to a regular meeting that has been noticed in order to take that action on behalf of the interlocal entity? [LB13]

SENATOR MINES: Probably what would happen in that instance is both agencies or both governmental units would create another interlocal unit that has that bonding authority. So...and that does not fall under, I don't believe that falls under open meetings laws. I could stand to be corrected. But...let's just take an example of a city and a school creating a library, common use library. First of all, one of those bodies has to assume the obligation for the bonds. More than likely, if I were a mayor, I would ask that those bonds be through a separate interlocal organization that's obligated to repay that. And I don't know if that separate organization has to have open meetings laws...falls under open meetings laws. I see Stephanie looking frantically, but I don't know that. [LB13]

SENATOR ADAMS: And I don't know the answer either. It just seems to me that there would have to be some kind of published open action for the actual... [LB13]

SENATOR MINES: For bonding authority? [LB13]

SENATOR ADAMS: ...bonding authority. But I don't know the answer myself. [LB13]

SENATOR AGUILAR: Further questions? Seeing none,... [LB13]

SENATOR MINES: Thanks. [LB13]

SENATOR AGUILAR: We'll now take proponents. How many...can I have a show of hands, how many are going to testify on this bill? Thank you. Proponents, please move forward. [LB13]

SHANNA BELSCHNER: (Exhibit 2) Good afternoon, Senator Aguilar, members of the committee. My name is Shanna Belschner, that's S-h-a-n-n-a B-e-l-s-c-h-n-e-r. I am a registered lobbyist for the Children and Family Coalition of Nebraska. The Children and Family Coalition is a group of provider agencies in the community, not-for-profit agencies, providing services for children and adults, mental health services, substance abuse services, foster care, and other child welfare services in the community. We support LB13, and we want to thank Senator Mines for bringing the bill. The reason we support it is not that we think that there needs to be a punitive action, but that auditing...the auditing of the state, federal, and local funds that flow through to interlocal agreements is just good government. And presently, there is a lack of auditing of funds that flow into and out of interlocal agreements. The particular interlocal agreement that CAFCON agencies work with are six interlocal agreements: they're the behavioral health regions. The behavioral health regions are independent, nonprofit organizations created through interlocal agreements between HHS and the regional governing boards. The regional governing boards are established in statute, and they're made up

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

of county commissioners from each of the counties within that region. And so behavioral health regions provide services in the community; they work with community providers to deliver services locally; they are funded with federal, state, and some county dollars to deliver substance abuse treatment, mental health treatment, child welfare services, and so forth. I've provided some written testimony, and I won't read it, but there is an example within my written testimony of...it's one example of why regular audits need to take place within interlocal agreements. And I'll tell you another story about a situation that kind of illustrates the need for the regular, you know, external auditing of these organizations. A couple years back one of the regions was outsourcing services. They do work with providers in the community; they contract with private entities to provide services. Providers in the community were...there were lots of delays in payments; payments were not being made for, you know, six months and, you know, and more. There was not a process to appeal the lack of payments that were made. Ultimately, providers in the community had to kind of group together and go to the governing board, go to HHS, and make their case, prove that they had these outstanding, you know, billable hours that were not being paid. Ultimately, the regional governing board they did initiate an audit of that region; did investigate the situation, found that there were lots of outstanding payments, and also identified services that were supposed to have been delivered to children and families through that region that had...that were not being delivered. With a regular audit you would...these things would be identified, they would be uncovered that, you know, payments were due that were not being made for six months and more, and that services or dollars that were flowing into the organization that were designated for a specific purpose for services in the community were not being provided. Those services were not being provided. Ultimately, what happened in that situation was the director of that region was fired; the service...there was a program within that region that was absorbed back into...actually HHS contracted with another organization for a while to provide some of those services. And then later on they did absorb them back and put them in the region. But these are examples of what can happen when nobody is watching. It is just good government to be monitoring the use of public, state, local, and federal dollars. And so that is why we support the bill. And I have a little bit of information here that just kind of...to give you a context of the amount of money, just through the behavior health regions. I think it's the last page here that kind of illustrates some of the funding that goes to one of the regions. And it's about, if you look down at the bottom here, it's about \$25 million that this particular region is identifying as their annual, I don't know if it's called their total annual budget, but it is probably a majority of their annual budget. And that's just one of the regions. So \$25 million times 6 is roughly what you're looking at in terms of flow-through money that goes from HHS to the regions. Again, you can see that there is a little bit of county matching funds. It's fairly minimal compared to your state and federal sources. I think that's all I have. At this point, the State Auditor's Office does not record a total amount for payments from HHS to the region. So there's no real documenting at this point of how much money flows through the agency out to the regions. And that would happen if there were annual audits. If you have any questions... [LB13]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

SENATOR AGUILAR: Questions for Shanna? Seeing none, thank you for coming today. [LB13]

SHANNA BELSCHNER: Thank you. [LB13]

SENATOR AGUILAR: Further proponents? Okay, I guess we're ready for opponents. And since we have such a large number, would you move forward and limit your comments to five minutes. Please stay on point. [LB13]

VIRGIL HORNE: Senator Aguilar, members of the committee, my name is Virgil Horne, H-o-r-n-e, representing the Lincoln Public Schools in opposition to this bill today. Let me state, first, that I am reading from the report that the Lincoln Public Schools submits to the Auditor. And also, in reference to the previous testifier, we also are subject to an annual audit that looks at everything that we spend. Other conversations that have been made any time the school district goes into an agreement with any other entity the entire school board has to take action on that matter before it can have any kind of effect. And those are all public meetings. What I would like to do is just point out that right now, with our July 1, 2004 to June 30, 2005 report to the Auditor, we have 66 agreements that are interlocal agreements. Of that 66, 17 are for special education services, and 33 are for enrichment activities for hearing impaired students. These students don't come to us at a given time. When a student shows up at a school, our school, anywhere across the region of southeast Nebraska, they need to have services. What's being proposed in LB13 would put in place a process that would take us a great deal of time to be accomplished. So we couldn't actually serve those kids, because we don't have something in place for that kind of thing. And we're talking about Gage County, Fillmore County, places that are around the southeast portion of the state. We also have an interlocal agreement with the city of Lincoln. In the paper this morning, if you happened to read the Journal-Star, on the bottom section of the front page of the paper we're building a new site out in the Airpark for a new elementary school. On that site is also being talking about a city library and a recreational center, which would share a singular parking lot. Now you say, well what's the big deal about a singular parking lot? Well, in this kind of weather when you're talking about expenses for scooping snow and stuff of that nature, that's one thing that you save money on; there are other issues that you save money on. We also have an agreement with the county for students that are being retained until they go to court. They don't miss school during that time. It's kind of a double penalty, you have to go to school and be in jail at the same time, but that's a part of the program that we have. We loan teachers to the university for a variety of different reasons. We have...Southeast Community Colleges uses our shops to teach their courses on woodworking and things of that nature. That's also an interlocal agreement. My point is we have multiple uses for this. And this type of process would delay a lot of that stuff. Now some of the stuff like this that's on the front page of the paper, obviously, that's going to be a time...long commitment, and it's also going to be well in advance

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

before this thing is built so we can do all that kind of thing. But the requirements as written would create many difficulties as far as school districts. Thank you. [LB13]

SENATOR AGUILAR: Thank you, Virgil. Questions for Mr. Horne? Seeing none, thank you, Virgil. [LB13]

VIRGIL HORNE: Thank you. [LB13]

JOHN SPATZ: Hi, good afternoon. Senator Aguilar and members of the committee, my name is John Spatz. It's actually spelled S-p-a-t-z. And I'm the legal counsel with the Nebraska Association of School Boards. And I would actually like to thank Senator Mines for bringing a bill that addresses interlocal agreements. However, we are standing in opposition against this because we would hate to do anything that would have any kind of a chilling effect on the usage of interlocal agreements. I'll give you just a couple examples. It's a very vital tool for many of our local rural school districts. Example of a use could be two neighboring school districts may have a need for some highly qualified teachers, maybe teaching Spanish or advance calculus or something like that. They do use this tool to gather teachers who can teach at both school districts, or share superintendents; there are situations where two different school districts have one superintendent, and it's used through an interlocal agreement. And we're concerned about anything that would have a chilling effect, because it's an extremely vital tool for our rural school districts. And we strongly would like to see anything done that could help prevent some of the abuses. And we'll gladly work with Senator Mines in crafting a policy or a bill that will help our school districts and all of our public bodies use this tool effectively in the way that you are intending it. And I believe...I think you, Senator Aguilar, asked if they are subject to the open meetings law, and the answer is yes. And just kind of a rule of thumb, if any body is...public body or body in general is making public policy or dealing with public funds in any way, shape or form, they will be subject to the open meetings law. And it's not a real black and white law in that area. That's just kind of a rule of thumb. Public policy or public funds, you will be subject to the open meetings law. And I'll be tickled to take any questions. [LB13]

SENATOR AGUILAR: Questions? Senator Adams. [LB13]

SENATOR ADAMS: In light of what you've just said then, do school boards, when they enter into interlocal agreements, will they do so in an open meeting? Will there be a vote cast by the joint school boards? [LB13]

JOHN SPATZ: Yes, yes. [LB13]

SENATOR ADAMS: Okay. [LB13]

SENATOR AGUILAR: Yes. [LB13]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

SENATOR AVERY: Do you know of any agreements that may have been created to avoid the discipline of the lid, property tax levy? [LB13]

JOHN SPATZ: That's a good question. And that would be considered, in my opinion, somewhat of an abuse of the system if it was just purely to avoid getting under the lid, or to try to do something outside of that. I'm sure there are. I think, and I would be...I don't have any statistics or data to back this up, but I know a large number of the interlocal agreements being done by the school districts in the state, the money under the lid isn't the determining factor, it's if they can pool together and get one superintendent to work both schools, that's the motivating factor. And doing...having a situation like that does save the taxpayers funds because whereas you may pay a superintendent \$100,000, if you're working with another school district you may only have to pay \$50,000 for that superintendent or something along those lines. So it is a tool of efficiency, and I believe that was the original intent of the interlocal law is to enable communities or local political subdivisions to pool their resources and assets to be more efficient. And I think in large part, with I'm sure some exceptions, school districts have done a pretty good job in meeting the intent of the Legislature. [LB13]

SENATOR AGUILAR: Thank you. [LB13]

JOHN SPATZ: Thank you, appreciate it. [LB13]

JEFF KUHR: (Exhibits 3, 4, and 5) Good afternoon, Senator Aguilar, members of the committee. My name is Jeff Kuhr. I'm the director of the Three Rivers District Health Department, which serves Dodge, Saunders and Washington Counties. And I'm here today on behalf of the 400 members... [LB13]

SENATOR AGUILAR: Spell your last name, please. [LB13]

JEFF KUHR: Pardon me? [LB13]

SENATOR AGUILAR: Spell your last name, please. [LB13]

JEFF KUHR: Oh, I'm sorry. It's K-u-h-r, I apologize for that. Today I'm here on behalf of the Public Health Association of Nebraska. The Public Health Association opposes LB13 as...if the bill passes as written it would require Nebraska's district health departments to go through an application process and follow guidelines that are identical to what they are already doing or what they already have done. And specifically, I'm speaking of lines 15 through 18, on page 3 of the proposed bill. "Any existing joint entity as of the effective date of this act shall complete the application and certification process pursuant to the act." In 2001, through LB692, the Legislature allowed for a portion of Nebraska's Tobacco Settlement Fund to be used to establish

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

and maintain district health departments across the state. Part of what I've given you is a map of what we looked like prior to LB692 with 22 county health departments. And then after LB692, we have coverage in all 93 of the counties, all but two are covered under LB692. So in all of these, which up to, some of them have nine counties, all of these were created with interlocal agreements, which required county resolutions for each. As part of LB692, new statutes were adopted by the Legislature to provide strict guidance toward the function and role of these new health departments. I've also given you our specific statutes, which are 35 state statutes, just to kind of address some of the intent of the bill which we have legislative oversight. Through these statutes, the health department receives funding only if it serves a single county with a population of at least 50,000, or if it serves three or more contiguous counties that have a combined population of at least 30,000. So asked to go back and redo this process with those requirements, as you can see, would be somewhat of a nightmare. Therefore, every county outside of Douglas, Lancaster, and Sarpy, has aligned with at least two other counties and have formed an interlocal agreement which required a resolution by each county in order to receive the LB692 funding. Each health department is governed by a board of health which contains a county supervisor and a public-spirited individual from each county involved in that district health department, as well as a dentist and a physician from within the district. Health departments are required to abide by all of the laws that apply to any governmental agency, which includes filing their annual audit with the State Auditor's Office. In addition, district health departments provide an annual report to the Legislature because of the legislative oversight. The public health system in Nebraska is nationally recognized because of the rapid pace in which we have formed this statewide public health system. Our district health departments play a vital role in pandemic influenza preparedness, environmental safety, detecting and controlling of communicable diseases, and many other issues that allow Nebraskans to live safe and healthy lives. We feel LB13 will cause a major disruption to our statewide public health system for which many of us have worked long and hard to develop. And I ask that you respect the work that your colleagues and previous lawmakers have done. I'll be glad to take any questions. [LB13]

SENATOR AGUILAR: Thank you. Questions? Senator Avery [LB13]

SENATOR AVERY: Would you be supportive of this bill if, on page 3, lines 15 through 18, were amended out? [LB13]

JEFF KUHR: I think we could... [LB13]

SENATOR AVERY: The retroactive feature? [LB13]

JEFF KUHR: Well, because of...yeah, with my review, I mean, honestly, we do all of this. So absolutely, I mean if it's going to tighten it up for others, certainly, because we already abide by that. But we would like to see exclusions simply because that's a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

process that we don't want to undertake again. [LB13]

SENATOR AVERY: We may hear additional testimony to that effect, I think. That's all I have. [LB13]

SENATOR AGUILAR: Thank you. Any more opponents? [LB13]

CHRIS DIBBERN: (Exhibit 6) Good afternoon, Senator Aguilar, Chairman, members of the Government, Military and Veterans Affairs Committee. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel for the Nebraska Municipal Power Pool. Two of our organizations, out of our four, are interlocals. The Public Alliance for Community Energy, which is 68 cities and villages in Nebraska, and the National Public Gas Agency, which is 16 members in 4 states. So we have used the interlocal laws for the last 16 years in our organization. It has saved millions of dollars in natural gas issues. We...I'm here to explain one of the good aspects of LB13. And I appreciate Senator Mick Mines introducing the bill. We are opposed to the bill because there are more things about the bill that we couldn't live with, but there is one good thing about the bill, and I'd like to also mention a few of the unworkable aspects. Our agency has existed under the interlocal laws for 16 years. And you can have an agreement which is, let's buy a fire truck together, and so we have an agreement to, as you heard about operating that parking lot together. You can create an interlocal agency, which is what we have done with these two interlocals, or you can even have the joint public agency, which Senator Mines said this was drafted after. That joint public agency actually has taxing authority. Our interlocals do not have taxing authority. So we have a, we'll call it, a lighter duty. LB13 doesn't grandfather in existing agencies, as you've already noted before. So we walked through the bill and said, could we comply with LB13? And we couldn't comply with it, not because of some of the things you've mentioned before, like the Open Meetings Act, which we run all of our meetings under the Open Meetings Act, and we have audits for all of our agencies, but just a lot of the things, paperwork that we'd have to go back and recreate, and could we get that filed and all of the issues that are under a joint public agency is what troubles us. None of our organizations have taxing authority. Several of our agencies are associated with bonds, so we have issued bonds under an interlocal. What we liked about LB13 was found on page 8, lines 16 and 17. And what happens with an interlocal is, how do you find them in the state? Until this committee asked the State Auditor to find out how many interlocals were out there, and I think they issued a report in 2002 that said there were 2,000, not all agencies, but agreements out there. So there are several thousand interlocals out there. We liked that you could file with the Secretary of State and put on record that you have a certificate of good standing, like you would a corporation. You would file with them and say, I'm a business in good standing. So people could find you so that the public is aware of the interlocals. And I'm referring to the interlocals that actually create agencies and have a board. I think it would be very helpful to file that with the Secretary of State. And I know the Secretary of State says we can't accept those filings today. So I think that would

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

be...that's one, very good piece of LB13. So if you are looking for something that I think would be helpful, that's the one piece of this. There are many...when Senator Mines said he wasn't sure whether we were under the Open Meetings Act or not, there's a lot of questions about interlocals; there's a lot of flexibility about interlocals. You've heard some of the things interlocals have done. So it's not surprising that he didn't find exactly this statute that says this applies to interlocals, they're growing. In the statute now we'll find some interlocals under political subdivisions what we have to do. And we're finding it in case law. If you look in the last ten years, there's been about six interlocal cases that have gone to the Supreme Court. So you're...this is creating a new body, a new way of doing the public's business, saving people money. Our towns do adopt resolutions to join the interlocals. So the 68 villages, each one of them adopted a resolution in a public meeting to join us. Our boards are open...are subject to the open meetings...we've interpreted that we are subject to the Open Meetings Act. We publish our meetings. We have open records. We have...we're under those same guidelines. And lastly, we also...our organizations are subject to audits, and so we have a filing of an audit that we present to the State Auditor. So it's not a requirement, but it's something we do. [LB13]

SENATOR AGUILAR: Questions? Seeing none, thank you, Chris. [LB13]

LARRY DIX: Senator Aguilar, members of the committee, for the record, my name is Larry Dix. I'm the executive director of the Nebraska Association of County Officials and I appear today in front of you in opposition to LB13. And a majority of what I was going to say has been covered. I wanted to talk a little bit about the County Public Health Departments. Jeff covered that very, very well. The efficiency of interlocal agreements is vital to county government. I will tell you county boards, any time and all the time when they created the county public health departments, those were all open meetings. There was always a vote taken; those were always recorded. Each one of the 93 counties, of course, is audited on an annual basis, so that certainly covers all of that. Right now, I know it was touched on, and the cooperation I want to extend, of course, to Senator Mines. And Senator Mines knows...I've already been in to talk to him about it, and we've discussed some of the things within the bill for potential changes. One is that right now we have information going to the State Auditor on a form that says, we have an interlocal agreement, and now we're going to have a requirement for the information to go to the Secretary of State. And so, however we shake out this bill, if we could cut down some of the redundancy on sending reports into state agencies, that certainly would be beneficial from our point of view. The last thing, if you'll note on the fiscal note of course, it says, no fiscal impact. And certainly from the county's perspective we don't view that there's no fiscal impact to comply with the requirements of LB13. But with that, I'd just want to...and I'm sure Senator Mines is certainly aware, we're more than willing to sit down and try to work through whatever we can through this process. Thank you. [LB13]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2007

SENATOR AGUILAR: Thank you, Larry. Questions? Seeing none, thanks. [LB13]

LARRY DIX: Thanks. [LB13]

SENATOR AGUILAR: Next opponent. If you want to testify, would you move to the front. [LB13]

JOEL PEDERSEN: At the Chair's discretion I've read the instructions. I'm here neutral. My board did not have a chance to meet and take a position on the bill. If you're ready for me. [LB13]

SENATOR AGUILAR: Were there any other opponents? We do have one more. I'm sorry. [LB13]

LYNN REX: Sorry, Joel. [LB13]

JOEL PEDERSON: No problem. [LB13]

LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. Some of the issues raised with this bill I won't repeat those. I think the one issue is just simply some of the concerns raised by bond council on those agreements that are already in place and the concerns about those. But we're very pleased to work with Senator Mines and the committee on whatever effort you want to have to move this bill forward or however you want to advance it. Thank you. [LB13]

SENATOR AGUILAR: Questions for Ms. Rex? Seeing none,... [LB13]

LYNN REX: Thank you. [LB13]

SENATOR AGUILAR: (Exhibit 7) ...thank you. For the record, I'll read into the record a letter of opposition from the city of Lincoln. I will take neutral testimony. [LB13]

JOEL PEDERSEN: Good afternoon. I'm Joel Pedersen. I represent the Joint Antelope Valley Authority, here in Lincoln, Nebraska. We are a joint entity which, as you've heard from the other testimony, is one of the stripes of interlocal entities that can be created under the Interlocal Cooperation Act. It's not the only one. In fact, I think the majority of the use of the Interlocal Cooperation Act doesn't form a separate legal entity. A joint entity is the rare bird, if you will. With that in mind, we would not be able to comply with the bill as it's written. So I was glad to come to the hearing and learn that it's not quite ready to go yet. And we would be happy to work with Senator Mines on some of those concerns. JAVA is an administrative entity with one goal, it's to build a project; it's not setting policy, it has no tax authority, and it was really designed to get three public

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

agencies on the same page and keep focused on one important public project. For that it's probably fairly unique. But by the same token, the flexibility of the existing Interlocal Cooperation Act is what allowed JAVA to happen. So I don't take lightly the ability to use this tool. I was also here when the Joint Public Agency Act was enacted. And it is correct, that that included taxation authority that's not available necessarily under the Interlocal Cooperation Act. So in some respects it makes sense that there is a public elected official on those boards. Whereas an administrative agency that's not setting policy, that's not doing taxes, we inherit the budget from three public entities. And there's a public hearing on that budget at that level. JAVA has its own budget, but it's a successor, it's an inherited budget. The creation of JAVA had actually six public hearings, because there was an amendment to the interlocal agreement when we went from planning stage to implementation stage. So there were public hearings at the city council, the Lower Platte South NRD, and the Board of Regents, all of them noticed, as all of those public meetings are. The Interlocal Cooperation Act requires governing bodies to approve those. Now there may be some exceptions that I'm not aware of for entities that don't have governing bodies, but as far as the entities involved in JAVA, it was all done at public meetings, and the interlocal, by request of those public agencies, expressly says that JAVA is public. So the advantage of JAVA, under the flexible Interlocal Cooperation Act is you have one public body, you have one project manager, one legal counsel for that matter, for a very big public project that impacts all three public agencies--the university, the city of Lincoln, and the NRD. That's the kind of flexibility the Interlocal Cooperation Act offers that the Joint Public Agency Act does not. And it's important; it's important for the JAVA Project, and perhaps similar other projects that come along. But I think it's also important, as you may hear, because of the number of interlocal agreements that don't rise to the level of having their own legal status. Those interlocal agreements that are ad hoc, that don't create any sort of budget impact or any sort of other utility outside of cooperating, which I think the original intent, there was an incentive under the lid bill to get local agencies to work together, to save the taxpayer dollars. That's the lid impact. If there's abuse of that, I would hope that that's rare. But if you've been familiar with the lid concept, there was an incentive to use the Interlocal Cooperation Act to create efficiencies. And I think we want to keep that ability, while at the same time acknowledging that there may be abuses. But I think your Auditor or the public officials in those jurisdictions can be accountable for that without changing the Interlocal Cooperation Act. I know I sounded rather negative about the changes but, like I say, I did not have the board meet and take a position. They're aware of my concerns. And I think if nothing else, an amendment would be needed so that existing agencies at least were out, existing interlocal entities. But with that, I'd conclude my comments, if there's any questions. [LB13]

SENATOR AGUILAR: Questions? Senator Avery. [LB13]

SENATOR AVERY: Joel, would you be willing to take a look at Dana Roper's letter and, not now, but at some point, address the several concerns that he has beyond just the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2007

retroactive feature? [LB13]

JOEL PEDERSEN: I sure would. [LB13]

SENATOR AVERY: Because I suspect the two of you are working together? [LB13]

JOEL PEDERSEN: We are aware of what each other are...is doing. I used to work in the city attorney's office, as you know. [LB13]

SENATOR AVERY: Yes. That would be helpful to us. [LB13]

JOEL PEDERSEN: Indeed. [LB13]

SENATOR AGUILAR: Further questions? Seeing none, thank you. Any more neutral testimony? Senator Mines, to close. [LB13]

SENATOR MINES: (Exhibit 8) Thank you, Mr. Chairman, members. You heard...much of the testimony that you heard today is...are stellar examples of how interlocal agreements are working and working well in Nebraska. We heard from Virgil Horne, from Lincoln Public Schools, how they have...they're successful creating interlocal agreements that help kids, that help special needs kids. This...LB13 doesn't do anything and doesn't affect the way that they do their interlocals. John Spatz, from the Nebraska Association of School Boards, again gave examples of how interlocal agreements are working, and Chris Dibbern did as well. Chris brought up a point that under the public agency...excuse me Joint Public Agency Act that it does have taxing authority. LB13 doesn't enable that. There's no taxing authority that's intended. You've been handed a copy, Senator Adams had asked the question about publication and open meetings. I should have known right off the bat that anytime you pass a resolution it has to be in a public forum, and that members of that public entity have to vote on it. So it is in a public forum. You also asked about bonding. And you can see that under 13-821, the joint entity...and a joint entity, and that's the language we're using, in case of a resolution of other proceedings providing for the issuance of bonds, pursuant to the Interlocal Cooperation Act, the governing body of the joint entity may, either before or after adoption of such resolution, or other proceeding in lieu of publishing the entire resolution or other proceeding may publish a notice of intention to issue bonds under the act. And there is...it's unclear, public meetings requirements are...open public meetings requirements are unclear. The publication of issuing bonds is a may rather than a shall; this doesn't address that. If we go to the core of what LB13 really does, it's about accountability. Certainly there are thousands of interlocal agreements that are working and working well. The State Auditor has that information. I would suggest that it's in a box deep, dark in a black room. If interlocal agreements were to be filed with the Secretary of State, there is a true and accurate record and that the public can go to and determine what they are. We have much work to do on this bill. And I would pledge to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

work with all of those that have testified and try and come up with a resolution that this committee would be...would accept. And I would close with that. I'm going to ask that you hold it until we're ready for a final, clean copy. [LB13]

SENATOR AGUILAR: Further questions for Senator Mines? Senator Rogert. [LB13]

SENATOR ROBERT: I just have one, quick. Senator Mines, in Ms. Belschner's material, I should have asked her but I was reading. She lists...puts an example in here, states some from Region VI. Is there any connection between the reason you brought this up and possible accountability of monies going through some of our organizations, like Region VI? [LB13]

SENATOR MINES: No, no, there's no intention to Region VI. In fact, I was aware that they had a...they were created through interlocal agreements. But, I mean this is accountability statewide. [LB13]

SENATOR ROBERT: Okay, Fine, thanks. [LB13]

SENATOR MINES: Thanks. [LB13]

SENATOR AGUILAR: Senator Avery. [LB13]

SENATOR AVERY: Senator Mines, the letter we have here from the city of Lincoln that opposes this bill and mentions a number of redundancies and mentions that many features are unnecessary. I'm not too concerned about that, since I'm sure that the laws that we make are full of redundancies and unnecessary features. But what do you think about the radio active feature? Radio active (laughter)...it may be, retroactive; it may be radio active. (Laughter) That was a Freudian slip. If JAVA have...if they have to go back, that's radio active, I think. [LB13]

SENATOR MINES: Yeah, and I agree. And the filings, new filings I understand are cumbersome. And I believe that those kinds of things we need to work through. [LB13]

SENATOR AVERY: Okay. [LB13]

SENATOR MINES: To say that we would issue a blanket order that all interlocals in place are grandfathered, there are, I surmise, I would suggest there are some interlocals that are not doing what our interlocal agreement intended to do, what our act intended. So, yeah, I agree, it's...that's what we need to work through first. [LB13]

SENATOR AVERY: Okay, thank you. [LB13]

SENATOR AGUILAR: Senator Pahls. [LB13]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2007

SENATOR PAHLS: Senator Mines, I have a question. Maybe you can help me out. Okay. This body makes an agreement with this body. True? Is that basically an interlocal agreement? [LB13]

SENATOR MINES: Yes, sure. [LB13]

SENATOR PAHLS: Is it possible for this body to make an interlocal agreement with itself if it represents another organization? [LB13]

SENATOR MINES: For the joint...if they create a joint body is what you're saying, or just a single... [LB13]

SENATOR PAHLS: Same body, I'm elected officials here, and I'm...and I belong to this organization, I'm elected officials and I belong to another organization. Could I...same group, could I... [LB13]

SENATOR MINES: Absolutely. [LB13]

SENATOR PAHLS: I could make it? Okay. [LB13]

SENATOR MINES: If I understand it right, sure you could. [LB13]

SENATOR PAHLS: Okay. [LB13]

SENATOR AGUILAR: (Exhibit 9) Further questions? Seeing none, I'd like to read into the record also a letter of neutral testimony on LB13 from the Lower Platte South Natural Resource District. And that closes the hearing on LB13. Ready to open on LB18. Give me just a minute to clear, Senator Mines, then we'll get you going. Senator Mines, to open on LB18. [LB13]

SENATOR MINES: Thank you, Chairman Aguilar, members of the committee. My name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District. I'm the principal introducer for LB18. Last year in this committee, there were two of us, I believe, right? Same committee? This bill, exact same bill was introduced to the Government, Military and Veterans Affairs Committee last year. This bill was advanced to the floor, to General File. And did it make it to Select File? It may...we were on Select. The bill at the...was on Select, we had floor debate, an amendment was offered by Senator Loudon, and I accepted the amendment because it made sense at the time, but the amendment completely destroyed the intent of what we were doing later. So I later withdrew this bill, took it off of Select File and indicated I would return this year. This is the same bill that was introduced, advanced and on General File. It's about recalling elected officials. LB18 would change current recall law to limit the reasons why a recall

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

can be sought for...to one of three reasons. And these are my...you'll hear these three reasons, they're fun to say: malfeasance, misfeasance, and nonfeasance. Right now, I'm going to skip all of this. Right now, a member of let's just say a city council, because three of us are familiar with that, a member of a city council can be recalled for any reason whatsoever, and have been called for any reason whatsoever. There is no standard by which a recall petition has to meet in order to recall a public official. If I don't like the color of Senator Karpisek's, if he was still the mayor, the shirt that he wears, I could recall him for that reason. Most recalls like that, all recalls I would suggest are...do not go through. However, the defamation to his character because a recall is issued all of a sudden people in the community wonder what in the world he did wrong. You have recallers that are circulating a petition, claiming that he, assuming that he has done something wrong. So the damage to his character is such that it can't be repaired, and in fact most of those recall petitions don't make it through to the final ballot. They don't even turn them back into the city clerk or the election commissioner. There are examples of...and I'll give you a couple of them. The mayor of Nebraska City, JoDee Adelung, was the focus of a recall effort. And the reason sighted, the reason she was recalled is because she decided to hire a city administrator. So there were some folks wild about that, and they said, well, if she's going to hire a city administrator, we're going to recall her. Petitions were circulated; JoDee went through...I mean it's a painful thing. I can only imagine what people go through. Petitions were circulated, petitions were never turned in at the end of the day, but for that period of time JoDee Adelung was put in the hot seat. Here's a great one. In Greenwood a voter was unhappy with the village board's decisions to enforce an ordinance that they had to...that that property owner had to install a sidewalk. The owner circulated a petition to recall the entire board. Most people aren't aware of why...they don't hear what's going on, they just see people walking around trying to recall individuals. And it's hurtful. And all this bill does is suggest there needs to be a reason, you have to have a reason that that public official has not performed their duty to a standard of malfeasance, misfeasance or nonfeasance. Now, to determine...here's where the amendment last year actually "clumsied" the entire bill. There has to be a point at which someone determines does the petition meet those standards. And we suggest that that be by a judge, and that the judge determine...not determine if the person is guilty of any one of those three conducts, but rather does the petition itself meet the standard of malfeasance, misfeasance, nonfeasance? In other words, you couldn't have a petition that I don't like Mayor Karpisek's color of his shirt. That doesn't meet any one of those three standards. I don't like the fact that the city council wants me to put a sidewalk in front of my house. That's not malfeasance, misfeasance or nonfeasance. All this does is establish that they have to meet the criteria; a judge evaluates whether the petition does meet that criteria, and then given a 20-day period, then if he approves it can go...he or she approves, it could go on the...they could proceed with the petition; if they claim that it does not, end of story and almost no harm, no foul. I could give you other examples. There's an example in Blair, and this one was very hurtful. Five members on an airport authority board, three of them were voting the way that they believed, and two were voting the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

way that they believed, and they didn't agree with each other. One of the two decided that, well, I'm just going to have a recall petition and recall those three officials because they're not agreeing with what we do. Again, it hits the papers. There are...the petitioners are out just simply because they didn't like the way they were voting. Petitions never got turned in, but for that period of time it's in the papers, you've got one of the recall...one of those persons recalled is a veterinarian. His clients were wondering what was going on. He believes he lost business because...now people wondered, you're being recalled, you must be a bad person. So this just sets a threshold by which recalls...recalling petitions have to meet to recall individuals in public life. With that, I would encourage your support of the legislation, and answer any questions you might have. [LB18]

SENATOR AGUILAR: Senator Friend. [LB18]

SENATOR FRIEND: Thank you, Mr. Chairman. Senator Mines, fond memories of this bad boy. Can you refresh my memory? The debate, last year, we were talking about the definitions on page 2, subsections 2, 3, and 4. Are those definitions...were they...are they...do they mirror definitions of malfeasance, misfeasance, and nonfeasance in other sections of our statutes somewhere? I just don't recall. [LB18]

SENATOR MINES: You know, I can't recall the... [LB18]

SENATOR FRIEND: I thought that was brought up. [LB18]

SENATOR MINES: Yeah, I don't know that it's defined elsewhere in statute. I'm not sure. We don't believe it is. I think we had to insert this. I think that's fair. [LB18]

SENATOR FRIEND: One of the things that occurred to me when I looked at this last night again and started...fond amusement, and then again today in regard to the concerns that people would have over Mayor Karpisek driving down the road, smoking marijuana and he crashes into a tree. That would never happen, of course, at least not anymore. [LB18]

SENATOR MINES: Of course. [LB18]

_____ : He wouldn't hit the tree, you mean? (Laughter) [LB18]

SENATOR FRIEND: The point is, if I stepped up and said, you know what, Mayor Karpisek needs to pay for this. Other than the fact that he's going to pay from a criminal code standpoint, I'd like to see him recalled. I didn't know that he smoked marijuana. There are other sections of the law that deal with what Mayor Karpisek did. You don't have to look to this to recall him. Is that correct? [LB18]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

SENATOR MINES: That's correct. Well, excuse me, no, I think... [LB18]

SENATOR FRIEND: So... [LB18]

SENATOR MINES: Perhaps. Go ahead. [LB18]

SENATOR FRIEND: We can carry this debate on later. I don't want to bog this down. But the point I'm trying to make, and I guess the question that I have for you is, recall procedures and those type of things, you don't anticipate those being necessary in a hypothetical of that nature. What if it is, though? You'd have to point to different sections of the law, the criminal code or whatever, to have somebody like that removed from office. The fact is, under these specific guidelines, you know, we're losing a little bit. Correct? I mean we're losing the ability to say, hey, you know, we don't like the behavior there because none of this happened specifically under these circumstances. [LB18]

SENATOR MINES: We don't... [LB18]

SENATOR FRIEND: I'm just anticipating something like that out on the floor and we might want to be able to point to other areas that say it's not necessary, we don't have to worry about it. [LB18]

SENATOR MINES: An example, Mayor Karpisek is in the bar every night and comes home drunk at two o'clock every morning, not representing himself in a professional manner. [LB18]

SENATOR FRIEND: I'm thinking subsection 2, right? [LB18]

SENATOR MINES: Yeah. [LB18]

SENATOR FRIEND: I didn't mean to interrupt you, but I'm thinking that somebody could point to that. The problem is, are we leaving this open to a judge to interpret what we mean under those circumstances? And that could be a little problematic for somebody who's sitting there saying, well, wait a minute, you're taking away our, your know, rights to deal with somebody under this. [LB18]

SENATOR MINES: Yeah, it's not the intention to take people's right away to recall, because I think that's a very basic right. But it's not right to recall people for reasons that are completely off the wall. [LB18]

SENATOR FRIEND: Absolutely. [LB18]

SENATOR MINES: And that's what this is intended to do. [LB18]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2007

SENATOR FRIEND: Okay. Well, we can carry on later, I'm sure, if we actually... [LB18]

SENATOR MINES: Yeah, we'll talk later. Okay. [LB18]

SENATOR AGUILAR: Further questions? Senator Avery. [LB18]

SENATOR AVERY: Let me just go back to where Senator Friend was, on page 2. This only refers to activity, or actions, or nonactions in office? [LB18]

SENATOR MINES: Yes. [LB18]

SENATOR AVERY: Suppose though a candidate for office violates, say, the Campaign Finance Limitation Act, and then is elected, and you wouldn't be able to recall him or her under those circumstances because the action would not have taken place while in office. [LB18]

SENATOR MINES: That's...I would assume you're correct. And I know that Lynn Rex with the League is following me up, and maybe she could confirm or deny that. But I got to believe it's true, just as, you know, with Mr. Hergert,... [LB18]

SENATOR AVERY: Right. [LB18]

SENATOR MINES: ...prior to assuming office. Yeah, I think you're... [LB18]

SENATOR AVERY: We'll be talking about that later in this committee. (Laughter) [LB18]

SENATOR MINES: I think we will, too. [LB18]

SENATOR AGUILAR: Further questions? [LB18]

SENATOR MINES: None from Senator Karpisek? [LB18]

_____ : Defend yourself, Russ. [LB18]

SENATOR KARPISEK: (Laugh) I will say, Mr. Chair, I'm glad that it did get to the bar idea, off the marijuana. (Laughter) I'll be...thank you for that, whoever switched that off. I won't...I can't argue on that one. Thank you. [LB18]

SENATOR AGUILAR: Can I see a show of hands, how many want to testify as proponents of this? Come forward, please. [LB18]

LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x-, representing the League of Nebraska Municipalities. We are here again this year in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

strong support of this measure. And I believe that last year, had Senator Loudon not had the amendment attached to the bill, this bill would have passed. We think this bill is important. I think it's necessary. It's important because recalls, on the local level, are so divisive. It's not just about being problematic and hurtful and also hurting the business, which you had received testimony last year from a veterinarian who was involved with the Blair Airport Authority. But I think it's very important to realize that this does have long-standing implications for communities. Sometimes it takes years for them to heal from those. Let me tell you some of the things, some of the reasons why municipal officials in this state have been subjected to recall, and very rarely are recalls successful. And I think the right to recall needs to be there in those extraordinary situations where it needs to happen. In fact, the history to this is that back in the early eighties, when Allen Beermann was Secretary of State, it was his opinion that municipalities could not remove from office, cities and villages could not remove from office an official who just simply doesn't attend meetings. And most regrettably, what has happened in some of the very small entities in this state is that Harry or Sally didn't want to run, they didn't put their name in, but somebody thought it would be a good yuck to write their name on a write-in, and they got elected. They had no intent of serving, they didn't want to serve, and basically they all but resigned. But the reality is many times they couldn't even get a letter of resignation from them, so we asked Allen Beermann, are some of these ordinances that are out there, and some of you may be aware of them, where cities historically, and perhaps other public entities as well had ordinances saying if you miss so many meetings consecutively you're subject to removal. Well, the Secretary of State's Office and Attorney General said the voters put them in, only the voters can take them out. So the history of recall in this state, not all states allow recall, the history of recall was that in fact to provide a process by which folks could in fact take out or remove public officials, and also folks that weren't doing their job and weren't being attentive and weren't basically doing things that really were hurtful for the communities. What was never intended, though, was what happened. Because this law...since then we have been before this committee probably every two or three years, as have other groups, talking about what really have been abuses in the process. What folks really didn't realize is that on the first few years of it that you can go into literally a bar, almost in any city, any time, and within a day or two get the number of signatures to recall someone. And so basically that activates the petition process, and for no reason. Laws then were passed saying that, no, now you have to have a stated reason. Not that the stated reason is necessarily the real reason, but at least state a reason. And so then the laws were amended to say, okay, you have to state a reason. Well, then we started looking at what some of the reasons happened to be. And realizing also that you have people then that say, you know, I'm not putting myself through this. There are people that were trying to be recruited, frankly, by other council members, by others to run for public office. And because of things that may have happened in Grand Island, I mean the mayor of Grand Island, I think, was subjected to two recall efforts perhaps. They never got enough signatures, I think, there. But we since, over the years, have taken the strategy that when, at least a municipal official is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

being subjected to recall, if it's something that we think is an unfair thing, we certainly try to assist them. And the code of the west is you fight back, because if you don't fight back people assume the allegations are true. So let me share with you some of the reasons why some officials have been subjected to recall. Some...and all of these may or may not have been recalled successfully, but at least they've been...they had to go through the process, their families went through the process. Their kids were harassed at school because of it, because, you know, what did your dad do? What did your mom do? Why is that happening? And Mayor JoDee Adelung, who is the Mayor of Nebraska City, she's also the President of the League of Nebraska Municipalities this year, wanted to be here today, but unfortunately is unable...is not in the state of Nebraska, but she wanted to have her testimony incorporated by reference that she gave last year, because she feels very strongly about this measure, as have others that have been subjected to it. We've had municipal officials subjected to issues simply because they put the issue of fluoridation on the ballot. And there is a number of Nebraskans, a small number but still a number that absolutely believe it is a Communist effort, a Socialist effort, if you are on Health and Human Services they come and testify to that, using those words, they believe it. And so the audacity of a public official or city council to place that on the ballot gets some people very upset, and that has resulted in folks going through this process. There have been folks, as a matter of fact we had...there was an entire village board recalled because they...this was back in the late eighties, because in order to get a CDBG grant to improve their water system, they needed to have water meters. And almost all cities have water meters now, but at that time the little villages didn't. Obviously, all the big cities did, the second class cities did, but not the little villages, because they couldn't, you know, it was just one of those situations. So bottom line is they were able to do that, but they couldn't get the grant money unless they did that. By simply putting that requirement in, and they had a year to do it, but by putting that requirement in the entire village board was recalled. As a consequence, they ended up with nitrate problems because they couldn't improve their water system. Things happened because of that. So I think there is a point where from what...something as benign as saying that some of the reasons that have been stated, because they don't have to be, I mean you just state whatever you think, some of these reasons that we've seen: we don't like her; he laughs too much at the meetings; these are some of the reasons that people put down. And you'd be amazed that Nebraskans, we are...I've always said, and whether it's a statewide initiative effort or a local one, we are a rather schizophrenic group. We will sign anything placed in front of us. All people have to say is, would you like to sign this so the voters get a vote on this? And we just sign it; that seems to be what Nebraskans tend to do. So we have a populace state, and maybe that's okay, but the reality is these things divide communities for years. The first recall in this state involved the recall of the mayor of Nebraska City, because at that time he basically thought that it was very important, and so did the city council, to have an airport and to expand that airport. And they got some federal money it was...actually, there were no local dollars even used. But he was successfully recalled over that. So bottom line is it is time, I think, to actually look at this and incorporate what other states

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

have done. To my knowledge, and I know (inaudible) committee counsel could probably best answer this, but I know that this draft, these definitions were taken from other states that basically used these definitions, and they have employed them. There are very few states that simply say you can recall somebody just for no reason whatsoever. And I know that in efforts in the past to address the issue of term limits for state senators, to try to do any number of things, I know Chris Beutler, Doug Kristensen and others looked at the issue of well, maybe a way to address this is to have a recall of state senators. And we met with me and said, believe me, be careful what you ask for because this was never what we thought this would be. We thought that the public would not...would understand the importance of public office. It is about governance. It isn't about personal vendettas. The mayor of Cozad was recalled because, in fact, she enforced and had her staff, because she's the executive branch, enforce a junk car ordinance. And there were nuisances, there were rats running around, things were happening, and she felt it was important to move forward, there were complaints by all the neighbors. But by the same token, this individual had friends, too. So bottom line is, this is very important. What this does is it basically says that the analogy would be a prima facie case. And maybe this addresses your question, Senator Friend, which is the judge looks at this and says, have they even stated anything that even if you assume it's true, assuming everything they said is true, does it state a case for malfeasance, misfeasance, or nonfeasance? Either it does or it doesn't. He's not saying it's true, or she's not saying it's true as a judge, but do the allegations even constitute something serious enough to remove someone from office? So...and by the way, and just in closing, one of the cases, too, that I think was just very damaging and there are people in this city that the individual recall was the mayor, he was a minister, he was simply implementing a decision that the citizens had already voted on, and it was a very controversial issue, but it was an overwhelming vote for this little city to take over its gas system. He was the mayor, he came into it, he was implementing that and putting it in place, and he was recalled for implementing it. And in so doing, there are people in that city that to this day the city clerk tells me and the former mayor, he's now the former mayor, they don't talk to each other, there are people that will not go to certain grocery stores because of these things. These are divisive in communities. So in closing, we really strongly suggest that you advance this bill once again. And we hope that you, as much as we like Senator Loudon, don't accept this amendment this year. (Laughter) I'd be happy to answer any questions you have. [LB18]

SENATOR AGUILAR: Questions? Senator Adams. [LB18]

SENATOR ADAMS: Lynn, I surely...and Senator, support in concept what we're doing here. I think the people have the right to know what it is that they're being accused of. And I realize that we're not dealing with criminal code and all of those kinds of things. I just think there's a principle involved here. However, not having been part of the discussions previously, where in your opinion does this bill allow a community to say, all right, the issue is not the performance of your duty but rather your character, the way

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2007

that you have handled yourself in public. My sense of this, in glossing over this, that part has been taken out. [LB18]

LYNN REX: That's true. In other words, what this says is that when the majority of citizens that voted, voted council member Jones into office, that they took all that into consideration, you hope at least, and they voted that person in. And you are correct, that if someone is out doing something short of something that would constitute these particular issues, what they're doing in office, that it takes away the right to remove that person. That's true. That is true. [LB18]

SENATOR ADAMS: Okay. [LB18]

LYNN REX: I do know though that what does happen in some cases, and there have been two examples I can think of in the last maybe five years, where there's been an individual that perhaps has been...once into office has perhaps had some conduct that one would think is not appropriate. And there's...peer pressure does a lot of things. And the other council members just had a chat with him and basically said, it's time for you to resign. And those things do happen. I mean there is a self-discipline that comes with that. But you are correct, this simply says, no, you're not going to get rid of somebody simply because they are implementing an act or doing certain things, or because you just don't like them. In one city there was a divorce situation, and so the other family members decided this was time to do something else and ratchet it up a little bit. I mean these become very, very personal issues. But you have identified, Senator Adams, a correct issue. I mean it does limit the purposes for which you can recall someone. [LB18]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB18]

LYNN REX: Thank you very much. [LB18]

SENATOR AGUILAR: Any more proponents? Opponents? [LB18]

SUSAN SMITH: My name is Susan Smith, that's S-m-i-t-h. Thank you for allowing me this opportunity to speak with you today. I'll try to do the best I can with my notes. It's all over the page now, so...I think it's unreasonable for me to have to prove an allegation of misfeasance, nonfeasance, or malfeasance, which I think a couple of those also include proving intent and knowledge of those acts. I believe it limits and deters my right to recall an official. If the reason I have on a petition is not good enough and I'm not going to get the number of signatures I need, and even if I do get the signatures, then it goes to a recall vote by the people. So if the majority of the people didn't feel that it was a worthwhile reason, then that official is not going to be removed from office. As far as the damage to the character of the individual who is being recalled, with all the media that is available now, they have plenty of opportunity to let the public know their side of it. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

think they would also be able to file a lawsuit for defamation of character against that person if, in fact, it was just something to try and hurt that person's reputation or his livelihood. Plus the official does have an opportunity to write on that petition his response and his defense to whatever that reason is. I don't care to be limited to malfeasance. I mean it's going to be really difficult to prove malfeasance, misfeasance, or nonfeasance. It's going to make the recall process almost impossible for a citizen. Okay? And I believe the majority of Nebraskans, you know, are not careless or stupid with their signatures when it comes to signing things. And with the number of signatures that are required in order to get the petition to go through, I can't believe that you can get that spending a couple of weekends in the bars. And then let's see, allowing the recalled individual to defer to a district judge for a decision, that...again, that limits and deters the recall process. But if a judge were to find the reason valid, why could you not put it on the petition? And I think that by not letting us do that would prevent the citizens from being informed of a critical decision being made. And then I don't even know if the official would be able to again go further into court by...while this judge wouldn't make the decision, he had to prove malfeasance, misfeasance, or nonfeasance, perhaps that individual, that official could go one more step further and actually make you prove it in order to go on with the petition. I don't know. And Nebraska citizens live every day with the right to work law. And this should also apply to our officials. But with the changes to LB18, it would make the process almost impossible. I believe the changes proposed in LB18 will be greatly...will greatly diminish my voice and who makes the decisions in my city. And thank you for listening. [LB18]

SENATOR AGUILAR: Questions for Ms. Smith? Seeing none, thank you for coming today. Further opponents? [LB18]

LARRY WRIGHT: My name is Larry Wright and I live in Omaha, Nebraska and I oppose the changes in LB18 because I believe it hinders my voice in the elected officials that I have elected. [LB18]

SENATOR AGUILAR: Questions for Mr. Wright? Seeing none, thank you for coming today. [LB18]

LARRY WRIGHT: Thank you. [LB18]

SENATOR AGUILAR: Further opponents? Please come up. [LB18]

GARY DELANCEY: My name is Gary Delancey, it's D-e-l-a-n-c-e-y. And I want to thank the members for letting us come up here and voice our opinions. I'm only saying this because it gives me a little bit of my history. I'm a retired military member, and served all over the world. And I have a real concern with this bill because it's like government policing government. You have to go before a judge in order to get this recall process go through. And I've been in countries where, you know, not to say that most people

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

aren't honorable, but I've seen and been in countries where judges are bought and sold. I've seen members of their Senate, Congress being bought and sold, so I have a real concern with taking the rights of the people to decide if their representative has done something wrong, either illegally or characterwise. And I know we've picked on the ex-mayor of Lincoln quite a bit, but what's to say you find out an official belongs to a racist organization after he's elected? That...my understanding of what the restrictions of this particular bill, it doesn't voice that. Say for instance, Senator Avery... (RECORDER MALFUNCTION--NO OVERLAP)...elected to the office, how do the people, at that point, go in and do the petition to get him removed from office because of that character issue? Under this bill you couldn't do that, because he could still execute the duties of his office without breaking the law. So that's my concern over this bill and why I oppose it. I've seen...been in countries where I've seen similar situations occur and people stay in office forever even though the people try to recall them, and they just can't get it to go through the judge to approve it, and they can't get...if it's restricted by the body itself, they can't get that approved. This is the only way for us that, you know, are mainly concerned with local government, have an ability to remove somebody from office. The character...and I'm sorry, gentlemen, you were elected to office, and that does not give you a bulletproof vest that people aren't going to slander your character. That's part of the job, that comes with being elected as an official. I mean all you have to do is pick up the newspaper or turn on the TV, and political members of the Senate, the House, the President are being basically slandered and called names every day in the press. So one lady was saying that this causes individuals problems with their job, their normal job, causes problems within the community, people fighting back and forth. When you run for political office that's part of the responsibility you take is you're going to represent all the people. And you know, I guess I don't have any sympathy for, you know, the comments that this, you know, particularly the veterinarian had a problem with her business, because if she was concerned about that, should have made those considerations prior to running for office. That's part of the thought process that I would think as a representative you'd have in your mind before you run for office, because you're not going to make everybody happy. You know that's the beast. But to take the ability for the local community to remove somebody from office on those three issues takes part of our ability to remove them for character issues. And that's all I have. [LB18]

SENATOR AGUILAR: Questions? Thank you for coming down, and thank you for your service to our country. [LB18]

GARY DELANCEY: Thank you. [LB18]

SENATOR AGUILAR: Opponents? [LB18]

JOHN COPENHAVER: (Exhibit 1) My name is Copenhaver, C-o-p-e-n-h-a-v-e-r. I live in Omaha. It's been a long afternoon, and I'm not going to (inaudible) here very much. I've indicated here what I object to in this particular bill. One of the things that I...seems to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

happen to our country is that our youngsters don't understand the processes, they don't understand the history, they don't care to learn the history, there's less and less input from the populace as a whole; I think this is very bad. And I don't want to judge somebody who has done nothing wrong, but on the other side of the coin, if something has been done wrong I think it should be known and therefore I object to that basically in this particular bill. I think this whole process, I was here last Wednesday, and there's quite an elderly lady here which said, in regards to the processes of recall and the percentages, etcetera have increased, I think that basically it has become almost impossible to do anything unless you're a millionaire or unless you're being funded by somebody. I think that's unfortunate because I think it should be the other way around, and perhaps you'll get more input from the general populace. I hope that's happening, but I don't have any very good feelings about my country or where we're headed. Thank you very much. [LB18]

SENATOR AGUILAR: Questions? Seeing none, thank you, sir. Any further testimony in opposition? Neutral? Seeing none, Senator Mines, to close. [LB18]

SENATOR MINES: Thank you, Chairman Aguilar, members. Just responding to a couple of the thoughts. Petitions are...you can collect enough signatures just about anywhere. An example is LB423, they could not collect enough signatures to get on the ballot, but 70 percent of the people voted against it. So it's reasonable to assume that people will sign just about anything. There's one important point about the judge being...a judge being involved. They don't have to prove any one of those three standards. In the bill, on page 6, it says, "The court shall presume the allegations in the statement are true". So the statement that Jane Doe is guilty of...she's not performed her duties properly, the court presumes that statement to be true, and construes them in the light most favorable to the principal circulator or circulators. So having...we're not...the judge is not determining whether or not the elected official is guilty or not of the accusations. The judge determines if the accusation meets the standard of those three criteria. But even as important as whether or not that standard is met, if I chose to recall...I'm still picking on Mayor Karpisek, if I chose to pick on him because he beats his children, and I circulate a petition that I believe that the mayor is unfit for his job because he beats his children, you can circulate that petition; the media, guess what? Automatically he beats his children. Now how does he recover from that? That's not a condition of either one of these three criteria. It's unacceptable, it's improper, and I wouldn't want an elected official representing me that beats his or her children. But it goes to the character of the individual, and you're attacking that person's character, whether it's true or not. I submit that to effectively recall a person it should be for the improper performance of his or her job in duties of representing the public. And those three standards: malfeasance, misfeasance, misfeasance, are the reasons that should be used. I would encourage your support to advance this to General File. Thank you. [LB18]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

SENATOR AGUILAR: Questions for Senator Mines? Seeing none, thank you. [LB18]

SENATOR AVERY: I noticed you looked at me when you said, "seeing none."
(Laughter) [LB18]

SENATOR AGUILAR: That closes the hearings for the day. [LB18]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2007

Disposition of Bills:

LB13 - Held in committee.

LB18 - Held in committee.

Chairperson

Committee Clerk