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Government, Military and Veterans Affairs Committee
March 14, 2007

[LB528 LB646 LB686 LB694]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 14, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB694, LB686, LB646, LB528 and gubernatorial appointments. 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)...Military and Veterans Affairs Committee hearing. I'll start off by introducing the committee. I'm Ray Aguilar from Grand Island; on my far right is Senator Kent Rogert from Tekamah, Nebraska; next to him, Senator Russ Karpisek from Wilber; Senator Mick Mines, our Vice Chair, from Blair; Christy Abraham is our legal counsel; on my left is Sherry Shaffer, the committee clerk; Senator Mike Friend from Omaha; Senator Rich Pahls from Omaha; Senator Greg Adams from York. Bills will be taken up in the following order. First we have our gubernatorial appointment, then we'll have LB694, LB686, LB646, and LB528. Sign-in sheets are at both entrances. Sign in only if you're going to testify, and put the sheet in the box on the table in front of me. If you're not going to testify but would like to be on the record either as a proponent or an opponent on a bill, there's another sheet you can fill out and place up there as well. 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 introducing senators only. Listen carefully and try not to be repetitive. If you have a prepared statement or an exhibit, give it to the page and they will distribute it, and we will need 12 copies of each. Turn off your cell phones and pagers. Our pages for today are Patrick Krepel of Chadron, Nebraska; and Kristin Kallsen from Big Springs, Nebraska. And we're now being joined by Senator "Wild" Bill Avery of Lincoln. Mr. Falgione, please. Mr. Falgione has been appointed to the State Fire Marshal. I'd like you to start off by telling us a little bit about yourself and we'll go from there. [FALGIONE]

JOHN FALGIONE: (Exhibit 1) Okay, thank you very much. Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is John Falgione, J-o-h-n F-a-l-g-i-o-n-e. I appear before you today to discuss my appointment and seek your confirmation as the Nebraska State Fire Marshal. First, let me share a little with you about my background. I was born in Guide Rock, Nebraska and raised in Blue Hill, Nebraska. I attended a couple of years of college at Kearney State, before serving in the United States Army from 1969 to 1971. After returning to Nebraska, I worked in the private sector, including owning my own business. And up until 1991, I joined the Fire Marshal's Office. I've been active in the fire service community for more than 30 years. In the past, I've been a member of the Blue Hill Volunteer Fire Department, and of the Lincoln Southwest Volunteer Fire Department for

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a short time. In the State Fire Marshal's Office I have served as an inspector in the Flammable Liquid Storage Division, and as a Deputy State Fire Marshal in the Code Enforcement Division. In 1997, I attended the Nebraska Law Enforcement Training Center in Grand Island and became a certified law enforcement officer. This allowed me to serve as a Deputy State Sheriff and a Deputy State Fire Marshal in the Investigations Division until my appointment as State Fire Marshal by Governor Heineman on January 10, 2007. As my previous experience in the State Fire Marshal's Office shows, our agency has a variety of roles. Six divisions comprise our agency and serve Nebraska in a variety of roles. Our most visible division is our Enforcement Division, which conducts various building inspections and investigates fires. The Investigation Division investigates and enforces arson violations. The Fuel Safety Division enforces the state law related to flammable liquid storage tanks and pipeline safety. The Plans Review Division reviews building plans for compliance with fire and accessibility codes. The Training Division operates a statewide training program for emergency responders. And finally, the Administrative Division is tasked with providing leadership and clerical support to the agency. Because our core duties are to investigate fires, promote fire safety, inspect buildings and facilities and to promulgate and enforce codes, our agency has daily contact with and direct impact on businesses, organizations, fire departments, and individuals of Nebraska. My goal and the expectations from the Governor is for the Nebraska State Fire Marshal's Office to perform our duties in a more consumer friendly manner. The Governor appointed me because in part of my experiences in the private sector. As a result, he expects me to reach out and work with regulated industries and organizations to properly enforce fire regulations. He also expects me to emphasize to the deputies and inspectors to work with noncompliant groups and individuals to seek solutions, but to do so in a manner that continues to provide protection to all Nebraskans. I am fortunate to be able to work with the professional staff of the State Fire Marshal's Office in accomplishing the duties of our agency. I am grateful to Governor Heineman for appointing me to this important role, and I look forward to representing all firefighters, volunteer and professional on his cabinet. I appreciate the opportunity to come before the committee today to discuss my appointment and confirmation. I would like the committee to know that if issues related to the State Fire Marshal's Office arise in your legislative district, do not hesitate to contact me. Thank you for your time, and I will be happy to answer any questions you may have.
[FALGIONE]

SENATOR AGUILAR: Thank you, John. Questions for Mr. Falgione? Yes, Bill.
[FALGIONE]

SENATOR AVERY: Thank you, Mr. Chair. Are you aware that some questions have been raised about the proper use of state vehicles by your office? [FALGIONE]

JOHN FALGIONE: Yes, sir, I am. [FALGIONE]

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SENATOR AVERY: Would you care to explain your understanding of what current policy is now under former Governor Johanns' executive order regulating the use or nonuse of state vehicles? [FALGIONE]

JOHN FALGIONE: Yes, sir, I can do that. You're referring to Executive Order 99? [FALGIONE]

SENATOR AVERY: Dash oh one. [FALGIONE]

JOHN FALGIONE: Dash oh one. [FALGIONE]

SENATOR AVERY: Yes, sir. [FALGIONE]

JOHN FALGIONE: Yes. In the Investigation Division we have unmarked units. Our investigators are driving unmarked units so they can do surveillance, if need be. They dress in plain clothes, and so they're not as visible in the public as our Enforcement Division is that does drive the marked units with the lights and such as that. There is a provision in 99-01 that I have some staff that need to use vehicles that are on-call 24 hours a day, 7 days a week, subject to call, I should say, is the way I should put that, subject to call. I have some staff members that live outside of the city and I require them to go to a response immediately when I call them, no matter what the day, or the time of day or night. They may have to haul some specialized equipment that we have to a scene or to a sight, and time is of the essence. If I were to have them drive into town, some of them live a ways out; if they had to drive into town, pick up a pool vehicle, and drive to the facility to get the equipment and then drive to the scene, we could be looking at about up to a three hour delay in some cases or more, depending on where it's at. So with that, I have authorized or asked for authorization from DAS for some of that staff to have authorization to drive that vehicle home so that if they have...if I have a need for them, I can call them. There is a provision that if they drive into work for the day, as it for their convenience at that point is not necessarily for state convenience if they drive into work that day. But they drive, and nothing happens during that day, and they drive back home, they're still on call or subject to call for that night. The Accounting Division has a formula they have used and come up with a dollar figure that that individual must pay the tax on per day for the use of that vehicle. And so they have to keep a log of each day that they drive that vehicle that it has been at their convenience to come to work and not had a call out for them to go somewhere or had a meeting to attend, you know, early that morning or that night, away. An example that I can give you that's going to happen this evening, I have to go to Wisner tonight. I will be taking a state unit. My plan is to take a state unit home this evening on my way to Wisner. Now it's probably going to be about 1:30 in the morning when I get back home, get back to Lincoln. So I will then proceed right to my residence and bring the car back into the pool tomorrow morning, when I come to work in the morning. [FALGIONE]

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SENATOR AVERY: So there are provisions in the executive order for exemptions?
[FALGIONE]

JOHN FALGIONE: Yes, there is. [FALGIONE]

SENATOR AVERY: Because the Executive Order, in general, tried to limit or eliminate the use of state cars for what might be personal business. [FALGIONE]

JOHN FALGIONE: Absolutely, absolutely. And we have adhered to those regulations, and the agency always has. The other side of that is we have some locations up in our building that is for state vehicles to be parked in. Now, I have a parking space, state parking space that I pay for. So sometimes I may park an unmarked unit in that spot, or I may drive my own, you know, my own vehicle, which I have parked there right now. But it is a spot that I pay for, but sometimes I may park a state unit in that spot. And I'm not asking for reimbursement from the state for that day or anything like that. But, yes, there are provisions and we adhere to those in the agency. [FALGIONE]

SENATOR AVERY: Mr. Chair, I have one more question. You indicated that you now have some of your staff doing undercover work, you said, or at least unmarked, unmarked,... [FALGIONE]

JOHN FALGIONE: Correct, correct. [FALGIONE]

SENATOR AVERY: ...civilian clothes. Is this part of the Homeland Security requirements that...extra duties you've had to take on? [FALGIONE]

JOHN FALGIONE: No, sir. We've...we have taken on extra duties because of that, but we've always had an investigator, investigation staff that are deputy state sheriff's, they are fully trained, certified law enforcement officers. And, obviously, if we have some people that are...you know, bad people sometimes start fires for various reasons of crime. And if we have to do surveillance on those folks to build our case, they can't do it in a marked unit. [FALGIONE]

SENATOR AVERY: And you can't show up dressed like you. [FALGIONE]

JOHN FALGIONE: Absolutely not. And sometimes...and I haven't been on stakeouts myself doing surveillance. When you...you may still get made by somebody in that community because there is a large network of people. So sometimes it makes it difficult. But, yes, we have had those for quite a few years now, we've had investigators. And like I say, some of them...we used to have cars, and we do have cars available or pickups. And anymore most, because of some of the equipment, most of the equipment the investigators carry they do have pickups for that. And we have two canine units as well. We have two accelerant dogs, one stationed with an investigator in Gretna, and

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one in Grand Island. And, obviously, they have some special equipment in those trucks and need more special equipment in those trucks for those canines. And we use those on fire scenes for...to see if someone has used an accelerant to start a fire with.
[FALGIONE]

SENATOR AVERY: Thank you. I have no more questions. [FALGIONE]

SENATOR AGUILAR: Senator Pahls. [FALGIONE]

SENATOR PAHLS: Mr. Chairman. John, I have a question. Do the inspectors in the Omaha area...are they under your jurisdiction? [FALGIONE]

JOHN FALGIONE: In Omaha, Omaha is a delegated authority city for us, just like Lincoln is, and Grand Island, and North Platte, and Norfolk, Beatrice. The city of Omaha, their fire investigators are all law enforcement officers, yes they are. In Lincoln they are not. Do they come under our jurisdiction? They're under our blanket because we have delegated our authority to them. [FALGIONE]

SENATOR PAHLS: Okay. [FALGIONE]

JOHN FALGIONE: And so they have their own city regulations that they follow as well. But they have to do their inspections and their basic work has to be done under the auspices of the guidelines that we have. [FALGIONE]

SENATOR PAHLS: Okay. But if I had a concern about one of the people there, I could call you up and you would help find the answer to that? Is that correct? [FALGIONE]

JOHN FALGIONE: Oh absolutely, absolutely. As a matter of fact, I spent yesterday in Omaha with the Omaha fire on a situation, yes, sir. [FALGIONE]

SENATOR PAHLS: Okay. Because in the past, I experienced this several years ago, it seemed like every time we had a different inspector, and I'm going to use the word, it seemed like we had to jump a different hoop. I was, you know, sometimes it was very frustrating. And then I think there was period of time that there was a conflict between the people in charge of both sides. And those of us who were doing the actual work, I felt, were caught in the middle of that. I was just concerned. [FALGIONE]

JOHN FALGIONE: Right. And let me give you, can I...if I can elaborate just a little bit about that. [FALGIONE]

SENATOR PAHLS: Yes, yes. [FALGIONE]

JOHN FALGIONE: As for instance even at the end of our conversations and meeting

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yesterday we discussed this very thing. Tried to get some uniformity, you know, in the way we do inspections as the way city of Omaha does or any other community. Because they not only have the...to follow the NFPA codes that we have to enforce, the city of Omaha also uses the IBC codes, the International Building Codes. They have the option of using both codes at that point, and going with the most stringent. But where some of the confusion has come in, with their turnover in personnel that they have, because they gets captains off the rig come in for a couple of years period of time or whatever to do their inspections, then it seems like they rotate out. I made the option open to them, yesterday, that if they would...wanted to send their people down to go over plans reviews with our Planning Review Division, to give them some insight into the correct way to do those things, the way that we do them, and the same with the inspection personnel. We made the same offer, we will have their inspection personnel follow or shadow our inspectors or whatever it takes for to get them onto the same line of thought. And that's what we're up to now. [FALGIONE]

SENATOR PAHLS: I appreciate that, because sometimes I felt it was almost a personality was...I mean they may have been following the rules, but it just seemed like the personality was how rigorous the rules would be followed. And it caused some of us who were being, quote, checked, you know, we seemed like we were dancing at times, and that's because I was involved with the school system. [FALGIONE]

JOHN FALGIONE: Right. And that thing came up too, as I said, there were five inspectors, five of us that had done inspections in that room yesterday. And I challenged them. I said, if we all five went to the same building, we would have five different inspection reports, because the codes are that way with interpretation. It's interpretation. The thing that we're trying to do is get everybody to have the same train of thought to interpret them. [FALGIONE]

SENATOR PAHLS: Okay. That would...I'm telling you, that would be appreciated. [FALGIONE]

JOHN FALGIONE: We're working at it, Senator, that's what I'm telling you. That's all I can tell you right now. [FALGIONE]

SENATOR PAHLS: Okay, yes, all right. Thank you. [FALGIONE]

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

SENATOR ADAMS: Mr. Chair, I don't know that I really have a question. But...and I hope it's appropriate at this point. But for the record, a few months ago, the appointee was out in York, when we had our fire. And I want the record to show that he was very cooperative, particularly with city officials. He was there virtually every day, walking us through the whole process. He was meeting with the affected property owners and

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tenants or landlords, and took us all the way through the process. And I felt that the job he did on that situation was very effective. [FALGIONE]

JOHN FALGIONE: Thank you, Senator. [FALGIONE]

SENATOR AGUILAR: Thank you, Senator Adams. John, right now the Training Division, I believe, is still located in Grand Island, isn't it? [FALGIONE]

JOHN FALGIONE: Yes, it is. [FALGIONE]

SENATOR AGUILAR: Is there any intention to move that to Lincoln, or are you pretty happy with it there or satisfied? [FALGIONE]

JOHN FALGIONE: For the time being I'm very happy with it there. There are some rumblings in state government that eventually we may have to move out of the building that we're in, because we are located in the building with TSB, where they have their garage, and they get all their vehicles come in. And they have some other plants that they're building down the road. If that happens, if they decide that they need that space for expansion or whatever they're doing, then we will have to find another location. And so with that, we've kind of kept some options open, just knowing that it doesn't...you know, it isn't going to happen over night. My idea is if we have to move then maybe we can find a location that is suitable that we can bring the Training Division into the main office area. They have a large amount of equipment, so we need storage space for that kind of thing. We have like 118 part-time instructors that are utilizing some of that equipment. And between our full-time staff and our part-time staff we need the housing for all that stuff. Right now we're paying for locations for storage units to keep some of that equipment in because we don't have a location, even in Grand Island where they're at. Ideally, it's in a good situation in Grand Island because it's in the central part of the state, it's on the I-80 corridor, we've got north-south access. I have no plans to move it at this time. But if we have to move, then we have to look at options. [FALGIONE]

SENATOR AGUILAR: And I completely agree with that assessment as far as being centrally located. And let me just say for the record, that I'd be more than happy to work with you and Grand Island officials to make sure that if you have any storage questions or concerns that we can help you with, we'd more than happy to do so. [FALGIONE]

JOHN FALGIONE: I appreciate that. We will do that. Thank you, sir. [FALGIONE]

SENATOR AGUILAR: Further questions or comments? Senator Mines. [FALGIONE]

SENATOR MINES: Thank you, Mr. Chairman. John, do you have an assistant that lives in Eagle, Nebraska that is commuting to work in Cass County in a state owned vehicle?

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[FALGIONE]

JOHN FALGIONE: Yes, sir, I do. [FALGIONE]

SENATOR MINES: And is there a basis for that? [FALGIONE]

JOHN FALGIONE: Yes, there is. [FALGIONE]

SENATOR MINES: Okay. [FALGIONE]

JOHN FALGIONE: He fits into that category that I discussed earlier. The best example I can give you of why I asked for authorization for him to drive back and forth, to keep that unit at his house, about a week and a half ago, two weeks ago I got a phone call at four in the morning that I had an investigator on the scene, headed to a scene in Omaha with two individuals badly burned in a fire. Before I could get any more phone calls made about going to that situation, and I was going to go to it, to assist, to see if there was something that needed to be done to take some of the burden off the investigators working the scene, to help them a little bit at that point, before I could get very much more than turned around, I received another phone call that we had an apartment complex in Crete that six people had been transported to the hospital with unknown injuries and possible fatalities still in the building. [FALGIONE]

SENATOR MINES: John, do you have other assistants that are assigned vehicles for commuting purposes? [FALGIONE]

JOHN FALGIONE: No, sir. [FALGIONE]

SENATOR MINES: So that's the only one? [FALGIONE]

JOHN FALGIONE: He's the only one. He is the Assistant State Fire Marshal for me. But I was ready to dispatch him to Crete to take care of that situation,... [FALGIONE]

SENATOR MINES: Sure, sure. [FALGIONE]

JOHN FALGIONE: ...while I was there. For him to drive in from Otoe County, come in, pick up what he needed, and then head back to Crete, by the time he would have driven straight across, he could have been to Crete before he came in here. [FALGIONE]

SENATOR MINES: That is an instance. But if he...or do you have other...you have no other vehicles assigned to any other individuals? And do you have a... [FALGIONE]

JOHN FALGIONE: Excuse me, Senator, that do not work in the main office. Now all of our people have home office, home offices that they work out of. [FALGIONE]

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SENATOR MINES: Sure. [FALGIONE]

JOHN FALGIONE: So therefore they have to take their vehicles home with them.
[FALGIONE]

SENATOR MINES: Okay. And then secondly, do you have an unmarked vehicle
assigned to you? [FALGIONE]

JOHN FALGIONE: I had one when I was an investigator. [FALGIONE]

SENATOR MINES: Okay. [FALGIONE]

JOHN FALGIONE: Yes, I did. [FALGIONE]

SENATOR MINES: Okay, but you don't currently have one? [FALGIONE]

JOHN FALGIONE: Not really assigned to me, no. I took the one that I had and switched
it with the investigator out of Scottsbluff, who was in a small pickup and was having
some health issues with his back riding in that small truck. So I transferred that one to
him, and I brought that...his Ranger, little Ranger pickup,... [FALGIONE]

SENATOR MINES: Sure. [FALGIONE]

JOHN FALGIONE: ...into the office and parked it in a state parking spot, which happens
to be right beside mine. And for when I brought it back, I think, maybe that day I
probably parked it in my spot. [FALGIONE]

SENATOR MINES: Okay. You don't use that ever for private use? [FALGIONE]

JOHN FALGIONE: Oh, never. [FALGIONE]

SENATOR MINES: Never. [FALGIONE]

JOHN FALGIONE: Never, no. [FALGIONE]

SENATOR MINES: Okay. [FALGIONE]

JOHN FALGIONE: And as a matter of fact, we just hired a new investigator and...
[FALGIONE]

SENATOR MINES: That's all I wanted to hear was never. [FALGIONE]

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JOHN FALGIONE: ...that will be going to Madison County as soon as he comes on board. [FALGIONE]

SENATOR MINES: Thank you. Okay, well, thank you. [FALGIONE]

JOHN FALGIONE: Yes, sir. [FALGIONE]

SENATOR AGUILAR: Further questions or comments? Seeing none, thank you, Mr. Falgione. [FALGIONE]

JOHN FALGIONE: Thank you very much. [FALGIONE]

SENATOR AGUILAR: Do we have anyone that would like to speak in favor of this nomination? Please come up. Welcome. [FALGIONE]

BILL LUNDY: (Exhibits 2 and 3) Thank you. I promise to do better than I did last time. I thought I'd shut my cell phone off, and last (laugh) time I testified. [FALGIONE]

SENATOR AGUILAR: We appreciate that. [FALGIONE]

BILL LUNDY: And I promise you it's off today. Senator members, Senator Aguilar, Nebraska Government, Military and Veterans Affairs Committee, and a special recognition to my senator from my district, Greg Adams. My name is William L. Lundy, I go by Bill. And I'm secretary-treasurer of the Nebraska State Volunteer Fireman's Association. I represent the 7,500 firefighters and rescue personnel that make up the membership of our organization that extends from north to south, east to west of this great state of Nebraska. The Nebraska State Volunteer Firefighters Association fully supports the appointment of Mr. John Falgione to the position of the Nebraska State Fire Marshal. The opinion of the association that John Falgione exhibits integrity, leadership, and visionary qualities necessary to manage the Nebraska State Fire Marshal's Office in a manner that provides the highest standard of service to the fire rescue service as well as the citizens of Nebraska. The Nebraska State Fire Marshal's Office provides volunteer firefighters and rescue personnel, support and assistance consisting of fire investigations, inspections and education opportunities. John's excellent people skills will cause positive interactions to take place during these processes, while working and affecting many diverse groups. The state of Nebraska's Fire Marshal Office Training Division is the major source of training for volunteer fire departments in the state of Nebraska. The Nebraska State Volunteer Firefighters Association is ensured that the services they provide to the Nebraska communities will be of the highest professional level because of the training received from the State Fire Marshals' Training Division under the exemplary management skills of John's supervision. The Nebraska State Volunteer Firefighters Association agrees that the honorable Governor Dave Heineman has chosen the best person for the job, and ask

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you to endorse and support John Falgione as the next Nebraska State Fire Marshal. I would also like to add a personal comment. As Greg indicated, in October 2006, we had a major fire in York that resulted in a large loss of property. At the whole time, John was there, supporting the York Fire Department, allowing us to make sure that the services we provided and all the details were necessarily followed to ensure that the investigation and the settlement of the insurance activities, as well as activities of the fire department were followed up. Another example I'd like to mention is in February 2005, York County had the unfortunate event of suffering a line of duty death of one of our volunteer firefighters in Benedict, Nebraska. John Falgione was the inspector on that. He showed up at the York Hospital at 1:30 in the morning to help the York Fire Department and the Benedict Fire Department in this trying time, to ensure that the details were followed, to make sure that all of the information was provided and provided support to the community, as well as the firefighters present. I truly think John is the right choice for this job, and I'd like to recommend the committee agree with that nomination. [FALGIONE]

SENATOR AGUILAR: Thank you, Mr. Lundy. Questions for Mr. Lundy? Seeing none, thank you for appearing today. [FALGIONE]

BILL LUNDY: Thank you. [FALGIONE]

SENATOR AGUILAR: Further proponent testimony? Any opposing testimony? Neutral? Seeing none, that closing the hearing on the appointment of John Falgione. LB694, Senator Christensen's staff. Welcome. [FALGIONE LB694]

DAN WILES: (Exhibits 1, 2, 3) Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. I'm Dan Wiles, D-a-n W-i-l-e-s, legislative aide for Senator Mark Christensen of the 44th Legislative District, here to introduce LB694. Currently, there's a shortage of state parking in the Capitol vicinity for staff and guests. This became evident to some of our new staff in our office as they attempted to get parking as they came to Lincoln this year and was one of the instigators for Senator Christensen to introduce this bill. There seems to be about an average of a two-year waiting list on state parking facilities. LB694 is an attempt to find a workable solution to this problem. LB694 would ask the State Building Division to conduct a study to look into the feasibility of construction of parking and office structure on property south and east of the Capitol. Specifically, the State Building Division would be asked to examine issues relating to private ownership and management of the structure, long-term ground lease of the property, and state provided low interest financing. The State Building Division would be required to report its findings to the Government, Military and Veterans Affairs Committee and the Appropriations Committee prior to the next regular session of the Legislature. If you notice, in the bill and the introduced copy of the bill there was a misunderstanding on who was responsible, who this should be directed to. So in the bill there is a...it's directed to the

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Nebraska Capitol Commission. It was made aware to us after we introduced the bill that it should be the State Building Division. So I handed out an amendment just for that reason. The other things that we handed out are just kind of background information that we found as we were doing some research on it, providing for what the zoning is for some of the...I believe Lot A, and the Executive Lot, and the height limitations that we have for building around in the Capitol environs area. The basic intent, like I said, was to find a resolution to what seems to be a reoccurring, long-standing problem of finding parking for staff, and employees, and for visitors, and guests, those also attending hearings. And the study that is before you is basically designed as an idea, a starting place for discussion, looking into maybe an alternate way of resolving the issue. We did discuss with the Department of Administrative Services and I believe they sent a memo to the committee regarding some of the legal issues surrounding what Senator Christensen marked into the introduction. Did they... [LB694]

SENATOR AGUILAR: I'm not aware of it. [LB694]

DAN WILES: Okay. Well, that was what I was told from the Department of Administrative Services. So I can get that memo to you. It goes over some of the issues that were outlined in the study as to the feasibility and from a legal standpoint, and looking into leasing, low interest loans, a master leasing program, and the Nebraska Building Corporation, those different options of...different paths of possibilities to take with this. Currently, bottom line basically is Senator Christensen is not a big fan of studies and other studies. And he would like, if this goes forward, that it be...that it goes forward in a serious notion. If the committee really isn't serious about pursuing extra parking in the vicinity of the Capitol, he'd rather not this go...he would rather that this not go forward. He would not want to waste the time and effort to do so. But if you feel, as a committee, that this is something that's worthwhile, he definitely encourages you to move the bill ahead so that we can look into this issue. Any questions? [LB694]

SENATOR AGUILAR: Thank you. Questions for Mr. Wiles? Senator Adams. [LB694]

SENATOR ADAMS: Have you had discussions with the city of Lincoln, or would this study intend to do that? [LB694]

DAN WILES: I believe it was the study that would intend to do that. Our basic discussion has been with the Department of Administrative Services. That's the extent of it as we have. [LB694]

SENATOR ADAMS: How big is the need? [LB694]

DAN WILES: What's that? [LB694]

SENATOR ADAMS: How great is the need? [LB694]

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DAN WILES: Well, some of the figures that we had found was in the open lot there is a one to a two-year waiting list. In the parking garages there's a two-plus waiting list. We heard that at one point it was a seven-year waiting list. And there's 800 people on that list. We hope that this study would further find out more information about that. [LB694]

SENATOR ADAMS: Okay. [LB694]

DAN WILES: There... [LB694]

SENATOR AGUILAR: Other questions? [LB694]

DAN WILES: May I, I was going to add something else. There is in our research we did find that there were two other studies, one done in 1986, and one done in 1992. Of course, a lot of that information, when it comes to cost and things like that, is a little outdated. But we do have copies of that that we got from Legislative Research that we could give to the committee, if you would like that. [LB694]

SENATOR AGUILAR: Thank you. Senator Mines. [LB694]

SENATOR MINES: Just as a point of reference, Mr. Chairman, thank you very much, this is a great idea. I carried it last year. And I just...it's something that should have been done a long time ago. We need more parking for our constituents, for those that visit our Capitol. I'm curious though about the building space? Why throw building space in with the parking or office space? [LB694]

DAN WILES: I think he just wanted to look into that as a possibility of...the way he originally looked into it was how are you going to get someone as a developer come in and do that? If you were going to lease that to someone, how do you make it feasible? And so he included that in to be looked at so that whether that would help it be more feasible than without it. [LB694]

SENATOR MINES: That's interesting. Thanks. [LB694]

SENATOR AGUILAR: Further questions, comments? Senator Avery. [LB694]

SENATOR AVERY: Thank you, Mr. Chair. I presume this study would also look into alternatives to fund this, other than General Funds, using General Fund money? [LB694]

DAN WILES: That was the hope, that was the hope... [LB694]

SENATOR AVERY: Yeah, revenue bonds, for example. [LB694]

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DAN WILES: Yeah, that was the hope was that we would find some alternative so that it's not just General Fund funded money. [LB694]

SENATOR AVERY: You are also aware that the state is looking at buying Woodmen Insurance building? [LB694]

DAN WILES: Yeah, after we introduced that. That was kind of other information that came in. And so that's something that would have to be,...I mean if we went ahead with the study, to probably expand the scope of the study to look into how that would affect. [LB694]

SENATOR AVERY: But that's surface parking, that's really not going to solve the problem. [LB694]

DAN WILES: Yeah. One of the...part of that Assurity building purchase would include a lot a block to the east and would have 200 and some parking, it would be outside the...I believe on that map I put a blue X on that block. There's a map, yeah, the one you're looking at there, has like 204 stalls for parking that they're going to get with the purchase, that's part of the surety, that's part of the deal. That is outside the Capitol environs, so a taller structure could be built there, taller than what could be built around the Capitol. So I don't know, that's another area to look into. [LB694]

SENATOR AVERY: If the study actually looked at revenue bonds as a way to pay for it, the impact on the General Fund would be very minimal. [LB694]

DAN WILES: I would think so. [LB694]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Wiles. [LB694]

DAN WILES: Thank you. [LB694]

SENATOR AGUILAR: Any proponents of LB694? Welcome. [LB694]

LORAN SCHMIT: (Exhibit 4) Chairman Aguilar, members of the Government Committee, my name is Loran Schmit. I speak here today on my own behalf in support of LB694. I've also submitted testimony in the Appropriations Committee in support of LB574. I testified earlier, a year ago, in support of Senator Mines' bill to provide more parking, and I'm not very much partial to studies, because we all know that studies can be used either affirmatively or negatively, and more frequently they delay projects than do they result in something being done positively. But I have a tendency to ramble, so I'll read my testimony very briefly here and then perhaps make some comments. Thank you for letting me testify. Lack of available parking for state employees and the public is

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a serious inconvenience to everyone. More than 20 years ago, I was a member of the Legislature's Executive Board when the new computer building was built west of the Capitol. I was a strong proponent of the idea that instead of building a structure with only two levels of parking that a design should be changed so that there would be two additional levels of parking. At the time the argument against my suggestion was that such a project would not be financially feasible. My response at that time, and I believe it is valid today, is that when the public travels hundreds of miles to Lincoln to attend a function at the Capitol, they are not fussy about the cost of parking, but more concerned about the inconvenience of finding a parking space while at the Capitol. After lengthy debate between members of the Executive Board at that time, I was assured that additional parking could be added to the computer building garage, if the need became critical. I believe that testimony here earlier indicates that the need is critical and has become greater over the years. I do not know if the structure was actually designed that we could put two additional levels of parking on the building or not, but if so, that might be a short-term option. I believe the proposal offered by Senator Christensen is probably a better one. The inconvenience and cost to employees and the public because of a lack of sufficient parking spaces increases every year. The Capitol is the people's building and accessibility to it ought to be made as convenient as possible rather than to be made difficult. The passage of Senator Christensen's bill would fulfill a need for many years in the future. At the time I tried to convince the Executive Board that we should provide additional parking spaces near the Capitol Building, I made the comment that if those of us who are elected had to search for a parking space every day, as did everyone else, the problem would have been resolved many years ago. I believe that without being critical of the present Legislature, that probably applies today. One of the most frequent complaints I hear today is the complaint, because people come to this Capitol for hearings, and seek for a parking place, and if they outsmart someone and find a place, then they have to remember for sure to get out there and get their car back before it becomes illegal. And one of the most frequent complaints I had was when people's automobiles were towed because they went beyond the legal parking limit. Not a very pleasant experience. I would commend Senator Christensen for his bill. I ask the Government Committee to report the bill favorably to General File and work diligently for its passage. I'd be glad to answer any questions. In response to the office space, I recall when we build the State Office Building, we thought that would provide the space we needed for many years. Well, I think we all know today we have many, many buildings in Lincoln that are leased for the purpose of state office work, not perhaps the most efficient way to handle that work. And it might be feasible to provide some office space and gather some of those state employees in a more central location. In any case, I believe that it's been more than 20 years I have always regretted I did not hold out and insist on having those extra two levels of parking, particularly when I drive around and around the Capitol trying to find a space as of today. And I know it has to be extremely frustrating to employees to have to find a place to park and not be able to find one. It's not so bad in the summertime. But in the wintertime and many other times it's an inconvenience, it's a deterrent. And I believe that in addition to the public employees,

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the people of the state of Nebraska who come to the Capitol ought to know that they can find a place to park. I've been to many other capitols. I don't think I've been to any of them that did not have a designated parking area for visitors to the Capitol, with the exception of Nebraska. I know we're conservative (inaudible) plain tight, but there comes a time when we ought to acknowledge that people have a right to get access to this building. I commend you, Senator, and ask for any help I can do. [LB694]

SENATOR AGUILAR: Questions for Senator Schmit? Seeing none, thank you. [LB694]

LORAN SCHMIT: Thank you. [LB694]

SENATOR AGUILAR: Further proponents? Are there any opponents? Neutral testimony? Seeing none, that closes the hearing on LB694. Now ready to open on LB686. Senator Karpisek, please. [LB694 LB686]

SENATOR KARPISEK: Chairman Aguilar, members of the Government Committee, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. I am here to present LB686 which deals with the nonpartisan ballots. And by the looks of it, I told Senator Mines that he must have let this one slip through his fingers. (Laugh) He likes to get all the controversial ones. LB686 would provide for partisan ballots for unaffiliated voters at primary elections. A registered voter who is not affiliated with a political party and who desires to vote in the primary election for local, county and state offices may request and receive a partisan ballot for all such offices from one political party, with minor exceptions. Looking at the green copy, now a registered voter who is not affiliated with any political party shall receive only nonpartisan ballots at primary election. Also currently, Section 3, a registered voter who is not affiliated with a political party who desires to vote in the primary election for the office of United States Senator or U.S. Representative, may request a partisan ballot for either or both of such offices from any political party. I do have to admit that this should have been lumped together, that that ballot would also go...these new offices would go on that same ballot. I know that the concern is that there would have to be more ballots printed. That is not my intent at all. I was thinking that we could just put these onto the ballot for the Senate or the House of Representatives. We also would strike all the language that would allow any party to register voters at their discretion they could permit them to vote. Right now I think that could cause a major problem, too. I did see in a lot of the opposition testimony that if a county has 5,000 nonaffiliated voters that you would have to print 5,000 of each different party. I don't think that that is necessarily true. I think that we know we can gauge now how many we need, and they can get pretty close. Because, like I say right now, you should already have to have these ballots for the House or the Senate. Again, it is not a bill that I want to bring up to cause financial hardship for the counties. Of course, I am registered under one of the parties. Some people just don't want to do that, and they feel that they should be able to still vote in the primary. So with that, I would answer any questions. [LB686]

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SENATOR AGUILAR: Questions for Senator Karpisek? Senator Avery. [LB686]

SENATOR AVERY: Thank you, Mr. Chair. Would you say this is an attempt to expand participation in primary elections? [LB686]

SENATOR KARPISEK: Yes. [LB686]

SENATOR AVERY: And we already allow it for nonaffiliated voters to vote to request a partisan ballot for U.S. Senator and Representative? [LB686]

SENATOR KARPISEK: Yes. [LB686]

SENATOR AVERY: So all you're doing is ask that it be extended to other races, statewide and local? [LB686]

SENATOR KARPISEK: Yes, city, county, state. [LB686]

SENATOR AVERY: And I notice that it seems that virtually every election commissioner within driving distance is opposed. [LB686]

SENATOR KARPISEK: I noticed that, too, Senator. (Laughter) And we did craft this after, I think it was in 1999 there was a bill similar. So again, I'm sure that I will maybe wrap my head around why it would take more ballots. Right now I'm not. Now saying maybe it is written poorly and we could amend it that there wouldn't have to be others. Maybe I just can't get that. But my staff and I have tried to figure that out, and we haven't been able to. [LB686]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB686]

SENATOR KARPISEK: Thank you. [LB686]

SENATOR AGUILAR: (Exhibits 1-14) Any proponents wanting to testify on LB686? (Laughter) Let's go right to opponents. While she's coming up, I'd like to read into the record letters of opposition from: Janene Bennett, Otoe County; Debra Finn, Wayne County; Joann Fischer, Knox County; Pauletta Gerver, Red Willow County; Deb Karnatz, Clay County; Linda Kastanek, Saline County; Chrisella Lewis, Adams County; Diane Mohr, Dixon County; Diane Olmer, Platte County; Carolyn Pedersen, Antelope County; Nancy Scheer, Madison County; Bonnie Vogltance, Cuming County; Rebecca Rossell, Lincoln County; Vera Dulaney, Scotts Bluff County. That's all. Welcome. [LB686]

DIANE OLMER: Good afternoon, Senator Aguilar and other senators of the

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Government, Military and Veterans Affairs. I am Diane Olmer from Platte County. I was on that list. My name is spelled D-i-a-n-e O-l-m-e-r. I am the election commissioner in Platte County. I also serve as a cochair of the Election Law Committee for the County Clerks, Register of Deeds and Election Commissioners for Nebraska. As I was listening to the introduction of the bill, one of our main oppositions to it is the fact that it's not really well written, in our minds. The way it's written right now it creates four more sets of ballots for each precinct in our county. And I'm sure you know enough about elections to know that that this only affects the primary election, and it only has to deal with partisan races. Nonpartisan races, of course, everybody gets to vote on, no matter if you're nonpartisan or registered Democrat, Republican, or whatever. But my main opposition is that, like I said, it creates another whole set of ballots. And as the senator mentioned before about how many extra ballots we would have to print, that isn't really our main objection as far as cost. When we create a scanner ballot, which we all have to use now, we have to have ballots that are scannable. We can't do the paper ballot where we can save a lot of money and have our local printer just whip some out for us. We have to have a scanner ballot for each precinct. And it costs a lot of money to create one extra scanner ballot for each precinct. We have extra charges from ES&S to set up the ballot, to program our scanner, and also to...our printer charges us more for each ballot face and ballot setup. You just created a lot more that we have to put in the newspaper in our sample ballot also. I did an estimate on costs, just from my costs from the general election, and right now in Nebraska we have four recognized parties: we have the Republican, Democrat, Nebraska, and Green Party. This would be four more ballot types and faces in each precinct in my county of 30 precincts. It would create...you take 4 times 30, that's 120 new ballot faces, and that's for each ballot type you have. We're talking a lot of money, we're not just talking a little. You're talking...for us to just print an extra ballot of a type that we have already, that doesn't cost us so much. But to print a whole new different type of ballot, where we have a different setup in the ballot, the scanner, and publications, that costs a lot of money. I wanted to kind of demonstrate to you what it does for us. And I'm going to show you what we have now. If I'm looking at a precinct in Platte County, I want to show you something, I don't want to give it to you. (Laughter) The way things look now, if you're nonpartisan, we have a ballot ready for you that just has school issues... [LB686]

SENATOR AGUILAR: We have to get you on the record, you have to be in front of the mike. [LB686]

DIANE OLMER: Oh, I'm sorry. Okay. I want to lay out the number of ballots that we have right now. And then I want to show what yours creates, and this is just for one precinct. And then I'll tell you what the costs could be for just Platte County. And with bigger counties, of course, it would be worse, and smaller counties now probably would be just as bad because we all have to have scanner ballots. So right now in Nebraska we have basically, four full ballots: one for Republican, and Democrat, a Nebraska, and a Green Party. So we've got the Republican, Democrat, Nebraska, and Green Party,

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and we also have a nonpartisan ballot. So if a Republican walked in they would get this and this ballot. In some primaries in some counties they combine them. But no matter what, you still have to create this ballot all by itself for the person who's nonpartisan that walks in. So you still have that, no matter if they combine the two together. And, like we said, right now it also says that we have to have a nonpartisan Republican, nonpartisan Democrat, nonpartisan Nebraska, and nonpartisan Green. And those just have U.S. Senate or the House of Representatives on it. Okay. Now these are the ballots that we have in each primary without any splits at each precinct. And say I have a supervisor split in one of my precincts, where we have supervisor 1 and supervisor 2 are in that same precinct. Then I would have another one of these, another one of these, another one of these, another one of these. I have some precincts that have up to nine splits. I'm not saying a primary will have all those splits in there, but I am saying this is the bare necessity for one precinct. If I have splits it's way worse. And now the way the law is written up as it stands, they want us to have another set of ballots that only have state, county, and local races on it. So now I've got another ballot for the nonpartisans to choose for the Republican, Democrat, Nebraska, and Green Party. If I was a...well, I am a registered Republican. I'm a little jealous of the nonpartisans and all the choices they have. A nonpartisan walks in, they don't say anything, this is all they get. But the way the law reads now, they walk in, it doesn't say you can only request one or the other. And I've talked to other people about this, they could probably come in, I'm not sure that it negates this, and ask for a Green Party on the state and the House and Senate, and maybe want a Republican Party on the state and local. I don't know if that makes much sense. So rewriting the law or the bill that you've got proposed would, if you combine these, that definitely would help. And it would not add any cost to what we have already then probably, at least not as much. But every time we have to create a brand new ballot in a precinct, don't forget you've got four from each precinct and I've got three precincts, so it's a lot of money. The other thing to think about is I don't think it's only confusing to...the cost isn't the only thing to worry about. Our poll workers, you're just causing more confusion for them. We want them to do the right job. We have so much time to train them. And they only do this job twice every two years. And then also the voter, we have to put up signs and everything to make them aware of this. But what's probably going to happen is they're going to come in, ask for the wrong thing thinking they could have got something else, didn't know what they could get, walk out, talk to their friend who's also nonpartisan, who got what they wanted, and be very upset, because there's going to be more confusion with the voters the way the bill is written up right now. I tried to figure out what the extra costs would be if we went with the bill the way it is right now. And in Platte County it was going to add, with setting up the ballot, scanner and newspaper publications, it could have added at least about \$8,000. My personal opinion is if it's come the time in Nebraska where we're going to let a nonpartisan come in and vote on races, and this law never mentioned anything about voting on the President, well as soon as the nonpartisan voter hears about this new law, about going in and choosing a party, and we have a presidential election coming up, that's what they're going to think they're going to get. And then the poll worker is going

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to have to deal with a disgruntled voter when we don't give it to them. My real opinion on this is if you want to simplify things, and you really think we should give other people the right to vote in your party, give them the whole thing. Get rid of all of these, have these five choices, nonpartisan comes in, they don't say anything, they get this; Republican comes in, they get what they always did, and if the Republican...if you want to let nonpartisan voters choose, then give them everything. Every time you make another little division it causes confusion and creates cost, and I just don't think it's worth it. And we look bad in the paper every time something goes wrong at the polls. And this is...this will create more confusion there. Guess that's all I have to say. So any questions?
[LB686]

SENATOR AGUILAR: Questions from the committee? Senator Avery. [LB686]

SENATOR AVERY: Hi. [LB686]

DIANE OLMER: Hi, Bill. [LB686]

SENATOR AVERY: She and I served together on a task force and often we disagreed on some of these very issues. [LB686]

DIANE OLMER: A lot. (Laughter) [LB686]

SENATOR AVERY: And I just want to know if you, generally speaking, do you think that expanding participation in elections is a good thing or not? [LB686]

DIANE OLMER: Definitely. [LB686]

SENATOR AVERY: Okay. [LB686]

DIANE OLMER: But I think the voter, if they hear about this bill, that they're going to be able to choose a party, especially with the presidential coming, they're going to expect to see that presidential race on the ballot and they're not going to get it. That's why I suggest if you want to let them choose, and if you want more people to vote in the primary, give them the whole ballot. [LB686]

SENATOR AVERY: So would you then...let me ask the question a different way. Are there states today that do what you suggested? You have the partisan ballots, and the nonpartisan ballot, and then a nonpartisan comes in they can request any ballot they want? [LB686]

DIANE OLMER: I think there are. [LB686]

SENATOR AVERY: And you have all the races on there. That's a simple way to do it

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make your life...your job a lot easier. [LB686]

DIANE OLMER: Yeah. We would have to print more ballots of the Republicans, Democrats, you know, each pile that I had there. [LB686]

SENATOR AVERY: In order to... [LB686]

DIANE OLMER: That is a lot less costly than creating a new ballot. It would save us a lot of money. [LB686]

SENATOR AVERY: So if we amended this bill in committee, we'd get your support? [LB686]

DIANE OLMER: You would get my support. I can't guarantee you 93 of them, you know, 93 counties, but I think there will be quite a few would support it. [LB686]

SENATOR AVERY: And that would eliminate the confusion, it would also contribute to perhaps more voter participation in primaries? [LB686]

DIANE OLMER: Yes. [LB686]

SENATOR AVERY: I know when I was running, I ran into a lot of independents who said, well, I can't vote for you. [LB686]

DIANE OLMER: Right. [LB686]

SENATOR AVERY: I said, oh, but you can, please, believe me, you can. But they thought because I'm not registered with the party, I don't get to vote in a primary. [LB686]

DIANE OLMER: And I've had that in my office, too. People will come in new, and we explain the Nebraska voting system to them, and what it means when they register as nonpartisan. And they say, well, then I can't vote in the primary. And we say, well, you can vote, but you only get certain races, that's the problem. And I think there was a problem with...well, even you know, we've had this law about a nonpartisan coming in and requesting the U.S. Senate or the House of Representatives. And it's not an either or either you get both of them if they're both on the ballot, or you get one, if only one is on the ballot, because the Senate is not always on every year. Lot of people don't know about it. And with the Tom Osborne race, you know, there were people that didn't know they could do that and things like that. So the nonpartisan voter have really got to be truthfully more well educated on the voting process than we Republicans, Democrats, Nebraska or Green Party voters. [LB686]

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SENATOR AVERY: Thank you. [LB686]

SENATOR AGUILAR: Further questions? Seeing none, thank you for coming today. Further opponents? Welcome. [LB686]

SHERRY SCHWEITZER: Good afternoon. My name is Sherry Schweitzer. I'm the Seward County clerk. Guess I need to spell my name, S-c-h-w-e-i-t-z-e-r. I'm cochairman of the Legislative Committee for County Clerks, Registers of Deeds, and Election Commissioners. I'm also representing the Nebraska Association of County Officials, of which I am on the board of directors. Diane did a great job of letting you know how complicated it is to prepare ballots for an election. A primary, specifically, is more difficult because we deal with all the different parties. She showed you all the different kinds of ballots there were. She told you how much poll worker error there is. And that's a big thing, because dealing with all of the different kinds of ballots and dealing with something that happens only two times every two years is a little bit strenuous. When she talked about the costs then and then saying if everybody could vote on everything, I mean if a nonpartisan could come up and give them everything, because as the bill is written right now, you could not vote for President. And in two years I think that will be an important thing for Nebraska electors. There still would be quite a little bit of, what can I say, question about whether or not that would be the answer or not. I have presently around 2,000 nonpartisan ballots or electors. That would mean, basically, I would need probably 2,000 more Democratic ballots, 2,000 more Republican, probably, you know, lesser amounts of the Green and Nebraska Party because they don't have quite as many in my area. But not knowing how many people, or not knowing what party they would pick, if I was to have someone like Senator Pahls come up and ask...and vote...if you are nonpartisan, I have no idea how...what party ballot you would be expecting. If you were to come up and pick one, I'd want to be sure and have one there. There's nothing more upsetting to a voter than to come to vote and not having enough ballots there. Having all of those extra ballots is quite an extra cost. In my county, I would probably have 8,000 extra ballots prepared. I have 12,000 voters. I can't imagine what the cost would be for larger counties. And right now let me tell you how easy it is to be registered under a party, or even a nonpartisan. Right now, when you come up to our office or you open your phone book, you can register to vote. You can do it when you get your drivers' license. I mean there are a myriad of ways in order to register to vote. Once you are registered, it's not like you've signed on for life. It takes you 30 seconds to change it, if you want to. You can change it up until about ten days before election. If you want to...are so sincere on voting for someone that you are not a registered party with, or maybe if you are a nonpartisan, there are so many ways for it to happen. I'm not sure if allowing everyone who is registered nonpartisan to pick their party ballot is the answer. In time, I can see where people will, more or less, they will register to vote nonpartisan if they know they don't have to choose then. They can wait until they vote on election day. Which is fine, but pretty soon nobody will be registered under a party. I can see that happening, and then you have even more nonpartisans. So

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my 2,000 elector number will grow into 4,000 and larger in other counties. I'm not sure this is the best answer for Nebraska's elections. I'll entertain any questions that I might not have answered. [LB686]

SENATOR AGUILAR: Questions from the committee? Seeing none, thank you. [LB686]

SHERRY SCHWEITZER: Thank you. [LB686]

SENATOR AGUILAR: Any further opponents? Welcome. [LB686]

SANDRA STELLING: Good afternoon. Chairman Aguilar, and Government, Military and Veterans Affairs Committee, I'm Sandra Stelling, Jefferson County clerk, register of deeds and election commissioner, and cochair of the Legislative Committee for our Clerk's, Register of Deeds, and Election Commissioners Association. Sherry and Diane have done a wonderful job so far. I've just got a couple of other concerns. It is a great...would be a great burden to know how many ballots we need to order. Another portion of this bill, and it's on page 6, lines 14 through 16, that it also states that the delegates to county, state, and national convention, these people, if they declare their party, will not be able to ask for those. There again, that would be one more split on all of these ballots, if I'm reading the law as it is written. Jefferson County, our voters, about 15 percent are nonpartisan right now. And another thing I have been questioned about, can the election official that day, or the election worker ask what party the nonpartisans want, or do they have to come in and ask specifically for a party, as they do for the congressional and Senate right now? They have to ask for that. This is just one more thing for our election workers to keep track of. As Diane alluded to, some of them do have a little trouble right now, so we make all of our counts come up right. And there again, I think we have to turn back to the voters. The voters need to be a little bit responsible for this before they get there. They need to know what they can vote on and stuff like that. And they do have ample time, prior to the election, to change their party affiliation. I think Diane and Sherry have said most everything else that I had written down. [LB686]

SENATOR AGUILAR: Questions? Senator Avery. [LB686]

SENATOR AVERY: Thank you, Mr. Chair. You are the third testifier now that has raised as your principle objection to this bill the additional work that you would have to do. Now, I'm quite sympathetic to any argument that says we don't want to confuse the voters. And I think that if this is a bill that confuses voters, we need to make sure it doesn't do that. But I'm unpersuaded that your job as election commissioner, which is to administer the law, would be made a little bit more difficult. If it facilitates voting and it expands voting participation, why would you resist it just because it means you have to do a little bit more work? [LB686]

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SANDRA STELLING: Well, first of all, I think you, as well as I, need to be responsible to the taxpayers and this is going to cost the taxpayers a lot more money for additional ballots, for additional everything that we have to do with elections now, with making the ballots, with all the programming and everything. And I think we need to kind of look at that. If you want to streamline it and make one ballot, I would have no problem with that. But, you know, where you've got all of these ballots and all of these splits, I mean I've got 14 splits in one precinct. And each one of those would have to, you know, when the primary, I would have 4 different ballots and possibly times 14. And then if you don't take...if you don't have the delegates on part of them, there are additional splits there. And I guess I'm looking at it, maybe I shouldn't be looking at it as a taxpayer. If I can cut costs on something, I'm going to try to do it. And I see this as costing the counties a lot more money and the taxpayers. [LB686]

SENATOR AVERY: Well, let's take that to the logical conclusion. We could save even more money by eliminating the ballot altogether. You wouldn't want to do that. [LB686]

SANDRA STELLING: Well, that's up to this committee's decision. [LB686]

SENATOR AGUILAR: Further questions? Seeing none, thank you for coming today. Further opponents? [LB686]

SCOTT LAUTENBAUGH: Mr. Chairman, senators, my name is Scott Lautenbaugh. I reside in Omaha, Nebraska. I am not currently an election official of any kind. And I actually was not here to speak... [LB686]

SENATOR AGUILAR: Would you spell your name, please? [LB686]

SCOTT LAUTENBAUGH: Yes, I'm sorry. L-a-u-t-e-n-b-a-u-g-h. I was not in here to speak on this particular bill today. However, I've heard some of the questioning, and I don't believe that increasing turnout is a good that trumps all of the concerns, and I don't believe it should be viewed that way. These are partisan primaries. And because I believe it's a federal requirement that we allow voting by independents in the Senate and House races, it's not incumbent upon this committee to think that's a good idea. And I, personally, don't believe that's a good idea. These are partisan primaries, and people are free to choose their partisan affiliations and choose who they want to represent them as a Republican or as a Democrat. And if independents choose not to have an affiliation, it seems to me that is a choice they make as well. And if they need to understand then a little more about how the ballots work, or when they get to vote in the general, or what they may not get to vote for in the primary, that is all a natural outcome of the choice they have made, which is to remain independent or nonpartisan, if you will. So there are many ways we could increase turnout. We could do away with registration requirements, we could require people to vote, etcetera. That is not the only reason to do something, however. And in this case we are talking about partisan offices. It seems

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to me very simple and very clear that partisans should be the ones making the call, people with partisan affiliation. Thank you. [LB686]

SENATOR AGUILAR: Questions? Senator Mines. [LB686]

SENATOR MINES: Thank you, Mr. Chairman. Scott, nice to have you here. I was hoping someone would bring this up. In fact, that is my concern with a bill that would allow nonpartisan voters in a partisan process. In your experience as an election official, do you...what would be the reason anyone would register either Republican, Democrat, Green Party, or Nebraska. Why wouldn't any voter register independent so they can vote in anybody's primary? [LB686]

SCOTT LAUTENBAUGH: Well, I suppose hypothetically that would preclude you from being a candidate or going to a convention, if you did not have the proper party affiliation, as a delegate to a convention. [LB686]

SENATOR MINES: But as a voter, it expands your choices. [LB686]

SCOTT LAUTENBAUGH: As a voter, it actually would, in a sense, penalize the people who chose to have a party affiliation and who may want to vote for one race or another race on the other parties ballot or another parties ballot, I should say. [LB686]

SENATOR MINES: And would there be an opportunity then for voters that are either unaffiliated with a party, or choose to switch parties in a primary where the opposing party candidates are in a tight race, and you may want to get the least favored candidate elected, so they face your party in the general election, (inaudible) good candidate. I mean I see this is an easy way to tinker with the system as well. [LB686]

SCOTT LAUTENBAUGH: I believe the that the term is referred to as raiding, where you try to get your party members, in states that do have this, and I think one of the Carolina's has open primaries. And there is an effort made to do just that very thing. And my opinion is that that distorts the process. [LB686]

SENATOR MINES: Yeah. Thank you. [LB686]

SENATOR AGUILAR: Further questions? Senator Avery. [LB686]

SENATOR AVERY: Hi, Scott. [LB686]

SCOTT LAUTENBAUGH: Good to see you again, Senator. [LB686]

SENATOR AVERY: Yeah, we've had this debate before, I think. [LB686]

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SCOTT LAUTENBAUGH: We have. [LB686]

SENATOR AVERY: He was on that task force that Diane was on. (Laughter) [LB686]

SCOTT LAUTENBAUGH: I was the one opposed to everything. [LB686]

SENATOR AVERY: You said that the goal of increasing turn out or participation in the primary is not sufficient to trump the current law, that we shouldn't change the law in order to advance the overall goal of increasing turn out for primary voting. Right? [LB686]

SCOTT LAUTENBAUGH: I believe I said that's a goal that would not, should not trump all other concerns. [LB686]

SENATOR AVERY: When would a goal of increasing turn out trump current law? [LB686]

SCOTT LAUTENBAUGH: I'm not sure I understand the question, Senator? [LB686]

SENATOR AVERY: Well, you and I had this debate in that task force. My view is that we should do everything we can to expand turn out, to encourage turn out, to make voting as easy as possible. And you don't share that view. So I'm trying to find out if there's somewhere in the current regulations, the current practices of voting and registration and qualifying to vote where you might say that increasing turn out is a sufficiently valuable goal that I would be willing to make this change and that change? [LB686]

SCOTT LAUTENBAUGH: I believe our task force that dealt with all of these issues and others met for a year and a half or two...I'm sorry, yeah, a year and a half or two years almost. And I will characterize the changes that we came up with after reviewing the whole system as very modest. And all of us had the concern that we should not...we should remove unreasonable impediments to voting. That didn't mean we should let anyone vote, regardless of whether or not he or she had registered ahead of time or things like that. But unreasonable impediments, which are always in the eye of the beholder, admittedly, we looked at and looked at removing. And if memory serves, our commission recommended some very modest changes around the edges. And very... [LB686]

SENATOR AVERY: Actually, there were some pretty bold changes, and you voted against a lot of them. I was just reading the report again last week, because I was coming back here to this body with some of those recommendations. [LB686]

SCOTT LAUTENBAUGH: Sure. I don't think we found any fundamental flaws in the

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system itself that would prevent large numbers of people from voting. I guess my answer to your question would be on a case-by-case basis. And you're asking me today, I'm assuming, if allowing the dilution of the meaning of partisanship, is that worth it to get a few more people to the polls? And my answer to your question is, no. Now, if there were some other hypothetical barrier to voting that did not have another negative impact if we removed it, and it would increase turn out, well then certainly that would be worth pursuing. I just don't believe that's this proposal. [LB686]

SENATOR AVERY: One of our recommendations, you'll remember, was to allow ex-felons to have their voting rights restored after two years. [LB686]

SCOTT LAUTENBAUGH: Yes. [LB686]

SENATOR AVERY: That actually was passed into law. [LB686]

SCOTT LAUTENBAUGH: Yes. [LB686]

SENATOR AVERY: Did you think that was an unreasonable...or that was a marginal kind of tinkering with the edges proposal? [LB686]

SCOTT LAUTENBAUGH: Considering the number of felons and the practical effect on the turn out, yes, I believe that was a very marginal...tinkering at the margin. I don't think that was removal of a whole scale impediment to voting. [LB686]

SENATOR AVERY: Okay. [LB686]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB686]

SCOTT LAUTENBAUGH: Thank you. [LB686]

SENATOR AGUILAR: Further opposition? Neutral testimony? Seeing none, that closes...Senator Karpisek, to close. [LB686]

SENATOR KARPISEK: Thank you, committee. Some good debate, and that's mainly what I wanted to get going. I would like to try to make a few points. I would have to ask your esteemed legal counsel, in Exec, but I don't know that we can tinker with the thought of putting the presidential on this bill, or if we can only do state, city, county, local, that sort of thing? So I don't know that, but I'm asking. I guess, you know, we're coming down to we don't want to cloud the partisanship. Well, we already can, though. It says, these people can ask for a partisan ballot for Senate or House. So that is already there. And, you know, not knowing how many to print, how do we know how many of those to print? That I don't...I don't understand that. How many of those do we know how to print? And if people don't know about it, it says, the election commissioner or

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county clerk shall post a notice in a conspicuous location, easily visible and readily readable by voters. And I don't think that always happens either. I've had a...this came up in my election. A lot of independent voters asking what can we do? And I didn't know either, so I had to find out. The raiding, I think you can do that now. Like you said, you can switch in two weeks, so if a bunch of us would get together and decide we're going to run a bad person against our person, we could do that now, not as easily I'll admit, but you could. And again, I will admit that we didn't maybe look at this as closely as we should have. Bill Drafter's drafted it after the 1999 bill, and pretty much did it verbatim. But it was not my intent to create extra ballots, because that is, I agree, not a good thing to do. But I would like to try to get more people out. And I just think that some of the argument is a little bit moot because you already have to do that. So saying if you have 2,000 independent voters you'd have to print 2,000 more Republican or Democrat; if you have 10,000 Republican or Democrat, do you have to print 10,000 of those ballots now? No, you probably know that you're going to have maybe, what, 30 percent vote, something like that. So I think those same numbers could be used. And the first year wouldn't be as easy, I agree. [LB686]

SENATOR AGUILAR: Senator Rogert. [LB686]

SENATOR ROBERT: Senator Karpisek, just two questions. When you were asked the question during your election, what do I do? Did you tell them to go register with the party? Or did you think about that? [LB686]

SENATOR KARPISEK: Oh yes, absolutely. And like I said, I'm party, we're all party, I think in here. But, yeah, some people just absolutely will not because they don't like the fighting back and forth amongst the parties. [LB686]

SENATOR ROBERT: Sure. [LB686]

SENATOR KARPISEK: The one comment about there wouldn't be any parties pretty soon, maybe that would be great, I don't know. No, that would be like the Legislature all over the state. [LB686]

SENATOR ROBERT: That was my next question. What say you to the argument that it will start sliding more people to the independent realm, and then nobody will be registered, and they'll all just choose when they get there? [LB686]

SENATOR KARPISEK: I guess that doesn't...that really doesn't concern me too much. [LB686]

SENATOR ROBERT: Okay. [LB686]

SENATOR KARPISEK: You know, like I say, in here we're all supposed to be

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nonpartisan also. [LB686]

SENATOR ROBERT: Okay, thanks. [LB686]

SENATOR KARPISEK: Thank you. [LB686]

SENATOR AGUILAR: Further questions? Senator Pahls. [LB686]

SENATOR PAHLS: If you had your choice, Senator, would you have hand count or machine count? (Laughter) [LB686]

SENATOR KARPISEK: I was going to ask about that, but...how would I...I would rather have machine count. [LB686]

SENATOR PAHLS: Okay. So I thought this was your indirect way of adding hand count. [LB686]

SENATOR KARPISEK: Oh no. (Laugh) In the beginning I would like to have a hand recount in that 1 percent. [LB686]

SENATOR PAHLS: Okay. [LB686]

SENATOR KARPISEK: Thank you, Senator Pahls. [LB686]

SENATOR AGUILAR: Senator Avery. [LB686]

SENATOR AVERY: Do you plan to amend this bill to get the hand recount in? That's not a serious question? (Laugh) [LB686]

SENATOR KARPISEK: No, I sure do not. I think this one probably has enough problems on its own. (Laughter) [LB686]

SENATOR AVERY: I thought that Diane Olmer had an interesting idea to combine it all into one ballot. Would you be adverse to that, if the committee decided that this might be an appropriate amendment to make? [LB686]

SENATOR KARPISEK: No, not at all. [LB686]

SENATOR AVERY: That seems to me to simplify things. [LB686]

SENATOR KARPISEK: Yes. And that was... [LB686]

SENATOR AVERY: It might reduce the cost, even. [LB686]

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SENATOR KARPISEK: And that was the intent, Senator. I know that as it came out it doesn't do that, but that was the intent, to make this all on one different bill (sic). But again, I don't know about the President part. I would argue to that to say you already can't vote for President, but you can vote for House or Senate. And so if people know about it as they're supposed to by the signage, then you should have the same argument. [LB686]

SENATOR AVERY: Well, it wouldn't address Scott Lautenbaugh's point and Senator Mines point about how this might affect partisanship, generally, in the state. But if you could get down to four comprehensive ballots, it would seem to me that that would be an improvement and a cost savings. [LB686]

SENATOR KARPISEK: I would think so. I appreciate...and that would be the goal of my bill is to get it, I feel, as you do, I think as you do, to get as many people to vote as we can. [LB686]

SENATOR AVERY: Right. [LB686]

SENATOR KARPISEK: And again, I'm not saying that they shouldn't register partisan, I am. But for people that don't, I think their vote is just as important as mine. [LB686]

SENATOR AVERY: Thank you. [LB686]

SENATOR AGUILAR: Further questions? Seeing none, that closes the hearing on LB686. We're now ready for LB646, Senator Nelson. Welcome. [LB686 LB646]

SENATOR NELSON: (Exhibits 1-6) Thank you, Senator Aguilar and members of the committee, and, as Senator Preister is fond of saying, friends all, I hope. I'm glad that this gave me an opportunity to excuse myself from the Appropriations Committee, because it was much warmer over there, even though we had fans on. Someone said at noon that you can always tell Appropriations Committee members, as they walk around the building, because they have numb expressions on their faces. So my name is John E. Nelson, N-e-l-s-o-n, from District 6. And I'm here to introduce LB646. And I think you probably have the Statement of Intent with you, but our intent here is to accomplish two purposes. One, at the discretion of the election commissioner or county clerk, the counting board may begin counting early ballots, which we used to refer to as absentee ballots, no earlier than 24 hours prior to the opening of the polls on the day of election. And secondly, the election commissioner or county clerk shall develop a procedure for picking up and counting ballots during election day. And I should state that the statutes prohibit the release of election results prior to the closing of the polls on election day, and that will remain intact under this bill. And I should also mention that Speaker Flood has this as one of his 25 priority bills. This bill is offered to address a problem that we

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encountered in Douglas County during our last general election, on November 7. In Douglas County we deal with a fairly large number of ballots. I think in the general election close to 150,000 ballots were counted, and of that number 29,000, about 20 percent, were early ballots. I'd like...I don't want to take away anything from the election commissioners and other officials that are going to testify to you here today, but I'll just give you a little bit of history. I was the chief deputy, Douglas County election commissioner in the seventies, and I can remember very well when we had paper ballots and we had counting boards, and sometimes those counting boards would go beyond midnight, and we had to go out and rescue them. And we were, so far as I know, the first one then to begin using optical scanners to count paper ballots in Douglas County, and that occurred, I think, in 1976. And we were then able to count ballots quickly and accurately. But nevertheless, we really usually didn't get results or the final tally until very late in the evening, generally after 11 o'clock. We then established a procedure to collect ballots early. We had central collection points and they would bring the sealed collection boxes there. We would bring them to the election office and begin counting them shortly after 2 o'clock p.m. In that manner, we probably counted about a third of the ballots and also all of the early ballots, and we had partial returns ready for the media and press at 8 o'clock that evening, and generally a final count by 11 p.m. And this worked very well. It worked very well for Douglas County for the past 30 years, probably Sarpy County and Lancaster, so far as I know. But however, prior to this last election then our election commissioner and other officials were informed by the Secretary of State that they could no longer count ballots early. And this meant for us in Douglas County that the counting of early ballots, absentee ballots could not begin until 8 o'clock in the evening, and it took until 10:30 to complete the count of those early ballots, which represented 20 percent, before we could even begin the counting of the regular ballots. Consequently, it was probably 3 or 4 in the morning before we had any final results. This affected me as a candidate because when we first got the results around 11 o'clock from the early balloting I was behind. Nothing changed until 1 o'clock, when I went to bed. I was behind when I went to bed. Fortunately, I came out ahead, but several candidates went to bed that night thinking that they had lost the election, and this created a great deal of frustration, not only on the part of the candidates, but also on the part of the media and voters as well. As I said, early counting worked very well for us. And we have procedures already in place to account for the way that we have been doing it. Section 32-1012 provides that an election commissioner or county clerk may arrange to have partial returns delivered to a central location at any time after the opening of the polls, if at least 25 ballots have been cast since any prior delivery. We also have 32-909 which says that ballots can be counted using a scanner and may be opened prior to the closing of the polls. So as it stands now, LB646, as we're proposing it, would permit election commissioners and clerks to count ballots on election day at their own discretion. It would permit them to start counting early voting ballots no earlier than 24 hours than the opening of the polls or when the polls open. And LB646 harmonizes our statutes. It eliminates the possibility of human error due to exhaustion of election officials. And it just seems to me...what this

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basically does then is it restores us to where we were during the past 30 years through a process that worked very well prior to the decision by our Secretary of State that we should no longer count ballots early. And so I would appreciate your support of this bill. And I will have the page hand out letters of support from several people that were not able to be here today. Oh, they're already out, all right. And at this time, I will close my opening and entertain any questions. Senator Pahls. [LB646]

(RECORDER MALFUNCTION--SOME RECORDING LOST) [LB646]

SENATOR NELSON: ...Secretary of State, John Gale, a few days before I introduced the bill, and he indicated at that time he would probably oppose it. I don't know whether he will. He had his own reasons, I guess, for deciding that we should not count early. And I think you probably will be considering a bill, after this, which sort of confirms what the Secretary of State decided during this past general election. [LB646]

SENATOR AGUILAR: Further questions? Senator Mines. [LB646]

SENATOR MINES: Just a comment, Mr. Chairman. Senator, I agree with you that the tally of the votes, particularly Douglas County, but I think this happened all over the state, was clumsy. And it was more clumsy than it has been in many years that you or I have been watching election results. And I'll be interested to hear the other bill as well to see how we might...I just think we need to fix it. I don't know how we do it, we just need to fix it. Voters were dissatisfied, candidates were dissatisfied. I think the public deserves a quick and fair response. And we didn't get it this last time. [LB646]

SENATOR NELSON: It was sort of a solution in search of a problem. [LB646]

SENATOR MINES: I think so, yeah. Thank you. [LB646]

SENATOR NELSON: So thank you very much, Senator Mines, for your comment. [LB646]

SENATOR AGUILAR: Further questions or comments? Seeing none, thank you, Senator. [LB646]

SENATOR NELSON: Thank you very much. [LB646]

SENATOR AGUILAR: (Exhibits 1-6; same exhibits Senator Nelson handed out) First proponent. While he's coming up, I'll read into the record letters of support from Congressman Lee Terry; Congressman Adrian Smith; Ila Davis, Burt County clerk; Vera Dulaney, Scotts Bluff County clerk; Jim Vokal, Omaha City Council; Chuck Sigerson, Omaha City Council. Welcome. [LB646]

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MIKE BOYLE: Thank you. Mr. Chairman, members of the committee, my name is Mike Boyle B-o-y-l-e, and I am a former election commissioner from Douglas County. And in the interest of full disclosure, it was my pleasure to appoint John Nelson as the chief deputy. I didn't see that in his election brochure when he was running (laughter), but I always told John that I would do anything I could help if he ran for office. We developed a great deal of respect for one another over the years. And I always told him that I would either do anything to help him, I'd either endorse him or condemn him, whichever helped. So I'm here today to endorse him. This is a real common sense bill. And so that I'm not redundant, I'll just make a couple of points and then perhaps answer any questions you might have. I'd like to point out to the committee that the safeguard in all of these election procedures is the fact that it's our neighbors...our friends and neighbors who are doing the work at the polling places. They're not strangers. I'm sure some of you, maybe even your spouses or close relatives have been election workers. And they're the ones who gather the ballots and seal them into the box and take them to the counting...usually to the courthouse to be counted. There's a seal that's placed on the container that's a metal container. It cannot be duplicated, it says Election Commissioner on it. Once it's broken, it's broken and there's no way to repair it. Also, I guess the biggest safeguard is the fact that these are our friends and neighbors who are handling these ballots. This is not a group of political types and hacks that are getting into the ballots and trying to change things. So I think that's the biggest safeguard. And so it makes great sense to me to continue the procedures that we've had in place in Nebraska for some 30 years. Ironically, counting the ballots earlier, starting at 2 in the afternoon or so probably is a safeguard. Because if there's something wrong with the system, if there's some computer programming error or something wrong has happened, some ballots are printed improperly, it will show up immediately at 2 o'clock and there may be some chance to recover from it. But if we wait until 8, there's a tremendous amount of pressure, particularly in today's society. We want the results, we want them now. We are not interested in waiting until, you know, 2 or 3 o'clock in the morning. So we have spoiled everybody in this whole thing. But I'm not saying that's a bad thing. So, I guess, my points are that our friends and neighbors are the people who are controlling these ballots, and I think we can trust them. They have never violated their trust in all the years I was involved, or all the years I've been in politics and observed it in Omaha and Douglas County, and I don't think so in the rest of the state either. So I think it was a good system, it was working. And hopefully, you'll restore it and give it the kind of security it needs by passing this bill. So I would ask you to do that. And I'll answer any questions, if you have any. [LB646]

SENATOR AGUILAR: Questions for Mr. Boyle? Seeing none, thank you. [LB646]

MIKE BOYLE: Thank you. You may want to expunge the record on the part about being a friend of Mike Boyle's here, Senator Nelson. (Laughter) Thank you very much. [LB646]

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SENATOR AGUILAR: Welcome. [LB646]

SHAWN RENNER: Senator Aguilar, members of the committee, my name is Shawn Renner, S-h-a-w-n R-e-n-n-e-r. I'm a lawyer here in Lincoln. I appear today on behalf of Media of Nebraska, Inc. which is a nonprofit corporation comprised of the press, print, and broadcast news media. I was asked by my client to appear before you to indicate that organization's support for LB646. It shouldn't come as a surprise to the committee that one of the interests of the news media in the election process is getting accurate information from the counting officials as soon as possible. Media of Nebraska believes that LB646 will help that. It's my sense, although I can't give you any citation to particular studies or authorities, but it's my sense that early voting is becoming more prominent as time goes on. I think there was more early voting last election than had been previously. The impact of LB646 would be to allow the appropriate officials to start the counting of those early ballots quicker than they currently, at least under our current Secretary of State's view. And the news media believes that that would be helpful in allowing them to report results to the public quicker and more accurately. Be happy to answer any questions. [LB646]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB646]

SHAWN RENNER: Thank you. [LB646]

SENATOR AGUILAR: (Exhibits 7-14) I'd also like to read into the record support for LB646: Janene Bennet, Otoe County; Debra Finn, Wayne County; Joann Fischer, Knox County; Diane Olmer, Platte County; Carolyn Pedersen, Antelope County; Nancy Scheer, Madison County; Vera Dulaney, Scotts Bluff County; Cynthia Heine, York County. Welcome. [LB646]

DAVE PHIPPS: (Exhibit 15) Thank you. Senator Aguilar, members of the committee, thank you for having me today. My name is Dave Phipps. I'm the Douglas County election commissioner. My last name is spelled P-h-i-p-p-s. I am here today in support of LB646. And to me there are a few aspects to this besides the midday delivery, which we in Douglas County have referred to for quite some time. And so I kind of want to talk about all those different sections that this bill addresses. I think we've heard from a number of people on just how well a midday delivery has worked in Douglas County and the larger counties that utilize some sort of central scanning type system. Between 30 and 50 percent of all of our ballots were counted before the polls closed, allowing our machines to only have to go through maybe half the ballots after 8 o'clock. And, you know, many people might think, well gosh, what's the big deal? You just stay open a little later. Well, to give you a little background, and I don't mean to come up with a heart, you know, sobbing story, but you know we start our day on election day at about 5:30, 5 o'clock in the morning. On this particular election, you know, I got in the office about 5:15. Went outside, did an interview with Channel 6 and 7 and their early morning

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crews. Got to work, spent the entire day, you know, working our election day processes. Started counting the ballots at about 5 o'clock that evening, the early voting ballots; continued counting throughout the night. We didn't finish counting until about 5 o'clock the next morning. And I walked out of the office at 5:30, where I didn't have to, but I could have done another interview with Channel 6 and 7 who were still in our parking lot. So any day where I get to do two morning live TV shows and not having gone to bed is a little stressful for us. But what that practically does is, frankly, it causes an environment where great deals of mistakes can happen. And, you know, after you've worked 20 hours I don't think there's anybody who's necessarily in their right mind. And so it becomes...it makes things a lot more difficult. And so giving us this ability or allowing us to keep this ability, I should say, really makes sense for election officials. It makes sure that election results are accurate, which is, I think, everybody's goal. I mean they're my number one goal, accuracy is number one. But everybody wants immediate as well. And this is much more immediate than doing it all after 8 o'clock p.m. So I think this bill would certainly help in that area. I think that this would keep that option open for us and allow us to return to a practice that has served the citizens of Douglas County and really the state of Nebraska for many, many years. The other things that this bill allows us to do is to count the early voting ballots beginning 24 hours before the polls open. So the day before the election, that Monday, we can start counting those early voting ballots. And for Douglas County this is becoming more and more of an issue. We obviously have a certain limited number of space. I can employ any number of people, although my county board member, Mike Boyle, might not like the sound of me employing vast numbers of people. But you know, I can always employ more people to count ballots, to open ballots, to split open envelopes and those sorts of things. But there's a practical limit to how many I can fit in my building at any given point in time when I've got so much stuff going on in those days preceding the election. In Douglas County I have a staff, normally, of between 13 and 15 full-time workers. During election season, which is about 3 months for us, we're working at between 40 and 70 people working in our office. Then on election day we have, you know, between 200 and 300 people working in our office. So, I mean, there are physical limitations to what we can do. Allowing us to count those ballots, those early voting ballots early makes a tremendous difference, helps us out tremendously on election day where it gives us a chance to, you know, work on other things that are pressing at the time, you know, problems that happen at the polls, things that we're seeing out in the field we have a better chance of addressing because we're not distracted by counting early voting ballots. In years past, early voting maybe accounted for anywhere between 3 and 6 percent of the total vote. They were relatively small numbers. The Legislature, I think, very correctly allowed to change the law to make early voting easier. You know, you took away the excuse necessary to request an early voting ballot or an absentee ballot at the time. That increased the numbers that we're talking about. A couple of years ago you then changed the name from absentee to early voting, letting people know that you don't have to be absent to get an absentee ballot. So, you know, in the minds of the voters the convenience of getting a ballot delivered right to their door is becoming more

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and more appealing and more and more people are requesting it. It's also a function that the parties are using and the candidates are using. They're pushing this more, and more, and more. So to give you a little example of the growth that we're talking about in 2004, the presidential general election, we had 30,000 requests for early voting ballots; in 2006 we had 33,000 requests for early voting ballots. So in just a two year period we increased 3,000 votes. Well, you think 3,000, well, that's not that big of a deal. But as a percentage of the vote, in 2004 it was 15 percent of the vote was voted early, in 2006 it was 22 percent. So it was a 7 percent increase in voting early. For the 2008 presidential general election we're probably going to be approaching 50,000 early voting ballots. Actually, I would not be surprised if we surpassed that, so we're talking 25 to 28 percent of our vote coming early. So allowing us to count those ballots the day before gets one more thing off our to do list on election day, and that makes a huge difference. The final thing that LB646 does for us, which may not sound like a big deal, is it allows us to process and open the early voting ballots as they come into our office. Right now the laws says that you can't open those ballot envelopes until the Thursday prior to the election. What this bill allows us to do then would be to open them beginning 35 days, when they start going out. So at 35 days prior to the election, we mail out all those early voting ballots, people can come into our office and start voting in person. So instead of waiting until that Thursday before, when a ballot comes in we can just slit the envelope take out the ballot, you know, do all the procedures that we need to and then stick the ballot into a ballot box. Well, you would think opening, slitting an envelope and taking the ballots out isn't that big of a deal. But when you're dealing with 30,000 of them it becomes a big deal. And Thursday before the election is, quite frankly, the busiest time of year for us because it's the time that we're getting all those supplies ready to go out into the polls. We're loading up the precinct boxes, getting the auto marks, the disabled equipment ready to go. So it's a hub of activity and we just don't physically have the space anymore. So this would allow us to just use a small group of people to process them as they come in, as opposed to a large group of people, which I don't have room for anymore, to do it in that five-day window prior to the election. So overall, this is a great bill for us. We think that it would really help our operations a great deal. Obviously, I think there is money to be saved, which is always something I think we're aiming for. So with that, I will be happy to answer any questions that you have. [LB646]

SENATOR AGUILAR: Questions for Mr. Phipps? Seeing none, thank you. [LB646]

DAVE PHIPPS: Thank you. [LB646]

SENATOR AGUILAR: Next proponent. Welcome. [LB646]

NANCY JOSOFF: (Exhibit 16) Good afternoon, Senator Aguilar and committee members. My name is Nancy Josoff. I'm the election commissioner in Cass County Nebraska. My last name is J-o-s-o-f-f. I'm here today in support of LB646. And I have maybe a little bit different twist to put on this. I'm going to ditto Dave, or Mr. Phipps, on

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his early voting information. We've seen early voting ballots grow substantially in Cass County also. Although, we're, you know, obviously quite a bit smaller. But I would like to go ahead and just mention here subsection (6) states that the ballots can be counted no earlier than 24 hours prior to the opening of the polls on election day. As he talked about how busy everything gets, I don't have the luxury of being able to hire anybody that I want to hire down in Cass County. My office consists of one person, and I had to beg for a part-time temporary employee through the '04 general election. So it does get extremely hectic. If anybody has ever put together a wedding, you know, an elaborate wedding think of it as something like that, when you have all the final details at the end that you're trying to get done. And that is exactly what it's like, except we have 29 precincts down there, so you're trying to synchronize all 29 precincts at the same time. But the volume is definitely growing. And I do expect to see that grow substantially myself down in our county. Subsection (8), this clarifies the election commissioner or the county clerk shall have the discretion to determine if there will be an early pickup of ballots in the county. And some of the counties are going to use this, and some of the counties are not going to use this. In Cass County one of the dilemmas that I face is our tabulation center or the election office is on the far east side of our county. And we have a larger area mass than Sarpy or Douglas. But one of our largest precincts is on the extreme west end of the county. So just to drive the ballots from the west end to the east end of the county is going to be a 45 minutes or an hour long drive. So by the time the polls close and by the time they have the opportunity to close everything down, get everything kind of counted up and make sure everything is good to go, it's going to be 9:30, 10 o'clock before the ballots even hit my office from that west end of the county. I'm not so concerned with having to count those ballots, but if I can at least do a pickup of the ballots out there, get them into my office and prepare them to count so that at eight o'clock I'm good to go and I can start counting those. You know, I can see where this pickup would really be beneficial for my county. And it's something...I have not done this in the past, but because of the growth in our county, it's something that I definitely was planning to do this next time around. So that's...and I understand there are some issues with counting them early. I'm not really pushing that part of it, but I am looking for the early pickup portion of it, just to get them down to my location so I can get ready to count them. And if you decide you don't want to count them until 7 o'clock or 8 o'clock, you know, I can still work with that, it's still going to be beneficial. The other options are that one thing was mentioned about if you run into any issues, you know, maybe with anything, you're going to find that out a lot sooner. We get the volume of ballots going through those machines and everything, we're going to be able to maybe pick up on something like that instead of waiting until 2 o'clock in the morning. I don't know, I must be doing something a little bit different, because I'm usually there all night. And like I say, being a one person office, we had a 48-hour day during the '06 general election. That's all that I have. If you have any questions? [LB646]

SENATOR MINES: Thank you, Ms. Josoff. Any questions? I do have one, Nancy. Because you're...I think Mr. Phipps has an unusual circumstance compared to the rest

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of us. However, I have a question about security. If you count ballots early, in an office, small office like yours, are there security issues with tabulating those votes properly and accurately as opposed to keeping all the tally together at one time, as we did this last session? [LB646]

NANCY JOSOFF : Well, like I said, we've never had any kind of an early pickup in the past at all. The security issue, as far as getting the ballots from point A to point B, is not an issue at all, because obviously you have individuals from two parties. [LB646]

SENATOR MINES: All right. Maybe accuracy is a better word. Would there be an issue of accuracy? [LB646]

NANCY JOSOFF : Well, that's going to a training for the precincts that are determined to have the early pickup. It will definitely be something new. It's definitely something that we'll have to prepare those precinct officials for, to help them understand on their end what they need to be able to provide, to be able to know that they have an accurate account at that pickup. But then in turn when it gets to our office to be able to make sure when we get there and when we do open those up we have the appropriate numbers and everything, and we can continue. As far as actually...it's been well the way it's been. This would just be an additional pickup for what we'll be doing. [LB646]

SENATOR MINES: Okay, thank you. Any further questions? Nice job, Nancy. Thank you. [LB646]

NANCY JOSOFF: Thank you. [LB646]

SENATOR MINES: Next proponent. Come on. Don't fight over it. (Laughter) Proponent, come on up. Nice to have you here today. [LB646]

GLEND A DeBRIE: Thank you. Senator Aguilar and members of the Government, Military and Veterans Affairs Committee, I wish to thank you for allowing us to testify for this. My name is Glenda DeBrie, the last name is D-e-B-r-i-e. I am the Buffalo County election commissioner, cochair of the NACO Election Law Committee, and I'm currently serving on the board of directors of the National Association of Recorders, Election Officials, Clerks, otherwise known as NACRC. I'm here to support LB646 which allows early pickup and counting during election day at the discretion of the election commissioner. This had been our practice until the 2006 general election. We were then asked not to pick up early and do early counting. First, I would like to tell you that prior to the 2006 general election we not only counted our ballots on election day, but also counted Phelps County ballots. Normally, we are all done with both counties by 11 or 11:30 in the evening. This, of course, was accomplished by Buffalo County doing early pickup. The ballots were picked up. Normally, we dispatch people around 3 o'clock in the afternoon. The ballots picked up were sealed in a locked ballot box and returned to

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our office. The people picking up the ballots had the inspector confirm the number of ballots in the box by completing an affidavit indicating the number of ballots issued. The clerk and inspector of each precinct signed a document, along with the individuals picking up the ballots. We would start counting ballots, normally, around 6 o'clock p.m. No numbers were released by our office to anyone, other than the Secretary of State, before 8 o'clock p.m. I'm aware the Secretary of State has some concerns. And I understand part of his concern is that there are not many states that are now doing early pickup. As I mentioned, I'm a member of the NACRC. The national organization has been told that there are several states that are still doing early pickup. Another concern is security. Our office has not had any issues with security. The people in the counting room are people that absolutely need to be there to unlock the ballot boxes, keep the boxes separated before and after scanning. We need a person to job the ballots so that while being scanned they are not sticking together, the Resolution Board, which consists of two different parties to resolve any ballot problems, a scanner operator, and at times a support person from our vendor. On occasion the media wants a picture of the scanner, but they are never allowed to scan individual ballots. We also had poll watchers in the last election, watching the process at a distance during the 2006 election. Basically, our scanning room is only for people that absolutely have to be there. Unless there are poll watchers, media is escorted in, and escorted out of the scanning room. Captain Bob Anderson, of the Buffalo County Sheriff's Office, is our security guard, and is at our office until we are totally finished. Absentee ballots were scanned early in the 2006 general election so the Secretary of State could have a total to report by 8 o'clock. Why is there a difference in those ballots and not the early pickup ballots? We all have to learn to trust, keep our eyes open, and do the very best we can. The appearance of our 8 o'clock p.m. total was somewhat misleading because one party mailed absentee ballot requests and encouraged people to vote absentee and put postage on the ballot. The other party did not put postage on the requests, and did not get their ballots out as early as the first party. The results of the first count were somewhat deceiving. If we had early counting of all ballots that may not happen. All of you have been a candidate, and I am sure as a candidate you want the results as soon after 8 o'clock as possible. To keep candidates and the public informed, we've put our latest totals on...excuse me, our latest totals on the web page, and update it every 30 to 45 minutes. One of my supervisors was a candidate in the 2006 general election and was up until 4:30 the next morning, waiting for his results. This is not only frustrating to us, it is also frustrating to those on the ballot, the media, and the public. Next year is a presidential election and we all know our turnout will be larger than normal. Early pickup and scanning would certainly be appreciated by all. Candidates, media, the public have become accustomed to receiving information in a timely manner. If there is a concern about giving information or early results out, our scanner actually does have a...is equipped with what is called an auto log. So if we could do early pickup, we could actually scan those ballots, and not print a report until the Secretary of State needed that report. That auto log in the scanner would tell you when that report was printed. Okay? I feel very strong about this issue. I woke up at 4:30 for the November 2006

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general election and did not leave my office until 4:30 the next morning. My staff and I are at the office before 7 in the event of polling places needing something. While scanning our ballots we had a minor breakdown and it took two and a half hours for the repairman to arrive to our office to fix the problem. Had we been able to start earlier, we may have gotten the scanner fixed right away and not have to spend the night at the office. I have great respect for the Secretary of State's Office, and I know that they are trying to do the best that they can. But local election officials are also trying to do the best that they can and accommodate everyone. Thank you for your time and interest in the election process. If you have any questions, I'll do my best to answer them. [LB646]

SENATOR AGUILAR: Thank you. Questions from the committee? Seeing none, thank you for coming today. [LB646]

GLENDA DeBRIE: Thank you. [LB646]

SENATOR AGUILAR: Welcome. [LB646]

SCOTT LAUTENBAUGH: Chairman Aguilar, senators, my name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. Thank you for allowing me to appear today. I am a former election commissioner from Douglas County as well. I, too, was disappointed by the length of time it took to do the counting in the last election. And I believe it was due to a policy change that was more of a solution in search of a problem, as I think the sponsor of this bill, the introducer of this bill described it. I was unaware, in my tenure in Douglas County, of any breach of security or any issue regarding the early release of ballots. Our procedure was to pretty much have the early pickup from all the precincts by about 3 in the afternoon, and we would proceed to count those, and by about 5 or 6, generally, we would have what would be known as early results, and that usually represented, if memory serves, about 40 percent of the counting for that day. Leaving aside the time saved, that element of it, I agree with commissioner Boyle that that was a substantial and important check on the process itself for two reasons. One, it did allow us to detect any problems with the scanners. And they are not perfect machines. We can test them, we can do whatever, but there were always issues. It was good to know early if there was an issue, I should say, there wasn't always an issue, but it was good to know early if there was. The balance, I believe, Douglas County has even increased security since then to the point where access is severely restricted to the counting area. I am just unaware of a circumstance where there was an early...some sort of breach of the law, I guess, would be the best way to put it, by releasing results early on. And as a practical matter, I believe under the current law, it's a felony anyway to do that. And there was...I just never worried, well, we always worried. But I don't remember anyone being willing to commit a felony to get the results out there early. I believe that...once again it would be a felony still to do that. And the current law worked well for several years as it was written. Additionally, it is almost...it could be described as an antifraud system to do the counting in two increments, if you will, two separate settings because you would be able

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to compare what you received from the early pickup with what you received from the later pickup and determine if there was a wide variance in some precinct. I don't recall any circumstance where I ever even had occasion to suspect fraud in Douglas County, and fraud being some sort of ballot box stuffing incident or something like that. I don't ever remember thinking that ever happened. But it would be even more difficult for a person to do that or a group to do that if you had two pickups and you could compare the early results to the late results, and usually they're very consistent, as you would imagine. And you would have an indicator there. I believe by getting the results out earlier, as we used to do, it's what the public has come to expect of us and it's what the public has come to count on. And when the results are delayed as long as they were, it can impact the process and people's confidence in the process. So I guess the point I'm making is that this could encourage people to vote (laughter) and increase turnout if we went back to the old system of releasing results as we had for several years. I'd appreciate it. Be happy to take any questions you may have, if any. [LB646]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB646]

SCOTT LAUTENBAUGH: Thank you. [LB646]

SENATOR AGUILAR: Next proponent. How many proponents do we have left? I see two. [LB646]

SANDRA STELLING: Good afternoon again. I'm Sandra Stelling, S-t-e-l-l-i-n-g, Jefferson County clerk, registrar of deeds, election commissioner, and also the cochair of our Legislative Committee for the Clerks, Registrar of Deeds and Election Commissioners Association. On behalf of the association, we would like to support LB646 for the early pickup. This bill means a lot to the counties that do the early pickup. I, for one, do not because I'm one of the smaller counties. But I think we all need to work together to be able to do this. And in the Statute 32-1027 (8), it states that no results shall be released prior to the close of the polls on election day. So I think that takes care of your giving out the results ahead of time. And we'd also like to support getting the early ballots ready to count, so that those may be counted by 8 o'clock and you can give those results out. I think everything else has been pretty much said. [LB646]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB646]

MATT CONNEALY: (Exhibit 17) Senator Aguilar and members, I am Matt Connealy. I'm the executive director of the Nebraska Democratic Party. Last name C-o-n-n-e-a-l-y. I'll be very brief. We just wanted to come and show our support for LB646. [LB646]

SENATOR AGUILAR: Thank you, Matt. Questions for Mr. Connealy? [LB646]

SENATOR MINES: This is a good time, Mr. Chairman, (laughter) but let's let it pass.

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(Laughter) Thank you. [LB646]

LARRY DIX: Senator Aguilar, members of the committee, for the record, my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in support of LB646. A majority of the things have been said, but there are a couple of points I want to really try to impress upon the committee. One of the things I think when you run elections, and my history has given me an opportunity to run elections, not only in the state of Nebraska, but in many other states across the United States. When Glenda DeBrie was here from Buffalo County she described what happened in Buffalo County, and I was part of that in the eighties. And I've got to tell you, that worked very, very well. The process was there. There were many things, by doing an early pickup, that we caught that we never would have been able to in a timely fashion. But at the bottom line what we're really talking about and when we run elections is accuracy. It's not a race, it's not to see if county A can report results faster than county B or anything like that, it is accuracy. And when you hear folks saying that, you know, we're up here for 24 hours a day doing that. You know, you've got to really question what happens to the accuracy when we get that late into the day, especially when in the election world it does start at 5 and 6 in the morning. So I want to impress upon you that anything we can do to help for the accuracy, because that really is what it's all about, we really need to do that. Now you may hear that other states do not have early pickups and things like that. And I've got to tell you, I've worked in about 20 or 30 other states, and the majority of those, the reason they don't is because they are doing precinct-based...most of them are doing precinct-based counters. And so, you know, you throw these numbers out and say, well, these states don't, these do, but we are a little bit different where we are completely a central count state. Fortunately, I had an opportunity to observe the county of Los Angeles when they ran an election. Of course, Nancy talked about the problem of getting ballots in timely. In the county of Los Angeles they actually have a helicopter that flies the ballots, at that point in time it was punch cards, into the central location. So they solved that problem in that way. But I don't think Cass County is going to be funding a helicopter to do that. Lastly, I think it's a testament to our county clerks and our election commissioners across the state of Nebraska that we've not been in the headlines about problems with our election. We're not the Florida's. These folks are so dedicated and so trustworthy to what they do, I think it's a testament to them, because that's really where the work goes on in the elections, it's out there in those counties running local. And granted, we count ballots for statewide elections, but these are very, very trustworthy folks. I think it's been indicated time and time again by the fact that we run good elections in the state of Nebraska. So with that, I'll be happy to answer any questions that anybody may have. [LB646]

SENATOR AGUILAR: Questions for Mr. Dix? Seeing none, thank you. Any further proponents? How about opponents? [LB646]

NEAL ERICKSON: (Exhibit 18) Senator Aguilar, members of the committee, I'm Neal

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Erickson, I'm Deputy Secretary of State for Elections. That's E-r-i-c-k-s-o-n, here on behalf of Secretary of State, John Gale, in opposition to LB646. I was joking with Senator Karpisek earlier. If he thought he had a tough day with the last bill, now you know you got a real uphill battle when you've got a dozen proponents, 21 cosponsors, and you're testifying in opposition. (Laughter) But I do want to thank Senator Nelson for consulting with Secretary Gale prior to introducing this bill. As a result, we do understand his view on this issue. However, we do have a contrary opinion on the wisdom of the early counting policy. Our opposition to early counting stems from conversations with both federal and international observers after the May primary who cautioned against breaking ballot box seals prior to closing the polls. We also understand that final results in Nebraska...excuse me, in the November election were not available as early as some would like. And certainly we would like to increase the speed of those returns. After the general election we met with a lot of the election commissioners to discover the problems they had, suggested changes in their policy they might accomplish to increase those. However, the way we look at it, when it becomes a choice, as we see it, between speed and ballot security issues, we feel obligated to side with the ballot security issues. This is particularly true when the speed can be increased through other means, although perhaps costly--methods such as adding additional central count machines or using a precinct-based counting system. These are the reasons we oppose LB646. And with that, I'd answer any questions you might have. [LB646]

SENATOR AGUILAR: Thank you, Neal. Questions for Mr. Erickson? [LB646]

NEAL ERICKSON: What I handed out to you was, I think, a rather timely article from a Tucson newspaper, it's a month old, about some of the problems that occurred with reports being run prior to the close of the polls. So I'd encourage you to take a look at that. And I'd answer any questions you might have. [LB646]

SENATOR AGUILAR: Senator Avery. [LB646]

SENATOR AVERY: Thank you, Mr. Chair. Neal, do you have any evidence that any of this has taken place in Nebraska? Anything like what happened in... [LB646]

NEAL ERICKSON: No, and if we did we would, I can guarantee you, we'd be pushing prosecution on somebody because it is a felony to do so. [LB646]

SENATOR AVERY: So maybe Senator Nelson is right, this is a solution looking for a problem? [LB646]

NEAL ERICKSON: Well, when you're talking about security issues, and it is the same thing with fraud, and I think when I addressed this committee real early on this year, when we had an initial briefing, I talked about the way we prevent fraud. Number one, is

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make it difficult to do. Number two, make it detectable; and then, three, prosecute. We view this as number one, making it difficult to do. Making it more difficult to release those early returns than with an early pickup. [LB646]

SENATOR AGUILAR: Further questions? [LB646]

SENATOR AVERY: Well put. [LB646]

SENATOR AGUILAR: Seeing none, thank you. [LB646]

NEAL ERICKSON: Thanks. [LB646]

SENATOR AGUILAR: Any last opponents? Senator Nelson, to close. Excuse me, just a minute, Senator Nelson. Was there any neutral testimony? Sorry about that. [LB646]

BOB TWISS: Good afternoon, members of the committee. My name is Bob Twiss, T-w-i-s-s, and I'm going to apologize. First of all, to Neal Erickson and please pass it on to Secretary Gale. I didn't talk with you ahead of time, but I was going to testify one way or the other. For the most part, it is neutral testimony. Having been through a very close election myself several years ago, by less than a handful of votes, I am concerned overall about accuracy and security. However, based on testimony today, I think actually there is more security and accuracy in terms of absentee ballots where the voter is using an envelope and not going to the courthouse, for example, to do early voting. Because it allows adequate time to verify appropriately, and I wish that Dave Phipps would have gone into more detail about the procedures in terms of working with an actual absentee ballot--the envelope and the ballot itself, and being able to...it's very important to check the signatures and the accuracy of that envelope that was returned basically by mail, it can be returned in person, but by mail. And that would allow...the early aspects would allow more of an opportunity for the election officials to do a more accurate job, I think. And I don't see a real risk of security whatsoever in terms of the overall early balloting and counting. But it's very, very important that that envelope be verified early enough so that they're not rushed the day of the election in trying to verify the signature, the envelope, the initials that also on the ballot have to be verified and then, of course, the ballot goes into a box, or that ballot may be set aside. But let's allow adequate time, more than adequate time, quite frankly, to have greater accuracy and I think, quite frankly, greater security in that aspect of the early vote counting. With that, I would entertain any questions. [LB646]

SENATOR AGUILAR: Questions for Mr. Twiss? Seeing none, thank you. [LB646]

BOB TWISS: Thank you. [LB646]

SENATOR AGUILAR: Is there anymore neutral testimony? Let's try it again, Senator

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Nelson. [LB646]

SENATOR NELSON: Thank you, Senator Aguilar and members of the committee. I lost my train of thought there. I'll be very brief. I want to thank all the persons who traveled here, the election commissioners and other officials to testify, in particular Mike Boyle. He and I go back a long ways. We're on opposite sides of the political spectrum at times, but he has a long history of experience and public service as do the election commissioners and the county clerks. There has been bipartisan support for this bill. I don't think I can add to anything that's been said. I think it's been very informative. Really the concern about breaking the locks on ballot boxes at 2 o'clock, I think should not be a concern at all. If we ever do have a problem, then that would be the time to impose this type of restriction. Early counting and early pickup have been perfected and worked very well in all of the counties that used that. And I would just say, let's not tinker with a system that has been working well. And I want to thank you for your attention today. [LB646]

SENATOR AGUILAR: Thank you. Any further questions for Senator Nelson? Seeing none, that closes the hearing on LB646. We'll now open on LB528. Turn the chair over to Senator Mines. [LB646]

SENATOR MINES: Thank you, Senator Aguilar. [LB646 LB528]

SENATOR AGUILAR: Good afternoon. My name is Ray Aguilar, spelled A-g-u-i-l-a-r, representing District 35. I'll be introducing LB528 at the request of the Secretary of State's Office. LB528 makes several changes to the Election Act. The first change eliminates counting boards. Counting boards were appointed when paper ballots were manually counted. Since ballots are no longer counted manually, because of new voting equipment, these counting boards are no longer necessary. The bill also requires candidates to be affiliated with a political party before the first Friday in December prior to the statewide primary election in order to be eligible as a write-in candidate. The provision is intended to close a loophole for write-in candidates who didn't register with a party before the December deadline. The bill also changes the deadline for issuing special ballots. This change is made to be in compliance with federal law. The Secretary of State's Office is already complying with the federal law, but this bill will bring state law into compliance. Finally, the bill eliminates language allowing partial returns to be delivered to the centralized location after the polls open. As you know, this provision is in conflict with Senator Nelson's bill, which we have already heard. I think the committee will have an interesting discussion about whether it is good public policy to allow ballots to be counted before the polls close. Neal Erickson is here from the Secretary of State's Office is here to provide additional details of the bill and answer any technical questions. Thank you for time and attention. [LB528]

SENATOR MINES: Thank you, Senator. Do we have questions for Senator Aguilar? I

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don't see any. Thank you. Neal, I think you're up next. [LB528]

NEAL ERICKSON: Senator Mines, members of the committee, once again for the record, my name is Neal Erickson, Deputy Secretary of State for Elections here on behalf of Secretary of State, John Gale, in support of LB528. I appreciate Senator Aguilar introducing this bill on our behalf. He mentioned a few minor things that this does accomplish. One of the items he mentions is a write-in affidavit. And this is something we issued an interpretation on last year. Right now, in order to run in a partisan primary, you have to change your party affiliation by the first Friday in December. You can't change after that in order to kind of cherry pick what race you want to be in. But the law is not clear about...okay, I don't file, but I decide to do a write-in. And we had a situation where a candidate, and I honestly don't remember which party it was, but let's say he wanted to run in the Republican primary, missed the deadline, couldn't get on that way, actually thought maybe it's better for me to be the Democratic nominee at this point, so tried to file, changed his party and filed as a Democratic write-in. We issued an interpretation saying that was not within the spirit of the law, which was to have to declare your party so in advance, you couldn't pick and choose that way. And so what this change would do would be to codify that and kind of level that playing field. If you're going to run in a partisan primary, whether it be as a file candidate or write-in candidate, that change in party affiliation if desired to, so it must be made by the first Friday in December. The second item that Senator Aguilar mentioned is what is called, at the federal level, a 60-day ballot. In our statute it says 57 days, and that goes back to when we used to allow absentee ballots to be returned up until Thursday after the election. The federal law requires that you have these ballots available 60 days prior to the deadline for the ballot. So when we had Thursday, it actually was 57 days prior to that...or 57 days prior to the election. So we needed to make that change. Now when we changed, that was one of those situations where that change from Thursday to close of polls was made because of some perceived fraud on or potential for fraud in the absentee process. So we changed that. We need to have the statute catch up with that. The bulk of this bill removes references to counting boards in a precinct-based level. Those were necessary when we were hand counting ballots. You had to have a counting board there to count those ballots and put those in. With all counties using optical scan equipment at this point in time, those provisions are no longer necessary. The last of it is the early voting or, excuse me, the early pickup, early counting provisions that we've been through already today. So with that, I'd answer any questions that you might have. [LB528]

SENATOR MINES: Thank you, Neal. Questions? I don't see any, Neal. Thank you. [LB528]

NEAL ERICKSON: Thanks. [LB528]

SENATOR MINES: (Exhibits 1-5) Could I see the hands of those that wish to testify on

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this? One, two. Let's have any proponents. Come on up. You're a opponent? We don't have any proponents? We have one proponent. And while you're coming up, I'd like to read into the record that Janene Bennet, Otoe County; Debra Finn, Wayne County; Joann Fischer, Knox County; Diane Olmer, Platte County; and Carolyn Pedersen from Antelope County want to go on record in support of LB528. Hello again. [LB528]

SHERRY SCHWEITZER: Hello. Sherry Schweitzer, I'm the Seward County Clerk, S-c-h-w-e-i-t-z-e-r. I'm here not only representing my own office, but the Nebraska Association of County Officials, of which I'm on the board of directors. I'm going to be real short here and just tell you that we'd like to go on record supporting this bill in part. Of course, any time we need to update statutes because of change in law, federal, HAVA for instance, with our counting machines, we are for keeping everything current. Of course, the Section, specifically 32-1012, and the statutes on page 19, line 16, that deal with the early pickup language, we are not in favor of. That is quick. [LB528]

SENATOR MINES: Very good. Great testimony, Sherry. Thank you. Are there any questions? I don't see any. Thanks for being here. Any other proponents for the bill? I do not see any. Opponents? Mr. Phipps, you could be the last one. [LB528]

DAVE PHIPPS: I think I took the opposite tact of them. First of all, my name is Dave Phipps. I'm the Douglas County election commissioner, P-h-i-p-p-s. They're supporting the bill overall, but opposing the one section. I'm opposing the one section, but supporting everything else. So take that how you will. The cleanup language, I think, is very important. And I do thank Senator Aguilar and the Secretary of State's Office for doing this, although those particular sections regarding hand counts don't affect Douglas County. Anytime you can clean up election law or any part of the law it makes life as an election official much easier. So we certainly support those sections. For the reasons that we talked about earlier, obviously, I oppose the section removing the option for a midday delivery. So with that, I'll answer any questions that you have. [LB528]

SENATOR MINES: Okay, Dave, thanks. Senator Rogert. [LB528]

SENATOR ROBERT: Mr. Phipps, this bill would eliminate counting boards, which you are in support of on LB646? [LB528]

DAVE PHIPPS: At the...it eliminates them at the precinct level, the hand count boards, correct. [LB528]

SENATOR ROBERT: Okay. [LB528]

DAVE PHIPPS: Correct. And those aren't anything that we do. [LB528]

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SENATOR ROBERT: Those don't affect yours? Okay, thank you. [LB528]

SENATOR MINES: Any other questions? David, nice job. [LB528]

DAVE PHIPPS: Thank you, sir. Thanks you, senators. [LB528]

SENATOR MINES: Thank you for being here. Anyone wanting to testify in opposition? Anyone in a neutral capacity? I see none. Senator Aguilar waives closing. And that will close the public hearing on LB528. And you're adjourned. [LB528]

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Disposition of Bills:

LB528 - Held in committee.

LB646 - Advanced to General File, as amended.

LB686 - Held in committee.

LB694 - Held in committee.

Chairperson

Committee Clerk