



One Hundred First Legislature - First Session - 2009
Introducer's Statement of Intent
LB 626

Chairperson: Bill Avery
Committee: Government, Military and Veterans Affairs
Date of Hearing: March 4, 2009

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The purpose of LB 626 is to amend the Nebraska Political Accountability and Disclosure Act to expressly state certain permissible uses as well as prohibited uses of public resources, personnel or property by a public official or a public employee. I am proposing some amendments to LB 626 for your consideration.

LB 626 was introduced in response to an August 8, 2008 decision of the Nebraska Accountability and Disclosure Commission. The decision relates to a complaint filed against a public official alleging a misuse of public resources. The complaint was filed in February 2007. Before the August 8, 2008 decision of the commission, public officials and employees, as well as the statewide organizations that represent them, had a relatively clear understanding of prohibited and permissible uses of public resources under the Nebraska Political Accountability and Disclosure Act.

The Legislature needs to address the confusion caused by the August 8, 2008 decision of the commission to give clear direction to public officials and public employees, as well as the Nebraska Accountability and Disclosure Commission itself.

When a complaint is filed against a public official or public employee alleging a violation of section 49-14,101.01 or section 49-14,101.02, the public official or public employee that can afford to do so will likely retain legal counsel to defend themselves, which must be at their own expense. Sometimes, defending your reputation against these allegations costs tens of thousands of dollars, even when the allegation involves a de minimis or incidental use of public resources. This was clearly the case in the August 8, 2008 decision of the commission involving Michael Nolan, who was the City Administrator of Norfolk when the complaint was filed in February 2007.

With only a few exceptions, LB 626 with my proposed amendments will expressly codify certain uses of public resources by a public official or public employee that have been commonly accepted as permissible or prohibited by many attorneys for school districts, counties, municipalities and other government agencies subject to the Nebraska Political Accountability and Disclosure Act.

For example, with my proposed amendments, section 2(1) of LB 626 would provide that “Any use of public resources by a public official or public employee which is incidental or de minimis shall not constitute a violation of section 49-14,101.01 or 49-14,101.02.” In addition, section 2 would exempt from the Nebraska Political Accountability and Disclosure Act and employment contract, a collective-bargaining agreement or a written agreement or policy with a provision regarding the use of personnel, resources or property which is approved by a government body. LB 626 would also amend section 49-14,101.01 by including provisions from section 81-1120.27 to expressly provide that a public official or public employee may use a telephone, cell phone, electronic handheld device or computer under the control of a government body to communicate unexpected schedule changes or essential personal business to a child, teacher, doctor, daycare center, babysitter or family member. This communication must be kept to a minimum and not interfere with the conduct of public business. As provided in my amendments to LB 626, a public official or public employee shall be responsible for payment or reimbursement of charges that directly result from any such communication. This type of communication has been authorized for years for certain state employees subject to section 81-1120.27.

LB 626 would also amend section 49-14,101.02 relating to the use of public resources when qualifying, supporting or opposing ballot questions. With my proposed amendments, a public official or public employee under the direct supervision of a public official is not prohibited from making use of public resources in expressing his or her opinion regarding a ballot question or from communicating that opinion. However, the public official or public employee is not authorized to utilize mass mailings or other mass communications at public expense for the purpose of qualifying, supporting or opposing a ballot question.

Finally, LB 626 with my proposed amendments would also amend section 49-14,101.02 to expressly provide that this section does not prohibit a public official, public employee or government body from making use of public resources in preparing, presenting or disseminating information demonstrating the consequences of the passage or defeat of a ballot question, resolution or ordinance. A public official, public employee or government body is not authorized by this section to utilize mass mailings or other mass communications at public expense for the purpose of qualifying, supporting or opposing a ballot question.

In conclusion, it is important for the Legislature to pass LB 626 this session to provide clear direction to our public officials and public employees as well as the Nebraska Accountability and Disclosure Commission.

Principal Introducer:

_____ **Senator Russ Karpisek**