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Transcriber's Office

Executive Board  
February 02, 2010

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[LB685 LB717 LB770]

The Executive Board of the Legislative Council met at 12:00 p.m. on Tuesday, February 2, 2010, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB717, LB770, and LB685. Senators present: John Wightman, Chairperson; John Nelson, Vice Chairperson; Mark Christensen; Deb Fischer; Mike Flood; Russ Karpisek; Chris Langemeier; Tom White; and Lavon Heidemann. Senators absent: Rich Pahls.

SENATOR WIGHTMAN: Good afternoon and welcome to the public hearing of the Executive Board of the Legislative Council. I would like to introduce to you the members of the Executive Board and the board staff, and then briefly explain the procedure we will be following this afternoon. Well, Senator White, you made a fast...

SENATOR WHITE: I can be here for just...turns out that it doesn't start for awhile.

SENATOR WIGHTMAN: Okay. First to my right is Janice Satra, legal counsel of the board; to her right, Senator John Nelson from Omaha, Vice Chair of the Executive Board; to his right, Senator Russ Karpisek from Wilber; to Senator Karpisek's right, Senator Mike Flood from Norfolk, also Speaker Mike Flood; and to his right, Senator Mark Christensen from Imperial. Senator Lavon Heidemann would normally be seated to his right but he is...will not be here. He might be here later. I am Senator John Wightman and serve as Chair. To my left is Jessica Shelburn, committee clerk; to her left is Senator Chris Langemeier from Schuyler, Nebraska. Senator Rich Pahls from Omaha will not be with us today. Senator Deb Fischer from Valentine is to Senator Langemeier's right; and Senator Tom White, who announced his absence, is now with us, he's from Omaha. We will first hear testimony from the introducer of each of the bills or resolutions, followed by those in favor of it, and then testimony in opposition, and finally we will hear from those who would have neutral testimony. We welcome anyone to testify but ask that you not be repetitive and that you try to keep your testimony to three minutes. Sign-in sheets are available at the testifier table. Please fill the form out completely before you come up, and hand it to the page before you begin your testimony. This will help us provide the transcribers an accurate record. When you testify, please state your name and spell it slowly for the record. If you plan to testify, please come up to the front row to allow for a smooth transition between testifiers. There is also a form available for those of you who might wish to support or oppose a bill but who do not wish to testify. This form will become part of the official record and can also be found at the testifier's table. If you have printed materials, please give them to the page so they can be distributed to the members of the board. We need 15 copies of any material, so if you do not have enough copies the page can make some for you. Finally, I would ask that you turn your cell phone off or put it on silent. The first bill that we have today is LB717 and Senator Avery is here to present that bill. Thank you. Welcome, Senator Avery.

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SENATOR AVERY: Thank you. Thank you, Mr. Chair. My name is Bill Avery. For the record, it is spelled B-i-l-l A-v-e-r-y. I represent District 28 in the Legislature. I am bringing to you today LB717 that seeks to make conflict of interest statements filed by a member of the Legislature more transparent and open to the public. This bill actually came out of a interim study that the Government, Military and Veterans Affairs Committee conducted this past summer and that interim study related to issues under the jurisdiction of the Nebraska Accountability and Disclosure Commission. During the interim, we had several meetings with stakeholders. At one of those meetings, the issue of conflicts of interest statements was discussed and the provisions of this bill were recommended. The stakeholders discussed how conflicts of interest statements are not really available to the public or even to other senators. The current procedure, you all probably know this, for a senator who has a potential conflict is to prepare a written statement describing the matter and delivering a copy of the statement to the A&D Commission and the Speaker of the Legislature. The Speaker of the Legislature then files the statement with the Clerk of the Legislature and it is held as a matter of public record. Problem is that I think a lot of people don't realize that that is how we handle the conflict of interest statements. What LB717 would do would be to require the additional step of the Clerk publishing the statement in the Legislative Journal. The discussions we had this past summer led to the conclusion that if we were to publish these conflict of interest statements in the Journal, it would make them more accessible to the public, to the press, and to other senators. I've had a conversation with Patrick O'Donnell and he thought that the language that says publishing the statements might add to the cost of actually publishing those...the information. We might want to change the language to simply say who has the conflict, what the conflict is, and which bill it affects. And that wouldn't require publishing the entire...I think it's a two-page statement and would cut down on the costs. The current law, which is not being changed by this bill, requires legislators to retain the option to vote when they have a conflict of interest. This might be something we want to look at in the future, whether or not, if you have a conflict, whether or not you ought to also be allowed to vote. I am not proposing that in this bill, however. Members of the executive branch and local political subdivisions are required to prepare statements of conflicts and then they are required to recuse themselves from influencing the actions and decisions on those issues. Since legislators are allowed to vote, even when there is a conflict, seems to me that this is a modest change that would simply make the statements public and provide readily accessible information to us, to the press, and to the public about who has these conflicts. With that, I will end my testimony and entertain any questions you might have. [LB717]

SENATOR WIGHTMAN: Thank you, Senator Avery. Can you tell me about how many conflicts in a normal year or how many statements of conflict are filed? [LB717]

SENATOR AVERY: You know, I can't because I haven't actually gone to the sources where the information is available to find out. I filed one the other day and probably I

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was not required under the law to file, but it involved a bill that my wife's employer was actively lobbying in the lobby and I felt like that, for me, that I should not participate in the debate and nor should I vote, and I did not. That might be a tight reading of the law. But I found that it was interesting that when I filed it that it kind of disappeared. You know, I knew where to go to find out where it was, but if I picked up the Journal and thumbed through the Journal, I wouldn't find it listed anywhere. I think this is not an onerous task. The Clerk of the Legislature has indicated that this can be done, especially if we tweak the language that says "statement" and makes it possible that just a description could be included, that it would not add appreciably to his cost. [LB717]

SENATOR WIGHTMAN: So you would be suggesting, Senator Avery, that this might be a very short summary... [LB717]

SENATOR AVERY: Yeah, a short summary. [LB717]

SENATOR WIGHTMAN: ...of the statement, not nearly all of the statement. [LB717]

SENATOR AVERY: Correct. [LB717]

SENATOR WIGHTMAN: Thank you, Senator Avery. Senator Nelson. [LB717]

SENATOR NELSON: Thank you, Senator Wightman. Senator Avery, I'm not very familiar with this. When do you have to file the statement with the Accountability Commission, just as soon as you're aware of a conflict? [LB717]

SENATOR AVERY: Yes, and in my case it was when the bill was actually being introduced on the floor. I said, wait a minute, I just talked to a lobbyist maybe ten minutes before trying to get me to oppose the bill and I realized the lobbyist actually worked for my wife's employer, so I went back and I immediately called my office. I said, prepare a statement right away. But you know, I...to answer again Senator Wightman's question, my guess is not very many statements are filed and it's because the way the law reads right now you have to have a...to be required to file one there has to be a direct financial benefit or detriment to you or a member of your immediate family. [LB717]

SENATOR NELSON: Could the entry in the Clerk's just simply say that Senator Avery has filed a statement with the Accountability Commission that he may have a conflict of interest and... [LB717]

SENATOR AVERY: On LB... [LB717]

SENATOR NELSON: ...on LB so-and-so? [LB717]

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SENATOR AVERY: Yes, I think that would be fine. [LB717]

SENATOR NELSON: Yeah. Thank you. [LB717]

SENATOR WIGHTMAN: Thank you, Senator Nelson. Senator Christensen, did you... [LB717]

SENATOR AVERY: Then anyone who wishes to know more about it could go to the actual document on file with the Supreme Court. [LB717]

SENATOR NELSON: All right. Yeah. Okay. [LB717]

SENATOR WIGHTMAN: Thank you. Senator White. [LB717]

SENATOR WHITE: Senator Avery, thank you for this. Is it necessary that this be a law? Couldn't the Executive Committee, since this is already public information and since it's within the purview of the Legislature, couldn't we just indicate and direct that they shall be put in the Journal? [LB717]

SENATOR AVERY: I think you can. [LB717]

SENATOR WHITE: Without worrying about whether it's debated or going to the Governor. In other words, we could adopt it and get past..... [LB717]

SENATOR AVERY: Would that then pass down to subsequent Legislatures and... [LB717]

SENATOR WHITE: Unless it was changed by the Executive Committee, I suspect it would. [LB717]

SENATOR AVERY: Either way you do it would be fine with me as long as it gets done. [LB717]

SENATOR WIGHTMAN: Thank you, Senator White. Senator Langemeier. [LB717]

SENATOR LANGEMEIER: Chairman Wightman and members of the committee, to address Senator White's comment is we can't bind future Legislatures, whether we put it in statute or we do it as an Exec Board. [LB717]

SENATOR WHITE: Right. [LB717]

SENATOR LANGEMEIER: We can't bind them, so it can be changed with 25 votes

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there, it can be changed with a vote of the board here. So I... [LB717]

SENATOR AVERY: Well, if it can only...I, not knowing that, but that's an important point. I would prefer then that it be in statute because it's harder to get 25 votes than it is to get 6. [LB717]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. Senator Flood. [LB717]

SENATOR FLOOD: Well, my only comment--thank you, Chairman Wightman--would be the more appropriate way to do it I think would be to change the Rules of the Legislature to make that one of the duties of the Clerk, as an officer of the Legislature, and then the subsequent Rules Committees can take it up as to whether or not they want it there, and it's probably the cleanest way. I don't think the Exec Board can mandate that as clearly as the Rules of the Legislature could. [LB717]

SENATOR WIGHTMAN: Thank you, Senator Flood. [LB717]

SENATOR AVERY: But it's in statute now. [LB717]

SENATOR FLOOD: True. [LB717]

SENATOR WHITE: Well, it's public now but how it's handled, that information, inside of the body, you know, is not necessarily a matter for law. It's just how do you do it. You know, obviously I support transparency but we were doing with other agencies and things, not our internal reporting requirements. [LB717]

SENATOR AVERY: Uh-huh. Well, if we change the rule then that would delay this until the next Legislature, right? [LB717]

SENATOR FLOOD: Not necessarily, Senator. I mean the Rules Committee could meet upon the call of the Chair at any time with any rules proposal. I don't know that we want to place in statute a requirement that the executive branch weighs in on how we operate our Journal or what we put in our Journal. [LB717]

SENATOR AVERY: Good point. [LB717]

SENATOR FLOOD: That is...that is a separation of powers issue unique to the Legislature... [LB717]

SENATOR AVERY: Yeah. [LB717]

SENATOR FLOOD: ...that we should always have control over. [LB717]

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SENATOR AVERY: Well, I'm flexible and quite willing to work with the committee in any way you want to achieve the objective. [LB717]

SENATOR WIGHTMAN: Thank you, Senator Flood. Any other questions? Thank you, Senator Avery. [LB717]

SENATOR AVERY: Thank you. [LB717]

SENATOR WIGHTMAN: Do we have other testifiers in favor of LB717? Welcome. [LB717]

FRANK DALEY: Thank you very much. Senator Wightman and members of the Executive Board, my name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission and I'm here today to express the commission's support of LB717. If it is good public policy that members of the Legislature disclose potential conflicts of interest, it seems to us that it is equally good public policy that the fact that those filings have been made be made available to other members of the Legislature and to the public as well. And that's the sole premise on which we think this is a good bill and I thank you for the opportunity to testify before you today. [LB717]

SENATOR WIGHTMAN: Thank you, Mr. Daley. You've heard the discussion with regard to whether that could be handled by rules change as well as statute. Do you have a thought on that? [LB717]

FRANK DALEY: Well, since I am part of the executive branch, I wouldn't even consider suggesting to you (laughter) how you deal with your internal rules and regs. [LB717]

SENATOR WIGHTMAN: Thank you. Any other questions? Senator Fischer. [LB717]

SENATOR FISCHER: Thank you, Senator Wightman. Mr. Daley, about how many of these statements are filed every year? [LB717]

FRANK DALEY: By members of the Legislature, probably a dozen, give or take; by other public officials and public employees, probably somewhere in the neighborhood of a hundred or so. But as I understand the bill, it would only relate to those filed by members of the Legislature. [LB717]

SENATOR FISCHER: Okay. Thank you. [LB717]

SENATOR WIGHTMAN: Thank you, Senator Fischer. Any other questions? Thank you, Mr. Daley. [LB717]

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FRANK DALEY: Thank you very much. [LB717]

SENATOR WIGHTMAN: Are there other testifiers in support of LB717? (See also Exhibit 1) Is there anyone who wishes to testify in opposition to LB717? Is there anyone that wishes to testify in a neutral capacity? Seeing none, we will close the public hearing on LB717. Thank you. We'll open the public hearing on LB770, which is to be introduced by Senator Flood, Speaker Flood. [LB717]

SENATOR FLOOD: Thank you, Senator Wightman, members of the committee, my name is Mike Flood, F-l-o-o-d. I represent District 19, serve as Speaker of the Legislature. Let's save some money. This bill amends the statutes to change how copies of the session laws and Journals are distributed to members of the Legislature. Currently, the statutes call the Clerk of the Legislature or the State Librarian to distribute two copies of the session laws to each member. This bill changes that so that automatically receiving two copies of the session laws and the Journals, each of the members would receive one copy and a second copy would be available upon request. As the fiscal note points out, this is a modest fiscal savings of 4,500 bucks. I've also prepared an amendment, AM1714, of which I believe I have copies for you and...we did provide one to Senator Wightman. This basically calls for the Auditor of Public Accounts to receive three copies of the Nebraska Statutes. In talking to Auditor Foley, he advised that his office does not need three copies and so this changes the statute so that the Auditor only receives two copies of the statutes, at his request. The other changes in AM1714 is a technical correction--a name change from Public Employees Retirement Board to Nebraska Public Employees Retirement Systems. With that, I hope that this is something you can consider. It's not a lot of money but every penny counts and this is a way to save 4,500 bucks. [LB770]

SENATOR WIGHTMAN: Thank you, Speaker Flood. So you are proposing that the amendment be added as a committee amendment or by an amendment by your or... [LB770]

SENATOR FLOOD: Hopefully by committee amendment, and that was at Auditor Foley's request. [LB770]

SENATOR WIGHTMAN: Thank you. Any questions of any of the committee? Seeing none, thank you. [LB770]

SENATOR FLOOD: Thank you. [LB770]

SENATOR WIGHTMAN: Are there other testifiers in support of LB770? Anyone that wishes to testify in a neutral capacity? Seeing none, we'll close the public hearing on LB770 and we'll open the public hearing on LB685. Senator Nelson, would you assume the Chair? [LB685]

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SENATOR NELSON: Do I move or just stay? I'll just stay here. [LB685]

SENATOR WIGHTMAN: Chairman Nelson or Vice Chairman, whatever, members of the committee,... [LB685]

SENATOR NELSON: Welcome, Senator Wightman. (Laughter) [LB685]

SENATOR WIGHTMAN: Thank you. For the record, my name is John Wightman. I'll spell it, W-i-g-h-t-m-a-n. I'm here today to introduce LB685. Welcome, Senator Heidemann. As you are aware, currently the Chairperson of the Appropriations Committee serves as a nonvoting, ex officio member of the Executive Board. LB685 would amend Section 50-401.01 of the Nebraska Statutes so that the Chairperson would become a voting member of the board. In preparing and in introducing this legislation, proposed legislation, I have reviewed the history and it appears that the Chairperson of the then Committee on Budget, which it was called then, was added in as an ex officio, nonvoting member of the board in 1967. This occurred at the same time that the Legislature was discussing the need to coordinate personnel and activities that serve the Legislature and put them under the jurisdiction of the Executive Board. Particularly, the discussion involved the need for the Legislature to hire permanent fiscal staff. The specific amendment read: The Chairman of the Committee on Budget shall serve as a nonvoting, ex officio member of the Executive Board of the Executive Council of our Legislature, itself, whenever the board is considering the fiscal administration. The explanation in the record of the amendment when it was filed, Senator Mahoney said this would pertain strictly to the matters of the financial situation in our state government. He would sit with the Executive Board, he would be a nonvoting member, but he would be there for advisory capacity and would assist the board since it would be most necessary that he would have the answers to the questions the Executive Board would be discussing no matter what segment of state government we might be discussing. As you're aware, the Executive Board does deal with complex administrative issues that impact many areas of legislative business. Some of these issues have fiscal impact; others do not. To me, I've sat here for the last year and a half...well, hasn't been quite a year and a half, year and a month maybe, and observed that Senator Heidemann has been here for every meeting almost, as many of the rest of us at least. He takes part in the discussion. He appears to be a member almost for all purposes and to me it doesn't make much sense that he sits here throughout this entire session, whether we're sitting as a Referencing Committee, whether we're sitting on almost any matter that we might have, and sits here and doesn't have a vote. I guess I just don't understand why he would not have a vote the same as other members. So it makes sense to me that he would be entitled to vote. And he offers his opinions so sometimes he has some...I think he may sway a vote here and there, so I have brought this bill with the idea that if he's going to sit here all of this time that it would make more sense that he have a vote. I realize that it will place an

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even number of votes, but I don't...there are a lot of committees that have an even number of votes. I don't see that as being particularly persuasive that he should not be a voting member. He certainly has as much to offer as probably all the rest of us do. So with that, I'll take any questions you might have. [LB685]

SENATOR NELSON: Thank you, Senator Wightman. Are there any questions of the senator? Senator Karpisek. [LB685]

SENATOR KARPISEK: Thank you, Senator Nelson. Senator Wightman, would this change the number of votes needed to get a bill out of committee or to pass anything? [LB685]

SENATOR WIGHTMAN: I believe it would. I think it's, to be a majority, it would take six votes, so it would in fact do that. [LB685]

SENATOR KARPISEK: Okay. Thank you. [LB685]

SENATOR NELSON: Are there any other questions? Thank you, Senator Wightman. [LB685]

SENATOR WIGHTMAN: Thank you. [LB685]

SENATOR NELSON: Are there any other testifiers in support of the bill? Is there anyone that wishes to testify in opposition to the bill? Is there anyone that wishes to testify in a neutral capacity? If not, we will close the hearing on LB685, and I will return control to the Chair. [LB685]

SENATOR WIGHTMAN: Thank you, Senator Nelson. I think that concludes the agenda for today, so. [LB685]

JANICE SATRA: Do you have any interest in going in Exec Session? []

SENATOR WIGHTMAN: What? []

JANICE SATRA: Do you have any interest in doing an Exec or do it on Thursday? []

SENATOR WIGHTMAN: I guess we could go into Exec Session if you want to, consider those, or we can wait until another day. I would assume we might not be ready to vote on all of them. But, Speaker Flood. []

SENATOR FLOOD: Not to be self-serving, but I guess I don't know that we're ready on LB717 or LB685 but my little bill on session laws, if I could get that moved out, it would be nice not to have to prioritize it. []

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SENATOR LANGEMEIER: I'll move to go into Exec Session. []

SENATOR FISCHER: Second. []

SENATOR WIGHTMAN: Okay, we have a motion by Senator Langemeier, seconded by Senator Fischer to go into Executive Session. []