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Transcriber's Office

Executive Board  
February 10, 2011

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[LB611 LB617]

The Executive Board of the Legislative Council met at noon on Thursday, February 10, 2011, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB611 and LB617. Senators present: John Wightman, Chairperson; John Nelson, Vice Chairperson; Mark Christensen; Deb Fischer; Mike Flood; Russ Karpisek; Chris Langemeier; Rich Pahls; and Lavon Heidemann. Senators absent: Steve Lathrop.

SENATOR WIGHTMAN: Welcome to the Executive Board's committee hearing. My name is John Wightman. I serve as Chair of the committee. I'm from the 36th Legislative District. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process and is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceeding, I would ask that you abide by the following procedures: Please turn off cell phones or silence them. The order of the testimony will be the introducer, the proponents, opponents, neutral, and then closing. Testifier sheets are there. Hand those in to the clerk or give them to committee page when you come up to testify. Spell your name for the record before you testify. We'd ask that you be concise. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Again, hand it to the page for distribution to the committee and staff, and we will need 13 copies. The pages can help you if you need copies. If you have written testimony but do not have 13 copies, again, call one of the pages. If you do not wish to testify but would like your position to be a part of the record, you can find the form found at the testifiers' table by the testifier sign-in sheet. Now as far as introductions to the...of the committee members, I'll start this time on my far right and, Senator Heidemann, go ahead, I'll have you introduce yourself this time.

SENATOR HEIDEMANN: Senator Lavon Heidemann, District 1, southeast Nebraska.

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial, McCook.

SENATOR FLOOD: Mike Flood from Norfolk, District 19.

SENATOR KARPISEK: Russ Karpisek, District 32 from Wilber.

SENATOR NELSON: John Nelson, Omaha, District 6.

SENATOR WIGHTMAN: To my right is Janice Satra, the committee counsel; and to my left is Jessica Shelburn, the committee clerk.

SENATOR LANGEMEIER: Chris Langemeier, Schuyler.

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SENATOR PAHLS: Rich Pahls, Millard of Omaha, 31.

SENATOR FISCHER: Deb Fischer, District 43.

SENATOR WIGHTMAN: And Senator Lathrop, who would normally occupy the chair to the far left, is not here today and won't be present at the hearing. So with that, we'll take up...start with LB611, Senator Pirsch.

SENATOR PIRSCH: Thank you, Chairman Wightman, members of the Executive Board. This bill, LB611, is about government efficiency and institutionalizing a process to trim wasteful state government spending. As we're all familiar with LR542, that process, it's played an important role this year in helping us meet our budget and I think the process that has been set up with this LR542 has proven to be so useful that we should enshrine it in law and utilize this process every budgetary cycle. And so that's what LB611 simply does, is every other year, at the beginning of the budgetary cycle, it calls for committees in the same way they operated under LR542 to essentially carry out that LR542 process of identifying the waste and fat as they see it or the least efficient usages of currently allocated funds and programs so that we can raise the issue to the body as a whole and look at eliminating programs that really haven't delivered on what they promised at the time that they were created, and many of these programs were created decades and decades and decades ago. And so it's really...I've become a believer in the LR542 process and this is a mechanism that would allow us to keep that, institutionalize it. That's it, simply put. [LB611]

SENATOR WIGHTMAN: Okay. Senator Pirsch, now this year we were looking for 10 percent cuts. Would you look at the latest forecast in determining what cuts we were perhaps seeking from the various committees or...? [LB611]

SENATOR PIRSCH: Uh-huh. And I appreciate that. I don't mean to suggest that the future is going to hold what this year holds, which is we are against the ropes this year and we need to make essentially 10 percent cuts. In the future, we don't...we may not and I don't, you know, everything is cyclical, we'll go through good times and bad times, but just because we are going through good times shouldn't mean that we shouldn't stop, turn around, look at where we've allocated the taxpayers' money, I mean we took money from people who could otherwise spend it in industrious ways and say, what are we getting as a state. We took it because we said we have important governmental needs for the money that you've earned and so I think we have a duty to make sure that money is always spent in efficient ways. And so whether it's good times or bad, there's no sense having governmental spending going on that is inefficient. Now we don't...we have a dire need to even, you know, to cut to the bone. But again, the LR542 process, and that was really well spelled out in this, in the manual I think that Speaker Flood put together, is really it's to identify and bring out for discussion these programs. And so it doesn't mandate. The committees are not coming forward suggesting but it raises...and

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each committee has peculiar knowledge about the agencies and departments within their subject matter, and so you gain a lot by having committees familiar with them bring the issues forward, so... [LB611]

SENATOR WIGHTMAN: Thank you, Senator Pirsch. [LB611]

SENATOR PIRSCH: Sure. [LB611]

SENATOR WIGHTMAN: Senator Fischer. [LB611]

SENATOR FISCHER: Thank you, Chairman Wightman. Thank you, Senator Pirsch, for bringing the bill. Do you know how many bills have been introduced this year due to the LR542 process... [LB611]

SENATOR PIRSCH: Well, you know... [LB611]

SENATOR FISCHER: ...as a direct result of that process? [LB611]

SENATOR PIRSCH: ...I couldn't give you an exact number. When I was going through the Governor's briefing, he indicated that he did look at the LR542 process, the recommendations that came out of certain committees, and incorporated many of those in his budget, feeling that that was, you know, so it does have persuasive effect. Probably not as many as I would hope for but that doesn't mean that those recommendations are gone forever. I think that this, you know, once brought up, perhaps people felt that it raises a red flag and people are digging into those agencies, departments, and spending programs, and they may come to manifest next year. So I think you have to look at...especially if we have an ongoing process and every two years the same agencies, the same departments, the same programs rather are brought up time after time, they're put on notice that, you know, that they're in play. [LB611]

SENATOR FISCHER: I think, you know, with the LR542 process we were looking at 10 percent cuts and I can tell you in my committee, I introduced bills, as I believe we were charged to do under the LR542 process, that I do not support because it calls into question public safety on our railway inspectors that we would need to cut in order to make those 10 percent cuts, with limousine services, to get rid of those inspectors. And both of these are under the Public Service Commission. So I think...I guess I wouldn't support going through a LR542 process just trying to look for 10 percent cuts when you know there are certain bills that you couldn't support anyway. You know, I'm all in favor of looking for efficiencies in government but I think we need to be careful how we go about doing that and not cut services that affect public safety. [LB611]

SENATOR PIRSCH: Well, thank you for those comments and right you are. You know,

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10 percent may have been the number employed this year and that might be a magical number with some. I don't really care what it is or what methodology you employ to look for inefficiency. If you just, I mean, and I don't mean it to be as rigorous as it had to occur this year with several meetings. I'm not sure we can sustain that. Each committee will get to decide. I want to give the maximum flexibility to decide, well, you know, if anybody has any thoughts about that, but I think everybody should at least for one second think of that, as on committees, think of it as a consideration--oh yeah, we do have to submit some sort of a recommendation. And it can be flexible enough to be small if that's what you honestly as a committee feel or if you have 10 percent that's great too. I just think that the process of thinking about programs that were put in place and their efficiency is more important to me than any magical number. And again, you're describing with this limousine and railroad inspection what you consider to be very vital and efficient uses of that. That's not what I'm after here in that, so... [LB611]

SENATOR FISCHER: Okay. Thank you very much. [LB611]

SENATOR PIRSCH: You bet. [LB611]

SENATOR WIGHTMAN: Thank you, Senator Fischer, Senator Pirsch. Senator Pahls next. [LB611]

SENATOR PAHLS: Thank you, Chairman. Senator Pirsch, I look, you have already proposed in front of us to limit the Legislature on the number of days because you want to go odd-numbered years. [LB611]

SENATOR PIRSCH: Yes. [LB611]

SENATOR PAHLS: And then you're coming with a proposal, and I understand what you're...now it seems to me in some degree you're going the other direction. You want to increase. If we'd stay the same way then we'd need more than... [LB611]

SENATOR PIRSCH: I see what you mean. You're wondering about in one hand I'm saying don't meet that second year before the budget. [LB611]

SENATOR PAHLS: Right. [LB611]

SENATOR PIRSCH: Right? Well, I think, and I don't care about the formality of the meeting or what it is or you can meet once. Each committee should be given maximum flexibility. If you have no particular taste for or if the committee is busy with other matters, I, you know, want to just put forward to take care of this business on an informal basis, electronically. I've got no problem with that. If you want to devote two minutes to it or one minute or whatever, that's your choice. If you want to delve into it, the committee decides we're interested in this and wants to meet five, seven times over

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the summer, that's good too. I don't, you know, I just think that, you know, my suggestion with going to one year is that there may not be efficiency with meeting all those days. I think this LR542 slice takes very little time and does give you a bang for your buck. And I think if you don't feel it does then your committee can treat that, you know, however they want to with 30 seconds of regard or 30 days of regard. [LB611]

SENATOR PAHLS: Okay. [LB611]

SENATOR WIGHTMAN: Thank you, Senator Pahls. Senator Flood. [LB611]

SENATOR FLOOD: Senator Pirsch, I think what I hear you saying and the part that I value about your bill the most is there's benefit to the standing committees investigating the state spending within their scope of jurisdiction. Is that one of the overriding principles of your bill? [LB611]

SENATOR PIRSCH: It is. We've set up a Legislative Performance Audit Committee, a freestanding committee, composed of...and you're never going to be able to have on that committee members from, you know, say two, even two members from one committee. And so who knows better the subject matter of their committees than the committee members, right? So I almost think we're getting more bang for the buck having the committees look over their own stuff rather than set this free-floating, independent Legislative Performance Audit that does...and I'm not by any means knocking that. They do a lot of good work. But their purview can only be so small and it's all...a lot of it would, I would assume, be foreign. I'm on Banking, Commerce and Insurance and Revenue. If you're looking at an Education Department, I'm starting from ground zero if I'm on that committee. This seems to utilize the most informed parts of the Legislature to deal with those programs and so, to me, it makes the most efficient sense. Committees are best situated and have the preexisting knowledge on that. [LB611]

SENATOR FLOOD: And because of the LR542 process, as a member of the Legislature, do you feel more prepared to address the budget issues because of the inclusion of committees on this journey? [LB611]

SENATOR PIRSCH: I do. Well, it seems to me that we as a Legislature are always looking forward, where our short...you know, we figure out where shortcomings are and then just try to plug that with overlying bills, positive bills, going forward. But the LR542 process to me was great because for the first time, I mean we can do it on an individual basis but it wasn't as effective I think through the process where we stopped, turned around, and said...and looked at what we've done in the past and what other Legislatures have done in the past and said if we...you know, is there...there's got to be...and that's, you know, it's not because they were bad programs but the most efficient, effective corporations in the world do some programs and projects. I mean

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that's just a fact of life that some things are not going to turn out for you as well as other things do. And we always have to, I think, trim the hedges and utilize the dollar, the taxpayers' scarce resources in the most effective manner. So that's what this is about. [LB611]

SENATOR FLOOD: Thank you. Thank you. [LB611]

SENATOR WIGHTMAN: Thank you, Senator Flood. Senator Nelson. [LB611]

SENATOR NELSON: Thank you, Mr. Chairman. Senator, it seems to me like maybe LB611 changes the direction a little bit more toward efficiencies than cutting by 5 percent or 10 percent. [LB611]

SENATOR PIRSCH: Absolutely. That's my goal. And let me say if there's anything about the language that gives you a hang-up, but you're exactly right. I don't mean this to be cuts, I don't, I mean mandatory cuts. I just want this to be about looking backwards and looking for efficiency as you, as the committees see it, and doing whatever you think is proper. [LB611]

SENATOR NELSON: Well, then my question is aren't we going to have some duplication if we keep the Performance Audit Committee and also have a committee under LB611? Aren't they...would you do away with the Performance Audit Committee? [LB611]

SENATOR PIRSCH: Well, again, I don't want to suggest a formal...I don't want to add another layer of government, another committee. I don't want to add another commission. I just want to use what we have, the committees, which are going to exist whether this goes through or not, and just say can you be...essentially this is can you be mindful, can you institutionalize and however, to whatever extent you want to, look backwards and see if you find an efficiency that you can bring to the light of the floor, make those recommendations. Perhaps people outside of the committee will pick up on them and introduce them. Perhaps the committee, once you're on that, will themselves, the committee, will recommend changes or elimination of the programs. But I don't...I'm not suggesting formation of any new entities at all as LR542 really didn't. And you can take that. If your committee is not a believer and want to do, you know, very minimal, God bless you. And if you want to run with it, you can do that too. [LB611]

SENATOR NELSON: Well, but you're... [LB611]

SENATOR PIRSCH: And with respect to your Performance, Legislative Performance, that's up to you. I mean what I would suggest is probably before you get rid of it get a few years under the belt. This is free. There's no cost, I wouldn't anticipate, for us doing the LR542 process. See how it works out for a few years. If it really seems to be

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duplicating or better than Legislative Performance Audit, you know, I'd leave it up to you to decide. [LB611]

SENATOR NELSON: Well, you're talking about individual committees taking a look at things but yet you're providing for an ad hoc committee here made up of the Chairpersons, so that's another entity, isn't it? [LB611]

SENATOR PIRSCH: Well, you know, to the extent...I don't think anything was created on a permanent basis or there was any cost involved in the LR542 process. We've already seen this. We went through this last year. I don't think any cost was or any entity was created, so to that same extent would nothing be created new in the future. [LB611]

SENATOR NELSON: Thank you. [LB611]

SENATOR PIRSCH: Yeah. [LB611]

SENATOR WIGHTMAN: I guess I would ask, now we met as the Chair of these committees as an ad hoc committee a number of times during the summer, many of them by telephonic conferences. [LB611]

SENATOR PIRSCH: Yeah. [LB611]

SENATOR WIGHTMAN: Do you see it as being...the ad hoc committee under LB611 being as broad in scope as LR542 has been during the past summer? [LB611]

SENATOR PIRSCH: I think it has to be more flexible and more broader in scope. It's going to depend on the times, right? You know, we go through cycles. It's a down cycle. LR542 is a vital component during these years. I think it's going to be...I think it is vital, I think it's healthy, I think the committees will recognize that as time goes on. But I don't mean to suggest to you, because I think it would mean peril for this idea, if I suggested you must make these phone calls, you must have these meetings, you must spend this amount of time. I think that eventually the good of this process will shine through and people will gravitate towards that voluntarily rather than I don't need to set any requirement for meetings or times or anything of that sort. I think it should be flexible. [LB611]

SENATOR WIGHTMAN: Thank you, Senator Pirsch. Senator Pahls. [LB611]

SENATOR PAHLS: I was going to say one thing, just to make a comment. One thing I did notice about it, when the groups that did come from in this committee to tell us their story, a lot of them said they had never been asked,... [LB611]

SENATOR WIGHTMAN: True. [LB611]

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SENATOR PAHLS: ...you know, to come in front of us. So just a comment. Thank you. [LB611]

SENATOR WIGHTMAN: Anyone else have any questions? Thank you, Senator Pirsch. [LB611]

SENATOR PIRSCH: Thank you. [LB611]

SENATOR WIGHTMAN: Now are there other proponents that would testify? [LB611]

SENATOR PIRSCH: And if you don't mind, I'm going to waive closing, Mr. Chairman. [LB611]

SENATOR WIGHTMAN: Certainly. [LB611]

SENATOR PIRSCH: Thank you. [LB611]

SENATOR WIGHTMAN: Okay. Are there any other proponents on LB611? Are there any opponents wanting to testify on LB611? Is there anyone in a neutral capacity? If not, we will close the hearing on LB611 and move on to LB617. LB617 would create the Administrative Rules Review Committee of the Legislature. Senator Mello. [LB611]

SENATOR MELLO: (Exhibit 1) Good afternoon, Chairman Wightman, members of the Executive Board. My name is Senator Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District which includes south Omaha and Bellevue. LB617 is based on a similar bill that was introduced by Senator Pat Bourne in 2001 and it's designed to provide additional legislative oversight to our current rule-making process. Currently, 41 states have some form of legislative oversight or involvement in the rule-making process. In an era or term limits, I believe it is increasingly important that the authority delegated by the legislative branch to executive branch agencies is being exercised in accordance with the Legislature's intent. Our current rules and regulations process is conducted entirely within the executive branch. An agency looking to promulgate a new rule or amend an existing rule gives public notice of the proposed changes, holds a public hearing, and following the hearing the rule is forwarded to the Attorney General for a review of the rule's statutory authority and constitutionality. Once approved by the Attorney General, the rule is forwarded to the Governor for a signature. LB617 would insert an additional step in the rule-making process in the form of a new legislative committee, the Administrative Rules Review Committee. This committee would consist of the Chairpersons of the Legislature's standing committees and would be staffed by a combination of standing committees legislative counsels and the Clerk of the Legislature. The Clerk of the Legislature would also serve as an ex officio member of the committee. Under LB617, the Attorney General would still review proposed rules

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and regulations for constitutionality but the review for statutory authority and statutory intent would fall to the Administrative Rules Review Committee. Agencies would submit a copy of all proposed rules and regulations to the committee and the committee would have 30 days from the date of receipt to notify the agency of their approval or disapproval of the proposed changes. If no action was taken by the committee, the proposed rules would be deemed accepted. The bill also contains a procedure for expediting the review process, allowing the Governor to waive public notice provision and requiring the committee to approve or disapprove the changes within 10 days instead of 30. In order to ensure that the review of rules and regulations does not interfere with the other business of the Legislature, LB617 provides that agencies may only adopt or amend rules and regulations between the adjournment sine die of the Legislature and November 30 of the same calendar year. However, this requirement does not preclude an agency from beginning to work on proposed rule or regulations outside of this window. After introducing the bill, a number of state agencies have contacted my office with concerns about the strict time line, particularly that it applies to regulations that may be time sensitive. The committee should have received a copy of AM298, which would provide for the waiver of the time restrictions by the Administrative Rules Review Committee if the agency can show good cause. I believe the amendment should alleviate agency concerns about the bill's time line requirements, as if an agency cannot show good cause to adopt rules and regulations outside of the strict window there's no reason the agency would be unable to wait until the Legislature adjourns before adopting the rule or regulation. Some on the committee may be aware that from 1978 to 1986 the Legislature had a committee known as the Administrative Rules and Regulations Review Committee. This committee was empowered to field complaints on rules and regulations, suspend any rule or regulation thought to exceed the statutory authority or intent of the Legislature, and introduce legislation invalidating rules and regulations. While these powers, which essentially amount to a legislative veto of rules and regulations, present a significant constitutional separation of powers issue, LB617 merely provides for a review of rules and regulations. Even if the committee felt a particular rule or regulation violated legislative intent, LB617 merely provides for the Legislature to review and register their disapproval with the agency prior to the final adoption of the rule or regulation. As Senator Fischer no doubt recalls, the Legislature passed legislation in 2005 that instituted a process for individuals who feel aggrieved by a rule or regulation to file a complaint with the Executive Board. I believe this legislation was a good first step, but for the most part the process has not been utilized. But just because the complaint process has been underutilized it does not mean that the legislative oversight is unneeded in the rules and regulations process. In just the past few years there's been a number of instances where executive branch agencies have either acted contrary to the Legislature's intent or taken action for which they did not have statutory authority. During the 2009 Legislative Session, there were a handful of bills that were introduced in the Legislature in response to revenue rulings and interpretations by the Nebraska Department of Revenue that diverged from the legislative intent. For example, LB233 was introduced in reaction to the department's

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application of the sales and use tax to purchases of mineral oil because of a new interpretation that the oil was not, quote, essential component of processing grain, while LB234 was introduced in reaction to the department's limitation of an energy exemption for grain drying equipment to only the months of October through December. Both of these decisions were contrary to the legislative intent when those tax exemptions originally passed and the lack of legislative oversight essentially allowed the Department of Revenue to increase taxes without the Legislature first passing a bill. Perhaps a more telling story or perhaps a more telling example of why we need some form of legislative oversight on the rules and regulations process is the recent troubles with the reform of our child welfare system by the Department of Health and Human Services. As many of our offices were flooded with calls for help and pleas to slow down, we as the Legislature were essentially powerless to act because the actions were being taken between legislative sessions. While the review of rules and regulations envisioned by LB617 would not have been sufficient to disrupt the privatization of child welfare this past interim, the bill does provide a reasonable level of oversight into actions taken by state agencies over the interim. With that, I thank you for your time and would be happy to answer any questions you may have. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Mello. Senator Fischer. [LB617]

SENATOR FISCHER: Thank you, Chairman Wightman. Thank you, Senator Mello. You referenced my priority bill from 2005, LB373, but I would note I think in Section 13 of your proposed bill, LB617, you repeal my priority bill. Is that correct? (Laughter) [LB617]

SENATOR MELLO: To answer your question, yes, it does, Senator Fischer. [LB617]

SENATOR FISCHER: But you love it, don't you? [LB617]

SENATOR MELLO: Well, actually it was, as I...it was a good first step. It really was. I think the legislative history behind this issue proved that Senator Bourne, who worked on this issue for a number of years, and the bill you did prioritize was a compromised version of trying to get some movement in regards to involving the Legislature again in that process, and while it serves right now as the only vehicle, frankly, that someone could register disconcert or feel that they were aggrieved by the rules and regulations process, LB617 I believe only strengthens your previous bill that you prioritized. [LB617]

SENATOR FISCHER: But we really haven't seen that bill used. We haven't seen the process being engaged by the public, have we? [LB617]

SENATOR MELLO: I would say that it's been underutilized significantly in the sense of the rules and regulations process. [LB617]

SENATOR FISCHER: And I think you also pointed out that when we notice that there

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has been a problem perhaps in the rule-making process, bills are introduced that do address that currently. Is that correct? [LB617]

SENATOR MELLO: The examples I used regarding the Department of Revenue, those were two examples that we know for a fact that bills were introduced to rectify what I think many of us in the Legislature saw as an agency overstepping their statutory boundary. [LB617]

SENATOR FISCHER: Well, yeah, I was a little disappointed that you repealed that but appreciate your efforts. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Fischer. Senator Langemeier. [LB617]

SENATOR LANGEMEIER: Senator Mello, my question is, is there a time limit on bills that are passed that rules are made, that it's going to be out...let's say we pass it in 2011 and they create the rules in '11 or '12, then future rules, do we have to do that? Let me give you an example. Game and Parks changes their rules on a regular basis, whether it's their decision this summer to allow crossbows to be used for hunting of deer, which is a rule change, and I can tell you right now any time that Game and Parks makes a rule change my phone rings the way it is. Would we over...would we scrutinize every one of those rule changes forever? [LB617]

SENATOR MELLO: Well, once again, it's not a matter of...I wouldn't...I guess I wouldn't choose the language of that you would have to scrutinize every rule. The way the bill is laid out is that every rule and regulation would come to this committee, which it's made up of all the standing committee Chairs. Ultimately, it's left up to...and part of the legislation states that the committee elects a Chair and a Vice Chair. It's ultimately left up to the committee whether or not they even want to meet in the sense that if...and just hear in previous testimony in the sense of the bill you heard before in regard to the number of meetings that might have to be...that might have to take place, this just takes what the Legislature delegated to the Attorney General in regards to reviewing the statutory authority and intent of the Legislature, takes that back and however this committee chooses to go about that, whether or not they choose to meet or choose not to meet, is left up generally to the committee to decide. But if you choose not to meet, within 30 days the rule automatically goes back to the Governor essentially or goes to the Attorney General and then to the Governor for his signature. [LB617]

SENATOR LANGEMEIER: Okay. Thank you. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. Senator Nelson. [LB617]

SENATOR NELSON: Thank you, Mr. President. Thank you, Senator Mello. Currently, the AG's Office has the responsibility of determining the constitutionality and the

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statutory authority and the statutory intent. Is that right? [LB617]

SENATOR MELLO: Uh-huh. Yes. [LB617]

SENATOR NELSON: Why would we want to take away the statutory authority, their determination, and handle that ourself? [LB617]

SENATOR MELLO: Well, Senator Nelson, I believe it's a philosophical belief that I stated in my opening that in an era of term limits I believe that this is a legislative power, I should state, this is a legislative power that we delegate to the Attorney General. This bill essentially takes that legislative power that we delegate back to the Legislature and the reason why is because I'm convinced in an era of term limits the Legislature needs to provide and exercise more oversight over the powers that we have. And the rules and regulations process is a process that we have ultimately the authority to oversee but we just choose to delegate it. [LB617]

SENATOR NELSON: Well, I agree, but how do we, in comparison with the Attorney General's Office, as a group have the knowledge and expertise to determine statutory authority? That seems to me that ought to remain with the Attorney General area... [LB617]

SENATOR MELLO: Well, Senator Nelson... [LB617]

SENATOR NELSON: ...along with the constitutionality. [LB617]

SENATOR MELLO: I would say, Senator Nelson, that I value all 48 members' perspectives regardless if they're an attorney or not in regards to determining whether or not when the Legislature passes a piece of legislation, when that legislation gets turned into rules and regulations if it's following the intent. And the way the committee is also set up is that we take the committee counsels from the standing committees to help us interpret the rule and regulations as it relates to the legislation that we passed. So ultimately, it's a matter of whether or not we trust ourselves as a Legislature as well as trusting our committee counsels to assist us in whether or not the rules and regulations follow the intent of the legislative bills that we pass. [LB617]

SENATOR NELSON: But you're talking about intent. I'm talking about authority, statutory authority. [LB617]

SENATOR MELLO: Statutory authority. I would equate the same thing. I equate them as in the same boat in the sense that we have committee counsels who are attorneys who can help and believe assist us. We have senators who are attorneys but I also believe we have senators who are not attorneys who can still interpret the law and be able to read through the legislative bills that we pass to determine whether or not what

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we mean is actually being carried out through rules and regulations. [LB617]

SENATOR NELSON: Well, I think we're adding to our workload by doing that. I mean the AG is there to do that for us and I don't think generally there would be any question about statutory authority. But anyway, thank you, Mr. President. [LB617]

SENATOR WIGHTMAN: One question and then I'll go to Senator Pahls. Thank you, Senator Nelson. I'm not sure about the scope of this in the first year. Would this committee have the authority to look at all rules and regulations that have ever been published since we're now giving a new time frame? [LB617]

SENATOR MELLO: The process, Senator Wightman, is when rules and regulations are promulgated or if they're being revised essentially. So it's the sense that rules, there's a process that we currently have set up through our delegation of this power to the executive branch where they follow, when they revise rules and regulations or need to promulgate new rules and regulations, they follow a process. We essentially are just inserted in that process when new rules and regulations or old ones are being reviewed so it's not a matter of the committee...I would say if the committee chooses to meet, I remind you, that they will look through all old rules and regulation. It's only when new rules and regulations or existing ones that are being revised are sent through that process. And instead of sending it first to the Attorney General, those rules and regulations come to this legislative committee first. [LB617]

SENATOR WIGHTMAN: I know that with regard to LB611, Senator Pirsch...or Mello, Senator Mello, that we talk about the Performance Audit Committee and it seems to me maybe the Performance Audit Committee is maybe more in line with LB617 in that the Performance Audit Committee could look at any of these on a basis if they wanted to at any rate. Could you comment on that? [LB617]

SENATOR MELLO: I believe the Legislative Performance Audit Committee has a different scope than where the LB617 Administrative Rules and Regulations Review Committee would ultimately take in regards to its scope. This solely deals with rules and regulations where the Legislative Performance Audit Committee has a little bit broader authority to review existing programs that are already in statute in regards to whether or not they're meeting their statutory obligation as well as looking for performance issues underlying there, whether it's financial or operations or efficiency, as well as some changes that have now incorporated the State Attorney...our State Auditor, I'm sorry, into that process as well. So one could say there may be concern that there could be potential overlap but because I believe this committee is so...the LB617 committee essentially is so narrow in that it's only looking at rules and regulations, compared to a host of other issues that the Legislative Performance Audit Committee looks at, I don't see that there would be a wide overlap. [LB617]

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SENATOR WIGHTMAN: Thank you, Senator Mello. Senator Pahls. [LB617]

SENATOR PAHLS: Thank you, Senator. Do you feel right now that the three branches of government, that it's out of balance and this will bring it back in? Is that one of the rationales behind this? [LB617]

SENATOR MELLO: I absolutely believe the three levels of government or three branches of government are out of balance, and I think part of that reason why, Senator Pahls, is based on term limits. Term limits, I think as we have seen being a product myself of the term limits era, we have lost a lot of knowledge, a lot of history, and with legislation that we pass, sometimes for that legislation to see the full effect, none of us will be here to see that. And I think this provides once again the Legislature, as a separate, coequal branch of government, to take back some of its authority that it has delegated just for the review process, and I think that's very critical, is that the way it used to be done is that the Legislature essentially could veto rules and regulations where this essentially is providing this committee the ability to review all the rules and regulations and provide feedback to the executive branch of issuing approval or disapproval of their interpretation of our bills. [LB617]

SENATOR PAHLS: Thank you. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Pahls. Senator Flood. [LB617]

SENATOR FLOOD: Senator Mello, you enjoy the benefit of year-round staff. Is that true? [LB617]

SENATOR MELLO: Yes. [LB617]

SENATOR FLOOD: And have you been concerned with the rule-making process during your time as a state senator? [LB617]

SENATOR MELLO: Yes. [LB617]

SENATOR FLOOD: How many public hearings have you attended? [LB617]

SENATOR MELLO: I've actually not attended one. [LB617]

SENATOR FLOOD: How many public hearings have your staff attended? [LB617]

SENATOR MELLO: I'd have to talk with my staff. I've had them look into public hearings, whether or not... [LB617]

SENATOR FLOOD: Are you aware of them actually attending any public hearings?

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[LB617]

SENATOR MELLO: I'm not aware that they've attended them. I believe they watched them on the closed-circuit television before. [LB617]

SENATOR FLOOD: So there is a process in place that provides due process, not just to a member of the Legislature but to any citizen in the state, one that you have not availed yourself of given your strong concerns regarding the rules and regulation process. How can we establish this mechanism if those that are concerned won't go to the public hearing that are currently held for each rule and regulation? [LB617]

SENATOR MELLO: Well, once again, I think, Senator Flood, I don't believe that...I don't believe to be concerned with the rule and regulation you have to go to the public hearing to first hear about it to show concern. I believe that the public hearing is there to provide feedback for the public and the sense that I can choose to watch that public hearing if I'm in the Capitol, watch it on my closed-circuit television in my office or my staff can choose to do that; that we can take those concerns as well and issue those concerns to the agency after the fact without having to attend a public hearing. So I think the premise of...I think the premise, unfortunately, that you have to attend public hearings to have concern I think is fatally flawed. I think what this does is... [LB617]

SENATOR FLOOD: Well, I think you've explained your position very well. I'm not going to proceed anymore with any more questions, but thank you. I think I know where you're at. And I can appreciate your interest in making the Legislature more powerful. I just am...just trying to reconcile whether we're balancing it well enough now. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Flood. Anybody, any other member have any questions? If not, thank you, Senator Pirsch. (Laughter) How did I call you Pirsch twice? [LB617]

SENATOR MELLO: I will accept that as an apology, Senator Wightman. Thank you. (Laughter) [LB617]

SENATOR WIGHTMAN: Same color of hair. I apologize. Are there other testifiers as proponents? [LB617]

RICH LOMBARDI: Members of the committee, my name is Rich Lombardi and I'm the...yeah. [LB617]

SENATOR WIGHTMAN: I'll try to get that down. (Laugh) [LB617]

RICH LOMBARDI: (Exhibits 2, 3, and 4) Yeah. This is a tough group here. Okay. I'm appearing today on behalf of the Nebraska Children's Healthcare Alliance, which is

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comprised of Boys Town National Research Hospital, Building Bright Futures, Nebraska Medical Association, Children's Hospital, Alegant Health, Creighton University. And the Nebraska Association of Behavioral Health Organizations we also represent and I have testimony from them. In the last several months there's been an incredible amount of activity occurring, as you know, within the Department of Health and Human Services, an incredible volume of rule and regulation, and I think that's what's prompted the interest of these two organizations that represent folks within your district. And I think that's...I think that we're going to see, as we go down the road with healthcare reform, that we're only going to see a number of that rule and regulation processing increase. I'm also going to pass out to you...it's always interesting. It's wonderful to have a young man like Senator Mello come in with legislation. It's kind of back to the future for a number of folks in this room in that from 1953 until well into the 1980s you had a revisor of regulations on staff that was part of the legislative process and reviewing the promulgation of rules and regulations by the various departments. And it was a significant part of the legislative oversight process that the legislation embarked upon. And I'm not so sure it's not a bad idea to bring back that idea, given the fact that really rules and regulations are where pretty much the rubber hits the road from your statutes. And the Speaker's comments, many of my clients participate in the Administrative Procedures Act, in the rule and regulation hearings, and I think that suggesting that it's a hearing is...it's not really a hearing. I mean my folks go into a basement primarily in the State Office Building and talk into a tape recorder. It's not like there's a give and take that goes on in that particular process. And I would say probably 99 percent of the rules and regulations are consistent with regard to the statutes that you pass. But I think that the Legislature has always been the place where the citizen can go to get a fair hearing. And I think that just the nature of the complexity of legislation that you're dealing with, that more and more you're going to...there's going to be a larger promulgation of rules and regulations. And I think the timing problems that have been brought up by committee members could probably be alleviated with having the notification come to the Legislature when the rule and reg process starts. When the department initiates the administrative rule and regulation process, 30 days of public notice are given, and it would seem fair to me at that time to at least inform the Legislature that this rule and reg is going through the process. And Game and Parks is probably one of the areas, Senators, where they move the quickest on rules and regs than any other department that I've seen, and I appreciate their timing challenges and I think that that might alleviate it because there is a 30-day time table in which the notification goes out and the public hearing has to occur and then the AG has to review it and then the Governor signs off on it. But it seems to me that that is...that this might be a very helpful tool and I would distinguish between your Performance Audit Committee from the standpoint that you really...your Performance Audit Committee does a great job. I, of course, would personally recommend that you beef up staffing there because I think that there's, as part of the legislative oversight, is the actual performance of the agencies in performing what their mission is within there. This is taking a look at rules and regulations that are intended to actually govern what your statutes are directing, so this is not a very new

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and novel idea. And as Senator Mello had pointed out, 41 other states have some type of capability. So I just want to leave that...this testimony with you, and that concludes my remarks. [LB617]

SENATOR WIGHTMAN: Thank you, Mr. Lombardi. Any questions? [LB617]

RICH LOMBARDI: Let me just add one thing because the only reason I have this is because of the Law Library, so (laughter) I didn't want to miss an opportunity to put in a push for the Law Library. [LB617]

SENATOR WIGHTMAN: Okay. [LB617]

SENATOR FLOOD: And it's a good chance that's going away too. [LB617]

RICH LOMBARDI: I understand that. I think that would be a shame. [LB617]

SENATOR WIGHTMAN: Any questions? [LB617]

RICH LOMBARDI: Thank you very much. [LB617]

SENATOR WIGHTMAN: Thank you. Are there other testifiers as proponents? [LB617]

JAMES GODDARD: (Exhibit 5) Good afternoon, Mr. Chairman, committee members. My name is James Goddard. I'm a staff attorney at the Nebraska Appleseed Center for Law in the Public Interest. Nebraska Appleseed is a nonprofit, nonpartisan legal advocacy organization that works for equal justice and full opportunity for all Nebraskans. I'm here today to support LB617. I want to start out saying it's clear that the Legislature understands the need for vigorous debate and scrutiny when a bill is proposed and before it becomes law. This is part of our American democratic system and in Nebraska it's exemplified by the process where each bill has a hearing, just as we're having a hearing today. But laws go into effect that don't truly bear legislative scrutiny. Indeed, administrative agencies promulgate rules of law almost every day. While it's very important that agencies have the ability to promulgate rules, there are times where rules result in serious policy decisions that may not have been contemplated by the authorizing legislation. This is significant because these rules carry the force of law. They affect Nebraska's corporations and Nebraska's people in countless ways. As a result, it seems sensible that this body have a chance to meaningfully review these regulations, both to ensure the intent of the legislation is carried out and to ensure the scope of the regulations are consistent with the authority given to the administrative agency. LB617 would amend the Administrative Procedure Act to create the Administrative Rules Review Committee. This committee would do a number of different things but it would be provided with materials giving details about the rule and about how the public views it, and I think that that's an interesting

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opportunity for the Legislature to actually get those public comments and see what the public is saying about this rule. The committee could also approve or disapprove of it. That's something that is currently not allowed. And even if a senator went to a public hearing and testified for or against a rule, they still don't have a formal process to approve or disapprove of it. So LB617 is consistent with the careful but vibrant deliberative process that is characteristic of Nebraska's legislative system. The current process of public notice and comment are important and they will remain key as a rule is made and it goes along the process, but at present that rule-making process rarely leads to changes, rarely leads to improvements in the proposed rule. Having the Legislature more involved, as the body from which the agency derives its authority in the first place, would have an important impact on the process and a positive effect on the creation and oversight of rules of law that affect Nebraskans. For all these reasons, we respectfully urge this committee to advance LB617. And I do want to say, Senators, I apologize that I brought an insufficient number of copies of my testimony. I have 10, not 13, and I'm happy to provide additional copies later. [LB617]

SENATOR WIGHTMAN: Thank you. Are there any questions from any of the members of committee? If not, thank you for your testimony. [LB617]

JAMES GODDARD: Thank you. [LB617]

SENATOR WIGHTMAN: Are there any other proponents for LB617? We do...oh, this is a letter from... [LB617]

JESSICA SHELURN: No, this is not for this. This is for opposition. [LB617]

SENATOR WIGHTMAN: Are there any other proponents here that would...? Are there any opponents? We do have some letters in opposition to LB617. [LB617]

COLLEEN BYELICK: Chairperson Wightman, members of the Executive Board, my name is Colleen Byelick. I'm the general counsel with the Secretary of State's Office. Secretary Gale did want to be on record as opposing this piece of legislation. I did want to kind of talk a little bit about our office and our role with the regulation process. Currently, all new rule-making hearings must be submitted to our office 30 days prior to the hearing, as well as to the Executive Board of the Legislature, and we are statutorily required to maintain a public docket of all the proceedings and the regulation process. We're also required to maintain the Administrative Code. We're required to distribute the code, certify the code, and file final regulations. The process as it exists provides for public participation but then also provides for review by the Attorney General and the Governor for legal and other policy considerations. We're just concerned that LB617 undermines some of those principles. Basically, our rule-making docket that we maintain, we have maintained on-line since 2007 in its current form and what it does is it tracks regulation throughout the process in conjunction with the Attorney General's

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Office and the Governor's Office. It also provides the text of the regulation. It provides agency contact information. It provides notice about the hearing. It also sends out e-mail comments, similar to the Bill Tracker system, and it also allows for on-line comments to be made to the particular agency regarding regulations. So we feel like we've really done a lot to promote public participation and allow for public participation in the rule-making process, including anyone from the legislative branch. And in order for us to continue with this process, we would have to add this Legislative Review Committee to that docket and, in talking to our vendor about that, we were quoted a significant cost to do that, and that is noted in the fiscal statement that you have. In addition, we're concerned about some of the uncertainty with regard to this committee. Right now, as the bill is drafted that the regulation is deemed approved if no review is had within the 30-day window. Our concern is since the shift from the AG's Office to this legislative rule-making committee shifts the statutory authority regulation, that in theory then there could be rules where no statutory authority review is had, because if the committee doesn't get around to reviewing it, it's just deemed approved within that 30 days. There's also no indication as to when this review is supposed to happen within the rule-making process. Currently, it's a pretty set process where the reg goes to the Attorney General, goes to the Governor, and then it's filed in our office. And so we're unsure where this process fits within that. Also, currently right now the customary practice is for all those agencies to actually stamp approval or file on the face of the regulations so anyone looking at the official regulation knows that it's been through the process, knows that it's an official regulation, and knows it's been approved. This takes away that uncertainty because there's no mandatory rejection or approval. And so looking on the face of the regulation, our office would have no idea whether the rule went through this process or not and neither would anybody else looking at the rule, for that matter. We weren't sure if one of the purposes was to speed up the rule-making process, but, based upon all the different reasons that rules are revised and amended and proposed, we're really concerned about the time frame. And it sounds like there's an amendment that...possibly a response to some of those concerns, but rules are...most rules are not new rules. Most rules are going through are amendments and they're done for a variety of different reasons. It could be based on federal regulations or federal law changes. It could be based on changes in a particular industry. It could be based upon seasonal changes. So it's hard to take this kind of one-size-fits-all approach with the time frame and apply it to every agency. And then the rule process as it is now is a very...can be a very lengthy and cumbersome process and so we're just concerned about adding another 30-day review that's not mandatory. So those were the only comments I had and I can try and answer any questions you have about the process. [LB617]

SENATOR WIGHTMAN: Would you spell your name for the record? [LB617]

COLLEEN BYELICK: Sure. It's C-o-l-l-e-e-n, and the last name is B-y-e-l-i-c-k. [LB617]

SENATOR WIGHTMAN: Thank you. Senator Flood. [LB617]

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SENATOR FLOOD: How long have you worked in the Secretary of State's Office?  
[LB617]

COLLEEN BYELICK: Since 2006. [LB617]

SENATOR FLOOD: And in what position do you work? [LB617]

COLLEEN BYELICK: I'm the general counsel. [LB617]

SENATOR FLOOD: And what duties do you have? [LB617]

COLLEEN BYELICK: My duties vary but obviously any legal issues within the office and for the first probably four and a half years that I worked for the office one of the areas of the office that I had some direct supervision over was our rules and regulations area.  
[LB617]

SENATOR FLOOD: Do you still have direct supervision over that process? [LB617]

COLLEEN BYELICK: No, now I don't, but I still have input in that process. [LB617]

SENATOR FLOOD: Now what...you're concerned about the time frame Senator Mello's bill imposes because of the addition of the legislative review. What role does the Secretary of State's Office take in managing the docket so that proposed rules move through the system? [LB617]

COLLEEN BYELICK: There's no onus on us to move a rule through the system but I think, because we've set up the system whereby those agencies that approve it actually go in and log in and put their approvals and put their reviews, it provides a lot of public oversight to the process because the public can see how long a particular agency has had a rule or regulation. So there's no onus on us to move something through but by providing all this... [LB617]

SENATOR FLOOD: Should we put an onus on you to do that,... [LB617]

COLLEEN BYELICK: Oh. (Laugh) [LB617]

SENATOR FLOOD: ...because, I'll be quite frank, I have...my concern with the rule-making process as both a Performance Audit Committee member and I, you know, I passed a bill on allowing first responders to transport patients in an ambulance. You know, there's a pending rule out there as it relates to childcare. It seems like these things languish in the system. You know, I'm not so...I mean the oversight is part of it, but I think the biggest issue for me, as a member of the Legislature, is I want to know

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that once it goes in the system there's an expectation that it's going to be reviewed, there's going to be a hearing, the agency will react to the hearing and take the hearing seriously, that it goes to the Attorney General, it goes to the Governor, and then it's filed. [LB617]

COLLEEN BYELICK: Uh-huh. [LB617]

SENATOR FLOOD: And I don't see that happen in every situation and I think it needs to be addressed. So if we put a time line on there to make sure things get done, you know, the minute you file this is how long you have to get it done, can we give the Secretary of State authority to manage that? Should we? [LB617]

COLLEEN BYELICK: Well, it's not something honestly that I've thought about so I don't know that I'm going to have a good answer to you. [LB617]

SENATOR FLOOD: Okay. [LB617]

COLLEEN BYELICK: But I think part of the issue and part of the problem is that there's so many different reasons why regulations get hung up in the process, so it's kind of hard to say, well, you should only have five months for your regulation or you should only have X number of times, because things change. [LB617]

SENATOR FLOOD: But when the Legislature passes a bill... [LB617]

COLLEEN BYELICK: Right. [LB617]

SENATOR FLOOD: ...and makes a change, we shouldn't wait three years to see it implemented in rules and regulations. [LB617]

COLLEEN BYELICK: No. [LB617]

SENATOR FLOOD: That's wrong and this branch of government isn't going to sit around while that stuff happens. Senator Mello and I may disagree on the contents of his bill but...you aren't the responsible party but somebody is going to be responsible to carry out the intent of the Legislature. [LB617]

COLLEEN BYELICK: Uh-huh. [LB617]

SENATOR FLOOD: So carry that back to your brethren in the executive branch because it is very frustrating to pass a bill and see no action be taken. [LB617]

COLLEEN BYELICK: Yeah. [LB617]

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SENATOR FLOOD: And this branch of government, if you don't want things like this to happen, that has to get cleaned up in every single agency. When we speak, we want it carried out. We don't want to be waiting for a regulation three years down the road. [LB617]

COLLEEN BYELICK: Uh-huh. [LB617]

SENATOR FLOOD: Thank you. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Flood. Senator Langemeier. [LB617]

SENATOR LANGEMEIER: I had a couple things I want to talk about, but I want to follow up on Senator Flood's deal. An example is two years ago Senator Dierks, and I teamed up with him, we passed the ability for chiropractors to do animal care and the vet board was supposed to adopt rules and regulations to make that happen. We're two years into nothing. The vets have decided that we just won't make rules and regs so this won't happen. We're going to deal with that. But I want to boil down your testimony. It's, number one, you think there's a cost to you that you don't like; number two, the stamp and require, I'm sure our Exec Board Chair would love to have a stamp designed that he can stamp on things. I think we could handle that. And the third is the time line and I think time lines can be adjusted. So if those are the three things, I think we can...we can adjust. [LB617]

COLLEEN BYELICK: Yeah. And I think, too, just kind of the...we're...now we're adding on an additional area. And I think one of the things that we were concerned about, too, and I don't know if anyone from the AG's Office is here or not, but one of the things that if all of these regulations should be reviewed for statutory authority then how does that work when it's just deemed approved after 30 days? Because basically then if this committee doesn't get to it, then nobody is reviewing this regulation for statutory authority. So that was kind of a loophole that we were seeing when we looked at the bill. [LB617]

SENATOR LANGEMEIER: Okay. Thank you. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. Any other questions? Thank you for your testimony. [LB617]

COLLEEN BYELICK: Yep. [LB617]

SENATOR WIGHTMAN: Are there any other persons here appearing in opposition to LB617? [LB617]

BRAD GIANAKOS: (Exhibit 6) Good afternoon, Senator Wightman and members of the

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Executive Board. My name is Brad Gianakos, B-r-a-d G-i-a-n-a-k-o-s, legal counsel for the Department of Health and Human Services. I appreciate having the opportunity to represent the views of my agency in opposition to LB617. The existing process for approval of agency rules and regulations is outlined in the Administrative Procedure Act, known as the APA. LB617 would amend the APA by additionally requiring review and approval of all agency rules and regulations by a new legislative committee. The Department of Health and Human Services is responsible for the majority of state agency rules and regulations. In the past three fiscal years, 2008 through 2010, DHHS has promulgated or amended a total of 125 sets of regulations. This number, of course, only accounts for the regulations overseen by DHHS. Many other state agencies also have rule-making activity throughout each year. LB617 would add another layer to the approval process and prolong the process even further. At the same time, LB617 restricts the approval of regulations to the time period from the beginning of the...excuse me, from the end of the legislative session through November 30, effectively shortening the opportunity for rule making to roughly half and sometimes less than half a year. We are concerned about the effect the limitations in LB617 will hinder agency rule-making efforts. The sheer volume of regulations that the committee would have to review could also place a significant delay in administrative rule making or affect the quality of regulations if passed if a presumption of approval in the bill was applied. This is a major issue with deadlines and financial consequences are involved and citizens' rights and privileges are concerned. I should note that we have not yet received an advance copy of AM298. LB617 would hamper the department's ability to carry out executive functions under state and federal law in a timely manner and to efficiently manage the agency's budget. Within DHHS, rule making can be driven by federal or state legislative action, judicial action, federal funding, or grant requirements, public policy concerns or fiscal decisions. The delays built into LB617 and the restriction of rule-making action to only half the year could result in harmful regulatory gaps and, in some situations, could result in a loss of funding. Our second concern relates to the basic constitutional principle of separation of powers. The Nebraska Supreme Court has traditionally strictly interpreted this principle and has struck down legislation that violates it. The Attorney General reviewed two similar bills proposed in 1977 and in an Opinion dated February 22, 1977, stated the bills presented very serious questions involving the separation of powers. The Governor, through the action of executive agencies, carries out the laws enacted by the Legislature. LB617 may result in the Legislature exceeding its authority to involve itself in an operation of the executive branch. Numerous other states have attempted to enact statutes similar to LB617 only to finally have them struck down by the courts as unconstitutional. In general, such laws have been found to be unconstitutional because they violate the separation of powers clauses of state constitutions. Some state courts have additionally held that actions similar to those proposed in LB617 constitute an improper delegation of legislative power when the actions are performed by a committee or while the general assembly of the legislative body is in adjournment. The Legislature is not currently without a role in the rule-making process. First, only the Legislature may empower the state agencies to promulgate regulations. Next, the APA

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currently requires agencies to send the draft regulations to the Executive Board of the Legislative Council prior to the public hearing. Through that mechanism, the Legislature can advise an agency and provide input on its regulations. Also, members of the Legislature may raise complaints about proposed regulations. These complaints are referred to the standing committee with subject matter jurisdiction over the issues addressed in the regulations. This process has been used once since enacted. In addition, we have several technical concerns with the bill. First, it is unclear at what point in the process legislative approval would occur; and second, while it seems the core of LB617 deals with the scope of statutory authority, it is unclear whether there are other reasons the committee might deny approval. Further, the bill does not require the committee to provide an explanation of its reasons for disapproval. Disapproval would, therefore, not only leave the affected state agency without the ability to carry out its duty to enforce the law but also without any guidance on how to correct the issue. In summary, we oppose LB617 because of the consequences to the work of the department caused by the bill's additional layer of review within its restricted time frame, because of its apparent violation of the separation of powers principle, and the technical deficiencies of the bill. I appreciate the opportunity to comment on LB617. Let me say that my agency appreciates the Legislature's interest in and attention to the rule-making process. The development, promulgation, and enforcement of regulations are the essential work of our agency. We are committed to perform those duties as responsibly, efficiently, and effectively as possible. For that very reason, we have serious concerns about the impact LB617 would have. The department's position is that the existing procedure is sufficient to allow legislative input into the regulatory process without raising the significant policy and legal concerns of LB617. I, therefore, urge the committee not to advance this bill. Thank you for your time and attention, and I'm available to answer any questions you may have. [LB617]

SENATOR WIGHTMAN: Thank you, Mr. Gianakos, for appearing. Senator Flood. [LB617]

SENATOR FLOOD: You were present when I visited with the representative from the Secretary of State's Office, and she's very capable and does a good job of explaining but I think she's absolutely right, they don't have the ability to manage this system. But you do, the Department of Health and Human Services. In 2004, LB1083 was passed that created behavioral health reform. The Performance Audit Committee last year had to physically...had to conduct a preaudit to get that started. What happened between 2004 and 2009 that we didn't have any regulations promulgated for the Division of Behavioral Health? [LB617]

BRAD GIANAKOS: Senator Flood, I certainly understand your frustration and that of other senators when legislation is enacted and the promulgation of regulations takes longer than expected or anticipated. I'm not able to comment on the specific set of regulations that you're referring to. I didn't have any direct involvement. In general, as

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was previously stated, there are a number of issues that can affect the time frame involved in promulgating regs and the date, the final date that regs are enacted is not entirely within a state agency's control. We do have to obtain approval from the Attorney General's Office and we think... [LB617]

SENATOR FLOOD: In that case, the rules hadn't even been promulgated. I mean there was no public hearing. [LB617]

BRAD GIANAKOS: That's correct. [LB617]

SENATOR FLOOD: I mean we went...we went five years without any action. And then another case, you know, I passed a bill on first responders being able to transport patients in an ambulance without having to be an EMT-B certified paramedic, and I have people from Battle Creek and Norfolk saying, oh, we had that bill passed last year. You know, I can't remember...Mr. Dean Cole is in charge of EMS at the Department of Health and Human Services and there hasn't even been a public hearing on it. You know, what I would ask you to do, you know, I am, as you can tell, very frustrated. I recognize you don't have the control over every one of those, but if you would provide my office a list of all the rules that have to be promulgated and where they're at in the status for the Department of Health and Human Services, because I think the Legislature has an interest in the rule-making process; more than anything, we want to see our intent carried out. You know, my remedy, if I don't like your rule, is we'll come in and we'll pass a statute that trumps your rule. I mean that's one of the remedies I feel that I have as a member of the Legislature. But, you know, the Secretary of State's Office did an excellent job representing what I think the concerns are with the bill and the hurdles, but they're not in charge of you. There is an issue there and I don't want to get too exercised over it but I would like to maybe see what those bills are. And if you could specifically find out about my first responders. [LB617]

BRAD GIANAKOS: Yes, we can certainly provide a list of pending regulations and provide you some information on those regulations. [LB617]

SENATOR FLOOD: And maybe talk to Mr. Cole. Now one of the things, quite frankly, that I think about is, you know, in this case I know that some of the folks that work at DHHS had concerns about my bill. You know, I passed the bill; there's no rule and regulation. Well, is this like a bureaucratic veto of legislative intent? I'm not suggesting that it is but those are the questions that start getting raised when you don't see the regulation follow the law. So thank you. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Flood. Senator Langemeier. [LB617]

SENATOR LANGEMEIER: To follow up on Senator Flood's commentaries, my concern with the passage of LB617 is if you never make your rules we have nothing to look at or

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take through this process anyway. At some point we've got to figure out a way to make those rules happen. [LB617]

BRAD GIANAKOS: Yeah, I would agree with you that this bill will not address that issue. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. Senator Karpisek. [LB617]

SENATOR KARPISEK: Thank you, Senator Wightman. I just have to, in your testimony, "LB617 may result in the Legislature exceeding its authority to involve itself in a operation of the executive branch." To me, that just seems very ironic, and I'll leave it at that. Thank you. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Karpisek. Anyone else have any questions? Thank you. [LB617]

BRAD GIANAKOS: Thank you. [LB617]

SENATOR WIGHTMAN: Are there any other opponents of LB617 wishing to testify? We do have two letters of opposition, one from Michael Linder, Department of Environmental Quality, another one from...I'm not sure whether it's Nicole (sic) Ackermann Sherdon. [LB617]

SENATOR FLOOD: Oh, it's Noelle. [LB617]

JANICE SATRA: It's Noelie. Noelie, yes. [LB617]

SENATOR WIGHTMAN: Noelie, okay, Noelie Ackermann Sherdon, Department of Motor Vehicles. We will place those in the record. (Exhibits 7 and 8) Anyone else wishing to appear in a neutral capacity? [LB617]

JAMES DOUGLAS: Thank you, Chairman Wightman, members of the Executive Committee. My name is Jim Douglas. I work as the deputy director for the Nebraska Game and Parks Commission. My name is spelled D-o-u-g-l-a-s. I'm representing the Nebraska Game and Parks Commission in a neutral position and would just like to provide a little bit of information to the committee. The first point is that I would thank Senator Mello for his proposed amendment that would provide the potential for a waiver for state agencies that could show cause why there might be the ability of an agency to promulgate regulations outside of the time frame that's contained in the bill, LB617. As an example, currently we're sending proposed regulation amendments to the Secretary of State's Office and to the Executive Chairman, I think today, concerning big game recommendations for the upcoming season and we are fortunate in that we've been able to get, as was alluded to earlier, some fairly quick turnaround in the promulgation

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process, going through all the steps that were outlined by the Secretary of State's Office, sometimes within 60 days. In the case of our big game recommendations, we normally try to hold the public hearing in March and that allows us to have some final regulations adopted, signed by the Governor in a timely fashion so that we can let our residents and nonresident hunters know what is available to them for opportunities to hunt in the state in a way that they can plan their vacations, etcetera. And hunters spend about \$200 million a year in hunting activities in the state. It's a huge economic development issue. I think if...we would put ourselves in a disadvantage to other states who are also vying for nonresident hunters for big game, for example, if we couldn't do that in a timely fashion. So we would support anything that would allow us to promulgate regulations outside of the time period for certain instances, as it's contained in the bill and according to the amendment. And we also sometimes have some things that arise for migratory bird regulations that would be outside of the time frame when the Legislature is in session. A few years ago the U.S. Fish and Wildlife Service, which sets the outside parameters for when we can have migratory bird seasons, was awaiting the resolution of a lawsuit and when that occurred then in January, for example, we were allowed to potentially pass amendments to our regulations concerning the conservation action on taking snow geese, and we would not have been able to react in a timely fashion to that if there wasn't a waiver process or something to allow us to do it at that time. So those are just a couple of examples that I wanted to provide to you. [LB617]

SENATOR WIGHTMAN: Thank you, Mr. Douglas. Anyone have any questions for Mr. Douglas? Thank you. [LB617]

JAMES DOUGLAS: Thank you. [LB617]

SENATOR WIGHTMAN: Do we have anyone else desiring to testify in a neutral capacity on LB617? Senator Mello, this time, you're recognized to close on LB617. [LB617]

SENATOR MELLO: I'll be very brief so you can have some time for the rest of your lunch. A few items though I would make sure to clarify though. [LB617]

SENATOR FLOOD: Thank you. [LB617]

SENATOR MELLO: A few items to clarify for the record: one, some of the opposition testimony in regards to the separation of powers and some of the constitutionality aspects of this, this bill, they ruled on...the Attorney General's Opinions before ruled that the previous committee structures were too broad in that sense, where this provides no veto power to this committee, provides no other authority or power beyond an oversight in the sense of giving the Legislature's approval or disapproval, where that has not been the case in previous issues relating to an Administrative Rules and Regulations Committee. So for the record, I would remind that we have investigated that issue and

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there was no concern of constitutionality in regards to the Legislature exercising its authority to provide oversight in that sense. Senator Langemeier did mention the fiscal note as to the Secretary of State's Office and, as someone who sits on the Appropriations Committee and has the enjoyment of being able to look through agency's budgets, I would say that there is the concern or there would be...I do agree that there is a one-time programming cost associated with what the Secretary of State's Office does do currently with their rules and regulations. I would say, though, simply adding another component or another level in their process, so to speak, electronically to the tune of \$180,000, I would...it gives me great pause in the sense that all of us in this room are in the wrong line of work if that is the case, because this simple electronic change to a Web site and a data system I believe does not necessitate hours and hours and programming. In the sense that while I may not be an IT specialist, I do correspond with a good number of them and this would not be, I think, a massive overhaul of any information technology framework. So I question the sense that the amount on the fiscal note I think might be a little inflated but I do not disagree with the sense there would need to be some change to their current system. And with that, Mr. Chairman, I'm more than willing to work with the committee, if the committee so chooses to look to investigate this issue further. I believe that Senator Flood, Senator Langemeier brought up very good concerns regarding the rules and regulation process that, regardless of whether or not the committee chooses to advance LB617, that this legislative body should consider greatly over the coming years. Thank you. [LB617]

SENATOR WIGHTMAN: Thank you, Senator Mello. Any questions or comments? If not, that ends the testimony on LB617 and concludes our hearing. [LB617]