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Government, Military and Veterans Affairs Committee  
February 23, 2012

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[LB1013 LB1060 LB1116 LB1140]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 23, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1116, LB1013, LB1140, and LB1060. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Charlie Janssen; Russ Karpisek; Rich Pahls; Les Seiler; Kate Sullivan; and Norm Wallman. Senators absent: None.

SENATOR AVERY: (Recorder malfunction)...to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I represent District 28 here in Lincoln and I chair this committee and we will start...let me just start by letting you know that the order of business will be as posted outside the room, starting with LB1116, moving through LB1013, LB1140, and LB1060. Before we begin that, though, let me introduce the members of the committee. Starting at my far right over here is Senator Rich Pahls from Millard. Seated next to him is Senator Les Seiler from Hastings, and to join us in a few minutes will be Charlie Janssen from Fremont. Seated next to him is Senator Scott Price, the Vice Chair of the committee, from Bellevue. To my immediate right is Christy Abraham, the legal counsel for the committee. Joining us in a few minutes will be Senator Russ Karpisek from Wilber. And seated next to him, who will also be here later because she has two other bills up before another committee across the hall, Senator Kate Sullivan from Cedar Rapids. Senator Norm Wallman is the last one there, from Cortland, and on the far end is Sherry Shaffer, the committee clerk. If you are interested in testifying for or against any of these bills, we ask that you fill out this form. The form is available at the tables at each entrance to the room. Write clearly and give that to the clerk, and she will make sure that you are properly recorded in the record. If you have a copy of your testimony, we would like to see that. You need 12 copies. If you do not have 12 copies, we have someone who can help you get them and that is our page, who is Catherine Larsen from Omaha. If you have any documents you'd like to share with the committee, we need 12 copies of that as well. The same procedure if you don't have 12 copies will be followed. We do not allow any displays other than distribution of any material you want us to see. If you have any electronic devices that make noise, we ask that you turn them off unless you are credentialed press; that includes laptop computers. If you are a part of the credentialed press and you need to take a call, we ask that you leave the room. We have a second sheet here for those of you who wish to be recorded for or against the bill but you do not plan to testify. Please provide the information requested and print it, and they are available at each entrance. Now when you testify, you will see that we are using a lights system. The green light is a four-minute light, and when that goes out the amber light comes on. That means you have one more minute to finish your testimony, and the red light means you should be finished, so we ask that you follow that to the extent that you can. We will proceed with the opening statements from the introducers of the bills, followed by proponents and then opponents and neutral testimony. Closing remarks are reserved only for the

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introducers. So with that, we'll start with Senator Flood, LB1116. Welcome to the committee. I don't think you've ever been before us. [LB1116]

SENATOR FLOOD: No. This is a first trip for me, so thank you. Chairman Avery, members of the committee, my name is Mike Flood, F-I-o-o-d. I represent District 19, which includes Madison County and part of Stanton County. This bill replaces the State Court Administrator with the Chief Justice of the Supreme Court as the recognized judicial branch representative on the Nebraska Capitol Commission. Currently, the executive branch is represented on the Capitol Commission by Governor Dave Heineman and the legislative branch is represented by me as Speaker of the Legislature. In treating the three branches equally, LB1116 identifies the head of the judicial branch as the recognized judicial branch representative on the Nebraska Capitol Commission. Similar to provisions adopted by LB752 in '08 to allow the Governor and the Speaker to designate a representative to attend a meeting in his or her absence, LB1116 allows the Chief Justice to designate the State Court Administrator to attend a meeting in the Chief Justice's absence. The State Court Administrator would have full voting privileges for any meeting he or she attends on behalf of the Chief Justice. I just want to add that my bringing this bill is no reflection on the performance of the State Court Administrator as the current judicial branch representative on the Capitol Commission. Janice Walker has done a great job, and even with the passage of this bill I would assume that given the Chief Justice's schedule she will continue to participate at many of our meetings. However, as I mentioned earlier in my testimony, this bill correctly identifies the role of the Chief Justice of the Supreme Court as the recognized leader of the judicial branch. And as a member of the Capitol Commission in my sixth year, I think there are times where the three branches would benefit from having the top person in each branch be at the meeting. We work on things like Capitol renovation, you know. We have exclusive jurisdiction over what happens inside the Capitol. We have a relationship with the Capitol Environs, Bob Ripley who had worked for the Capitol Commission. I just think that we have a system in Nebraska that works well. All three branches, if they're going to be on there, should be represented by the top person or his or her designee. [LB1116]

SENATOR AVERY: Thank you. Questions from the committee? I presume you received...you...okay, Senator Karpisek. [LB1116]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Flood. I just thought since you came all the way down here, we should ask you is this...did the Supreme Court ask for you to do this or you just want to do...? [LB1116]

SENATOR FLOOD: Well, I...you know, there were a couple of meetings that I've been at where the state court mistress, you know, she says, well, I haven't talked with the court on that; let me go back. I just felt that, you know, situations...if the Supreme Court Chief Justice was there, it may make some of those meetings even more productive

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because he obviously conducts meetings of the entire court, you know, weekly with their consultation, so I thought that, you know...this was something I did. I also felt that it kind of conformed to what we did a couple years ago by...and I think in the past, Chief Justice Hendry said, you know, given his role as the Chief Justice of the Supreme Court and having to, you know, rule in certain matters, that the court previously had been reluctant to send over the Chief Justice. My sense is, you know, even though the, you know, the court is still the judicial branch, it has an important role. But they also have an important role inside this Capitol, and all three branches should be treated equally. [LB1116]

SENATOR KARPISEK: And can you remind us what we did a couple years ago? [LB1116]

SENATOR FLOOD: Well, a couple years ago I asked permission to, you know...since I am in Norfolk a lot of times and these meetings are only like 30 minutes mostly or an hour, to save the state some money and to let our...you know, I can appoint either the Exec Board Chair or the Clerk of the Legislature to go in my stead, which I think makes sure that we have somebody every meeting. I make most of the meetings, but when I can't or sometimes something big is going on, on the floor, I can say to the Clerk, can you go down there, and I'll manage what is going on, on the floor? It just helps out to make sure the Legislature is represented. And the Governor can send the Lieutenant Governor in his absence. [LB1116]

SENATOR KARPISEK: And so this is kind of along those same lines. [LB1116]

SENATOR FLOOD: Yeah. [LB1116]

SENATOR KARPISEK: I think that really helps put it all together. [LB1116]

SENATOR FLOOD: Yeah. [LB1116]

SENATOR KARPISEK: Thank you, Speaker. Thank you, Senator Avery. [LB1116]

SENATOR AVERY: Any other questions? Don't hear any. [LB1116]

SENATOR FLOOD: I'm going to waive my closing, so thank you. [LB1116]

SENATOR AVERY: Okay, thank you. [LB1116]

SENATOR FLOOD: Thank you. [LB1116]

SENATOR AVERY: All right, we'll move to proponent testimony. Anyone wish to speak in support of LB1116? Seeing none, anyone wish to speak in opposition? Anyone in a

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neutral position? It's...you've shut everybody up, Mr. Speaker. [LB1116]

SENATOR FLOOD: Sounds like a consent calendar to me. (Laughter) [LB1116]

SENATOR AVERY: All right, that ends the hearing on LB1116. We'll now move to LB1013. Is Senator Mello around? [LB1116]

SENATOR PRICE: No, he's kind of a tall, thin fellow. [LB1013]

SENATOR AVERY: (Laugh) Yeah. There he is. Well, we were just about to vote your bill out and... [LB1013]

SENATOR MELLO: Oh, I'll leave again and come back then. [LB1013]

SENATOR AVERY: Welcome, sir. [LB1013]

SENATOR MELLO: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. Last year, the Performance Audit Committee released a preaudit report examining the timeliness of rules and regulations process under the Administrative Procedures Act, the APA. That report found significant flaws in the promulgation process including regulations which had not been in place six or seven years after specific legislation requiring regulations had passed. In response to this report, the Performance Audit Committee, working closely with Speaker Flood and the Executive Board, amended a bill that I introduced, LB617, to provide a time line for agency promulgation of rules and regulations. While the time line adopted in LB617 was a good first step in reforming our rules and regulations process, my office continues to hear from individuals and organizations about actions by state agencies that may not violate the letter of the law but certainly violate the spirit of the law. These actions more or less fall into two general categories. The first, policy changes which should have been made through the APA instead of being made by some time of informal...some kind of informal guideline, such as provider bulletins in the Department of Health and Human Services; and the second, enforcing rules and regulations prior to the completion of the required procedures under the APA. LB1013 seeks to address these situations by making several changes to the APA. First, the bill redefines what constitutes a rule or regulation to include statements, policies, instructions, and standards of general applicability which are designed to implement, interpret, or make law. Based upon the fiscal note and the letters of opposition that my office has received so far on this legislation, this provision seems to be one which has raised most concern amongst state agencies, as the language may have cast too wide of a net. I would draw both the committee's attention, as well as those agencies' attention, to the existing statutory language on page 2, lines 16-18 of the green copy, which excludes the definition "rules or regulations concerning the internal management

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of the agency not affecting private rights, private interests, or procedures available to the public." I believe that this existing language would exclude a number of agency documents like tax forms, interpretive guidelines, and policy manuals from the requirements of LB1013. But for the record, I would be happy to work with those agencies who are here testifying in opposition to try to narrow the scope of this needed new language. In addition to redefining rule or regulation, LB1013 would prohibit the enforcement of a rule and regulation unless that rule or regulation has been completed...has completed the procedures in the APA, which means the regulations have been approved by the Governor and filed with the Secretary of State following a public hearing. Finally, the bill would provide for the awarding of attorney fees in cases where a rule or regulation is declared invalid because it was adopted without compliance with statutory procedures. This last provision would essentially provide affected parties with an important check against agencies that may try to avoid the APA procedures. There are several agencies that are planning on testifying after me to demonstrate specific examples of these occurrences that I mention in LB1013. Otherwise, I would be happy to answer any questions the committee may have. [LB1013]

SENATOR AVERY: Thank you, Senator Mello. Let me ask you. You said on page 2 that you were willing to work with the agencies that have objections. Do you have something specific in mind? [LB1013]

SENATOR MELLO: I think that in the underlying issue without completely, I would say, compromising a third of the bill right off the bat, I think the reality is--and my staff and I were talking about this prior to the hearing--that the language may be too broad, and I'm willing to acknowledge that to the state agencies because that is where we've heard most of the opposition is coming from is in that section--that page 2 which incorporates "statement, policy, instruction, or standard of general applicability"--incorporating that into what a rule or regulation may be. We're willing--more than willing--to narrow that language down, but I think just as important though, there's...this bill is cut into essentially three components. The second and third component I think add an awful lot of enforcement to ensure our rules and regulation process is being followed accordingly to the letter of the law that we provided the executive branch, even if we struck the first part of this bill. So while I'd prefer to work out a compromise in regards to language for the first section of this bill understanding that Sections 2 and 3 are as important, I'd be willing to even say that we can move past Section 1 if we needed to strike that language to look for some kind of compromise with the committee as well as with state agencies. [LB1013]

SENATOR AVERY: Thank you. Questions? Senator Pahls? [LB1013]

SENATOR PAHLS: Thank you, Senator. Senator Mello, so what you're telling me...if we eliminate the section that is causing all the concern, the rest of the bill should be

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acceptable, in your mind, with the rest of the people? [LB1013]

SENATOR MELLO: In my mind, Section 2, if we would remove Section 1, we would need it...to remove the similar language that's listed there in a subsection of Section 2. But the second main point of the bill ultimately is to ensure that state agencies can't implement or can't enforce a rule and regulation before it's actually followed the process, and you'll hear--I have a document here from the Department of Health and Human Services that one of those who will testify in support of the bill will explain a little bit more--that we have state agencies that are essentially implementing a rule and regulation before it's followed the statutory process that we as the Legislature laid out for them to follow before they can actually implement that rule and regulation. Well, what Section 2 of the bill says...you cannot implement a rule and regulation until it has been signed by the Governor and has been filed with the Secretary of State, which are the final two stages of the APA act essentially, and I'll...some of the other people that will testify today will explain. Most of the problems that we've heard are dealing with the Department of Health and Human Services, but the underlying issue is I don't see how a state agency can make an argument against not following state statute which says they can't in theory implement a rule and regulation before it becomes a rule and regulation. Otherwise, that is making the argument that the executive branch of government is making law before that law has been approved by the Governor or the Secretary of State, and they're carrying forth that law. [LB1013]

SENATOR PAHLS: Okay, and you had some discussion with the Speaker on this issue? [LB1013]

SENATOR MELLO: This issue...the whole issue of the rules and regulations reform kind of came about last year on a bill that I brought to the Executive Board, which ultimately looked to revisit the Legislature. It would have put rules and regulations back, so to speak, partially in the legislative purview and removed some of that from the executive branch. And as a compromise, working with the Performance Audit Committee as well as Speaker Flood, we developed a compromise component, LB617, which requires state agencies now to provide time lines to the Legislature of when they're planning on implementing rules and regulations. We've put also some components in regards to time frames, that they have to implement a rule and regulation with a certain time frame so that the law can be implemented. And if they didn't follow those, they would have to come back to the Legislature and explain to us why this is not occurring, which ultimately...what changes in state law would necessitate...or it would be necessitated for them to carry through the rules and regulations process. [LB1013]

SENATOR PAHLS: Okay, and I'm just trying to figure out...and you worked with Speaker Flood on that particular...? [LB1013]

SENATOR MELLO: Yes. [LB1013]

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SENATOR PAHLS: Because just to be honest with you, I sit on the Exec Committee and very seldom does he show a lot of emotion, but he showed an awful lot of frustration on things that he thought were going to happen and they didn't and... [LB1013]

SENATOR MELLO: Um-hum. Yeah, you're remember...that hearing, I distinctly...you're right, Senator Pahls. I think the underlying issue, that's where LB617 came from, was legislative bills that have been passed by the Legislature and have not been implemented by agencies... [LB1013]

SENATOR PAHLS: Right. [LB1013]

SENATOR MELLO: ...because they refuse to promulgate rules and regulations. And Speaker Flood used an example of a bill he passed that it was years before they...and they still hadn't promulgated the rules and regulations to actually implement his piece of legislation, which I think raised concerns amongst him as well as other senators when they learned about that. [LB1013]

SENATOR PAHLS: Right. Okay. Okay, thank you. Thank you. [LB1013]

SENATOR AVERY: Senator Price? [LB1013]

SENATOR PRICE: So then, Senator Mello, this is a two-prong thing. It's not just about people enacting too quickly; it's about getting them to enact or to act. [LB1013]

SENATOR MELLO: There...it's...I would say it's...while this is only...it's only part of...I think the whole Administrative Procedures Act is in desperate need of significant reform since we're finding out more and more as we've dug into this issue over the last couple years that there's just not a lot of attention paid to rules and regulations from the legislative branch, knowing that we've given that authority to the executive branch to carry through our will of enacting the statutes and the statutory law that we pass. And only with some major issues that have come up in regards with the Department of Health and Human Services where either one, they act too fast, and they choose not to follow the APA or they don't act at all, which they also are not following the APA. It's raising concerns in general of how is it that we as a legislative branch of government can enforce the...or can require and enforce the executive branch to carry through our will through a time line and a procedure that we as a Legislature feel is justified to Nebraskans. So it is an issue, so to speak, of the case that Senator Pahls mentioned where they refused to implement a rule and regulation, so thus they wouldn't implement the bill. Also on other ends, they implement a rule and regulation before it actually is even...is certified or an official rule and regulation, which they do so to carry out the will of the agency or the executive branch on that specific issue. So I think on both fronts

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there needs to be, I would say, an effort put forward by this Legislature to really research, dig in, and explore the APA Act and to find out ways that we can modernize that current process so that situations that you'll hear after me won't happen again in the future. [LB1013]

SENATOR PRICE: A yes would have worked, but thanks. [LB1013]

SENATOR MELLO: Um-hum. [LB1013]

SENATOR AVERY: Are you suggesting that this might be willful disregard for the requirements of the APA? [LB1013]

SENATOR MELLO: I think you're going to hear examples of testifiers after me who will show you that there...that the executive branch, through some of the policies, through whether it's guidelines, memos, provider bulletins, they are enacting law outside of the Legislature. And that's the ultimate concern that I have in regards to this process, is the executive branch being able to issue or change state law through a provider bulletin, for an example, which the Department of Health and Human Services does this all the time which ultimately changes...whether it's a provider rate, a reimbursement, they're able to do that through these other means and methods that do not have to go through the rule and regulation process, which the rule and regulation process is a very public, transparent process for individual citizens to be able to come in front of a department and express their feedback or opinions on this proposed rule or regulation. When an agency simply issues an edict and it does not allow for public input, that in my view runs counter to the law that we have passed as a Legislature that creates the process for the Administrative Procedures Act, thus allowing the executive branch to create law without us giving them the authority to create the law through the APA process. [LB1013]

SENATOR AVERY: As a political science major at the university, you shouldn't be surprised that this is how it works so frequently. [LB1013]

SENATOR MELLO: Well, it's funny in the same...in some regard because some have made that similar argument in regards to this happens all the time at the federal level. [LB1013]

SENATOR AVERY: It does. [LB1013]

SENATOR MELLO: The federal...the executive branch at the federal level, under multiple political parties and multiple administrations, make federal law through the executive branch instead of following it through the legislative branch. We have documented instances where we feel that is happening right now under our executive branch where we would like to see that process reformed and changed. And as I said before, I'm more than willing to work with the committee members as well as state

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agencies to clarify and narrow down the scope, so to speak, of what would fall under a "rule or regulation." [LB1013]

SENATOR AVERY: Any other questions from the committee? I don't see any. Are you going to stay for closing? [LB1013]

SENATOR MELLO: I'm next...yeah, I'm next. I'm the next bill on the thing, so I'll stay. [LB1013]

SENATOR AVERY: Oh, you are. That's right, so you can't leave. Any proponent testimony? [LB1013]

JAMES GODDARD: Good afternoon, committee members. [LB1013]

SENATOR AVERY: Welcome. [LB1013]

JAMES GODDARD: (Exhibit 1) My name is James Goddard, that's G-o-d-d-a-r-d. I'm an attorney at the Nebraska Appleseed Center for Law in the Public Interest. I'm here today to testify in support of LB1013. As the committee is aware, the Administrative Procedure Act, or the APA, establishes minimum procedural requirements for state agencies. When the requirements are followed, the rules that they promulgate are valid and they carry the force of law. The...one of the big purposes of the APA is to provide notice to the public and a chance to be heard before a law goes into a effect that affects the public. So in other words the APA requires transparency, clarity, and communication. But unfortunately the APA process is often circumvented when agencies take actions affecting private rights but take them informally and outside of the APA process. For example, some agencies disburse bulletins or letters making substantive changes to existing rules which affect private rights. These actions, although they are informal, are still rules, and they must follow the APA. In other words, calling an action by a different name or implementing it through a different form doesn't make it any less of a rule. When this happens, it creates a serious problem for the public because the public just is uncertain about what the law is. On one day, the law could be one thing. A letter can go out and the law could be something else, so the duties that a citizen or an entity or a corporation might have can change pretty quickly. When this happens, they have no chance to weigh in on the change, whether it's wise or unwise, and they have no time or lead time to decide do I need to make changes as a result of this law. So LB1013 attempts to remedy these problems, and one way of doing that is providing more detail about what a rule or regulation is. Providing more information about what that means gives agencies a better understanding of what actions they have to take to follow the APA and when. Also, the bill gives specific examples of the types of informal actions that must be promulgated, if those actions would meet the definition of the rule. That's Section 1 and Section 2 Senator Mello just referred to. I would like to say that it's important to note that this bill does not require informal communications to follow the

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APA process. Actions that don't generally apply to everyone and that don't affect private interests don't have to follow the process. Moreover, proposed changes like this one...the proposal in this bill is very similar to other state APAs such as Michigan, so language like this has been tested and is not unreasonable. I'd also be happy to provide the committee with some examples of some of the problems we've seen in the last couple years. Most of these are from the Department of Health and Human Services because that's the organization that my...that's the entity my organization works with the most. One of those--and a big one--is right now there is currently an entire chapter of regulations applying to children's behavioral health--very important regulations--that have not been put through the process, and yet they have been disbursed in draft form to providers and others. And the implication is these need to be provided, yet they have not gone through the process. A few months ago, there was a provider bulletin that said copayments will change as of tomorrow, but the current regulation said the copay was less, so there was no way they could follow the process in one day and have it done. When we contacted the department about it, we were told that it was merely an oversight, and they changed the date and then changed it again and pushed it back, but that announcement was not made to everyone in the public. Those are just a couple of examples of the way something can be done informally that is treated as a law, or the APA is just entirely bypassed, and regulations are applied that have not followed the process. For all these reasons, we'd urge you to advance this bill. Thank you. [LB1013]

SENATOR AVERY: Let me ask you to clarify, perhaps by example, what you mean by private rights and interests. [LB1013]

JAMES GODDARD: Well, I'm taking that language from what I would call the third part of the definition that Senator Mello mentioned. There's the first part about a rule or a regulation is a policy, instruction, or standard. There's the second part that says it's meant to implement or interpret the law, and then the definition goes on to say this doesn't affect internal agency management that does not affect private rights or interests. So the act itself doesn't define those terms, but in my estimation it's an action that is affecting someone's property, their finances, their livelihood in some way or another, but that's not in the...that's not defined in the act. [LB1013]

SENATOR AVERY: Yeah, thank you. Questions? Senator Wallman. [LB1013]

SENATOR WALLMAN: Thank you, Chairman Avery. As you realize, HHS, we deal in Medicaid and Medicare. Aren't some of these rules and regulations supposed to coincide with federal? Do you feel we're stepping outside the bound on these issues, some of them? [LB1013]

JAMES GODDARD: I mean, it...some of this is merely the implementation of federal and state law. I think that there are times where I think we might go beyond what federal law dictates or even do less than that, but I'm...I don't feel like I can give you an

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example at this point. [LB1013]

SENATOR WALLMAN: Okay, thank you. [LB1013]

SENATOR AVERY: Any other questions? Don't see any. Thank you, Mr. Goddard. [LB1013]

JAMES GODDARD: Thank you. [LB1013]

SENATOR AVERY: Any other proponent testimony? Welcome to the Government Committee. [LB1013]

TOPHER HANSEN: Thank you, Mr. Chair. Mr. Chair, excuse me. I heard that February 23 was business casual day at the Legislature, and although I tried to check with the chief of protocol, Mr. Allen Beermann, he was unavailable prior to the meeting to confirm this, so here I am, so... [LB1013]

SENATOR AVERY: And he is wearing a tie, by the way. (Laughter) [LB1013]

TOPHER HANSEN: (Exhibit 2) I noticed, so forgive me. And, Mr. Chair and members of the committee, my name is Topher Hansen. I am here today to represent the 49 members of the Nebraska Association of Behavioral Health Organizations, which represents clinics, hospitals, and private providers throughout the state of Nebraska. LB1013 follows on the heels of LB617, which we heard previously, to deal with delays in promulgating rules and regulations. LB1013 then looks at the regulations adopted internally by state agencies. So I'll be honest with you here that this bill came from the ongoing and constant changes in the delivery of health services through Nebraska Medicaid. We received so many provider bulletins in the course of every week, and we started joking about the fact how it shows up Friday at 4:30. You can just count on it. It almost became a laughable matter that here they come again, and it comes one after another until you start crying from the fact of you know that things have changed. And as private providers trying to serve low-income people with serious behavioral, health, and medical issues with very little funding to do that relative to what it costs to do business, these things strap us to then be changing the system constantly with no notice. Regularly, the providers who deliver these services to low-income Nebraskans as well as those who are in the physical health services business saw changes in payments, types of service that could be delivered, and the manner in which those services could be delivered. These changes many times would occur on a weekly basis. Since 2007, the department has initiated and implemented 161 regulation changes, and 50 percent of those came from Medicaid. The...while the regulation changes were done within the scope of the APA--we may have disagreed with a bunch of them--our big concern was the fact that some of these changes are throwing 60 cents on every dollar out the door for important services that we can leverage federal money for. And those

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changes, as I said, although within the APA were not necessarily what we thought was a good idea, and certainly losing that kind of leverage dollar is a big concern. LB1013 was written to attempt to deal with the other way policy changes are made through the Department of Health and Human Services and all of state government, through e-mails sent to interested parties that may or may not include all those who should know about the change, that is to say sometimes the e-mails go to a group of people who may not even be affected by that regulation, and other people who are affected by that provider bulletin then don't get the e-mail, and I'll give you an example here in a sec. In our case these announcements are called provider bulletins, and in other state governments they go by other names. The bulletins were originally designed to announce procedural changes related to billing procedures, modifications to medical necessity criteria, and for changing requirements for prior authorizations and issues like that. This method has become increasingly popular with the Medicaid division. In 2007, 32 provider bulletins were distributed; 2010, 65 bulletins were sent out, changing very important components that required extensive time and money to implement and almost always restricting access to health care. Many changes require providers to make very quick changes in their procedural and/or administrative procedures. Most of the changes between 2007 and 2010 limit access to services to low-income Nebraskans. In the case of the children's services regulation, the most recent communication was a new rule change e-mailed on February 15, 2012, noting the new regulations would be scheduled for hearing but that the rules implementing the changes would be effective immediately. Effective immediately, their hearings will come at a later date. I would also note that the list used to make this notification was almost completely made up of people who would not have an interest in the change, with those that would have an interest completely left off; communication is less than transparent. Without public input per the APA, ramifications of changes on Nebraska citizens are not heard, and the consequences can be devastating. NABHO contends that many of these decisions made in reducing access to low-income children and youth in the Medicaid system--many that are state wards--have led to the critical problems that the Legislature now must face in the child welfare system. Some of the decisions made since 2007 would go so far as being major policy issues that should be debated by the Nebraska Legislature, not made by a division of the Department of Health and Human Services. NABHO encourages this committee to take a hard look at how changes are made currently in all departments, particularly those made through announcements, bulletins, and so-called guidelines. In our experience, the Department of Health and Human Services has become careless in not only ensuring that the APA is followed, but have developed an alternative system of implementing new rules that did not exist before. Please consider LB1013 as a step toward ensuring the APA is followed and that major policy decisions are made appropriately, with citizen input. With that, too... [LB1013]

SENATOR AVERY: You owe us a minute. [LB1013]

TOPHER HANSEN: I'm sorry? [LB1013]

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SENATOR AVERY: You owe us at least one minute because you were on the red light. [LB1013]

TOPHER HANSEN: (Exhibit 3) And what I'm going to do is just pass this out for your evening reading, and it is a list of the regulations and the bulletins. And in fact if you turn to the back you can see the lists of bulletin changes that are made to programs like mine that are wrestling with the most sick and devastated populations in the state of Nebraska, and we're having to deal with that on a weekly basis without the necessary input. [LB1013]

SENATOR AVERY: I asked Senator Mello a question, and I'm going to ask you the same one. Do you think this is willful disregard for the APA's procedures, or is it just carelessness, inadvertent, or what? And if you think it's willful, would you care to talk about what you think might be motivating it? [LB1013]

TOPHER HANSEN: You know, it's hard to say that because that requires me to be in the mind of those initiating these provider bulletins or whatever they're called, and so I don't think I can fairly judge what's in the mind of the people initiating. What I can say is that it has pushed to the point that correction is needed, whether it be intentional or carelessness or some other level of intent, that I think regardless of that fact the attention is needed. What I do know is that process--due process--is very important to make sure there's a fair playing field, that systems happen in an orderly way. And we last year saw the need for a bill to say okay, let's move it along. And this year, now we're saying that issuing those things what appear to be outside the rules is too much. So there's a balance in between that we need to achieve and obviously, whatever the intent, we need to give guidance to that in a fair way to allow the citizens and the people providing the services to give input and to be able to adjust systems. This falls on the most vulnerable in our state, that these rules and regulations probably don't affect you and me very much in our private lives. It affects me big time in my business life as executive director of CenterPointe, but it really falls on the people that get pushed out and, therefore, I think it becomes policy and needs proper discussion. [LB1013]

SENATOR AVERY: Thank you. Questions from the committee? Thank you. [LB1013]

TOPHER HANSEN: Thank you. [LB1013]

SENATOR AVERY: Any other proponent testimony? Welcome. [LB1013]

BRENDON POLT: (Exhibit 4) Good afternoon. My name is Brendon Polt. That's B-r-e-n-d-o-n P-o-l-t. I am director of government relations and a registered lobbyist for the Nebraska Health Care Association. That's a nonprofit trade association with a membership of over 200 nursing homes and 200 assisted living facilities throughout the

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state of Nebraska, both proprietary and nonproprietary. And I do want to wait until just--or maybe go slowly--while you get some of these documents because I'm going to make reference to two examples of interpretations or bulletins which we think you'll see very clearly have the effect of a law or a rule or regulation. I guess I'd also preface this by saying that it's not my intent to say anything personally disrespectful or make any sort of accusations against anyone at these agencies. In fact with, for example, the first one with the State Fire Marshal, they're very helpful to us in understanding how the code--fire code--applies to long-term care. Nevertheless, I do want to just draw your attention to this first official interpretation. You'll see at the top, it says that it's...that it relies on certain provisions in the NFPA, which is the fire code, the life safety code. And then as it goes through, if you look through what the official interpretation, it says that microwaves cannot be used in long-term care facilities unless there is a...every six months there is an assessment of the cognitive and physical ability for a person to use their microwave. But then it goes on to say that the building must be protected through...with an automatic fire...or an automatic sprinkler system throughout the facility, then you have to have listed quick response or residential sprinkler heads--which would be a huge cost to most providers--and then the patient sleeping rooms would have to have a smoke alarm that's connected to the building fire alarm system, which I understand is not commonplace in the state. So, you know, this is...whether or not you think this is a good policy or not is not my point, and that's not why I'm here, but it certainly does...if you like to pop popcorn and you're living in a nursing home, or you want to warm up some milk or coffee or something and this is just issued unilaterally, well, that's something that really should be more deliberative. And we think that's what the Administrative Procedures Act is supposed to do, is facilitate a public dialogue before a law is implemented. Incidentally, also in your materials I have included the provisions of the NFPA, and you'll see that there's no...and these provisions are adopted properly into our fire regulations, but you'll see that there's no reference to microwaves or these provisions on what's required in a room before you can have a microwave, so they've really just interpreted something completely new that's not in our approved code. A second example was a provider bulletin. I think this might be what Senator Mello was referring to. What happened is on...effective January...or, I'm sorry, July 1 of 2011, there was a payment change made for holding a bed. When a nursing home resident goes to the hospital or takes therapeutic leave, there was a change in how the rate would be calculated for that payment. All nursing facility payment regulations are adopted in regulation, and they're in the chapter...or Title 471 Administrative Code, Chapter 12. Well, so starting July 1, they were no longer following what's in their current regulation; they were just paying it based on a different formula. Then, on...you'll see that the provider bulletin was issued on November 3. So on November 3, they finally told providers, oh, by the way we've changed how we're paying you. And if you look at this bulletin in detail, it says we're going to rules and regs promulgated, if and when those are adopted, then we're going to go back and retroactively reimburse certain provisions and then reduce them more for future payment. Well, then...so quite a big change that's taking place in this memo that's

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issued five months after the change was made. So then on December 9, a month after the memo, the regulations were heard. And those still are pending, sitting somewhere, haven't been adopted and signed by the Governor, but they're effective and they have been since July 1, and so it's just a kind of a blatant disregard for the Administrative Procedures Act. And we like this bill so much because at least it gets groups like ours the ability to discuss these issues with you and get the public's attention. [LB1013]

SENATOR AVERY: Thank you for your testimony. Questions from the committee? I don't see any. Thank you, Mr. Polt. Additional proponent testimony? We are on LB1013. All right, we'll move to opponent testimony. Anyone wish to testify in opposition? Welcome, sir. [LB1013]

JOHN MUNN: Thank you, Chairman Avery. Proceed? [LB1013]

SENATOR AVERY: Yeah, proceed. [LB1013]

JOHN MUNN: (Exhibits 5-7) Chairman Avery and members of the Government, Military and Veterans Affairs Committee, my name is John Munn, last name spelled M-u-n-n. I'm the director of the Nebraska Department of Banking and Finance. I'm appearing today in opposition to LB1013. I also provided the clerk with letters expressing opposition from the Nebraska State Patrol and the Nebraska Department of Environmental Quality. The Department of Banking and Finance regulates all: state-chartered financial institutions such as banks and credit unions; financial entities and their employees such as mortgage bankers and mortgage loan originators; and securities transactions, securities firms, and their individual agents and advisors. Each of these industries has state and federal compliance standards and is closely regulated because the impact on the public of wrongdoing, mismanagement, or failure of any one of these entities could be severe. LB1013 would amend the Administrative Procedure Act to expand the definition of rules and regulations to include a statement, policy, instruction, or standard of general applicability issued by an agency. LB1013 would further permit an...prohibit an agency from issuing, utilizing, enforcing, or attempting to enforce guidelines, criteria, bulletins, manuals, instructions, standards of general applicability, and other actions constituting a rule or regulation unless it follows the process for adopting a rule, which includes notice, hearing, and approval of the Governor. The department believes the requirements of LB1013 would have a wide-reaching adverse effect. In addition to formally adopting rules and regulations, the department issues statements of policy, interpretive opinions, and frequently asked questions--or FAQs--to provide guidance and assistance to the industries and individuals we regulate. Every application form we use contains instructions and criteria for completing the application. We receive and respond to frequent requests for statutory interpretations, no-action opinions, and procedural guidance. We instruct by letter, mail, and telephone, and at times we instruct at seminars and conferences. We issue orders that must contain certain conclusions of law as we determine whether the

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facts in an application or a disciplinary matter meet statutory tests. We examine many of the institutions and entities using manuals, procedures, and policies that we developed or that were developed in conjunction with our federal and state regulatory counterparts. All of these are the normal daily activities of a state agency created to provide the expertise and knowledge to administer and enforce specific laws, to guide those regulated in complying with the law, and to assist and to protect the public in their dealings with these entities. Although effective regulation needs to be timely, LB1013 would virtually eliminate the department's ability to efficiently respond to inquiries or provide quick guidance to the industries and the public. The financial industries we supervise face constant change. As I indicated earlier, the financial services industries are in most cases regulated at the state and federal level and on an interstate basis. Regulators have worked to coordinate with their counterparts to provide less duplicative and burdensome regulation. If we were required to go through the rule-making process for these joint activities, Nebraska would lose its ability to act on a coordinated basis. This will substantially increase the cost to the department and to those we regulate. The purpose of the rule-making process is to give those rules the force of law. Forms, interpretive guidance, frequently asked questions, exam manuals, and the other items I have discussed today do not need to have the force of law. To take these items through the rule-making process will adversely impact the availability of financial services in this state. Thank you for the opportunity to speak today. I'd be happy to respond to any questions. [LB1013]

SENATOR AVERY: Thank you, Mr. Munn. Let me ask you. Senator Mello did say that he'd be willing to work with the agencies on that first section that we discussed that tends to be fairly broad. Do you see any opportunity there to come to some common understandings with Senator Mello and perhaps work out a compromise? [LB1013]

JOHN MUNN: I'd hate to speculate on that. We would look at the bill as a whole, and I'd hate to say that one part at this point is acceptable and another part is not. [LB1013]

SENATOR AVERY: So you find the whole bill to be unacceptable, all parts of it? [LB1013]

JOHN MUNN: I'm testifying as to the bill that was presented to us. [LB1013]

SENATOR AVERY: I know. I was hoping that I'd get you to go beyond that. Any other questions? Senator Wallman? [LB1013]

SENATOR WALLMAN: Chairman Avery, thank you. Thank you for coming. [LB1013]

JOHN MUNN: Um-hum. [LB1013]

SENATOR WALLMAN: I will go on beyond that a little bit. You don't have near the rules

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and regulations though, like in the health field, do you? [LB1013]

JOHN MUNN: I hope not. [LB1013]

SENATOR WALLMAN: Yeah, so. Thank you. [LB1013]

SENATOR AVERY: Any other questions? Senator Seiler. [LB1013]

SENATOR SEILER: Thank you, Senator Avery. Director, is...do you...does your department have emergency powers where they can do a regulation and put it into effect right away, or does it have to wait until it goes through the whole process? [LB1013]

JOHN MUNN: Not as to a regulation. But in an emergency situation such as the need to close the financial institution... [LB1013]

SENATOR SEILER: Right, right. [LB1013]

JOHN MUNN: ...we have emergency powers requiring the Governor and the Secretary of State's concurrence that... [LB1013]

SENATOR SEILER: But that comes up under your emergency statute that's already gone through the regulatory power. [LB1013]

JOHN MUNN: That's correct. [LB1013]

SENATOR SEILER: Okay, thank you. [LB1013]

JOHN MUNN: Um-hum. [LB1013]

SENATOR AVERY: Any other questions? Thank you, Mr. Munn. [LB1013]

JOHN MUNN: Thank you for the opportunity to appear. [LB1013]

SENATOR AVERY: Any more opposition testimony? Welcome. [LB1013]

DOUG EWALD: (Exhibit 8) Chairman Avery and members of the Government, Military and Veterans Affairs Committee, my name is Doug Ewald, last name is E-w-a-l-d, Tax Commissioner of the Nebraska Department of Revenue. I appear before you today in opposition to LB1013. As written, by requiring "any rule, regulation, statement, policy, instruction or standard of general applicability issued by an agency...designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure" to be subject to the notice and review

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requirements under the Administrative Procedures Act, LB1013 would expand the publications and informations subject to APA notices and review. I think it's fair to say the information issued by the department, geared to the general public, would fall within the purview of LB1013. As a result, LB1013 would fundamentally change the way the department communicates with most taxpayers. To ensure the department remains responsive to the needs of Nebraska taxpayers, the department continually issues forms and guidance including information guides, frequently asked questions, and revenue rulings. These documents, while not holding the same force and effect under law, do provide instructions or guidance to taxpayers and represent an instrumental and necessary tool used by the department to inform and respond to concerns of Nebraska taxpayers. Most forms the department publishes on an annual basis would also be subject to the notice and review requirements under the APA. Most income tax forms change every year and are dependent on timely action by Congress. Again, the department updates over 250 forms a year, such as 1040N, Nebraska individual income tax, and Form 10, sales and use tax returns. By subjecting all these documents to notice and review under the APA, LB1013 makes the department less responsive to the current needs of Nebraska taxpayers, not more. This concludes my formal remarks, and I'd be happy to answer any questions you have. [LB1013]

SENATOR AVERY: Thank you, sir. Questions from the committee? I don't see any. Thank you. [LB1013]

DOUG EWALD: Thank you. [LB1013]

SENATOR AVERY: Any more opponent testimony? Good afternoon. [LB1013]

FRANK DALEY: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. I'm here today to express the commission's opposition to LB1013 in its current form. And in saying that, I understand the good and positive reasons for its introduction and appreciate Senator Mello's offer to work with agencies to work out some of the language here. The problem with the bill in its current form is that it significantly expands the definition of a rule and regulation or what is covered under the term rule and regulation. And the other part of it is that with that expanded definition and the new language on page 4 of the bill, the following statement, I believe, would be true under LB1013 as drafted: No agency shall issue or utilize a bulletin, manual, or instruction unless the bulletin, manual, or instruction has been approved by the Governor and filed with the Secretary of State after a hearing. I don't think we really want to create a situation where a state agency is required to go through the rule-making process in order to update a manual or instructional manual or a bulletin or something of that nature. Now I recognize the language on page 2 which has been alluded to which says that rule or regulation doesn't refer to something which is of general application and doesn't affect a

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private right, but consider this. Under the Accountability and Disclosure Act, a lot of us have certain filing requirements, and with some of those filing requirements there's a specific calendered date by which they're required. So an annual campaign statement is due on January 31; your statement of financial interest is due on April 1. But others require an interpretation of the commission, that is campaign statements are due so many days before an election, and the closing date is due so many days before an election. That requires the commission on an...in every election year to figure out what is the election date. What are the number of days before the election? Does it fall on a weekend or a holiday such that other statutes come into play that move those? Those are interpretations that the commission has to make, put in instructional bulletins for the ease of candidates so that they can comply, and it seems to us that requiring that process to go through the rule and regulation process is burdensome, not particularly useful, and really does impede somewhat the ability of the commission to react to things that need to be reacted to. So again, I understand the concept behind the bill. The Accountability and Disclosure Commission thoroughly agrees with the idea that an agency should not attempt to enforce as a rule or regulation something which hasn't been adopted formally as a rule or regulation. And so again, we're perfectly happy to work with Senator Mello and his staff on this language. Thank you very much for the opportunity to testify. [LB1013]

SENATOR PRICE: Thank you, Mr. Daley. Are there any questions from the committee? [LB1013]

SENATOR PAHLS: Yeah. [LB1013]

SENATOR PRICE: Senator Pahls. [LB1013]

SENATOR PAHLS: I know you're in opposition to this,... [LB1013]

FRANK DALEY: Yes. [LB1013]

SENATOR PAHLS: ...but what I appreciate about your...I didn't see somebody coming up here automatically resisting the concept of change. Even though you disagreed with the way the current bill is written, you are at least willing to work with the senator who may or may not be right. And I appreciate that, that you're coming up...okay, you're open, you don't care for it the way it is right now, but you're willing to look and I appreciate that. Thank you. [LB1013]

FRANK DALEY: Thank you, Senator. [LB1013]

SENATOR PRICE: Any other comments or questions? Seeing none, thank you, Mr. Daley. [LB1013]

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FRANK DALEY: Thank you very much. [LB1013]

SENATOR PRICE: Well, we'll move on to the next opponent. Welcome. [LB1013]

BO BOTELHO: Thank you. Good afternoon, Vice Chair Price and members of the committee. My name is Bo Botelho; it's spelled B-o B-o-t-e-l-h-o. I am the general counsel and legislative liaison for Administrative Services. I am here today to provide testimony in opposition to LB1013. The Department of Administrative Services opposes LB1013 as it is currently written. The bill expands the definition of rules and regulations to include statements, policies, instructions, and standards of general applicability issued by an agency. Doing so will greatly increase the number of documents that will require the formal public hearing process, per 84-907, and final approval of the Governor. Currently, rules and regulations are designated to implement, interpret, or make specific the law enforced or administered by an agency or to govern the agency's organization or procedure. Rules and regulations have the force and effect of statute and can carry a penalty for violation. They are necessary for agencies to carry out the laws and duties which have been expressly delegated to that agency by a statute. Statements, policies, instructions, and standards of general applicability are part of the inherent authority of agencies to govern and direct day-to-day agencies' duties, operations, and interactions with the public. In other words, agencies use statements, policies, and instructions to provide internal guidance on how to implement and effect the rules and regulations that have been delegated to the agencies by a statute. This expanded definition of rules and regulations would seem to capture most if not all of Administrative Services' operational regulations and procedures except for those which deal entirely with internal office management. However, even those may be drawn into the definition if they touch and concern private rights and private interests and procedures available to the public. As the bill would prohibit enforcement of any policy or instruction until it has been through the Administrative Procedures Act, applicable policies would have to complete the approval process in an expedited time frame. This would be an almost Herculean undertaking for an agency as large and diverse as Administrative Services, a task not achieved without significant expense and time. Again, I would like to thank the members of the committee for my opportunity to provide this testimony and would answer any questions you may have. [LB1013]

SENATOR AVERY: Thank you for your testimony. Questions from the committee?  
Senator Karpisek. [LB1013]

SENATOR KARPISEK: Thank you, Senator Avery, and thank you. So you're saying that this would take up too much time to have public hearings? [LB1013]

BO BOTELHO: It could. As the bill is written right now, it would draw in all our rules, all our...well, not rules--the rules have already been through the public hearings--but all those procedures or policies which have not. And I believe the way the bill is written,

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they would have to...you would have to start right away or you couldn't use those, so it would be sort of a mass-promulgation process. [LB1013]

SENATOR KARPISEK: So maybe when we write bills, we should make it more detailed on how we want them to be carried out rather than leaving anyone to figure out how they want to do it themselves. I mean, it seems to me like okay, here's...we're going to run this rule, but then we're going to do it how we want, and then maybe we'll...might have the public hearing later. But we're going to start it now, and then maybe in six months we'll change it. Listening to the proponents, I mean, do you see what they're saying? [LB1013]

BO BOTELHO: But the rules should already have been through the procedure. Our objection are those policies which are not rules, which we think may be drawn in. [LB1013]

SENATOR KARPISEK: Okay, very good. Thank you. [LB1013]

SENATOR AVERY: Any other questions? Okay, don't see any. Thank you. [LB1013]

BO BOTELHO: Thank you. [LB1013]

SENATOR AVERY: We're on to opposition testimony. Good afternoon, sir. [LB1013]

RICHARD HEDRICK: Good afternoon. I'm Richard Hedrick, H-e-d-r-i-c-k. We need...probably the most...the government's problem is not the government, the people running it. We need oversight of agencies. I remember where in Lincoln here, about 15 years ago they had a tree or a...for this lady had a fourplex that she wanted to move and that...got everything all settled except a branch that was vertical over the street. There's...for...should not have been there in the first place. It wasn't proper tree agriculture--whatever you want to call it--but this so-called city forester wouldn't let them cut it down. And to the argument, well, she saved a lot of...would have saved all this lumber. He said that tree was more important than the lumber. There should have been oversight. The question I have about this...the way I read this bill, the Governor has too much oversight; he has too much power. Maybe I'm not reading it right. Thank you. [LB1013]

SENATOR AVERY: Thank you, Mr. Hedrick. I haven't seen you for a while in this committee. [LB1013]

RICHARD HEDRICK: I've got to get this thing going again. (Laughter) [LB1013]

SENATOR AVERY: Questions from the committee? [LB1013]

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RICHARD HEDRICK: Okay. [LB1013]

SENATOR AVERY: All right. Thank you for your testimony. Any other opponent testimony? Good afternoon. [LB1013]

COLLEEN BYELICK: (Exhibit 9) Good afternoon. My name is Colleen Byelick, C-o-l-l-e-e-n B-y-e-l-i-c-k, general counsel for the Secretary of State's office, here in opposition to LB1013. I appreciate Senator Mello's offer to work on Sections 1 and 2 of the bill, and that would be something that our office would be open to working on as well. Our concern is primarily that we would be unable to efficiently manage our office if this bill were to pass. Many of our guidelines, instructions, and standards could possibly be drawn into the definition of rule and reg under this bill, and we believe these things are more akin to sort of day-to-day operations of our office and do not rise to the level of rule and reg and should not be given that equivalent weight or status of rule and reg. We're also concerned about the time frame that it takes to enact a rule and reg. Whereas now, when we respond to a constituent concern or a problem within our office, we can do that in a matter of days. And under this bill, because of the requirements of the rule and reg rule-making process, we would be looking at probably three to six months to react to an issue within our office. We're also a little bit unique in that we do file, distribute, and certify all state regulations, and so depending upon the volume of regulations that we would see if this bill were to pass, there may be a fiscal impact with our office. And at the outset of this bill we really don't know what that would be, so we really didn't feel like we could even make an educated guess as to what that would look like, but that's just something to kind of keep in mind. As a constitutional office, there's also a concern now that all of our policies, our manuals, our instructions, our standards would have to be approved by the Governor, and that does seem to be contrary to the constitution in that we are...in that the Secretary of State is a constitutional officer. There's a couple practical issues that we noticed with the bill. It didn't appear to have a delayed operative date, so 90 days after the end of session, it seems like we would have to run all of these things through the rule-making process, which seems virtually impossible. In several areas of our office, we don't have rule-making authority. We don't even have the authority to promulgate rules and regs in a lot of areas of our office, so it seems like it would be impossible to comply, in those areas of the office, with this bill. And we also, in many of our guidelines that are directed at staff, have the procedures for entering things into our system, deal with our databases and our software application, and we don't think that that's something that should just be sort of in the public domain, that that would possibly pose a security risk. And although, you know, this bill is directed at things that affect private interest or private rights, it's difficult to draw that line with the manual that tells staff how to interact with public documents that they receive and public requests, and so we saw a difficulty there in trying to draw that line. And so we completely understand frustrations with the citizens and that the Legislature deals with, with agencies that have a, you know, broad discretionary authority and power and that we completely understand what the intent and purposes

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are of the bill, but we just think that it goes too far. So any questions? [LB1013]

SENATOR AVERY: Thank you very much. Questions from the committee? [LB1013]

COLLEEN BYELICK: Think we've covered it all? [LB1013]

SENATOR AVERY: Senator Seiler? [LB1013]

SENATOR SEILER: Thank you, Senator Avery. Ma'am, do you put a disclaimer on any of your guidelines and that, like a Rev. Proc. or a private letter ruling by the federal that this is...guidelines do not rely upon it? [LB1013]

COLLEEN BYELICK: In quite a few. I mean, we try and avoid giving any sort of legal advice in any document that we have. But if there is something that we're putting on our Web site or a standard or guideline that we're putting out there for the public, we always put a disclaimer about that you should talk to your attorney or your CPA or your financial advisor about the transaction so that you're not relying solely upon...on our guidance. [LB1013]

SENATOR SEILER: I didn't ask the other agencies that. Do you think that's common practice in the other agencies? [LB1013]

COLLEEN BYELICK: I really don't know. [LB1013]

SENATOR SEILER: Okay, thank you. [LB1013]

SENATOR AVERY: Any other questions? Thank you for your testimony. Any other opponent testimony? Okay, we'll move to neutral testimony. Anyone wish to testify in the neutral position? Senator Mello. [LB1013]

SENATOR MELLO: Thank you, Chairman Avery and members of the committee. I would say the underlying issue here, hearing both from the proponents and the opponents, I think really comes down to the issue of whether or not, one, we as a Legislature want to provide more instruction from our legislative power to the executive branch. That is the underlying issue you...I heard from those, from the opponents, that this is an executive power that we have given them; we have given the authority away from the Legislature to the executive branch to implement rules and regulations. It's only fitting that I knew in advance that most of the executive branch agencies would come in opposition because this alters their power. This alters their ability, in their view, to conduct what they see as their day-to-day way of doing business. I'm a believer that we can reform our government to change the way they do business. And as you heard from the proponents, I haven't heard anything so crystal clear as you heard in one of the testifiers on the Medicaid bulletin provider--provider bulletin--that says this change will

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be implemented on the effective date of the regulations which have been proposed but are not yet final. It's intriguing that the Department of Health and Human Services did not testify here today, knowing that they are the biggest abuser of the rules and regulations process. I can respect the fact that the Banking Director, that the Tax Commissioner, other executive branch agencies--particularly the Secretary of State and the Accountability and Disclosure Commission--are willing to work with me and this committee to find a solution to what we have acknowledged is a problem, that there are entities that are operating outside of the scope of law as we have drafted it in the APA guidelines or the APA Act. My hope is that to some of the questions the committee has asked, that we can get other executive branch agencies willing to sit down at the table to figure out a way for them to follow the APA, as well as trying to put more guidelines in the sense that exactly what was read in that Medicaid provider bulletin will not occur in the future because that is in what I view as a "smoking gun" of an agency acknowledging that they are not...they have...they are enacting a rule and regulation that's not been promulgated, signed, and approved by the Governor and the Secretary of State. That should be problematic for all of us as legislators. That is an abuse of power, it's a formal abuse of power on a document that's been provided to this committee, and it's my hope that we can work on this issue for the remainder of this session and if anything be able to dig into this issue over the interim to find out a way to modernize the APA so that this kind of abuse will not happen again in the future. Thank you, Mr. Chairman. [LB1013]

SENATOR AVERY: Thank you. Questions? Senator Seiler? [LB1013]

SENATOR SEILER: Thank you, Senator Avery. Senator Mello, do you envision any kind of a disclaimer to use on some of these guidelines? For every form they send out, an agency sends out, to have a guideline on this that this is a...our recommended procedure but would not be a matter of fact as law, and we wouldn't have to have a full-blown hearing on it? I'm also with you, curious why Health and Human Services wasn't here since they changed a regulation in the middle of a trial on me over the noon hour. (Laughter) So I fully understand what you're talking about, and I was hoping they would be here, but thank you. I think that Rev. Procs. and the guidelines that the IRS used would help a lot on how they're treated on their policies. [LB1013]

SENATOR MELLO: Senator Seiler, that's actually a recommendation that we had not considered but I think is something that this committee and others should consider as a potential solution to the problem you heard from the proponents. While we even acknowledge that yes, there are states that use this language, we're acknowledging that it may be too wide of a net of what we want in regards to trying to solve the problem. But the idea you just proposed I think is something that can help solidify or, I would say, ease the considerations or calm the fears that some of the agencies came in, in regards to all of their numerous documents that they feel would be subject to an APA. If we simply were able to emphasize that this is not a rule and regulation and thus it does not

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carry the weight of law, that would be something as a potential compromise I think I would be willing to consider. [LB1013]

SENATOR SEILER: Thank you very much. [LB1013]

SENATOR AVERY: Senator Pahls. [LB1013]

SENATOR PAHLS: Thank you, Senator. Yeah, right, and I want to add to that. I mean, I...like any department, I could see a resistance simply because if you're the director and you really think you're doing a good job... [LB1013]

SENATOR MELLO: Um-hum. [LB1013]

SENATOR PAHLS: And I know the couple of ones who...because I worked with them. [LB1013]

SENATOR MELLO: Yeah. [LB1013]

SENATOR PAHLS: And I mean they really in my estimation do a very good job, so I can see why they think we're trying to push them around a little bit. So shrinking what we're looking at, I picked up from those directors... [LB1013]

SENATOR MELLO: Um-hum. [LB1013]

SENATOR PAHLS: ...that that, you know, that's probably doable. But I can't...I still feel their resistance. But if we have agencies that are really, you know, really playing this ball game not with the rules that should be established, I think that gives us an opportunity to dig deeper. Thank you. [LB1013]

SENATOR MELLO: Thank you. [LB1013]

SENATOR AVERY: Senator Price? [LB1013]

SENATOR PRICE: Thank you, Chairman Avery. Senator Mello, I can absolutely understand what we're trying to do here, but I want to make sure that we acknowledge the fact that a lot of what goes on within HHS is something that's downward directed from federal government. I mean, the rules and regs that come down from federal government are like raindrops. They're constantly coming down, and so I think what we end up doing is using HHS as a punching bag without looking at it. That doesn't...I'm not saying that there's not a challenge in front of us,... [LB1013]

SENATOR MELLO: Um-hum. [LB1013]

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SENATOR PRICE: ...but we just can't punch on them all the time without saying they're the recipients of a downstream deluge of regulations. I mean, with the healthcare act they've passed, that...hundreds of pages that didn't have anything written on them, with rules to come to be determined, this makes it very challenging for all parties and that...what Senator Seiler proffered may be a solution. But again we have to have a holistic look of what the drivers are here, so I just want to make sure that we have that viewpoint. Thank you. [LB1013]

SENATOR AVERY: Any other questions? Thank you. [LB1013]

SENATOR MELLO: Thank you. [LB1013]

SENATOR AVERY: (Exhibits 10-14) Before closing the hearing on LB1013, I want to read into the record two letters of support: one from the Nebraska Association of Homes and Services for Children and one from the Nebraska Hospital Association. In addition, I have three letters of opposition: one from the Power Review Board; one from Mueller Robak, representing the State Bar Association; and one from the Nebraska Arts Council. (See also Exhibit 15) With that, we will end the hearing on LB1013, and we will ask, is Senator Mello around? (Laugh) We'll ask Senator Mello to open on LB1140. [LB1013]

SENATOR MELLO: Thank you. And again good afternoon, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB1140 would update the Professional Landscape Architects Act and is brought on behalf of the State Board of Landscape Architects. The bill makes several revisions which are relatively minor in nature but would bring the act more in line with the model landscape architecture law which other states have based their own landscape architecture statutes on. First, LB1140 would change registration under the act to a licensure and provide the board with the authority to adopt licensing standards to meet the standards which have been established by the Council of Landscape Architectural Registration Boards, otherwise known as CLARB. Because of the constitutional prohibition on delegation of legislative authority, rather than directly adopting the CLARB's standards the bill would allow the board to adopt licensure standards through the rules and regulations process. Currently, standards in Nebraska...the current standards in Nebraska to become a licensed landscape architect are an accredited degree in landscape architecture, four years of experience under a licensed landscape architect, and passage of the landscape architect licensing exam, otherwise known as the LARE. In contrast, the standards which have been established by the CLARB call for only three years of experience. In fact, Nebraska is just one of the few remaining states which have a four-year experience requirement. Additionally, LB1140 provides that the LARE examinations may be administered by either the board or by CLARB. These examinations are transitioning from the traditional paper and pencil format to an

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electronic format later this year, so without these changes the board would be unable to license candidates who pass the exam in this new format. Representatives from the Board of Landscape Architects are here today to testify and answer any questions you may have about the CLARB. Otherwise, I'd be happy to answer any questions you may have at this time. [LB1140]

SENATOR AVERY: Thank you, Senator. Questions from the committee? Don't see any. [LB1140]

SENATOR MELLO: Thank you. [LB1140]

SENATOR AVERY: Now are you planning to stay to close on this one? [LB1140]

SENATOR MELLO: I will, but more than likely I'll waive. [LB1140]

SENATOR AVERY: Okay. All right, proponent testimony? Welcome. [LB1140]

EILEEN BERGT: (Exhibit 1) Thank you. Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Eileen Bergt, and that's spelled E-i-l-e-e-n B-e-r-g-t. I am a licensed landscape architect here in Lincoln and the current vice chairperson of the Nebraska State Board of Landscape Architects. I'd like to offer this testimony on behalf of the board regarding LB1140. The Nebraska State Board of Landscape Architects was created by the passage of the Professional Landscape Architecture Act in 1967 to regulate the practice and the profession of landscape architecture in order to protect the health, safety and welfare of the general public. This remains the board's first priority, as it continues its oversight of the licensure and regulation of the profession of landscape architects in Nebraska. The revisions proposed by this bill are minor and in general align the Nebraska Professional Landscape Architect's Act with the Council of Landscape Architects Registration Board model law, which we call CLARB. CLARB is a national organization whose members include the landscape architecture licensing boards in 48 states, 2 Canadian provinces, and the territories of Puerto Rico, and they regulate the profession of landscape architecture. CLARB prepares and scores the Landscape Architecture Registration Exam. This exam determines whether the applicants for landscape architectural licensure are able to provide landscape architectural services without endangering the health, safety, and welfare of the public. The Landscape Architecture Registration Exam is transforming from a paper and pencil format to a computer-based testing format this year, so without the changes of this Landscape Architecture Act, the board will be unable to license candidates who pass the exam in this new computer-based or electronic format. We are also changing some minor wording issues in the exam...or in the act while we're doing this. We're changing the term "registered" to "licensed," we are changing "landscape architect" to "professional landscape architect," we are modifying the licensing standards to follow the current CLARB board, and we are also allowing the

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public member of the board to vote on matters of professional competency. I urge the committee to move forward on LB1140. Thank you. [LB1140]

SENATOR AVERY: Thank you. Let me ask you. If a person has a lawn service and maybe they trim bushes and maybe they do a little landscape work and perhaps even put in irrigation systems,... [LB1140]

EILEEN BERGT: Um-hum. [LB1140]

SENATOR AVERY: ...would they fall under this licensure requirement? [LB1140]

EILEEN BERGT: No. No, not unless they call themselves a landscape architect. [LB1140]

SENATOR AVERY: So they could do the work of a landscape architect but not actually call themselves one and they'd be okay? [LB1140]

EILEEN BERGT: Well, someone out there pruning is not really doing the work of a landscape architect. A landscape architect does design and protects the health...the public health and safety, welfare of the public more so than out trimming shrubs and mowing grass. [LB1140]

SENATOR AVERY: Um-hum, so if they do a little design... [LB1140]

EILEEN BERGT: If they're...and if they're doing a little design, if the... [LB1140]

SENATOR AVERY: If they design a rock garden or something like that, that would fall under the definition of a professional landscape architect? [LB1140]

EILEEN BERGT: If it's minor and they sell plants, it's allowed within our act. [LB1140]

SENATOR AVERY: Hmm, okay. Senator Price? [LB1140]

SENATOR PRICE: Thank you, Chairman. Thank you, ma'am, for coming down. We received a letter from constituents that talked about perhaps within the bill where we talk about "planting plans," to replace that with the word "landscape plans." Any initial ideas or...? Where right now in the proposed language, where it's on page 3, line 24, "from preparing planting plans," they want to do it maybe "from preparing landscape plans," you're the professional and I'd like to ask your opinion. [LB1140]

EILEEN BERGT: They're asking to change the term "planting plans" to "landscape plans?" I don't know. I would need to ask the board what their feeling is on that. I'm not sure right now. I don't see the...I don't know...pondering this. [LB1140]

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SENATOR PRICE: Okay, I just wanted to throw that out and see what stuck, and we could always... [LB1140]

EILEEN BERGT: Okay, okay. [LB1140]

SENATOR PRICE: ...because say, you know, they say landscape design is the planning process used to develop esthetically pleasing and functional outdoors spaces... [LB1140]

EILEEN BERGT: Okay. [LB1140]

SENATOR PRICE: ...and a planting plan could be I might put in a row of beans or I'm putting in a row of corn or am I putting in begonias. [LB1140]

EILEEN BERGT: Yeah. [LB1140]

SENATOR PRICE: So I just...I ask that question because it is in front of us and it was important, I thought. [LB1140]

EILEEN BERGT: Okay. We'll get back to you on that one. [LB1140]

SENATOR PRICE: Thank you. [LB1140]

SENATOR AVERY: Any other questions? Senator Wallman. [LB1140]

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, thanks for coming, ma'am. What kind of piqued my interest on this professional test, you know, with the computer software is I, as a layman, can I buy that same software? For planning? Like homes, I know I can. [LB1140]

EILEEN BERGT: Um-hum. This...well, it's only available through the Council of Landscape Architecture Registration Boards, and it's offered through testing service centers, so. [LB1140]

SENATOR WALLMAN: Okay. Okay, thanks. [LB1140]

SENATOR AVERY: Any more questions? I don't see any. Thank you for your testimony. Any other proponent testimony? Seeing none, we'll move to opponent testimony. Anyone wish to testify in opposition to LB1140? I don't see anyone there. [LB1140]

SENATOR SEILER: Wait a minute. [LB1140]

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SENATOR AVERY: Are you in neutral or opposition? I think you're neutral. I have your letter here. [LB1140]

MARTI NEELY: Okay. [LB1140]

SENATOR AVERY: All right. We'll take neutral now. Nobody came forward. Come on. Welcome. [LB1140]

MARTI NEELY: (Exhibit 2) Good afternoon, Senator Avery, members of the committee. My name is Marti Neely. I am a professional landscape designer. I also serve on the board of directors of the Association of Professional Landscape Designers. My... [LB1140]

SENATOR AVERY: Will you spell your name for the record? [LB1140]

MARTI NEELY: Yes. M-a-r-t-i N-e-e-l-y. In looking at LB1140, I want to applaud your efforts to: (1) simplify the act; and (2) include our military members and their spouses in the ability to practice their profession across the United States. Having grown up in the military, there is a great sacrifice that is given, and I think it is time that we do protect their right to practice. But I also have a concern with the language of the law as it is written, that the profession of landscape design is excluded although it is a long--excuse me; I've never testified in front before, so this it's a little nervous--but the profession... [LB1140]

SENATOR AVERY: We're not scary. Go ahead. [LB1140]

MARTI NEELY: ...of landscape design is as old as the practice of landscape architecture, and while there is some overlap, there are also some very distinct differences. In the act--and I did write the letter that you have--my concern on page 3, where the term "planting plan" is used, is what it does is it suggests that other than landscape architects, that they would be the only designers that could suggest something outside of plant materials when in fact landscape designers do affect and help the public in a lot of buying decisions that go beyond plant materials. We are not interested in designing roadways, placing hospitals, or doing public work. We work generally with the consumer on private homes, though not exclusively. But with the verbiage that is here, if I were to help a consumer design where a patio would go, I would be in violation, and I've been...I think that is inappropriate. It's not reasonable, so I would like the committee to look at the language and consider using the word "landscape plan," which is a broader definition of what we do, so that we would be able to comply. I do not believe these changes would have a negative impact on the act or the right of the Landscape Architecture Board to review work that they feel is in violation of the health, safety, and welfare of the citizens of Nebraska. Thank you for the opportunity to testify. [LB1140]

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SENATOR AVERY: Thank you for your testimony. We might have questions. Hold on. [LB1140]

MARTI NEELY: Okay. [LB1140]

SENATOR AVERY: Yes, Senator Price. [LB1140]

SENATOR PRICE: Well, as an Air Force veteran, I can understand and commiserate with you, and I appreciate you coming forward. I wasn't aware that you were in the audience when I brought it up, but thank you for helping to clarify that. [LB1140]

SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. [LB1140]

MARTI NEELY: Thank you. [LB1140]

SENATOR AVERY: Any other neutral testimony? Okay. Seeing none, we will go to closing. Senator Mello? [LB1140]

SENATOR MELLO: Yeah, okay. I'll be brief, Chairman Avery, and I'll make sure I touch base, or I'll have...make sure that the Professional Landscape Board will touch base with the neutral testifier and provide to the committee information. It would though, for records purposes...the section that she would like to see changed is existing statute which has no ramifications whatsoever on the existing bill in front of you of...or any of the proposed changes that we are making in the bill. So I think just for clarification purposes, without fully understanding kind of the whole world, so to speak--the difference between a landscape designer in comparison to a landscape architect, which this act and bill only affects landscape architects and them being licensed as landscape architects--I think the issue she raises is something we can look at, at another point, possibly looking to make other changes possibly in other landscape-related components of the bill. The underlying focus though is more on the registration and the licensure, so I just want to make sure for clarification purposes. But I will speak with her and the board after the hearing to make sure that we're crystal clear on what her request is, ask the committee to look into further language changes. [LB1140]

SENATOR AVERY: I have to admit I didn't know there was a distinction between designers and architects, but... [LB1140]

SENATOR MELLO: Licensing, I think. [LB1140]

SENATOR AVERY: Yeah. I know that there is a distinction in building designers... [LB1140]

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SENATOR MELLO: Um-hum. [LB1140]

SENATOR AVERY: ...and architects, but any questions more from...? Thank you, Senator Mello. [LB1140]

SENATOR MELLO: Thank you. [LB1140]

SENATOR AVERY: I do have an exhibit here from Ms. Neely for...to enter into the record. And with that, we will end the hearing on LB1140, and we'll now move to LB1060, and I see my friend. [LB1140]

SENATOR KARPISEK: He's getting ahead of you. [LB1060]

SENATOR SEILER: He's jumping right in there. [LB1060]

SENATOR PRICE: Yeah, you might want to get up there a little sooner than Senator Avery. [LB1060]

SENATOR SEILER: Are you sure he's a friend or a foe? [LB1060]

SENATOR PRICE: Senator Avery. Welcome, sir. [LB1060]

SENATOR AVERY: Thank you, Senator Price. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I am bringing to you LB1060, which is a bill that I am introducing at the request of the administration. LB1060 amends the Administrative Procedures Act to change the type of notice that agencies are required to provide to the public when proposing a change to a rule or regulation. The bill requires agencies proposing changes to their rules or regs to submit their notices of public hearing 35 days prior to the hearing, and they do this through the Secretary of State, or at least they submit their notice there. The Secretary of State then, at least 30 days prior to the hearing, must publish a notice on the Secretary's Web site. The bill eliminates the requirement that these notices be published in a newspaper having general circulation in the state. The bill also encourages agencies to solicit public comments through the Secretary of State's Web site on possible rule changes before they are formally proposed. The bill clarifies that the Secretary of State has a duty to publish on the Secretary's Web site when and how a person may comment on the possible rule or reg. Current law requires this information to be published in a newspaper of general circulation. For a long time, agencies published rule and reg notices in the Omaha World-Herald. That paper, you may remember, scaled back its circulation substantially in 2008. In order to provide adequate notice, some agencies publish in multiple newspapers now. It is unclear that it is even possible for agencies to comply with the APA requirement that a notice be published in a newspaper of general

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circulation in the state. I suspect that there will be people who will testify after me that will dispute this. Publishing electronic notices of the rules and regulations at hearings is a positive change, I think, because the notices will be available to everyone statewide, and they will be available on a 24-hour/7-day basis, not just one day when they happen to be published in a newspaper. The Secretary of State's Web site is linked to detailed agency information including contact information, the complete text of the proposed regulation, making it easier for members of the public to quickly understand what the agency may be proposing. The Secretary of State also offers a subscription e-mail service that provides notification to interested parties without their having to actively monitor newspapers or the Secretary of State's Web site. Most of you know that I am a strong advocate of effective and efficient government, and I have participated with this committee in efforts to enhance and expand the use of technology in how we do business in the state. I think that we've used the phrase in here before that we're trying to bring the state of Nebraska kicking and screaming into the twenty-first century; this is a part of that effort. This is a bill where we will be using technology to help citizens get more involved in their government. It can improve government through perhaps a small cost savings with the bill because agencies will not have to pay newspapers to publish their notices. It is my understanding that my good friend Allen Beermann is here for a purpose, and it is not to entertain us. It is to say that Bill Avery has a bad bill, and it will not affect our close friendship when he does that. But it is important, I think, for us to understand that it...the day is coming when we are going to be using this technology more widely in government, and eventually we'll all get used to it and find out that it is probably preferable to the old system. It's important to remember that this bill deals with two types of notices required to be published in newspapers, and there are some 900 references to publication of notices in other parts of state law. The vast majority then of public notices will still be required to be published in newspapers even if this bill becomes law. There will be people who will follow me who will testify and discuss how this bill will streamline the APA process and perhaps bring some cost savings to the state. So with that, I will ask you to advance this to General File and take any questions. [LB1060]

SENATOR PRICE: Thank you, Senator Avery. Are there questions from the committee? Seeing none, we will move on to proponents. Would the first proponent for LB1060 come forward? Welcome. [LB1060]

MIKE LINDER: Thank you. Good afternoon, Senator Price and members of the Government, Military and Veterans Affairs Committee. My name is Mike Linder, last name L-i-n-d-e-r. I am director of Nebraska Department of Environmental Quality, and I'm here today to testify in support of LB1060. LB1060, as Senator Avery mentioned, amends the Administrative Procedures Act to make the Secretary of State's Web site the common location for public notices of rule making under the APA. Our agency, DEQ, does have extensive experience with public notice process under APA. We routinely update environmental regulations before the Environmental Quality Council.

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Last year alone, the EQC held 77--not 77--17 regulatory hearings regarding DEQ regulations and programs, and that's probably about an average number. The DEQ already uses a variety of alternatives in addition to newspaper publication to inform our stakeholders of regulatory activities and hearings. We do statewide outreach to stakeholders during the initial phases of regulatory development to inform them that a regulatory change is being planned and to collect their input and inform them of when hearings will be held. To do that, the department uses a variety of electronic mailing lists that we have developed within our agency to get the word out. We also keep our Web site up to date on our regulatory proposals. To publish notice in a newspaper we believe is not as effective as it once was since there is no longer--again, as Senator Avery mentioned--one source that does get statewide circulation, so using the Secretary of State's Web site as a statewide source to publish hearing notices does make sense, at least to me. And while the bill does not...it does mandate the use of the Secretary of State's Web site, it doesn't preclude an agency from publishing a notice in a newspaper or trying to get a public service announcement in a newspaper if we would deem that necessary to reach an additional audience. LB1060 will also provide a direct savings to our agency. As an example, the public notice for the upcoming March 2012 Environmental Quality Council meeting costs...I just signed off on a bill of about \$1,700 to publish in a newspaper. We estimate that the savings to our agency would be about \$4,000-6,000 per year with this option. So again, the DEQ supports LB1060 and urges the committee to advance it for consideration, and I'd be...that concludes my testimony. I'd be happy to respond to any questions. [LB1060]

SENATOR PRICE: Thank you, sir. Are there any questions from the committee? Seeing none, thank you for your testimony, sir. [LB1060]

MIKE LINDER: Thank you. [LB1060]

SENATOR PRICE: We will take the next proponent for LB1060. Welcome back, sir. [LB1060]

BO BOTELHO: Thank you. Okay, my name is Bo Botelho, B-o B-o-t-e-l-h-o. I am general counsel and legislative liaison for the Department of Administrative Services. I would like to thank Vice Chair Senator Price and all the members of the committee for an opportunity to provide testimony today in support of LB1060. This bill would amend the Administrative Procedures Act to change the type of notice that agencies that are required to provide to the public when proposing a regulatory change. It would require agencies proposing regulatory changes to submit their notices of public hearing to the Secretary of State for Internet publication on the Secretary of State's Web site. The bill clarifies that the Secretary of State has the duty to digitize and electronically publish proposed regulatory changes on its Web site in order to provide notice to the public. This bill would also eliminate the requirement for the publication of public hearing notices in newspapers having general circulation in the state. Currently, when an

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agency changes, adopts, or modifies any rule and/or regulation, the Administrative Procedures Act requires that the agency...to advertise in a newspaper having general circulation in the state to inform the public about when and where the agency will have the public hearing. While some papers have large regional circulations, none have true statewide circulation. Therefore, in order to provide adequate notice to members of the public across Nebraska, an agency must publish in multiple newspapers or publish in one of the larger newspapers in the hopes of covering as much area as it can. It is unclear as to whether it is possible to comply with the letter of the APA as it is currently worded. This bill would allow for a system of notice which would be accessible throughout the state, creating a more uniform method of public notice. Any notice, once posted, would be available to everyone across the state at the same time and be available 24 hours/7 days a week. The bill simplifies the method of publication for state agencies and will reduce public agency costs while increasing timeliness and the public accessibility of statewide publications. I would like to thank the committee for my opportunity to testify and would take any questions. [LB1060]

SENATOR PRICE: Thank you. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB1060]

BO BOTELHO: Thank you. [LB1060]

SENATOR PRICE: Next proponent? Welcome, Dr. Schaefer. [LB1060]

DR. JOANN SCHAEFER: (Exhibit 1) Good afternoon, members of the committee. My name is Joann Schaefer, J-o-a-n-n S-c-h-a-e-f-e-r, M.D. I'm the chief medical officer and the director of the Division of Public Health for Health and Human Services. I'm here today to testify in favor of LB1060, which authorizes the electronic publication of information regarding rules and regulation changes. So what this bill means for our agency is the same--less expensive ways for information to be distributed to the public. The Department of Health and Human Services system conducts anywhere between 35 and 50 public hearings a year. In recent years, this has resulted in publication costs of about \$20,000. For information purposes, we'd also like you to know that in addition to formal publication that is required by statute, we frequently use other informal ways to communicate with the public during our regulation process. We frequently involve external stakeholders during and/or sometimes even before the drafting process even begins when we're working on regulations, so before they even go to public hearing. People can subscribe to our Web sites so that when the hearing notices are made, they'll get an e-mail notification; that process stays in place. As you also heard, that process will be in place or is in place at the Secretary of State's office as well. For all the reasons that you heard before--I won't be duplicative in my testimony--it is the same reason why we support the bill. We're always looking for better ways to communicate with the public, get their input before/during the regulation process, and we think this is a better way to do business as these are things that affect their health and safety and

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well-being. And we think it's important, and we really applaud Senator Avery for introducing the bill. If you have any questions, I'd be happy to answer them. [LB1060]

SENATOR PRICE: Thank you. Any questions? Senator Wallman. [LB1060]

SENATOR WALLMAN: Thank you, Chairman--Vice Chair. Welcome, Doctor. [LB1060]

DR. JOANN SCHAEFER: Thank you. [LB1060]

SENATOR WALLMAN: So you want to put the post office out of business? (Laughter) No, on a more serious note, I've had complaints about the state Web sites are too busy, it takes too long to get on, and so do you think this is going to make it worse? [LB1060]

DR. JOANN SCHAEFER: Would that be our Web site, the DHHS Web site? [LB1060]

SENATOR WALLMAN: Yes. [LB1060]

DR. JOANN SCHAEFER: Well, actually it's good that you mentioned that. We actually, through a series of federal funding that came from the Division of Public Health, we were actually able to purchase the redoing of our Web site, and so that has been underway now over the last several months. We did the internal Web site first, the external is being worked on now, so it's been a massive overhaul and upgrade. It hasn't been done for years, and people have been working extremely hard on that, so I think the Web site has undergone tremendous improvement. You will see tremendous improvement, really getting it up to this year's date of current technology. So yeah, I think it's really good. I think that public notification portion on the regulation part was pretty good before. [LB1060]

SENATOR WALLMAN: Um-hum. [LB1060]

DR. JOANN SCHAEFER: So, you know, if you signed up to that Web page and we published a hearing notice, you got that e-mail and, you know, I think that was good. But I think it's going to be even better but, you know, there's all sorts of ways that we communicate with the public on this, Senator, and it's very important to us to get public input. I mean, I want...you know, we...I have in the Division of Public Health just one law that has 58 sets of regulations, so that's a lot to clip through. And there are a lot of stakeholder groups that we're working with, so it's really important to us to be able to communicate with them quickly and efficiently. And if we were doing all of those--I mean, we're doing it now--but if we were relying only to communicate via newspaper, it would be very difficult. [LB1060]

SENATOR WALLMAN: Yeah, thanks. [LB1060]

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SENATOR PRICE: Thanks, Senator Wallman. I would ask--or Senator? [LB1060]

SENATOR SEILER: Uh-uh. [LB1060]

SENATOR PRICE: Okay, well, I'll ask a question real quick. Have you ever polled the people who attend these hearings to find out how they receive their information? [LB1060]

DR. JOANN SCHAEFER: You know, that's a good question. I'm not sure if we have. [LB1060]

SENATOR PRICE: All right. Thank you. [LB1060]

DR. JOANN SCHAEFER: But I'll get back to you; I'll ask the question. [LB1060]

SENATOR PRICE: Great. [LB1060]

DR. JOANN SCHAEFER: I'm not sure if we have. [LB1060]

SENATOR PRICE: Thank you. Senator Pahls? [LB1060]

SENATOR PAHLS: Yeah, I want to ask you a real serious question now. Do you still have your singing voice? [LB1060]

DR. JOANN SCHAEFER: My same voice? [LB1060]

SENATOR PAHLS: Singing voice? [LB1060]

DR. JOANN SCHAEFER: Oh, my singing...yes, I do. [LB1060]

SENATOR PAHLS: I don't know if you know this; this woman can sing. Thank you. [LB1060]

DR. JOANN SCHAEFER: Thank you; that's a nice compliment. [LB1060]

SENATOR PRICE: Thank you, Senator Pahls. Are there any other questions? [LB1060]

DR. JOANN SCHAEFER: I won't quit my day job though. (Laughter) [LB1060]

SENATOR PRICE: I'm sure that Gunny (phonetic) will be happy about that. Thank you very much for your testimony today. [LB1060]

DR. JOANN SCHAEFER: Thank you. [LB1060]

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SENATOR PRICE: Do we have any further proponent...? Come on down. [LB1060]

TIM McCOY: Thank you, Senator Price, members of the Government, Military and Veterans Affairs Committee. My name is Tim McCoy. I am with the Nebraska Game and Parks Commission. I'm their wildlife division administrator. I'm here today to support this bill from the standpoint of the Game and Parks Commission for pretty much the same reasons you've heard earlier, and I'm going to not talk about a lot of those. We do a lot of regulation changes, specifically especially with our hunting and fishing seasons and our regulations. That's typically an annual process for us for most of our different groups of species, so we do this a lot. It would simplify it from our standpoint because of that challenge of notice in a paper that hits the entire state. We also would...I would like to also add that for us, most of our hearings--nearly all of them, unless we do a special public hearing, usually that's in association to a specific area of the state--are done at our commission meetings, which are therefore covered under the Open Meetings Act, so those are...we do always public...provide notice of those, and those hearings and the schedule are published--for our meetings--are published on our Web site in advance of those meetings so the public can see those. But we do think, from our standpoint, this would allow us to be perhaps a little quicker and move a little more into the twenty-first century in how we provide information to all of our constituents and would note that this is really...these hearing notices are...should already be...are usually already provided via the Secretary of State's office. So it's not necessarily an addition; it just really clarifies that, states it as a place where folks can go for that information, know to be looking for it there. [LB1060]

SENATOR PRICE: Thank you, Mr. McCoy. Are there any questions from the committee? Seeing none, thank you for your testimony. Are there any other proponents for LB1060? Seeing none, we will now move on to opponents. Mr. Beermann? [LB1060]

ALLEN BEERMANN: (Exhibits 2-3) Thank you very much, Mr. Acting Chairman, members of this committee. I'm Allen Beermann, B-e-e-r-m-a-n-n. I represent the Nebraska Press Association, and we appear today in opposition for...of this bill for numerous reasons. I'll try to be brief. It might be useful for the committee to know that similar legislation this year has already been defeated in 12 states. The most recent was two weeks ago in Florida. I might also mention that the Web site for Missouri, which is a secure Web site for their government agencies, is still down. It's been down for several days now because it was hacked, and instead of all the legal notices on the Missouri Web site the last couple of days and maybe still now, they're showing war movies. I might also mention that state of Utah two years ago made this move of taking everything out of the newspapers and putting it on their Web site, and I'm happy to report that they changed course and last year, they went back to publication in newspapers. Also, three cities in the Northeast--two of them in Maine and I think one in New Hampshire--decided they were going to save a lot of money and put all their legal

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notices on the Web site. Well, then the clerks in these cities forgot to renew their Web site, their URL, and suddenly they were unplugged. They lost all of the history of their legal notices, and now they're fighting lawsuits, and they haven't saved much money. The premise of a public notice possesses four major characteristics. A public notice is published in a forum independent of the government, such as a newspaper. A public notice is capable of being archived in a secure and publicly available format. In that regard, I might mention that twice in the last three years, our state has experienced ice storms in which up to 22 counties were without any electricity for up to 19 days. Every newspaper was published during that period, but of course none of the Web sites worked for almost three weeks, and they still have legal complications for those notices that were supposed to be on the Web site. A public notice is capable of being accessed by all segments of society. The national Public Notice Resource Center frequently--almost monthly--does public notice surveys and here are their recent findings, one as current as yesterday. Only 66 percent of all Americans over 18 ever use the Internet. Only 50 percent of the African-Americans use the Internet. Only 45 percent of Hispanic-Americans use the Internet. Only 40 percent of Americans over 65 use the Internet. Only 15 percent of Americans visit a government Web site on the average day. And I can report as recently as yesterday, 89 percent of the U.S. adult population did not view a government Web site, and over 40 percent of Americans have never visited a government Web site. The other thing that's important about publication of notices in the newspaper is that you get a proof of publication, an affidavit that's part of the record. Electronic notices, you do not get that. And we've also had instances--and I won't bore you with all of the details in the various states--where public notices have been changed, altered, amended or taken down or hacked; that is not a good procedure. The last thing that I would mention today would be good news to Senator Avery and perhaps to this committee and to the state of Nebraska. Starting March 1, the Nebraska Press Association has created a Web site in which every legal notice published in Nebraska will be on our Web site, available free of charge to every citizen in this state. The public notice for every public notice published will be on the Web site for six months. You can also access it by a specific word, a smart search. If you're looking for a school bus bid, you'll find the school bus bids instantly in every state, county, or city in Nebraska. And so that will be up soon, and I think that would render this bill to be unnecessary. So for all of these reasons, I hope that this bill would be in the final motion made as a candidate, for when you adjourn sine die, it will go away. Thank you for the courtesy of hearing us today. [LB1060]

SENATOR PRICE: Thank you, Mr. Beermann. I'll just ask real quick. What has been the circulation numbers of newspapers of general circulation in the state of Nebraska in the last 10 years? [LB1060]

ALLEN BEERMANN: Okay. We're going to have testimony to that effect, but generally the subscription numbers for Nebraska are 700,000. [LB1060]

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SENATOR PRICE: But...okay, well, we'll save more questions for later. Are there any other questions from the committee? Seeing none, thank you, sir. [LB1060]

ALLEN BEERMANN: Thank you, Senator Price. [LB1060]

SENATOR PRICE: Our next opponent? Welcome. [LB1060]

SCOTT SEARL: (Exhibit 4) Thank you. Thank you, Senator Price. Thank you, committee members. My name is Scott Searl, S-c-o-t-t S-e-a-r-l. I'm vice president and general counsel for the Omaha World-Herald company. As you know, we're the largest newspaper in the state. We're also a business, and I want to get it out on the table. Obviously, we make money from legal notices, but the bottom line is this isn't for us about the money. We are very passionate about legal notice issues. My colleague, Larry King, will talk about some of the public policy issues we view as being involved here. And what I wanted to do is briefly address two of the points that were made by proponents of the bill, the first one being the issue of: Can any newspaper in the state satisfy the requirement of being a newspaper of general circulation? We understand that issue. We've looked at it because we understand we pulled back our home delivery circulation for part of the western states--counties in the state--a few years ago. Currently, we distribute our newspaper by four different methods. There's home delivery, there's mail, there's single-copy sales, and there's also the new technology "e-edition." That's different than our Web site; it's different than Omaha.com. It's an actual PDF replication of the newspaper that's pushed out or e-mailed to subscribers. And the Audit Bureau of Circulation which checks the circulation of newspapers, it actually counts that as newspaper circulation. When you take our circulation, we are in all 93 counties of the state; we are in fact a statewide newspaper. Our circulation in certain counties in the west, it's not as large as it used to be, but we believe we still satisfy the legal requirements of being a newspaper of general circulation. I won't get into all the details of the case law and the research, but surprisingly there's a lot of cases out there that have looked at this issue and have interpreted that phrase--what does it mean to be a newspaper of general circulation? So the memo that I've circulated, it highlights what those cases are, what the tests are, and if you look at that test, we believe we clearly satisfy that test. The second issue that I wanted to address is the issue of bringing our notice into the twenty-first century. I think we can all agree we want the notice to serve what it's intended to serve, to get notice to as many people as possible as efficiently as possible. The newspaper--and when I say newspaper in this context, I'm meaning the printed newspaper--still is a valuable source of getting that information out, but we think we can be helpful, too, on the new technology side of things. I know the proposal here is to use the Secretary of State's Web site. By any measure, if you look at how people get their news and get their information, they're not going to the Secretary of State's Web site, nor do I think they will go there. They'll go to sources like Omaha.com. To put it in context, Omaha.com has about 17-18 million page views per month, 1.6 million unique visitors per month. That would dwarf anything that

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the Secretary of State or any government Web site would have. I think really, if we're looking at bringing this into the twenty-first century, maybe the thing to look at, if it...the way this statute is worded, "newspaper of general circulation," maybe we need to clarify that when we look at the word "newspaper," what we really mean is the printed version plus its on-line counterpart. Let's not take away and exclude the printed version, but let's look at the printed version plus the on-line counterpart, and we'd be happy to work with anyone on the committee, any agency, to craft language that would bring the statutes into the twenty-first century in that regard, and we think that's a better solution. Thank you. [LB1060]

SENATOR PRICE: Thank you, Mr. Searl, and you almost got an amen from me as a witness. I'd like to ask a question. We heard the number of 700,000 as a circulation number,... [LB1060]

SCOTT SEARL: Um-hum. [LB1060]

SENATOR PRICE: ...and then we look at this e-version. Can you proffer how much of that total circulation was the e-version circulation? [LB1060]

SCOTT SEARL: I don't have the e-version numbers--I'm sorry about that--but I have... [LB1060]

SENATOR PRICE: So you don't know if that's a part of that or another subset on top of that. [LB1060]

SCOTT SEARL: My guess is it would be part of it because if you...if the e-version that we have, the Audit Bureau of Circulation, what they do is they look at and they count that e-version. If it's an exact replica of the newspaper, they count that as paid circulation, so I think that would probably be part of it. [LB1060]

SENATOR PRICE: Well, the follow-on then would be from what I've heard from the agencies and when I've had discussions before. Is there a way that a political subdivision and/or a state agency could look at that? Because I would submit that the cost for the e-version is significantly lower than the printed version and that the rates would be reflected therein, and I think we would have a solution set there where we meet the financial savings that some are looking for and yet keep the integrity of the system in place today. [LB1060]

SCOTT SEARL: I don't know what our "e-rate" ad...ad rates are. I think the legal ad rates are set by statute, so I don't know if there is a differentiation between the e-version right now in the statutes and the paper. [LB1060]

SENATOR PRICE: Well, as long as when we get together sometime after, we can

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discern that. That would be awesome, and I'd appreciate that. [LB1060]

SCOTT SEARL: Yeah. Our point is we don't think we should do something where we take away notice for those people who really rely on the printed newspaper. We're not opposed for any government agency putting notice on-line; we think that's great. But it ought to be also in the newspaper and probably also on Omaha.com and other on-line counterparts. [LB1060]

SENATOR PRICE: Thank you. Do we have any questions from the committee? Seeing none, thank you for your testimony, sir. [LB1060]

SCOTT SEARL: Thank you. [LB1060]

SENATOR PRICE: Next opponent? Welcome, sir. [LB1060]

LARRY KING: (Exhibit 5) Thank you. Senator Price, members of the committee, my name is Larry King. I'm vice president of news for the Omaha World-Herald company in Omaha, 1314 Douglas Street, 68102. I won't repeat much of what Scott Searl, my colleague, said, but I'll go away from my prepared remarks just to try to answer your question. There's no doubt that the circulation of printed products in this state as well as nationwide has declined. But I would point out that that is still an extremely large audience, larger than the audience that is going to be gained, I guess, by the what the proponents say to make it somehow more available to the public; I'm mystified by that. Each of the proponents said that they want to inform the public. If that is the case, why would they take away notice in the most widely-distributed forms of providing information to our citizenry, which is still the major news products in this state, the Omaha World-Herald being the largest, but also the Journal Star and other newspapers? The intent of a public notice is by definition to notify the public of a public policy, of a proposed public policy action, and the best vehicle of that is still a news publication. I happen to be a pretty avid hunter, and I go to the Game and Parks Commission Web site, but I'm not going to see...in all the different departmental rules and regulations, I'm not going to see things that come up because I, like I would attest most citizens, are not going to go every day to look at governmental Web sites; it's going to be a rare occasion. And when you know specifically what you want to look for, you can go there. But in the case of a citizen who wants to keep himself or herself informed, that comes through the course of reading a news product. You find things that you didn't know about whether that's in an article, an opinion piece or yes, a legal notice. Legal notice is part of a news and information package, which is what we do day in and day out. So I guess what my point--without repeating what Mr. Searl said--is with our print circulation alone, but add to that our electronic circulation that is indeed part of the moving into the twenty-first century, there is no audience of citizens in our state larger to find out what is going on this state, including what their governmental entities are proposing or are up to. They come across it every day in the course of informing

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themselves as citizens. And, as Mr. Searl said, we're not opposed to the Secretary of State's Web site having all these notices. We just think it is not the time or place to take those out of the vehicles that are the dominant source of information for people who want to know what is going on in their government. And with that, I would conclude and answer any questions that you might have. [LB1060]

SENATOR PRICE: Thank you, Mr. King. Are there any questions? Seeing none, thank you for your testimony today. [LB1060]

LARRY KING: Thank you. [LB1060]

SENATOR PRICE: Do we have any further opponents? Good afternoon, sir. [LB1060]

GORDON WINTERS: Good afternoon, Senator Price, members of the committee. My name is Gordon Winters. I'm the opinion editor for the Lincoln Journal Star. I'm here representing them today. Most of the points that I'd like to make have been touched on already by speakers before me, but I think I have a couple of things to offer. One of the things that I do in my job is I interact with the public who want to put letters to the editor about legislative bills and things of that nature, and I'd...every day it's impressed on me the different places that people in our society are in their use of electronic communication. Some of the people who write letters to the editor write them on handwritten letters with stamped envelopes and so-forth. Some people fax us letters. Some people go to our Web site and put their letters in that way. Other people e-mail them. We have all these different systems, and some people are very adept with electronic communication, and some people have no idea whatsoever. It's been my experience over the years that sometimes I'm the teacher. When they get a new computer, they want to know how to use the Web site to put their letters in, and so we kind of have to walk them through. And I can tell you that it's my experience that I think there will be a day when electronic communication will really reach a wide spectrum of society, but it's not there yet by quite a long way. There's a lot of people out there that just have no idea how to even use a computer, let alone how to go to a Web site. The second point I'd like to make is even for somebody like myself who's been on-line since, you know, they first invented browsers, it's not easy to find stuff. You have to have really good Web sites and that are easy to navigate. And the other trouble is, as Allen referenced with the site that got hacked, Web sites can change from minute to minute, and I think the interests of open, transparent government are going to be served, even when everybody can use electronics, with independent Web sites where the rules and regulations are placed there, they're under independent control. It was interesting as I sat here and, you know, with the legislative committee and heard apparently some senators are concerned that the bureaucracy doesn't always function the way they would like it to and there's a little...seemed to be some trust issues there. I think that you may have the same issues with the general public if the government itself was in charge of all the...posting all the rules and regulations and, you know, I think the public would

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be...feel safer if they knew that games weren't being played at that level. I think that's really all I have to clean up here, but I'd be happy to answer any questions. [LB1060]

SENATOR PRICE: Well, thank you, Mr. Winters. Are there any questions? Senator Wallman. [LB1060]

SENATOR WALLMAN: Thank you, Senator Price. Yeah, welcome. Do you see in the future that newspapers would charge for Internet access? [LB1060]

GORDON WINTERS: You know, there are some, but they...we...in the business we call them "pay walls" that are being tried. [LB1060]

SENATOR WALLMAN: Um-hum. [LB1060]

GORDON WINTERS: The trouble is the way the Internet was created, everything was free,... [LB1060]

SENATOR WALLMAN: Yeah. [LB1060]

GORDON WINTERS: ...and it's really hard to kind of...the horse is out of the barn, so to speak, to do that. [LB1060]

SENATOR WALLMAN: Yeah. [LB1060]

GORDON WINTERS: Everybody's watching the newspapers that have tried to see how that's going. [LB1060]

SENATOR WALLMAN: Um-hum. [LB1060]

GORDON WINTERS: There may be some success in having part of the information be free, but for heavy users would have...would agree to pay for part of it and we'll see. [LB1060]

SENATOR WALLMAN: Okay, thanks. [LB1060]

SENATOR PRICE: Thank you, Senator Wallman. Are there any other questions? Senator Pahls. [LB1060]

SENATOR PAHLS: I just want to add this. You know, you did capture my gray matter when you said maybe we need somebody else other than government doing this. Now that just...that did make some sense there, you know, and I thank you for that. [LB1060]

GORDON WINTERS: I'm glad you liked it. [LB1060]

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SENATOR PRICE: Any other comments, questions, or queries? Seeing none, thank you for your testimony, sir. [LB1060]

GORDON WINTERS: Sure. [LB1060]

SENATOR PRICE: Do we have any other opponents? Would anybody like to testify in the neutral? Welcome back. [LB1060]

COLLEEN BYELICK: Hi, thanks. [LB1060]

SENATOR PRICE: I almost said "Kotter." [LB1060]

COLLEEN BYELICK: Good afternoon again. My name is Colleen Byelick, C-o-l-l-e-e-n B-y-e-l-i-c-k, general counsel for the Secretary of State's office. Currently, we receive all public rule-making notices 30 days prior to the hearing. We're also statutorily required to maintain a current rule-making docket, and we maintain all of that on-line for public access. Currently, we enter the relevant hearing information into our Web site, we track the regulation through the approval process, through the Attorney General and Governor's approval, and then finally the filing with our office. All of this is kept on our Web site for 30 days after the rule-making process is complete whether the rule is adopted or terminated. We also have an e-mail notification ability where we do send out notices regarding...or we send out e-mail notifications for subscribers that want those. So we're basically providing most of this information on-line already, and my point in testifying is just to let you know that we are doing this, that we're capable of actually putting the legal notice on our Web site. We're not offering an opinion as to whether or not that's better than the current system, but we believe that we can do it, and this bill is workable if that's the direction that the committee wants to go. Have any questions for me? [LB1060]

SENATOR PRICE: Thank you. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB1060]

COLLEEN BYELICK: Thank you. [LB1060]

SENATOR PRICE: Would anybody else like to testify in the neutral? Seeing not, Senator Avery for closing? [LB1060]

SENATOR AVERY: Thank you, Mr. Vice Chair. I just want to emphasize that this bill is consistent with my longstanding interest in modernizing government and getting efficiencies in government and some cost savings. I know that these notices are an important revenue source to two newspapers in the state, the two largest papers, Lincoln Journal Star and the World-Herald. But I would invite you to go to the classified

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section and turn to the legal notices and the...you will see the vast majority of these notices will still be required if this law becomes...or if this bill becomes law. You'll still notice that there are over 900 references currently in statute to newspaper notices. This bill only deals with two. Newspapers are in fact very important to our state. I wish that newspapers were not going through the difficult times that they are, and I reluctantly admit that this might add to their woes, but that is not my objective. The...it is...this bill is about providing as much of a notice as we can, fair warning to citizens if a new regulation is proposed that might affect them. The first priority we have as a Legislature is to make sure that people can participate in their government and act to protect their own rights and to do so in the most convenient and efficient manner possible. I would also point out--and I know that you know this to be true--young people today don't read newspapers, so we have a phenomenon that is developing in the state of Nebraska and throughout our country where the younger generation is digital; they are going to electronic media to get their information. And I have a standing policy in my office that everybody in the office read the newspaper every day. Well, their idea of reading the newspaper every day is different from mine. Mine is pick up the paper and read it, flip through it, read it. Their idea of reading the paper...and I'm not talking about the people sitting at this table; I'm talking about my other staff. Their idea--they're younger--their idea is to go on-line. You go on-line, you check the Journal Star, you check the World-Herald; that's how you get your news. And you have other sources, Nebraska Watchdog and things like that. And I admit that it is going to be hard for newspapers to adjust to that trend among the younger generation. The fact is that most of the newspapers in this state will be unaffected by this bill. The smaller newspapers, they came in here last year when we had that public notice proposal as a part of the LR542 process. They are not affected by this. This is a modest proposal, really, that affects primarily the two major urban newspapers. I subscribe to both in my office. I subscribe to both at home. I read them every day. I don't know if I could exist without them, but I'm not in that younger generation that I was just talking about. I'd still like to have that newspaper in my hand, but the younger generation is not like that and I'm afraid that we're missing them. If our legal notices have to go into newspapers, we're missing them because they're not likely to be very easily located on the Web. So with that, I will end and take any questions you might have. [LB1060]

SENATOR PRICE: Senator Sullivan? [LB1060]

SENATOR SULLIVAN: Thank you, Senator Price, and I apologize for not hearing your introduction--I was introducing another bill--but a couple of things. I would guess that maybe it's not so much about revenue and inefficiency, but it's--and I think you alluded to this--who's our audience and who are we serving and... [LB1060]

SENATOR AVERY: It's both; it is both. [LB1060]

SENATOR SULLIVAN: It is, but I don't think we can lose sight of the fact that we...who

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our audience is and how best can we serve them and inform them. And in this whole thing, maybe I'm...has it ever been considered, first of all, that maybe we have to use more than one medium to reach out to our audience, our citizens? And has there ever been a discussion about using our statewide telecommunications system--public radio and public television--as part of the mix of how we reach out to citizens? [LB1060]

SENATOR AVERY: Not to my knowledge. [LB1060]

SENATOR SULLIVAN: I would think that that might be something that should be considered in the whole mix, too. Thank you. [LB1060]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions? Seeing none, thank you, Senator Avery. [LB1060]

SENATOR AVERY: Thank you. [LB1060]

SENATOR PRICE: (Exhibit 6) And I will read into the record a letter of support from the Commissioner of Labor, Catherine Lang. And with that, that will close the hearing today on LB1060, and that concludes our business for the day. Thank you for participating in your government. [LB1060]