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Transcriber's Office

Executive Board Committee
February 06, 2014

[LB720 LB909 LB996]

The Executive Board of the Legislative Council met at 12:00 p.m. on Thursday, February 6, 2014, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB720, LB909, and LB996. Senators present: John Wightman, Chairperson; Bob Krist, Vice Chairperson; Greg Adams; Bill Avery; Kathy Campbell; Mark Christensen; Russ Karpisek; Steve Lathrop; and Heath Mello. Senators absent: Ernie Chambers.

SENATOR WIGHTMAN: I think we'll go ahead and open. Probably others will be in later, but...so welcome to the Executive Board committee hearing. My name is John Wightman. I'm from Lexington, Nebraska, and represent the 36th Legislative District. We will take the bills up in the order posted on the agenda. To better facilitate today's hearings, I ask that you follow these procedures. First, turn off your cell phones or silence them. The order of testimony will be the introducer, proponents, then opponents, and then neutral testimony, and then an optional closing by the introducer. Testifiers must fill out the sign-in sheet and then hand it to the committee page when you come up to speak. If you need copies if you're going to have any handouts, we'll need 13 copies; and the page will assist you with that. When you come up, please spell your name for the record before you begin your testimony. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand any exhibits you have to the page for distribution to the committee members and staff. If you have any written testimony but do not have the needed 13 copies, as I said, you can request the page make those copies for you. If you do not wish to testify but would like your position to be part of the record, you can sign the form found at the testifier's table by the testifier's sign-in sheet. To my immediate right...I'm going to have people introduce themselves. To my immediate right is Senator Krist who is coming through the door right now so I'll let him introduce himself.

SENATOR KRIST: Bob Krist, I represent District 10, northwest Omaha and Bennington.

SENATOR ADAMS: Greg Adams, District 24.

SENATOR CAMPBELL: Kathy Campbell, District 25.

SENATOR WIGHTMAN: And then we'll start to my far left.

SENATOR AVERY: Bill Avery, District 28.

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial.

SENATOR LATHROP: Steve Lathrop, District 12.

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SENATOR WIGHTMAN: Thank you. And Senator Karpisek will perhaps join us later.

SENATOR CRAWFORD: To reach the right number.

SENATOR WIGHTMAN: So we'll take up today's bills in the following order, and it will be LB720, then LB909, and LB996. Our page today is Audie and I think I mentioned that, but she will assist you if you need copies made. With that, we'll start on LB720. Senator Crawford.

SENATOR CRAWFORD: (Exhibit 1) Thank you. Good afternoon, Chairman Wightman and members of the Executive Board committee. My name is Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District in Bellevue, Offutt, and eastern Sarpy County. This is my first time appearing before this committee and I'm happy to be here. LB720 is part of a larger responsive regulations package of bills I introduced this session to increase transparency, accountability, and efficiency in Nebraska regulations and rule making. This includes LB718 and LB719 which the Government Committee reported out this week and currently sit on General File. Bills we pass as a Legislature here are often converted into regulations that agencies enforce. Nationally, 20 percent of all economic activity is directly regulated by state regulations. Because of this, some have said agencies are the fourth branch of government. Regulations shape the details of policy and, as you know, the devil is often in the details. Our laws are as effective or as burdensome as the regulations that enforce them. The book I used for state policies class this fall had a map that ranked the states based on the strength of the toolbox available to each legislature to conduct oversight over regulatory agencies. And the page has copies to distribute of this map from the textbook. The darker the state the bigger the toolbox available to that state legislature. As you will see from the handout, Nebraska is white. This means our Legislature has one of the smallest and weakest toolboxes in the country in terms of legislative oversight with few checks on agencies' power during the rule-making process. Term limits have further weakened our ability as a body to serve as a check on agencies' regulator power. A second reason for LB720 is to provide a tool for bigger picture oversight. Laws and regulations get made one by one, often in response to some specific, narrow situation. This can lead to overlapping regulations, regulations that drift from legislative intent or regulations that are more burdensome than anticipated by the lawmakers who authorized the regulations. To combat these challenges, some states employ periodic reviews. The periodic review is when every single regulation in the state gets examined every five years or two years or ten years at the periodic review. However, these periodic reviews often come with significant costs due to the time and resources involved in looking at every single regulation in that way. LB720 creates a tool that allows citizens, legislators, and other public bodies to direct attention to areas in regulation that are most in need of review instead of looking at every single bill. It also provides a mechanism to streamline regulations and a process to push for reconsideration and revisions of regulations that have become out of date or

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redundant. In 2005, the Legislature passed LB373, a bill introduced by Senator Pat Bourne and prioritized by Senator Deb Fischer. LB720 expands the tool that was created by LB373 in several key ways. First, it applies to existing rules and regulations. Currently, only proposed regulations are subject to the complaint process and we already have the comment period for that part of the process. Second, the bill adds additional criteria to the complaint process. Third, the bill creates a similar tool for political subdivisions and voters to use. Please note that the bill does not create any new powers for legislative committees, and after our amendment that we bring today you will not add any new duties on the part of the Executive Board beyond those that are already in the statute that has been passed. I want to spend just a few moments talking about the last two points specifically. I just mentioned LB720 adds additional criteria for the complaint process. They are: (1) The regulation creates an undue burden in a manner that significantly outweighs its benefit to the public; (2) Circumstances have changed since the passage of the statute which the rule implements; or (3) The rule overlaps, duplicates, or conflicts with federal, state, or local laws, rules, regulations, or ordinances. These criteria are consistent with language that's found in other states in their Administrative Procedure Act. In addition to adding these additional criteria to our complaint procedure, LB720 also creates a similar process for governing bodies of local subdivisions like cities or counties to file similar complaints. The inclusion of political subdivisions and citizens enhances the Legislature's ability to conduct oversight and increases the participation of these groups in our rule-making process. I think that sometimes especially we may pass a bill and not understand and say how it affects our smallest cities or our most rural counties. And this gives them a chance to put a complaint in, in that case. The pages are now circulating an amendment to LB720 for the committee's consideration that eliminates the citizen petition portion of the bill. The amendment (inaudible) the Executive Board from having to get into the business of verifying signatures. Citizens can still engage their county officials, city councils, and mayors to encourage these bodies to trigger the complaint; and citizens can also engage us as senators to encourage one of us to file a complaint. Since the current complaint procedure was passed in 2009, it has only been used once. I anticipate more usage in its current form, but I do not believe that it would be overused or the Executive Board would be flooded with complaints if LB720 passes. Some may ask why focus on regulations? I admit that most of our citizens do not spend time thinking about our Administrative Procedure Act or even know what it is. But the decisions made during the APA impact Nebraskans' lives in countless ways every day, and some of the testifiers will attest to this. For these reasons, I ask for your support for LB720. I'm happy to answer questions now or I can answer questions if you have them after the testifiers. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Crawford. Questions? Go ahead. [LB720]

SENATOR CHRISTENSEN: Right now if we don't like how they're implementing it we can write a new bill, then come back and alter it and change. Are you looking for a

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faster response or? [LB720]

SENATOR CRAWFORD: What this does is this allows you to lodge a complaint and request response. So then I think you would do that and if you got an adequate response then maybe you don't need to do anything else. If you get the response, then that gives you also more information for crafting that bill if you think you need to craft a bill to change the regulation. [LB720]

SENATOR CHRISTENSEN: Okay. Thank you. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Christensen. Any other questions? If not, thank you. [LB720]

SENATOR CRAWFORD: Thank you. [LB720]

SENATOR WIGHTMAN: Do we have other persons wanting to address the committee in favor of, I might add? [LB720]

KENT ROBERT: Good afternoon, members of the Executive Board. My name is Kent Rogert, R-o-g-e-r-t. I'm here today representing two organizations: LeadingAge Nebraska is a coalition of nursing home and assisted living facilities and the Nebraska Intellectual Disabilities Service Providers, and that's pretty self-explanatory. They offer services in the community to those who are affected with developmental disabilities. We thank Senator Crawford for introducing this bill, along with her other two bills, LB718 and LB719, in an effort to create a more responsive executive branch in terms of agency regulations and rules. The organizations I represent with the nursing homes, they're nearly 60 percent Medicaid based who are subject to lots of rules and regulations. And the folks who are on the intellectual disability side are all Medicaid clients. They only have...their only method of life is through rules and regulations. And while we want to follow the rules, sometimes it becomes difficult to know what the rules are and they get changed on a pretty quick basis without a lot of input. I just now read the fiscal note that was attached, and I just would read the first two lines. It says: The changes in the bills could potentially create a significant increase in workload and cost for state agencies as there could be a dramatic increase in the number of aggrieved parties." Well, if that is so the case, then this is long overdue. Thank you. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Rogert. Yes, Senator Christensen. [LB720]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess I got to agree with you... [LB720]

KENT ROBERT: Okay. [LB720]

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SENATOR CHRISTENSEN: ...because all the complaints I get on HHS, it would shut the whole place down. I get 100 calls in childcare and other places all the time. It's a disaster. [LB720]

KENT ROBERT: I would agree that the most common phone call I got when I was in the Legislature was from that agency and a couple of others. And getting a response for those concerns was often...is a huge chore. [LB720]

SENATOR CHRISTENSEN: Impossible nearly. Thank you. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Christensen. Anyone else have any questions? If not, thank you. [LB720]

KENT ROBERT: Thank you. [LB720]

SENATOR WIGHTMAN: Do we have anyone else wanting to speak in favor of LB720? Good afternoon. [LB720]

ALAN PETERSON: (Exhibit 2) Chairman Wightman and members of the Executive Board of the Legislative Council, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I am a lawyer and also a lobbyist for ACLU Nebraska. We try to protect and preserve civil liberties, mostly the ones that are found in the Bill of Rights of both Nebraska and the U.S. Constitution. ACLU is in favor of this bill as well as LB718 and LB719. It provides some more due process ability for the people of this state to have some input on the rules and regs that govern their lives. It's about as simple as that. The Legislature, under the previous bill as Senator Crawford mentioned, had some power in that direction. But this expands it now I guess to political subdivisions, but no longer are the citizens under the amendment to be given a specific petition power. And so I've been sitting here thinking about that. I don't think that amendment that's proposed damages the bill, maybe a little. As written, the bill recognized what the First Amendment calls the right of the people to petition for redress of grievances. That's part of the First Amendment you don't hear about very often. There's nothing, though, in the law now nor in the amended version that would keep, say, a petition of 100 citizens from being turned in to their political subdivision, governors, their mayor, council, etcetera, county board. And then the political subdivision would have the power to carry that on if they wished. There wouldn't be anything to prevent citizens either from handing in that 100-signature or 500-signature petition complaining about, say, HHS's rigmarole regulations which they sometimes pull interpretations on, on their own. So I think it's okay. I think keeping Executive Board from having to verify signatures is probably okay. If people still have the right to make that complaint, that's good even with the amendment. What I really like about the bill, though, is that it would require some form of response to serious objections to regs. And I, like many of the folks probably in this

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room, have experienced many times firsthand what I would call a stonewall. Objections made that seem on their surface to be valid or worth considering are met with silence because there's no requirement of response. Even saying respond, as this bill does, surely will send some message that the stonewall response, the silence treatment is no longer okay with this Legislature. That's going one step beyond monitoring. That's giving a bit of a warning. Don't stonewall the people; don't stonewall the political subs; and especially don't stonewall the Legislature if it has some complaints and concerns. Probably the main concern that I think of is when...occurs when an agency passes rules and regs that appear to go beyond the authority that the statute they're relying on gave them. And the recognition of that as a problem that can be raised either before the regulation passes or even afterwards when it's discovered how it's being applied. That's terrific. I think it's a good bill. I think it's good for due process. I think it's good for the First Amendment right of petition, and I hope you'll advance it. Thank you very much. [LB720]

SENATOR WIGHTMAN: Thank you, Mr. Peterson. Yes, Senator Christensen. [LB720]

SENATOR CHRISTENSEN: Thank you, Chairman. Can you explain to me, okay, once we sent a complaint to a department, did I miss it or is it under this part "shall respond within 60 days." Is that right? How quick are they going to respond to the allegations? They're supposed to give us a response,... [LB720]

ALAN PETERSON: You know... [LB720]

SENATOR CHRISTENSEN: ...but I don't trust that we're going to get anything anyway. [LB720]

ALAN PETERSON: You have the hammer. This bill perhaps puts a little more lead in the hammer that you can swing and that means you can change the law, nobody else can, under which they claim to have the power for the bad regulation. Now if they don't want to respond, they will have violated the statute. You should be able to carry that to your colleagues and get something done about it. It doesn't...it's not criminal statute. [LB720]

SENATOR CHRISTENSEN: Right so to me there's not a real hammer other than you can say to your colleagues, they wouldn't respond so we need to change it this way. Is that how you see it? [LB720]

ALAN PETERSON: Yes. [LB720]

SENATOR CHRISTENSEN: Okay. Thank you. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Christensen. Senator Krist. [LB720]

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SENATOR KRIST: It's no secret that many of us have asked to speak to a member, a state employee and that employee cannot come and talk to us because they belong to the executive branch. I've run into that more than a dozen times I think in the time that I've been here. I believe that this is an attempt to move in the direction of getting some cooperation in this particular area. And I thank Senator Crawford for bringing it. But, you know, the Public Records Act clearly says four days. Sixty days to me...and there is some commonality...sixty days to me is too long because we have people right now that Senator Rogert just talked about in his areas because a rule is going to change, some of those folks are going to go to a nursing home because they're not going to be able to afford home care as they change. And they were not represented in that change. And you and I both know a case that you--and I thank you for doing it--had carried forward and we had to take it to court in order to have a contractual obligation that was made between a mother for her child and the department. And they gave us no satisfaction, in fact didn't even want to talk to us. And when the department did come and talk to me, they had to have a babysitter from PRO. I don't think it's enough, but I think it's a starting point. And together with Freedom of Information Act, Public Records Act, those kinds of things, we should be able to force them to respond in a more timely manner. And you're welcome to respond if you'd like. [LB720]

ALAN PETERSON: I would just briefly. Public Records Act would only require them to turn over existing records, not to create a new one. If they have records, it gives four days as you correctly state. However, it says if they need more time their response within four days can say, we need more time and give the estimate of time and expense. The public records law is a little soft in that area and, frankly, I'm sorry about it because it is occasionally abused. This is an incremental change. It's showing a hammer maybe a little heavier than before. It's in the right direction, and I don't know whether hints are heard. Maybe it has to be stronger, but this is an attempt to cooperate and collaborate and it goes in the right direction as you said, Senator Krist. [LB720]

SENATOR KRIST: Thank you. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Krist. Anybody else have any questions? If not, thank you for being here, Mr. Peterson. [LB720]

ALAN PETERSON: Thank you. I did put my ideas in writing if those could be distributed. Thank you. [LB720]

SENATOR WIGHTMAN: Do we have anybody else that obviously wants to speak in favor? Thank you for being here. [LB720]

LORAN SCHMIT: (Exhibit 3) Thank you, Senator Wightman, members of the committee. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. With the permission of the

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chairman, I will testify on behalf of both LB720 and LB909. [LB720]

SENATOR WIGHTMAN: I'll give you that permission. [LB720]

LORAN SCHMIT: Testimony is similar and will save some time. Each of these bills in their own way is an attempt to resolve a problem that should not exist. That problem can best be described as a tendency by government agencies to expand their role and mission by rule and regulation beyond the authority granted by the Legislature. I do not allege that this expansion is always done with mischievous intent. I've been told by state employees that it is frequently necessary to clarify legislative language which may sometime result in a rule which is more restrictive than the statute. The necessity of state compliance with federal regulations also provides an opportunity for state regulatory agencies to enact rules and regulations more stringent than federal regulations. The passage of LB720 and LB909 would give direction to state agencies that the Legislature does not intend to abdicate their responsibility to any agency. Some of you will recall that one year ago the association of ethanol producers by the help of Senator Wallman introduced LB737. That bill today rests on General File and may rest in peace if Senator Chambers continues to block the bill. But the facts are that these two bills are along the same line, as is LB637, and recognize a problem which does exist and which is prevalent in not just one agency but many agencies in government. And I very heartily support Senator Crawford and other senators who introduced these two bills and ask that they be advanced to General File. I'd be glad to answer any questions. [LB720]

SENATOR WIGHTMAN: Thank you, Mr. Schmit. We will consider this as both supporting LB720 and LB909. Anybody have any questions? If not, thank you. [LB720]

LORAN SCHMIT: Thank you. [LB720]

SENATOR WIGHTMAN: Do we have any other persons? We are running out of time or will be with the other bills we have, so if you could make your comments fairly brief, that would be helpful. [LB720]

JERUSHA HANCOCK: (Exhibit 4) My name is Jerusha Hancock, J-e-r-u-s-h-a H-a-n-c-o-c-k. I'm a staff attorney with Nebraska Appleseed, coming here to testify in support of LB720. The APA was purposed to allow for transparency, clarity, and communication in executive agency rule making. Unfortunately, at times the process required under the APA is ignored or disregarded, leading to public confusion and frustration. And we have seen several instances where draft rules have been proposed and then enforced before they go through the process. LB720 expands the grounds upon which someone can file a grievance regarding a new regulation or the repeal of an old regulation. And it also allows a legislator to file a complaint regarding a regulation on the grounds that it creates an undue burden because circumstances have changed

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since the passage of the statute that the rule implements or because the rule or regulation overlaps, duplicates, or conflicts with other law or regulation. We feel like this is an important expansion of the grounds on which a rule or regulation can be challenged. I won't go through the rest of our testimony since it's duplicative of previous testifiers. But if you have any questions, I'd be happy to answer them. [LB720]

SENATOR WIGHTMAN: Thank you. Anybody have any questions? Thank you for being here. [LB720]

JERUSHA HANCOCK: (Exhibit 5) Also submitting written testimony on behalf of the League of Nebraska Municipalities. [LB720]

SENATOR WIGHTMAN: Okay. We'll accept that. You're a proponent, is that correct? [LB720]

GAVIN GEIS: Yes, proponent. [LB720]

SENATOR WIGHTMAN: Thank you. [LB720]

GAVIN GEIS: I'll be very fast. Chairman Wightman, members of the Executive Board, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm the executive director of Common Cause Nebraska. I just wanted to say that we support the bill and bring to your attention a poll by the associated press that was done December of last year. It showed that 76 percent of Americans who care about policies found that or believe that the government will make no progress in 2014 on these issues. People generally are disillusioned with their government. Now I don't think that applies quite as strongly at the state level. I think that Nebraskans believe in their state government. But I think the disillusionment rolls down the hill toward the state unfortunately. We think that this is a good way to bring people back into the process, and we think it does it responsibly. We think that the hundred signature count is a good way to get people involved without too high of a limit. Overall, we just think this is a good bill that might do something to combat some of that disillusionment. Thank you. [LB720]

SENATOR WIGHTMAN: Thank you, Mr. Geis. Does anyone have any questions they would like to address? If not, thank you for being here. Are there any more who would want to speak in favor in the affirmative on LB720? If not, is there anybody present who would want to speak in opposition to LB720? Is there anyone here who would want to speak in a neutral capacity? If not, we'll close the hearing on...oh, excuse me. Yes, you have a right to close. Come on. [LB720]

SENATOR CRAWFORD: Oh, okay, and I'll be brief. I'll focus on mostly answering questions that people have raised and see if anyone has any other questions. So one of the questions raised is if we pass this bill are we going to put everything to a stop

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because we'll have so many complaints that nothing will happen? So I want to put your mind to ease a bit about that because, again, there are specific criteria that have to be met for a complaint. And also it's a case that if a complaint is lodged it goes to the Chair of the committee and they decide whether or not to take it any further. So if we get someone who is just making harassing complaints or if we get complaints that really don't fit the bill, then they don't go any further. So there's a mechanism to stop that. But it does, however, on those complaints that have...that fit the criteria it does put in a process where they are statutorily required to respond within 60 days. Now 60 days came from the old language. If that's something that you feel as Exec Board we should amend, that I'm fine to talk about that. But that really was part of the older...I mean the existing statute is the 60 days. It does give you just a formal process to get a formal response and the response then is public record. So that addresses I think what Senator Krist was saying about getting stonewalled. The response becomes public record as well. So that I think is an important piece of the bill. And it is the case, again, that the Chair still plays a key role in terms of deciding how far to take those. I think oversight is very important for us as a legislative body having the important...the tools for us to use. And again particularly in the era of term limits, the person who passed the original bill is no longer here, it is important for us to have this tool. And also as a state government, you know that we really pass the laws that are carried out in our political subdivisions and to give them a way to be involved in this process and be able to lodge a complaint I think is an important step for us to take. Thank you. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Crawford. Yes. [LB720]

SENATOR MELLO: Thank you, Chairman Wightman, and thank you, Senator Crawford, for being LB720. [LB720]

SENATOR CRAWFORD: Thank you. [LB720]

SENATOR MELLO: A couple questions: one, and it deals with your amendment. [LB720]

SENATOR CRAWFORD: Okay. [LB720]

SENATOR MELLO: I can see where...I can see why and where you came up with wanting to allow political subdivisions to lodge independent complaints outside of the Legislature. How strong are you in regards to allowing...that's kind of a pretty different policy change in regards to what the current law which makes people have to go through a senator arguably to file a complaint. [LB720]

SENATOR CRAWFORD: Right. [LB720]

SENATOR MELLO: And last year in Government we passed a bill of mine, LB98, that

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empowers the Public Counsel or the Ombudsman's Office to be able to take complaints like legislators and advocate for them. Would you be amenable at all in regards to maybe not requiring political subdivisions that have to go through a senator or a member of the Legislature or the Public Counsel's Office to lodge their complaint in the new framework you put in LB720 just to make sure that the Legislature as itself is kind of control the process to help bring down that potential multiple complaints that could come from any and all political subdivisions to make them have to work with the Legislature to do it? [LB720]

SENATOR CRAWFORD: I appreciate that concern. I'm willing to have that discussion. At this point I would say it's still the case the Legislature is in charge because the committee of jurisdiction still decides. So the senators on that committee of jurisdiction are still in the driver's seat. So if cities or counties are lodging complaints that we, the Legislature, don't think should be addressed, we still...we just stop it right there. So my sense is that that part of the process keeps the Legislature in charge. I appreciate that question. [LB720]

SENATOR WIGHTMAN: Thank you, Senator Mello. Anyone else? Thank you, Senator Crawford. [LB720]

SENATOR CRAWFORD: Thank you. [LB720]

SENATOR WIGHTMAN: (Exhibits 6, 7, 8, 9) Before closing on this, we do have four or five letters of support: one from Nebraska Farm Bureau, Anthony Aerts; and we have one from the Nebraska Optometric Association in favor by David S. McBride, executive director; we have one by North Platte Valley Water Association in support of LB720; and one from the Disability Rights of Nebraska by Brad Meurrens. We will include all of those in the record. And with that, we'll close the hearing on LB720 and take up LB909. Senator Kintner. [LB720]

SENATOR KINTNER: (Exhibit 10) Chairman Wightman and members of the Executive Board, for the record I'm Senator Bill Kintner, B-i-l-l K-i-n-t-n-e-r, representing Legislative District 2. I appreciate this opportunity to present LB909 for your consideration. LB909 is very simple. The bill will require all state agencies to issue regulations to submit a list of all the rules and regulations to Legislative Performance Audit Committee on or before July 1 of this each year in a format designated by the committee. My bill would require a listing of all regulations that have been in effect for five years or longer, along with the identifying legislative bill, state law, or federal law that authorizes or required the regulation. My goal is to add to the data that the Legislature is obtaining on regulations, to have a place for senators to review a comprehensive list of existing regulations and how long they have been in effect. I believe this would be a valuable service and a great resource to the Legislature in determining how to make our agencies more efficient and reduce the burdens of

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regulations that may no longer be needed. I'm not seeking to burden our agencies with more reporting. I'm confident that the Performance Audit Committee could come up with a suitable format for the reporting to ensure that the burden is minimal. In theory, this list would be easy to publish each year after the initial research and inventory of the regulations are done by an agency. My original idea for the bill was to require all state agencies' regulations to be automatically sunsetted after five years. I have been researching some states that require all regulations and even all state programs to be automatically ended after five years. For example, the state of Missouri, Alabama, Illinois, Texas require efficiency reviews of regulations and agency programs by the Legislature within various time frames in order to see whether they should be eliminated, amended, or continued. Also in Iowa, Wisconsin, and New Jersey similar requirements are in place through governor executive orders. In reviewing these examples, I realized I did not want to have a new board or commission or group created to review these regulations. I don't want to create a new bureaucratic process. I don't want to create a new agency to manage regulations. I don't want to put more burdens on our legislative staff. LB909 is a simple start to obtaining that data that the Legislature needs. I know we hear from our constituents that there are too many government regulations. On several occasions I've tried to track it down if it's a federal law, one of our state laws that's creating the concern. Well, during my research I've been made aware of our Secretary of State's rules and regulation Web site. I've spent some time reviewing it. While it does provide a method to see all the existing regulations, I still think we need to force the agencies to realize how many regulations they have on the books that are more than five years old. I also suggest that we have a uniform reporting procedure with the data that comes to us in the Legislature directly for senators. I hope that LB909 would be the first step in getting the data the senators need to start really reviewing state agency regulations and having information we need to determine if there were some regulations or statutes that could be eliminated or streamlined. Finally, I am providing the committee with copies of an amendment I'd like to have added to the bill for clarity. It would clarify that agencies identify whether the source of a regulation is either recent legislative bills or state or federal statutes. I thank you for your consideration, and I'll answer any questions you may have. Did you all receive this or do I need to hand it out? [LB909]

SENATOR WIGHTMAN: I don't think we have a copy of the proposed amendment. [LB909]

SENATOR KINTNER: Okay. Well, it's one sentence; pretty easy. [LB909]

SENATOR WIGHTMAN: Thank you, Senator Kintner. Senator Christensen. [LB909]

SENATOR CHRISTENSEN: Thank you, Chairman. Is there a reason why you wait five years? Because I guess part of what I'm thinking about is making sure everybody is aware of every statute that there's in. So I wondered why you were waiting five years.

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[LB909]

SENATOR KINTNER: What I did was I looked at what other states were doing and they went anywhere from three years to eight years. And I thought, well, five years sounds pretty good. And I'm really thinking about a lot of these regulations, you know, we passed in 1968, 1959, 1971, times are different; and no one has looked at them for awhile. They pop up every once in a while. So I'm hoping that the new ones that we pass that we give them five years, see how they're doing. So I took five because it was in the middle of what the other states are doing. [LB909]

SENATOR CHRISTENSEN: Okay. Thank you. [LB909]

SENATOR WIGHTMAN: Thank you, Senator Christensen. Any other questions? Yes, Senator Mello. [LB909]

SENATOR MELLO: Thank you, Chairman Wightman; and thank you, Senator Kintner. My own question is and it kind of goes with what maybe Senator Christensen was asking is why not simply just ask for all the rules and regulations? Why cut it off at five years I guess would be my question? Why not just ask for all of them with corresponding statutes and? [LB909]

SENATOR KINTNER: Well, I was looking at a way to review statutes and regulations. I thought five years we'd give them some time. We've seen how it works. They may have withstood the test of time. Hopefully if they're bad we've already addressed it, they've already looked at; but in case they haven't, it comes before the performance review committee and they can take a look at it. [LB909]

SENATOR WIGHTMAN: Thank you. Yes, Senator Avery. [LB909]

SENATOR AVERY: Thank you, Mr. Chair. How would this bill affect the Secretary of State's Web site that posts rules and regs? [LB909]

SENATOR KINTNER: It wouldn't at all. [LB909]

SENATOR AVERY: It would replace it? [LB909]

SENATOR KINTNER: No. No, that's a separate thing that he does. [LB909]

SENATOR AVERY: All right. Then if the Secretary of State is already posting these on his Web site, why would we need this bill? [LB909]

SENATOR KINTNER: Because I want every regulation to come before the performance review committee every five years to be looked at. Hey, do we still need it? If it's

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needed, how is it doing? That's it. Right now we don't go combing through the Secretary of State's Web site unless we have, you know, some problem or something we're looking for. This sets up a periodic review that the Legislature should be doing, not the executive branch. [LB909]

SENATOR AVERY: About how many rules and regs are we talking about? [LB909]

SENATOR KINTNER: I have no idea. [LB909]

SENATOR AVERY: This could be a really large project. [LB909]

SENATOR KINTNER: Well, the first time it might. But then after you get through it, then you got every five years. So the ones we create now will be looked at in five years or the ones that are created now will be looked at in five years. It might...if you look at the fiscal note, some of the agencies have weighed in and most of them say no big problem. [LB909]

SENATOR WIGHTMAN: Thank you, Senator Avery. Do you have further questions? [LB909]

SENATOR AVERY: No. [LB909]

SENATOR WIGHTMAN: Anyone else have questions of Senator Kintner? Yes. [LB909]

SENATOR CAMPBELL: Senator Kintner, I...thank you, Chairman Wightman. Senator Kintner, obviously I turned to the last page and looked at the DHHS. [LB909]

SENATOR KINTNER: Um-hum. [LB909]

SENATOR CAMPBELL: Would you make any distinction between those regulations that are required to be put in place by the federal government? [LB909]

SENATOR KINTNER: Only the ones that we have to implement, the ones that we have control over. If it's something that comes in and it's got to be done, there's nothing we can do about it. I mean, we have to do it. [LB909]

SENATOR CAMPBELL: So you would exempt also looking at those. [LB909]

SENATOR KINTNER: Yes. [LB909]

SENATOR CAMPBELL: And I, in all honesty, Senator, I don't know how that might affect the 440 chapters of regulations. I'd have to check with the department, but that's helpful. Thank you. [LB909]

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SENATOR WIGHTMAN: Thank you, Senator Crawford (sic--Campbell). Anyone else have any questions? Thank you. [LB909]

SENATOR KINTNER: And I'll stick around. [LB909]

SENATOR WIGHTMAN: Okay. Do we have anybody else present who wants to speak in favor of LB909? Do we have...we did have some letters that included both the previous bill and we'll make them part of the record with regard to this bill as well. Do we have anyone that wants to speak in opposition to LB909? Anyone that would want to speak in a neutral capacity? If not, we'll close the hearing on LB909. [LB909]

SENATOR KINTNER: If nobody has any questions... [LB909]

SENATOR WIGHTMAN: Oh, excuse me, let you... [LB909]

SENATOR KINTNER: I'm good. [LB909]

SENATOR WIGHTMAN: Do you have...come on up. [LB909]

SENATOR KINTNER: No, not if you don't have any questions. [LB909]

SENATOR WIGHTMAN: Okay. Thank you. Good afternoon. [LB909]

SENATOR MCGILL: Hello, Senator Wightman. Ready for me? [LB996]

SENATOR WIGHTMAN: Go ahead. [LB996]

SENATOR MCGILL: All right, thank you, members of the Executive Board. I'm, for the record, state Senator Amanda McGill, M-c-G-i-l-l, and I come before you today to introduce LB996. This bill would require state agencies to respond to written requests for information from a member of the Legislature, employee of the Legislature, Legislative Fiscal Office, or the Office of Legislative Research within four business days. State agency means any state agency or state entity which receives appropriations from the Legislature but does not include political subdivisions. LB996 is intended to provide clarity and consistency to the process surrounding legislative requests for information from state agencies. The time line requirements in the bill mirror that of a public record request. This bill does not prohibit an agency from providing the information sooner than that four days and that four-day time line begins upon the receipt of the written request. The language allows for an exemption if there is a legal basis for denial of the request. And if the request is too large or complicated to be completed within the time frame, the agency can respond with an explanation and estimated date for fulfilling the request and an opportunity from the requestor to modify or prioritize items within the request. The bill

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is not intended to be punitive or overburden agencies, but instituting this time line sets a clear expectation and allows for a uniform process. The bill facilitates effective and efficient government because if we don't have this information, then we can't be effective and efficient with what we're doing here in the Legislature. I think many of us have faced...have been in situations of not being able to get information from departments as quickly as we'd like. And I feel this would be a good process for us to put into place. And I'd be happy to answer any of your questions. [LB996]

SENATOR WIGHTMAN: Thank you, Senator McGill. Do we have any questions of Senator McGill? Thank you. [LB996]

SENATOR MCGILL: All right. Thank you, Senator Wightman. [LB996]

SENATOR WIGHTMAN: Do we have other people that want to speak in favor of LB996? Good afternoon again. [LB996]

LORAN SCHMIT: Thank you, Senator Wightman and members of the committee. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I'm pleased to be here again this afternoon to testify in support of LB996. I'm really embarrassed that we have difficulty securing information from time to time from state agencies. That should be an arrogance that should not be tolerated and it should not be condoned and it should be explained to the agencies that the Legislature is the predominant agency which creates those agencies and that they should respond promptly. LB996 is a bill which has been introduced obviously because state agencies do not feel compelled to respond to requests for information from state legislators or employees of legislators or the Legislature. There should be no reluctance on the part of any state agency to respond to a request for information. Most state employees are responsible and responsive. If they were not, government would not function. They may have some specific reason why they do not respond, but they at least owe that response to the Legislature. On those rare occasions when problems develop, there should be no reluctance on the part of any agency to provide necessary information about requests. The passage of LB996 will remove any doubt that any request for information from a legislator or legislative employee should be promptly honored. I would be glad to answer any questions. Thank you very much for allowing me to testify. [LB996]

SENATOR WIGHTMAN: Thank you. Do we have any questions? [LB996]

SENATOR CHAMBERS: Senator Schmit, I'm glad to see you again. When you and I were here--I still am but when you were here, too--there was enough time to build up some aura about yourself where agencies would not dare turn you away. But with time limits now, term limits, two senators are going to have the chance to develop that. So I think with especially what you're pointing out it's necessary that there be something that they can show that agency which will mandate that they give the information. [LB996]

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LORAN SCHMIT: I agree, Senator. And it's been my experience that frequently the individual person to whom whenever he makes the request might want to respond but has been directed not to respond. And that should remove all doubt that there not be any failure to respond. And you pointed out, this is not to ruin the experience of present legislators, but not many of them have your tenure and your experience and your background. And it's easier to shrug off a less experienced legislator than it is for someone who has been around longer. [LB996]

SENATOR CHAMBERS: I don't even know who represents the area where you live, but it sure would be nice for me if you'd come back. (Laughter) [LB996]

LORAN SCHMIT: I wish I were back on LB637, Senator. I just commented on that a while back. I might bring that back, who knows? Thank you, Senator. Thank you very much. [LB996]

SENATOR WIGHTMAN: (Exhibit 11) Thank you, Senator Chambers. Is there anyone else that had questions of Senator Schmit? If not, are there other persons here who want to speak in favor of LB996? Seeing none, and by the way, we do have one letter in support of LB996 on behalf of the North Platte Valley Water Association which we'll make a part of the record. Anyone want to speak in opposition? [LB996]

RHONDA LAHM: (Exhibit 12) Good afternoon, Senator Wightman and members of the Executive Board. In the interest of time, I'll just make my comments a little bit abbreviated; and I have attached here copies if you want, entire copies of my comments. [LB996]

SENATOR WIGHTMAN: Could you spell your name. [LB996]

RHONDA LAHM: Yeah. I'm Rhonda Lahm, R-h-o-n-d-a L-a-h-m, director for the Department of Motor Vehicles; and I'm appearing before you today to testify in opposition to LB996. The Department of Motor Vehicles has concerns with LB996 as introduced. The Department of Motor Vehicles understands the bill is broadly written to give the Legislature express authority for timely access to records held by state agencies. The DMV is subject to the Uniform Motor Vehicle Records Disclosure Act which strictly limits...has strict limits on the release of protected information from the DMV databases. The Uniform Motor Vehicle Records Disclosure Act was enacted in the 1990s to provide specific protection for all the personal information and sensitive personal information the DMV houses in its records. Over the years, the DMV has been very vigilant in protecting the information in our files because the DMV files contain everyone's personal information, your neighbors', yours, and mine. Many government agencies want access to DMV records. There is a section in the law that allows DMV to release data to government agencies for their use in carrying out their duties. Even so,

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the DMV will not release data to another agency without entering into a written agreement with that agency in which the agency's purpose in requesting the data is specified. The Uniform Motor Vehicle Records Disclosure Act provides that the DMV may set conditions for release of information pursuant to Nebraska Statute 60-2909. Before data is released to another agency, we require them to agree to protect the records from any redisclosure or release of use for any reasons other than the specific specified purpose in their contract. It is with the lens of the Uniform Motor Vehicle Records Disclosure Act that we view LB996. The bill does provide that an agency may respond to a request with a legal basis for denial. Depending on the specific request, the Uniform Motor Vehicle Records Disclosure Act could be a basis for denial of records or cause an extension request to allow time for personal information to be redacted. There could be occasions when the DMV could provide protected information to the Legislature based on the specific request, but then the redisclosure provisions for the Uniform Motor Vehicle Records Disclosure Act apply to the requestor. It becomes his or her duty to protect the data from misuse or be in violation of the law. The Uniform Motor Vehicle Records Disclosure Act's requirements and penalties make it difficult for the DMV to understand how that law proposed...the law proposed in LB996 will fit in with the existing Uniform Motor Vehicle Records Disclosure Act provisions as well as the existing public records law. LB996 will be another layer of analysis which makes rapid response for the information more difficult. I would respectfully request that the bill be amended to clearly dovetail the provisions of LB996 with the existing public records request provisions and with the other existing laws such as the Uniform Motor Vehicle Records Disclosure Act. Thank you for your consideration on this issue as the board formulates policy regarding legislative access to state agency records. Thank you for your time today, and I'm happy to answer any questions that you have. [LB996]

SENATOR WIGHTMAN: Thank you, Rhonda. Senator Mello. [LB996]

SENATOR MELLO: Thank you, Chairman Wightman; and thank you, Director Lahm. You briefly touched at the end of your testimony how is LB996 different from me as an individual senator making a public records request of your department? [LB996]

RHONDA LAHM: There's certain exemptions in the public records law that we're allowed to not disclosure based on that exemption and also with the Uniform Motor Vehicle Records Act they're not considered public records. So any access to that information under the public records law is not accessible. So you as a person, you wouldn't have any access. As a Legislature, that would be different under LB996. [LB996]

SENATOR MELLO: So would your suggestion in regards to your general opposition to this bill is it's simply to have LB996 follow existing public records laws, open public records request laws then as it relates specifically to this data? [LB996]

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RHONDA LAHM: Right and in particular personal data in the data housed and protected by the Uniform Motor Vehicle Records Disclosure Act. [LB996]

SENATOR MELLO: How many requests have you gotten from a legislator in regards to this specific data in your department? [LB996]

RHONDA LAHM: We actually get requests from the Legislature and also the Legislative Research Office not that often or I shouldn't say not that often. We do get them, not usually for personal information. And I think that under the existing law that we've been able to provide them the data that they need and hopefully on a timely basis. I'm not aware that they haven't been concerned with our response. I know we've worked with Senator Avery on occasion and got him numbers, and we've been able to do it under the existing provisions. [LB996]

SENATOR MELLO: I would like if you could provide my office a detailed account of how many times you've gotten requests for this very specific I would say personal data in regards to a legislative request if you could provide that. [LB996]

RHONDA LAHM: Okay. I'll provide what we have, happy to. [LB996]

SENATOR MELLO: Thank you. [LB996]

SENATOR WIGHTMAN: Thank you, Senator Mello. Senator Krist. [LB996]

SENATOR KRIST: I would just say, Director, that I have made several requests of the Department of Motor Vehicles in the time that I've been here, and you've always been responsive. So there you go. This is really not aimed at those agencies that are responsive. It might be aimed at those that give you the stiff arm and don't want to talk to you. But I compliment you on being able to do what you can do within the current guidelines. I think if you read page 2 of the green copy... [LB996]

RHONDA LAHM: Right. [LB996]

SENATOR KRIST: ...of this, I think it basically says if a request cannot be reasonable..."with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling..." I would say that that's a point where you could say unless in violation of or whatever. I mean you can look at doing something like that. But again, compliment the DMV on being responsive to me in a number of times--not aimed at you. Thank you. [LB996]

RHONDA LAHM: Thank you. I appreciate that and (inaudible) language that would exempt the protections of the Uniform Motor Vehicle Records Act would be helpful from

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our perspective. [LB996]

SENATOR WIGHTMAN: Thank you, Senator Krist. Thank you. Anyone else has any questions? [LB996]

RHONDA LAHM: (Exhibits 13, 14) I also have two letters here from other agencies for the record from Department of Labor and DHHS. [LB996]

SENATOR LATHROP: (Laughter) So they send over (inaudible). (Laughter) [LB996]

SENATOR MELLO: See what I was getting at. That's why I (inaudible). [LB996]

SENATOR WIGHTMAN: You're here also in opposition (inaudible). [LB996]

BO BOTELHO: Yes, Senator. [LB996]

SENATOR WIGHTMAN: Okay. Thank you. [LB996]

BO BOTELHO: (Exhibit 15) Good afternoon, Senator Wightman and members of the committee. My name is Bo Botelho, B-o-t-e-l-h-o, general counsel and materiel administrator for the state Department of Administrative Services. Our objection is akin to what the DMV had mentioned and as Senator Mello pointed out. This bill seems to adopt the language almost identical from 84-712(4) of the public records statute, except it leaves out the cross-reference to those records which may be withheld, which is 84-712.05. And that's our basic objection because we're unsure of what the intent was to leave out that cross-reference to make these records available or to retain the protection. And as far as Administrative Services puts out the records that we would have that fall on that are medical records, HR records and we just don't release those. We have released them to the Ombudsman on his request, but that was with a signed release from the employee allowing us release to the Ombudsman for him to investigate whatever he was investigating. So that's the basis of our objection. I have written testimony, but since we're short in time, I kept it short. [LB996]

SENATOR WIGHTMAN: Yes, Senator Mello. [LB996]

SENATOR MELLO: Thank you, Chairman Wightman; and thank you, Bo, for your testimony. Essentially reading these two letters and asking the question of Director Lahm, is simply your opposition more than anything else is that it doesn't have the cross-reference to 84-712.05... [LB996]

BO BOTELHO: Correct. [LB996]

SENATOR MELLO: ...and if that was added it would be the equivalent of existing public

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records law? [LB996]

BO BOTELHO: Correct. [LB996]

SENATOR MELLO: All right. Thank you. [LB996]

SENATOR WIGHTMAN: Thank you, Senator Mello. Anyone else have any questions? If not, thank you for being here. [LB996]

BO BOTELHO: Thank you. [LB996]

SENATOR WIGHTMAN: Any other persons want to speak in opposition to LB996? Does anyone want to address us in a neutral capacity? If not, we'll close the public hearing on LB...oh, we'll close it right after you. [LB996]

SENATOR MCGILL: I'll just very quickly say I'm happy to work with folks to put that language back in. Obviously line 12 talks about if there's a legal basis for denial then they can put that in their letter as well, which may cover them to an extent; but I'm happy to look into that and include it. [LB996]

SENATOR WIGHTMAN: Okay. Thank you. [LB996]

SENATOR MCGILL: All right? Thank you. [LB996]

SENATOR WIGHTMAN: That will close the public hearings. [LB996]