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Government, Military and Veterans Affairs Committee
January 24, 2013

[LB78 LB125]

The Committee on Government, Military and Veterans Affairs met at 2:00 p.m. on Thursday, January 24, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB78 and LB125. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; John Murante; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. This is our second day of hearings and we have what I think is a relatively light schedule. The bills will be taken up in the order as posted outside the room, that is we'll begin with LB78 and that will be followed by LB125. Before we start that, let me introduce the members of the committee. Starting on the far right over here, Senator John Murante from Gretna, a new member of the Legislature and a new member of this committee. Senator Dave Bloomfield, next to him, from Hoskins. He, too, is a new member of the committee. Senator Scott Lautenbaugh from Omaha is a new member of the committee, but has served before so he missed us so badly he had to come back. Seated next to him is Senator Scott Price from Bellevue. He is Vice Chair of the committee. On my immediate right is Christy Abraham. She is the legal counsel for the committee. On my left here is Senator Russ Karpisek. He is from Wilber. And to his left is Senator Norm Wallman from Cortland. Senator Jim Scheer will be here soon. He is running a little bit late because of a previous commitment. Senator Scheer is from Norfolk. And on the far end down here is Sherry Shaffer, the committee clerk. If you have anything that you want to pass out to the committee, we ask that you give her a copy. She'll give it to the pages and the pages will distribute them. Our pages are Will Rahjes from Elwood, Nebraska, and Cicely Batie from Lexington, Nebraska. They will be assisting throughout today. If you are here in...and you're interested in testifying for or against any of these two bills, we ask that you pick up a green form, fill it out in clear print so we can read it, and hand it to the clerk when you come to the testifier's table. We ask also that you clearly state your name and that you spell your name so that it is entered properly in the record. If you're here and wish to record your presence...record your support or opposition to any of these bills but you do not wish to testify, there is a white sheet of paper here. You can fill that out. These are available at each entrance to the room. The introducers will be given an opportunity to make initial statements. We'll follow that with proponents and then opponents and neutral testimony. Closing remarks are reserved for introducing senators only. We ask that you listen carefully to the testimony prior to your testimony so that you do not repeat what has already been said, and that will allow us to move things along. We will be using the light system. When the green light is on, you have four minutes. When the amber light appears, you have one more minute to wrap up your testimony. And then when the light turns red, please end your testimony. Please also turn off any electronic devices that make a noise, especially cell phones. If you have prepared testimony in written form and you want to distribute

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copies to the committee and you do not have the 12 copies that we require, we have pages that will help you with that. All right. Since I am the first introducer today, I'm going to turn the Chair over to the Vice Chair and we will proceed.

SENATOR PRICE: Senator Avery, welcome. [LB78]

SENATOR AVERY: (Exhibit 1) Thank you, Senator Price. My name is Bill Avery, B-i-l-l A-v-e-r-y, I represent District 28 here in Lincoln. As many of you know, the Government Committee is statutorily required every four years to survey every board and commission in the state and make a determination as to whether that commission or board should continue to operate. Last year was the year to complete this task, and the staff of this committee worked on it for quite a long time this past summer. The committee sent out surveys to over 220 statutorily created state boards and commissions. Every survey was returned, although one was received after the report was published. Every survey was reviewed to determine if there were any boards or commissions that were no longer active. You have a listing of the results of that survey being passed out to you now, and it will give you both the name...give you the name of the board or commission, the purpose of the board or commission, and reasons for the recommendation to eliminate that board. The...if a board or a commission has not met for the last four years or if it could not list any accomplishments on their survey, they were included in this bill for elimination. LB78 eliminates...proposes to eliminate the Affirmative Action Committee, the State Airline Authority, Athletic Advisory Committee, Livestock Auction Market Board, Private Postsecondary Career Schools Advisory Council, the Riparian Vegetation Management Task Force, and the Rural Development Commission. There are a couple of boards that did...that are not included on this list for different reasons other than not meeting or listing any accomplishments. The Rural Development Commission was put on the list because all of their funding was eliminated by the Legislature in the last biennium. The Riparian Vegetation Management Task Force is on the list because the law that established that task force specifies a sunset provision of June of this year, although I believe that Senator Carlson probably is going to try to revive that or extend that sunset. It is my understanding that the Private Postsecondary Career Schools Advisory Council has been meeting in the last four years and there will be somebody here probably to testify to that effect. However, I would point out that their survey response did not indicate that they had been meeting. In fact, it was largely blank, inexplicably. So we can discuss the merits of some of the items listed here, but I believe that you will hear from people in the audience about some of these and perhaps we will make some adjustments to that list. But this list that I have prepared for you here is comprehensive, and it does give us an opportunity to kind of clean things up every four years which may not be often enough for some of us. But certainly it does a fairly good job of eliminating those commissions and boards that tend to be defunct. So with that, I would ask you to advance this to General File, and I'd be willing to take any questions. [LB78]

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SENATOR PRICE: Thank you very much, Senator Avery. Senator Lautenbaugh. [LB78]

SENATOR LAUTENBAUGH: Thank you, Senator Price. Senator Avery, if you covered this already I apologize. When the surveys were sent out, did the respondents know the purpose--that we might be doing away with these? [LB78]

SENATOR AVERY: Yes, they do. [LB78]

SENATOR LAUTENBAUGH: So they were clear it was an important thing to do. [LB78]

SENATOR AVERY: Absolutely. Absolutely clear. And if we don't hear from them, we assume they have no interest. And if they're not meeting, what's the point of having the commission or the board? [LB78]

SENATOR LAUTENBAUGH: I think, as you and I have discussed many times, I'll be cold and dead in the ground before I support removing the Riparian Vegetation Management Tax Force. But I do applaud your effort in bringing this and I think we do need to, from time to time, look at things and maybe do away with some of these things that are authorized but not existing or serving a purpose. [LB78]

SENATOR AVERY: Well, yeah. This is usually a fun exercise. If you want to reduce the size of government, here's a good chance to do it. But we're not...we're using a rational and logical process, and we're not taking the meat-ax approach to it. It's very surgical. We go after those commissions and boards that really haven't done anything, can't point to any accomplishments, and have not met. If you haven't met for four years, maybe you don't need to exist. [LB78]

SENATOR PRICE: Thank you, Senator Lautenbaugh. Are there any other questions from the committee? Seeing none, thank you Senator Avery. [LB78]

SENATOR AVERY: All right. Thanks. [LB78]

SENATOR PRICE: We will now take any of those folks who would like to testify as a proponent. Welcome. [LB78]

CATHERINE LANG: (Exhibits 2, 3) Good afternoon. Thank you, Vice Chair Price and members of the Government, Military and Veterans Affairs Committee, my name is Catherine Lang, C-a-t-h-e-r-i-n-e, Lang, L-a-n-g. I'm the director of the Department of Economic Development and the Commissioner of Labor. I appear before you today as the director in support of LB78 and offer an amendment that would repeal the provisions of law that authorize the Nebraska Economic Development Commission. I want to recognize and thank the current members of the EDC for their willingness to serve the state of Nebraska, the Department of Economic Development, and our business

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community through their appointment to the EDC. During 2012 I, as the director of the Department, did not call a meeting of the Commission. The Department was focused on the operation of our new and existing economic development programs. This fall a member of the EDC inquired about a meeting. It was at that point that the agency attempted to schedule a meeting for January of 2013. The purpose of the meeting was to meet the statutory obligation to meet and to determine from the commissioners the issues that the Commission would focus on for 2013. However, after receiving comments from some of the members, the agency decided to offer an amendment to repeal the Commission. I did talk to four of the eight members of the EDC on Tuesday. On Wednesday morning I sent an e-mail to all members of the EDC notifying them that a proposed amendment would be offered and asking for their comments, advice, or counsel. I also provided the contact information of Chairman Avery should they wish to communicate with him directly. Here are some of the challenges that the state and the Department have faced regarding the EDC. That statute sets forth a detailed membership structure for the EDC, and this presents challenges when there is a need to fill a vacant position. The structure involves finding representation from each congressional district, political party, urban and rural areas, while requiring within that membership that certain private industry sectors are represented. Additionally, the EDC is required by statute to meet at least four times a year in each calendar quarter, and it is challenging to schedule meetings that all of the EDC members are able to attend. Until last month, the last time that a meeting was held was August of 2011. Perhaps most importantly, the purpose of the EDC is primarily advisory leaving little actionable responsibility for the EDC. The EDC was authorized by LB965 in 1986. In addition to the Commission, the state has a very active economic development community including the Nebraska Economic Development Association, NIDA, the Diplomats, and the chamber organizations from state to local communities. Additionally, our public power entities and many of our major corporations have invested in economic development divisions. It is the position of the Department that it is reasonable to offer an amendment to repeal the EDC. The Nebraska State Chamber, many of our local chambers, the Diplomats, our local and regional economic development organizations are all valued partners of the Department. The Department collaborates with these organizations to promote communication between business and industry and the state of Nebraska. The Department is developing or associating with business and industry counsel to ensure continual engagement with our economic engine and understand challenges and development policies and programs that further economic and wealth creation in our state. The Department believes that these efforts are more effective in developing collaboration than a mandated and structured commission. In 2008 the EDC met on three occasions; in 2009 three occasions. In 2010 they tried to meet on three occasions; two meetings were canceled for inability to reach a quorum. In 2011 they met on one occasion; an additional meeting was scheduled but we were unable to reach a quorum. And in 2012 we did not meet. I would request that the committee adopt this amendment to LB78, and I would be happy to answer any questions. [LB78]

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SENATOR PRICE: Well, thank you very much. Are there any questions from the committee? Seeing none, thank you for your testimony today. [LB78]

CATHERINE LANG: Thank you very much. [LB78]

SENATOR PRICE: Do we have any other proponents who would like to testify on LB78? Do we have anybody who would like to testify in opposition? Welcome, sir. [LB78]

ROY BARTA: (Exhibit 4) Thank you. Thank you for having me. My name is Roy Barta, R-o-y B-a-r-t-a. I serve as the executive director for the Nebraska Livestock Markets Association. On behalf of the Nebraska Livestock Markets Association, we'd like to thank you for the opportunity to convey to you and the Government, Military and Veterans Committee that the group is opponent...is opposing LB78. Our opinion is to remove or dissolve the Nebraska Livestock Auction Market Board would serve to create a wider communications gap between this important sector of Nebraska's agriculture industry and the governing entities of the state of Nebraska and the Nebraska Department of Agriculture. The proposed change, assigning the duties of the board to the Department, in our opinion, places the state's livestock producers at somewhat of a disadvantage as it removes the decision-making process of individuals with an acute knowledge of the livestock marketing issues. When determining the proper course of action on an issue, individuals with the industry's expertise should be consulted and involved in the decision-making process. The Nebraska Livestock Markets Association would strongly urge that the committee maintain the makeup of the Nebraska Livestock Auction work as it is, keeping the designated livestock auction market representative that is currently appointed to represent the auction markets of the state of Nebraska. The auction market representative for the Nebraska Livestock Auction Market Board has access to consultation and materials from both the Nebraska Livestock Marketing Association and Livestock Marketing Association. With this regional and national perspective on livestock marketing issues important to our state, the auction market representative brings invaluable insight to the decision-making process of the Nebraska Livestock Auction Market Board. I would take any questions if anybody had anything. [LB78]

SENATOR PRICE: Well, thank you, Mr. Barta. And I see some questions. Senator Wallman. [LB78]

SENATOR WALLMAN: Thank you, Senator Price. Yeah, thanks for coming. And you feel you have collaborated with neighboring states as well, then? [LB78]

ROY BARTA: Where I'm at and where I'm coming from is specific to that of the auction markets of Nebraska. Now given the fact that I'm a regional rep for the livestock marketing association, the title that I carry for Nebraska I carry in five other states:

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Kansas, Colorado, Wyoming, South Dakota, and North Dakota. [LB78]

SENATOR WALLMAN: And what...do you have a budget? You set a budget every year? [LB78]

ROY BARTA: What we do is we operate on a very small annual membership from those people who serve as state members, because collectively they are also members of the Livestock Marketing Association which is a national trade association representative of auction markets across the United States. [LB78]

SENATOR WALLMAN: Thank you. [LB78]

ROY BARTA: Okay. [LB78]

SENATOR PRICE: Thank you. Senator Lautenbaugh. [LB78]

SENATOR LAUTENBAUGH: Thank you, Senator Price. And thank you, sir, for your testimony. I just want to understand. The information we were presented previously says that the board in question, the Livestock Auction Market Board, has not met in four years and lists no accomplishments. Is the board...isn't that required to meet regularly or what does it do that may not show up here so we have the wrong impression if we do? [LB78]

ROY BARTA: Okay. No, everything that we've been involved to date or asked to participate in to date is when there has been the issue of...the most recent one that I can come up with is an auction market had been closed. Okay? And upon its closing, that number licensing is no longer available. So upon the purchase of the facility to operate again, it had to make application and go before the Livestock Auction Market Board to ask for a license to operate within the state of Nebraska. That board has an auction market operator sitting in that capacity that kind of gets to hear the questions as they're presented, because it's a public hearing of people who oppose the issuing of a new auction market license and those who would oppose the issuing of a new auction market license. With an auction market representative on there, I think, you know, that individual who's making application gets heard more clearly. [LB78]

SENATOR LAUTENBAUGH: So when did that happen, do you know? [LB78]

ROY BARTA: This goes back in--I guess I'll be market specific--this goes back some time to when the Sutton, Nebraska, facility closed and then it was purchased and then reopened again and it's operating now. And it has been some time. [LB78]

SENATOR LAUTENBAUGH: Okay. Do you have any idea? I have no idea. Do you have any idea how long... [LB78]

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ROY BARTA: I'm going to back up. It's going to be beyond probably five or six years. [LB78]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB78]

SENATOR PRICE: Thank you, Senator Lautenbaugh. Are there any other questions from the committee? Seeing none, thank you for your testimony, Mr. Barta. [LB78]

ROY BARTA: Thank you. [LB78]

SENATOR PRICE: Would anyone else like to testify in opposition to LB78? Seeing none, would anybody like to testify in the neutral? Welcome. [LB78]

BRAD DIRKSEN: Thanks. My name is Brad Dirksen, B-r-a-d, last name Dirksen, D-i-r-k-s-e-n. I'm the program director of the Private Postsecondary Career Schools and Veterans Education section of the Nebraska Department of Education. I was the individual responsible for submitting the survey to...that was requested for boards and commissions, and we attempted to submit the form. Obviously, it didn't get in to the committee until...in its complete form. So I do apologize for that. I was responsible for that and it did not happen. However, I want to advise everyone that the Advisory Council...the Private Postsecondary Career Schools Advisory Council has met four times in the last four years, we are an active organization, there has been many accomplishments. A lot of them are in the form of general discussion about the Private Postsecondary Career School Act and how we regulate those schools. We've also met in the last four years and talked about increases or fee adjustments to our fee structure. We changed...made some changes to statutes in regards to the exemption clauses from which schools we (inaudible) exempt from the Private Postsecondary Career School Act. We've added and changed out or proposed things to have variable fees. We've changed definitions in our rules. We've also looked at the regulatory structure of Private Postsecondary Career Schools in the state and how other state agencies play into that whole picture, and also adjustments to the Tuition Recovery Cash Fund which is part of the Private Postsecondary Career School Act. So there's lots of issues we've discussed over the past four years. And the Advisory Council to our organization is extremely important. We don't have a very large budget. However, the Advisory Council members don't also bring very much of a cost to our organization as we would only reimburse for travel and mileage for our members. However, they the last couple of years haven't requested any reimbursements, so it's not a fiscal cost to our organization. And they've been very key players--and as their key stakeholders being usually the executives of a lot of the private postsecondary career schools--in giving us advice at the ground level and how to adjust our policies and taking different factors into consideration. So we find them a very important piece and in moving forward in the coming years. I know we're going to talk about minimum standards for schools. There's new things coming up with

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on-line education and accreditation concerns. There's lots of different things that are changing the field of education that haven't been addressed lately by the Private Postsecondary Career Schools Advisory Council, and we're looking to definitely continue that work. So we would like to be removed from the bill at the committee's...but we would like to continue our operations, basically. Are there any questions? [LB78]

SENATOR PRICE: Thank you, Mr. Dirksen. Are there any questions from the committee? I would ask just one question. At the beginning, did I hear in your title of the entire Commission--you said it really quickly--did I hear "veteran" in there somewhere? So could you say what that part is, please? [LB78]

BRAD DIRKSEN: Yeah. It's the Private Postsecondary Career School and Veterans Education section. [LB78]

SENATOR PRICE: Okay. [LB78]

BRAD DIRKSEN: We have the Private Postsecondary Career Schools section. And then there's also Veterans Education. We act as the state approving agency for veterans' education in the state of Nebraska. We basically do program approvals for on-the-job training, apprenticeship programs, and also college programs for the GI Bill purposes. Veterans Education is real close with the VA. [LB78]

SENATOR PRICE: Thank you very much. Are there any other questions? Seeing none, thank you for your testimony. [LB78]

BRAD DIRKSEN: Thank you. [LB78]

SENATOR PRICE: Would anybody else like to testify in the neutral on LB78? Seeing none, Senator Avery. [LB78]

SENATOR AVERY: Thank you, Senator Price. I would just point out that we set the bar very low for these organizations, and if you can't clear that bar, you really shouldn't be in operation. The testimony you heard can easily be addressed in the committee amendment. So with that, I would say, pass the bill. [LB78]

SENATOR PRICE: (Exhibit 5) Thank you very much, Senator Avery. And I have with me a letter. This is a letter that opposes it from the Nebraska Health Care Association; that will be put into the record. And with that, we will close the hearing on LB78 and proceed to LB125. [LB78]

SENATOR AVERY: I assume that's why everybody is here, LB125. Senator Scott Lautenbaugh. Welcome, sir. [LB125]

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SENATOR LAUTENBAUGH: Thank you, Chairman Avery and members of the committee. My name is Scott Lautenbaugh from District 18. This is an unusual bill, unusual hearing for me in a lot of ways. I would like to start by thanking my cosponsors, Senator Chambers and Senator Avery. This is not my first go-round on this issue, and those of you who were on this committee last year may recall that, but the issue hasn't gone away. And I think we probably had sufficient votes to pass it last year but not to get past a filibuster, so the bill died. This is a slightly different version of the bill. You'll have a committee amendment coming that takes out the term limits aspect of it. So what we're talking about is a nine-member OPS board that would move the elections to coincide with the city elections coming up in Omaha this spring and allow, I believe, more focus on a very important board. And what do I mean when I say a very important board? Because wherever you're from, your school board is important. But I think everyone has to keep in mind, as I have said many times in floor debate, we're all fans of local control until we're not. But school boards, school districts are creatures of the Legislature, creatures of state government. School boards, at least this Class V school district doesn't have any authority to vote to change its own size. It can't be done. It can't change its boundaries. It can't change the laws that govern it. They come to the Legislature. And the drumbeat for change for the OPS board has become deafening over the last few years, and I think you'll hear about that. Again, this bill would change Class V school districts. There's only one--OPS. It would go to a nine-member board, making it much more in line with what exists throughout the rest of the state. This bill has no applicability, really, to any other size, any other class of school districts, except the Class Vs. And I think there's a good reason for this, as we discussed last time around. I'm not sure where the wisdom of an even-sized board would come from in any event or what the justification for that would be, but I do believe historically the 12-member board has led to perhaps some people not being interested in being the superintendent or some superintendents being granted additional authority to be spared the burden of having to deal with 12 individual masters, if you will, on any given topic. That's a problem. And I don't think we have to look far. You can look at any other school district in Douglas County or the Douglas County Board or the Omaha City Council. I think the largest of all them is a seven-member board. This would allow OPS to still stay nine. There was, illustrating I think the fact that this has become very, very focused on by the public and very much discussed in the public eye and in the media, there was recently a World-Herald editorial that I sent around to all of you and the title was: A drastic step but necessary. And I obviously agree. I won't sit here and read the whole editorial to you, and there are those who will testify as to how the board functions and what we should be doing here, but this is a serious bill. And I think you all need to understand that OPS has a budget larger than the city of Omaha, and I believe that by reforming the board in this way we'll bring more focus to the election and people will pay more attention to who we're electing to handle this very, very important entity with a very large budget and an awesome responsibility. And this is, again, my attempt to shine the focus on this and I hope you'll look favorably upon it. I'd be happy to answer any questions you might have. [LB125]

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SENATOR AVERY: Thank you, Senator. Questions? Senator Price. [LB125]

SENATOR PRICE: Senator Avery, thank you. Senator Lautenbaugh, obviously sitting on the committee, I'm fairly intimately aware of what we're doing here. But the question I do have to ask, by moving the elections to the citywide election cycle, have you given consideration of how that will impact the OPS district in Sarpy County, because they will never be in sync then? [LB125]

SENATOR LAUTENBAUGH: Right. Well, and honestly, that happens any time a district slops over, if you will, or extends beyond the county line. Millard Public Schools goes into Sarpy County and they'll be having a special election in May to coincide with the city. There's nothing that can be done about that. The precincts that are in Millard, people are going to have to work extra hard to get out the word that, hey, just because you're not part of this Omaha city election because you're in Sarpy County, you still have to participate in Millard. This would be the same thing for the handful of precincts that are in OPS. Even though they're not coinciding with the city election, I still think it does force, if you will, the voters in those precincts to be made aware of the election and focus on this one issue--who should represent them on this very important board. So while nothing is perfect, this is surely an example of something that isn't perfect, it's part of the reality we already have with other issues and it's just something we have to deal with. [LB125]

SENATOR PRICE: And so that means that in the language of the bill you've taken in consideration that when we're doing the districting, it will go beyond one county. So if you were to move forward, those nine seats will have to be drawn into over two counties. I just want to make sure that we consider that, the cost burden, because it's a different county that is actually running it, and I'm wondering. [LB125]

SENATOR LAUTENBAUGH: Well, yes, I did consider that, and actually the map that is proposed with the bill puts all of the Sarpy County precincts into one district. I did take the liberty of checking with both of the election commissioners in Douglas and Sarpy and making sure that they were, first of all, aware this was likely coming and get a feel for how it will work from a practical standpoint. And as is done again, the example is taken when Millard has a special election but there's no election in Sarpy County at the same time. Oftentimes the ballots for these few precincts will just be printed by the Douglas County Election Commissioner and counted by the Douglas County Election Commissioner, but the Sarpy precincts will be staffed by their usual poll workers. So I'm not sure which cost you're... [LB125]

SENATOR PRICE: Okay. [LB125]

SENATOR LAUTENBAUGH: ...referring to, but it's done to limit it in that way. [LB125]

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SENATOR PRICE: And are you telling me that somehow in Sarpy County, when I have it on both sides of Papillion, that you have a contiguous county? As you said, it's going to be a contiguous district. Because if it's going to be one district and there's a break laterally from east to west on Harrison, you...it must have a rainbow design. [LB125]

SENATOR LAUTENBAUGH: No. And I don't want...I think I may have misled you somehow then. There's a small portion of Sarpy County that is in OPS and that, what I would say, is in eastern Sarpy County, just across Harrison Street obviously. [LB125]

SENATOR PRICE: Right, my district. [LB125]

SENATOR LAUTENBAUGH: Yes. The part that's Millard is much farther west. I'm not saying they are in the same district. I'm saying... [LB125]

SENATOR PRICE: Okay. [LB125]

SENATOR LAUTENBAUGH: ...the portion of OPS, those precincts, are all now in one subdistrict where previously they were two. That's what I'm trying to convey to you. [LB125]

SENATOR PRICE: Thank you for clarifying for the record. Thank you. [LB125]

SENATOR AVERY: Okay. Any other questions from the committee? Thank you. All right, we'll now entertain proponent testimony. Welcome, Senator. [LB125]

SENATOR CHAMBERS: It's good to be here. Mr. Chairman, members of the committee, I'm Ernie Chambers. I represent the 11th Legislative District. I cosigned this bill with Senator Lautenbaugh. I'm very glad that he brought it. Whenever a significant change is going to occur and it affects a group of people who have had things their way for a long time, those people experience unpleasantness, discomfort, and sometimes even pain. But when you're seeking to bring about the greatest good for the greatest number, then somebody is going to be left unhappy. It's like a court case. The ones who win love the system; the ones who lose may hate the system. But because the system is bigger than any individual and we're looking at the interests or toward the interests of the patrons of the school system--the parents who are the patrons, the children who are to be the beneficiaries--secondary to that are the interests and concerns of those who happen to serve on the governing body. The governing body is very important. It should be a portraiture in miniature of those who are to be governed. And that can be accomplished by the way this bill has been drafted in reducing the number from 12 to 9. The districts make it possible for all of those different constituencies to be represented on the newly configured board. I think it's essential that we have an election this spring, because there are additional complications and problems due to ineptness,

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incompetency, or sheer negligence of the school board president and probably the legal counsel, because the law says that the new members should be sworn in before the first Monday after their election, you know, in the following year. That was not done. Even if in the rules of the school board a person could read that and know it. The new members may not know. They're not conversant with the rules. But even if they can be presumed to know, the duty of a prudent, competent attorney is to inform the client if the client is about to go over the precipice. There might be a presumption that they know, but if from their conduct it appears they don't know or they have forgotten, the legal counsel is to notify that client that you're about to do something that has catastrophic consequences. For whatever reason, the board members did not know or they simply chose not to comply with the law. Attributing to everybody good faith in terms of what they did, I will say they did not know. The one with the duty to advise them, the legal counsel--and that firm has gotten millions of dollars from OPS down through the years--did not advise them on this most crucial item. There could be not just the newly elected people in this election who were in violation of the law and, therefore, according to the law, their election is void, but the ones in the previous cycle may also not have been sworn in appropriately. When you look at these kind of issues, nobody on this committee nor I will have to resolve all those issues, but somebody is going to have to do it. So with all of that confusion, one thing we can do is make a start through what we can do as a Legislature by requiring an election in the spring, and everybody who wants to be on the board must run at that time. And we say we may not be able to correct everything that happened before, but from this point onward we're going to make sure that everything is done with circumspection, is done decently, and in order. And I know when the red light comes on I have to stop. One of my main credos is that I play by the rules. I know what the rules are. I will respect them and I will stop even before the red light comes on. However, I will answer any questions that you choose to ask me.
[LB125]

SENATOR AVERY: Thank you, Senator. Let me start. When...by the way, I'm a cosponsor on this bill, so I might as well disclose. [LB125]

SENATOR CHAMBERS: And it was so comforting to know that you're there. (Laughter)
[LB125]

SENATOR AVERY: Last year, when we debated this late in the session, the point was made over and over that, yes, we may have problems in OPS but this is not the solution. How can you...what argument can you make that reducing the number of board members can actually address the problems that we are so familiar with? [LB125]

SENATOR CHAMBERS: First of all, that other bill had things in it that this one doesn't: the members would be paid \$20,000 or whatever the figure was, there was a term limit proposal, and in addition to that the reduction in the size of the board. There is no pay involved in this bill. The term limit provision was inadvertently retained but it is to be

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eliminated. And the bill only reduces the size of the board. Now let's say that all 12 of the people now...this is an example, not an allegation. Let's say all 12 are incompetent and you reduce the number of incompetence from 12 to 9. You automatically reduce the amount of overall incompetency that you have. But by having a new election and there are 9 members, and its being done under the circumstances that exist at the time that we're doing it, there are people who would not have wanted to serve on a 12-member board with the confusion, the rubber-stamp attitude and mind-set, and get on that board and try to fight against 11 people and the superintendent, who would now say there are people in positions of responsibility who understand that that 12-member board was unwieldy. And they are firing, in a sense, a shot across the bow of OPS to remind them that the Legislature is constitutionally authorized to run the public schools. The Legislature will invoke that authority to bring about a change for the better, which is not nearly as intrusive as can be done by the Legislature, such as determining that a school district with 45,000 to 50,000 students is too large, too unwieldy; therefore, that district should be broken up into smaller pieces. That is not being attempted. All that's being done is to do away with some of the unwieldiness of the current board. I was one of those who opposed reducing it to seven because, due to the segregation in Omaha based on residence, I have to be realistic. I was the one who got the law that required district elections. I want those constituencies to continue to be represented. And by reducing the number to nine rather than seven, that can be achieved. It means that the people in the district that I represent, the district comprising the largest number of black people in this state, may have to work a little harder to put somebody on the board. But I see nothing wrong with telling a group of people, any constituency when they're seeking representation, you've got to pay attention, you've got to be active, you have to inform yourself, and if you're going to be a responsible participant nobody will hand it to you, you've got to get up and boogie. And by the majority that still exists in that district, it is not as large. But I don't think any requirement of any federal court decision or rule or regulation related to ensuring adequate representation of constituencies with a community of interest, I think none of those will be violated. Those rules don't necessarily guarantee that if people don't assume their responsibility, they're going to be given representation. It's designed to guarantee that the possibility of obtaining that representation is there, taking into consideration the discrimination, the racism, the segregation, so that district should still have a majority. Those concerns are being met, and if they were not I would probably be one of the strongest opponents, and I certainly would not have put my name on it. But now to answer that question specifically...I needed a context and maybe it will reduce the number of questions I have to be asked. By having a board with nine members, even though the school, OPS, extends outside or beyond the city limits, I believe--it's confusing--there is no other governing entity that has more than nine members, except maybe the learning community. The learning community is not a governing board in the way that the school district is. It can pass no rules, no regulations, impose no responsibilities on any school district. It cannot draw attendance boundaries. It can say nothing about whom should be hired as a superintendent, the qualifications of teachers, what the curriculum should consist of. So

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it's like an umbrella administrative agency or entity with very limited, narrowly defined, restricted duties and responsibilities. A school board, on the other hand, has plenary authority to act except where limited by law. So there's a difference. But among the routine political subdivisions, as we understand them, OPS has far too many members on the board, so I think there's going to be an improvement. And if there's not, if there's not, and I think about what I say before I say it, if somebody can give me a sword, razor sharp, of the description that I have in my mind, which I'm not going to share with you, I will fall on that sword. [LB125]

SENATOR AVERY: We don't want to see that. [LB125]

SENATOR WALLMAN: No. [LB125]

SENATOR CHAMBERS: Well, since you don't know the description, I don't have to do it anyway. (Laughter) [LB125]

SENATOR AVERY: Any other questions? Senator Wallman. [LB125]

SENATOR WALLMAN: Thank you, Chairman Avery. Thank you, Senator Chambers, for coming here. I appreciate your passion. But do you think...as you said, we can pass a law here to limit the number of school board members? Do you think if you put that to the voters of Omaha, they would choose to do this? [LB125]

SENATOR CHAMBERS: I don't care what the voters would choose to do, and let me tell you why I say that. These are not popularity contests. We have a responsibility as a Legislature to undertake our duty, because I'd venture to say if you put to a vote of the people whether they ought to pay any taxes, the answer would be no. [LB125]

SENATOR WALLMAN: Thank you. [LB125]

SENATOR CHAMBERS: And if you put to a vote of them, should I be given a salary commensurate with the one that I had before I was fired, they would vote yes. Now there are some things which I think appropriately are put to a vote of the people, but when it comes to something like representation, then the ones who are in the majority are going to vote to keep themselves in the majority. And that's why the court came up with the formula: one person, one vote. There were situations where you had very small districts geographically, so those few people wielded the same amount of power as a district that may have had ten times as many. So the court said one person's vote cannot carry more weight than another person's vote. So when you draw district boundaries, you have to make sure that they come within a tolerance or a variance of a certain small amount. We are talking here about representation and this, remember, is just the first step toward remedying a serious problem in education in the Omaha Public School system, and that is the achievement gap. There has been no serious addressing

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of that gap by the 12 members on the board or the superintendent, former superintendent who has left. I have been calling for over a decade for his firing or resignation publicly, in articles, on the floor of the Legislature. Nobody listened. Well, all due respect, there would always be 12 females, and I call them Mackiel's harem, and nobody ever objected to that characterization. When there was an incident of serial sexual assaults by a middle school teacher in Omaha, nothing was done. School employees who knew about what he did, did not report to the authorities. Two of the victims were told by the principal at the school, I don't believe you, called them liars and put them out of school. But when the county attorney looked at their allegations and the facts, criminal charges of a felony nature were filed against these two girls who they were the victims. They were put out of school by that principal and called liars and nothing was done by OPS. After the thing hit the newspapers and it was clear that the law required reporting, it was clear that none of the officials and employees who knew reported. The school board took an official formal vote endorsing the way these employees and officials had mishandled that sexual assault matter. This man had been suspended several times over a three-year period, but he was never fired and what he did was never reported. The only thing OPS did was to say his contract will be renewed...would not be renewed. He was not told, you're terminated. That is what happened in OPS and they did not give consideration to the fact that the achievement gap is worsening. My community has all kind of problems. We have more killings by and of our young people, which cause me grief. I cannot get the authorities to go after the source of the guns. And people want to do all kind of tack-on things, but education is extremely important. Where do you modify the minds, the thinking patterns of large numbers of young people if not in the classroom? OPS has never said, we're going to improve the educational offerings. Teachers with the least qualification and experience are assigned to the schools in the area where my children go, and I'm to tolerate that? But despite the admitted bitterness that I have nourished toward OPS for decades, I am willing to say that we will bring about a substantive change incrementally. The least intrusive thing this Legislature can do as a start is to reduce the size of this unwieldy, incompetent, corner-cutting, law-violating, crime-endorsing school board, is to reduce the number. And if somebody can convince me that reducing the number of school board members to 9, when you review the numbers of school board members throughout the country, the numbers of those elected officials on other governing bodies, if you can convince me that there's something magic about 12, then I will maybe alter my position. But I know you can't. And for those of you all who pray in the Legislature every morning, how many disciples did Jesus have? Twelve, and that was too many because one of them betrayed him and another one denied him. So maybe if he had had only ten and had picked them better, then he would not have been betrayed, he would not have been denied, he would not have been delivered into the hands of the enemy. And had he not been delivered, he would not have been crucified. Had he not been crucified, there would be no Christian religion. Were there no Christian religion, you all wouldn't be praying in the Legislature every Sunday morn, every morning that you meet. So things have repercussions. But on all the things I said about

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the schools and the concern I have for the children, I'm as serious as a heart attack. And when I say "my children," I don't mean my biological children, I don't mean children of my complexion. I mean any child who attends these poor-performing school buildings. My view is that every classroom in every building in every district should offer those children the opportunity for a decent education, and those buildings should be under the control and governance of the people who comprise the community where those buildings are located. Do you all know that white people get treated better than black people in Nebraska? Do you all know that for decades there is a white district that was carved out by law out of the womb of OPS? It's called District 66 or Westside--a white district created by law because they didn't want their children attending school with certain other children. So before people start condemning me for wanting to break up the system so those who live in this area and want to govern the schools where their children attend in that area say anything about a racially identifiable district, look at Westside. Why is that never brought up? Because white people are the standard. In my community and based on the way I was brought up and taught in the schools, things are as they are not because they are as they are but because white men say this is what they are. And even if our mind tells us that's not so, living in the real world we have to accept it, act as though it's so, and comport ourselves as though it's so. There are black people who teach school in OPS who are compelled to say that it offers good education to our children, and they know that's not the case. And I know I'm somewhat far afield. You all have been very indulgent, but I have to let you all know that this bill is just a start but it has very deep implications. It's a start. You're serving notice to the people who will wind up on the board this time that if they do the job that they take an oath to do, and we're going to make sure they take the oath on time so that their election will not be voided, if they just do that we're not going to ask any more of them. But if they do that, they can make Omaha like that proverbial beacon on a hill. The city of Omaha is not really that large. There are resources in that city. There are philanthropists, there are sources of money to make it possible to have in fact a school system that is fair to all of the children who will be viewed as children, not in terms of complexion. Maybe you can see my hand as a metaphor. Look at the palm of my hand. That's as white as any of you all, huh, or as pink. Look at the back of my hand. We as black people are walking metaphors. Why do you think the ones considered black are not like the color of black? Because white people jumped over the fence and polluted our blood. They turned us into what we are. We did not contaminate white people. During slavery and subsequent to that there were laws that would let me be hanged if I'm merely accused. So is the blood being poured across racial lines through the semen of black men deposited in the vaginas of white women? Certainly not. But this is a country built on lies and our kids have to go to school and be taught by people additional lies, and I'm tired of it. But I'm still willing because there's an oath that I took also, voluntarily, knowingly, with no mental reservation, to see that the laws of this state and the constitution of this country are faithfully upheld and discharged to the extent that I, as an elected official, can do. That means that all of the bitterness, all of the anger, all of the hostility, and even around the edges maybe some of the hatred have to be brought under subjection so

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that any talent that I have, any ability that I have can be put toward trying to make a better place for everybody. That sounds naive but it shouldn't sound naive from somebody like me. And that's what Senator Lautenbaugh...he's not going to say it like I'm saying it; has offered a bill that will put us on the path toward doing that. It won't be the first time that somebody did something that was much better than he or she anticipated that it would be, but he's offering us an opportunity. There are people who thought that Senator Lautenbaugh and I probably couldn't agree on anything, but when I see that a person has vision, has foresight, has the gumption and the backbone to take some action to bring about a better set of circumstances, you think that I'm not going to go along with that because ordinarily I don't agree with him on potayto (phonetically) or potahto (phonetically) as a pronunciation? If I'm intelligent and I want all of our children to respect intelligence, I have to accept wisdom from whatever source it comes. And in this instance, wisdom is sitting to my left and slightly behind me in the form of Senator Scott Lautenbaugh, and I'll give him his credit. He's entitled to it. He took a lot of grief, some of it even from me, last session because of the form of the bill. I am not one who will knowingly hold to a position that is invalid. When he came with a better bill, what choice did I have, if it's doing what I think ought to be done, other than to say, Senator Lautenbaugh, can I hitch a ride on your wagon? And he being forgiving, he being magnanimous said, Ernie, this is the Jericho road but there's more room on it than for one person. In fact, there's room enough for at least two people, myself and Senator Avery. And I have to say to the committee, I ordinarily will not take this much time. I will not presume on your kindness, your consideration, your courtesy, even your courtliness, but the issue to me is so grave that I had to take the opportunity that was given to say it in a public forum where a record will be made of it. And for all I know, the Grim Reaper could be waiting for me outside that door, and as I feel that icy finger on the back of my neck I'll say, if only I had spoken. Well, now, brothers and sisters, I don't want to die when I leave this room, I hope I don't die when I leave this room, but I have unburdened my soul and I can die in peace with a clear conscience. And if there is a better place beyond here, then I'm sure that's where I will wind up. (Laughter) [LB125]

SENATOR AVERY: We're happy to give you that opportunity. [LB125]

SENATOR CHAMBERS: Thank you. And I presume there wouldn't be any more questions. (Laughter) No. Thank you. [LB125]

SENATOR AVERY: How could there be? (Laugh) [LB125]

SENATOR CHAMBERS: By the way, I have to go back to the Judiciary Committee. That's why I can't stay. But they were glad that I left to come here. (Laughter) [LB125]

SENATOR AVERY: Do we have additional proponent testimony? Welcome. [LB125]

NANCY KRATKY: (Exhibit 1) Hello. Thank you. He asked me can I follow that. Yes, I

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can. I am Nancy Kratky, 1204 North 101 Circle, Omaha, Nebraska. Although I am a member of the school board, I am not speaking for the school board. I'm speaking for myself. Can you hear me now? [LB125]

SENATOR PRICE: Could you spell your name? [LB125]

SENATOR AVERY: Yeah. [LB125]

NANCY KRATKY: I did say my name. Spell it. Nancy you can spell, K-r-a-t-k-y. Okay? [LB125]

SENATOR AVERY: Yes. [LB125]

NANCY KRATKY: Two years ago I would have never dreamed that I would sitting here in favor of support of a proposal to change and diminish the school board representatives in the Omaha Public Schools. To understand that statement you need to know that I was born in OPS, attended elementary and high school in OPS, graduated from UNO, student taught in OPS, and taught in OPS. My accomplishments were the discussion and implementation of the Positive Action Centers, or PAC rooms, in the elementary schools, the starting of Teacher Recognition Day in Nebraska, and a resolution signed by Senator, then-Governor Nelson noting the establishment of Nebraska Heritage Day to be celebrated on a yearly basis. For many years, 12 representatives served Omaha well. During the past two years, many things have changed. They have not been positive. In some instances, they have been shocking. I have no doubt but that our four new members who campaigned and spent money to get elected can do a creditable job. There are still great things happening in the district, however, I feel a revamping can serve us well as we move forward with the new superintendent. Because I try to attend programs, open houses, and events in my district, some increase in the area could be workable, but I also want it to be doable. My constituents have been appreciative in noting my attendance. While we serve the entire district, it is somewhat difficult to advocate as you are able to do in your role of your subdistrict with so many voices on the board. The Omaha World-Herald pointed out many accurate points in the January 20 article advocating revamping of the board. One of the points they made discussed pay for school board members. While I am not advocating for pay for school board members, I want to go on. With a larger district of 50,000 students and 80 schools, to visit them and drive around the city a tank of gasoline can be used even if you try to visit 3 schools a day in close proximity. I have long advocated for mileage within the district. The one month I calculated and turned in the \$55 stipend, which I was told I could do, and this was just for gasoline reimbursement, it sat on a desk indefinitely and that was the end of that. At a state school board meeting, when the subject came up, I was quickly told the school board members serve for the love of the child. There could be an implication here that if you think you should be reimbursed in any way, you are not loving the children, etcetera. So

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why have I done this for so many years? One could say I wanted to be there to be a voice and be certain we are serving all parts of our city and making a difference for all of our children. Do you have any questions for me? [LB125]

SENATOR AVERY: Well, we'll see. Questions from the committee? It appears not. Thank you for your testimony. Additional proponent testimony? Welcome, sir. [LB125]

JUSTIN WAYNE: (Exhibit 2) Justin Wayne, Justin, J-u-s-t-i-n, Wayne, W-a-y-n-e; 8937 North 56 Avenue Circle, Omaha, Nebraska. I also am speaking as an individual, not as a board. Our board did take a vote last night. I want it to be noted that the vote was 7 to 4, I believe, and the 4 members who voted no were Kratky, myself, Walker-Nash, and Brumfield. What I passed out was my editorial that I wrote in the Omaha World-Herald January 13, 2013, and I won't repeat a lot of the things that were already mentioned. But I will say that I fundamentally believe many, if not all, the problems in Omaha Public School come down to three things: board governance, leadership, and accountability. And by reducing the size of our school district, I truly believe that will help with all three of those areas. I truly believe that right now is the right time to make our governing structure more efficient and more effective. Reducing the size of the school board is a necessary first step to making us a better run school system. And again, I want to emphasize it's a necessary first step. I think the structure has to be in place in order to make the rest of the steps that I think OPS itself should be able to do before the state, as mentioned by Senator Chambers, does anything more intrusive. So I submit the testimony for you guys to have and you guys can read over, but I do want to talk about a couple other things. Comparing our school district to other school districts as far as voter or people per district, roughly right now the way the maps are drawn is roughly 37,301 people in each district. Lincoln School Board members represent 36,911, so the numbers are very similar to what Lincoln is currently. Will it require a little bit more effort on the part of school board members? Absolutely, but I also think that's what running for office is about. In fact, yourself, you guys represent a little bit over 45,000, I believe, per district, which is interesting and makes it challenging for some of the farther west districts, but you still do it and you still do it effectively and efficiently. The other thing I just want to point out is that...without reading the whole testimony, is that there's an issue that's going to be raised later on about timing, that we just hired a new superintendent. Well, I think it's important for this committee to know that at no point there's no evidence the superintendent is not ready to come on board with these four changes. Obviously, it's been in the paper since September. He applied and went through the interview process knowing that at least four new board members would be on there and possibly the reduction of our school board size. The bill was introduced. He still signed the contract after the bill was introduced. And if all the media is correct that this bill has a lot of support, according to the Omaha World-Herald's article, if that's still correct, he still signed the contract. Furthermore, we approved the contract yesterday, but it's also to note that I have a Twitter account and he was joking with me on Twitter just as recent as January 22 about the long days of a superintendent. There's

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no evidence at all that this shake-up or this revamp would cause any distraction. In fact, the school district he spent most of his time at, Wichita, which is comparable to Omaha Public Schools with 50,000 students, has a seven-member board. The school district he currently is a superintendent of has a seven-member board. So this wouldn't be foreign to him to have a smaller school board; however, it would be foreign to him to have a 12-member school board. Again, I won't reiterate all the things that have been said here already, but I do think it's time to hit the reset button. This bill was introduced last year and people said the timing wasn't right so they gave us another six or seven months. Since then, there has been more issues that have arose with how our board is functioning. So now the time is right to hit the reset button and even I will have run again, if I choose to, and my term will also be cut short. It's not about me; it's about our students. It's about a governing structure that's more efficient and more effective, and that's why I'm in support of this bill. I'll answer any questions. [LB125]

SENATOR PRICE: Thank you, Mr. Wayne. Are there any questions from the committee? Seeing none, thank you for your testimony today, sir. [LB125]

JUSTIN WAYNE: Thank you. [LB125]

SENATOR PRICE: Are there any other proponents? Welcome, sir. [LB125]

SAM BROWER: Thank you. Thank you very much, Senator Price and members of the committee. My name is Sam Brower, S-a-m B-r-o-w-e-r. I live in Omaha, Nebraska, and I am here to speak in favor of this proposed legislation. I have been a longtime observer of the Omaha Public School Board of Education, and it's my view that this legislation is a rational and reasonable effort to cure many of the problems that have led to what I believe today continues to be a dysfunctional school board. I would...there have been articles in the World-Herald by proponents and opponents of the legislation. I'm certain many of the arguments that have been presented in the newspaper you'll hear today by those in opposition. I would just like to suggest, if you would, if you hear these objections, to be mindful as to the extent to which the objections you will hear are those that relate to kind of the comfort zone of the current board of education or are objections that have, as a victim, the students that attend these schools. And as near as I can observe, most of the objections that have been made publicly to date are in the former category. That is that, you know, recent candidates have had to invest time and energy into running for the school board and that, hence, you know, funds raised would have to be wasted, things like that, lost time campaigning if the board set a new set of elections in the spring. That has nothing, nothing at all to do with what's in the children's best interest. There's also an argument that I think you might anticipate that over...there's been over a one-third turnover in the board in the last election and somehow that that's evidence that the voters' will to change things has occurred and that there's no further action that you, the Legislature, should take because of that change. But that's not a correct conclusion because of the fact that none of the new four board members sit on

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the board by virtue of running against four former board members. In every case where there's a new member, it occurs by virtue of the voluntary retirement of board members who have, get this, four of these members had collectively over 60 years of service on the board, dating back almost 35 years ago to 1978. So these were people that were retiring. There wasn't any change mandated by the voters because they weren't even on the ballot. The other argument that you will hear will be a voter nullification argument, the one that, well, these folks have just won their election, it is an inappropriate time for you or the Legislature to intercede and disrupt the 12-member arrangement. But, you know, that's an argument that if you listen to it carefully there would never be an occasion by which any changes could be made because there's always going to be new members elected. And the nullification argument, I mean that's an argument that dates back and has been used over the years, you know, for all types of defense of questionable public policies. And the other thing I would point out in that regard is that the respect for the voters can be kind of evidenced by the fact that 5 of the 12 board members, I checked this by looking back at the various council or board of education positions, and over 5 of the 12, the reason they were elected was by virtue of the fact that their predecessor resigned and then there was an appointment, which is a common practice, in which...under which board members become incumbents and then can run for reelection. Five of the twelve sit on the board in that...through that means. And it's unprecedented in the state of Nebraska. My only argument would be I think, to Senator Avery's point, is there a guarantee, there certainly, I would have to concede, there is no guarantee in this business. But I would even beg Senator Chambers to think of seven might even be...get us closer to a point that would not require other means, more serious means, of intrusion into OPS. I'd be pleased to answer any questions. [LB125]

SENATOR AVERY: Thank you. Questions from the committee? I don't see any. Thank you. [LB125]

SAM BROWER: Thank you very much. [LB125]

SENATOR AVERY: Additional proponent testimony? Seeing none, we'll move now to opponent testimony, those wishing to speak in opposition to LB125. Good afternoon. [LB125]

JOHN BONAIUTO: (Exhibits 3 and 4) Good afternoon. Senator Avery, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, 1908 South 77 Street, Lincoln. I'm a registered lobbyist and I represent the Nebraska Association of School Boards and the Nebraska Council of School Administrators. On this particular bill, I am here on behalf of the Nebraska Association of School Boards. And the School Administrators have not had their meeting to take positions on legislation yet, but they will be doing that in the next day. I have been before committees on many different occasions and given a lot of different testimony. Today I will characterize my testimony as gentle opposition in that the School Boards Association took their position based on a discussion they had in

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November, before this bill was introduced. They talked about there is no right number or no wrong number in selecting board representation, and they had some concern, obviously, about term limits. So I would say up-front that Senator Lautenbaugh has worked to improve his bill from last year and we appreciate the amendment to remove the term limits. I'm not here to in any way question the Legislature's authority to set the number of board members. But I would say that based on current statute...and we have statutes that deal with Class III districts and Class IV and Class V. The School Boards Association represents all classifications of districts. In statute currently we have the ability for Class III school boards, by resolution, if they're a nine-member board--and there are a number of nine-member boards that exist because of reorganizations and there were that many seats that were necessary in the reorganization--that would like to go to a smaller number, but the only choice for them is six. And I've been told by boards saying, if we could go to seven or if we could go to five, we would be much more willing to make that switch. And there are six-member boards that have the option to go to nine, but I've not had any move up from six to nine. But I guess my comment is, as you discuss this bill, and I know, Senator Avery, from conversations with you and how your committee has worked hard to make good bills even better in the process, that maybe you would consider that a range in statute for boards to be able to bring to their community a discussion of could a nine-member board move to seven which is not an option now, could a six-member board move to five may be helpful in looking at finding the number that works best for a community. Beyond that, I have nothing else to offer so I will end my testimony. [LB125]

SENATOR AVERY: A good place to end. [LB125]

JOHN BONAIUTO: Yeah, and just... [LB125]

SENATOR AVERY: When you've run out of things to say, it's a good time to stop. [LB125]

JOHN BONAIUTO: I did and I'm just hoping to get out of here with as much skin as possible, so... [LB125]

SENATOR AVERY: All right. Let me ask you about this local control issue. [LB125]

JOHN BONAIUTO: Sure. [LB125]

SENATOR AVERY: You are fully aware the Legislature has the authority, as Senator Chambers eloquently stated, we have the authority to legislate in this area. [LB125]

JOHN BONAIUTO: Absolutely. [LB125]

SENATOR AVERY: You are saying that it is unwise for us to do so? [LB125]

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JOHN BONAIUTO: No, I'm saying...actually I'm asking is, as you look at making a decision to move a bill to General File, that you're considering right now in LB125, that you might look at it in a broader sense and can you look at the current legislation that deals with school board numbers. And you surely have that authority and ability to set the number, but I think that to the local control issue would be, beyond that, could communities make changes other than what is limited right now in statute. And these are very old statutes. And so this issue has not been visited for quite some time other than looking at Omaha last year in legislation. And so the School Boards Association, rather than focusing on one school district, they're looking at all of the school boards statewide. [LB125]

SENATOR AVERY: Let me ask you, let's take this argument about local control to its logical extension. You would not want the state to say, okay, you want local control, we'll end the school aid statute and you can just swim or sink on your own. You wouldn't go that far, would you? [LB125]

JOHN BONAIUTO: Would not like that, Senator, and I think Senator Lautenbaugh alluded to it in his opening. You know, we do, when in doubt, use that local control issue when we like it. There are some times we don't like it, and so we have to dance around that. So you know... [LB125]

SENATOR AVERY: You know, it's always been a mystery to me, not really a mystery, it's always been a little bit of an irritant, sitting on the Education Committee now for six years. And exactly as you said, when you don't like something, it's all about local control, but, boy, when you like it, yes, we will embrace that. But then when you come up with something else, you know, it's local control trumps it. When does local control trump a statewide issue or the authority of the Legislature? [LB125]

JOHN BONAIUTO: Well, we've learned that there's just no time that local control trumps the authority of the Legislature, so...(laughter) and we've learned that very, very painfully at times. And so...but, you know,... [LB125]

SENATOR AVERY: Good answer. Senator Scheer has a question. [LB125]

SENATOR SCHEER: Thank you, Chairman Avery. John, just to clarify because I don't want it to be confused, your testimony, if I'm understanding you as correct, is not necessarily germane to the OPS portion of this bill. It is more to the fact that you're hoping that if we use this as a vehicle to help perhaps modernize and give other options to other district sizes other than just Class V. Am I understanding your testimony correctly? [LB125]

JOHN BONAIUTO: Senator Scheer, I think that does characterize where I am at, since

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Senator Lautenbaugh removed the term limits. And I was really trying to figure out how to get out of this as gracefully as possible. [LB125]

SENATOR SCHEER: I think you've done it. [LB125]

SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. [LB125]

JOHN BONAIUTO: Thank you, Senator. [LB125]

SENATOR AVERY: Any other opponent testimony? A familiar face. [LB125]

BRENDA COUNCIL: (Exhibits 5 and 6) Good afternoon, Chairman Avery and members of the committee. I am Brenda Council. My last name is spelled C-o-u-n-c-i-l. I reside in the Omaha Board of Education District, at 1615 Wirt Street, Omaha, Nebraska. I'm a proud product of the Omaha Public Schools and had the privilege of being a member of the Omaha Board of Education with its 12 members for 11 years. At least I believe I did, since when I was first sworn in 30 years ago we swore us in the same way they swore them in this year; so it's been going on for 30 years. I appear this afternoon in opposition to LB125. And for those of you who are not new to this committee or not new to the Legislature, know that I appeared in opposition to a similar bill that was introduced last year. And I would love to spend as much time providing responses to questions I don't believe were answered, Senator Avery, but I'm going to try to focus on one of the issues that I believe is an imperative with regard to LB125. Let me begin by responding to one question that this committee has posed. There is no doubt, Senator Avery and members of the committee, that this Legislature has the authority to legislate the number of school board members in any district in the state of Nebraska. What you cannot do and what this bill will not do is legislate the quality of the people who hold those seats. And for anyone to suggest to you that there's some correlation between the number of members of the board and the quality of the functioning of that board isn't being honest with you; and if time permits I'll get back to that. But my main concern is now is not the time for the enactment of the provisions of LB125. If Senator Lautenbaugh had been successful last year and his bill last year had provided for the conduct of OPS board elections at the same time as city elections, there may have been some merit, because there's a grain of merit to conducting the city election and the school board elections, because there's limited focus. We all know at a general election how many issues are on the ballot. You had three or four constitutional amendments, you have other bond issues, and the ballots get very lengthy. And I said a grain of merit to holding with the city election because the downside is if the effort is to place more focus and make school board elections more high profile, it doesn't necessarily result from connecting it with the city elections for these reasons. In 2005, the voter turnout for the city general election in Omaha was 24.5 percent. That was total voter turnout. In the general election in 2008, when the school board elections were held, the voter turnout

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was 72.6 percent. In 2009, when the city's elections were held, voter turnout was 31 percent; in 2012, when the general elections were held, 68.9 percent. So the upside is there are fewer things on the ballot during the city election. The downside is there is significantly less voter participation during the city's elections. The other problem with this bill at this particular time, and I respect and appreciate the position that was articulated by a previous person testifying in support of this bill, but there is merit to the argument that it is unfair to the voters, unfair to the candidates for this body to mandate by legislation that people who went through an election in November turn around and have to go through another election in April and then again in May. And the reason I say that, if you go back to last year when Senator Lautenbaugh introduced similar legislation, he said one of the reasons he introduced the bill was to encourage more high-caliber candidates to seek school board seats. Well, how many of these four successful school board candidates would have run in November had they known that they would have to turn around...if they wanted to hold that seat, they would have to turn around and go through that same exercise again in an April primary and a May general; and not only that, they would have less than a month to decide whether they wanted to seek the seat. Because if this bill passes, with an emergency clause in place, these individuals...anyone who would want to seek the nine seats proposed by this legislation, would by statute, by the law itself, have to file by March 1. So they would have less than a month to decide whether they want to do this, and they would have two months to campaign covering 10,000-plus more voters than they would have had to cover if they had not had to run. You wait four years, they have an opportunity to do that. I know my time is up but I do want you to know that in answer to your question, Senator Avery, there is no correlation, none whatsoever, between the number of school board members and any of the concerns that were raised in the World-Herald articles, the World-Herald editorial, or anything else. And if you'd listened intently to Senator Chambers' arguments, he talked about the law firm. All it takes is a majority of the board of education to change that. You don't need a law to reduce the size of the board to accomplish those kind of changes. You don't need a reduction in the size of the board to hire a qualified and competent superintendent. You don't need a reduction in the size of the board in order to be more vigilant in terms of looking at your financial documents to ensure that you're reserving enough money to pay your superintendent's retirement. The size of the board has no bearing whatsoever on it. I didn't make copies and I hope she'll testify to it--I hope she'll testify; but one of the new school board members, Jennifer Tompkins Kirshenbaum, wrote an outstanding editorial as to why this is not the time and why the number of board members has nothing to do with the ability of a board to function effectively. I would urge this body to kill this bill in committee because all it's going to do is result in upheaval, but that upheaval doesn't necessarily result in positive change for the benefit of the children and the families of the Omaha Public Schools. I'll answer any questions you may have. [LB125]

SENATOR AVERY: Okay. Senator Wallman has a question. [LB125]

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SENATOR WALLMAN: Thank you, Chairman Avery. Thank you, Senator Council, for showing up. [LB125]

BRENDA COUNCIL: Senator Wallman, good to see you. [LB125]

SENATOR WALLMAN: As you and I know, we agreed on some of this stuff. But do you think the State Board of Education helps school districts in any way, school boards, to make education better? [LB125]

BRENDA COUNCIL: Yes, you know, and you'll see in Board Member Kirshenbaum's article one of the things that this Legislature can do, which it hasn't done, is mandate board training. And it's up to the individual board member whether he or she pursues board training. To the credit of the four newly elected board members, they all undertook the board training that was offered by the Nebraska Association of School Board members before they took the oath of office. So they entered into their position with an understanding, a grasp. But I can tell you, when I was first elected to the board, I didn't have that opportunity to get that kind of training before I took office. But these four board members, the fact that they did that before they even took office shows you how committed they are to undertaking their responsibility as school board members as effectively and efficiently as they can. I wish I could say that all of the previous 12 board members had pursued that same board member training. [LB125]

SENATOR WALLMAN: Thank you, Senator. [LB125]

SENATOR AVERY: Anybody else have questions? Let me ask you, can you admit that there are problems with the school board in the past under its 12-member size? Can you... [LB125]

BRENDA COUNCIL: I can tell you that some problems have been encountered by the school district of Omaha that could have been addressed differently and better by the board of education. But again, Senator Avery, that gets down to the efforts of the individual board members. Just like it takes 25 votes to change anything in this Legislature, it takes 7 votes to change anything on the Omaha Board of Education. There's a lot of discussion about the issue about reporting the abuse and how long it took the board to change its policy. All it takes is a seven-member vote. All it takes is the leadership of seven board members. The last I checked school board policy, a board member can seek to have an item placed on the agenda and have it taken to a vote. So if you sit back and allow something to languish for 12 or 18 months, is that due to the size of the board or is it due to the competence of the board? And that, Senator, is the key issue. And I just...one other point. One of the previous testifiers referred to an editorial that he wrote, and in that editorial there is a reference to a report that was published by the Council of the Great City Schools in 2010. That same report was used last year to support the argument that a nine-member...well, back then the board that

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was proposed in that bill was even smaller than nine, but that a smaller board member...a smaller board represented best practice. I urge you to read that report because that's not what that report stated. But in addition to that, while the report did say, here, we've identified eight urban school boards, eight urban school districts that have experienced significant improvement in academic achievement, something all of us wants to see occur in the Omaha Public Schools and every other school district. And they said, of these eight school boards, they all had school board sizes ranging from five to nine. They give a profile: this is how many students in the district; this is how many school board members on the board; this is how they're selected, either they're appointed or they're elected, and it just so happened that all eight were elected. What I find interesting, Senator Avery, LB125 says we should have a nine-member board in Omaha. One of the eight school board districts identified in that report as being a stellar example of how a smaller school district operates was also the district, shortly after that report was published, that was discovered to have engaged in the largest educational cheating scandal in the nation's history, and it had a nine-member board. So does that mean nine school board members are prone to cheat to improve their academic achievement? No. No more than anybody can sit here and say that a 12-member board will not be able to properly, effectively, and efficiently manage the school district of Omaha. [LB125]

SENATOR AVERY: All right. You did admit though that there are problems with the Omaha current board or at least have had past problems. [LB125]

BRENDA COUNCIL: They are past problems. [LB125]

SENATOR AVERY: What would you suggest as a remedy? You don't like this...you don't like LB125. What would you suggest? [LB125]

BRENDA COUNCIL: You know, I think the kind of change, Senator Avery, that the proponents of this bill at least articulated last year and to some extent this year, have occurred. They said they want new and fresh ideas. Soon you'll have five new board members. Ms. Kirshenbaum, in her editorial, talks about, give them an opportunity to implement their new and fresh ideas. There was objection to the fact that the former superintendent had too much authority, yet a school board member just testified that they just signed a contract with a new superintendent. And it's this composition of board members who engaged in that negotiation, arrived at that contract, and have set the expectations. So those issues should have been addressed. And what Ms. Kirshenbaum and to a large extent what I'm asking is these fundamental changes, a change in the composition of the board, a change in board leadership; that's what the World-Herald said, that reducing the size of the board would offer greater leadership. I don't know how you do that. I mean, how do you connect the number to leadership? But you have new board leadership. You have new board leadership. You'll soon have five new school board members; you have a new superintendent; and you have the scrutiny

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of the entire state. So that's why I don't believe this bill is necessary at this time, particularly in view of the fact that these four newly elected board members went through the effort and a couple of those races were spirited and tightly contested despite the fact that there's this belief that nobody of quality would run for a 12-member board. I would submit to you that the four people who were elected would, if they don't take issue with it, should take issue with it, that they are high-caliber individuals who are committed to making a difference. So I think the change that was being sought by just the discussion of reducing the size of the board has resulted in a change in the direction of OPS, has resulted in much of the changes that everyone, I think you'll get a consensus, believed needed to occur. New superintendent, new board members, new board leadership--you have it. So by reducing it by three, can any one of us sit here and say that nine people wouldn't do the same thing that the World-Herald criticized and complained about? None of us can say that. But what we can say is that with the kind of oversight, with the kind of training that these new board members have received, that they're moving in the direction that everybody, and I think even Senator Lautenbaugh when he introduced the legislation. The objective is to get OPS moving in the right direction. Now to get to where Senator Chambers indicated...or intimated that you need to go, then, quite frankly, none of the current board members should run because of the remote possibility they could be elected, because if they're incompetent, they're incompetent. [LB125]

SENATOR AVERY: How do you explain the vote last night by the board to take a neutral position on this bill? [LB125]

BRENDA COUNCIL: I can't speak...I'll think they'll testify as to why they took a neutral position. But for me, again...and Senator Avery, I think you know me well enough, you have to show me a correlation between the number of board members and what you're seeking to achieve. Many of us in our legislative roles have seen solutions in search of problems. Here we've got a solution that doesn't really know what the problem is and doesn't really know how to get at the problem. [LB125]

SENATOR AVERY: But we agree there is a problem. [LB125]

BRENDA COUNCIL: I think that there is a need for better management and oversight, and I think that...and you see the movement in that direction with the change that has occurred thus far. But to force the voters in the Omaha Public Schools in at least four instances, if the bill passes, to vote three times in less than three years on their school board representative, where does that get you? [LB125]

SENATOR AVERY: All right. Thank you. Oh, wait, we have one more question. [LB125]

SENATOR BLOOMFIELD: Thank you, Senator Avery. [LB125]

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SENATOR AVERY: Wait. All right, I had two people. Senator Bloomfield. [LB125]

SENATOR BLOOMFIELD: Thank you. Senator Council, Senator Chambers seemed to intimate in his remarks that by going to nine, somehow the black children would receive a better education than they're receiving under the 12-person board. Is there any validity to that statement at all? [LB125]

BRENDA COUNCIL: I don't know how you can arrive at that conclusion, because there is no correlation between increased academic achievement and the number of people in board positions. [LB125]

SENATOR BLOOMFIELD: Is there a division in the district...I'm not as familiar with the Omaha district as I need to be. I will dig into it deeper and I'd love to talk to you about it a little bit if we can. But is there a change in districts somehow when we go to nine that there would be a difference in the pattern of voting or anything like that? [LB125]

BRENDA COUNCIL: Yeah, absolutely. [LB125]

SENATOR BLOOMFIELD: Okay. [LB125]

BRENDA COUNCIL: And there was an article in the World-Herald that showed how the districts would be drawn under the bill. Currently, OPS is a majority/minority school district, okay? So the majority of the children in Omaha Public Schools are minority students, okay? [LB125]

SENATOR BLOOMFIELD: Yes. [LB125]

BRENDA COUNCIL: Currently, on a 12-member board, there are four African-American board members and eight non-African-American board members. As I read the article in the paper and what the objective was to be achieved by the way the boundaries were drawn, it would assure a minimum of one African-American board member out of nine. And you ask me what my druthers are? I want it the way it is: 4 of 12 as compared to 1 of 9. [LB125]

SENATOR BLOOMFIELD: I understand. Thank you. [LB125]

SENATOR AVERY: Senator Scheer. [LB125]

SENATOR SCHEER: Thank you, Senator Avery. Senator Council, the thing that you talk about not guaranteeing anything better from a 12 to 9, to a certain extent I can follow that, but on the same hand, as we work in the Legislature...and granted, I'm very new here and you've had much more experience than I... [LB125]

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BRENDA COUNCIL: Not much more. A few days. [LB125]

SENATOR SCHEER: In this body perhaps. But the fact of the matter is, even in this body, we work with smaller numbers and then larger numbers because it is easier to get things accomplished in smaller numbers. And I don't see it as a huge stretch that would say if you are at 12 versus 9 because of less personalities, it may be easier and faster to accomplish more things for any district; and going back to Mr. Bonaiuto's comments that perhaps, you know, some districts want to work with 5 or 7 rather 9 and 6. And I think part of it, as from my experience working on school boards, and so I think there I maybe have more experience than you, it is easier to accomplish things with smaller numbers and not larger numbers. [LB125]

BRENDA COUNCIL: Well, Senator, just as this body functions through committees, so does OPS. And those committees are open to all board members. They're invited to engage in discussion, although they may not have a vote on the committee. That's the process by which the information is synthesized and recommendations are made to the full board, just like this body will or will not advance bills to the full Legislature. And in terms of whether or not 12 is too large a number, at least it wasn't my experience in my 11 years on the board. And when you look at some of the objection to the current 12 members and some of the arguments in support, like the World-Herald says, ah, leadership. Well, you know, I can only relate to my experience. I had the privilege of serving as president of the Omaha Board of Education for four terms. And during those terms we accomplished some very significant achievements. And even Board Member Kratky who got up and spoke in support of this bill, if you heard her, she began by saying this 12-member board has served us well until a couple of years ago. So what does that sound like? Does that sound like personality or does it sound like policy? I submit to you it's the former rather than the latter, and I don't think it's the size of the board that has anything to do with that. [LB125]

SENATOR SCHEER: You know, I can appreciate that. I can't speak obviously for another board member, but just from my perspective I do think that sometimes smaller numbers have a better ability to come to consensus than larger numbers. And I don't have any factual evidence; that's just my own opinion, so. [LB125]

BRENDA COUNCIL: Okay. And if I may... [LB125]

SENATOR SCHEER: And I appreciate yours as well. [LB125]

BRENDA COUNCIL: Could I comment just a little further on that and further response,... [LB125]

SENATOR SCHEER: Certainly. Well, I don't know. That's up to the senators. [LB125]

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BRENDA COUNCIL: ...Senator Avery, and just briefly? [LB125]

SENATOR AVERY: Are you answering a question? [LB125]

BRENDA COUNCIL: It's answering his question very, very briefly. [LB125]

SENATOR AVERY: Okay. [LB125]

BRENDA COUNCIL: One of the arguments advanced by Senator Lautenbaugh when he introduced a similar bill last year, was that the problem with the 12-member Omaha Board of Education was "group think"; that there were too many unanimous or near unanimous votes. That's not a sign to me of conflict. That's not a sign to me of division. Yet another proponent of this bill says the problem with large boards is they create conflict. Well, either there is conflict or there's not conflict. Either there is group think or there's not group think. But there was data introduced last year that showed the overwhelming majority of the votes of the Omaha Board of Education were unanimous or near unanimous. So that to me is not an indication of inability to come together and make decisions. [LB125]

SENATOR AVERY: Any more questions? Thank you, Senator. [LB125]

BRENDA COUNCIL: Thank you, Senator Avery. [LB125]

SENATOR AVERY: Any more opposition testimony? [LB125]

NANCY HUSTON: Opposition? [LB125]

SENATOR AVERY: All...opposition. Yes. Welcome. [LB125]

NANCY HUSTON: Thank you. I think it's good to be here. I am Nancy Huston. Huston is not spelled like the city; it is H-u-s-t-o-n. I am a resident of Omaha within the Omaha Public Schools district. I live at 3000 Farnam Street, Apartment 9F, which is very important because there's another Huston in my building, and if you don't put 9F on there she might get my mail. And that is in Omaha. I come before you today as a citizen residing in the city of Omaha within the Omaha Public Schools boundary. I am a strong proponent of the Omaha Public...of public education and of the Omaha Public Schools. I care for the education provided to the children of Omaha, to the children from all walks of life and children from all over the world. Today, there are more than 96 languages spoken by the students of the Omaha Public Schools. Since my move to Omaha...or to Nebraska in 1971, I have learned more and more about the Omaha Public Schools and have grown to care for the system more deeply. I first taught in the system and have just completed 16 years of service on the Omaha Public Schools school board. I did not run for reelection in November. I strongly object to LB125 as it is written. There are

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several things I object to: reducing the size of the board, which is perhaps the least important part of this proposal to me at the present time, but I do object to it; placing the election of the OPS school board on the ballot with city elections which are held only every four...which are held every four years. How would the election to the board for half of the members presently, held every two years, be staggered? And how would elections be held in those parts of the Omaha Public Schools that exists outside the city limits and even outside of the county? Who would be responsible for that expense? And voter turnout, as has been said, for city elections is much smaller than the general elections in November every two years. But in my opinion, the most egregious part of the bill is the speed with which it is being presented; first, to pass the bill itself and then to hold an election for the board members residing in the newly drawn subdistricts only four months after the most recent election. Where is the voice of the voter who just elected four new board members in November? There should be time for any bill, but especially a bill of this magnitude, to be considered carefully by this nonpartisan body which is the Unicameral Legislature of the state of Nebraska. The citizens of the community should have the opportunity to learn and respond to this bill and to any bill that comes before the Legislature. George Norris, who fought so hard for the Unicameral, it is said he wore out two sets of tires driving this state to get the Unicameral, said that the people would serve as a check for the possible abuse of power by their elected officials. If this bill is passed as quickly as it has been hoped for, will the voice of the people be heard, or will there be abuse of a power by elected officials? I ask that you listen carefully, consider the ramifications of the bill as it exists today, and decide to allow time to hear the voice of the people. Thank you, and I will be happy to respond to any questions. [LB125]

SENATOR AVERY: Thank you, Ms. Huston. Questions from the committee? I don't see any. Thank you very much. [LB125]

NANCY HUSTON: Thank you. [LB125]

SENATOR AVERY: We're still on opposition testimony. Anyone wish to speak in opposition to LB125? All right. We'll move now to neutral testimony, neutral testifiers. [LB125]

VIRGINIA MOON: I've been watching people get in this chair and let's see if I can do it without falling down. [LB125]

SENATOR AVERY: Good afternoon. [LB125]

VIRGINIA MOON: Good afternoon. My name is Virginia Moon. My first name is spelled like the state, Virginia; Moon, M-o-o-n, and I'm the interim superintendent for the Omaha Public Schools. I've been in that capacity for six months and I'm here to perhaps answer your question about why did the Omaha Public Schools take the stance to testify in a

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neutral capacity. I have to begin by saying that I'm a passionate supporter of public education. I believe it is at the heart of the democracy and that one of our primary jobs is to create citizens who elect officials and who make good decisions and help us with our government. I'm, although you might find this hard to believe, a superintendent who believes in representative board government; so even though we do complain from time to time about working with our boards. The question was asked earlier: Why did the board decide to testify neutral? And that is because although I know it's not said often, the Omaha Public Schools does understand that we have a huge job in changing the achievement gap and in providing achievement for students--we have students who need us the most probably of any in the state, it is a huge responsibility and I believe we take it seriously. And so 12 or nine, I don't think that there's anyone who can show what's the right number, that the magic number exists. But we do have some concerns with the bill. So if this bill is going to pass, we want to be sure that we're a part of making it the best bill it can possibly be that will serve the students of the Omaha Public School districts not just in this election but going forward for years and years to come. So we're testifying neutral in this case and asking the committee to take a look at the bill itself, and if it's going to be a bill--and that's certainly not up to the board or to me--but that we take a look at some of the components of the bill and ask you to consider making some changes in the bill if indeed it's going to go forward. The first one you've heard a lot, and that's aligning the election with the municipal elections. With the exception of this very first one, which is going to be a special election in about half the cases anyway, and could be held at any time, the general election gets a better voter turnout, more attention to the issues, and it will not have to be--if we go ahead and keep the election of the Omaha Public School Board with the general elections, we don't have all those special elections for all the little entities that exist outside the municipality of Omaha. So that's our first comment. You know, we stand ready to help with the bill if it's going to go forward. Secondly, we have some concerns...we agree, I think, with Senator Chambers in the fact that the representative districts need to have a voice. However, we are a majority/minority district. We are about a third African-American; about a third Latino, that's the largest of the thirds--mathematically I know you can't have three unequal thirds but we do; and about a third white. And so in the drawing of the boundaries, there is no majority/minority Latino district, and it is probably possible to do that, but it simply is not...it will be an odd-looking district to create that but we do believe that if it's going to be representative of the population, that that's a consideration that should be taken into account. The other concern that we do have is that the immediacy of this reelection, that we not...that we consider some other alternative in implementing this change in the number of board members rather than this very quick municipal election. There's not time for people to decide to run, to get their campaigns together, to register, to do that. It's...it could certainly be part of a general election in some time in the future, but if it's going to be a special election, it could be held at any time between now and Christmas, I guess. So we have some suggestions there, but I see that my red light has come on and I will also follow the rules. I do want to take one tiny second more, and that is to say I've served in Papillion-La Vista; in Kansas; in Broken Bow,

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Nebraska; in Ralston; and now in Omaha Public Schools. And I think I have to speak for the board members that I serve with for the Omaha Public Schools and all the board members. I think it's hard for them to hear those comments about incompetent and those sorts of things. I do not believe in any way, shape, or form in my actions with this board, no matter where they are on this issue or other issues, that they haven't come with a competent, caring attitude towards their duties. And I'd be happy to answer questions. [LB125]

SENATOR AVERY: Thank you very much. Questions from the committee? Senator Wallman. [LB125]

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, thanks for coming. My wife is a retired school teacher, and I've known a couple superintendents quite well. And they tell me...my wife tells me and some of my good friends are still teaching, about assessments, you know, how we assess our students. And the special ed assessments are out of whack so that it makes your grades look worse, you know what I'm saying? And it's impossible because of the IQ differences there as far as language difference and all these different things, culture, all these things, and you may be at a disadvantage in certain communities this way. [LB125]

VIRGINIA MOON: I think... [LB125]

SENATOR WALLMAN: How do you address that? [LB125]

VIRGINIA MOON: You know, that's a very large discussion and certainly the way the No Child Left Behind and the state of Nebraska ranks schools and the number of failing schools is a function of subgroups and small groups of students. And I don't think that there's any argument from people in the Omaha Public Schools, especially the board, that achievement has to be our highest priority and that we are not necessarily getting the achievement that we want across the board and that we have to do more and better every single day to do that. I do have to say that in the Omaha Public Schools our students scored better and improved in every subject area at every grade level tested. And so, you know, we are taking that responsibility very seriously, and that's not just an excuse: Oh, well, we can't. And this board has that attitude. This is a board that's had a lot of things on their plate that boards don't usually have to deal with. Usually we deal with roofs and bond issues and odd things. But this has been a...usually not superintendent e-mails and things like that. So I can't answer your question in the time I have here, but you're absolutely right: We're judged by subgroups. [LB125]

SENATOR AVERY: Senator Scheer, you had a question? [LB125]

SENATOR SCHEER: Thank you, Senator Avery. Just for my own information, you may not be the correct person to ask, but you noted that you have a third, a third, a third, as

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far as...is that student population or population in general of your voters...or of the population? [LB125]

VIRGINIA MOON: Well, it's student population. But I think if you look at the numbers on the map, you'll see that that's...it's population representative as well. [LB125]

SENATOR SCHEER: So your student population mirrors the adult...or the total population in general? [LB125]

VIRGINIA MOON: And probably not exactly, but very close. [LB125]

SENATOR SCHEER: Okay. Thank you. Thank you, Senator Avery. [LB125]

SENATOR AVERY: Thank you. I don't see any more questions. [LB125]

VIRGINIA MOON: Thank you. [LB125]

SENATOR AVERY: Thank you, Ms. Moon, for your testimony. Any other neutral testimony? Welcome to the committee. [LB125]

JENNIFER TOMPKINS KIRSHENBAUM: (Exhibit 7) Thank you. My name is Jennifer, J-e-n-n-i-f-e-r, Tompkins, T-o-m-p-k-i-n-s, Kirshenbaum, K-i-r-s-h-e-n-b-a-u-m. The reasons for LB125 is that OPS has too many board members who are too comfortable with the administration and the status quo, and this bill is to make changes. These concerns were with a former board, a former superintendent, and former board presidents. Change was needed and change has already arrived. The school district had elections on May 15 and November 6 to elect new board members. After eight months of campaigning, fund-raising, countless hours of volunteering and the voters going to the polls twice, this bill would override the voice of the voters. Short of a recall or impeachment, where is the justification for a representative who is legally elected by their constituents to be denied the ability to fill out the whole term? We tell people to get out and vote and we say how important it is to vote. And senators win elections. How would they feel if after the term someone comes to them and says, we're going to do a redo. How would you react? The action would erase the people's vote; their vote didn't count. The people and organizations who contributed money, it was all for nothing. And the people who serve in the military, they go and they defend our rights and our freedoms, and this is what we're talking about. How is this bill an emergency? Change is wanted and change has already come through the democratic process. The board has four new members and we will appoint another one, so we'll have five new members. The district has a new superintendent and a new board president. The bill proposes that a school district with approximately 50,000 students should change from 9 to 12, so I'll review just a few Nebraska school boards that have 9 school board members and the student population...student enrollment. So Chase County Schools

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has a board of nine; their enrollment is 564. East Butler Public Schools, enrollment of 341. Fillmore Central, 583. Logan View Public Schools, nine board members with an enrollment of 528. Loup City Public Schools, 351. Silver Lake Public Schools, 239. West Boyd Public Schools, 260. If the state says that nine school board members is the perfect number for a student population of 50,000, what will the state say for a district that has 260 students? Nebraska school boards want to pay attention to the precedent that this bill would set. Currently, the county election commissioner adjusts the boundaries for OPS with the school board's approval. This bill would take it out of their hands and place it in state senators' hands. Is that a move you...that make your constituents comfortable? What will the state say about your own boundaries of your own school districts? And I heard a state senator today say, well, I'm not familiar with the Omaha Public Schools--and that's what we're talking about. What is the cost to have another primary and general election? Because there are 15 OPS precincts outside the city limits, OPS would have to pay 100 percent of those costs in addition to sharing the costs to the precincts in the city limits at a rough estimate total between \$85,000 and \$115,000. Why burden the district with this cost when an election was just completed two months ago? When I was campaigning, I learned that many voters were concerned with past mistakes and wanted a new direction. We accomplished this with the election and with the new board member, new president, and new superintendent. For the above reasons, please fix this bill. [LB125]

SENATOR AVERY: Thank you. [LB125]

JENNIFER TOMPKINS KIRSHENBAUM: I'll take any questions. [LB125]

SENATOR AVERY: Thank you. Questions from the committee? I don't see any. Thank you, Ms. Kirshenbaum. [LB125]

JENNIFER TOMPKINS KIRSHENBAUM: Thanks. [LB125]

SENATOR AVERY: Additional neutral testimony. Welcome. [LB125]

BAMBI BARTEK: Hi. Good afternoon. I'm going to be very brief. My name is Bambi Bartek; Bambi, B-a-m-b-i, Bartek, B-a-r-t-e-k. I'm a current OPS board member and have served on the OPS Board of Education for approximately nine and a half years. I am speaking as an individual. Dr. Moon represented the position taken by the board. I'm here to testify in a neutral capacity because we as a board have always said that the board's size has no impact on student achievement. Twelve is not a perfect number, nine is not a perfect number. I doubt if there really is a perfect number, so I'm not going to testify on that. My focus is on the issue of timing. Creating a smaller board now has a negative impact on obtaining that good governance. I agree with those who have already testified that alignment of the elections to the municipal elections to accomplish a smaller board is problematic. These problems arise because of the timing of proposed

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change in board size. There is no need to rush. The very recent elections have resulted in significant change on the board. The voters deserve to have their voices and choices supported. Moving the change of the board size to the general elections in 2014 not only respects the electoral process but gives adequate time for individuals who might seek to serve on the board to prepare and to run a campaign where voters have the ability to understand who is running and what they bring to the Omaha Public Schools. The only reason the Legislature is being asked to get intimately involved in the very local issue of drawing subdistrict boundaries, which I am told has constitutional problems, is because of the timing of the change in size. I'm not a lawyer and I don't pretend to be able to talk about exactly what the legal problems could be. But the last thing we need is a law that gets challenged and again puts the future of the OPS board in limbo. We need to move on. We need to focus on educating students. And if we are going to change the size of the board, we need to do it right; we need to do it right the first time. Let's make this process one where the public can get involved actively. Municipal elections attract only half of the number of voters that the general election does. The Legislature already has a solid process in place for setting subdistrict boundaries that allows for public input at the local level. There is no reason not to follow that except for the unnecessary rushing. I found it interesting...I've been contacted by many constituents through this process. I have to say most stand in opposition, which of course they would because most of them are my friends (laugh), so that's what they would do. But I did have one woman who has written me and she has written me a lot of times in all the years, and I thought this was interesting. And she said, quote, for the sake of full disclosure, I have supported Mr. Lautenbaugh's idea in the past to reduce the size of the board, but certainly not like this. What's happening here is wrong in so many levels. I know full well that you don't put together an effective campaign in less than 60 days. Unquote. In closing, I urge this body that if we are going to change the size of the board, then let's just do it right. Change the size but follow the regular process for elections and for boundary setting. It saves money. It is fair to those who have run and those who would want to run for a seat on the board. It helps the voters have time to be informed and to have their voices heard. Surely this is what good government is all about. Thank you. And if you have any questions. [LB125]

SENATOR AVERY: Thank you, Ms. Bartek. Questions? Senator Murante. [LB125]

SENATOR MURANTE: Thank you very much for coming and testifying. I'd start by making the observation that the neutral testimony sounds more opposed than Mr. Bonaiuto's opposition testimony, but...(laughter). But what I...I have sat back and I have listened today to a lot of testifiers, people who are intimately involved in the operations of Omaha Public Schools. And I would note, my observation is that the starkest difference between the two sides, between the proponents and the opponents, is less a matter of the competence of the school board itself or swearing in or whether they meet statutory deadlines and things like that, but on how well the Omaha Public School district is doing in educating kids and achieving positive outcomes. And the proponents

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seem to have a very negative perception on how well OPS is doing on preparing kids for future life and the opponents seem to have a more optimistic, I guess you could say, perspective. I want to get your perspective on where you think OPS is at and just how good of a job are you doing on educating kids right now. [LB125]

BAMBI BARTEK: Senator, I have to thank you so much for that question because I laid in bed last night thinking, oh my god, what are they going to ask me, what are they going to ask me. And I panicked. And this isn't the question I expected and I love this. We're doing amazing things. We are doing so many things that people...we need a new PR person, and which we actually just hired one. But we haven't had one. We've been operating for nine months without really a good PR person, and we need to sell our story. We're doing great things. I know Dr. Moon said that all of our kids have gone up in all their test scores. We have highly qualified teachers in all of our schools. I know that Senator Chambers said that we have certain areas in town that have all the new, young, inexperienced teachers. He's wrong. He's absolutely wrong. If you go into those schools...and I'm not saying call in advance so we can ship down a bus of old teachers. No. Come in tomorrow, check in at the office, so there's nobody whose afraid that you're there, but check in tomorrow at the office, and you're going to see what's going on. And most of these schools don't just have a regular schedule of 9 until, is it, 3:55. They don't have that anymore. They have kids that come in before, and they're not just coming in and sitting there because their moms are, you know, at work and they have nowhere to be. They're being taught. They have lessons. They have a curriculum. And then they're coming in afterwards, and they're not just coming in afterwards again to play basketball or whatever; they're learning. They have one-on-one learning. They have life skills learning. And yes, they are probably playing sports and being with their friends, but they're learning how to interact and they're not just sitting at home by themselves in front of a TV or in front of some computer screen playing some game. They're learning. There is so much learning. We have kids that don't have the best home life, but they're able to come and they get breakfast with us and they have caring adults and then they come during the day and then they're there, and some of them stay for dinner. These are three meals that we have provided in the entire time in a wonderful, enriching environment. We're teaching, teaching, teaching. We're just going up all the time. And there will always be a gap. In urban schools, I can't picture that there will ever not be a gap, because there's such an opportunity gap. We can't fix the kids if we can't fix the families. We can't take these children and keep them 24 hours a day because they all go home. And the kids aren't going to understand, we can't have a group of kids that go to other countries for vacations and then we have another group that doesn't even know how to pass 72nd Street and think that they're going to have the same life experiences. Everything is different. So we have to bring it to them, and that's so difficult, but we work on it every single day. And all the ideas that are brought to us, we sift through them and try to pick out the best, and then we throw them out there. And if they don't work, you pull them back, shake them off, save your money, and try something different. And then a lot of them work, a lot of them stick. But the ones that don't, we test them, try them,

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turn them back in. And that's all we can do. And it's so hard because we can't take these experiences a lot of times from other school districts in the state of Nebraska because they don't have the same challenges. They may have some kids that have issues but they don't have such a large degree of problems. And so this way we can go to other states, it's hard to compare us with people in the city. Was that too long? I'm sorry, but that was a good question. [LB125]

SENATOR MURANTE: You don't have the longest testimony of the day, so that's...(laughter). [LB125]

BAMBI BARTEK: I was trying to think of what I could say that would not compete with that, but. [LB125]

SENATOR AVERY: How much of what you just said in terms of the programs available are a result of the learning community? [LB125]

BAMBI BARTEK: Oh, heck, not that much at all, is it? [LB125]

_____: (Inaudible.) [LB125]

SENATOR AVERY: You need to address us. [LB125]

BAMBI BARTEK: (Laughter) Well, I had to ask my question. [LB125]

SENATOR AVERY: (Laugh) If you can't answer it, just say you don't know. [LB125]

BAMBI BARTEK: Well, I don't want to say...I don't have a number, no. But they bring in a special supply and I'm not involved in that part of it. What they bring in and what gets put in, that doesn't come across my desk, so I don't have the intimacy with that. What I am mentioning I know for a fact is what we are initiating. So I guess I don't have an answer to that, I'm sorry. [LB125]

SENATOR AVERY: Senator Bloomfield. [LB125]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Again, I freely admit not being totally familiar with the Omaha school district. Given the technology needed to teach, is that better in some schools than it is in others, and is there something there that we would... [LB125]

BAMBI BARTEK: That's almost an interesting question, Senator Bloomfield. I like that one too. [LB125]

SENATOR BLOOMFIELD: Please don't go quite as long as you did on this one, but.

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[LB125]

BAMBI BARTEK: The problem isn't with the computers right now that we're having a problem with the infrastructure of the schools. You could bring in...even if you had the money, and let's say we said we go to a one-to-one laptop or something, we honestly can't because you have to do the wiring. But, you know, in all the buildings to make sure that everybody has a wire, so. But honestly, a lot of our more impoverished schools have more computers. So, yes, there may be a technology but it's...you know, difference, but it's actually tilting the other direction. But we are right now in the middle of a three-phase project where we've done a technology study. And so we're trying to make sure that everybody is brought up to this minimum. And, of course, like in any district, you have some schools that collect more money, like PTAs that raise a lot of money. And so there are some schools that, of course, have more just because they have parents that have provided more. But we're bringing everybody up, but there's...I don't think there's anyone that's extremely low compared to the others. [LB125]

SENATOR BLOOMFIELD: There's no big disparity? [LB125]

BAMBI BARTEK: Can I ask my consultant? [LB125]

SENATOR BLOOMFIELD: No. [LB125]

SENATOR AVERY: No. [LB125]

BAMBI BARTEK: Sorry. I didn't know I couldn't do that. I'm sorry. [LB125]

SENATOR AVERY: That's all right. [LB125]

BAMBI BARTEK: No, I don't. [LB125]

SENATOR BLOOMFIELD: Okay, thank you. [LB125]

SENATOR AVERY: You'll be back probably to testify again, so then you'll know next time. [LB125]

BAMBI BARTEK: Well, good. Thank you. I'm so sorry I did that. [LB125]

SENATOR AVERY: No, that's okay. Senator Price. [LB125]

SENATOR PRICE: Thank you, Senator Avery. And thank you for testifying and, Senator Murante, you kind of started the conversation. I want to say, first and foremost, I do understand OPS does a lot of great things. [LB125]

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BAMBI BARTEK: Thank you. [LB125]

SENATOR PRICE: And there are a lot of great outcomes and there have been for generations. Our state stands as a testament to that, Senator Council, and others. Okay, that being said, in your rebuttal or in your answer you brought up what I think a key aspect where we say the home life of a student, the before and after home, plays a critical role and impact on the success of the student. How does...or does the size of a board impact that student at home or in and out of school? [LB125]

BAMBI BARTEK: How would the...how does the number on the board? [LB125]

SENATOR PRICE: How would the size of the...on the board, one way or another, affect what happens to that child at home? [LB125]

BAMBI BARTEK: It probably doesn't. [LB125]

SENATOR PRICE: Okay. Thank you. [LB125]

SENATOR AVERY: Any other questions? I don't see any. Thank you, Ms. Bartek, for your testimony. [LB125]

BAMBI BARTEK: Thank you very much. [LB125]

SENATOR AVERY: Any other neutral testimony? Okay, I don't see any. Senator Lautenbaugh, you are free now to close. [LB125]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. I don't think I've been ever described as the embodiment of wisdom before, and certainly not by Senator Chambers, but... [LB125]

SENATOR AVERY: I was about to correct him, but I decided not to. (Laugh) [LB125]

SENATOR LAUTENBAUGH: Well, if it makes you feel better, I'm sitting there hearing those words and thinking, but I just tore my pants on the arm of the chair. So the embodiment of wisdom probably wouldn't do that; at least see that the arms are longer and move on accordingly. But anyway. Senator Chambers talked about something that I...well, he talked about a lot of things that I didn't talk about, but he talked about one thing in particular that I think it's very important for the committee to understand. He alluded to the issue of the swearing-ins. And this isn't going away, and part of the impetus for this bill is relatively fresh, and that is that it is the case that six people were elected to the board last November and their swearing-ins were not properly done. And the statute that governs OPS and only OPS is very harsh but very clear. It says if you're not sworn in before a certain date, your election is void. Not voidable, not problematic,

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not okay if you're close enough, but void. And a new member must be appointed. Now here's where the real problem comes in. OPS freely admits they did it wrong two years ago, too, when the other six were sworn in. And we heard today that they've been doing it wrong for time immemorial. So is there anyone who is a valid member of the OPS board? And if you want to see chaos and if you want to see confusion, we've already had one of the new ones resign just this week, and the current board keeps talking about appointing a replacement. They don't have a quorum to do that. There's a legal action coming that's going to establish that at least some of them aren't there, and that might not be ambitious enough, depending on how the rule is read. We're in uncharted territory with this, and it's not something that I put the board in. It's something that...well, it doesn't matter how the board got there. The problem is, there is going to be chaos. We may or may not have any valid members of the OPS board at this point. So if you want a justification for the reasoning as to why we have to hurry along with this and do something now, I'm telling you, chaos is coming. And we've heard, well, this special election putting it with the city election might cost \$100,000 for OPS. For OPS, that means turning over the couch cushions. We're talking about a district that had an extra \$6 million of the state's money for quite some time that it was unaware of until earlier this year that had a random million dollars for the superintendent that caught everybody off guard. OPS has a budget bigger than the city of Omaha, as I said earlier. A hundred thousand dollars to get a valid board in place is a bargain, and I think you heard some of the neutral opponents to this bill talk about how we should maybe have a special standalone election, which, of course, this will raise the turnout of the city election. A standalone OPS election will cost all the more for OPS and not have a better turnout arguably. So I don't understand the rationale behind that. Going through what we did with the maps here, it's important to note that, until 2011, OPS had no say over how its maps were drawn. The election commissioner drew the maps and said here are your maps. Two thousand eleven was the first time OPS was allowed to approve its own map for subdistricts. So there's not a tradition there that we're violating that somehow OPS has always had input in this. And I take exception with some of Senator Council's testimony...well, a lot of it, but especially when she talked about she prefers 12 members...the 12 districts because that allowed for eight African-American members and the nine districts are drawn only to allow one African-American member. That's just not correct. What we did in drawing the nine districts was to make sure that we did not leave an argument that you were trying to diminish any minority influence. In the current OPS districts, there's one African-American majority district and there is one that almost is. In the new map, there is one African-American majority district and there's one that almost is, and you have four African-American members on the board. They were not all elected from majority/minority districts. That's a red herring. And while I think it says good things about OPS and the population in general, I think it's a red herring to suggest that this map would somehow prevent what's happening anyway in districts that aren't majority/minority districts. I don't want to take up all afternoon on this...okay, well, I guess it's too late for that probably; so I apologize for that, but. I think it's important to note what you heard today and who you heard it from. You heard a lot about this isn't

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fair to the public and there's been a lot of outcry from the public. Well, they didn't make it today; well, you heard one guy from the public and not an elected official who was for the bill. My mail is not running anything but supportive of this concept nor did it last year. And you actually heard some board members this time, more than one who are here, saying this needs to be done. You've heard from editorial writers. You've seen...I've shared parts of the Omaha...major Omaha paper's editorial, the World-Herald's editorial about this. This is not some half-baked notion, and to say that it's not a crisis and doesn't warrant doing it right now is to ignore what has become the elephant in the room, and that is the legal invalidity of the current board. And make no bones about it, if there's a criticism that this is coming too fast or somehow this election wouldn't be fair notice, this is how our city elections function. The filing deadline is March 1, the primary is in April, the general is in May. Somehow the city of Omaha functions in that way. I don't believe it's any different for the school board to be able to function in that way. And I would urge you to again consider the people from the school board that came here, which says a lot about the fact that they would actually break from the pack, if you will, and say, look, the time has come for this. Think who testified. Think what you heard. And please, look favorably on this bill. I know you looked askance at me when I started to ask a question of someone in closing yesterday, so I don't know if I'm supposed to say I'm available for questions or not, but here I sit just the same, if someone like me wants to ask a question of me. [LB125]

SENATOR AVERY: Actually it's probably fine because sometimes we do have additional questions. Senator Price has an additional question. [LB125]

SENATOR PRICE: Thank you, Chairman Avery. And I would just ask, I mean we heard a lot of testimony today that seemed to point to size of boards and there's no data to suggest a smaller board is any more efficient. But I'd ask you if we reverse that question, is there any data that says a larger board is more efficient? [LB125]

SENATOR LAUTENBAUGH: Oh, Senator Price, I thank you for that question because that was something I skipped in my closing notes here out of the interest of brevity, but you've taken that away, so here we go. Again, Senator Council touched on that as well, and she pointed out that the study in question that identified the best performing larger school boards...school districts, I should say, it did not say size mattered as far as the size of the board. But here's the problem: They were uniformly of the same size. And you can't find but maybe one board of significant school district size, larger urban size, that is bigger than OPS. So to say, did we go out and compare all the other 12-member larger boards...or larger district boards; well, where are you going to find them? So just as surely as that study did not go compare the 12-member boards, the one or two of them that exist at districts of that size, to the other good-performing boards and say, oh, there's a difference, all of the ones that were well-performing did not have 12-member boards. They had seven, nine...I think there might have been a five or something in there. And that leads me to a side bar, I guess, about great moments in lobbying, where

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the Association of School Boards came in and said, we oppose your bill but while you're there will you add an amendment on for us? (Laughter) Wow. But again, they have...they want the ability to go towards an odd-numbered smaller board and I understand that obviously, and, you know, there is it. [LB125]

SENATOR PRICE: Well, Senator Lautenbaugh, I would say that anecdotally it would say that there are some...is there some evidence to suggest that it didn't work as well as some had hoped? [LB125]

SENATOR LAUTENBAUGH: The 12-member board, you're saying? [LB125]

SENATOR PRICE: Correct. [LB125]

SENATOR LAUTENBAUGH: Well, it's hard to argue with the numbers everywhere. I mean it's all well and good to say there hasn't been anything that's studied a 20-member school board. The problem is there aren't any 20-member school boards. There's nothing that says the 12-member school boards compared to another 12-member school board because there's nothing to compare it to as far another 12-member school board. So yes, you're correct. But the...sometimes you just have to look at reality as it exists and draw an inference therefrom. And if you can't find another animal like this, it's at least possible that there's a reason for that, and that is a larger board may not work terribly well. [LB125]

SENATOR AVERY: Any more questions? It looks like we're finished, Senator. [LB125]

SENATOR LAUTENBAUGH: Thank you all. [LB125]

SENATOR AVERY: (See also Exhibit 8) Thank you. That ends the hearing on LB125 and the hearings for today. Thank you all for coming. We will be here tomorrow if you want to come back. [LB125]