

Transcript Prepared By the Clerk of the Legislature
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Government, Military and Veterans Affairs Committee
March 01, 2013

[LB563 LB603 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, March 1, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB563, LB603, and gubernatorial appointments. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; John Murante; Jim Scheer; and Norm Wallman. Senators absent: Scott Lautenbaugh.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. We have a short agenda today, but we will start with two reappointments to the State Emergency Response Commission. And we will invite, first, Steve Danon to come up here and talk with us for a little bit. Welcome, Mr. Danon. Would you like to tell us a little bit about yourself and why you want to be reappointed? [CONFIRMATION]

STEVEN DANON: (Exhibit 1) My name is Steve Danon. And my job presently, for the last approximately eight years, has been risk control safety director with the state--or, with the state--with the Marcotte Insurance Agency. Basically, the last 15 years my job has been involved in working with businesses to identify risks and to help them in protecting themselves against anything that could potentially cause a claim and/or other problem with their business. I've been on the State Emergency Response Commission I believe since its inception, which was in the early 1990s. At that time, I was the occupational safety and health director for the Safety Council in Omaha. But I was also on both the Local Emergency Planning Committees, both in Douglas County and Sarpy County. And I think I had actually been the chairman of the Sarpy County LEPC. I've lived in Nebraska for 20 years. I moved out here by OPPD from California to basically do emergency planning at the nuclear power plant. My background prior to coming here to Nebraska was in emergency management working for several jurisdictions in California, the County of San Diego, a couple of cities, and then eventually came here. Kind of made a career transition from emergency management into a more wider-based field using my experiences and technical background to get into the private sector; but still I've always stayed involved to some degree in governmental response to emergency management. Probably the most...other than being on the State Emergency Response Commission and providing a lot of guidance to them, I worked for an organization...I work also as a consultant for an organization that does business-continuity planning or continuation of operations. And that consulting firm essentially has a contract with the state of Nebraska right now, even though I'm not involved in that process. But they contract with the State Emergency Management Agency to do--I think, the state and five or six jurisdictions--to develop plans on what would happen if they lost some type of continuation of their government. Basically, the leadership becomes affected and/or serious strife impacts their ability to continue and they develop plans to deal with that. Personally, several years ago--maybe about four or five--I was involved in a three-year project in Omaha essentially as a volunteer. I was

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asked to participate as the safety officer for, I believe, to this day it was the largest emergency management drill conducted in the state of Nebraska. It was under an urban area security initiative grant from the Homeland Security Department. And I was on the executive planning committee, and my primary role was to make sure that nobody really got hurt during the exercise. And that exercise, basically the scenario of it was multi-locations--actually it was over several years that we built up to this major exercise--but essentially it ended up being the scenario was the detonation of some kind of IED device that...the baseball stadium that no longer exists. Rosenblatt, so sorry, yes. And then some other hostage-type situations that took place. And essentially, I developed a team of safety officers and had safety officers at all the locations of the different events. And like I said, their primary objective was to not be involved in the exercise, not to assess the exercise, but to make sure that the people that were really doing the exercise didn't actually get hurt. That's about it. [CONFIRMATION]

SENATOR AVERY: All right. Thank you. I see that you have experience teaching first aid and CPR. [CONFIRMATION]

STEVEN DANON: I do. I started teaching first aid and CPR when I was...became active with the Red Cross. And then also led to my career...actually my career was being involved in the disaster services of the Red Cross, but kind of also as an ancillary thing. I've taught first aid and CPR for probably 30 years. Been an emergency medical technician both in California and then when I came to Omaha and I was working for OPPD. I applied and was assigned...actually I was a volunteer...lieutenant volunteer firefighter in the Millard Fire Department for almost ten years. Millard is a pretty large suburban suburb--can you say that, suburban suburb? I said it--of Omaha, about 50,000, 60,000 residents. [CONFIRMATION]

SENATOR AVERY: How long does it take for someone to learn basic CPR? You can teach it, I'm sure. But how long would it take someone to learn it? [CONFIRMATION]

STEVEN DANON: You know, I'll just tell you this. There is no...you can never ask me just a simple question. It's kind of the instructional background that I have, so I always have to kind of explain the answer and then give you the answer. And so, gosh, maybe I should be a politician. [CONFIRMATION]

SENATOR AVERY: Well, we have time limits on how long we can speak. [CONFIRMATION]

STEVEN DANON: Okay. Where's the lights? When do they start blinking? Okay. Well, essentially what I wanted to say is that you know, what is going on right now in the field of teaching community first aid and CPR is the recognition that...and it's always been this situation that we've always understood that there's not enough people trained in first aid and CPR--especially in CPR--in this country. The American Heart Association

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estimates that about 250,000 to 300,000 people a year die when they go into cardiac arrest outside of a medical setting. And it's quite simply because nobody gave them CPR. And so as you deal with these statistics and you're involved in organizations and/or committees that are trying to improve that, you look at ways that you're teaching and what you teach to the community and what is more effective. And so that's why many of you have seen a kind of a transition into teaching more people more skills or excuse me, not more skills, but more people more compressed skills so that we get more people trained just to give CPR. And that's why you see things like hands-only CPR. They're doing that because with that, you can do that in an hour compared to--here comes the answer--compared to maybe closer to 3.5 to 4 hours to actually take a full CPR class because there's certain conditions when you're taught that you should just give hands-only CPR. And the very first thing you're taught to do is call for rescue. [CONFIRMATION]

SENATOR AVERY: I have a reason for asking that question because I have a bill that would require CPR training in high schools. [CONFIRMATION]

STEVEN DANON: I have...Rick Kolowski, who is a brand new legislator here, I talked to him several times--he and I are buds--and I talked to him several times when he was on the Learning Community about doing that. I am aghast that we don't do that. At times, I was called in whatever organization that was affiliated to do that, but it was usually done by an individual teacher or a curriculum coordinator. Absolutely we do a tremendous disservice to our community. And I know, because I've dealt with curriculum coordinators at school districts. And I don't know how or what you all in your different roles get involved with those people, but trying to get additional curriculum in a school district is very, very difficult for a variety of reasons. But this is one that is...it should be required. Certainly I know in the past, I have done some training (inaudible). All the special ed teachers at the Millard ed school district were taught but the teachers weren't and obviously the students weren't. And I think that's...I think it absolutely should be something that if you want some assistance by somebody who's been involved in this for a very long time, I'd offer that. [CONFIRMATION]

SENATOR AVERY: I might give you a call before that hearing. [CONFIRMATION]

STEVEN DANON: Yeah, absolutely. [CONFIRMATION]

SENATOR AVERY: Well, the reason I wanted to ask that question is that we struggled with how to... [CONFIRMATION]

STEVEN DANON: Oh, how to do it. [CONFIRMATION]

SENATOR AVERY: How are you going to require this without overburdening the schools... [CONFIRMATION]

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STEVEN DANON: Right. [CONFIRMATION]

SENATOR AVERY: ...who already have enough to do and... [CONFIRMATION]

STEVEN DANON: And those...and I can see in that, there are difficult questions because you have set curriculum. And then how do you spread that curriculum out over a semester or over whatever period of time. I can tell you the times that I've done it for school personnel, it's been in one sitting. [CONFIRMATION]

SENATOR AVERY: Uh-huh. [CONFIRMATION]

STEVEN DANON: You know, so you take three hours to do CPR and another maybe three hours to do the first aid. You're combined now, your first aid and your CPR. [CONFIRMATION]

SENATOR AVERY: Thank you. [CONFIRMATION]

STEVEN DANON: Yes. [CONFIRMATION]

SENATOR AVERY: That's helpful. Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, sir. And I apologize for walking in during your opening. [CONFIRMATION]

STEVEN DANON: That's okay, I thought I was going to be late. I got here at 1:00 and I thought I was late, and I realized it was 1:30. So you're excused. [CONFIRMATION]

SENATOR PRICE: Well, you are well practiced then. My question has to deal with the utilization of modeling and simulation in disaster preparedness. Are you seeing a growing trend towards this? I mean, I come from an old-school area where we did the mass casualty (inaudible) exercises in the military. And we actually went out and did it, and you had a lot of role players and things going on versus the academic book setting to now moving more and more to this two-dimensional role-playing type situation. And I was wondering what your thoughts were. One, are we moving to more and using it where it's prudent. And is it helping or not as helpful as we had thought it might be? [CONFIRMATION]

STEVEN DANON: I would...I actually have...as I'm listening to your question and I'm processing it, and I'm thinking...I mean, the answer is actually simple but it's complex. I mean, it's simple... [CONFIRMATION]

SENATOR PRICE: You can go as simple as we can for time's sake. [CONFIRMATION]

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STEVEN DANON: Yeah. I mean, the simplistic answer is, absolutely, and I'll just give you one example. There's a federal safety law, OSHA, okay? I deal with OSHA all the time with businesses. There is a federal safety law that says employers are required to have emergency action plans to take care of their employees. It says that you have to be able to account for your employees when they leave the building. And it says that your employees have to know what they do and how you notify them. But it doesn't require an employer to have a drill. There's no requirement in federal safety laws that require employers to have drills. It says it in small print that drills are recommended, because we realize that, in fact, if we do a drill then when we actually have a situation, people know better what to do. And in actuality, there's a psychological term that's used for these kind of things when people are faced with panic situations, and it's called a hero plan. And it doesn't mean that you're a hero. It means...what it is, is that you have gone through the processes of actually being involved mentally and physically, depending on what you're doing. But you've been engaged in this process of doing that so, in fact, when you're faced with this crisis situation where you're supposed to respond very quickly, your brain doesn't go into this fright-or-flight mode, you move right into doing what you do. And that's the reason you see police officers and fire departments and things train as realistically as they can. I think, you know, to answer your question directly, when you begin to remove the realities of that and train people in a classroom or by videos, you lose it. There's no way you can teach a firefighter what a real fire feels like when you go into it unless it's real. And not just a fire, but going into a room that is totally black and overheated and you're blinded by the light and figure out what you're supposed to do. I would say based on my experiences and what I know about human behavior, that it would be impossible to simulate that. [CONFIRMATION]

SENATOR PRICE: Thank you. [CONFIRMATION]

SENATOR AVERY: Any other? Senator Wallman. [CONFIRMATION]

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, they had a short course in here. The new CPR, you know, with the heart-stopped stuff. And I was hoping more younger people would be in there. I was the oldest one in there, I think. But it...and I've taken CPR and I've had to use it once. And it's important, I think. [CONFIRMATION]

STEVEN DANON: It's radically important. You know, when you think...just the numbers that I threw out to you, you know, 250,000 to 300,000 people die a year because there was nobody giving CPR. I was on the Millard...these are stories that I tell in my first aid class. I was on the Millard Fire Department for almost ten years. I estimate that in that ten-year period of time, I probably went on 100 medical calls where people were in cardiac arrest, the youngest being like a 20-year-old woman who had overdosed on some drugs all the way up to the elderly people; but a lot of middle-aged people, usually related to some kind of chronic illness or traumatic incident like on a freeway or

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something like that. In not one of those cases--not one of them--was anybody giving CPR, ever, ever. And not to say that the outcome might have been...not been different because, you know, who knows? But in not one of those was anybody ever giving CPR, even when people were...you know, a family member would discover somebody in bed or in the other room and they would be unconscious. You know, and they'd desperately call 911 and say, hey, my loved one or whoever is not responding or whatever. And we'd get there and...you know, essentially, when you think about the time element between the time that we got in our equipment and raced over there and got there, the person was beyond being revived. But that's the realities. And all the firemen that I've ever talked to, nobody has ever told me about successfully making a save of someone who was in cardiac arrest in a nonmedical setting without CPR or certainly now with today's technology of having AEDs, automatic external defibrillators. [CONFIRMATION]

SENATOR AVERY: Uh-huh. [CONFIRMATION]

STEVEN DANON: The recovery rate or the ability to get the heart started back electronically is a huge technological advance in making it pretty much totally self-automated. [CONFIRMATION]

SENATOR AVERY: And they're pretty easy to use and self... [CONFIRMATION]

STEVEN DANON: They are. They are totally self-automated. [CONFIRMATION]

SENATOR AVERY: Yeah. [CONFIRMATION]

STEVEN DANON: Yeah. And in a CPR class when we teach AEDs, essentially I pull somebody up out of the class that has no clue about it and I say, here. [CONFIRMATION]

SENATOR AVERY: Do it. [CONFIRMATION]

STEVEN DANON: Do it. Yeah. [CONFIRMATION]

SENATOR AVERY: Any other questions? Well, thank you. This was an enlightening conversation. [CONFIRMATION]

STEVEN DANON: Okay, good. Thanks. [CONFIRMATION]

SENATOR AVERY: Thank you very much. We'll now invite Mr. Don Eisenhower to come up. He is also being recommended by the Governor for reappointment to the State Emergency Response Commission. Welcome, Mr. Eisenhower. [CONFIRMATION]

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DON EISENHAUER: (Exhibit 1) Good afternoon. [CONFIRMATION]

SENATOR AVERY: You have a very, very distinguished name. [CONFIRMATION]

DON EISENHAUER: Yes, been around a little bit. But yeah, so I'm Don Eisenhower. I'm up for reappointment on the SERC. I've been on SERC for eight years, I really enjoyed working with it. Some of my background: On SERC, I represent agriculture. I've been involved with agriculture since the '70s after I came out of the Navy. I've worked for agriculture co-ops all the time along and I have worked in three states. And basically in the '70s is when the OSHA programs kind of took a foothold and got going. So I have established safety programs in a co-op in Oklahoma, in Kansas, and also in here in Nebraska. And basically now I am on also an LEPC, which I'm chairman of. And this works well with SERC because we are supportive and administer things to the LEPC so it works well. I can transfer information back and forth both ways. So that is kind of...well, the main reasons I would like to continue on SERC. [CONFIRMATION]

SENATOR AVERY: And I see that you've served on emergency response teams at the county level, Gage County. [CONFIRMATION]

DON EISENHAUER: Yes. [CONFIRMATION]

SENATOR AVERY: Nebraska Safety Council. [CONFIRMATION]

DON EISENHAUER: Yes. [CONFIRMATION]

SENATOR AVERY: And Fairbury Advisory Review. [CONFIRMATION]

DON EISENHAUER: Yes. [CONFIRMATION]

SENATOR AVERY: So you've been around a while. [CONFIRMATION]

DON EISENHAUER: Yes, I've been around. In fact, I didn't want to mention this, but this would have been in the '70s we established an emergency medical team in northeast Nebraska. And I was chairman of the unit and I did have EMT training, I was an EMT. But as you're aware, in those days we did not have the technology we have today. So there's no way I'd be qualified today without going through further training. [CONFIRMATION]

SENATOR AVERY: You mentioned that you represent agriculture on this commission. [CONFIRMATION]

DON EISENHAUER: Yes. [CONFIRMATION]

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SENATOR AVERY: Tell me a little bit about what kinds of issues you have in agricultural areas. [CONFIRMATION]

DON EISENHAUER: Basically, probably the main thing is the hazardous material, the proper handling at the commercial level, at the delivery level, and with the producer. And this is one of the things at the cooperative that...you know, OSHA, EPA both have very stringent regulations on this and that's why I worked to make sure that we were following all the rules and regulations. And this kind of works along in with the LEPC because that is the membership we try to get a lot with the hazard materials that the people handle or sell. So when we're out looking for new members, it works well that I can understand a little bit and I can kind of explain, you know, hey, we're not a regulatory agency but we're here to help you to devise a good safety plan for your organization. [CONFIRMATION]

SENATOR AVERY: Thank you. Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you, Chairman Avery. First, I want to thank you for your service to our country in the Navy. [CONFIRMATION]

DON EISENHAUER: Well, thank you. [CONFIRMATION]

SENATOR PRICE: I appreciate that. And in looking at...obviously, you have extensive training. My question when we look at your records when you were doing records maintenance, how do you see records maintenance today and the move from paper to electronic records? How does that transpire? We've had a lot of bills here where we're trying to pull the state from a paper-driven community to where we can do some electronic database-type things. [CONFIRMATION]

DON EISENHAUER: Right. [CONFIRMATION]

SENATOR PRICE: How is that progressing in your line of work in the safety world? [CONFIRMATION]

DON EISENHAUER: Well, it's progressing real good, and it's fairly fast. And I guess my opinion is I am really for it because you can gather a lot of information quickly. You do not have these volumes of manuals that you have to go through. And one of the things you need to be cautioned about is at the level--we'll just use cooperatives, that's where I work--is this information you can put on computers, all the regulatory things and the things they should do. But you have to be very careful that you understand that all of the employees understand how to use a computer and how to access this information. So as time progresses, this will be great because basically now I think everybody coming up through is well trained in computers. It's not like when I got started in it. That was something we didn't have. So... [CONFIRMATION]

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SENATOR PRICE: So and do you think that that also helps and facilitates people moving from one place...if I look at your record and I think of what I know about the safety world... [CONFIRMATION]

DON EISENHAUER: Uh-huh. [CONFIRMATION]

SENATOR PRICE: ...and people moving--it could be an EMT in one location and moving to another one--that by having these electronic records and they move much quicker and it's easier to carry your compendium or your files with you versus trying to find that one certificate and be dependent on that certificate. [CONFIRMATION]

DON EISENHAUER: Yeah, that would be correct. You can have a lot better recordkeeping out of it. [CONFIRMATION]

SENATOR PRICE: Okay, thank you. [CONFIRMATION]

DON EISENHAUER: Yeah. [CONFIRMATION]

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

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for being here. I have an ag background as well. [CONFIRMATION]

DON EISENHAUER: Yeah. [CONFIRMATION]

SENATOR WALLMAN: And as far as...you know, I have an ethanol plant a few miles down the road from me. [CONFIRMATION]

DON EISENHAUER: Uh-huh. [CONFIRMATION]

SENATOR WALLMAN: Do you (inaudible) train like the Adams Fire Department too? Is that a special...you know, that could be an explosion or giant fire. [CONFIRMATION]

DON EISENHAUER: I don't personally train, but this is where we work in with the LEPCs. We just a couple of meetings ago at our LEPC, we had a tabletop exercise, and that was with a couple of facilities in Fairbury that produced chemicals. And basically what transpires is they...well, supposedly, we used as a disaster a tornado had come through. Well, what was done was we had the emergency responders. There was the fire chief and stuff that would be in charge of the whole situation. Then the question then, we discussed the facility. What was their training? Where was their location? Where did people go? Who do you talk to? And then also it went to the other side from the emergency or from the fire chief. He said, here's our capabilities, here's how we do

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things. How do we coordinate? And one of the things come up was, okay, if we need equipment, do you have people trained to use equipment? What equipment do you have? Do we need to get equipment in? Where do we get it? What size? Stuff like that. [CONFIRMATION]

SENATOR WALLMAN: Thank you. [CONFIRMATION]

DON EISENHAUER: Uh-huh. [CONFIRMATION]

SENATOR AVERY: Any others? Senator Bloomfield. [CONFIRMATION]

SENATOR BLOOMFIELD: Just a feeble attempt at a little bit of humor here for the rest of the senators. Have you ever been within 100 miles of a pipeline? [CONFIRMATION]

DON EISENHAUER: Yes. [CONFIRMATION]

SENATOR BLOOMFIELD: Thank you. [CONFIRMATION]

DON EISENHAUER: In fact, one of... [CONFIRMATION]

SENATOR AVERY: We'll not ask for an elaboration on that. [CONFIRMATION]

DON EISENHAUER: ...one of our members is from the pipeline. [CONFIRMATION]

SENATOR AVERY: Thank you, Mr. Eisenhower. [CONFIRMATION]

DON EISENHAUER: Yes. Okay. [CONFIRMATION]

SENATOR AVERY: Just so you and Mr. Danon know our procedure, we will convene in Executive Session to vote on your confirmation. And then that gets referred to the general body for a vote. [CONFIRMATION]

DON EISENHAUER: Okay. [CONFIRMATION]

SENATOR AVERY: And that...we'll do that promptly. [CONFIRMATION]

DON EISENHAUER: Okay. Well, thank you. [CONFIRMATION]

SENATOR AVERY: We'll not keep you waiting. Thank you very much for coming. [CONFIRMATION]

DON EISENHAUER: Uh-huh. [CONFIRMATION]

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SENATOR AVERY: All right. I am going to convene now, open the hearings on the two bills on our agenda. You will note on the agenda outside the room that we have two bills, LB563 and LB603, that we will be hearing today. Before I start, let me take care of some housekeeping matters first. I need to introduce all the members of the committee starting at the end down here on my right, Senator John Murante from Gretna. He is seated next to Senator Dave Bloomfield from Hoskins. Senator Scott Lautenbaugh from Omaha will not be with us today, but next to him is Senator Scott Price, the Vice Chair of the committee. He is from Bellevue. To my right is Christy Abraham, the legal counsel for the committee. And I think Senator Karpisek, who sits here, will be arriving eventually. He is from Wilber. Next to him is Senator Norm Wallman from Cortland. Next to him is Senator Jim Scheer from Norfolk. And at the very end is Sherry Shaffer who is the committee clerk. If you wish to testify for or against any of these bills, we ask that you fill out the green sheet which is available at each entrance to the room. Please print the requested information, give this to the clerk and she will have all the information she needs to identify you for the record. But in addition to this, we want you to spell your name. State your name clearly for the record and spell it so that we have no mistakes in the transcription. If you wish to record your support for or opposition to any of these bills but do not wish to testify, there is a white sheet of paper here that you can fill out. And they, too, are available at the entrance to the room. Now the order in which we will take up these bills is as posted outside the door on the agenda. And the procedure is that introducers make initial statements, followed by proponents, who are followed then by opponents and neutral testifiers. The closing remarks are reserved for the introducing senators only. If you have any material you would like to distribute to the committee, we need 12 copies. If you do not have 12 copies, give a copy to the clerk and she will have the pages assist you in getting the proper number of copies. Our pages are Will Rahjes from Elwood and Cicely Batie from Lexington. Cicely has left? Is she coming back?

WILL RAHJES: She went to go work in the copy room, so I doubt it.

SENATOR AVERY: Okay. Well, we don't have a lot of work today for you, Will. If you have a cell phone or any electronic device that makes noise, please turn it off so as not to disrupt the proceedings. We will be using the light system. The green light is four minutes. When the green light is on, you have four minutes. When it goes off, the amber light comes on. You have one minute to wrap up your testimony. And when the red light comes on, we want you to be finished. We tend to enforce that, not brutally, but vigorously. All right. With that, we welcome back a former member of this committee, Senator Bob Krist. Welcome.

SENATOR KRIST: Thank you, Senator Avery. It's good to be back. Good afternoon, members of the Government, Military and Veteran Affairs, and Chairman Avery. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. And I represent the 10th Legislative District in northwest Omaha along with north-central portion of Douglas County, including the city of Bennington. And if I forget Bennington, they let me know that. I

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appear for you today in introduction and support of LB563. Last year, Senator Avery, you introduced and the Legislature passed LB858, which places additional requirements on state agencies contracting for services over \$15 million. With the bill, an agency proposing to contract for services over \$15 million will submit to the Materiel Division of the Department of Administrative Services, a copy of the proposed contract and a completed proof-of-need analysis. The overall intent of the legislation was to establish an open and fair process for selection of contractual services using performance-based contracting methods to the maximum extent possible. Testimony before the Government Committee and on the floor in 2012 in support of LB858 did not discuss the bill's applicability to contract amendments but, instead, focused on the proof-of-need analysis sometimes referred to in testimony as a cost-benefit analysis prior to entering into a contract. The process described in LB858 is more appropriate for a new contract than for an existing contract that requires an amendment to the compensation or provisions within each contract for a fiscal year. LB563, this year's bill, my bill, is necessary to clarify the intent of LB858 to apply to the front end of the contracting process rather than the midst of any existing contract for services which requires an annual amendment to the compensation provisions. Let me give you an example. In a contract that I'm very familiar with on the federal level--it's a services contract--it's let for five years: a base year and then four years at the discretion of the government. Each one of those four years there's what we call a fair and equitable adjustment clause that you can renegotiate. If the contractor is losing an incredible amount of money, they could come back and say we need to add. If the government is saying that you haven't complied with this part of it, they can adjust. But that doesn't apply within a contractual period. You'll see that the only addition really in Senator Avery's piece of legislation in the statute from last year is the word "new." So with that, I'd be happy to take any questions that you might have. [LB563]

SENATOR AVERY: Thank you, Senator. Senator Price. [LB563]

SENATOR PRICE: Thank you, Chairman Avery and Senator Krist. Obviously, this interests me from my background. And I know it's not your wording as I read through the bill. But if you could open your green copy to page 2, line 25, subparagraph (e) where we're saying and stipulating "identification of the specific state agency employee who will monitor the contract," my question is, sometimes an employee moves. Would you think it would be advisable at this point and juncture to stipulate employee and office so that if the employee leaves... [LB563]

SENATOR KRIST: Oh, absolutely. [LB563]

SENATOR PRICE: ...the office? So I mean, I'm just looking through this for an opportunity to tune it up. [LB563]

SENATOR KRIST: Sure. [LB563]

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SENATOR PRICE: And then if we would go further on and we look at the...page 3, subparagraph (g) there on line 4, in reading the "assessment of the feasibility of alternatives within the state agency to contract for performance of the services." It almost sounds like we're saying here, we're looking to say, hey, can you do this internally before you contract? And I think about at the federal level with MEOs and they have a 10 percent advantage. [LB563]

SENATOR KRIST: Right. [LB563]

SENATOR PRICE: And so we really don't articulate anything other than a broad term. So I would be interested in looking at topics such as that. And then on the final page, on page 4, lines 2 and 3, we see "if the division certifies" and then "if the division does not certify." [LB563]

SENATOR KRIST: Right. [LB563]

SENATOR PRICE: All we really see in there is they had more information. There is really no commentary about being able to deny it. It's only...it's an always can do, no denial authority. So it almost seems like the division becomes a wash. And I thought this would be an opportunity to make a record and perhaps address those issues in this bill. [LB563]

SENATOR KRIST: Can I address them? [LB563]

SENATOR PRICE: Please. [LB563]

SENATOR KRIST: Your first comment at the bottom of page 2, a specific employee, totally concur. I mean, you're not even saying that this is a qualified contracting officer or warranted person. So very applicable to redefine and tweak it in that way. Your second comment with the assessment of feasibility alternatives within the state, there's no question about that. Further definition obviously would be warranted. The documentation on the back, I think my only issue there, Senator, would be that we make sure that it's supposed to be or it's not supposed to be a documented filter for how the contract would be performed. So I think it would be...I mean, we've both seen language in other contracts that probably fits that bill. I think you can go to the point of the department being a filter when it's maybe not supposed to function that way, unless I'm misreading your comment. [LB563]

SENATOR PRICE: I would just hope it would say...throughout that language, we're saying get the concurrence of division or get the comments of the division. We never said to say that if there is a mechanism for the division to say, no, there's no going forward. We're not going to let...if they don't prove their points... [LB563]

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SENATOR KRIST: Documentation. [LB563]

SENATOR PRICE: ...we didn't say they can say denial. [LB563]

SENATOR KRIST: Yes, sir. Yeah, that's an excellent point. And I would welcome a committee amendment if you'd care to tweak it any more, sir. [LB563]

SENATOR PRICE: I'm sure we'll talk about it (inaudible.) I just wanted to ask. Thank you. [LB563]

SENATOR KRIST: Sure, absolutely. [LB563]

SENATOR AVERY: I see that your bill is only one word. [LB563]

SENATOR KRIST: That's it. You did it so...well, you did it so well, all it needed was one...no, I think you had active conversations over several contracting bills last year. And I believe this was part of an effective... [LB563]

SENATOR AVERY: Yeah. I think part of your bill was folding in here too. [LB563]

SENATOR KRIST: I think it was. And...but this was warranted and absolutely needed. This was a small problem. And we're seeing that problem with several contracts with the Department of Health and Human Services right now, which is why I bring it forward to you. [LB563]

SENATOR AVERY: Thank you. Any other questions? All right. You going to stay around to close? [LB563]

SENATOR KRIST: I will. I have to be someplace else. When they call me, I'll leave. But I think I'll stay. [LB563]

SENATOR AVERY: There are only two people...three people, counting the Red Coat. [LB563]

SENATOR KRIST: That's what I noticed. Thank you. [LB563]

SENATOR AVERY: It can't be very long. Proponent testimony? Good afternoon. [LB563]

KORBY GILBERTSON: Good afternoon, Chairman Avery and members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Boys Town.

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I'd first like to thank Senator Krist for working with us on this legislation. And talk a little bit about LB563 would simply clarify--obviously, one word--existing statutes regarding the contractual review and require agencies to conduct proof-of-need analysis only when they enter new proposed contracts for services in excess of \$15 million. I emphasize the word "new" because current law is a little bit unclear as to whether existing contracts could be brought under the proof-of-need requirements. Under LB563, it would be clear that proof-of-need analysis is to be applied at the front end of the contracting process rather than in the midst of an existing contract for services, which require an annual amendment. And this portion of my testimony is specific to Boys Town's interest as Boys Town is part of Nebraska Families Cooperative or NFC. Many of you have heard of that. It includes five Omaha area agencies, including Boys Town, the Child Saving Institute, Heartland Family Services, OMNI Behavioral Service, and Nebraska Family Support Network. NFC connects families to the vast array of services provided by Nebraska providers and manages the delivery of these services to Nebraska families. NFC provides the case management, service coordination, and delivery to all of the child welfare and juvenile justice children and families in Douglas and Sarpy Counties through a contract with the Department of Health and Human Services. This contract started July 1, 2009, and is to run through June 30, 2014. As part of that contract, there is a requirement that the parties go through an annual negotiation to look at certain terms of the contract, one of those things being case rates. And NFC is currently in negotiations with the Department of Health and Human Services to renegotiate certain terms. And LB563 would simply clarify that these required negotiations would be allowed to continue without triggering a proof-of-need analysis. Now just in case there's questions, I want to be clear that the negotiations don't change overall scope of the contract or the services provided, they don't result in the displacement of any state employees. Those were some of the things that were in LB563 originally--or not LB563, I'm sorry--LB856, LB858, sorry. [LB563]

SENATOR PRICE: Previous bill. [LB563]

KORBY GILBERTSON: The previous bill, sorry--or increase the overall...the budget for fiscal year '14. So if there's any questions, I'd be happy to try to answer them. [LB563]

SENATOR AVERY: LB858. [LB563]

KORBY GILBERTSON: LB858, thank you. [LB563]

SENATOR AVERY: Questions? Senator Price. [LB563]

SENATOR PRICE: Just one. Is it possible that these negotiations would in and of themselves trigger a change of \$15 million? [LB563]

KORBY GILBERTSON: That... [LB563]

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SENATOR PRICE: The new negotiated terms, not in the total part, but it changes... [LB563]

KORBY GILBERTSON: Trigger a new \$15 million threshold? [LB563]

SENATOR PRICE: Threshold pierce. [LB563]

KORBY GILBERTSON: I'm not sure if the...I don't know what the negotiations will come out, so I can't answer that... [LB563]

SENATOR PRICE: Okay, thank you. [LB563]

KORBY GILBERTSON: ...if the amounts are that large. [LB563]

SENATOR AVERY: Would you label or describe this as a substantive change? [LB563]

KORBY GILBERTSON: No. [LB563]

SENATOR AVERY: Technical. [LB563]

KORBY GILBERTSON: And what I would say--and here's where...when we first started talking about this at the beginning of session, how I differentiated it is these are requirements under the existing contract. They are required to go back to the table every fiscal year and revisit certain terms of the contract. So they knew that when they entered into the contract, and that was expected to be done. I should probably also note for those of you who are new, this is part of the pilot project in this state for child welfare issues and juvenile justice issues, so this is really the Legislature's decision on how this continues to run. That's why the concern lies there that you don't have something accidentally trigger a requirement that wasn't anticipated when the contract was entered. [LB563]

SENATOR AVERY: Any more questions? Thank you. [LB563]

KORBY GILBERTSON: Thank you. [LB563]

SENATOR AVERY: We're still on proponent testimony to LB563. Any other proponent testimony? Okay, we move to opponent testimony. Anyone wish to testify in opposition to LB563? Any neutral testimony? Senator Krist. [LB563]

SENATOR KRIST: As long as I stayed, I'll take a few more minutes of your time. I think the key here in...for...I think Ms. Gilbertson talked about it very succinctly. Because it's a pilot program, we do own...the Legislature owns the contract. So we don't want to get

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into the midst of triggering another area within contractual law that would cause us to lose the pilot program the way it exists. And the answer to your questions, Senator Price, I asked that question. And it would take a huge change in the case rate in order to make that kind of adjustment. So I can't say definitively but I'd say good judgment tells me no. And with that, thank you very much for your time. [LB563]

SENATOR AVERY: Thank you, sir. That ends the hearing on LB563, and now we'll move to LB603 and invite the dean of the Legislature up. [LB563]

SENATOR CHAMBERS: My, my, my. Thank you, Mr. Chairman, members of the committee. My name is Ernie Chambers. I represent the 11th Legislative District, and I keep a close watch on this horde of mine. That's for Johnny Cash over there. Members of the Legislature, this is a straightforward bill. And no matter what a person's religious predilections may be, I'm dealing with the law. This bill is based on the fact that when this country was founded, the founders of it, even though they didn't live up to their religious protestations, put certain requirements in the constitution of an oath. And every place in the U.S. Constitution where an oath is required, also an affirmation can be given because there are people who don't believe in swearing. And the irony about all of this swearing--I don't mean profanity--when people put their hand on the Bible, they're swearing on a book that says...in fact, Jesus said: swear not at all; not by heaven for it is the throne; not by earth for it is his footstool. Swear not at all. Let your yea be yea, your nay be nay. Anything more than this proceeds from evil. So despite what Jesus told them, they put their hand on the book and violate that order and swear on that book. I'm just showing you the inconsistency of people who, for religious reasons, will say you ought to be required to swear. There is a section of statute which I quoted in my statement of intent. A lot of people are not aware of it and those who administer oaths are not aware of it, and there are many places in the statute requiring an oath which ignore it. And this is the language quoted verbatim from Section 25-2220. "Whenever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect." I should have attached to my statement of intent a copy of the oath that we take. It is the oath specified by the Nebraska Constitution that we take and it says swear or affirm. That language mirrors language in the U.S. Constitution which says that the oath of every member of every legislature--and mentions other positions--shall be, and it says swear or affirm. The Nebraska Constitution mirrors that. The section of statute that I read indicates that the affirmation is the same. So whether you're making an affidavit, a search warrant, or whatever, they say by oath or affirmation. So what my statement points out is that the bill before you is designed to correct the notion that every oath that must be administered requires the one administering it to say you swear. The one taking it feels required to say I swear. And if an oath is essential to taking the office, the person goes against his or her conscience and will say, I swear. When I was filling out my campaign or candidate statement in the Secretary of State's Office, I lined through the word "swear" and wrote above it "affirm." And Secretary Gale won't remember this. He said, Senator Chambers,

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you make things so difficult. I said, no, I just make things right. So based on what I've indicated there, in at least one place I was able to find--there may be others--where the words "so help me God" are attached. No person can be compelled to acknowledge any god. The U.S. Constitution and the Nebraska Constitution both say there can be no religious test as a condition to holding any office. And when it comes to the oath taken by the president, it says swear or affirm. And the words that these presidents add, so help me God, are not a part of the oath in the constitution. That is a political statement to keep from offending some of these narrow-minded people who say that this is a Christian country and you'd better toe the line or else. Other people don't write lines that I toe and that's why even though the document was given to me that says "swear," I lined through "affirm" because I know what the constitution says. I know what the statutes say. And anybody can challenge me who wants to, and I will correct their miseducation and improve their education. And I don't see anything else that I need to add, so I'm open for questions that may like to put to me. [LB603]

SENATOR AVERY: Thank you, Senator Chambers. Let me ask you, why do you think that there is no fiscal impact if forms such as the one that you filled out as a candidate, filing form for the Learning Community...that would have to be redone? [LB603]

SENATOR CHAMBERS: I don't know that the people who make out these fiscal reports would want to try to track down every agency or entity that says "swear" alone. On these statements or these forms for notaries public, it just says "swear." So that is everywhere. I don't know why they didn't put...or they might have felt that the amount would be inconsequential. Whenever they have paper printed, they can just correct it if they choose to. But to try to do a little educating, I wanted to go through the statute and find as many places as possible and correct it. While I was on the Learning Community, new people came on and an oath was administered. And before it was administered, I pointed out--and everybody was very uncomfortable--that the constitution and law allows a person to affirm. And the person who was being sworn in, having all those eyes on him or her, peer pressure and fear pressure are powerful. The person says, well, I will swear. But the person administering the oath should say "swear or affirm" and that's what the Chief Justice says when all of us are standing up there, I hereby swear or affirm. And I'm just trying to bring to people's knowledge what the law and the constitution are. [LB603]

SENATOR AVERY: Thank you, Senator. Senator Bloomfield. [LB603]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator, there's nothing in the laws preventing the president from going forward and adding "so help me God" if he so chooses, is it? [LB603]

SENATOR CHAMBERS: No, there's nothing to prevent it. [LB603]

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SENATOR BLOOMFIELD: Okay, thank you. [LB603]

SENATOR CHAMBERS: But it's not required. [LB603]

SENATOR BLOOMFIELD: I understand. [LB603]

SENATOR CHAMBERS: Just like a person can use any holy book or no book. [LB603]

SENATOR BLOOMFIELD: Right. [LB603]

SENATOR AVERY: It could be, "so help me, Allah." [LB603]

SENATOR CHAMBERS: Huh? [LB603]

SENATOR AVERY: It could be "so help me, Allah." [LB603]

SENATOR CHAMBERS: Right. And it could be for me because the way I express language, so help me Webster, and my hand would be on a dictionary. [LB603]

SENATOR AVERY: Senator Price. [LB603]

SENATOR PRICE: Thank you, Chairman Avery. Senator Chambers, I'd like to mine your knowledge of language. If I'm at a swearing in to be sworn in, I cannot...if you have not...to not swear, to bind by swearing, can you even have a sworn statement? [LB603]

SENATOR CHAMBERS: You can put a person on or under oath, and there are limitations to language. And sometimes, because of the inability of language to express nuances, the very word that we're saying does not have to be, we have to use that word--as you pointed out--a sworn statement. How can it be sworn if you don't swear? But because of the vagaries of language and traditions, that statement probably will continue to be a sworn statement. For example, politicians lie all the time. But other people lie too. They will make a statement which contains a refutation of the statement. I never say never, and they said it twice while saying they never say it. I pay attention to what people say, and I hear things like that all the time. But people are going to speak in a way to be understood, not to be accurate and correct. [LB603]

SENATOR PRICE: Well, I appreciate that. Thank you. [LB603]

SENATOR CHAMBERS: That was a very good question. [LB603]

SENATOR AVERY: Any others? Thank you, Senator. Are you going to stay around to close? [LB603]

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SENATOR CHAMBERS: I can't because we've got a crazy bill in there that would allow anybody to say I refuse to give you medical treatment because it violates my conscience. And the guy from the Nebraska Medical Association, he's on the bill. Medical Association...he is too. And I don't know if Karpisek is, but I told the guy from the Nebraska Medical Association--because I found some flaws and contradictions in the bill itself--that if he wanted to escape my withering questioning he could do it while I'm gone because I've got to go present a bill. And everybody laughed, and I think I saw him leaning forward. But if you don't need me for anything else. [LB603]

SENATOR AVERY: Okay. All right. Thank you. [LB603]

SENATOR CHAMBERS: Thank you. [LB603]

SENATOR AVERY: Thank you very much. [LB603]

SENATOR CHAMBERS: Oh, and I am requesting that you advance the bill. [LB603]

SENATOR AVERY: We will now accept proponents, LB603. Welcome. [LB603]

JUSTIN EVERTSON: (Exhibit 1) Thank you. Thank you for having me, and I appreciate the opportunity to speak. I'm Justin Evertson, J-u-s-t-i-n E-v-e-r-t-s-o-n. And I think first I'll say--butter you up--but thank you for your service. I don't know how state senators do it. And you're always under the gun for both pro and con on things, and I know that's hard work. And there's people like me that just really appreciate this. And I swear it seems surreal that I follow Ernie Chambers here in this testimony. A farm boy from western Nebraska who grew up as a kid listening to what Ernie was doing in the Legislature and, at that time, not agreeing very often. And now it's ironic that I've come around and agree with a lot of what Senator Chambers has to say. So people can change and things can change. And so let me say right up front--and I will be brief here--I do represent the Nebraska Secular Advocates, and that's identified in the handout here. We support LB603 and thank Senator Chambers for introducing it. The Nebraska Secular Advocates is a new grass-roots group dedicated to keeping our government secular. Although this group was organized primarily by nonreligious Nebraskans, we include and we do welcome the participation of many religious Nebraskans who support these causes, and especially the separation of church and state. There are quite a few religious people who are very much for this. So quickly, I'll run through this. This bill goes right to the heart of the concept of church/state separation as spelled out in--what's interesting to me--both the state and the U.S. Constitutions. And I've included specific language to that in my handout. Both documents clearly state that no religious test shall be required to hold public office. And in addition, both constitutions and our statute that Senator Chambers referred to specifically include the allowance of affirmations in addition to oaths. And we would...I just know if I was taking that oath, I would prefer to have the option of an affirmation. So

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a couple of other points: the bill cleans up state law, as Senator Chambers said. And you might want to take this to heart. The bill reflects the opinion of 67 percent of the U.S. population who in a couple of different surveys have said that, religion aside, they support the concept of the First Amendment and the separation of church and state; 67 percent of U.S. citizens. And then this is interesting too, another survey. The law reflects a significant and growing segment of Nebraska's population that is secular oriented and does not believe in a God to be feared for the purpose of swearing the truth. That survey indicates 10 to 20 percent of Nebraska citizens, potentially well over 200,000 of us, likely hold this belief. And so with that I'll close and take any questions. But thank you for your time. [LB603]

SENATOR AVERY: Thank you. Evertson, right? With a t? [LB603]

JUSTIN EVERTSON: Evertson, E-v-e-r-t-s-o-n. [LB603]

SENATOR AVERY: T, okay. Questions from the committee? I don't see any. Thank you, sir. [LB603]

JUSTIN EVERTSON: Thank you. [LB603]

SENATOR AVERY: (Exhibit 2) Any other proponent testimony? We're on LB603. Any opponent testimony? Any neutral testimony? I have a letter here from the ACLU, signed by Amy Miller, that expresses support for LB603. This is to be read into the record. With that, we end the hearing on LB603 and the hearings for today. [LB603]