

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 20, 2014

[LB1065 LB1066 LB1075 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 20, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1075, LB1065, LB1066, and a gubernatorial appointment. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Dave Bloomfield; Tommy Garrett; Russ Karpisek; Scott Lautenbaugh; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: (Recorder malfunction)...opening of the hearing. We have one gubernatorial appointment that we need to consider. It will be a call in. And after we finish with that, we'll open the committee for actual hearings on bills. So just stand tight while we wait for the call to come in. Why did you move? There he is. We have a...no, this is a nominee. Good afternoon. Is this Sherry... [CONFIRMATION]

SHERRY BLAHA: (Exhibit 1) Hello, how are you? I'm Sherry. [CONFIRMATION]

SENATOR AVERY: Sherry Blaha... [CONFIRMATION]

SHERRY BLAHA: Yes. [CONFIRMATION]

SENATOR AVERY: ...this is Senator Bill Avery. [CONFIRMATION]

SHERRY BLAHA: Hello, how are you? [CONFIRMATION]

SENATOR AVERY: I Chair the Government, Military and Veterans Affairs Committee. [CONFIRMATION]

SHERRY BLAHA: Yes. [CONFIRMATION]

SENATOR AVERY: We have with us here Senator Norm Wallman who is from Cortland. We have Senator Dave Bloomfield from Hoskins, Senator John Murante from Gretna, and I am from Lincoln and I Chair the committee. So we will start this committee by asking you to tell us a little bit about yourself. We do have your bio in front of us. [CONFIRMATION]

SHERRY BLAHA: Okay. Well, I can't add any more to it or lie, huh? Well... [CONFIRMATION]

SENATOR AVERY: But we'd like for you to tell us a little bit about why... [CONFIRMATION]

SHERRY BLAHA: Okay. [CONFIRMATION]

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SENATOR AVERY: ...you want to serve. [CONFIRMATION]

SHERRY BLAHA: All right. Well, emergency management has been in my blood for, oh, about 29, 30 years. I was the emergency manager in Scotts Bluff County from 1983 to 2008 and so that was a total of about 24.5 years. I was...I began the LEPC here in September of 1987. So that has been in existence for 27 years. It currently has 15 members and it meets quarterly. And our emergency manager now takes care of that. And I am also a member representative of that board as a Scotts Bluff County Commissioner. I've been a commissioner since 2011. I was elected in 2010. During my emergency management career, we experienced one train derailment, which included a huge chemical spill and evacuation of a good portion of the city of Scottsbluff. We experienced a major sugar factory explosion where we had one death here and it totally destroyed one of the buildings. And we've had two large tornadoes. In my personal life, I am married. I have three grown children, six grandchildren, and one great grandchild. And I guess that's it, kind of in a nutshell. [CONFIRMATION]

SENATOR AVERY: Well, let me ask you, what role does the commission play in managing or responding to these state emergencies? Do you do any actual in-the-field work or you're advisory? What role does the commission play? [CONFIRMATION]

SHERRY BLAHA: You're talking about our local emergency planning committee? [CONFIRMATION]

SENATOR AVERY: No, the State Emergency... [CONFIRMATION]

SHERRY BLAHA: The State Emergency Response Commission. [CONFIRMATION]

SENATOR AVERY: Right. [CONFIRMATION]

SHERRY BLAHA: Well, I don't believe we...that the State Emergency Response Commission has responded to any actual huge emergencies. But I think you are...you have to make sure that all the chemicals are kept track of and are available for the public. You have to make sure that all the plans are done in each and every county and that the people there are trained and responsible...the emergency responders are trained and responsible for responding to the emergencies. [CONFIRMATION]

SENATOR AVERY: Your...the information we have here says that you actually were appointed in June of 2013... [CONFIRMATION]

SHERRY BLAHA: Yes, I was. [CONFIRMATION]

SENATOR AVERY: ...and served till September. And this term that we're looking at now

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is September 2013 to 2017. [CONFIRMATION]

SHERRY BLAHA: Right. [CONFIRMATION]

SENATOR AVERY: Were you on the commission when they had the wildfires in the north-central part of the state? [CONFIRMATION]

SHERRY BLAHA: Well, I wasn't actively on it. I was...at that point, I was just attending the meetings. And I've only attended one in Lincoln and then the rest have been by video. No. I guess I'm not aware that we responded to it. [CONFIRMATION]

SENATOR AVERY: So the...so SERC actually had no role to play in responding to those fires? [CONFIRMATION]

SHERRY BLAHA: Well, I know that the state Nebraska emergency met. Management sends teams out to...yeah, I know that they were there. But I don't know that any active members were there. [CONFIRMATION]

SENATOR AVERY: I'm really trying to find out what the commission actually does when you have... [CONFIRMATION]

SHERRY BLAHA: Oh, what they do. Okay. Well, I thought you were giving me a test. [CONFIRMATION]

SENATOR AVERY: No, no, no, no. [CONFIRMATION]

SHERRY BLAHA: Well, the commission, I think, is just a body of people that just make sure that every...all the...everything is in order. Like, okay, the LEPCs are...they have to take in all of the chemicals, the extreme chemicals, that are stored within the county. The emergency manager here is in charge of that and he has to keep track so that...it is the community right to know what is stored in their community. And that is our emergency manager's job to have those lists. And to tell you the truth, nobody has ever inquired in all the years that I've been involved with it. But it's there and ready for, you know, a review if somebody wants to know the chemical that is stored near where they live or where they work. [CONFIRMATION]

SENATOR AVERY: I understand. [CONFIRMATION]

SHERRY BLAHA: And then we make sure that all of the emergency plans are taken care of...in order. All counties are supposed to have emergency plans. And the Nebraska Emergency Management takes the lead role in responding to the emergencies of a county if, you know, if it's a declared emergency and we need more help than what we can handle locally...what the counties can handle locally. I guess I

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should talk to it on that level. [CONFIRMATION]

SENATOR AVERY: Thank you. [CONFIRMATION]

SHERRY BLAHA: Yeah, I guess I didn't realize you didn't know what the SERC did. [CONFIRMATION]

SENATOR AVERY: Well, we always like to hear what you think it does. [CONFIRMATION]

SERRY BLAHA: Right, right. Well, it is a good thing to have. The SERC and the LEPCs were brought about when they had a huge chemical spill in Bhopal, India. And so everybody jumped on the bandwagon and said we need to know what is stored in our communities. And so that's why the organization has come about. But really, they don't respond, per se, to the major emergencies... [CONFIRMATION]

SENATOR AVERY: Okay. [CONFIRMATION]

SHERRY BLAHA: ...unless there's someone on the board, of course, that has, you know, has the detail to do that. [CONFIRMATION]

SENATOR AVERY: All right, I'm going to open up the committee for questions. So hang on, all right? [CONFIRMATION]

SHERRY BLAHA: Okay. [CONFIRMATION]

SENATOR AVERY: Questions from the committee? We're speechless. Nobody has any questions. [CONFIRMATION]

SHERRY BLAHA: Okay. Well, that's fine with me. [CONFIRMATION]

SENATOR AVERY: Let me tell you what happens next. We will convene the committee in Executive Session later this afternoon and we will vote on your confirmation at that time. And you will be promptly notified. [CONFIRMATION]

SHERRY BLAHA: Okay. [CONFIRMATION]

SENATOR AVERY: (Exhibit 2) I do have a letter here in support of your nomination from Larry Dix, the executive director of the Nebraska Association of County Officials. [CONFIRMATION]

SHERRY BLAHA: Oh. Well, that's very nice of him. [CONFIRMATION]

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SENATOR AVERY: And hold on just a minute. I'm going to open up the hearing now for any other comments from the audience. I don't see any. Thank you, Ms. Blaha, for cooperating with us by telephone. [CONFIRMATION]

SHERRY BLAHA: You're certainly welcome. You saved me about a, oh, 800 mile trip. [CONFIRMATION]

SENATOR AVERY: You'll be hearing from us soon. All right. [CONFIRMATION]

SHERRY BLAHA: Thank you very much. [CONFIRMATION]

SENATOR AVERY: Thank you. Good-bye. [CONFIRMATION]

SHERRY BLAHA: Bye. [CONFIRMATION]

SENATOR AVERY: All right, now, welcome to the hearing of the Government, Military and Veterans Affairs Committee. We have three bills to take up today. These three bills are posted outside the room, LB1075, Burke Harr will be introducing that. And we will, then, take up LB1065 by Senator Lautenbaugh, then LB1066 by Senator Lautenbaugh. Before we do that, let me introduce the people who are now here. Senator Tommy Garrett from Bellevue is on the end down here on the right. Next to him is Senator Dave Bloomfield from Hoskins, Nebraska. And we welcome Senator Lautenbaugh, Scott Lautenbaugh from Omaha to the committee, as well. Senator John Murante, the Vice Chair of the committee, is from Gretna and he is seated next to Senator Lautenbaugh. On my immediate right is Christy Abraham who is the legal counsel for the committee. I am Bill Avery, Chair of the committee and don't forget it.

SENATOR HARR: Yes, sir.

SENATOR AVERY: And we will be joined later by Senator Russ Karpisek from Wilber. I met him in the hall. He is on his way to Judiciary to introduce a bill. Senator Norm Wallman sits next to him, from Cortland. And Senator Jim Scheer is the last one there from Norfolk. On the very end is Sherry Shaffer, she is the committee clerk. We ask you, if you are going to testify for or against any of these bills, to fill out the green form. Provide, in clear print, the information requested. Give this to the clerk and we'll keep this for the public record. We do have a page today...just left, but it is Colton Wolinski. If you have any transcript of your testimony you want us to see, we need 12 copies. If you have any supporting information for your testimony, we need 12 copies. If you don't have 12 copies, give the original copy to the clerk and she'll have the page get the number we need. If you're not going to testify but you wish to be recorded for or against any of these bills, there is a form at the entrance to the room, at each entrance, that you can fill out and we ask you to please do that. We will be using the light system. The green light is a four-minute light. The amber light is a one-minute light. And for you,

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Senator Harr, that's five minutes. And we...that was a joke.

SENATOR HARR: I won't take the whole time.

SENATOR AVERY: When the red light appears, you should be finished. Actually, we don't use the lights for introducers. Introducers get to go first and they're followed by proponents and then the opponents and neutral testifiers. Closing remarks are reserved for the senators. If you have a cell phone, please turn it off. Any other electronic equipment or any noisemaking devices, please make sure they are silent. Okay. Welcome, Senator Harr. We will now hear your opening statement on LB1075. Welcome. [LB1075]

SENATOR HARR: Thank you, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. I'm Senator Burke Harr and I represent midtown Omaha which is comprised of the neighborhoods of Dundee, Benson, and Keystone. Not the pipeline but the neighborhood. This is LB1075 which, as many of you are aware, has 12 cosponsors. LB1075 does two things. First, any person who is elected or appointed to serve on the governing board of a political subdivision or the governing body of an agency of the executive department of the state of Nebraska which is created by the Constitution of Nebraska, by statute, or otherwise on an independent board, including the Board of Regents of the University of Nebraska, or on an independent board, commission, bureau, committee, council, subunit, or other body created by the Constitution of the state of Nebraska by statute or otherwise pursuant to the law is not eligible for employment by that entity for two years after leaving such position. Secondly, any person who appoints a member to serve on the governing board of such political units I had just mentioned, is not eligible for employment by the entity for two years after leaving the position by virtue of which he or she made the appointment. The goal of this legislation is to prevent the appearance of impropriety and the revolving door that can occur in politics. There was recently a situation which occurred up in Omaha that involved one of the public utilities. One of their board members was involved in the hiring of the eventual president. In fact, that board member served on the committee that helped select the finalist. Within 12 months, the new president hired the board member as vice president, giving him a salary of over \$150,000. The vice president is now an interim president of said utility company as they search for a new president. I want to be clear. I am in no way suggesting collusion was involved in the previous example. I have known both the former president and the current interim president and have nothing but the utmost respect for them personally and professionally. Rather, what I'm trying to convey is what the board did, themselves, in that same utility. They created this same policy, rather for a year instead of two, but they saw the importance of it. We, as elected officials, are held to a higher standard. And I think we should hold ourselves to that high standard. I think it's a good thing. The public places a great deal of trust in us and expects us to do what is right and to have integrity. LB1075 would add a layer of safeguard to that trust. I ask you to advance

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LB1075 out of committee and I would be happy to answer any questions you may have. Thank you. [LB1075]

SENATOR AVERY: Thank you, Senator Harr. Do we have some questions? Senator Scheer. [LB1075]

SENATOR SCHEER: Thank you, Senator. Senator Harr, just wanted to, in my own mind, clarify exactly what you're talking about. This...how far down the food chain does this go? Does this go, then, down to municipalities and counties and school districts and so forth? It's any governmental entity within the state of Nebraska. Would that be correct? [LB1075]

SENATOR HARR: Political...yeah, well, it's those described. So for instance, you were on an independent board previous to this, which was the school board, state school board. If...for instance, that's elected, it's not a cabinet position to the Governor but it's within the executive branch. So if the Governor appointed someone to the school board that you were on, that would preclude him from then becoming the commissioner of education. Or at least that member...yeah, it would preclude him for two years after leaving office. Vice versa, vis-a-vis...yeah, if you...it goes down to the political subunit, as low as you can get. What we want to do is avoid the revolving door situation where we have collusion. So that's exactly what we're looking for. [LB1075]

SENATOR SCHEER: Okay. And this may be an oddball one but, you know, there are cases where this might happen as you talk about school districts. For example, in a smaller community, someone may have served on the school board for 12, 20 years... [LB1075]

SENATOR HARR: Uh-huh. [LB1075]

SENATOR SCHEER: ...is retired and no longer wants to go to school board meetings so he doesn't seek reelection. But they need a bus driver for activities. Would he be eligible to be a bus driver? [LB1075]

SENATOR HARR: Does the bus position pay? [LB1075]

SENATOR SCHEER: Certainly. [LB1075]

SENATOR HARR: I would have to argue possibly not. We could make an exception on there for towns of a certain size or jobs that go below a certain level. But what we don't want to do is, you know, we also want to avoid the situation where no one had a bus job. This guy was looking for a job. He goes out and creates a...as a board member, creates a job for, lo and behold, a bus driver. And then the second the job is created, he becomes the bus driver. We want to avoid that situation too. [LB1075]

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SENATOR SCHEER: Understood. I'm just concerned that there might be some exceptions out there, especially in smaller communities that some positions are not really the most sought after positions. [LB1075]

SENATOR HARR: Yeah. [LB1075]

SENATOR SCHEER: And although they do pay, usually they don't pay a lot. And so that may be the better route as some type of financial remuneration threshold type deal. [LB1075]

SENATOR HARR: Yeah. And I make two other points. Number one...because that is a valid concern, I believe, and it's been brought to me by other people. First of all, I've not received one e-mail that says this is a bad idea. I've had e-mails that say, hey, I have a concern about this. I have received numerous e-mails saying this is a great idea. What we can do is, we can play with that time. You can have a cooling-off period of less than two years. You could do a year. You could do six months. You'll also see there's no enforcement mechanism in here. So if that school district did do that, there really isn't an enforcement mechanism. It's just merely, you're violating the law. And if the school is okay with that, the school is okay with that. [LB1075]

SENATOR SCHEER: Well, I would hate to put a school district or any other governmental entity into a position because... [LB1075]

SENATOR HARR: But we don't withhold school funding, we don't... [LB1075]

SENATOR SCHEER: but...well, but just...well, I understand. But when you are elected and serve in a capacity of a school board, as a city councilman, as a legislator, you are...we all on the same opportunity when we are brought into public service say that we will obey and protect the Constitution of the state of Nebraska. [LB1075]

SENATOR HARR: Yeah. [LB1075]

SENATOR SCHEER: These laws are the part of the state of the constitution and so... [LB1075]

SENATOR HARR: Well, they're the statute, not the constitution. But, yeah. No, I agree with you. I agree with you. But what... [LB1075]

SENATOR SCHEER: So, you know, you're putting them in a position where they knowingly are not following their own... [LB1075]

SENATOR HARR: That's fine. But you know, we don't want people to cash in either on

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the fact that they're the school board member. [LB1075]

SENATOR SCHEER: And I do think it's a good idea. I'm not trying to nitpick you. It is a good idea. I just know that there will be some exceptions and how do we work around (inaudible). [LB1075]

SENATOR HARR: The other problem you're going to run into is you have two people running for the bus driver job. If all of a sudden, a board member gets it, nonboard doesn't get it, that nonboard member is going to sit there and have some pretty raw feelings saying, hey, this was just quid pro quo. So yeah. [LB1075]

SENATOR SCHEER: Understood. But my concern was when we don't find the bus driver. And the guy that's been volunteering and being a school board member for the last 20 years is said, well, okay, I'll drive the bus. I suppose he could say, well, I'll do it for free. And so I (inaudible) for free, so... [LB1075]

SENATOR HARR: And maybe that's the answer is, if two or more people apply. [LB1075]

SENATOR SCHEER: Yeah. [LB1075]

SENATOR HARR: You know, there are a lot of ways to peel this onion. [LB1075]

SENATOR SCHEER: Yeah. [LB1075]

SENATOR HARR: It's just determining...but I think the underlying policy is a sound policy idea. [LB1075]

SENATOR SCHEER: I don't have a problem with that. I was just looking at the exception. I just (inaudible). [LB1075]

SENATOR HARR: And I'm more than willing to work with the committee to...if you should feel so inclined to pass this out of committee. [LB1075]

SENATOR SCHEER: Okay, thank you. [LB1075]

SENATOR HARR: But I think...yeah, it's been pretty obvious where the public sentiment is. [LB1075]

SENATOR SCHEER: Okay. Thank you, Senator Avery. [LB1075]

SENATOR AVERY: I'm sorry, what has been obvious? [LB1075]

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SENATOR HARR: What's that? [LB1075]

SENATOR AVERY: What did you say was obvious? [LB1075]

SENATOR HARR: I think the public sentiment has been pretty clear, from what I've received, that they think this is a good bill. [LB1075]

SENATOR AVERY: Yeah, we've gotten some mail. Any more questions? Senator Lautenbaugh. [LB1075]

SENATOR LAUTENBAUGH: Just briefly, did any of your cosponsors or you prioritize this today? Just as point of information, I guess, if you know. [LB1075]

SENATOR HARR: I suppose they would have to ask me if they wanted to prioritize my bill. So to the best of my knowledge, no. [LB1075]

SENATOR AVERY: Any more questions? Senator Bloomfield. [LB1075]

SENATOR BLOOMFIELD: Thank you. Don't feel bad about having ten cosponsors. I've got a bill sitting in Judiciary with 35 that I'm not sure is coming out. [LB1075]

SENATOR HARR: Well, and you know, as we all know, if this passes out of committee, you can always amend this onto another bill. So just because it doesn't have priority, doesn't mean that the bill, in itself, is dead. [LB1075]

SENATOR AVERY: Don't see any more questions. Thank you, Senator. [LB1075]

SENATOR HARR: Thank you. [LB1075]

SENATOR AVERY: We'll now accept proponent testimony to LB1075. Proponent testimony. Any opponent testimony? Hello. How are you? Welcome. [LB1075]

BETH BAZYN FERRELL: Good, thank you. Afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l, I'm with the Nebraska Association of County Officials. I'm appearing in opposition to the bill because counties have kind of an unusual situation when it comes to making an appointment to fill a vacancy on a county board. A vacancy is filled by a committee of the county clerk, treasurer, and county attorney. And sometimes, then, they fill the vacancy. But sometimes, for example, a county treasurer might decide not to run for reelection but come back and help in the office, maybe serve as a deputy while the new person sort of gets their feet on the ground. This bill would preclude that. And if the committee chooses to move forward with the bill, we would like to work with you in trying to get that situation worked out. I'd be happy to try to answer questions. [LB1075]

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SENATOR AVERY: Thank you. Questions? No, I don't see any. Thank you for your testimony. Any more opponent testimony? Any neutral testimony? Senator Harr. [LB1075]

SENATOR HARR: Thank you. Senator Lautenbaugh, I now know how you feel about the bar. I think every bill of mine, NACO has come in against this year so except for one. I understand their position but it's a workable position. There are a lot of ways around this. You can hire someone back as a consultant. Remember, we also have from the time the person is elected until the time they take office to help do the transition. You also have a staff, a bureaucracy behind each elected official that can help with that transition period. It's a little...I don't know how I say this politely. No one is irreplaceable. We have great assets in our public employees and I appreciate all that they do. But a good manager will create people under them and train people under them to be ready. What would happen if that treasurer, God forsaken, got hit by a car. Would the office close then? No. That's what you always have to be in preparation for. So I understand their concern but good leadership is having someone prepared to replace and come after you. So in my world, Senator Scheer's argument probably carries a little bit more water than a treasurer who feels they're irreplaceable. So with that, I would, I guess, I would be open to any questions. [LB1075]

SENATOR AVERY: Any more questions? Oh, look at this. Senator Bloomfield. Then I'll get Senator Lautenbaugh. [LB1075]

SENATOR BLOOMFIELD: Thank you, Senator Avery. When you first introduced this bill, you thought it was apparently a good idea. Then at some point you apparently thought it wasn't such a good idea before you got the ten cosponsors that you now have. [LB1075]

SENATOR HARR: Yeah. Twelve, like the Apostles, as Senator Chambers would say. Why did I withdraw it? [LB1075]

SENATOR BLOOMFIELD: Yeah. Why did you withdraw it? And I understand why you put it back in with... [LB1075]

SENATOR HARR: Because this became about the Governor and this wasn't about the Governor. This was about a situation where we wanted...I think it's good policy-based legislation. But this became political. It became about a person. And so what I would say is that, instead of making this about an individual instead of a policy, I thought it would be better to withdraw and bring it back, maybe, next year when it's not about a person and it doesn't appear to be about a person. But rather, we don't have someone that will say, oh, this could be that person. It would be, this is a good idea. [LB1075]

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SENATOR BLOOMFIELD: Do you feel it could still be used as being against a person? And is there any way around that if... [LB1075]

SENATOR HARR: Well, could it or could it not? The answer is, if this were to pass into law, it would have an effective date of middle of June, probably. The Board of Regents, I believe, has said that they're going to meet before that time. Maybe they could name a president before that time. But to be honest, I haven't even heard the Governor wants the job. Matter of fact, all I've heard is he doesn't want the job. I've never even heard him say he's thinking about the job. The closest I've come is him saying he won't answer the question. But, you know, that's not saying you're interested. And this is exactly what I wanted to avoid. I wanted this to be about, I think this is good public policy. I think this is sunshine rules that provides transparency in our government so that we don't think people are cashing in on their office, so that they don't get a golden parachute when they leave the treasurer's office to be a consultant or an employee of that office after they leave but, rather, that there is a clean transition from one administration to the next. [LB1075]

SENATOR BLOOMFIELD: Okay, thank you. [LB1075]

SENATOR AVERY: Where were you when I had the revolving-door bill about legislators going around to the other side of the glass and becoming lobbyists immediately after leaving the Legislature? See, I could have used your help. [LB1075]

SENATOR HARR: Well, I don't think that's a bad idea either. I don't know...when did you introduce that bill? [LB1075]

SENATOR AVERY: A couple of years ago. Had a different committee but... [LB1075]

SENATOR HARR: Did it make it out of committee? I don't... [LB1075]

SENATOR AVERY: No, it didn't. It was the worst hearing I've ever been in. [LB1075]

SENATOR HARR: But you and I are in agreement there, that we think it's a good idea. We don't want people cashing in on their elected positions for personal gain. It dirties the institution. [LB1075]

SENATOR AVERY: The only people in the room that were opposed to the bill were the people on the committee. I mean, really, the audience...nobody opposed it except the committee. You've been there? [LB1075]

SENATOR HARR: I would be open to a friendly amendment to that degree, Senator Avery. [LB1075]

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SENATOR AVERY: Senator Lautenbaugh. [LB1075]

SENATOR LAUTENBAUGH: Unless someone is compelling you to be a member of NACO, you don't understand how I feel about the bar. And I don't know why you don't get this but this is twice now this year that you've not gotten it. But in any event, I had a question there and you kind of...I was going to argue with you and say, no, your Taiwan resolution of last year was much worse than that other hearing...but as far as hearings go, pound for pound. But... [LB1075]

SENATOR HARR: And for the record, I have a...I just tease you with NACO. I really like them, they're a great group and they do a great job. And they stand up for the rights of our counties which is important. So that was more in jest than in seriousness too, so, if that wasn't clear. [LB1075]

SENATOR LAUTENBAUGH: So you want to join with them, is that what you're saying? [LB1075]

SENATOR HARR: What's that? [LB1075]

SENATOR LAUTENBAUGH: You want to sign up, then, is that what you're saying? [LB1075]

SENATOR HARR: (Inaudible) NACO, yeah. [LB1075]

SENATOR AVERY: Any more questions? Thank you very much. [LB1075]

SENATOR HARR: Thank you very much. I appreciate it. [LB1075]

SENATOR AVERY: Thank you for your time. [LB1075]

SENATOR HARR: Uh-huh. [LB1075]

SENATOR AVERY: That ends the hearing on LB1075. (See also Exhibit 1) And now we go to LB1065 and invite Senator Lautenbaugh to explain the bill to us. Welcome, Senator Lautenbaugh. [LB1075]

SENATOR LAUTENBAUGH: Thank you, Senator...Mister Chairman, Senator Avery. As they are kind of together, do you want me to open on both of them at the same time? I don't know that we're going to be saving a lot of time, pound for pound, or confusing the witnesses. [LB1065]

SENATOR AVERY: No, we'll do them separately. [LB1065]

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SENATOR LAUTENBAUGH: Okay, that's fine. LB1065 is the one you want me to do first? [LB1065]

SENATOR AVERY: Yes. [LB1065]

SENATOR LAUTENBAUGH: LB1065, very simply put, eliminates secret ballot exception for leadership votes under the Nebraska Open Meetings Act and requires that such votes be subject to...should be record votes, basically. The point of that is...it's really hard to elaborate on this further. We have, in the Legislature, several political subdivisions traditionally vote in secret for their leadership positions. I think those are important votes, among the most important votes we cast. And that holds true of every political subdivision. I think they should be public record. That's really it. [LB1065]

SENATOR AVERY: All right. Let me ask you, is this...would the Legislature be the only institution that would come under this law? [LB1065]

SENATOR LAUTENBAUGH: Nope. [LB1065]

SENATOR AVERY: But where else do you have secret ballots for leadership? [LB1065]

SENATOR LAUTENBAUGH: Well, I can't identify everybody. I know the Omaha School Board does it by secret ballot. I know the city council does it by quasi-secret ballot but you can find out who voted how. It's kind of a hybrid system. I think the County Board of Douglas County is a secret ballot. Some are, some aren't. Some choose to be secret, some choose not to. [LB1065]

SENATOR AVERY: Uh-huh. [LB1065]

SENATOR LAUTENBAUGH: So it's kind of a "pick 'em." This would make it just... [LB1065]

SENATOR AVERY: Mandatory. [LB1065]

SENATOR LAUTENBAUGH: ...uniformly not secret... [LB1065]

SENATOR AVERY: Yeah. [LB1065]

SENATOR LAUTENBAUGH: ...but make it a mandatory open vote. [LB1065]

SENATOR AVERY: Do you think that in the Legislature, if we were to have recorded votes for committee chairs, speaker, leadership positions, do you think that would have any implications for our nonpartisan traditions? [LB1065]

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SENATOR LAUTENBAUGH: No, I don't see that at all. I think what it would have...and I've been here now for a few cycles and this is, you know, the last time around for me, I guess. There are a lot of...there's a lot of bitterness after every series of leadership elections, it seems to me. And I think with the secret ballot, what we encourage people to do is not exactly be forthcoming with their colleagues. And we have a lot of suspicion and anger after every vote. And I mean, I can think of some, you know, very difficult votes on bills that come up. We do deal with important issues in the Legislature where people leave angry and people stay angry for a while. But we do those votes in public because the public has a right to know how we vote. I don't think there's a more important vote that we cast than speaker and people should know how we vote. Similarly, with committee chairs. It's the same thought process. I don't look at it as changing partisanship or affecting bipartisanship or nonpartisanship. I look at it as the public has a right to know what we did. And I think, honestly, our colleagues are entitled to know where we stood and we should be honest with each other. And if we're not being honest with each other, this would certainly take that away. I don't know if I answered your question. That was kind of a rambling... [LB1065]

SENATOR AVERY: It was a rambling answer but I'll accept it. [LB1065]

SENATOR LAUTENBAUGH: ...in search of a thought. But I hope there was something in there worthwhile. [LB1065]

SENATOR AVERY: Senator Scheer. [LB1065]

SENATOR SCHEER: Thank you. Senator Lautenbaugh, just for clarification on my part, essentially, if you...if a organization is held under the open meetings law, so regardless...and I don't know specifically, either, if it's a natural resource district or a school board or county commissioners or wheat authority or whatever it might be. If they are under the Open Meetings Act and they are electing leadership, then it has to be an open process, essentially, is what this bill would do? [LB1065]

SENATOR LAUTENBAUGH: Yes. Yes. [LB1065]

SENATOR SCHEER: Okay, thank you. [LB1065]

SENATOR AVERY: Any other questions? [LB1065]

SENATOR LAUTENBAUGH: That is an important distinction. This just would apply to the ones that the public meeting act applies to, so. [LB1065]

SENATOR AVERY: Senator Murante. [LB1065]

SENATOR MURANTE: Thank you, Senator Lautenbaugh. And I know you have a

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number of bills that kind of go down the same path that have been introduced in the Legislature. Some of them went to the Executive Committee. I don't believe those have made it out of committee yet. But it seems to me like we have a pretty concrete and consistent state policy that if...that the votes we take as public officials ought to be open to the public and that our constituents have a right to know how we vote on very important matters. And I'm wondering if anyone has given you any sort of justification for why we should be concealing these votes from the public aside from the question Senator Avery had mentioned about the potential for partisanship. [LB1065]

SENATOR LAUTENBAUGH: I had heard that concern from another senator previously. But to answer your question, another concern beyond that, no. And it's a little bit disappointing because I've heard people come in and talk about transparency on any number of issues, ones where I didn't even think transparency was necessarily being implicated. But I do look at this bill and its companion bill as...coming up here, as very, simply put, transparency-related bills, to say the least. And I was surprised that the first couple iterations of this thought went to the Executive Board rather than this committee. But, no, I hadn't really heard of any argument against them other than, well, it would affect our bipartisanship or our nonpartisanship, if you will. And...no. [LB1065]

SENATOR MURANTE: Has anyone given you an explanation as to how that would play...how does it make this Legislature partisan to...I haven't even heard an...other than to say it would, I haven't heard an explanation as to how it would. [LB1065]

SENATOR LAUTENBAUGH: Well, I think the thought process is that if your vote is public and you voted someone for a different party to be a chairman, then your party would come down on you. Well, the parties come down on people from time to time for their votes and it doesn't really seem to matter that much. I mean, there was something this year where one of the parties had passed a resolution saying, you will do this. I didn't think we ever took that to a vote. The litmus test for this, litmus test for that. I don't...oh, it was the... [LB1065]

SENATOR MURANTE: Winner take all? [LB1065]

SENATOR LAUTENBAUGH: Winner take all was what it was, yeah. I think it's funny because usually that's how people find out about those resolutions that the parties pass, is when someone whips them out on the floor and says, aha, look what your party did two years ago because other than that, nobody ever hears about them, I don't think. But I suppose that's the argument, that it would give the parties something to grouse at its elected officials about and say, you voted for someone from another party to be a chair. We did, actually. I usually joke when I bring up some of these bills that some people just hate that I, you know, work alone without a lot of supporters behind me. We did contact some people who are traditionally here and going on about the virtues of transparency and saying, you know, we hope you'll come and testify in favor of my bill. And one guy

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said, oh, I know what you're up to and I'm not going to do it. Well, of course, you know what I'm up to. I told you what the bill does. I mean, you know, there's no...I'm transparent, too, on this one. This is what the bill does, so I can't explain it any more. [LB1065]

SENATOR AVERY: But you admitted that we've had attempts by the parties to influence votes that we take on leadership positions, calling on Republicans to only vote for Republican candidates for committee chairs. And you see that as an appropriate activity in how we organize or internally organize the body? [LB1065]

SENATOR LAUTENBAUGH: I don't remember...and I'm just being honest here. I can remember, after the fact, people being criticized for obviously not only voting for members of a party or leadership positions because of the way the votes came out. I mean, just doing the math. But I don't know that there were any resolutions passed or any preelection attempts to hold people's feet to the fire or say...I just, I don't recall because, again, it's not the kind of thing that really moves people, it seems. Again, the resolution on winner take all seemed to only come to prominence when it was divulged on the floor by the other party members because it's, I mean, we don't live and die by the resolutions near as I can tell, but, or even know about them until somebody else exposes them, I guess. But...so no, I don't recall if it was done on the front end. [LB1065]

SENATOR AVERY: I don't either. [LB1065]

SENATOR LAUTENBAUGH: But I remember criticism on the back end, if you will. [LB1065]

SENATOR AVERY: Senator Bloomfield. [LB1065]

SENATOR BLOOMFIELD: Thank you. Do you not think this will create some animosity over and above what we see now when you know that the guy you thought was supporting you voted the other way? [LB1065]

SENATOR LAUTENBAUGH: Well... [LB1065]

SENATOR BLOOMFIELD: I realize we deal with that every day on bills. But I'm a little concerned that it might do something at the beginning of the session that would rock the session. [LB1065]

SENATOR LAUTENBAUGH: I think what it'll do at the beginning of the session is have people be straight with each other because you aren't going to be able to tell your friend, if you will... [LB1065]

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SENATOR BLOOMFIELD: Three people that you're going to vote for them. [LB1065]

SENATOR LAUTENBAUGH: ...don't worry, I'm with you. People will have a more realistic...I can remember some people who were devastated by the results because they'd been led to believe they had support that they didn't have. And that stuck with people and led to anger for a protracted period. You know, it's kind of...we're all supposed to have reasonably thick hides by the time we get here. This is not a fun process and whoever said, this ain't bean bag, wasn't kidding. So, you know, I think if this were to be the law, if you will, then, again, there would be a lot fewer people surprised by vote outcomes or disappointed or there would be a lot less deception, certainly. [LB1065]

SENATOR AVERY: Would this actually apply to the Legislature? [LB1065]

SENATOR LAUTENBAUGH: I was backing down from that, too, as far as the Open Meetings Act and whatnot. [LB1065]

SENATOR AVERY: Uh-huh. [LB1065]

SENATOR LAUTENBAUGH: We did several different versions of this bill because we...and in my own mind, I'm tracking through the ones that went to the Executive Board and the ones that went through here and doing the same discussion of why I'm doing all these that I did in each opening. But the goal of all of them, whether as they're introduced or as they would ultimately be amended, would be to have leadership votes, regardless of the political subdivision, whether we're talking Legislature or the board of supervisors in Thedford, which I don't know if that's the county seat, so...or where Thedford is, particularly, but. [LB1065]

SENATOR AVERY: But we write our own rules for how we run our institution. [LB1065]

SENATOR LAUTENBAUGH: We write our own rules and there was...someone raised an issue at the Executive Board hearing where I think there's a provision there that says those things which ought to be secret will be secret. Well, if we have a law directly on point to the contrary, I don't know which controls, necessarily. Also, one of the iterations of this is a constitutional amendment which, of course, would specifically control and say that this is not a secret ballot thing. And that, too, would address it. [LB1065]

SENATOR AVERY: Do you know, and I'm trying to recall whether I know, that the founding fathers of the Unicameral intended that leadership positions would be selected by secret ballot? I think I read that in one of the histories of the Unicameral. It might have been Charlyne Berens' book, One House, which is widely considered the number one authority on the Unicameral. [LB1065]

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SENATOR LAUTENBAUGH: I don't know. [LB1065]

SENATOR AVERY: Would it matter to you if that was the original intent? [LB1065]

SENATOR LAUTENBAUGH: No, in a word. [LB1065]

SENATOR AVERY: I'm not surprised to hear that. Any more questions? Thank you. We will accept proponent testimony on LB1065. Opponent testimony? Neutral testimony? [LB1065]

ALAN PETERSON: Good afternoon, Chairman Avery, members of the Government Committee. I am testifying on my own, only on behalf of myself, on an informational basis. I saw this bill. I understand it's a transparency bill. And I thought, well, I wonder, does the open meetings law apply, in the first place, to the Nebraska Legislature. And I did only a few minutes' research but I know you have a very able legal assistant who might dig into it. There is a Attorney General Opinion of Nebraska in, I think, about 1985 which says that because the Legislature's powers and rules are established in the constitution, including matters of openness, that the open meetings law does not apply. If you think about it, if it did apply, then you probably wouldn't be able to have the closed Executive Sessions where you take your votes. And you would have different notice requirements, although I think your notice requirements would pass under any set of rules. So that...I understand Senator Lautenbaugh's purposes to be as he says, to promote openness, transparency, let people know how people voted. The law, as it stands now, is that the constitution, according to the Attorney General's Opinion, governs all this and the open meetings law doesn't apply. Open meetings law applies to all public bodies. And then there's a very long-winded definition. And it refers to advisory groups of political subdivisions or other parts of the executive branch or...and then there's some catchall language. If you read the catchall language literally, it sounded like it would cover the Legislature. So the issue apparently arose in the 1980s and I think that Opinion bears a number of 180 or 120. I was trying to find it on my smart phone and it wasn't smart enough to try to be more helpful. But I could take another look. I just think if Senator Lautenbaugh's proposal has merit, it may be that it can't be by this method of simply saying that the exception to the open meetings law for these votes for leaders, that exception is part of the open meetings law. And if the open meetings law doesn't apply in the first place, it's probably not a very good route to go. So that's neutral. And you know very well, I'm all in favor of transparency. But I'm also very much in favor of this Legislature setting the rules that it needs to have in order to be an effective body. And this bill, I guess, raises that issue of where you balance those out. So that's just for whatever it's worth. [LB1065]

SENATOR AVERY: So we would...if I understand you, then Executive Sessions of committees would have to be open or would not apply...would be exempted from this law. [LB1065]

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ALAN PETERSON: Yeah. The votes portion. You can certainly go into Executive Session. But it's very clear that votes would have to be taken and you'd have to come back out and vote. I know that's not the practice. So there would be quite a few changes necessitated if the Attorney General had ruled the other way. [LB1065]

SENATOR AVERY: And that would include, say, the Committee on Committees, which is, I think private votes? [LB1065]

ALAN PETERSON: Yes. All committees would be governed. If you start with the open meetings law, it's got a lot of requirements. And the Legislature does not, right now, follow those requirements. And that's probably because 30 years ago we got an Attorney General's Opinion saying it doesn't apply. I don't know that there's a Supreme Court case on it. [LB1065]

SENATOR AVERY: But we are, compared to other state legislatures, a very open Legislature... [LB1065]

ALAN PETERSON: Uh-huh. [LB1065]

SENATOR AVERY: ...and we follow policies that most states don't follow, such as every bill getting a public hearing... [LB1065]

ALAN PETERSON: Right. [LB1065]

SENATOR AVERY: ...allowing the press in our Executive Sessions, allowing the press on the floor, allowing the press to have access to us while we are in debate. And the only time they're excluded is when we are at house is under call or we're on final reading. No other Legislatures do that. [LB1065]

ALAN PETERSON: Yeah. The Nebraska Legislature has one exception in the public records law for your internal correspondence and things of that kind, I think, phone call records. Those are made an exception to public records. Otherwise, public records law applies to the Legislature. But it looks like the open meetings law may not, according to that Opinion. [LB1065]

SENATOR AVERY: I think we have a question. Senator Murante. [LB1065]

SENATOR MURANTE: Thanks for coming down. [LB1065]

ALAN PETERSON: Sure. [LB1065]

SENATOR MURANTE: I'm wondering...what I didn't catch was your...broadly speaking,

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if we're going to just narrow this down to a discussion about the Legislature and the secret ballot, do you think as a matter of public policy, it's appropriate for us to have secret ballots and to conceal who we vote for from our constituents? [LB1065]

ALAN PETERSON: In other words, are the merits of Senator Lautenbaugh's proposal... [LB1065]

SENATOR MURANTE: Right. [LB1065]

ALAN PETERSON: ...should that be open or not? [LB1065]

SENATOR MURANTE: Uh-huh. [LB1065]

ALAN PETERSON: I don't have an answer for you on that. I think it's a balance between the collegiality and collaborativeness that's necessary to make laws, all those issues, the political issues that Senator Avery mentioned, versus how about a little bit more transparency in how you elect your committee chairs. If I'm just "John Q. Citizen" sitting here and I'm not a very political...party political guy, I'd probably say, open it up. But you folks know what scars and injuries might be done to your process by that much better than I do. And I've seen a little bit just being an observer. I've seen hard feelings. That's the balance and that's the question. And I'm not qualified to answer it. [LB1065]

SENATOR MURANTE: And I'm also interested in getting your take on...it was brought up...the Committee on Committees was brought up. And in many cases, those decisions who we elect to the Committee on Committees and the Executive Board... [LB1065]

ALAN PETERSON: Right. [LB1065]

SENATOR MURANTE: ...they're made not just by secret ballot but at secret meetings. And in some cases, before when I cast my vote for the members from the second district caucus of Committee on Committees' members and Exec Board, I wasn't even sworn in yet. I wasn't even a member of the Legislature but was casting a ballot in a...again, there was no notice given. There was no press there. Do you think that is an appropriate methodology of electing leadership or is that something that we should maybe take a look at going forward? That is...I mean, we're electing leadership there. You're going to the Executive Board of the Nebraska State Legislature and it's done completely in secret. Do you see a problem with that? [LB1065]

ALAN PETERSON: I'm only here personally... [LB1065]

SENATOR MURANTE: Uh-huh. [LB1065]

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ALAN PETERSON: ...Senator. And, you know, what my bias is toward openness as a person working in the field forever. But the open meetings law, as you notice in this bill, does contain that exception as a matter of policy setting for the whole state for all the cities and towns and counties and so forth. It says, when you're electing...when a council gets involved in electing people to come in, it can do that without disclosing votes. So I guess I am saying, the Legislature set aside the question of whether open meetings applies to the Legislature itself. The Legislature has set that balance in favor of a little bit of secrecy. And, you know, I can't second-guess that. [LB1065]

SENATOR MURANTE: Can't second-guess the Legislature? [LB1065]

ALAN PETERSON: My bias is toward openness. I understand there's a strong argument, occasionally, that you don't get at each other's throats at the start of a session. Makes sense. [LB1065]

SENATOR MURANTE: Okay, thank you. [LB1065]

ALAN PETERSON: Yes. [LB1065]

SENATOR AVERY: Anybody else? Thank you, Mr. Peterson. [LB1065]

ALAN PETERSON: You're welcome. [LB1065]

SENATOR AVERY: Any other neutral testimony? Senator Lautenbaugh. [LB1065]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And Mr. Peterson may very well be correct. The Attorney General's Opinion isn't law, it's an Opinion. But it might be correct. If this needed to be changed into a constitutional amendment by amendment to accomplish the goal, then so be it. But he may be correct, there is an argument. [LB1065]

SENATOR AVERY: I wasn't aware of that. I don't know if any of us were. Is that your close? [LB1065]

SENATOR LAUTENBAUGH: Yes, sir. [LB1065]

SENATOR AVERY: Any other questions of Senator Lautenbaugh? All right, that ends the hearing on LB1065. And we'll...since we take care of things sequentially today, we'll go to LB1066. Senator Lautenbaugh. [LB1065]

SENATOR LAUTENBAUGH: This is the same version of what I...the discussion we just had but it only applies to county boards. But it does the same thing. [LB1066]

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SENATOR AVERY: Any questions for Senator Lautenbaugh? Senator Wallman.
[LB1066]

SENATOR WALLMAN: Yeah, thank you, Chairman Avery. Do you think...I know, my county board have had their share of articles in the paper. Do you think it's trouble with county boards across the state? [LB1066]

SENATOR LAUTENBAUGH: I'm sorry. Do I think what about county boards? [LB1066]

SENATOR WALLMAN: Yeah, they have trouble with this here, you think, the roll-call votes? [LB1066]

SENATOR LAUTENBAUGH: Oh, I don't know if I'm qualified to speak to them across the state, really. [LB1066]

SENATOR WALLMAN: Okay. [LB1066]

SENATOR LAUTENBAUGH: That's like, you know, my...in my opening regarding school districts, I'm familiar with one. And I know about one county board, really, too. Or really, also, I should say. [LB1066]

SENATOR AVERY: Any other questions? I don't see any. [LB1066]

SENATOR BLOOMFIELD: Dave Bloomfield. [LB1066]

SENATOR AVERY: Oh, I'm sorry, Dave. [LB1066]

SENATOR BLOOMFIELD: Thank you. I think I found my own answer. It says in the opening statement that certain counties and I assume it doesn't apply to the ones that have townships. Am I correct there? [LB1066]

SENATOR AVERY: So it would not cover county supervisors. [LB1066]

SENATOR LAUTENBAUGH: Right. Yes. [LB1066]

SENATOR AVERY: But is it your intent that all counties would be covered by this?
[LB1066]

SENATOR LAUTENBAUGH: Actually, if this ever passed...if this advanced, it would be my intent to make it into the thing we just discussed. So, yeah. I'm not married to the language of this bill, to say the least. [LB1066]

SENATOR AVERY: Now, counties that have supervisors are counties with townships.

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It's a nice trivia question. [LB1066]

SENATOR LAUTENBAUGH: Uh-huh. See, I actually knew that one as opposed to the one you asked about whether or not it was the intent of the Legislature founders. [LB1066]

SENATOR AVERY: The founders. I think if you go back and look at the history, it was the intent, for the reasons that we've discussed and that is keeping partisanship out as much as possible because that was George Norris'...a big, big part of his campaign for the Legislature. I don't see any more questions. [LB1066]

SENATOR LAUTENBAUGH: Didn't he use paid circulators? [LB1066]

SENATOR AVERY: Don't think so. [LB1066]

SENATOR LAUTENBAUGH: No, he did. [LB1066]

SENATOR AVERY: He was on the payroll of the U.S. Senate when he was traveling the country. But he took Professor Senning from the political science department at UNL with him most of the time. And that may not be why it passed, but it probably didn't hurt. And I don't believe he was paid. Okay. Thank you. We will hear proponent testimony on LB1066. We will hear any opponent testimony to LB1066. Now we'll hear from Mr. Peterson. No? [LB1066]

ALAN PETERSON: He's on his own. [LB1066]

SENATOR AVERY: All right. Any neutral testimony on LB1066? Do you wish to close, Senator? [LB1066]

SENATOR LAUTENBAUGH: I'll waive. [LB1066]

SENATOR AVERY: You'll waive. Thank you. That ends the hearing on LB1066 and that ends the hearings for today. Thank you all for coming. [LB1066]