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Government, Military and Veterans Affairs Committee
February 11, 2015

[LB282 LB283 LB365 LB403]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 11, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB282, LB283, LB365, and LB403. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Mike Groene; Matt Hansen; and Beau McCoy. Senators absent: Joni Craighead; Tyson Larson.

SENATOR MURANTE: Welcome to the Government, Military and Veterans Affairs Committee. My name is John Murante, I'm the Chair of the Government Committee and state senator for District 49, which includes Gretna, Chalco, and northwest Sarpy County. We are here today for public hearings on four bills. The bills will be taken up in the order on which they appear on the agenda which is located outside of the two doors. If you are here to testify on any of the bills on the agenda, we ask that you fill out one of these green sheets. These green sheets are located on the two tables on the opposite sides of the room. If you are here and support a bill but do not wish to testify, we have a sign-in sheet as well. I would encourage you to sign in, indicate your support or opposition for any of the bills that we are discussing today. And your support or opposition to those bills will be given the same amount of weight as if you had come and testified before the committee. When you come and testify, please begin by stating and spelling your name for the record. It's very important for our transcribers' office. The order in which we will proceed is that the introducer of a bill will give his opening statement. We'll then proceed to the proponents, followed by opposition testimony. We'll then finish with neutral testimony and the introducer will have an opportunity to close. We ask that you listen very carefully to the testimony that has preceded yours and try not to be repetitive. Again, if someone has already articulated a point that you would like to convey, we ask that you sign in and your opinion will be recorded for the record. We do use the light system here in the Government, Military and Veterans Affairs Committee. We will have four minutes for testimony. When the yellow light comes on, we ask that you begin wrapping up your testimony, as you have one minute remaining. And when the red light comes on we ask that you end your testimony, at which time we will open up the committee for whatever questions they may have. At this time, I'd ask that you turn off any cell phones or electronic devices that make any noise. We are a committee which does permit the use of electronic devices, which are used for taking notes, pulling up bills, doing research, which is what some of the members of the committee will be doing as you testify. If you have a prepared statement or any exhibit, anything to distribute to the members of the committee, we ask that you provide 12 copies. Give them to the page, who will distribute it to the committee. If you do not have 12 copies, that's fine. Just give it to the page and we'll make copies for you. With that, we'll begin the introductions of the members of the committee. To my immediate left is State Senator Matt Hansen from Lincoln, Nebraska. To his left is State Senator Beau McCoy of Omaha. To his left, State Senator Joni Craighead, who is out for the day, followed by Sherry Shaffer, the committee clerk. To my immediate right is Charles Isom, the

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committee's research analyst, followed by State Senator Tommy Garrett of Bellevue, Nebraska, who is the Vice Chairperson of the Government, Military and Veterans Affairs Committee. Next is Senator Dave Bloomfield from Hoskins, Nebraska, followed by Senator Tyson Larson from O'Neill, and State Senator Mike Groene from North Platte, Nebraska. I do anticipate Senator Groene will be here at some point today. And with that, I think we've dispensed with the formalities and we'll begin with Senator Roy Baker day here in the Government, Military and Veterans Affairs Committee. Senator Baker, you are welcome and recognized to open on LB282. [LB282]

SENATOR BAKER: (Exhibits 1, 2) Thank you, Chairman Murante, members of the committee. LB282 would amend Section 84-1410, allowing two things: (1)(d) allowing a public body to enter a closed session to evaluate the job performance of a nonelected official if such person has not requested a public meeting, removing the clause "when necessary to prevent needless injury to the reputation of a person." And the second part, which quite frankly is the more important part to me, Section (1)(f) would be added to the specific reasons closed sessions may be held: Discussion of applicants other than finalists who have applied for employment by the public body. For purposes of this subdivision, finalist means any applicant (i) who reaches a final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants. I'm going to refer substantially to the action taken in 2007 with regards to the Public Records Act to the point where the language defining "finalist," that was actually the compromise agreement in 2007. So I've lifted the language exactly including a probable grammatical error when it says, in part 2, "less than four" it should have probably said "fewer than four." But my point is, I took that language directly from the Public Records Act. In 2007, the Legislature did amend the Public Records Act in a manner that is consistent with the act's stated purpose of open government, while protecting the public interest and avoiding injury to individuals. And again, the language in 84-712.05 of the Public Record Act, it defined what a finalist is, just the same as is proposed in LB282. When the 2007 Legislature amended the Public Records Act to protect the confidentiality of nonfinalist candidates, it effectively made the determination that protecting such confidentiality is necessary to protect the public interest and to avoid injury to the nonfinalists. My contention with proposed LB282 is that the same determination should apply with equal force to the confidentiality of nonfinalists during a meeting of a governing board. I handed out a sheet that I will at least hit some highlights on to enter it into the public record. At the Government Committee meeting held on LB389 on February 1, 2007, nearly all those involved in the hearing recognized the fact that maintaining the confidentiality of nonfinalist applicants is necessary to protect the public interest and to avoid causing injury to nonfinalists. That was spurred primarily because of the interests of the University of Nebraska, although all governmental subdivisions operate under the same open meetings law. And you know, while there may be a new president of the university selected every 10 or 20 years, there are more than

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20 school superintendents hired each and every year. Richard Wood, general counsel for the University of Nebraska: I have been told that many people will not apply or agree to go through the process if early in the hiring stage their name becomes public because of the adverse effect it will have on their current position of employment. B.J. Reed, executive associate to the chancellor at UNO said: I will tell you my experience with searches...is as much the issue of how public those names are is critical to which candidates are willing to go forward. Lynn Rex, representing the League of Nebraska Municipalities, stated that it doesn't just apply to the university, it applies to municipalities as well. There was an individual city manager in western Nebraska, city of the first class, highly regarded, probably one of our best administrators in the state. He applied for a position when the city of Kearney...a position opened up several years ago. And what happened is, he lost his job as a result of applying. When it got known back home that he put his name in, there were members of the council and citizens came forward and said, Harry obviously doesn't have a commitment to our city anymore, and you need to consider yourself short term. And his contract was up the next year and that was it. I'm going to quote a little bit more extensively from the February 1, 2007, testimony by Allen Beerman, because he states the case as well or better than I can and that applies to this as well. Allen Beerman, representing the Nebraska Press Association: We would like to go on record being in favor of LB389 with Aguilar amendment; Aguilar amendment being that part that defined who was a finalist. We think it's very important. We think that the process would work very well if the public, at least as a finalist, has the opportunity to know who they are, to ask questions, to observe the candidates, to see them walking around the campus and interact with people, and they are known that they are finalists. And any of those three or four people could become the university president. To the university's credit, in the last selection when President Milliken was selected I participated in those activities, just as an observer. And I watched citizens come forward that had the opportunity to ask questions of the candidate, to listen to the answers, to be part of it, to meet and greet them in a social setting, and to observe how they reacted to interaction with the public. It was very healthy. It was very encouraging to me. So I would support this bill as amended. I think it could be made to work. As a media, we are not interested in the other 30, 40, or 500 applicants because the public is not. They want to know who are the real finalists, who has a possibility of becoming the leader of this organization. That's what the public is interested in. Then it becomes our obligation to tell the public who they are. It's that simple. It's also healthy for good government. And Senator Avery, on the floor debate on March 14, 2007, expanding on the harm caused when the confidentiality of nonfinalists is not maintained: It's a longstanding problem that the university has had in recruiting people for administrative positions. What they need is the opportunity to recruit from the large pool of applicants without having those people express an initial interest in a position having their names made public. The reason for this is that many of the best candidates for these positions are reluctant to put their names forward or to express an interest in an open position if they know that interest is going to be made public. It may be difficult for you to continue to operate effectively in your home situation if people now know, well, that the person expressed interest in

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employment at the University of Nebraska. We would like to be able to give the university the opportunity to have a broad pool, not a restricted pool, one that would give them access to the best candidates possible. I have been a search consultant for more than 15 years. I was involved with Raine Associates out of Cedar Rapids, Iowa, as an associate, did searches all across the country, not only Iowa and Nebraska but Texas, Oklahoma, Arizona, Florida, Maryland. And for districts of sizes anywhere from 400 enrollment to over 100,000 enrollment. So I was intimately involved with what it takes to recruit candidates for those kinds of positions. By the way, I talked to Frank Daley and he assured me I had no conflict of interest. I have nothing to gain personally whether or not this bill passes. And we did file one just because, but he said he did not see any conflict of interest. I want to describe briefly a typical search process, a superintendent search process. In some instances, the governing board, a school board will conduct the search without assistance. More commonly, search consultants are employed. When search consultants are selected, such as my company...in 2010, I formed a partnership with another individual to have our own consulting service to serve Nebraska so they could...Nebraska schools so they could have the same quality of search assistance as the large urban areas across the country receive. So when we go in, it goes something like this. We establish time lines and the compensation package parameters. We individually interview each board member to try to determine what it is the people see as issues, what it is they're looking for. We ask the board what stakeholders have what involved and usually they will say they like staff to be consulted. Community leaders usually or any other groups a board wants to have input, with the understanding the final decision lies with the board and the board alone. So then as consultants we develop a profile of desired strengths for the candidates. We advertise the vacancy and recruit candidates. As applications come in, we process those, we conduct typically a preinterview with almost everybody, unless a candidate is obviously not certified for the job for which they're applying. We'll do Dogpile or some other search to see what's been in the papers, see what kind of controversies that individuals may be involved in. And oftentimes in recruiting, you know, the best candidates are not necessarily those looking for a job. They may be very happy where they are, but we've identified there's someone who is probably in a position where they could advance, move up within their career. But you know, those people in particular don't want their names out there unless the board's going to be serious about them. You know, it's not speculative that you lose good candidates unless their confidentiality is maintained. We've had...any number of times, I've had told to me directly, I don't want my name in there unless the board is going to be serious about me as a candidate. So we do our best to share that that's not the case. Sometimes we'll have someone say, I don't want my name out there unless I'm in the top two. And we say, sorry, we can't do that. Once you become a finalist, your cover is blown and that information will be made public. So my...when my company, Baker and Rastovski School Services, LLC, does it, we narrow it down first to six to eight semifinalists. And we go into a board--you used to always do that in closed session--say, all right, here are some semifinalists for you. It's your job to narrow them down to the finalists. All the people that applied are here. We give them a list of names. And if you want to see their application materials, they're there in a box. And the board

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members have a right to go look at any people that we bypassed in our recommendation of six to eight finalists. Then we do...before that point...I'm not sure I said we do an extensive background investigation. You know that's not only Dogpile or other Internet searches, it's also a lot of phone calls, not only to people they list as references, but we also want to find the person's worst critic and talk to them as well. So then we prepare confidential reports that we provide to the board on the semifinalists. So at that point after the board has read through our confidential reports and studied the application materials, then we lead them through a consensus process, a matrix that enables them to arrive at the finalists that they want. Now finalists can be three to five; four is the most typical number. But sometimes it can be three. On rare occasions it could be more than four, it could be five. And at that point, you know, once the board has narrowed it down say, these are the four people we want to be brought in for a personal interview. We notify the press, notify the public, and at the interviews we've been conducting lately, we've been conducting those interviews as open sessions. I would tell you, it wasn't always that way. I had a 37-year career as a superintendent, so I did advance three times and had probably more than three interviews. I probably looked at a couple of other places too. And even interviews, back in the old days...the last time I interviewed was the mid-'90s when I was hired at Norris. Those things used to be totally in closed session. We're not doing that anymore. This bill doesn't ask for that. What this bill asks for is that the identity of the nonfinalist candidates be kept confidential and that, in order to do so, that the board would need to do that in a closed session, that the use of the hiring process which the field of applicants is narrowed down to finalists. So my request is that the committee consider LB282, which would synchronize the provisions of the Open Meetings Act with the Public Records Act. Thank you and I would respond to any questions. [LB282]

SENATOR MURANTE: Thank you, Senator Baker. Are there any questions? Seeing none, thank you for coming down. And we will proceed to proponent testimony on LB282. Proponents. Welcome to the Government Committee. [LB282]

KELLEY BAKER: Thank you, sir. It's a pleasure to be here. My name is Kelley Baker, I'm an attorney, I am completing my 40th year in the practice of school law. So I have a great deal of affection and experience for school boards. [LB282]

SENATOR MURANTE: Would you spell your name for us, please? [LB282]

KELLEY BAKER: Oh, I'm sorry. K-e-l-l-e-y, Baker, B-a-k-e-r. With regard to evaluations, what I want as an attorney representing boards of education, is good, clear, direct communication. All other evaluations take place in private, but those of the superintendent may be subject to being open. What I want for members to be able to do is to look the superintendent in the eye and tell them when...tell him or her when things are going well and when things are not going well. If that's to be done in public, it inhibits the board members from letting their hair down, speaking

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clearly, speaking thoroughly, and then having a good conversation with the superintendent about the board members' feelings. The way the statute is currently set up, you may go into executive session to avoid needless injury to the reputation of an individual. So if you're talking about how well things are going in various areas, that's wonderful if that's an open session. But now, oh, we've come to a point where I think it would be best for us to go into executive session. That's very awkward. It's very ineffective, but that's the sense of the current law. You may only go into executive session to avoid needless injury to the reputation of the superintendent. And I'm not sure exactly what that means, but I'm fearful that if you're talking about the good things and you go into executive session, your patrons hear you and they say, oh, he's in bad trouble. And we know that the patrons can imagine things that are far from the truth. And it may be that a board member thinks that something is a little sensitive and he or she wants to go into executive session, but it's not the truth. And yet people can imagine that the superintendent is in bad trouble. And one thing that I've noticed lately and that gives me a great deal of heartburn is the development of the Internet blogs and Facebooks. I'm sure you know of instances when senators have experienced disparagement, extraordinary, untruthful criticisms. And that's more and more a fact of school life. So I think that if boards can go and evaluate the superintendent in executive session, speak freely and keep it in executive session, we're going to have better evaluations, better communication, and better results than this awkward, in the open for happy things and then going into executive session for goodness knows what. So I strongly believe that LB282 would address this very well. Patrons who are unhappy with the superintendent can speak to the superintendent. They can and do speak to board members. They may file written criticism and they may file a grievance if they wish. They have all those opportunities. They may speak at board members. And I am here with regard to applications to affirm the truth--and I've had two calls about just this issue this week--to affirm the truth that it is...it inhibits administrators from applying for other jobs if their names are disclosed before they get to, say, the final four or those who are seriously under consideration. Thank you for your time. [LB282]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions for the testifier? Seeing none, thank you very much for coming down today. [LB282]

KELLEY BAKER: Thank you, sir. [LB282]

SENATOR MURANTE: Any additional proponents for LB282? Mr. Spatz, welcome to the Government, Military and Veterans Affairs Committee. [LB282]

JOHN SPATZ: Thank you very much. Thank you for having me. My name is John Spatz, it is spelled S-p-a-t-z, believe it or not, but it is pronounced Spots (phonetically,) I'm the executive director for the Nebraska Association of School Boards and here to support this bill and really appreciate your time in entertaining this concept. In 2003, I was hired as the legal counsel for the

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School Board Association. And at the time, I noticed probably two-thirds of the calls I would get from school board members and superintendents from across the state had something to do with open meetings. And in 95 percent of the cases, the school board or the superintendent was trying to identify, how do we do this correctly and had what I would say are legitimate questions about the interpretation. So it was clear to me at the time that we needed to do more to get more information out about the open meetings law. And over time, we developed three different books that we put out there. We've done numerous workshops around the state and we've opened them up to all political subdivisions. So we've tried to flood the market with information. And following up on something that Senator Baker said, I think things have gotten a lot better in schools primarily, over the years, with transparency. And transparency is very important to us because we oftentimes say, if you're doing things well you want to be transparent. You need to do things appropriately and you shouldn't be afraid of that transparency. With this bill before us today, the issue with the hiring process, there's a simple issue with two parts of the law. We have the records law that says you only have to put out the top four finalists and the open meetings law that would say to narrow that list down, you should do that in open session. So really today, I'm very interested in clarity from this committee and from this Legislature because I would rather have direction provided by you as a Legislature than by a court at some point. And even if this bill does not pass, if this doesn't move forward, we'd be very interested in a conversation with this committee, with those who may testify in opposition today about that hiring process because really we're not trying to hide anything. We're not trying to bamboozle anyone. We want a process that makes sense for the public for transparency purposes and for hiring the best candidate. And there's ways of doing that. One of the concerns that I've heard with the language today was that there would be a concern that interviewing candidates before the final four would be...could be done in closed session. I don't see that in the language today, but if you thought that was a legitimate concern in the language today, we could certainly...there would be something you could do to address that because there's no interest on our part to have interviews done in closed session. It really is that narrowing the field down from ten candidates to four or however many candidates you have in, and in providing some clarity between the records and the Open Meetings Act. That's really what we're looking for. And like I said, we'd be very interested in having a conversation with anyone who's in opposition of this bill, anyone on this committee or anyone at the Legislature. And following up on what Kelley Baker said regarding the evaluation process, it is to prevent needless injury to the reputation of an individual. And then you may go into closed session during an evaluation. The question is, what is needless injury? And Kelley brought up a good point. And, in fact, the courts at one point said there could be more harm in "sinister silence" than there is in doing something in open session. And that's the court language. And what they meant by that was, when you go into closed session because...to protect somebody's reputation, the people in the crowd may presume something far worse than what you're actually going into closed session for. And also, there's that range, where is a needless injury to a reputation in that evaluation process? How serious does it need to be? Everyone in this room probably would have a different opinion about that. So we, at the School Board

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Association, appreciate this discussion. We hope this committee has a discussion about this hiring process. We would love to have a discussion with those who are in opposition. And I'd be happy to answer any questions today. [LB282]

SENATOR MURANTE: Thank you very much for your testimony, Mr. Spatz. Are there any questions? Seeing none, thank you very much for coming down. [LB282]

JOHN SPATZ: Thanks for having me. I appreciate it. Yep. [LB282]

SENATOR MURANTE: We continue on with proponent testimony to LB282. Welcome to the Government Committee. [LB282]

JON HABBEN: Good afternoon, Chair Murante and members of the committee. My name is Jon, J-o-n, Habben, H-a-b-b-e-n, and I'm the executive director of the Nebraska Rural Community Schools Association. All you've heard, we easily echo. But I want to emphasize a couple of points. We started into the superintendent search process for a variety of reasons. But there is a core piece to that process that I think you would hear from every search firm. You want to do an excellent job, not just a good job, but you want to do an excellent job of doing all of the background checks on all of the candidates. And to be able to have that frank discussion on the way to those final four, if that's the number that boards typically use. In order to do that, that frank discussion begins to be chipped away at the edges when you have to feel you have to do that in open session. You do have reputations to consider; you do have people's futures to consider; you do have to pay attention to board members and what they say and what they don't say. And, yes, as Kelley mentioned, you do have to pay attention to where everything goes once it's said. That is a critical piece and we would strongly appreciate the opportunity to be able to do that clearly backed up by statute. I can't emphasize how important that is. Now, as far as the evaluative piece of superintendents, I can tell you from my years in the school business before doing what I do now, 17 of those were as a superintendent in different schools. And I had a chance to look at and think about how those board members approached the topic of evaluating their superintendent and how the community reacted by certain pieces that might have floated beyond, shall we say. And it's never very pretty. And some of the things, quite honestly, that become not very pretty are relatively miniscule but they provide ammunition. You know, it's a little like arming people with a small bullet and finding out they figured out a way how to grow that into .30-06. It's the kind of thing that more professionally done--and I'm not speaking to the transparency issue--more professionally done in a closed session environment where you can really get down to the nuts and bolts and you feel that you can candidly speak to the issues at hand with other board members and with the superintendent. And we believe that this bill attempts to get to both of those issues I've discussed. We certainly appreciate its offer and we hope you'll consider it. Also, and I would echo what John Spatz says, we need clarity. We really

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need clarity. And we'll appreciate the opportunity to work with anybody and certainly will appreciate the conclusion that will get us to clarity. Thank you very much. [LB282]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions for the testifier? Seeing none, thank you very much for coming down today. We are still on proponent testimony for LB282. Are there any additional proponents wishing to speak? Are there any opponents wishing to speak on LB282? How many opponents do we have on LB282? A couple? So what I'd ask you to do is...we've got a couple of chairs here in the front row. If you're going to testify in opposition, please come closer to the front and just be prepared to hop up when this testifier is done. And welcome to the Government Committee. [LB282]

MIKE REILLY: Thank you. Chairman Murante, committee members, I am Mike, M-i-k-e Reilly, R-e-i-l-l-y. I'm the executive editor of the Omaha World-Herald at 1314 Douglas Street in Omaha. I also am president of Media of Nebraska, which is an organization that represents all the state's newspapers and broadcast organizations in important matters of common interest. And LB282 is such an important matter. It is important to us because it's a step backward, a step away from the very law that it is intending to amend. The open meetings law intent is very clearly stated in 84-1408. It is the policy of this state to conduct the public's business in public. As a journalist, I've reported on government agencies for 30 years, mostly in Nebraska. And I have heard the arguments officials like to make in favor of secrecy when government boards are trying to hire a school superintendent or someone to run another public agency. The argument is that disclosure will scare away some of the best candidates. And we've heard that argument already this afternoon. Really? How great are these candidates who are afraid of the public? Who wants a superintendent afraid to face public scrutiny? These are very public jobs. Dealing with the public, dealing with scrutiny from the public ought to be trait one on the list of characteristics for these jobs. And what board wants to hire a superintendent who is afraid that his current or her current employer will find it offensive that other potential employers are interested in him or her? And someone who is fearful of his or her current employer doesn't sound like a particularly strong candidate for leadership, in my opinion. Besides, this bill does not change or really fix that supposed, that alleged problem. I mean, who does not apply for a job and expect or at least hope they're going to be a finalist? Now under the existing open meetings law, we just hired Hank Bounds as NU president. Under the existing open meetings law, we hired J.B. Milliken as NU's president. The Metropolitan Utilities District last year hired Scott Keep using the current open meetings law. The Omaha School District hired Mark Evans recently using the existing open meetings law. I'm not saying that some candidates don't apply for some jobs because of the scrutiny required under the open meetings law. But are we really arguing that all of these people that are running important public agencies that have been hired through the open meetings law are not well qualified leaders? The other change in this bill is also a step away from the open meetings law's intent. I know that it makes it more convenient for governing boards if they can deliberate secretly. Someone used the word "awkward" to have to do it in public. But this law is

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narrowly construed for a good reason. Democracy, as you all know as public officials, is not the most convenient way to conduct business. But the desire for convenience should not trump the vital role the public has in vetting candidates for important positions. The public has an important role to vet candidates. It's in statute. There is not statute, that I know of, that governs the important role of headhunters. Etched on the stone of this beautiful Capitol is the motto, "The salvation of the state is watchfulness in its citizen." So please don't make it harder for citizens to be watchful. Please reject LB282. Thank you for listening and I will be happy to answer questions if you think I can. [LB282]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down. [LB282]

MIKE REILLY: Thank you. [LB282]

SENATOR MURANTE: Additional opposition testimony to LB282? Welcome to the Government Committee. [LB282]

DAVID BUNDY: (Exhibit 3) Thank you. Chairman Murante, committee members, I'm Dave Bundy, B-u-n-d-y. I'm the editor of the Lincoln Journal Star and I'm a member of the board of Media of Nebraska, testifying in opposition to LB282. Each campaign season, our editorial board calendar fills up with endorsement interviews. We hear candidates talk about just about every topic under the sun. What we never hear from candidates though is, that they favor making government less accountable or less transparent. And we don't hear that because citizens don't want that. But that's precisely in our view what LB282 does, weakening our open meetings law most notably, and for us problematically, by allowing a school board to conduct much of a superintendent search behind closed doors. While I'm a newspaper editor, I'm also a taxpayer, I'm also a property owner, and most importantly I'm the parent of four kids in Lincoln Public Schools. I care about the quality of my local schools on a lot of levels and I know you do too. If you're going to shut me out of one of the most important functions my school board performs, a function that I've been granted a legal right to observe, there ought to be a good reason. The Attorney General's Office in its 2013 Opinion found that the two reasons cited by a school board, that secrecy will produce a stronger field of candidates and that it will protect the reputations of those candidates who aren't finalists, were without merit. But I can understand the motivation for the proponents of LB282. It is a lot easier to do your work without people watching. But our government, as Mike said, wasn't designed to make things easy. We willingly and knowingly traded some convenience and some efficiency in government for deliberation and for transparency. How else could one explain our three branches of government and our system of checks and balances? And if you were in a hurry to get things done, who would create the U.S. Congress? Deliberation and transparency are why I get to talk to you today. You all are smart

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people. You can guess what the media think of a bill like this. It's certainly not breaking news that an editor opposes weakening our open meetings law. But you've sacrificed some legislative speed to allow me a few minutes to be heard. So would LB282 help districts attract better candidates? Search firms must think so. But with our current process, have the state school districts suffered? Are our schools led by second-rate administrators? I don't think so. I think they're led by people who have passed a rigorous interview process, one that includes to the greatest extent possible, oversight by the people who actually foot the bill for the schools and elect the school boards, taxpayers, voters, and citizens. Those same people are the people that sent you here. You are those people. You have kids. You pay taxes. You're sitting in these seats because you care about your communities. Don't close the door on other citizens who care. Great communities and great school districts don't get built behind closed doors. They get built by elected officials confident enough in their work to do it under the scrutiny of an engaged community. Please reject LB282. Thank you. [LB282]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions for the testifier? Senator Bloomfield. [LB282]

DAVID BUNDY: Wouldn't you know I'd get the first question. [LB282]

SENATOR BLOOMFIELD: Thank you, Chair. Mr. Bundy, is there any number that you would deem appropriate or do you think we ought to just publicize everybody that applies for any job? [LB282]

DAVID BUNDY: As a member of the media, as somebody who is interested, I'd like to know everyone. Any narrowing of it is chipping away at the open meetings law, in my book. [LB282]

SENATOR BLOOMFIELD: Okay. Thank you. [LB282]

SENATOR MURANTE: Thank you, Senator Bloomfield. Are there any additional questions? Seeing none, thank you very much for coming down today. [LB282]

DAVID BUNDY: Thank you. [LB282]

SENATOR MURANTE: Additional opposition testimony to LB282. Welcome to the Government Committee. [LB282]

JACQUELYN HARMS: Good afternoon, everyone. Thank you. Thank you so much for letting me be here today. Good day, Chairman Murante and members of the Government, Military and

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Veterans Affairs Committee. I'm Jacquelyn, J-a-c-q-u-e-l-y-n, Harms, H-a-r-m-s, I live in North Platte, 2520 Cedarberry Road. Today I'm representing KNOP-TV, Gray Television--and that includes WOWT in Omaha, 10/11, KOLN/KGIN in Lincoln, KSNB/NBC Nebraska of Grand Island and Hastings--plus other electronic media Nebraska. I'm the news director at KNOP-TV. I'm a midday anchor and I'm a reporter and it's a position I've held for 20 years in western Nebraska. My television station serves a vast area. We are the eyes and ears to thousands of people. We report stories on crime and courts, civic events, schools and government; a big job. I have a lot of counties, a lot of villages, a lot of towns, and a lot of small cities in western Nebraska. If it wasn't for open meetings laws and regulations to cover this news, I couldn't do it. School boards and city councils are probably the best examples of why I'm here today. We use the public notices, we use the posted agendas for scheduling and initial fact gathering. And, of course, we conduct our own interviews, dig into things, and find out how...and tell taxpayers how their money is being spent. We understand that superintendents are the most likely highest paid position in western Nebraska, counties and school districts. The only hire to generate more buzz in western Nebraska than a superintendent in towns like Mullen, Valentine, or Ogallala is probably a football coach. People pay a lot of money to keep their schools open. They deserve to know who the candidates are for that highest paid government position. We have a right and taxpayers have a right to vet who would be right for them and to think about it. Transparency has never, ever backfired. A story to share with you: Just last night, North Platte School Board formally hired their new superintendent. That selection process started January 21 at a board work session, public published agenda, a quorum, and then the meeting started as Nebraska representatives of the Association of School Boards announced 15 applicants. Representatives were identified with a letter--each candidate got a letter--that's how they were protecting their privacy. The school board went into executive session for four hours. They emerged with the names of four finalists. We should have been able to hear the board discuss the qualifications of all 15. According to open meetings laws, that's the process. With news delivery on all types of media platforms, we should be able to tell our viewers about the school board's discussions and the candidates. It's the public's right. They get to discern the quality of that. It's their school. It is transparency. As each candidate traveled to North Platte for the interview process, we interviewed the candidates, we posted links of their resumes, we put interviews on Web sites, we put them on news apps, we helped people learn about Ron Hanson. Ron currently works for the Papillion-La Vista School District. He's not the superintendent though, so you're okay. His contract says he's going to make \$185,000 a year, he gets \$5,000 moving allowances, expense accounts, and benefits and privileges of certified staff. That's the man that's going to lead North Platte through the redesign of their middle school, a very contentious process. People have a right to know who's going to lead them. I know folks are concerned about keeping job candidates private and quiet and shielding them from undue stress. I hire journalists, I hire people all the time. I want to make sure that I hire people that are great. We develop their skills. And as a company, we fight to keep those employees. I want to know if they're looking for another job. That's the American way; it's business. If an employee is looking for another career opportunity,

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I want to know about it. I am against LB282. Thank you for your time, gentlemen. And are there any questions? [LB282]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Senator Groene. [LB282]

SENATOR GROENE: Thank you, Jackie. I wondered what we paid that new guy. [LB282]

JACQUELYN HARMS: I knew you did, didn't you, Mike? Did you catch that, \$185,000? [LB282]

SENATOR GROENE: Yes, because I heard they tried to keep it quiet for a while. Thank you. [LB282]

JACQUELYN HARMS: There you go. That's our job. Thanks, Mike. Thank you. [LB282]

SENATOR MURANTE: Thank you, Senator Groene. Are there any additional questions? Seeing none, thank you very much. Additional opponent testimony to LB282. Welcome to the Government Committee. [LB282]

PATRICK ETHRIDGE: (Exhibit 4) Good afternoon. My name is Patrick Ethridge, E-t-h-r-i-d-g-e, I'm a resident of Beatrice and publisher of the Beatrice Daily Sun newspaper and I'm here today to testify in opposition to LB282. Twice in the last five years our school board, the Beatrice Public Schools Board, has violated the open meetings act. Both times, when selecting a new superintendent. And that's one of the highest paid jobs in our community also. In 2010, the president and one other member of the Beatrice School Board called individual members prior to the actual meeting and secured the votes that they needed to hire a superintendent and not do it in open meeting. In that instance, a gentleman's agreement had been agreed upon with Dr. Lopez before the board ever took a public vote. Following that violation, the Daily Sun sought an Opinion from the Nebraska Attorney General's Office for sake of clarification. Assistant Attorney General Leslie Donley ruled that the law was indeed violated and noted a school superintendent is a public employee who is hired by the governing body of a local political subdivision. And I'm quoting: "We urge board members to err on the side of openness and refrain from conduct which raises issues of impropriety under the act." Two years later, the board again violated the Open Meetings Act. During a meeting on December 4, 2012, the board held a closed meeting to narrow down a list of 12 applicants to 4. At that time, Assistant Attorney General Donley issued an Opinion that exceptions listed in the Open Meetings Act only allow public bodies to use closed sessions to discuss matters related to protecting the public's money,

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collective bargaining, real estate purchase, staff negotiations, pending or threatened litigation, or to protect the needless injury to an individual's reputation. To borrow a line from Assistant Donley in that ruling, "the focus of the public interest described in the Nebraska Open Meetings Act is protection of the public's money, not the confidentiality of job applicants." It's my belief and the belief of the Attorney General's Office that the Legislature intended public bodies to appoint officials like superintendents in open meetings so the appointed officials were scrutinized in the same fashion as the elected members. I believe LB282 wrongly steers the state in a different direction where citizens and taxpayers are kept in the dark about the hiring process and the credentials of its potential leaders. Citizens and taxpayers of Nebraska receive a far greater benefit by knowing who applies for positions, what their qualifications are, and what they bring to the job. There's no evidence to suggest that this law would help attract better candidates. There's no evidence that suggests LB282 would benefit the citizens or the taxpayers. Lastly, I'd just like to say that just because some government bodies have trouble following the rules as established by the Legislature, that fact alone isn't a good reason to change a law that was put into place to benefit the public. Please reject LB282. [LB282]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. [LB282]

PATRICK ETHRIDGE: Thank you. [LB282]

SENATOR MURANTE: Additional opposition testimony on LB282. Welcome to the Government Committee. [LB282]

SHAWN RENNER: (Exhibit 5) Good afternoon, Senator Murante and members of the committee. My name is Shawn Renner, I'm a lawyer with the Cline Williams law firm here in Lincoln. I'm a registered lobbyist. I appear today on behalf of Media of Nebraska. You've just heard several of my clients speak to you. I'd like to follow up on a couple of things that have been said today. [LB282]

SENATOR MURANTE: Could you spell your name for the record, please? [LB282]

SHAWN RENNER: I'm sorry. First name is Shawn, S-h-a-w-n, last name is Renner, R-e-n-n-e-r. Patrick Ethridge mentioned a couple of Attorney General's Opinions that have come out of the last two superintendent searches in Beatrice. What the page or clerk is handing you is a copy of the 2013 Attorney General's Opinion that he just referenced. It's the most recent one. And this bill is written to, in effect, nullify that Attorney General's Opinion. When you read the Opinion, you'll see that it's the blueprint for LB282. This Attorney General's Opinion says that the process that the bill would amend the open meetings law to require is illegal under the current statute.

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We had some discussions by the proponents of the bill about the policies motivating them. And that is generally to get the better pool of candidates for superintendent positions. That proposition was actually addressed by Ms. Donley in her Opinion because it's one of the arguments that the Beatrice School Board raised in trying to convince the Attorney General that it acted legally. Here's what Ms. Donley said about it: In the present case, the board represents that "the narrowing of candidates to a finalist pool must be done in a closed session in order to attract the best candidates." We believe this assertion is speculative at best. Can the board say with any certainty that it attracted the best candidates by closing the meeting in question? In comparison, how is the public interest benefited by having the qualifications of the 12 candidates discussed privately. How does that save money? We would suggest the citizens and the taxpayers of the school district would receive a far greater benefit by knowing who applied for a position, what their qualifications were, and what they propose to bring to the job. That's the position my organization has tried to convey to you today. School superintendents, particularly, are among the most highest paid and respected government leaders in their local jurisdictions. I don't know a parent that doesn't have a real interest in how his or her public school children are being educated and treated in schools, and that's the job of the superintendent. We believe, the news media, that it is appropriate that the discussion of who should be considered to be the superintendent of a particular school be done in open and that the patrons of a school district have a right to hear their representatives discuss that issue. The focus of the open meetings statute is different from the focus of the public records statute. The focus of the public records statute exception that we've been talking about, the finalist exception, is to keep application materials for those who don't make the finalists...first of all, it's permissive. They can be withheld, they don't have to be. The school district could release them if they wanted to, so it's not a guarantee of confidentiality for anyone applying for a superintendent position. But more to the point, the focus of the open meetings law is what the people's elected representatives do on their behalf. It's not focused on who are these candidates, what are their application materials? It's how does my school board go about the process of hiring a new superintendent? What does my elected school board representative think about this pool of candidates? What does he or she think about the process that leads to the decision to hire this particularly important candidate? And it's that focus, that focus on the elected representatives that matters, not on the candidates themselves. And that's the focus of the open meetings laws of this state. The provision of the open meetings law that talks about needless injury to reputation--the second part of this piece that's kind of been left a little bit in the side in this discussion--that provision has been in law since it was enacted in the early 1970s. It has not changed since then. This is not a new requirement. Every person that has been evaluated by a public body since then, if that body is following the law, has followed that provision of the law since the mid-1970s. I think this is a concern that does not represent a real problem and we would urge you to reject LB282. Thank you. And I'd be happy to take any questions. [LB282]

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SENATOR MURANTE: Thank you very much. Are there any questions? Seeing none, thank you very much for coming down today. [LB282]

SHAWN RENNER: Thank you. [LB282]

SENATOR MURANTE: Are there any additional opponents wishing to speak on LB282? Seeing none, is there any neutral testimony on LB282? Seeing none, Senator Baker, you are recognized to close. [LB282]

SENATOR BAKER: Thank you, Mr. Chairman. And I'd be willing to...if anyone sees any possible middle ground, I'd be happy to work with the committee on finding that. I guess I do find the Public Records Act and the open meetings law to be in conflict right now. And I think clarification is needed. You know, it's impossible, almost impossible to comply with the restrictions of open records law by doing everything in an open meeting. So with that, I close and ask your support of consideration of LB282. [LB282]

SENATOR MURANTE: Senator Bloomfield, then Senator Groene. [LB282]

SENATOR BLOOMFIELD: Senator Baker, you may have said in your opening, but who asked you to carry LB282? Who asked you to carry LB282? [LB282]

SENATOR BAKER: This was my own special interest. [LB282]

SENATOR BLOOMFIELD: Okay. [LB282]

SENATOR BAKER: You know, I was not part of the Beatrice situation. I was interim superintendent in Beatrice, I was not in the building when that meeting happened when the board went into closed session at the request of their search consultants, McPherson Jacobson. But I was interim superintendent during that time frame. That's my interest. [LB282]

SENATOR BLOOMFIELD: Okay. Thank you. [LB282]

SENATOR MURANTE: Thank you, Senator Bloomfield. Senator Groene. [LB282]

SENATOR GROENE: Thank you, Chairman. Senator Baker, do you in your experience...you've been around a while, has anybody lost their job after the school board found out they applied for another job? [LB282]

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SENATOR BAKER: That's hard to say, Senator Groene. I think the bigger factor is people would say it's not worth it. You know, if my name is going to get out and I don't even know they're going to get serious about me, skip it. That's the bigger danger. [LB282]

SENATOR GROENE: Do you know if anybody got a raise after they found out they were looking for another job? [LB282]

SENATOR BAKER: I'm sorry. I didn't hear you. [LB282]

SENATOR GROENE: Do you know of anybody that got a raise after they found out they were looking for another job? [LB282]

SENATOR BAKER: I've heard of it. [LB282]

SENATOR GROENE: It chews both ways, is what I've seen. [LB282]

SENATOR BAKER: Well, it does. And I think in testimony back in 2007 it was pointed out, it's one thing if you're one of a multitude and weren't considered that would make you perhaps look bad at home. You know, it's going to come out if you're a finalist. And that...and if you don't get the job, it's not so bad. Say well, this person was a finalist. He was strongly considered. And that can be seen as a plus. [LB282]

SENATOR GROENE: Thank you. [LB282]

SENATOR MURANTE: Thank you, Senator Groene. Any final questions? Seeing none, that closes the hearing on LB282. (See also Exhibit 6.) And we will proceed to the next item on the agenda, LB283. Senator Baker you are recognized to open. [LB282 LB283]

SENATOR BAKER: (Exhibit 1) Okay. Again, Roy Baker, R-o-y B-a-k-e-r, Senator from District 30. LB283 deals with Emergency Management Act. And I've had personal experience dealing with a disaster. On May 22, 2004, when I was superintendent of the Norris School District, the Norris School District campus was struck by a tornado that was at least F4 and possibly F5. Norris is a school with about 2,200 kids, located about 12 miles south of Lincoln. It's the largest pre-K-12 campus in the state. The only place where all the district school buildings are together in one campus, with the largest enrollment. Everything on the campus was either damaged if not out-and-out destroyed. With assistance of our school attorney, Rex Schultze of the Perry Law Firm, we were able to procure an adversity proclamation for the Norris School District. And the powers that be allowed that emergency proclamation to go forward. They probably stretched the

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definition of local government to apply to a school district. A section of Nebraska statute 81-829.4 allows each local government to lay out the conditions of describing need for emergency proclamation. Local government generally means county boards, city, village boards, the like and school districts and service units do not technically meet the definition of local government. So LB283 would specifically add school district, ESUs, and NRDs allowed to apply to make emergency appropriations and emergency expenditures. It was necessary for us to move fast after the tornado. May 22...of timing...if it's going to happen is probably the best date it could have happened. May 21 had been our last day of school. So May 22...but we needed to move fast. And that's what the emergency proclamation enables you to do. It enables you to bypass normal waiting periods and it enables you to get things going a lot faster. There was a school district in Texas that got hit by a tornado the same day we did and we were able to proceed rapidly and they weren't. And so we were half recovered and they hadn't even started to clean up the mess yet. If we had not been granted an emergency proclamation, we could have missed a whole year of school. What are you going to do with 2,200 kids? Any alternative suggestions...you can't really farm them out to neighboring schools, that many students. Had to find an abandoned warehouse or something like that and quickly convert it to a school? So we quickly figured out the best option was to go for the emergency proclamation, get things going as quickly as we could. And by doing so, we were able to get enough of the buildings inhabitable by the start of school. And we brought in 12 portable classrooms...12 portable buildings, each with two classrooms. That enabled us to bridge until the time that more and more areas of the high school were made available to us. But the fact of the matter is, that we got that emergency proclamation probably through the benevolence of people. All right, poor Norris, they got hit. It doesn't really say school districts get emergency proclamation, but we've got to do something. So I think this would clarify that school districts and service units are just as apt as any other local government to face a situation where they have to deal with a disaster emergency. You still have to apply and be granted an emergency proclamation. You can't just go spend money and say, well, we had an emergency, we're free to spend as we want. Bear in mind, too, that after a disaster, you're really not talking about the expenditure of tax dollars. You're talking about the expenditure of insurance company dollars and that was certainly the case at Norris. We were insured through the Nebraska Association of School Board's ALICAP program, the pooling concept. But the overinsurance is by Allianz International Insurance Company. They brought a trailer full of consultants who were there every day for a year while we were doing the reconstruction. They were good to work with. They were helpful and advised us to do some things that we might not have done on our own. For example, immediately bring in drying equipment and get the building dried out because all the roofs had been compromised. There had been heavy rain. Did not want us to end up with a furry building, you know, with mold and a lot of health hazards afterwards. So that is the singular purpose of this bill is to add school districts and ESUs to the language of 81-829.49. And with that, I close my introduction. [LB283]

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SENATOR MURANTE: Thank you very much, Senator Baker. Senator Bloomfield has a question. [LB283]

SENATOR BLOOMFIELD: Thank you Chair. If you were able to do this at Norris without the language that you're asking for here, why do we need that language? [LB283]

SENATOR BAKER: As I stated, Senator Bloomfield, I think it was the benevolence of others that allowed that. You know, what if they would have said no? There was nothing in the law that said they had to. [LB283]

SENATOR BLOOMFIELD: I don't see any school district...the people of any school district, when their school has been wiped out or damaged, is going to say no, just let it go away. I don't know that there's necessarily a need for this language, but I'll listen and talk to you some off the mike. [LB283]

SENATOR BAKER: I appreciate your consideration. [LB283]

SENATOR BLOOMFIELD: Thank you. [LB283]

SENATOR MURANTE: Senator Groene. [LB283]

SENATOR GROENE: What...are you talking about just spending money or going out and borrowing money without a bond election or something and then address that later? Does the federal help or... [LB283]

SENATOR BAKER: No. Granted, there was later--much later--money from FEMA after it was all done with. But basically, we worked with the insurance company and proceeding in ways that we could move rapidly and meet their needs for accountability. There were still bids. But think about it. How would you possibly bring someone in and bid up front recovery of what we had? I mean, you don't know what you have until you...we were buried in our own debris. And so it would be impossible for somebody to...entering a sky-high bid. It was more important to be able to do bid packages as we go and that's what we were able to do. [LB283]

SENATOR GROENE: Thank you. [LB283]

SENATOR MURANTE: Thank you. Senator Garrett. [LB283]

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SENATOR GARRETT: Thank you. Thank you, Speaker (sic). Senator Baker, what are the existing statutory limitations on funds, I mean, what you can spend? [LB283]

SENATOR BAKER: The statute of limitations on repairs and this kind of thing? [LB283]

SENATOR GARRETT: Yeah. [LB283]

SENATOR BAKER: All right. Normally, projects...and I've got another bill coming at you...well, maybe it's another committee. But right now, I think over \$40,000 you have to do the...advertise for bids and go through that wait period. [LB283]

SENATOR GARRETT: And so what immediate funds were you able to expend? Is this from your school budget? [LB283]

SENATOR BAKER: Well, two things. Some from our own building fund, but mostly...there was the minor amounts that ALICAP paid. But mostly, we were at the mercy of Allianz, the overinsurer, the stop-loss insurance company. And there came a point...I mean people think, look at what happened. Well, that was easy, it was no big deal, it went smoothly. Sure, it wasn't easy. There's nothing easy about it. There came a point where Allianz said, we're not paying any more until we know how much more this is going to cost us. And Sampson Construction was wonderful. They were saying, we're already down \$3 million. We're not doing any more work until we get paid more. So at that point, we had some serious negotiations and were able to solve it by having Sampson do the best they could to project what the remainder of the cost would be and at a point where Allianz agreed. And it seemed like forever, but kind of a short-term stalemate was resolved. [LB283]

SENATOR GARRETT: Thank you. [LB283]

SENATOR MURANTE: Thank you, Senator Garrett. Any additional questions? Seeing none, thank you again, Senator Baker. And we will proceed to proponent testimony on LB283. Proponents. Welcome to the Government Committee. [LB283]

STEPHEN JOEL: (Exhibit 2) Thank you. Senator Murante and members of the Government Committee, my name is Stephen Joel, S-t-e-p-h-e-n J-o-e-l, and I am the superintendent of Lincoln Public Schools. I offer testimony today in support of LB283. If passed, LB283 would make it possible for schools to join other local governments to approve and make emergency expenditures, enter into contracts, and incur obligations for emergency management purposes, regardless of existing statutory limitations and requirements pertaining to appropriation,

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budgeting, levies, or the matter of entering into contracts. Such actions would require a positive vote of the board and a certificate of the city, village, county, or interjurisdictional emergency management director serving such local government, school district, or Educational Service Unit certifying that such action is necessary in the public interest for emergency management purposes. I want to briefly share our experience on the Memorial Day weekend in 2011 when a fire consumed our district office. This was not a natural disaster, but the results were very similar to what might occur from a tornado or other natural disaster. On the back of this sheet of paper I've provided you with a photo of the building's entryway. We were very fortunate in Lincoln that the fire occurred in May and the city of Lincoln and private industries had available spaces into which we could move our operations. Additionally, we had many local partners provide materials to the school district, helped us store and process our backup data, and other support services and materials. However, if any of these variables would have been slightly different, we may not have been able to open school in August without the ability to take emergency action. The bill includes the accountability measure of requiring school districts and Educational Service Units to secure the certificate from the county in which the school district or principal office of the Educational Service Unit is located. Schools cannot authorize emergency spending described in the bill on their own, but they would be able to do it when an emergency arises. Our great hope would be that we would never have to use this authority. It would mean that some sort of emergency or tragedy has occurred. I'd like to thank Senator Baker, who experienced a natural disaster while serving as superintendent at Norris for introducing LB283. Thank you very much for your time and I'd be happy to try to answer any questions. [LB283]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today, much appreciate it. [LB283]

STEPHEN JOEL: Thank you. [LB283]

SENATOR MURANTE: Additional proponents wishing to speak on LB283? Welcome. [LB283]

JENNIFER JORGENSEN: Hello, Senator Murante, committee. Thank you so much. My name is Jennifer Jorgensen, J-e-n-n-i-f-e-r J-o-r-g-e-n-s-e-n, and I am legal counsel for and here on behalf of the Nebraska Association of School Boards. And we also want to thank Senator Baker for introducing LB283. As Senator Baker stated in his opening, the purpose of the amendment is to extend appropriation power to schools and ESUs for emergency expenditures only. And this is the same appropriation that is allowed currently for local governments, cities, counties, and villages. The need for this amendment for schools arises from possible confusion as to whether the current act fully applies to school districts and ESUs. So what happens is, if there is a disaster, a school district can spend time trying to figure out...trying to work with attorneys, trying to see if they can actually fall under this amendment if they're going to deal with this

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disaster instead of knowing that they have full statutory authority under this disaster and moving forward. It gives school boards that calm that they know what statute to look at on what their next steps are when a disaster actually occurs. Some of the examples--and you've heard some of them already--that could procure a school district from moving forward if they're not granted this authority is, for example, the current public letting laws that are out there right now. So for a school or an ESU when they're constructing or repairing a facility which would happen during an emergency, without this amendment there might be an argument that a school or ESU might have to go through those public letting amendments or public letting statutes in order to move forward. And we want to remove those kind of statutory limitations that might be placed in an emergency or a disaster for those schools. There's also concern regarding, again, the immediacy of funds when a disaster occurs, having to have funds available immediately to them. Of course, there's always going to be insurance that might kick in or FEMA or NEMA money that might be available, but those could take months or years. So there's going to be a need for funds immediately. And, again, school boards want to know there's no restrictions on going forward, they know where to look on what their next steps are to get the funds needed. There's going to be funds, obviously, to fix the buildings, to possibly create temporary locations for them to get started, and they need to know what avenues to look for for funding. And as with the bidding statutes I mentioned prior, without the amendments of their bill there may be confusion by a board on what funds are available to them and what the next steps that they must take in order to accrue those funds to move forward during a disaster. There may be a question if this provides too much authority for school districts regarding appropriations, and we would definitely answer "no" to that for some of the examples that have been stated. This amendment is giving no additional authority to a school or an ESU that is not already provided to a city, a village, or a county that's in that statute currently. Per the verbiage of the statute, it only applies in the event of a disaster or an emergency that is defined in the statute. So this would only apply if they met that definition of emergency in the statute. If the expenditure or contract does not exceed a current statutory...or does exceed a current statutory limitation, it first must be approved by a vote of the board before any action can be taken. And it can be only taken to the board for a vote when the board has secured a certificate from the county that this is an emergency and it does fall under the statute. So again, we don't see this being abused in any format as far as exceeding current spending authority. One of the purposes of the emergency management bill that's stated in the statute is to reduce the vulnerability of people in communities resulting from disasters and emergencies. And we would argue at NASB that children are part of that vulnerability. And we want to make sure that their life is returned to normal as quickly as possible during an emergency. And a bill such as this is going to allow school boards to not question or not worry about if they're stretching that limitation. If they're considered a local government, it would be in the statute and they would be able to feel comfortable going forward. And I will try to answer any questions that you may have, and thank you for listening. [LB283]

SENATOR MURANTE: Thank you very much. Senator Bloomfield. [LB283]

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SENATOR BLOOMFIELD: Thank you, Chairman Murante. My district does not include, but sits very close, to Pilger. Pilger lost their school last year in a tornado. And you may not be able to answer this but under these emergency powers...let me explain a little further. This year they did an emergency thing and got some temporary buildings moved into Wisner, which is Wisner-Pilger School. This year they had a long discussion in the public to decide whether to rebuild the school in Pilger or to add to the building in Wisner. Under this emergency that you're asking for, would the school board have been able to simply move ahead and do the one in Pilger or in Wisner without consulting with the people of Pilger, who eventually lost their school, unfortunately. [LB283]

JENNIFER JORGENSEN: I can't answer that to 100 percent certainty. What I would say is, from what you're explaining, I'm not sure that would fall under the immediacy of an emergency in this situation. I think an emergency would be defined as just making sure the very next day if there was school, what are we going to do with these children. I would say or I would argue that a decision of where the school would be located down the road probably wouldn't fit under a definition of an emergency in that situation. But I wouldn't be able to speak of that 100 percent without looking at that definition. [LB283]

SENATOR BLOOMFIELD: Okay. I will ask Senator Baker to look into that a little more as we go along. Thank you. [LB283]

JENNIFER JORGENSEN: Yes. [LB283]

SENATOR MURANTE: Thank you, Senator Bloomfield. Senator Groene. [LB283]

SENATOR GROENE: Worst case scenario, they do not have bonding authority. They can't bypass bond elections by building something and then incurring debt and then say, well, now we've got to go get bonds. They can't get around the bonding issue laws, could they? [LB283]

JENNIFER JORGENSEN: Well, again, I'm probably not going to be the best person to answer that question. If it fits under the definition of an emergency, if they need to do an emergency, they can exceed some of the statutory limits that are already in place, such as exceeding a levy, a tax levy, exceeding a spending limit. As far as going over bonding authority, I think again the question would be do they need to go to that degree in order to just handle the emergency situation from a temporary standard to move on from that. [LB283]

SENATOR GROENE: But we need to know that. I mean, if somebody loses their school and builds one three times bigger that they couldn't get passed the last three times... [LB283]

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JENNIFER JORGENSEN: Right. And we can definitely look into that and get an answer. What I would say to that is, we could also look and see if that's something that a city, county, or village have ever used this particular act for because, again, we're not asking for anything additional for a school or an ESU that a city, village, and county isn't already getting. And so if that's not an issue with those entities, I'm not sure it would be for a school as well. [LB283]

SENATOR GROENE: I'm just worried incurring debt... [LB283]

JENNIFER JORGENSEN: Absolutely. [LB283]

SENATOR GROENE: ...and then you have no choice but to have a bonding election because you already have the debt. That's all I was worried about. [LB283]

JENNIFER JORGENSEN: Right. Right. Right. [LB283]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you very much for your testimony today. [LB283]

JENNIFER JORGENSEN: Thank you. [LB283]

SENATOR MURANTE: Next proponent to LB283. Welcome. [LB283]

JASON HAYES: Hello. Good afternoon, Senator Murante and members of the committee. For the record, I am Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, and I am representing the Nebraska State Education Association. I am testifying in support of LB283. We believe schools and Educational Service Units should have the same ability under the law as local governments do to make emergency expenditures in times of natural disasters and other emergencies. I ask you to support this bill and we thank Senator Baker for introducing it. [LB283]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, it's good to see you, Mr. Hayes. [LB283]

JASON HAYES: Thank you. [LB283]

SENATOR MURANTE: Are there additional proponents wishing to speak on LB283? Seeing none, is there any opposition testimony to LB283? Any neutral testimony? Seeing none, Senator Baker, you are recognized to close on LB283. [LB283]

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SENATOR BAKER: Thank you. I would waive any closing, but I'm here to answer any questions that you may have of me at the end. [LB283]

SENATOR MURANTE: Are there any final questions for the senator? Seeing none, that will close the hearing on LB283. And we'll proceed to the next item on the agenda, LB365. Senator Baker, welcome back. [LB283 LB365]

SENATOR BAKER: Do all of your committee meetings go this well, Senator Murante? [LB365]

SENATOR MURANTE: Always, always. [LB365]

SENATOR BAKER: I'm impressed. [LB365]

SENATOR MURANTE: As long as Senator Larson's not here, we're in good shape. [LB365]

SENATOR BAKER: I see. I'm ready to join your committee. It beats some I've been in. [LB365]

SENATOR MURANTE: We'll take that application under advisement. [LB365]

SENATOR BAKER: (Exhibit 1) Things are going to get easier for you as they progress through the day. This one, LB365, would amend Section 84-1413 to allow school districts and ESUs to keep required records in electronic form. You've probably heard of Dillon's Law. We know that we, as individuals, can be...we can do anything out there that doesn't break a law. It's not the same for governmental subdivisions. Dillon's Law basically says that you can only do what the law says you can do. A substate government may engage in activity only if it's specifically sanctioned by the state government. Dillon's Rule states that, if there's a reasonable doubt whether the power has been conferred, then the power has not been conferred. So the specific permission for school districts and the ESUs to keep records electronically is requested. It reflects the way that entities are operating. You know, many...more and more boards are going to paperless board meetings where there's never any paper generated. And the only thing I would say that if this bill is passed by your Government Committee, that this bill applies to school districts, ESUs, and as such, it should probably be in Section 79 of the Nebraska Revised Statutes. Thank you. [LB365]

SENATOR MURANTE: Okay. Thank you very much for your testimony. Senator Bloomfield. [LB365]

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SENATOR BLOOMFIELD: Thank you, Chairman. And this is more of a statement of personal belief than an argument with your bill. I fear putting everything on electronic media. I don't carry the confidence that the younger generation does in electronic media, so I like a paper trail. This does away with the paper trail and I'm going to have an issue with that. But there are a lot of young members on this committee. [LB365]

SENATOR BAKER: Thank you. [LB365]

SENATOR MURANTE: Very good question, Senator Bloomfield. Any additional questions? Senator Garrett. [LB365]

SENATOR GARRETT: Thank you, Chairman Murante. I share similar concerns. Are you familiar with what kind of backup systems there are? [LB365]

SENATOR BAKER: I can tell you, in my experience as a school superintendent with Norris and Beatrice, things are backed up daily at an off-site location. In the case of Norris it was off-site in one of our tech guy's house. In the case of Beatrice, it was...the backup was in the service unit facility. So there is the constant backup going on. The good thing about it, it's a lot easier to retrieve if you're looking. Do a search. You know, when I was...at Norris it was different than Beatrice where I served for nine months as interim superintendent. But there, you know there's a school district that's been in existence for more than a hundred years. And so in the central office building there's this room with stacks like a library. I'm telling you that I don't think that's any way to store data anymore. I think more and more schools are, in fact, they're scanning those old hardcopy documents for long-term preservation. [LB365]

SENATOR GARRETT: Thank you. [LB365]

SENATOR MURANTE: Thank you. Senator Groene. [LB365]

SENATOR GROENE: Thank you, Chairman. Down in Section 24(4) it says: The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to the public inspection during normal business hours. That would be obsolete then. I could probably access these records 24 hours a day over the school's Web site or... [LB365]

SENATOR BAKER: Yeah. Most boards that I've seen have all their board policies on their Web site, board minutes, agendas. [LB365]

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SENATOR GROENE: It says, all books, paper, documents. But how would I...if I wanted the Freedom of Information Act, I guess... [LB365]

SENATOR BAKER: You know, you could request it, Senator Groene. And if you say, I don't have a computer. I want a paper copy. [LB365]

SENATOR GROENE: They could print it? [LB365]

SENATOR BAKER: Take this example: They would have to go to a computer to verify what you wanted, hit the print button and print out the paper copies. If it's mutually agreeable, I think it would be a simple matter to give it to you electronically. [LB365]

SENATOR GROENE: I'm like Senator Bloomquist (sic). I'm not quite as old as him but I still like paper too. [LB365]

SENATOR BAKER: I do too. I do too. [LB365]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none, thank you very much, Senator Baker. And we will proceed to proponent testimony on LB365. Welcome back to the Government, Military and Veterans Affairs Committee. [LB365]

JENNIFER JORGENSEN: Thank you very much, Senator. Again, I'm Jennifer Jorgensen, J-e-n-n-i-f-e-r J-o-r-g-e-n-s-e-n, and again, I'm here on behalf of the Nebraska Association of School Boards in support of LB365. And again, thank you to Senator Baker for introducing this bill. The purpose of this bill is really just a cleanup bill or a clarification on some antiquated terminology that is in Chapter 79. So the purpose in drafting this was really just to clarify certain things in Chapter 79. And I'll give you a few examples of those. There are some statutes in there currently that state such things as, the secretary of the board shall record all proceedings of the district in a book furnished by the district. And so at the Association of School Boards, we get quite a few calls from school boards hoping or making sure they're not violating any of these statutes to say, you know, we want to take our minutes electronically, we type them into a laptop. Are we violating this chapter because it says we're supposed to be doing this in a book? And so again, the purpose for adding this language to Chapter 79 is really to specifically address those kind of statutes that are using those terminologies such as books or such as written reports, which allow those boards to not violate those statutes that they want to keep those in electronic copy. As you'll see in there, there is one amendment, 84-1413, which is part of the Open Meetings Act. And we are in no way changing that except for to clarify, again, that the meeting...the minutes that are stated in the Open Meetings Act can be taken typed in an electronic format and kept at

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the school in an electronic format. It doesn't change any aspect of those availability to the public, it doesn't change the public records laws as far as how you would ask for those documentations. As Senator Baker said, if somebody didn't have a computer and they didn't want to receive those in e-mail, you can still request a print copy of those. All this does is really clarify for the school boards that they can do those type of minutes and keep these kind of records electronically if they so wish. There's also similar statutes already in Chapter 79 that allows documentation to be in electronic format. There are some that refer to the Department of Education establishing procedures for submission of forms electronically. A lot of the reports that schools have to submit to the Legislature are allowed to be done electronically via similar statutes that are already in Chapter 79. So again, we see this just as a cleanup to allow electronic technology as those other statutes do. So again, thank you. And any questions, I'd be happy to answer. [LB365]

SENATOR MURANTE: Thank you very much for your testimony. [LB365]

JENNIFER JORGENSEN: Thank you. [LB365]

SENATOR MURANTE: Are there any questions? Senator Bloomfield. [LB365]

SENATOR BLOOMFIELD: Thank you, Ms. Jorgensen. You stated that it's merely cleanup. It would appear to me, and tell me if I'm wrong, that when you keep them in electronics now when the law says you'll keep them in a book, that's a little more than a cleanup in my mind. [LB365]

JENNIFER JORGENSEN: Well, clean up in the fact that we believe there's already been statutes that have allowed electronic records to be kept electronically. And these specific statutes just don't refer to those electronics so we're...and maybe "cleanup" is a poor choice of words. But we're sort of just catching up with those other statutes that are already allowing electronic records to be kept. [LB365]

SENATOR BLOOMFIELD: It sounds to me, and not to be argumentative, that possibly the intent was that they be kept both ways. And I think by doing what you're requesting, we're eliminating the books. Am I mistaken? [LB365]

JENNIFER JORGENSEN: I guess if somebody wanted to just keep them electronically on their computer there would be no requirement that they be kept in a book. [LB365]

SENATOR BLOOMFIELD: You don't believe that requirement exists now under that other language you quoted? [LB365]

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JENNIFER JORGENSEN: That you have to keep it in a book? [LB365]

SENATOR BLOOMFIELD: Yes. [LB365]

JENNIFER JORGENSEN: I do believe that is the current language. But I would also probably state that that was the language when it was written...when those statutes were written back...and I think the one that I referenced about the book--and I don't have this in front of me, so I apologize if I'm wrong--but I believe that statute was written back in like 1918. So I really do believe that that was the only availability of how to keep those records at that point. And we haven't updated it since then. [LB365]

SENATOR BLOOMFIELD: Sounds reasonable to me. Thank you. [LB365]

JENNIFER JORGENSEN: So that would be my statement on that. [LB365]

SENATOR MURANTE: Senator Groene. [LB365]

SENATOR GROENE: Well, I want to get home too, but now I'm confused. Maybe this is because I'm a rookie, but it says the repeal of original section. Normally, we see a bill and it's crossed off the original section. I don't know what the original section says. Why...this bill don't have it in here. [LB365]

JENNIFER JORGENSEN: I don't think there is an original section. And I have to say, I'm a rookie as well so we can maybe try to figure this out together. But this is actually not repealing anything that currently is in statute. We're simply asking to have this section added to Chapter 79, which then would refer to these existing 79 statutes that use the terms such as "books" and "documents" and "reports." [LB365]

SENATOR GROENE: It says, to allow school districts and Educational Service Units to keep electronic records and to repeal the original section. [LB365]

JENNIFER JORGENSEN: And maybe that might have to be amended. And I can talk to Senator Baker about that to make sure that that... [LB365]

SENATOR GROENE: I'd sure like to know what the original section is and how it reads. [LB365]

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JENNIFER JORGENSEN: Okay. [LB365]

SENATOR GROENE: Thank you. [LB365]

SENATOR MURANTE: That's just a bill...we'll go over that. That doesn't have anything to do with the contract...with the content of the bill. [LB365]

SENATOR GROENE: All right. Thank you. Appreciate it. [LB365]

SENATOR MURANTE: Yeah, no problem. Any additional questions? Seeing none, thank you very much for coming down today. [LB365]

JENNIFER JORGENSEN: Great. Thank you. [LB365]

SENATOR MURANTE: Additional proponents wishing to speak on LB365. Seeing none, is there any opposition testimony to LB365? Any neutral testimony? Senator Baker, you are recognized to close. [LB365]

SENATOR BAKER: Thank you, Chairman Murante and committee. If there's anything that we need to provide in the way of clarifications as you move forward, let us know and we'd be happy to work with you on that. Other than that, that's all. Thank you. [LB365]

SENATOR MURANTE: Okay. Thank you very much, Senator Baker. Any final questions for Senator Baker? Seeing none, thank you very much for joining us for "Senator Baker Day" here in the Government Committee, Senator Baker. And we'll finish up with State Senator Al Davis on LB403. Thank you, Senator Davis, for joining us also on "Senator Baker Day." We'll call it "Senator Baker and Davis Day," how about that? [LB365 LB403]

SENATOR DAVIS: You know, I think I have "Senator Davis Day" coming up in a few weeks, so. [LB403]

SENATOR MURANTE: How many bills does he have for a freshman? He's got a lot of days. [LB403]

SENATOR DAVIS: Good afternoon, Senator Murante and members of the Government, Military and Veterans Affairs Committee. I am Senator Al Davis, D-a-v-i-s, and I represent Legislative District 43. I'm appearing before you today to introduce LB403. The bill is intended to address

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what I believe is an unintended consequence of allowing counties under 10,000 population to hold primary elections by mail in select precincts. Let me first say, I'm very much in favor of elections by mail as long as they are fair and equitably open to as many voters and candidates as possible. LB403 would provide that a county that applies to run a primary election by mail in at least one precinct must either extend the by-mail primary to all precincts in the county or only include on the mail ballot races for federal offices or the state offices of Governor, Lieutenant Governor, Secretary of State, Auditor, State Treasurer, Attorney General and any ballot issues up for consideration. In this case, the county would need a set of polling places in those precincts for races for the Legislature and any other state, county, or local races. The intent of this bill is to maintain more consistent voter turnout across the county. Naturally, voter turnout will be higher in mail-only precincts. Especially in sparsely populated counties, this can provide a distinct advantage to any local candidate within that precinct. I'm a resident of Cherry County, Nebraska, which has been using all-mail ballots for many years in significant parts of the county. Cherry County, like all counties using mail ballots, send the ballots to us about a month before the election. Included with the ballots is a self-addressed, stamped envelope in which we place the ballots for return to the county clerk who serves as the election commissioner in that county. The service is incredibly convenient and very streamlined. My wife and I have always joked that we vote at midnight from the comfort of our own bed and drop the ballots in the mail the next day, a very easy process. Contrast that approach with Grant County which is just to the south of Cherry County. In Grant County two rural precincts were closed after the 2000 election and all balloting took place at the county courthouse. Hyannis is the county seat of Grant County and it's 12 miles from the west county line, 17 miles from the east county line, 6 miles from the north county line, and 18 miles to the south line. Two state highways run through Hyannis bisecting the county, but many of the county residents live south or north of two small communities east and west of town. To vote, some of these individuals drive 18 miles up a one-lane oil road and then 9 to 13 miles, depending on the community, to Hyannis on state highways to vote within the open hours at the polling place on the one day the polls are open. Throw in a storm in November, a cow calving in May, a spring branding at the neighbor's, a death in the family, a flat tire, and add the cost of driving to and from the polling place and voters will often not think it is worth the effort to participate. This is especially true when we are in an off year election. In those years, there are very few issues on the ballot drawing national attention and voting may take a very low priority. Think again of the difference between these two methods of voting. A prestamped and addressed envelope to drop your ballot into and a trip to the mailbox or a long trip to town to stand in line to cast a ballot which may have few national issues and possibly even fewer local issues and you can see the voter turnout will vary drastically. The key to this discussion is how the mail ballot is being used and what can happen when it is not applied universally to all voters in the county. By permitting only portions of a county to be all mail, the election commissioner is virtually guaranteeing a significantly different turnout rate in different portions of the county and that can affect elections. I believe that did happen in the 2014 primary races for Dawes County Commissioner. In that race one incumbent county commissioner was running against an

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individual who resided in an all-mail precinct in the southern part of the county. Dawes County elects its commissioners by district and three Dawes County precincts are in that commissioner's district. Precinct 7 lies in southern Dawes County and is an all-mail precinct...all-mail district. There were 319 registered voters in that precinct. In precincts 5 and 8 voters must go to the polling place in Chadron to vote. Precinct 5 contained 578 registered voters and precinct 8 contains 443 registered voters. Voter turnout varied significantly between the all-mail precinct and the other precincts in the spring 2014 election. Precinct number 7, which has the smallest number of registered voters of the three precincts but is the all-mail precinct, had a voter turnout of 54.86 percent. One hundred seventy-five individuals voted in the all-mail precinct. In precinct 5 only 21.28 percent of the registered voters turned out to vote or 123 voters. And in precinct 8, 28.9 percent of the registered voters went to the polls with 128 voters casting ballots. This was a race between candidate A and candidate B. Candidate B resided in the all-mail precinct and received 92 votes there or 67.65 percent of votes cast in that precinct. Candidate A received 44 votes there or 32.35 percent. In the two precincts in which the voters went to the polls, candidate A received 56.72 percent of the total votes in precinct 5, or 38 votes, and 67.65 percent of the total votes cast in precinct 8, or 60 votes. But at the end of the day, despite carrying the two precincts with the most registered voters, candidate A lost the election by 17 votes to candidate B. Candidate A received 159 total votes, of which 32.35 percent were mail votes from the all-mail precinct. Candidate B received 176 total votes and 67.65 percent of his totals came from all-mail ballots again from the mail precinct. I noticed this same anomaly in my own election when I ran for office in 2012. Ashby is a small town in Grant County with mail routes running north into Cherry County. Since I have lived in that area most of my life and know almost everyone living there, I know which voters lived in Cherry and which voters lived in Grant County and evaluated the voter turnout list from the Secretary of State. Although it has been a few years, I believe that the all-mail turnout in Cherry County was over 70 percent while in Grant County, which was a county where you go to the polls, it was between 15 percent and 25 percent. Voter turnout is obviously the key to winning an election and our county election commissioners are inadvertently changing the dynamics of voter turnout while authorizing portions, but not all, of a particular county to vote by mail. Although this may not be their intention, they are inadvertently picking favorites in an election because ease of voting is closely tied to increased turnout. The intent of LB403 is to level the playing field for local offices and the bill requires the county to set up precinct polling places for state senator, school board, county offices, NRDs, and the like if the county is not using an all-mail approach. This would entail significant expense and a better solution would be an all or nothing approach where the county either uses an all-mail balloting for every office or operates precincts for all offices. I obviously would prefer that a county implement an all-mail process for all voters in the county because it increases voter turnout so significantly, it saves the voters money and time and should be nearly a wash in terms of cost to the county itself. I also believe the Secretary of State's suggestion that return postage be affixed to the envelope could easily be waived if boxes for deposit of unstamped ballots were made available in the county seat of each county and would suggest the committee consider amending

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the bill to implement these changes. Most individuals will be more than willing to put their own stamps on the envelopes and the deposit boxes in the county seat will give those who choose not to self stamp their envelopes a means to be counted anyway. Savings produced by removing the stamping requirement on return ballots coupled with savings produced by eliminating most polling positions should produce a nearly neutral cost. By limiting this bill to counties with fewer than 10,000 residents we are removing potential objections which might be raised by residents of larger counties where costs could be significantly higher. In addition, it is in smaller counties where the ramifications of higher voter turnout in an all-mail precinct will be most significant and where the perception of choosing winners and losers could appear most easily...more likely. I urge you to consider passing LB403 with suggested amendments which will increase voter turnout, will provide an easier way for rural voters to be counted, and will level the playing field in counties where only partial all-mail balloting is taking place. Thank you. And I'm available for any questions. [LB403]

SENATOR MURANTE: Thank you, Senator Davis. Are there any questions? Senator Bloomfield. [LB403]

SENATOR BLOOMFIELD: Senator Davis, I wonder how much of what you saw there is actually because of the mail-in ballot and how much of it might have been because of voter interest. In my race two years ago, Wayne County, which has somewhere in the vicinity of 6,000 registered voters turned out 70-some percent. Dakota County which has twice as many registered voters turned out, I believe, it was 18 percent under the exact same rules. I think possibly what you're seeing is a determination by the voter whether or not he wants to vote rather than a big difference by the mail-in. Do you see that as a possibility or do you think it's strictly the mail-in difference. [LB403]

SENATOR DAVIS: I don't think so. I think the easier it is to vote the more likely people are going to do so. I think that just makes sense. If the ballot is mailed to your door you don't even have to think about going to the polls. You know, it just shows up in the mail and you take care of it when you have time to do that. I know in...when I was running two years ago in the primary, Cherry County's voter turnout was significantly higher than any of the other counties. And I could go back and probably pull that data and get that to you if you were interested in it. But there wasn't anything unusual in Cherry County that was taking place, it just happened to be that there's a lot of mail-in ballots at that point in that area. [LB403]

SENATOR BLOOMFIELD: Yeah. And I would have to go back and get the exact numbers too. But the idea that one area votes higher than the other doesn't surprise me because two of my counties had the lowest turnout in the state. A third of my counties had one of the highest turnouts, if not the highest turnout, and it all comes within 60 miles of one another. [LB403]

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SENATOR DAVIS: And that could be, in your case. I don't know what was going on in your counties. You know, I think you can take Dawes County and say, why would there be this significant difference in turnout there? So the only logical explanation I can come up with, since everybody in those three precincts was voting on the same issues, would have been that all-mail balloting just made it so much easier to do. [LB403]

SENATOR BLOOMFIELD: Okay. Thank you. [LB403]

SENATOR MURANTE: Senator Groene. [LB403]

SENATOR GROENE: Thank you, Senator Murante. Couldn't it be that most folks, when they get an official government letter, they reply to it? [LB403]

SENATOR DAVIS: It certainly could be. And that's one more reason why it makes sense to find a solution. [LB403]

SENATOR GROENE: Thank you. [LB403]

SENATOR MURANTE: Thank you, Senator Davis. I'm trying to understand the bill as it's currently drafted...and there's certainly no question that vote by mail elections consistently have significantly higher turnouts than polling place elections. That's not just a Nebraska issue or a district-based issue, it's a nationwide issue, there's no doubt about that. But as I read the bill, and correct me if I'm wrong, so how...if a person wanted to vote for President of the United States and a candidate for Legislature, the way the bill is drafted, they'd have to get a ballot in the mail to vote for President and then they'd have to go to a polling place and vote again to vote for a candidate for Legislature. Do you anticipate there being a significant drop off in voter participation once they've gotten the ballot for President of the United States then just not showing up and voting for the candidate for Legislature? [LB403]

SENATOR DAVIS: Yes. Yes. And that's why I wouldn't really want to see the bill adopted as it's drafted. [LB403]

SENATOR MURANTE: Okay. [LB403]

SENATOR DAVIS: I think it needs to be changed, but I think the committee ought to consider going to an all-mail balloting system for those counties. You know, I think all or nothing. [LB403]

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SENATOR MURANTE: Well, I think you've identified--and we talked about it before--it's...the situation clearly is fundamentally unfair. And I don't know if it violates the letter of the equal protection clause, but it certainly violates the spirit of the equal protection clause, that you have two neighbors living in fairly close proximity to each other. One, the government mails a ballot. The other one, you have to drive to a polling place. It's unfair to the voters. It's unfair to the candidates. And I agree with you, there ought to be some harmonization done on that, so. Are there any additional questions for Senator Davis? [LB403]

SENATOR DAVIS: If I can make one clarification. [LB403]

SENATOR MURANTE: Sure. [LB403]

SENATOR DAVIS: And it's...when I made reference in my testimony to the Secretary of State's concerns, their recommendation to the counties has been if you're doing an all-mail balloting, you need to stamp the return envelope because with the perception that it might be conceived of as a poll tax, which is why I offered this other alternative. I'm not sure that's...I'm not sure the Secretary of State is...I think that's a gray area that could be discussed because certainly 45 cents isn't a whole lot to put your ballot in the mail. But if we put the ballot boxes...locked box in the courthouse in the county seat and the all-mail ballot could be dropped in there, that would take care of that problem. And that's why that suggestion is in there. [LB403]

SENATOR MURANTE: Okay. Wonderful. Thank you, Senator Davis. And we will proceed to proponent testimony to LB403. Are there any proponents wishing to speak? Seeing none, opposition testimony to LB403? Welcome back, Mr. Secretary, to the Government, Military and Veterans Affairs Committee. [LB403]

JOHN GALE: (Exhibit 1) Thank you, Senator Murante and members of the committee. I am John Gale, J-o-h-n G-a-l-e, Secretary of State and Chief Election Officer for the State of Nebraska. I do appear today in opposition to LB403 for quite a number of reasons. And obviously from the testimony I've heard and the questions I've heard, there is some concern about this program. But to give you a little basic history, this Legislature back in 2003 authorized the creation of a 18-member commission called the Vote Nebraska Initiative. And the purpose of that initiative, created by this Legislature, was to figure out ways to increase voter turnout. There was great disappointment in the turnout in special elections. There was great disappointment in the turnout in rural areas. There was great disappointment overall in the turnout in most all elections. And so it was a key issue of concern to the Legislature. That task force then reported back to the Legislature with a report in December 2004. And in 2005 several bills were created as a result of the recommendation of that task force, one of which was this rural precinct vote-by-mail program. That bill initially had a limit of 7,000 of population for counties that could

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participate in that program. Several years later the Legislature saw fit to pass a bill that increased that to 10,000 because of the popularity and the interest amongst county election officials as well as amongst voters. And so we've now had that for...program for approximately ten years. The county election officials that have it, 11 counties, are just very much supportive of that program. They think it serves a lot of very great benefits in their counties. There are 61 of those rural precinct vote-by-mail precincts, which is about 4 percent of the total precincts which are about 1,400. Because of their size, as you know, precincts can be up to 1,750 registered voters, they can be as low as 25 or 50. Most of these are on the lower end and so they really represent less than 2 percent of the total voters statewide in all of the precincts. So it's a small category of precincts, but it does save the county election officials considerable money because they don't have to transport equipment to these rural precincts and they have 20 people show up to vote. They don't have to pay for poll workers, they don't have to worry about the supervision of a facility that may not be ADA compliant. So it served many great public policy reasons. In addition, voter turnout has gone up. And that has been a very pleasant surprise because in just regular vote by mail--early voting what we used to call it, absentee voting--it really was a convenience. It wasn't a huge jump in participation of voters from county to county, it was just a great convenience for a lot of people who may not were going to be available on election day or maybe they wanted to vote early and get it out of the way and not wait for election day. But in these precincts, these rural, small precincts, there definitely was a jump of 15 percent to 25 percent of voter turnout. It has nothing to do with political party. It has just to do with the fact that it is of such great benefit to people who live in these rural precincts who have bad roads, they don't have easy access to ADA facilities, and they're businessmen, farmers, and ranchers. So this bill goes 180 degrees from where we've been going, trying to incrementally increase vote by mail, which increases voter turnout and decreases cost. We think eventually we're going to have a vote by mail statewide program. But this bill simply kills this program. There's no other way to look at it than that. It's not a straightforward way to kill the bill, but it does kill the bill. How does it kill this program? Well, number one, it requires a rural voter in one of these rural precincts to vote twice. They get a ballot in the mail for the federal offices and constitutional officers. But then they have to go to their precinct in order to vote for the rest of the offices. Many people aren't going to vote twice. They're just going to vote the top of the ticket, the ballot that comes to them in the mail. Meanwhile, the county election official has to double their cost because they have to staff each of those precincts as well as mail out ballots in order to mail off the federal ballots. And they're going to have to pay for a separate ballot that's going to be just the state and local offices in order for people who mail in a ballot for the federal offices and then want to go vote in person for the other offices. It creates a nightmare for the county election officials, it doubles their cost, it reduces turnout, and it effectively eliminates all of the benefits of the programs we've had for ten years that's been supported by the Legislature for ten years. So it's a significant change in public policy, a significant reversal of our trend toward all mail elections and toward a greater familiarity and acceptability of voters for that type of program. Thank you. [LB403]

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SENATOR MURANTE: Thank you, Secretary Gale. Are there any questions? Senator Bloomfield. [LB403]

SENATOR BLOOMFIELD: Thank you, Mr. Secretary, for coming in and giving us your view on this. Senator Davis mentioned the stamp issue. Can you enlighten us a little bit on there of what is...what he might have been...is there an issue with how much it costs to get ballots returned or are we talking about wasting stamps on people that don't mail them back in or what are we talking about there? [LB403]

JOHN GALE: Well, we're just simply required, if we're going to mandate that the people in these rural precincts are going to receive a mail-in ballot to return and they're not going to have a precinct facility at which to vote, we have to provide them with a stamp on the return envelope and so we do. [LB403]

SENATOR BLOOMFIELD: Could we not simply put "postage paid on delivery" on there and save the state a few bucks on the postage? [LB403]

JOHN GALE: Honestly, Senator, I don't...I think there is such a system. I'm not so sure that the counties don't follow that. But we have to provide some kind of postage so that the mandated voter who has to return a paper ballot by mail doesn't have to pay for the postage, because then you have unequal treatment, a constitutional issue. [LB403]

SENATOR BLOOMFIELD: I understand that we have to provide postage but I would think we could do it on the back end rather than on the front end if we're not already. And we may be. [LB403]

JOHN GALE: I will certainly look into that, Senator, and report back to you. I think it's an interesting question. We do, and I know in some of our mass mailings, we're able to do that. And I honestly think counties can do that where they mail and only pay for those that come back. But I'll confirm that for you. [LB403]

SENATOR BLOOMFIELD: Thank you. [LB403]

SENATOR MURANTE: Thank you, Senator Bloomfield. Any additional questions for the Secretary? Senator Hansen. [LB403]

SENATOR HANSEN: Thank you, Chairman. Secretary Gale, you are obviously testifying in opposition to the green copy. But during its introduction, Senator Davis mentioned a possible

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amendment to switching to in these precincts an all or nothing mail program. Would you still be in opposition if, say, a county of 10,000 people switched to an all-mail election? [LB403]

JOHN GALE: Well, first, I do disagree with Senator Davis' testimony regarding what compels people to vote in what particular way in any precinct, whether it's an all mail-in ballot precinct or whether it's a precinct that goes to their election...on election day. You know, there's so much mystery wrapped around who wins and who loses in races. It can be personality, it can be your job, it can be your exposure to the public from other positions, it can be how you run your campaign, it can be whether the weather is against you on election day. To say that these small, rural precincts having a larger turnout in a county dramatically changed the outcome of elections is oversimplifying how elections come about. I mean, who could have predicted exactly the outcome of the Republican primary for U.S. Senate. Who could have predicted exactly the outcome of the primary for Republican gubernatorial candidates. These things are not an exact science. And so in any county, you're not going to be able to say, well, it's just those rural precincts that have a little higher turnout that have made all the difference, because how can you say that that increased turnout all went for one candidate or the other? There's no way you know. It's a secret ballot. So I think what this bill does is, it's a toxic pill to kill the program because people are not going to go vote twice. They're not going to vote once by mail and then go to a precinct and vote a second time for local and state candidates. Secondly, the county is not going to pay for it. They don't want to pay for it twice. And thirdly, you're going to have a lower voter turnout because those people may send in their federal ballot, but they're not going to probably drive 10 or 15 miles. So if you're going to kill the program, kill the program. But this complicates it in constitutional ways that go way beyond simply the issue of whether we have a program that don't have an issue, a program because of the unequal treatment between those who vote by mail. Under the regular early voting, obviously, for rural constituencies, they're going to have a higher turnout because of the convenience of early mail voting anyway. This just adds a little, small increment to that program. But somehow it's developed a reputation of being offensive enough to people, they think it's dictating outcomes. And so if the Legislature wants to reverse the direction we're going and kill this program, I would say, kill it. I wouldn't advance this bill, LB403, but don't advance LB319 either because we're attempting to increase voter turnout in LB319. We've testified here about that bill. And have a bill, so it's straightforward, come before this committee next year, allow the public to show up and testify and know that it's a bill to kill the program. This bill does it subtly, we're hanging on a noose swinging in the wind if this bill gets passed. [LB403]

SENATOR HANSEN: Okay. I appreciate that, but my question was...and let's pretend I'm drafting a bill for next year and I introduce a bill allowing counties to switch to all mail for all of their precincts in an all or nothing approach. Would that be something you and your office is supportive of? [LB403]

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JOHN GALE: Well, I think that that's a favorable direction. But I think what you're going to run into is exactly the same problem because in every legislative district you have multiple counties, for the most part unless you're metropolitan, and so if you have kind of checkered legislative districts where we have all mail-in in this county and not all mail-in in this county--so I'm just going to say the same thing--well, you're going to have a much greater turnout in this county that has all mail-in balloting for the whole county and you're not going to have it over here and so that's unfair. I mean, the only answer here is, based on what I've heard, is this jump to all mail-in balloting for the entire state in all races and that eliminates any inequality. But there's no reason to do that yet at this point. Maybe in four years from now, but to let the tail wag the dog here and let these little rural precinct all vote-by-mail dictate what we do as state policy, I think is not the direction to go. I don't think it's good public policy. So if we want to go to all mail-in voting for the entire state, well let's attack it that way and address it that way. But county by county options, I'm not opposed to that at all. And actually, I think over the next four years that probably is the logical sequence of how we're going to get to an all state mail-in balloting. But we only have about 23 percent, 24 percent of the public who like mail-in balloting now. States like Washington and Oregon and Colorado and even Texas, where you have 50 percent to 85 percent of the people voting early before they go statewide, you show a big public acceptance. We're trying to get that public acceptance and we're not there yet. But this program, if it's offensive to the Legislature as a matter of public policy, well, kill it directly. Don't leave it swinging, hanging in the wind. [LB403]

SENATOR HANSEN: Thank you. [LB403]

SENATOR MURANTE: Senator McCoy. [LB403]

SENATOR McCOY: Thank you, Chairman Murante. And thank you, Mr. Secretary, for being here today. I'd like just on that thread of conversation if I could, while it's possibly the tenor of this bill, you talked about high voter acceptance in those states that went to all mail elections. And I follow with great interest what's gone on in the state of Colorado because that's where the state...the state I was born in and spent my early years in. How do you think...and it may not necessarily be this particular bill, but could you give an idea of how you think we build a higher acceptance before we move...voter acceptance before we would think about moving to an all mail-in ballot system? Is there some means by which you think that we could do that? [LB403]

JOHN GALE: Well, as you know, we do have the special election statute, a bill in LB319. We have found a tremendous increase in turnout in voting on special elections within a county for economic issues. And it's been very, very popular with our county election officials and with the local political subdivisions that have these special elections. So as Chief Election Officer, my goal is try to have more than 50 percent turnout every election because there's much more

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ownership and proprietorship of the public and the community in these issues if you have 50 percent, 55 percent turnout rather than 11 percent turnout. So that's my goal. And we've seen that time after time in these special elections that are mail-in ballot elections. But we don't have candidate elections available for special elections. And so we're saying in LB319, okay, well, let's expand that so recall or vacancies can also be all-mail ballot issues within a political subdivision. That will help move people toward...because we have found that once people find the convenience and flexibility of being able to early vote, they have 25 days to do it, they can think about it before they have to mail it in, they have time to research it, talk to their neighbors, there's a wonderful flexibility. Once they do that, our understanding is that people don't go back. They like that. And so we've been moving, for the last 14 years, from a very small percentage. Now we're up to 24 percent, 25 percent, and that's in our statewide election. So if we could do this in our local elections, get people more familiar with casting a mail-in ballot, you're going to see a much greater acceptance of the public when we start talking about a statewide all mail in. So my office is going to do everything we can to help promote mail-in balloting by our constituents. Political parties seem to be very supportive of it, they're very adaptive to it, they understand that they can get the information. When somebody makes a request for an absentee ballot, they can find out the next day and immediately send out material to those individuals who want to cast a mail-in ballot. So the political parties and candidates have that immediate targeting of people. And that's been okay with virtually all of the citizens. We have some people who wonder why they get that material the day after they've asked for an absentee ballot. But nevertheless, it has been very popular and increasingly popular. [LB403]

SENATOR McCOY: Thank you. [LB403]

SENATOR MURANTE: Thank you, Senator McCoy. Senator Groene. [LB403]

SENATOR GROENE: Thank you, Chairman Murante. Did you say on a mail-in ballot where you...precinct, you mail it out 25 days ahead of time? Is that right? [LB403]

JOHN GALE: Well, I can't say for sure. I can't speak on behalf of the counties. But the idea is that those ballots will be mailed out ahead of the election, obviously, and it used to be 30 days, now it's 25 days. I'm assuming that it would be within that 25, yeah. [LB403]

SENATOR GROENE: I was just thinking, if you got a whole county and I'm running for county commissioner, I'm banging on doors...little old ladies' doors to ask them if I can help them fill out their ballot. And I mean, the election is basically over. Why would you...I mean, why would you keep campaigning if all of a sudden people are mailing in their ballots three weeks ahead of time? [LB403]

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JOHN GALE: Well, they don't though, Senator. They don't mail them in right away, they sit and kind of watch the news and watch the candidates and we find there's a big surge at the end within... [LB403]

SENATOR GROENE: Have you followed that, that all of a sudden the mail-in come in the last three or four days? [LB403]

JOHN GALE: All of a sudden. Certainly, within the last week, like a Thursday...Wednesday, Thursday before the election they start coming up and they show up on Monday in a very big way. So people don't necessarily cast them right away, but they do get them early. But then so do the military and overseas civilians. By federal law they have to get them early as well. Those who have asked for an absentee ballot, if they've asked for it before that 25-day period, they get it right away as well. [LB403]

SENATOR GROENE: Thank you. [LB403]

SENATOR MURANTE: Thank you, Senator Groene. Senator Bloomfield. [LB403]

SENATOR BLOOMFIELD: Thank you, Chair. And you may have addressed this while I was out. But particularly to the young folks, the next logical step is Internet mailing. How close are we to that instead of U.S. mail? [LB403]

JOHN GALE: That's been an incredibly unsolvable problem, Senator. Back in 2004, the Department of Defense--that has more money than most nations in the world--said that they were going to provide an Internet...safe, secure Internet system for the military and overseas voters so they wouldn't have to put up with this issue of having to mail out ballots and trying to get them back. Thousands of military personnel in Florida were not able to get their ballots counted back in that 2000 election. Huge issue of that mailing and return. Well, a lot of them, it's mailed to where they are one day, but they're deployed someplace else the next day and they don't even get that ballot. So the Department of Defense says, we're going to create that. And they weren't able to do so. They were not able to solve all of the issues of hacking and viruses and lack of security. So since that time, we've been thinking, well, with the huge advent of new inventions and software programs, somebody is going to come up with a program that would be secure and safe for that kind of a system. Nobody has yet. So we're not thinking that that's going to happen for maybe another 20 years. Well, meanwhile the young people are saying, forget about my PC, forget about e-mail voting, forget about computer. I want to vote on my mobile device. I want to vote on my cell phone. I want to vote on my iPad. Well, that's even more insecure because now you're talking about a wireless interception that's much more likely than the kind of interference that you might get through the fiber-optic Internet. So we're not, I think, we're not there yet and

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whenever we are there, it's going to be very expensive because once you have Internet voting you're going to have a retina scan, you're going to have to have some kind of an ID on that screen to identify who you are that's casting that vote so you can't do it twice. It's going to be sophisticated and expensive. Meanwhile, our current equipment, which has been wonderful equipment that we bought with federal money under the Help America Vote Act, is good for another four, maybe six years, another two cycles, three cycles maybe. It's served us well, we've had very smooth elections. The equipment that was the most costly was the equipment for the handicapped and visually impaired, called the AutoMARK. Federal law required there be one in every precinct for anybody who was handicapped who wanted to vote in person so they didn't feel like a second-class citizen. All that equipment has been out there. It hasn't been utilized all that much, but it's there by law and required and understandably required. But all-mail balloting will allow us to eliminate that equipment and everybody will receive their ballot at their home. And so the handicapped and impaired will be treated just like everybody else in terms of getting the ballot at their home. And they'll...obviously, some will need assistance in the preparation of those ballots. But meanwhile... [LB403]

SENATOR BLOOMFIELD: That's where Senator Groene comes in, I believe. Thank you. [LB403]

SENATOR MURANTE: Thank you, Senator Bloomfield. Are there any additional questions? Seeing none, thank you very much for coming down, Mr. Secretary. Thank you. [LB403]

JOHN GALE: Thank you, Senator Murante. Thank you, members of the committee. [LB403]

SENATOR MURANTE: We are still on opposition testimony to LB403. Welcome. [LB403]

BETH BAZYN FERRELL: Thank you. Good afternoon, Chairman Murante, 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 and I'm appearing in opposition to LB403. I would just like to echo a lot of the comments that the Secretary of State made about the reasons why counties are opposed to the bill as it's written. The issue of having a polling place and mail ballots is a huge one for counties. There would be the expense of mailing out the ballots plus the expense of having a polling place, as well as the difficulty sometimes in finding an accessible polling place that's within a precinct. So I'd just like to echo his comments about that. I know it's been suggested at different times that an interim study might be helpful on mail-in issues. And if the committee would choose to pursue that, I know we would be very happy to be involved in that. So I would be happy to answer questions. [LB403]

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SENATOR MURANTE: Thank you very much. Are there any questions? Seeing none, thank you very much for your testimony today. Is there additional opposition testimony to LB403? Is there any neutral testimony? Senator Davis, you are recognized to close. [LB403]

SENATOR DAVIS: Thank you, Senator Murante and members. And Senator Hansen, I appreciate your question. I want to reiterate what I did say at the end. And I want to go back a little bit and talk about bill drafting and what happens to you when you have a lot of things going on at once. You don't get something reread and I should have read it before we introduced it. But it was done, and what's done is done. I don't want to see you advance this bill without changing it, so that it becomes a county decision to either have all mail precincts or not, but not selective precincts within the district. I think that really settles the fairness question in my mind, because then everyone is on an equal footing. But just to get back to the point I think that somebody made about the number of people that turn out, so I went back to these figures. And in Dawes County, 54 percent of the people turned out in the all mail precinct. Only 28 percent in the best of the other two precincts. So you are doubling, essentially, the turnout. I think that's a very worthy goal. I think counties would easily implement an all-mail process if they chose to do that. And if they chose not to, that would be their call. You know, I will just...if you live in rural Nebraska, there are all kinds of little stories that go along with that. So when the Secretary was talking about people needing assistance...I always love to tell this story because they used to have the polling place at our ranch and it was in my mother's living room. And so this older couple came in and she kind of was senile. And so they go in the polling place and she says, now, Stein (phonetically), who am I supposed to vote for? And that's kind of the way it was done. We all just looked the other way, all of us who were on the polling board. But it's...to be able to double the turnout by saving the county some money, equalize the playing field so there isn't any perception of somebody being selected and someone else missing out, I think is a worthy opportunity. I think I heard the Secretary say he was not totally opposed to that idea, so I would urge you to amend the bill in that way and try to move it forward. Thank you. [LB403]

SENATOR MURANTE: Thank you, Senator Davis. Senator Bloomfield. [LB403]

SENATOR BLOOMFIELD: Thank you. Senator Davis, the little story you just told is one of my big concerns with mail-in election. Is Fred going to tell Martha how to vote when they're both sitting there in their living room trying to decide what they're going to do? [LB403]

SENATOR DAVIS: Well, he may tell her how to vote but she may decide to just vote her own way anyway. [LB403]

SENATOR BLOOMFIELD: Not if he's looking at the ballot as she's doing it. That's my big concern with mail in. Thank you. [LB403]

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SENATOR DAVIS: Thank you. [LB403]

SENATOR MURANTE: (Exhibits 2, 3, 4) Thank you, Senator Bloomfield. Are there any final thoughts? Seeing none, before we close the hearing on LB403, I have three letters of opposition: one from David Dowling, the Cedar County Clerk; one from Kathy Thorberg, the Boone County Clerk; and one from Joanne Fischer, the Knox County Clerk. And with that, we close the hearing on LB403 and our hearings on the day. (See also Exhibit 5.) Thank you, everyone, for coming down and we will proceed to an executive session. We'll give you your five-minute break, even though you just took one. [LB403]