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Government, Military and Veterans Affairs Committee  
February 04, 2016

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[LB687 LB742 LB867 LR379CA]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 4, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB687, LB687, LR379CA, and LB742. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Mike Groene; and Matt Hansen. Senators absent: Joni Craighead; Tyson Larson; and Beau McCoy.

SENATOR MURANTE: (Recorder malfunction.) ...and I'm the Chairman of this committee. We are here today for the purposes of discussing of and having public hearings on four legislative proposals before us. We will take them up in the order on which they appear on the agenda outside of this room. Something we are doing today, which is something that is a little bit unusual, if you are here to discuss either of Senator Bloomfield's proposals, LB687 or LR379CA, we're going to hear both of those two proposals at the same time because they're substantially the same in nature. So if for some reason you want to testify in favor of one but in opposition to another, we ask that you state that for the record and the committee statement will reflect such. If you're here to testify on any matters before us, we ask that you fill out one of these green sheets of paper which are located on either side of the room. If you're here and do not wish to testify, but do wish to register your opinion on any of the matters before us, we have a sign-in sheet where you can indicate your support or opposition for any of the matters before us. And we can assure you that your opinions will be taken into consideration just as if you had testified. If you testify, we ask that you begin your testimony by stating and spelling your name for the record, which is very important for our transcribers' office. Our order of business on any of the matters before us is that the introducer will make initial remarks. We'll then proceed to proponent testimony, followed by all the opponent testimony, any neutral testifiers, and then the introducer will be given an opportunity to close. We ask that you listen very carefully and try not to be repetitive. In the Government Committee we do use the light system. Each testifier is permitted four minutes. When the amber light comes on that signifies that you have one minute remaining and we ask that you begin wrapping up your comments. When the red light comes on, we ask that you close your comments and then we will open up the committee to any questions they may have for you. We ask at this time that you turn off or silence any cell phones or other electronic devices. If you have a prepared statement, exhibits, anything you wish to hand out to the committee, please give 12 copies to the pages and they will distribute them to the committee. If you don't have 12 copies, again, give them to the pages and they will make copies for you and distribute them. So we'll proceed to the introduction of members. To the far left is Sherry Shaffer who is our committee clerk. The bin in front of her is where you would submit the green sheets if you wish to testify. Senator Joni Craighead, State Senator from Omaha. She won't be with us; she is finally traveling back to the state and has reached Nebraska but cannot make it to Lincoln. So slowly but surely she is making her way to the state Capitol building. State Senator McCoy, Beau McCoy from Omaha will also not be here. State Senator Matt Hansen from Lincoln,

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Nebraska, is and will be here. So that's very exciting. To my immediate right, Andrew La Grone is our committee's research analyst. State Senator Tommy Garrett from Bellevue, Nebraska. Senator Garrett is the Vice Chair of this committee. State Senator Dave Bloomfield from Hoskins, Nebraska; followed by Senator Tyson Larson of O'Neill. And Senator Mike Groene; we expect Senator Groene to be here at some point as well. So without further ado, Senator Watermeier, welcome back to your Committee on Government, Military and Veterans Affairs.

**SENATOR WATERMEIER:** (Exhibits 1, 2, and 3) Thank you, Chairman Murante, and members of the committee. I appreciate that today. For the record, I'm Senator Dan Watermeier, D-a-n, Watermeier, W-a-t-e-r-m-e-i-e-r, and I represent District 1 in the southeast corner of the state. And I'm also Chairman of the Performance Audit Committee and today I'm here to introduce LB867 on behalf of that committee. LB867 would amend the Administrative Procedure Act which sets forth the formal process for agencies to follow when adopting administrative regulations. The bill is a result of a 2015 Performance Audit Committee audit. In that audit, the committee found that the existing language of the Administrative Procedure Act does not provide adequate guidance to agencies about what types of policies must be promulgated through their full Administrative Procedure Act process and does not reflect current best practices. In order to correct these issues, LB867 would do the following: number one is provide intent language for the APA; number two is amend the definition of rule or regulation to provide clarity for agencies and the public; number three, add the new term "guidance document" and procedures to assist agencies in providing information to the public; number four is create a short-term emergency rule procedure; number five, exempt technical changes and security policies from the notice and hearing requirements of the APA; number six is add language to the Department of Correction Services statute to require regulations when inmates are outside a correctional facility and update terminology in existing DCS statute; and number seven is to update the outdated references for the Secretary of State's Office. In drafting this legislation, the Audit Office solicited input and incorporated feedback from a great number of sources including state agencies, including the Department of Correctional Services, and the Department of Revenue, as well as a government and administrative practice section of the State Bar Association. I'm going to give you a real basic overview. I also brought an amendment with me today that I'll go over after I outline the bill. If you have more detailed questions, Stephanie Meese, the legal counsel for the Audit Office, is here and she'll be able to answer these questions. The rule definition is the first major change of LB867 as to the rule definition to resolve the lack of clarity in the current definition. The bill adds language stating that a rule must have general application, meaning that it applies to a broad class of people, as opposed to an order. LB867 also changes language regarding what is not a rule; internal procedural documents, guidance documents, forms, and their instructions. Now for guidance documents definitions and procedures, the nexus, as I stated earlier, LB867 adds the term "guidance document" to the list of documents that are not rules or regulations. Guidance documents are statements from agencies that provide information or direction to the public to interpret or to implement statutes or rules or

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regulations. An example of what types of these things would be considered a guidance document in the new definition, documents like agency, frequently asked questions, documents on their Web sites, Department of Revenue issues, revenue rulings, and Department of Accountability and Disclosure Commission advisory opinions would also be considered guidance documents. Now emergency rules...hang on just a second...the third major change in LB867 puts into a place a process for the adoption of emergency rules which can be adopted without following the typical notice and hearing requirements of the APA. Justifications for an emergency rule include natural disasters and changes in federal law that would result in a loss of federal funding should the state not change its rules. Any emergency rule would be in effect for 90 days but can be renewed for only one additional 90-day period. An agency could adopt a rule under this section after the approval by the Governor. If an agency wanted to make a temporary emergency rule permanent, the agency could begin the formal promulgation process while the emergency rule is in effect. Exempting these technical changes and security policies: LB867 would also create two new categories of rules that are exempt from the notice and hearing requirements of the APA. First, the bill would allow an agency to change the style or format of a rule, as well as change out-of-date statutory references. And secondly, security policies and procedures that would endanger public safety if released to the public would be exempted from the notice and hearing procedures. In the Department of Corrections, the bill also adds requirements for the Department of Corrections Services mimicking the language from last year's LB598 which required DCS to formally promulgate specific types of rules. The new recommendations of LB867 ensure that any procedures regarding a situation in which an inmate would be outside of a correctional facility through a program similar to the temporary alternative placement or when work release inmates are allowed to drive to prison...to allow prison vehicles their...this is where there is the most risk to the public would be required to go through the formal promulgation process. Additionally, the bill updates terminology in existing DCS statute to make it consistent with the new language of LB867. While it looks as though we're striking an entire section, the bill just puts the existing language into its own section and makes the language changes. And as far as the amendment I have, I have the amendment with me, the amendment to the bill that contains a number of clean-up details that were suggested by the stakeholders: make changes to the emergency rules process; it changes what factors can justify an emergency rule to make the language consistent with the model act. Secondly, it adds requirement that agencies must file an emergency rules with the Secretary of State's Office and publish them on their Web site. The amendment also adds language to the technical changes exemption to ensure that any changes made under this exemption must not alter the rights or obligation of the public. Finally, the amendment to LB867 adds language to the Department of Correctional Services requirement to clarify that its provisions only apply to when an inmate is outside of an correctional facility or a contracted county jail facility. Again, this legislation is a result of months of work and extensive involvement for a number of parties. I really want to particularly thank Tim Texel of the Power Review Board, who is here today, and my staff, they have done a great job on this. This has been a passion of several senators over the past. I know Senator Mello, if he can get out

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of Appropriations, will be in here and would like to speak to it. And so I appreciate the opportunity to testify. There's a lot of technicality to this bill and I might leave that to either Senator Mello and/or the staff through the Performance Audit. But if there are any questions, I'll try to answer them. [LB867]

SENATOR MURANTE: Thank you, Senator Watermeier. Are there any questions? Seeing none... [LB867]

SENATOR WATERMEIER: Perfect. I'll stick around, but I have another commitment, too; but I'll, hopefully, be able to close. [LB867]

SENATOR MURANTE: All right. That's a risky move having (Senator) Mello testify to the Government Committee. [LB867]

SENATOR WATERMEIER: I know. I know. [LB867]

SENATOR MELLO: Almost unprecedented. [LB867]

SENATOR MURANTE: Welcome, Senator. [LB867]

SENATOR MELLO: Good afternoon, Chairman Murante, members of the Government Committee. My name is Heath Mello, H-e-a-t-h, last name Mello, M-e-l-l-o. I am a state Senator representing the 5th Legislative District in south Omaha. And I come as a strong supporter of LB867, as you've heard from Senator Watermeier. And as Senator Murante and Senator Bloomfield know, I have brought over eight years to this committee a number of bills regarding the Administrative Procedures Act that tries to address what I think you really do see as a comprehensive reform of our state regulatory process when it comes to addressing rules and regulations. In discussions, obviously, the leadership of Senator Watermeier over the last year and a half with the Performance Audit Committee has really taken this issue on in light of what we had seen through the LR424 Special Corrections Investigative Committee that noticed a number of challenges in regards to one specific agency in respects to what we believe was a bypass of the Administrative Procedures Act. But as some of the committee members well know, you have, no doubt, heard in this committee, as has the Exec Board, challenges with other state agencies when it comes to definitions of what a guidance document is; definitions of what a rule and regulation is; and how, to some extent, we've seen, over a number of years, agencies been able to operate outside of that public purview of making policy decisions through the rules and regulations process, which has been burdensome on not only taxpayers, but organizations, businesses, those entities who have to work with those state agencies. And I think what you've

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seen from Senator Watermeier, in his testimony, walking you through the main components of the bill, really, I draw more than anything else the intent of the first three sections he discussed of giving real legislative intent in regards to the Administrative Procedures Act of what we, as a Legislature, want to see from the rules and regulations process. Obviously, giving a much better definition based on the model Administrative Procedures Act of giving a much clearer, I would say, definition of what a rule and regulation is can only help not only the public but, obviously, help out state agencies as they are going through that rules and regulations process. And the other main issue that I really applaud Senator Watermeier's leadership and the Performance Audit Committee's leadership on is the issue of addressing the guidance document. It's something that we had heard. Every year I brought a bill in this committee regarding this issue, the issue of what, quote unquote, an agency believes is a guidance document in comparison to a rule and regulation. We've never been able to truly solve that until...until the issue came in front of the Performance Audit Committee. And I believe with the Performance Audit report, as well as terrific work from the legal counsel and the other auditors, we've been able to, essentially, have a bill to present to the Legislature that really addresses those key issues. There's, obviously, as the other component that I want to speak a little bit more directly to also is the issue that Senator Watermeier mentioned regarding the Department of Corrections. I don't want to relive, to some extent, an awful lot of work that on over the past couple of years regarding that troubled state agency, but the issue regarding the impact that inmates who were outside of a correctional facility and the public not knowing that there was not a real public process for anyone to weigh in on in regards to when an inmate was driving a vehicle while still an inmate in the Department of Corrections and/or was being released from a Department of Correctional facility and re-entering the community without the public's knowledge. Those two specific examples that Senator Watermeier mentioned really...really raised this issue with the LR424 committee which was why it was one of our recommendations of our final report was to ask the Performance Audit Committee to really dig into the whole issue of the Administrative Procedures Act and hopefully bring what, I think, you have in front of you is a very, very good piece of legislation that's been worked on by the staff, by a number of agencies who have had concerns along the way, but mostly have all been ironed out to be able to present this bill today. So with that, once again, I only speak on my own behalf, but I really do appreciate the leadership of Senator Watermeier and Martha Carter, the auditor, and her staff in regards to really doing a lot of heavy lifting to help bring this real-quality piece of legislation in front of you as a committee. And, hopefully, the committee will look favorably on trying to address, once and for all, what I know has been an ongoing issue regarding the Administrative Procedures Act and our rules and regulations process in the state. With that, Mr. Chairman, I'd be happy to answer any questions you may have. [LB867]

SENATOR MURANTE: Thank you, Senator Mello. Are there any questions of Senator Mello?  
Seeing none... [LB867]

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SENATOR MELLO: Thank you. [LB867]

SENATOR MURANTE: Thank you very much for coming down to the Government Committee today. We'll now proceed to additional proponent testimony to LB867. Can I get a show of hands, how many people are going to testify in support of LB867? Okay. Any opposed? Neutral? Okay. Sounds good. First proponent testifier. I know some people raised their hands. Welcome. [LB867]

TIM TEXEL: (Exhibit 4) Senator Murante, members of the committee, my name is Tim Texel, it's T-i-m, last name is, T-e-x-e-l, and I'm the executive director and general counsel for the Nebraska Power Review Board. So I am the person responsible for dealing with the Power Review Board's rules and regulations. We have rules of practice and procedure and I'm the hearing officer for all Power Review Board hearings. The board is the state agency with primary jurisdiction over electric utilities and private developers that generate electricity in the state of Nebraska. So that's what our agency does. The board believes this bill is very beneficial for all the parties involved for the regulated entities, Nebraska's residents, and for the state agencies as well. The board greatly appreciates Senator Watermeier and the Legislative Performance Audit Committee, including all of the, I believe, the known stakeholders when drafting this bill. And I know I've been working on it since November of 2015. So we've been working on this for quite a while. I would like to say my comments are limited only to those parts of the bill pertaining to the APA. I don't have anything to do with the Department of Corrections provisions in Sections 1, 16, and 17, those are not something my agency has anything to do with. I think that the bill has been vetted very well, as you had heard. I wanted to go through some of the process. I don't speak for any other parties but myself and my board, but I wanted to let you know the vetting process that the bill has gone through. I serve as the chair of the Legislative Review Committee for the Bar Association's Government and Administrative Practice Section. And the draft bill was provided to all 17 members of that committee, including the executive committee, who made numerous recommendations to improve the bill. Many of those comments, although not all, were incorporated into the bill as you have it now. I think the Bar will testify later on their official position, but I wanted to let you know about that vetting process. The draft of the bill was also provided to every noncode agency director. And we made sure everyone received that, at least through an e-mail. We did not hear any objections from them. And I don't speak for them. But I know in the past when there have been changes to the APA, we have had quite a few noncode agencies that made comments about it, and we had none of that this time. So I think that's a testimony to this particular bill. The board believes that the three most important provisions, at least to my agency, are the new definition for what a rule or regulation is in Section 3 (2); the definition for a guidance document in Section 3 (5); and the rules for the guidance document set out in Section 4. To my agency, those are rather critical and very helpful to us and our regulated entities. The guidance documents in the APA would be, I think, a huge benefit to the entities regulated by state agencies, in particular, mine. The board currently uses board

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policies to issue interpretations in a similar method to that outlined in LB867. That has been a huge benefit to Nebraska's electric utilities and private generation developers and they have been very supportive of that process. But it is somewhat questionable if those interpretations could be formal rules, and we really appreciate some legislative guidance on whether we can do that in the way that we do it...the way this bill outlines. I won't go through the other steps that you'd have to take normally in the APA to get an answer, but I think this answers it very well instead of...making somebody go through the declaratory order process or filing application and making us rule on it after a hearing. I don't want to make any regulated attendees go to that time and expense. I would like to say that this is modeled after the national model rules and it's by the National Conference of Commissioners on Uniform State Laws. And I did bring a copy of that, so if you want to compare the similarity, at least as to the definitions and guidance documents, that I have the copies of that to distribute to you so that you could see, I think, this is substantially similar to what the model rules, with all of its vetting process and the national scholars that are on such a board that come up with that, and I think that's testimony to how much this is vetted too. And with that we would urge that you adopt the amendment that's been proposed and move this to General File. Thank you. I'd be happy to answer any questions.

[LB867]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. [LB867]

TIM TEXEL: Thank you. [LB867]

SENATOR MURANTE: Appreciate it. Additional proponent testimony to LB867? Mr. Mueller, welcome to your Government Committee. [LB867]

BILL MUELLER: Thank you, Senator, it's so good to be here in my Government Committee. Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB867 with the strong support of AM1976 that Senator Watermeier referred to. I want to first start by saying that I appreciate the assistance that Senator Watermeier has given us on this bill, and particularly Stephanie Meese, the legal counsel, and the Legislative Audit Office. We have been in constant communication the last ten days on this bill. When the Bar Association's legislation committee looked at this bill, we had a concern over two sections of the bill that you've heard about today--Section 5 dealing with emergency rules, Section 10 dealing with technical changes exemption. And what AM1976 does is tighten up these two sections of statute. It tightens up when an agency can adopt an emergency rule without going through the formal APA rule-making process. And it further tightens up when an agency can make a technical change to a rule, again, without going through the formal APA procedure. We do not have a position on Sections 1, 16, and 17

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dealing with Corrections. We're not weighing in on that. We are weighing in on the APA portions of this. As Mr. Texel told you, the emergency rule that is included in LB867 as amended by AM1976 is in large part consistent with Section 309 of the Revised Model State Administrative Procedures Act that has been promulgated by the Uniform Law commissioners. These are lawyers and judges and professors who spend hours and hours and hours studying, writing, rewriting uniform acts. That is where this Revised Model State Administrative Procedure Act comes from. It's well thought out. It is well vetted. With the amendment the Bar supports LB867. In the interest of full disclosure, our president is out of town at the American Bar Association meeting so he has not had an opportunity to revise our position, but I'm confident that with the amendment the Bar would support LB867 fully. I'd be happy to answer any questions that the committee may have. [LB867]

SENATOR MURANTE: Thank you very much for your testimony. Senator Groene. [LB867]

SENATOR GROENE: Thank you, Chairman. Mr. Mueller, you realize when a prominent lobbyist says "my Government Affairs Committee" (sic) a lot of citizens are looking at accountability and (inaudible). (Laughter) [LB867]

BILL MUELLER: Senator. [LB867]

SENATOR GROENE: Question--so the Bar...the lawyers think this will clear up a lot of...  
[LB867]

BILL MUELLER: Exactly. [LB867]

SENATOR GROENE: ...misconceptions. [LB867]

BILL MUELLER: Absolutely. It does. [LB867]

SENATOR GROENE: People asking questions about what do I need to follow? [LB867]

BILL MUELLER: It does. And our concern really was that, as drafted, that perhaps the emergency rule section may have allowed an agency to avoid the formal rule making under the guise of--this is just an emergency rule. I'm not saying that that was the intent of the bill, but we were concerned that it was, perhaps, overly broad. We were also concerned that as to the technical changes exemption, maybe you could claim that something was just a technical change, and again, not go through the formal rule-making procedure where the public has the right to comment and then have it end up affecting a citizen's right. The language of the

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amendment says that if a change is made under this technical changes exemption, that change shall not alter the rights or obligations of the public. So we think this amendment tightens this bill and only provides for true emergency situations and true technical changes to rules. So we think that it is a better bill. We think it is tighter. We think that the public is better protected with this amendment. [LB867]

SENATOR MURANTE: Thank you, Senator Groene. Additional questions? Seeing none, thank you very much for your testimony. [LB867]

BILL MUELLER: Thank you. [LB867]

SENATOR MURANTE: Additional proponent testimony to LB867? Any additional proponents? Any opposition testimony to LB867? No one opposed. Okay, neutral testifiers? Mr. Secretary. [LB867]

JOHN GALE: Mr. Chairman. [LB867]

SENATOR MURANTE: Welcome back to your Committee on Government, Military, and Veterans Affairs. [LB867]

JOHN GALE: (Exhibit 5) Thank you. Thank you. It's an honor to be here. I'm John Gale, Secretary of State, state of Nebraska; J-o-h-n G-a-l-e. And I'm appearing very briefly on a few sections of the proposed bill, LB867, do deal directly with the Secretary of State's Office. As you know, the Secretary of State files, compiles, maintains, and certifies all state agency rules and regulations and makes them available for public inspection. So it's like an hour glass. These come from a lot of agencies, come down through the funnel to us and we make them available to the public in a variety of different ways. Last fall, the Legislative Performance Audit Committee approached our office and asked if there were any outdated provisions of the APA with respect to the functions of the Secretary of State's Office that needed to be updated. We submitted our suggestions to the committee and they have been incorporated into LB867. We are very deeply appreciative of the communication and effort by the committee to involve agency stakeholders in the drafting of this legislation. We're a very important process of compiling and educating and these updates are going to help significantly in us being able to do our job. So for these reasons, we are appreciative and supportive of those changes. And that's the only part of LB867 that we're addressing, but they are really quite significant and helpful to the Secretary of State's Office in the performance of our duties. Thank you. [LB867]

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SENATOR MURANTE: Thank you, Mr. Secretary. Are there any questions? Thank you very much for coming down today, much appreciate it. [LB867]

JOHN GALE: Thank you, Chairman. [LB867]

SENATOR MURANTE: Additional neutral testimony to LB867? Welcome. [LB867]

CALDER LYNCH: (Exhibit 6) Thank you. Good afternoon, Senator Murante and members of the Government, Military and Veterans Affairs Committee. My name is Calder Lynch, that's spelled C-a-l-d-e-r L-y-n-c-h. I'm the director of the Division of Medicaid and Long-Term Care within the Department of Health and Human Services. Thank you for this opportunity to speak on LB867. I would like to note before I begin the testimony that I have not seen the amendment that's being considered before the committee today, so my testimony is based on the bill as it was filed. While DHHS is neutral on this legislation and as I understand the Department of Corrections has submitted some technical concerns regarding the provisions that specifically impact their agency, I want to express my appreciation for the inclusion of updated authority for state agencies to issue emergency regulations. The Division of Medicaid Long-Term Care, as well as our sister divisions within DHHS, issue numerous regulations per year impacting our clients and our providers. However, due to the lengthy process required under current law to approve rules in our state, the Medicaid program, as well as some of our sister divisions, is sometimes at risk with not complying with state or federal law changes and court decisions in a timely manner. These include matters impacting Medicaid enrollment and provide a reimbursement. Noncompliance can lead to audit findings or even Medicaid disallowances requiring the state to reimburse the federal government. As highlighted by the report issued in September by the Performance Audit Committee, Nebraska does not allow for time-limited emergency regulations like every other state does. From my experience working in Louisiana, emergency rules are important tools to ensure laws can be quickly adopted when necessary. LB867 incorporates several of the report's recommendations in allowing for emergency regulations, clarifying the distinction between regulations and guidance documents, and exempting technical and reference citation changes from the formal regulatory process. While these are important first steps, I believe that a continued focus on modernizing the APA is warranted. I hope this legislation will mark the beginning of an on-going conversation on how to further improve the APA in Nebraska. With that I'd be happy to answer any questions that the committee might have. [LB867]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?  
Seeing none... [LB867]

CALDER LYNCH: Thank you. [LB867]

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SENATOR MURANTE: ...thank you for coming down today, much appreciate it. Additional neutral testimony for LB867? Welcome. [LB867]

JAMES GODDARD: (Exhibit 7) Thank you. Good afternoon, my name is James Goddard, that's J-a-m-e-s G-o-d-d-a-r-d and I'm the director of the Economic Justice Program at Nebraska Appleseed here to provide neutral testimony on this bill. We fully agree with the intent of LB867, particularly when looking at actions taken by agencies that affect private rights and that those actions must be adopted pursuant to the APA process. We think that that would be a great addition to the APA. I, too, have not seen the amendment that has been discussed. And it sounded, from what I heard, like that might address several of the points that we have made in the written testimony. So I'll be very brief and just say three different points: first is it changes the definition of what a rule is and removes certain key pieces of language. And, ultimately, that definition should be modified in some way to ensure that informal actions, whether it's a guidance, whether it's called a letter, whether it's an internal procedure, if it affects someone's legal rights and interests then it is a rule and must follow the formal APA process. We have proposed some language in the written testimony to do that, however, it sounds like the amendment may do just that. Also briefly on the emergency procedure, we recognize that there are times where this might be warranted, but it does significantly increase the scope of what can be done under the APA without following the process. And I look forward to the amendment and how that might be changed. And finally, looking at the technical changes exemption, similarly, when something could be changed because of its style or form, those are the words that are used in the bill, it also needs to be clear that if that change affects substantive rights or duties then that also should not be considered a technical change and subject to that exemption. So with that I look forward to looking to the amendment which may address many of the points that I've made. And we would be happy to work with the committee, the Performance Audit Committee in addressing any of these concerns and are at your disposal to do so. Thank you. [LB867]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today, appreciate it. [LB867]

JAMES GODDARD: Thank you. [LB867]

SENATOR MURANTE: Additional neutral testimony to LB867? Welcome. [LB867]

STEPHANIE MEESE: (Exhibit 8) Thank you. Good afternoon, Chairman Murante, and members of the committee. For the record, I'm Stephanie Meese, and that's S-t-e-p-h-a-n-i-e, and the last name is M-e-e-s-e, and I'm the legal counsel for the Legislative Audit Office. I'm having the page hand out a section-by-section of the bill that kind of has a brief description of what that section does, and then goes into a little more detailed description about why that change is

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needed. And I'm, basically, just here to answer any questions you might have, in case anything came up from another testifier. So, but I'm fine if nobody has any questions as well. (Laughter) [LB867]

SENATOR MURANTE: Well, let's just see. Does anyone have any questions? Seeing none... [LB867]

STEPHANIE MEESE: All right. Thank you. [LB867]

SENATOR MURANTE: ...thank you very much. Additional neutral testimony to LB867? Any additional neutral testifiers? Seeing none, Senator Watermeier, recognized to close. [LB867]

SENATOR WATERMEIER: Thank you, Chairman and committee members. You know, I think back to when we did the performance audit based on the revenue, Department of Corrections, and HHS, yet I would have been incredibly naive to think that we would come here today with a bill that has no opposition to it. And that's just a testimony not only to the committee but to the stakeholders behind that did a really, really good job in cooperation between the executive branch. We really had a good group of people talking about this bill and the effects of it. And as you, even Senator Mello mentioned in his very first point, you bring up the first two sections and it's about what's best for the public and allowing the public to have some input. And I think we'll have nothing better than a better arrangement, a better bill when we're all said and done with this. So with that I would just urge your adoption of the bill. I am prepared to make this a priority, if you get this out, we'll talk about it on the floor and have it out there. The Audit Committee has two priorities that we can use and we're fully willing to use that priority. [LB867]

SENATOR MURANTE: All right. Senator Garrett. [LB867]

SENATOR GARRETT: I guess I would only have one concern, one question is the...looking at the fiscal note, are you comfortable with that (inaudible)? [LB867]

SENATOR WATERMEIER: I just got it this afternoon. You know, and I should have asked Stephanie to address that; I didn't even think about it. I can just do it privately. I mean, we were actually...I wasn't sure there would be a big fiscal note to it at all. But I was surprised that it was around \$150,000. I think \$40,000 of General Funds...I didn't even bring it with me. [LB867]

SENATOR GARRETT: \$186,600... [LB867]

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SENATOR WATERMEIER: It's split between other and General. I hadn't had a chance to dig into it. It just showed up today, so I apologize. [LB867]

SENATOR GARRETT: Okay. All right. [LB867]

SENATOR MURANTE: (Exhibits 9, 10, 11) All right. Seeing no other questions, Senator Watermeier, thank you very much for coming to the Government Committee today. Before we close the hearing on LB867, I have one letter in support of LB867 from Spike Eickholt of ACLU of Nebraska, and a neutral letter from Kyle Schneweis, the director of the Department of Roads; and an additional neutral letter from Scott Frakes of the Department of Correctional Services. And with that we close the hearing on LB867. Thank you, Senator Watermeier. [LB867]

SENATOR WATERMEIER: Thank you. [LB867]

SENATOR MURANTE: And we'll proceed to the next item on the agenda, Senator Bloomfield. And I'll remind everyone, if you are here to testify in support or opposition, both to LB687 and LR379CA will be heard at the same time. So if...we're only going to go through this once, but if you, for some reason, desire to testify in favor of one but in opposition to another, let us know and it will be reflected in the record. Senator Bloomfield. [LB687 LR379CA]

SENATOR BLOOMFIELD: How's that for clearing a room? [LB687 LR379CA]

SENATOR MURANTE: You did a great job. [LB687 LR379CA]

SENATOR BLOOMFIELD: Good afternoon, Chairman Murante, and fellow members of the Government, Military and Veterans Affairs Committee. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d, and I represent the 17th Legislative District. I'm here today to introduce LB687 and LR379CA to the committee for your consideration. These two bills go hand-in-hand and will more than likely have the same parties that are interested in testifying on them so I requested the committee hear them together. LR379CA would place on the November 2016 ballot a constitutional amendment that would allow state-elected officials to be recalled. LB687 provides for the procedure and protocol for the recall of such officials. In the drafting of this bill, I looked at how it is done in other states. It is not something I took lightly. Most states require signature requirements anywhere from 10 percent to 40 percent. I decided to go with 35 percent. And that's, basically, my introduction, as short as you're going to get. [LB687 LR379CA]

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SENATOR MURANTE: Okay. All right, Senator Bloomfield. Any questions for...Senator Garrett has a question. [LB687 LR379CA]

SENATOR GARRETT: Thank you, Chairman. I guess...I hope I was...didn't miss your comment, what led to your introduction of this? What was the purpose? [LB687 LR379CA]

SENATOR BLOOMFIELD: I have kind of had this in the back of my mind for several years, but I got beat up pretty bad last year--what the hell are you people doing down there and is there any way to get rid of somebody that is elected, and the answer was no. This provides a means. It's not a simple means--35 percent is a pretty high bar. You know, it's 35 percent of the people that voted in that district, so it's not something that is going to be done just aggravated sitting governor or something like that, it's a pretty high bar to get to. But it does provide a means if someone is way out of line or if an individual is elected and then goes way afield from what he had promised his constituents in the campaign. [LB687 LR379CA]

SENATOR GARRETT: Thank you. [LB687 LR379CA]

SENATOR MURANTE: Thank you, Senator Garrett. Senator Bloomfield, do you...are you concerned...notwithstanding the public policy of whether state-elected offices should be allowed to be recalled, if we do it, is 35 percent of the number of votes cast is that...I'm concerned it's not attainable. If you have to get signatures for 35 percent of a statewide election, you're talking 350,000 signatures or thereabouts. [LB687 LR379CA]

SENATOR BLOOMFIELD: It is a high bar. If...this committee has the ability to amend anything we put in front of it if they wish to do so. Again, my intent was to start a procedure where it could be done because there is none. And I also did not want...because you see in other states where we have political parties, more or less, running the show. If a Republican governor gets elected, immediately the Democrat party starts initiating a recall process or vice versa, we elect a Democrat, the Republican hierarchy start running a recall so they can keep that governor busy. I think we saw some of that up in Wisconsin not very long ago. [LB687 LR379CA]

SENATOR MURANTE: Okay. [LB687 LR379CA]

SENATOR BLOOMFIELD: And that can be amended if the committee so wishes. [LB687 LR379CA]

SENATOR MURANTE: Sure. All right. Senator Hansen. [LB687 LR379CA]

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SENATOR HANSEN: Thank you, Chairman Murante. Senator Bloomfield, I ask just only because we've been discussing a different constitutional amendment on the floor, since you're changing the process for multiple different offices, have you thought about any of the single-subject ruling of the Supreme Court? [LB687 LR379CA]

SENATOR BLOOMFIELD: I have not given that consideration, Senator Hansen. It's something we probably should give consideration to before we kick it out of this committee. [LB687 LR379CA]

SENATOR HANSEN: All right. Thank you. [LB687 LR379CA]

SENATOR MURANTE: You might have to pick one constitutional office and allow it to be recalled. Which one are you going to pick? [LB687 LR379CA]

SENATOR BLOOMFIELD: Yours. (Laughter) [LB687 LR379CA]

SENATOR MURANTE: That sounds like special legislation, Senator Bloomfield. Okay. Any additional questions? Seeing none, thank you, Senator Bloomfield. That bill might not advance, by the way, Senator Bloomfield. (Laughter) Are there proponents wishing to speak for LB687? Welcome to your Committee on Government, Military and Veteran Affairs. [LB687 LR379CA]

RICK EBERHARDT: (Exhibit 1) Thank you, Chairman, and Senators. My name is Rick Eberhardt and I am the Pierce...I am from Pierce, Nebraska, where I have served as the Pierce County Sheriff for 31 years. I would like to testify in support of LB687 and LR379CA, bills that aim to allowing the people of the state of Nebraska to circulate a petition aimed at having a special election to recall any member of a state office. I feel that every elected state office should be held to the same standards as the counties' and cities' elected officials, which by present law are allowed to be recalled. I feel that most Nebraskans feel their state leaders are no better or worse than their local leaders and should be treated as such. Many Nebraskans feel that state leaders can break promises, promote bad policy, and pass bad laws that do not represent the will of their people, their constituents. Some leaders act out and attack certain individuals and groups to promote their own personal agenda with no consequences for four years. What message does that send to the people that pay the bills? I know there are leaders and lobbyists that like the status quo. But the petition process would act as a checks and balances system and would send a message to leaders and groups that we truly do have a representative government and all city, county, and state leaders should be held to the same standard and this would promote equality in local and state government. [LB687 LR379CA]

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SENATOR MURANTE: (Exhibit 2) Okay. Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today, much appreciate it. Additional proponents wishing to speak on LB687 or LR379CA? Seeing none, is there opposition testimony to either of the proposals? Seeing none, is there any neutral testimony? Seeing none, Senator Bloomfield....waives closing. And we do have one letter in support of both LB687 and LR379CA from Rachel Wise, the president of the Nebraska State Board of Education. And that closes the hearing on LB687 and LR379CA. We'll proceed to the last item on the agenda, Senator Hansen, LB742. Welcome, Senator Hansen, to your Committee on Government, Military and Veteran Affairs. [LB687 LR379CA]

SENATOR HANSEN: Thank you, Chairman. Good afternoon, members of the committee. My name is State Senator Matt Hansen. For the record, that is spelled M-a-t-t H-a-n-s-e-n. I represent District 26 in northeast Lincoln. I appear before you today to open on LB742. This bill would update statutes that reference county populations' thresholds of 300,000 and increase those thresholds to 400,000. It would also add language clarifying that these thresholds reference the population as measured at the most recent federal decennial census, as well as giving a six-month window for compliance when that threshold is crossed in specific instances, as recommended by Bill Drafters. This bill is largely based on the findings of LR196 interim study conducted by this committee during the 2015 interim that I introduced. LB742 and the LR196 interim study came from a conversation I had with representatives of Lancaster County early last session regarding the idea to raise certain thresholds for certain sizes of counties, specifically those of 300,000 to 400,000. By most estimates, Lancaster County passed the 300,000 population threshold sometime before the end of 2014 and will assuredly have that confirmed by the 2020 census. Raising those thresholds and clarifying the population counts would apply would continue the current requirements and ensure that they stay the same for Lancaster County. In closing, I would ask the committee to advance LB742 to General File. I'd be happy to answer any questions. [LB742]

SENATOR MURANTE: Thank you, Senator Hansen. Are there any questions? Are you at all concerned that we're not raising the number enough and we're going to be right back here in ten years doing the exact same thing all over again? Or is that a future Government Committee problem? [LB742]

SENATOR HANSEN: That hadn't been a concern until you mentioned it, but I'd be happy to work with the committee to double check. Obviously the concern was we wouldn't necessarily want to...I don't know what Douglas County's population is at the moment, but we wouldn't necessarily want to loop Douglas County into this category as well. [LB742]

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SENATOR MURANTE: Fair enough. All right. Any additional questions? Thank you, Senator Hansen. [LB742]

SENATOR HANSEN: Thank you. [LB742]

SENATOR MURANTE: We'll proceed to proponent testimony to LB742. Welcome. [LB742]

KERRY EAGAN: (Exhibit 1) Thank you. Good afternoon, Senator Murante, members of the Government, Military and Veterans Affairs Committee. My name is Kerry Eagan, spelled K-e-r-y E-a-g-a-n. I am the chief administrative officer for the Lancaster County Board of Commissioners. I would like to thank Senator Hansen for introducing LB742. I'm here on behalf of the Lancaster County Board to testify in favor of the bill. When we examined how Lancaster County would be affected by the 300,000 population threshold we identified three major impacts: (1) mandated changes to the county's civil service system; (2) would be the requirement for seven county commissioners rather than five; and (3) would be the sunset of our statutory authority for the Lancaster County employees' retirement plan. It should be noted that LB126 in 2015 addressed the pension plan concern, so that is no longer a problem for Lancaster County. The Lancaster County Board's biggest concern is how the threshold will impact the Lancaster County civil service system. Presently, the county's system is governed by a personnel policy board consisting of noncounty government members. Upon reaching 300,000 population, the county will be required to replace the personnel policy board with a civil service commission which consists of two elected officials, two county employees, and a member of the public holding no public or political office. The county board believes this makeup of a civil service commission is more likely to lead to partisan politics, which really undermines the very purpose of a merit system. Another concern with the impact on our civil service system is the loss of statutory authority which Lancaster County now has to facilitate the transfer of functions performed by state employees or employees of a political subdivision to Lancaster County, while at the same time this legislation protects the rights and accrued benefits of the employees being transferred. This legislation only applies to Lancaster County, and the authority would be lost when we reach the 300,000 threshold. Yet another concern is that the civil service system for counties with a population of over 300,000 includes department directors as protected merit employees. The Lancaster County Board believes these employees should serve at the pleasure of the county board. Regarding the number of commissioners, the county board believes the citizens of the county are presently well represented by five commissioners. We don't think an arbitrary population threshold should automatically increase the number of commissioners. It should also be noted that having seven commissioners rather than five would increase the cost for the county. We would need five physical offices. We'd have two additional salaries. The present salary for a Lancaster County Board member is about \$40,000, so there's about \$80,000 right now at present salaries. Election costs would be higher as well, so there would be additional costs and we don't see that there would be additional benefit. Finally, there should be a clear

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standard governing when the thresholds in the various statutes become effective. Some statutes indicate the threshold is reached, as Senator Hansen indicated, as determined by the most recent federal decennial census. Other statutes are silent on the threshold and when it's reached. Without clarifying that legislation, then it would be left to the courts to make that determination. So thank you. I would be happy to answer any questions. [LB742]

SENATOR MURANTE: Thank you very much for your testimony. I do have one question with respect to the size of the county board. Are you at all concerned that having districts with an ever-increasing number of constituents in them give the constituents less an ability to communicate with their representative and express their concerns? [LB742]

KERRY EAGAN: I think that could be a valid concern. The board feels that at the present time that's not a problem and we're, quite frankly, over 300,000 population at this time. So maybe at some point in the future maybe that's another consideration. In answer to a previous question, our population estimates, and I don't have that sheet in front of me, we're looking probably towards 2040 or so before we reach the 400,000. We've had a steady 1 percent growth in Lancaster County since we became a county. It's varied a little bit from that, but it's been an incredibly steady rate of growth. [LB742]

SENATOR MURANTE: Okay. Senator Bloomfield. [LB742]

SENATOR BLOOMFIELD: Thank you. My question is going to be along the same line as Senator Murante's was. That variation of 300,000 was put in there for a reason. What has happened in the last few years to make us think that all of a sudden we should go to a higher number before that number of commissioners is enforced? [LB742]

KERRY EAGAN: Well, we think it was... [LB742]

SENATOR BLOOMFIELD: Is it purely to save money or...? [LB742]

KERRY EAGAN: No, I don't think so, Senator. You know, when those population limits were set, and it was probably some time ago, and it was just to make clear distinctions between probably Douglas County that wanted to do it a certain way and Lancaster County which liked the way we were doing it. Of course, we had more in common with other counties with the number of commissioners. So I guess all I could say is the same answer as I did for Senator Murante, that it seems to be working very well now and the districts aren't too large and simply crossing the threshold we don't think should indicate an additional number of commissioners. [LB742]

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SENATOR BLOOMFIELD: Okay. That same set of rules goes on down to, if I'm not mistaken, regulating precincts in smaller counties. It may opt to be run by precinct captains versus may have...what's the word, Senator? [LB742]

SENATOR MURANTE: Supervisors, right. [LB742]

SENATOR BLOOMFIELD: ...supervisors instead of commissioners. [LB742]

KERRY EAGAN: Right. [LB742]

SENATOR BLOOMFIELD: That is a threshold too. [LB742]

KERRY EAGAN: Right. [LB742]

SENATOR BLOOMFIELD: If thresholds are set then that threshold is reached, do we want to make a habit of just changing the threshold? [LB742]

KERRY EAGAN: If there is good public policy reason to change them, I would agree that we should change them. And we think there is in this case, that there's a number of things that are working very well in Lancaster County and the county board is in favor of maintaining the same system, so. And vice versa, too: If there's a reason that you get to a certain level that you should be required to make the changes in existing law, then that argument could be made as well. [LB742]

SENATOR BLOOMFIELD: Thank you. [LB742]

SENATOR MURANTE: I think part of our challenge perhaps is that those of us in the Legislature have districts with approximately 37,000 people in them. You're talking about districts with 60,000 people-plus in them. And we have, we spent an awful lot of our time with constituent communication. If you doubled our constituents, I think we would find the workload to be burdensome. So I understand where your commissioners are coming from. They all got elected using the system we have now and they don't want to change the system. [LB742]

KERRY EAGAN: Right. [LB742]

SENATOR MURANTE: They're also uniquely biased on that subject matter... [LB742]

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KERRY EAGAN: Right. [LB742]

SENATOR MURANTE: ...because they benefit from the system that we have right now. So it's...I see where you're coming from. It's just...it's a challenge. We hate to see districts of that size. [LB742]

KERRY EAGAN: I understand. [LB742]

SENATOR MURANTE: So, any additional questions? Seeing none, thank you very much for your testimony. [LB742]

KERRY EAGAN: Thank you, Senator. [LB742]

SENATOR MURANTE: Additional proponent testimony to LB742? Any additional proponent testimony? Any opposition testimony to LB742? Welcome. [LB742]

GARY ALDRIDGE: (Exhibit 2) Chairman Murante, members of the committee, for the record: first, G-a-r-y; last, A-l-d-r-i-d-g-e, Lincoln, Nebraska. I'm one of the owners. LB742, Hansen, LD26, no et al, a/k/a special legislation carried for NACO and/or Lancaster County: a bill to change population thresholds, strike "three hundred", insert "four hundred." County government in Lancaster County is vested in a board of commissioners. In Lancaster County, the board has five elected commissioners. 23 N.R.S. 151, et seq., specifies in law certain provisions, duties, and/or requirements of a commissioner system with respect to population. 23 N.R.S. 151 separates counties at 300,000 inhabitants. A county above 300,000 inhabitants shall do certain things. 23 N.R.S. 151(1): Each county having (sic)more than 300,000 inhabitants shall be divided into seven districts. And 23 N.R.S. 151(2), "boundary lines shall not be subject to alteration...unless...a change in population requiring...redistricted pursuant to subdivision (3)(a) of this section." And 23 N.R.S. 151(3)(a), "district boundary lines pursuant to subsection (1)...shall be completed within one year after a county attains a population of more than three hundred thousand inhabitants." And 23 N.R.S. 151(3)(b), alterations of district boundary lines "shall be done by the county board." "If the county board fails to do so by the applicable deadline...boundaries shall be drawn by the election commissioner." Only Lancaster County, Nebraska, is affected by provisions of LB742. Words have meaning. The meaning and intent of legislation is determined by the words and the structure. Each county having more than 300,000 inhabitants shall be divided into seven districts. The word "shall" in general rules of construction, 49 N.R.S. 802, is "mandatory or ministerial action." I like that word "ministerial." District boundary lines shall not be subject to alteration more than once every ten years unless a change in population requires redistricting pursuant to (3)(a). The Unicameral says certain actions shall occur apart from an official population census if persuasive data supports or requires action. The

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"unless a change in population," the Unicameral acknowledged certain action is permissible between the decennial census. Statute is mute on whether the number above 300,000 is one or any other number. Ain't democracy beautiful? There may be any number of sources that can provide or project a reasonably accurate population for Lancaster County. The one attached is an estimate--CY 2014--above 300,000 population. "The establishment of...boundary lines pursuant to subsection (1) of this section shall be completed within one year after a county attains...more than three hundred thousand," this is the first sentence of (3)(a). Some or most or all may understand this as the primary action or duty of (3)(a). This shall be the first task or duty of a board after 300,000 population. The establishment of lines shall be done by the county board. If the county board fails by the applicable deadline, boundaries shall be drawn by the election commissioner. The applicable deadline is one year following 300,000 inhabitants. Estimates suggest the population of Lancaster County was above 300,000 in calendar year 2014. The Lancaster County Board of Commissioners, county attorney, election commissioners all are players in this drama. Each has a duty. That duty is established by law. LB742 is specific. The only county affected is Lancaster. Do I see NACO and/or county board lurking in the shadows? I do. Do I see the fingerprints of NACO or the county board on this LB? I do. NACO and/or the county board now asks the Unicameral to save them from what statute says they shall do.

[LB742]

SENATOR MURANTE: (Exhibit 3) Okay. Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today, much appreciated. Is there additional opposition testimony to LB742? Any neutral testimony to LB742? Seeing none, Senator Hansen, you're recognized to close. I should say that I do have a letter of support for LB742 from Larry Dix from the Nebraska Association of County Officials. [LB742]

SENATOR HANSEN: I will close simply by saying I'm happy to work with the committee on any issues or concerns facing the bill and hopefully we can get this moving forward. [LB742]

SENATOR MURANTE: All right, sounds good. Any final questions? Seeing none, thank you, Senator Hansen. And that closes the hearing on LB742 and ends the public hearings for the day. [LB742]