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Judiciary Committee  
January 31, 2018

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[LB792 LB883 LB913 LB923 LB955 LR269CA]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 31, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB913, LR269CA, LB883, LB923, LB955, and LB792. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32, and I am the Chair of the Judiciary Committee. I'd like to start off by asking my colleagues, starting with Senator Halloran today, to introduce themselves.

SENATOR HALLORAN: Thank you, Chair Ebke. Steve Halloran, representing District 33: Adams County and part of Hall County.

SENATOR KRIST: Bob Krist. I represent District 10 in Omaha and unincorporated parts of Douglas County, including Bennington.

SENATOR BAKER: Roy Baker, District 30: Gage County, part of southern Lancaster County.

SENATOR EBKE: And I suspect the other members of the committee--Senator Morfeld, Senator Chambers, Senator Pansing Brooks, and Senator Hansen--will be joining us before too long. We're starting on time. So assisting the committee today are Laurie Vollertsen, our committee clerk, and Dick Clark, one of our two legal counsels for the committee. Our committee pages are Rebecca Daugherty and Sam Baird, both students at the university, correct? No. Oh. Rebecca is a student at Doane. And on the table at the front over there you will find some yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There's also a white sheet over there if you do not wish to testify but would like to record your position on a bill. Also, for future reference, in all committees, okay, if you are not testifying in person on a bill and would like to submit a letter for the official record, all committees now have a deadline of 5:00 p.m. the day before the hearing. So if you want to submit an e-mail, letter for the record, you need to have it to us, to the committee Chair, by 5:00 the night before. We'll begin bill testimony with the introducer's opening statement. Following the opening, we'll hear from the proponents of the bill, those for the bill; then the opponents, those against the bill; and then those speaking in a neutral capacity. We'll finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, I ask that we keep the on-deck chair filled. If you

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

Judiciary Committee  
January 31, 2018

---

have any handouts...the on-deck chair is right up there. They have yellow signs there. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies, the page can help you make some more. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask you to wrap up your final thought and stop. We have an audible timer that goes off at three minutes and 30 seconds, so when you hear that, if you haven't stopped yet, it is time to stop. As a matter of committee policy, I would remind everyone that the use of cell phones and other electronic devices is not allowed in the hearing room during the hearings, though senators may be using them to take notes or to stay in contact with their staff. So at this time, I would ask everybody to take a look at your cell phones if you've got them with you and make sure that they are on either silent or vibrate mode. Also, I don't think we'll have any verbal outbursts today, but we ask that you not have verbal outbursts or applause. Such behavior could be cause for asking you to leave the hearing room. One more thing: You may notice people coming and going. That has nothing to do with the importance of bills being heard but senators may have bills to introduce in other committees or other meetings. With that said, we will begin today's hearing but we're going to call a little bit of an audible. Senator Krist is going to go first for reasons which will become apparent shortly. [LB955]

SENATOR KRIST: Well, that's a heck of an introduction. Good afternoon, Senator Ebke, members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington. I appear before you today in introduction of LB955. I'll stop there and simply say that I had legal counsel take a look at all the policies and procedures that are in place and the current statutes that are there. It is true that the policies and procedures are a little cumbersome, but they're already in law and in statute and in policy. For that reason, I would like to do a courtesy for anyone who would be waiting for hours to testify. I'd like you to IPP LB955 in Executive and dispense with it. That's my request. And I believe that it's in the best interest of both efficiency in legislative process and also in terms of hearing this now. I would say, if this were a long session and if we had the time to properly go through it, I might keep it on the table. But I rely on legal counsel to give me that kind of input and I think he's done a great job of letting me know that things are already in place. [LB955]

SENATOR EBKE: Thank you, Senator Krist. No questions? Did anybody come to testify either in favor of or opposing LB955? I see no one. Anybody in the neutral position? [LB955]

SENATOR CHAMBERS: Madam President,... [LB955]

SENATOR EBKE: Yeah. [LB913]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: ...only because it's one of our members. Today he made an amendment to one of the most famous scriptures: The last shall be first. But in the Judiciary Committee, the next-to-the-last shall be first. [LB955]

SENATOR KRIST: ...shall be first. [LB955]

SENATOR EBKE: (Laugh) That's right. Okay, that concludes the hearing then on LB955 and we will take Senator Krist's request into consideration in Executive Session. So with that in mind, we'll move back to the top: Senator McDonnell, LB913. [LB955 LB913]

SENATOR McDONNELL: I have to apologize. I forgot a copy of my testimony. You guys will have it here shortly after I'm done. [LB913]

SENATOR EBKE: Okay. [LB913]

SENATOR McDONNELL: (Exhibits 7-9 and 12) But there is three handouts. Thank you and good afternoon, Chairwoman Ebke and members of the Judiciary Committee. I am State Senator Mike McDonnell, spelled M-i-k-e M-c-D-o-n-n-e-l-l, representing south Omaha's Legislative District 5. Today I'm introducing LB913 which would make it a Class I misdemeanor to assault a healthcare professional with bodily fluid. The idea for this bill came to me from my constituent Abbey Klein, who is a registered nurse and working in Omaha, and she'll be testifying today. Getting to know Abbey and the passion she has for being a nurse and trying to make a difference and helping people, also the idea that when George Norris in 1937 and the people of Nebraska decided to make a change, I believe this is what they were envisioning. You have a person that came to me with an idea to try to help herself and other healthcare professionals and here we are today having the opportunity. And this will be Abbey's first time testifying, but you can't manufacture passion. It comes from the heart. And Abbey has passion for helping people and being a nurse, so I want to thank her for being here today. For some background on this issue, then-Senator Mike Gloor of District 35 introduced LB226 in 2012 that made it a Class I misdemeanor to assault a police officer, probationary officers, Department of Correctional Services employees, and others with bodily fluid. In 2014, then-Senator Lathrop of LD12 brought LB752, which was amended into LB811, which added firefighters to the bodily fluid assault provisions in Nebraska Revised Statute 28-934. Nurses and other employed in the healthcare industry typically work 12-hour shifts away from their families to ensure people in their communities are healthy, comfortable, and alive. I believe they deserve the same protections from bodily fluid assaults that are afforded to police officers, firefighters, EMTs and others. To me, providing lifesaving care in an emergency room is just as important as providing lifesaving care inside of a medic unit. Safety of nurses and other healthcare workers is a growing problem across our nation. Assault against any healthcare worker is a concern, but as in the

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

Judiciary Committee  
January 31, 2018

---

nature of the healthcare industry, nurses and certified nursing assistants spend a considerable amount of time with patients and are more vulnerable to assault. According to a 2016 American Nurses Association survey of more than 14,000 nurses and nursing students, 25 percent of the respondents had been physically assaulted by a patient or a patient's family member while at work, and 9 percent of the respondents were concerned about their physical safety while at work. We should work to protect our nurses. This is also somewhat personal to me. I come from a family of eight. I have two brothers and five sisters, and three of my sisters decided to become nurses. I'm proud of all my siblings but especially proud of the people that my sisters over their careers have helped people and the passion they also have for being nurses and trying to make a difference. And also, it's very important that I get this passed so they're not upset at me and I'll stay in good graces since they basically have baby-sat me my whole life and taken care of me. As reported by the University of Nebraska at Lincoln, Nebraska is facing a nursing shortage that will increase in the coming years. By 2020, Nebraska will have a demand over 20,000 nurses but will only have about 16,000 nurses available to work. As a state we need to make sure we are looking at ways to make the healthcare industry, and the field of nursing in particular, a more attractive option for our students and our working adults looking for a career change. LB913 is one way we can show that Nebraska is serious about nursing. We need to be able to retain and attract these hardworking professionals to our state. In October of 2017, there was a case in Senator Baker's district in Gage County where a woman assaulted both a police officer and nurse while...with bodily fluid. She was charged with assault on the officer but charges were not able to be filed for the assault against the nurse. I believe you should have received a letter in support from Gage County Attorney Roger Harris. Throughout the process of bringing LB913 forward, my office has been working with the Nebraska Nurses Association, the Nebraska Association of Public Employees, the Nebraska State AFL-CIO, and healthcare professionals from across the state. As I mentioned earlier, Abbey will be testifying, as well as Karen Wiley from the Nebraska Nurses Association. As you all know, your staff is so important and you work as a team of three and Evan has worked extremely hard on this. And when...knowing Abbey for a while now, I didn't realize when they invited Karen Wiley down here that I've known Karen since 1989. When I was hired in the fire department--and we just visited earlier here about ten minutes ago--her husband Ron Wiley was one of the captains at the station I was assigned to on 34th and Ames, and Ron served 37 years as an Omaha firefighter. He was a paramedic. He helped me tremendously learn. He helped a number of people in the city of Omaha. And also Ron is struggling with health problems now and I just wanted to make sure I told Karen thank you for coming here today but also to recognize the service that her husband gave to the city of Omaha for 37 years as a firefighter/paramedic captain. I believe that nurses and other healthcare professionals deserve the same protections from bodily fluid assault that are afforded to police officers, firefighters, EMTs, and others. I have an amendment addressing the signage requirement for hospitals and health clinics that amends the language on the sign to reflect the changes made by LB913. AM1692 changes the language to "WARNING: ASSAULTING A HEALTH CARE PROFESSIONAL WHO IS ENGAGED IN THE PERFORMANCE OF HIS

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

Judiciary Committee  
January 31, 2018

---

OR HER OFFICIAL DUTIES, INCLUDING STRIKING A HEALTH CARE PROFESSIONAL WITH ANY BODILY FLUID, IS A SERIOUS CRIME." I will work with the Nurses Association and this committee on specific language for the signage. I am open to changes and suggestions. Thank you, and I will try to answer any of your questions. [LB913]

SENATOR EBKE: Any questions? Senator Chambers. [LB913]

SENATOR CHAMBERS: In the interest of full disclosure, Senator, you and I had a good conversation about this yesterday, didn't we? [LB913]

SENATOR McDONNELL: Yes, we did. [LB913]

SENATOR CHAMBERS: And I say that because on occasion people have come from other states and they would have heard about me and we'll be talking and I'll...they'll say, well, I've heard your reputation. I say, yeah, well, what they say, I said, I know I got a pretty bad reputation but that's not true, it's worse. But now didn't...we discussed how many other individuals, based on their employment, have this kind of protection, and I told you that I had fought against making special categories. I thought one law ought to apply to everybody, correct? [LB913]

SENATOR McDONNELL: Yes. [LB913]

SENATOR CHAMBERS: And now I mention that that law is something like Swiss cheese because of all the exceptions that exist now. And you made what I feel, and I think you must have felt or you wouldn't have done it, a compelling case that in view of all these others who are given this protection, certainly the healthcare workers who are in direct physical contact with people who may harm them are entitled to similar protection. [LB913]

SENATOR McDONNELL: Yes. [LB913]

SENATOR CHAMBERS: And I told you I wouldn't commit myself but I had an open mind, right? [LB913]

SENATOR McDONNELL: Yes. [LB913]

SENATOR CHAMBERS: My mind is closed in favor of your bill now. [LB913]

SENATOR McDONNELL: Thank you. [LB913]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: Okay. [LB913]

SENATOR EBKE: Other questions? I see none. Thank you. You going to hang around or...? [LB913]

SENATOR McDONNELL: If it's okay, I'll waive closing... [LB913]

SENATOR EBKE: Waive? [LB913]

SENATOR McDONNELL: ...and go back to Appropriations, even though I'd like to stay here longer,... [LB913]

SENATOR EBKE: (Inaudible.) [LB913]

SENATOR McDONNELL: ...maybe all day. But thank you very much for the time. [LB913]

SENATOR EBKE: Okay. Thank you, Senator McDonnell. First proponent. [LB913]

ABBEY KLEIN: (Exhibit 10) Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Abbey Klein, A-b-b-e-y, Klein is K-l-e-i-n, and I am a registered nurse in the state of Nebraska. I grew up on a farm near...in Senator Baker's district near Adams, Nebraska, and I made my way to Omaha for work and school opportunities. I am now a constituent of Senator McDonnell's, and today I appear on behalf of myself and fellow registered nurses to express support for LB913. In my time working in the healthcare field, including working in an emergency room setting, I've had many opportunities to see how healthcare functions and how healthcare professionals interact with their patients. These opportunities have allowed me to see that bodily fluid assault against nurses is a real problem. There is an attitude among many that bodily fluid assault is just part of this job; nurses are aware of the possibility of these situations, and they assume the risks of these encounters. However, I'm here today to ask that you reject these commonly held beliefs. Being assaulted with a bodily fluid involves more than just feeling humiliated and inferior to the people we serve. This conduct is far from what would be considered moral or decent. Not only does this conduct have the potential to cause bodily harm, but it also possesses the risk of harming one's dignity and mental health. I entered the nursing profession to provide quality care to those who need it the most. I previously worked in a local emergency room department so that I could help care for those experiencing a health crisis. When a medic unit unloads and brings a patient in on a gurney, my first priority is stabilizing the patient. Never does the thought cross my mind that the patient may assault me in any way. Nurses work in close proximity with patients, which makes them extremely vulnerable

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

Judiciary Committee  
January 31, 2018

---

to assault of all sorts. The reason I am not thinking about defending myself when providing medical care is because I am more concerned about how to decrease a patient's intracranial pressure or how to stop a bilateral lower extremity hemorrhage in order to save someone's limbs. I cannot count the number of times when I was spit on or verbally abused while working in the emergency department. These are the reasons why I feel we deserve the same protections that EMTs and firefighters have while they provide medical care. We work collaboratively with these community heroes and feel it is only right that we have the same protections they do. For those who hold the belief that this kind of conduct is to be expected when you enter the nursing field, consider this. Whenever a nurse comes into direct contact with someone's bodily fluid, they must undergo complex, expensive, and time-consuming medical testing. The testing and resulting process can take weeks and even months while the affected nurse waits to find out if they have contracted an infectious disease. For those who spend their time away from family providing quality care to those in our community, this medical follow-up is a high price to pay. We need to learn how to better protect our nurses and show the communities that this behavior will not be tolerated. This is what the revisions to Section 28-934 are designed to do and I ask you to advance LB913 to the floor for full consideration by the body. I'm open to any questions you may have. Thank you. [LB913]

SENATOR EBKE: Thank you, Ms. Klein. Senator Krist. [LB913]

SENATOR KRIST: In his opening...thank you for coming, by the way. [LB913]

ABBEY KLEIN: Yeah. [LB913]

SENATOR KRIST: Thank you, Madam Chair. In his opening, he related two bills by Senator Gloor and...introduced by Senator Gloor and by Senator Lathrop. I was here for both of those bills, supported them. My mother was a nurse, my sister is a nurse, my sister-in-law is a nurse, and I think we've got two nurses in the making still, so I understand. But the one thing my sister did ask me with the Lathrop bill is, why not nurses? I'm glad you brought it forward. It has my total support. Thank you for being here. [LB913]

ABBEY KLEIN: Thank you for your time. [LB913]

SENATOR EBKE: Other questions? Thanks for coming today. [LB913]

ABBEY KLEIN: Thank you. [LB913]

SENATOR EBKE: Next proponent. [LB913]

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

Judiciary Committee  
January 31, 2018

---

KAREN WILEY: (Exhibit 11) Good afternoon. My name is Karen Wiley, K-a-r-e-n W-i-l-e-y. I'm a registered nurse in Omaha, Nebraska. I reside in Omaha, Nebraska. I have been a nurse for 40 years and for the past 25 years worked in the emergency department. I'm speaking on behalf of Nebraska Nurses Association and I'm also the past-president of Emergency Nurses Association, which is a 43,000-member international organization. I would like to thank Senator McDonnell and members of the Judiciary Committee for allowing me to share my testimony in support of LB913 and I would like to...and want to thank Senator McDonnell for including healthcare professionals in the list of public safety officers that would be protected by this statute. When Senator Mike Gloor introduced LB226 in 2011 to create within the Nebraska criminal code the crime of assault with bodily fluids against a public safety officer, discussions began around who is a public safety officer. When you look at the list of public safety officers listed in LB913, on page 3, lines 2-13, the addition of healthcare professionals, including nurses, is appropriate. Nurses work in most, if not all, of the facilities listed in the bill but they also work in private homes, the community, hospitals, clinics, factories, and schools. The Nebraska Nurses Association believes that if a nurse is knowingly and intentionally spit on or struck with urine, feces, blood, vomitus or other bodily fluids, that this action should be considered an assault. As an emergency nurse, I have cared for many people in times of crisis. The most difficult are the individuals who are brought in against their will, who are a threat to themselves and others. These individuals may be under the influence of drugs or alcohol. They can be angry and acting out by spitting, biting themselves, or attempting to bite you. The risk for exposure to bodily fluids is high. Nurses assist police, security, and paramedics in transferring patients to a hospital bed and applying appropriate restraints to allow for medical assessment and necessary medications to control and intervene with this patient. After admission, the care and safety of this individual is now the responsibility of healthcare staff. If the individual continues to be violent, it is up to the physician, nurses, and security to maintain a safe environment for all. The risk of exposure to bodily fluids that are infected with HIV, hepatitis B and C is high. The type of assault is not something that nurses should expect or be asked to silently endure. There are serious health consequences for nurses and health professionals associated with contact with bodily fluids beyond just cleaning up or showering. With real risk of having been exposed to HIV, hepatitis, or any infectious disease, the nurse must undergo medical testing and agonizing time waiting to learn if they have acquired a serious or potentially deadly disease. This is an unacceptable high price to pay for professionals who are dedicated to caring for others. We ask the committee to advance LB913 to General File. Thank you. [LB913]

SENATOR EBKE: Thank you, Ms. Wiley. Any questions? Thanks for being here. [LB913]

KAREN WILEY: Okay. Thank you. [LB913]

SENATOR EBKE: Are there any other proponents? I see no one moving. Are there any opponents to this bill? [LB913]

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

Judiciary Committee  
January 31, 2018

---

SPIKE EICKHOLT: Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, first name is S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB913. I don't want, and hopefully Ms. Klein and Ms. Wiley won't consider, my opposition anything directed toward them or what they do or what they've experienced or what really any nurse has experienced. This committee probably knows that historically these last couple years we have opposed really any bill that seeks to increase or broaden criminal offenses and we have done so simply because it's our position as an association that there are enough crimes, there are enough penalties, and this state does not need to have more. The state already has a prison and jail incarceration crisis. What we would specifically ask with respect to the specific suggestions in this bill, there's a couple things I want to say. First, I would remind the committee that under 28-929, -930, and -931, there already are felony-level protections for healthcare professionals. In other words, if a person, a patient or anyone, strikes a healthcare professional while they on duty or, so to speak, doing their job performance, that's a felony of some level. This would include and make it a misdemeanor offense if a person were to knowingly or intentionally strike a healthcare professional with bodily fluid. I'm going to try to say this carefully because I'm not trying to argue that somehow because nurses, and we've heard from nurses today sort of work with many people in a hospital setting and they're more likely to be exposed to bodily fluid, that they somehow assume that risk. That's not what I'm saying, but that is the practical sort of reality of the situation that you have people who are going to be...you have nurses who are going to be near people who have bodily fluids. And if you look at the term right out of the existing statute, bodily fluids is really anything, not limited to blood, urine, saliva, and mucus or other things. You heard I think from Ms. Wiley talking about people coming in, in crisis, being brought into a hospital setting against their will. That's when you're going to have these situations happen and I say that because I suspect the committee and others want to do something to stop this sort of behavior. But if you try to get into the mind, if you can, of that person experiencing that crisis when they're arrested off the street and they're brought in intoxicated, having been assaulted or in some sort of a situation, you don't have a deterrent effect. They're not going to read the sign that says don't do this and that. They're in a crisis mode. And if you have an incidental contact--and I'm not trying to belittle the risk, the health risk, with someone sort of spitting not necessarily at somebody but just spitting because they are just in a fit, unfortunately, you're going to have that crime. What you have in these situations, and I've represented many people, you have somebody who is arrested on the street. They struggle with the cops. They have assault, a felony assault there; they struggle with the EMT provider in the ambulance, a second assault; they get to the hospital, they strike a nurse, a third assault: all felony level. And this will add just simply another misdemeanor level and that's the concern that we have as an association and that's why we urge the committee to not advance the bill. [LB913]

SENATOR EBKE: (Exhibits 1-6) Thank you, Mr. Eickholt. Questions? I see none. Thank you. Any other opposition? Anybody testifying in a neutral capacity? I see nobody. Senator

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

Judiciary Committee  
January 31, 2018

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McDonnell waived closing. Do we have letters for the record? We have letters in support from Susan Martin of the Nebraska State AFL-CIO; Robert Rhodes of the Nebraska Medical Association; Andy Hale of the Nebraska Hospital Association; Roger Harris, the Gage County Attorney; Daniel Lynch of the Police Chiefs Association of Nebraska; and John Antonich of the Nebraska Association of Public Employees. And I probably butchered the name, but that closes the hearing on LB913. Thank you for being here. And we will move to LR269CA. Senator Schumacher, this is the first CA that has come that I've gotten to hear, so I'm kind of excited, in any of my committees, ever. [LB913]

SENATOR KRIST: Really? [LR269CA]

SENATOR EBKE: Yeah, I've never heard one before. [LR269CA]

SENATOR KRIST: It doesn't take much to entertain you, does it? [LR269CA]

SENATOR EBKE: It doesn't. Senator Schumacher. [LR269CA]

SENATOR SCHUMACHER: (Exhibit 2) Thank you, Chair Ebke, members of the committee. My name is Paul Schumacher, spelled S-c-h-u-m-a-c-h-e-r, and I represent District 22 in the Legislature, here today to introduce LR269CA. Behold the new city! This is a fun bill and it's also a very serious bill. I've done plenty of complaining about Nebraska going nowhere, look at the state and the various segments sitting on the Planning Committee, looking at where we might be going, on various economic task force analyzing the value of various programs, incentive programs and the like, and really I have concluded we are going nowhere fast. Now one of the reasons we go nowhere fast is we lack critical mass. We lack the kind of spunk that ignites the minds of enough young people to make it work. First, just a little bit of analysis. I've passed out a thing I put together in response to Senator Crawford's economic development task force. It goes a little bit more into detail to some of my thinking on this subject than I will go in today, but basically we have four sectors in our economy. We have the agricultural sector. The trends are strong with no indication of any change. Farms are getting bigger, population to produce the grains and the meat decreasing. The population born has a hard time keeping up with the population leaving the ag sector and the population that is basically dying off. We're going to have a very fertile agricultural economy in that we will produce grain and we will produce meat at record levels with a minimum number of people and there is a good chance that, whether through ownership or contractual control, that is going to be a vertically integrated corporate structure integrating all the aspects of agriculture from the seed and the fertilizer and the fuel and the equipment and the automation driving much of that equipment. We know also that in our communities under 5,000 in population--in fact, the median size of a community is 317, half of our communities are below 317--but basically the trends there are very strong--not true in all

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

Judiciary Committee  
January 31, 2018

---

cases but true in a vast number of the cases--and that is they're losing population. They've lost their school, that perhaps by mandate of the Legislature. They've lost their main street shops probably to business, to things like the big box stores and the various "marts" in the neighboring town; lost their churches. Most of them usually had two or three bars. Most are down to one and that's having a hard time keeping its doors open. And the pros in demographics say that under 5,000 is just not viable. You look then at the larger communities, those in the 20,000 range, give or take. You look at the population statistics on those and pretty well spells the story. Population growth: 3-5 percent a decade, not a year, a decade. Now that's pretty consistent across the whole spectrum. Those communities have grown somewhat because 20 years ago, 30 years ago there was an abundance of farm kids. Those farm kids were skilled. They knew how to pound, saw, weld, do all the things that rudimentary manufacturing required them to know how to do. And there was an excess of them, anxious to go to work in a nearby bigger town for what was advertised to businesses in attracting them here and developing here--cheap labor, cheap electricity. Well, that abundance isn't there anymore. In fact, many of our communities, were it not for the Hispanic migration, would have a population decrease rather than a small increase. Not looking too happy, is it? Well, we look to the Omaha, Douglas County, Sarpy County, and Lincoln for our salvation. Now that's not necessarily a picnic either. Their growth has relied principally upon migration from the hinterlands, principally attracted by higher education where the kids come, they find a mate, and neither one of them can come to agreement to go back to a small community in rural Nebraska and they settle where things are just a little bit more concentrated, a little bit more critical mass. And those communities are of...those three communities are still doing rather well, but they are among a class of communities nationwide that are engaged in fairly intense competition. And while they'll probably do well, we cannot expect any great dramatic change, particularly if you figure that some of the cornerstones of their growth have been a limited number of people with fairly significant net worth who have invested a lot there, and those folks are getting older and no guarantee that the heirs and the trusts, whatever, will be able to keep up the attraction even from the kids coming off the hinterlands. Same time we are having a deep problem trying to figure out how to pay for education. We have a sector...forces in every sector--the income tax, sales tax, and property tax sector--thinking that they are too high taxed. We have now...are going into a second year of slashing a previously approved budget. We've sucked our Cash Reserve down from \$700 million to now in the neighborhood somewhere around \$300-400 million and headed the wrong direction on the hope that somehow there will be a turnaround in revenues to an unrealistic level and we will be able to back it away. We've got a federal court action on our prisons. We've got people walking the streets that have got mental problems that we have no place to put but jail because we closed the regional centers and did not have substitute facilities. We have a whole gaggle of baby boomers who have not saved enough money to carry them through their nursing home years and we know where they're going to be looking at. We have instability in what we can expect out of the federal government, who has aided us in a lot of funding over the years and, in fact, was probably responsible for a good part of our buildup in our Cash Reserve to when it was close to

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

Judiciary Committee  
January 31, 2018

---

our goal of \$700 million--big problems. And I bellyache about those things. I bellyache about the idea that, you know, in many of our communities they're saying we've got to have the government pay for the training, the farmers aren't doing it anymore with the kids coming off the farm. We've got to have some aid for our housing projects because we have no place to put people who work at...and they need a place and they can't afford it because the wages are insufficient. So what's your best shot? And I don't have very long here to explain what my best shot might be, and I might certainly be wrong. But it occurs to me that the world has changed. We know we need critical mass. We know there are multinational corporations of great size who have escaped the confines of geography. We know there are extremely wealthy and, quite frankly, very egotistical people out there who are looking to leave their mark on the planet. We seem to think, and maybe with some accuracy, that if we reduce regulations it's a good thing for attracting business. We seem to think, and maybe with some accuracy, that if we reduce taxes and let money be reinvested in it by the entity that's doing the action, that that is good. But our economic development programs have been fizzles. We spent \$350-360 million last year on the Advantage Act and what do we have to show for it? The best committees that we've had that study it say, you know, maybe it did some good, maybe not, it's hard to quantify, just stick with us another 20 years, things will be great, while the average taxpayer pays more and gets grumpier. And we see ways to look east--to Omaha, Lincoln, and Sarpy County--to somehow be the future of the state. What if we are wrong? What if we are wrong? If you look at a satellite projection out of Denver, and this is where this...we can't get into details in a constitutional amendment because of all of those single-subject rules and things like that, so it's got to be what it is: a rudimentary language. But you look at Denver. Denver is exploding in population. Whatever is happening there, it's causing the population to grow, whether it's critical mass, whether it's pretty mountains, whatever. It's starting. It's happening. And you look at the satellite and you just see this flow of population north along I-25 toward Fort Collins and Cheyenne. When it gets to Cheyenne, it's got nowhere to go. It isn't heading north along no interstate north of Cheyenne. There's not much west to head to. And east right now, there's not a whole lot to head to either, except the I-76 intersection. The I-76/I-80 intersection connects right on in to Denver. What else is there? You have a gigawatt of electric power generation and transmission facilities right at Sutherland, not far away at all, enormous piece of infrastructure, enormous. You have the Union Pacific Railroad right of way; you have the Burlington right of way heading right up into Denver, along with I-80: enormous amount of infrastructure. You have fiberoptic lines running every which way along those railways and between that area in Denver that you can have tier-one fiberoptic communication, multiple redundant networks into the Internet. We have an inland sea that could never be built today because we'd be worried about drowning a worm. But it's been built at Lake McConaughy, pretty good entertainment for five, six months out of the year until it gets too cold. Got the interstates. We got proximity to all the organic foods and vegetable-raising land that you can imagine. And we have nothing. There is no underground pipes to speak of that you have to tear up. There are no old subways you have to run into if you start putting a bullet train or a subway in. There is nothing. And in a world where you have to

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

Judiciary Committee  
January 31, 2018

---

build something so different in order to be modern, not having to put up with a past is of great value, tremendous value. So why isn't there something there? Why isn't there something there? Why have we ignored that whole area? I was at a deal at Harvard University a few years ago and I brought the problem, very similar to that, to a group of people who are supposedly very smart and we had 40 minutes to discuss it, why, then bring your problem; a little group of ten in breakout session discussed your problem, come up...supposed to come up with a big solution. I kind of outlined it. And of the 40 minutes that I had, better than 30 of them were trying to explain to people that such a place existed. Unlimited fresh water? Talk to somebody from Bangladesh about that and they think you're nuts, can't be a place like that. I was describing paradise. And finally I said, look it, we're having a hard time gathering and holding population. And finally, a gal who worked for the World Bank, she was from Africa, and right near the end of the session she said, if there is such a place and people are not attracted there, it must be because of a repressive government. And I objected, of course. What do you mean repressive government? But it gets you thinking. Is it a repressive system in totality? And if you listen to some of the debates upstairs--I have for a number of years now--you begin to sense the spirit of repression, not of exuberance, not of liberty, but of we want to regulate this, we want to regulate this, we want to tax this. So what if we put all those forces together and the forces that we've put together are the forces of the future? We ride the wave rather than try to stand in the way of the wave and we say, look, following the lessons of Hong Kong, Dubai, some of those kind of things--we have a right to do it--let's say to somebody, under certain conditions, we will let you alone for 99 years and this is the investment we will require. You know, on the Toyota deal, when that was going around, Toyota sent out an RFP to various states: What will you do for us? This asset which costs us nothing, exceedingly low population area, land to be purchased at a premium without any problem for probably less than \$50 million for 36 square miles and it doesn't have to be the full 36. We will allow you to be your own sovereign entity to the full extent possible under federal law. We'll still have our Congress, the Senate seats. Some of those things we can't change. We can't change the Bill of Rights. We can't change federal taxes. But we can change us interfering with that entity. What is a new city worth 100 years from now, designed with the very best of everything, very best transportation system, the very best access to green, organic food kind of things, a bullet train to Denver International Airport? What's that worth? Isn't that 100 years from now worth a lot more, or at least an equivalent of a beach or a mountain range? And the more I think about it, the more I try to say, is there a future besides just watching a bunch of drones farm a bunch of corn and maybe some type of liquid cows that are raised in a facility of some kind? If there is a future, do we not need to attract the multinational corporation? Do we not need to maybe encourage them to partner together? What would a \$50 (billion) or \$100 billion investment out there do? And it, you know, it isn't make-believe. They're thinking along that line. They're thinking of the viability of corporate self-government and self-taxation and self-regulation. We got 75,000 square miles in this state. This would ask the people, do you want to try this with up to 36 (miles)? What bothers me most about the proposal is this, that there's no big money behind this. I don't know, if it was put on the ballot, how you'd wage a

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

Judiciary Committee  
January 31, 2018

---

campaign in favor of it, because obviously there would be somebody show up with some reason. I've been watching some of the national publications. Some people say I'm in bed with the Koch brothers, and that's that they just want to have a big city out there. Some have a nuclear waste depository out there. Some have a big casino out there. Some...I mean just a big dump site, you know, so there's no big money on this. But there will probably be a group out there that say that, you know, we'll spend some money against it. So be it. This is my best shot for the long-range future of the state. Without it, we've got all of our eggs in the Omaha/Lincoln basket and that is a basket that is going to be highly competitive. It's a nest in a windblown tree that's very high up there and it may not be wise. And so I bring this to the committee for no other reason than we get a discussion on the floor of the Legislature about the real situation that our state is in, the real problems that face it. How...no matter how we slice and cut the deck, taxes are going to have to be paid; got to figure out a way to educate the kids in the rest of the state. But let's have hope for the future. Let's have some stake in the future besides what is a rather predictable and sorry outcome that will not fire the imagination of enough young people to make us viable other than the drone raising the corn. I'm happy to take any questions. [LR269CA]

SENATOR EBKE: Thank you, Senator Schumacher. Senator Pansing Brooks and... [LR269CA]

SENATOR PANSING BROOKS: Okay. Thank you, Senator Schumacher. I really don't know whether to be morbidly depressed or ecstatically hopeful (laughter). However, I do know that I am going to miss you and your starring role in the Legislature as the visionary harbinger of doom, so (laughter), and you may be about 100 years ahead of yourself here, but it's very interesting to think about. Thank you. [LR269CA]

SENATOR EBKE: Senator Chambers. [LR269CA]

SENATOR CHAMBERS: Senator Schumacher, we have conversations as seatmates that we never share with the rest of the body, but I think we make each other think. And you stirred my pure mind with this proposal. And I compared my pure mind with the devious mind of big shots, that 1 percent. I saw a cartoon--I read the funny paper--and it had these two lions looking at this safari. And one was older and he told the other one looking down, because there were people in the safari, he said, the thing to do is start with the top 1 percent and then work your way back through the rest of them. That top 1 percent would not be above buying some land in the middle of a city--it could be a golf course--and the population would never be more than ten persons per square mile. Maybe it's two square miles. The only limitations is that the area could not be more than 36 square miles and the population would be ten persons, probably, you know, no more than that. So they could take this property and persuade the Legislature to give them complete sovereignty over it. The state would have no say-so what goes on there. The city, of which it is a part, would have no say-so. And by the language of the amendment, it doesn't say it has to be the

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

Judiciary Committee  
January 31, 2018

---

land in a rural area or anything else. And I've seen this Legislature give big businesses concessions, tax breaks, all kind of giveaways, to the detriment of the public at large. I have seen them give tax breaks to large commercial enterprises so, in effect, they don't pay taxes like other people do. And those enterprises, if they're commercial establishments that sell goods, would be collecting taxes...not them, the government would collect taxes from small business persons who would ordinarily be in competition with this big one and their taxes would go to subsidize the opponent who is going to put them out of business. And that's what happens in these cities. And it's not given consideration; it's not discussed. I have fought against those giveaways to no avail. The only time I was successful, Cabela's was going to build, and they ultimately did, a store somewhere in Sarpy County. David Landis brought a bill to give them all kind of concessions and I fought it and won and I said, by the time an operation like that settles on a location, enough to talk seriously about being there, they've looked at all of the factors, everything that's involved. They have enough money to do it on their own. The state doesn't have to give them any concession whatsoever. I said what these big companies do is suck these ignorant little towns-- and I put Nebraska in that category--backwards. There's a small-minded, rural-type attitude. They're bedazzled. And I said they'll get what they want from you, then they'll leave, just like ConAgra did. Well, I understand that...well, we didn't give Cabela's anything. They built that store. And I understand that way out there in the hinterlands, somewhere out there near Canada or Alaska, wherever that part of Nebraska is...I've never been out there before. The only way I know it's there, they draw it on a map and name it something. It's leaving. And now the people who saw it as their salvation don't know what they're going to do. The jobs, any economic activity was...they were being relied on for that, so they'll leave. This operation would get this land in the middle of the city. They could get the Legislature to give them whatever they want. The constitution only draws the broad outline and allows the Legislature to determine the other factors. This is a forward-looking idea. And from the research staff members have done, there are other countries doing similar things. But they don't have, in my opinion, the kind of situation where you have a weak-minded legislature, such as the one in Nebraska, who would turn prime land over to a big either enterprise or a consortium of big operations and they could gut the state. They could, literally, if they chose, destroy the economy of Nebraska. So for that reason, I'm going to vote to put this bill on the floor and support it and try to get in on the ground floor.

[LR269CA]

SENATOR SCHUMACHER: Senator, I've sat next to you too long. We're thinking too much alike, both the devious and the pure sides of us. One thing we very well could do is say that the area had to be a minimum of so many square miles in order to eliminate somebody plunking a piece of a park out of the middle of a city and doing it. Clearly, the opportunity is focused out in the western area. And I agree with you completely. Some of the decisions made on these economic development programs that give special treatment to special people who are specially connected are absolutely sinful. And I leave the Legislature with the same concerns that things

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

Judiciary Committee  
January 31, 2018

---

are the way they are because the wizards behind the curtain like Oz just the way it is.  
[LR269CA]

SENATOR CHAMBERS: Really, I think it's an idea worth considering, in all seriousness, but I don't have any questions. But I had fun. Thank you, Madam Chair. [LR269CA]

SENATOR EBKE: Other questions? Senator Morfeld. [LR269CA]

SENATOR MORFELD: Senator Schumacher, if we vote this bill out of committee, is it going to be your priority bill? [LR269CA]

SENATOR SCHUMACHER: There's just a good chance it will, because the ornery side of me will come out. [LR269CA]

SENATOR EBKE: Last hurrah, huh? [LR269CA]

SENATOR MORFELD: I think this would be a fun debate, but... [LR269CA]

SENATOR SCHUMACHER: I'd sooner spend six hours on it than county taxes, I'll tell you that. [LR269CA]

SENATOR MORFELD: Thank you. [LR269CA]

SENATOR EBKE: Senator Halloran. [LR269CA]

SENATOR HALLORAN: Explain to me. I understand sovereignty. But so this would still be a city that would be under federal constitution and federal regulations, right, government regulations? [LR269CA]

SENATOR SCHUMACHER: Can't get away from those. [LR269CA]

SENATOR HALLORAN: State constitution the same? [LR269CA]

SENATOR SCHUMACHER: State constitution applicable to the extent that this calls for either a partial or full delegation. I suppose you could have a partial delegation to say, except for this part

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

Judiciary Committee  
January 31, 2018

---

of the state constitution, so that would be...once you start getting in the weeds on a constitutional amendment, you run into the single-subject rule and so I didn't get in the weeds. [LR269CA]

SENATOR HALLORAN: So you're carving out a relatively small area in a big, vast hinterland/wasteland that everybody refers to. [LR269CA]

SENATOR SCHUMACHER: Well, I supposed they'd shoot you out near Ogallala if you called it a wasteland but... [LR269CA]

SENATOR EBKE: The Panhandle. [LR269CA]

SENATOR HALLORAN: Well, terms like that have been used, but not by me. I'm just kind of trying to duplicate the language here. But so you're creating a sovereign state within a state? [LR269CA]

SENATOR SCHUMACHER: Yes. [LR269CA]

SENATOR HALLORAN: Why don't you just give that sovereign state to Lincoln? Why don't you just declare Lincoln city limits a sovereign area? [LR269CA]

SENATOR SCHUMACHER: Because I think what you end up doing if you do that, the Lincoln economy is integral to the ongoing, day-to-day bills and income and revenue of the state. You'd hit a shock-value effect that could backfire if things did not go well. Out in the hinterlands, where it's one basic township of nothingness, if it doesn't develop, the rest of the state doesn't take a hit. [LR269CA]

SENATOR HALLORAN: Okay, so there are some advantages, obviously, to this sovereign city that other cities won't have those advantages, right? [LR269CA]

SENATOR SCHUMACHER: Yeah. And the rule generally was make it far enough away from everything else that it really doesn't matter. There's an old rule that I was told and might pass it on--maybe it was true, maybe not--but if you look at 16th and Farnam in Omaha, there's a symbol laid in the middle of the intersection: stay away from 60 miles of 16th and Farnam. That is a zone of influence. Once you get outside of that, and the farther you get outside of that, the more leeway there is to seek out new things. [LR269CA]

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

Judiciary Committee  
January 31, 2018

---

SENATOR HALLORAN: So would there possibly be a sort of gravitational pull from Lincoln and Omaha and other smaller, insignificant towns? To kind of coin a phrase commonly used, would there be a gravitational force pulling economic development that currently exists or might future exist in those areas to the special city? [LR269CA]

SENATOR SCHUMACHER: You know, it would probably be synergistic instead. If you look on a map, about every 300 miles there is a pretty good size city, 100,000 or more, some larger. We're missing that in the link between Denver and Omaha. And I think since one of our problems is a lack of critical mass, a lack of enough people with enough ideas to get things churning in investment, that maybe putting that extra link between Denver and Omaha actually makes the whole thing more viable. And if you ever could get that bullet train built to Denver International and it was working and this thing ever took hold, the next bullet train, they'd just be between Omaha and the new city. [LR269CA]

SENATOR HALLORAN: No matter what you do, there's going to be reasons people will move to Lincoln or Omaha, I suppose. But would that still not draw people to gravitate towards that special new city that has less regulations and less taxes probably? [LR269CA]

SENATOR SCHUMACHER: You know, well, it might have less taxes, yeah. That's an experimental question we don't know the answer to. I would hope that there is, as usually is, a dynamic equilibrium that moves between centers of economic activity and brilliance that fuels itself. But right now we know for sure that...well, not for sure, 98 percent certain that 100 years from now there's going to be not a whole lot more there than what there is now unless we cause something to happen. And I think that if we don't do this, there's enough chatter about things like this--and maybe even this bill will generate more chatter--somebody is going to do it. And one of the problems we've had with economic development is we've always been--in fact, I suggested a license plate--Nebraska, the tail end, because we've always been last or near the last. And by the time we get on to doing something, the opportunity is gone. And so this is a chance for us. And I bet you, this bill makes it to the...if it makes it to the floor, we get a little attention for Nebraska. And since I'm term limited, if there's heat, I'll take it. [LR269CA]

SENATOR EBKE: Why not? Senator Baker. [LR269CA]

SENATOR BAKER: I don't have any questions, Senator Schumacher. I wanted to thank you. You know, I think when you're talking about a paradigm shift like this, it takes lead time and, you know, nothing is going to happen immediately. As soon as the idea comes out that people need lead time, you're going to cause a lot of people to do a lot of thinking. So thank you. [LR269CA]

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

Judiciary Committee  
January 31, 2018

---

SENATOR SCHUMACHER: Thank you, Senator. [LR269CA]

SENATOR EBKE: Okay, I have a question. Have you... [LR269CA]

SENATOR SCHUMACHER: Just one? [LR269CA]

SENATOR EBKE: Well, we'll see where it goes. [LR269CA]

SENATOR SCHUMACHER: Okay. [LR269CA]

SENATOR EBKE: Have you ever read the book Atlas Shrugged? [LR269CA]

SENATOR SCHUMACHER: Yeah, a long, long time ago. [LR269CA]

SENATOR EBKE: This sounds very much like Galt's Gulch and this sort of place out in the middle of somewhere. [LR269CA]

SENATOR SCHUMACHER: Yeah. That was before the Internet. [LR269CA]

SENATOR EBKE: When you read the 12,000...1,200-page book and... [LR269CA]

SENATOR SCHUMACHER: Got a long... [LR269CA]

SENATOR EBKE: Yeah. [LR269CA]

SENATOR SCHUMACHER: I think I may have been in fifth grade. [LR269CA]

SENATOR EBKE: Well, you can get it on books on tape and listen. [LR269CA]

SENATOR SCHUMACHER: Oh, I don't have enough trips back and forth to Columbus to do 1,200 pages of... [LR269CA]

SENATOR EBKE: Okay. Well, yeah, you might. Yeah, you might. Any other questions? Thank you, Senator Schumacher. First proponent. Can I see a show of hands how many people are planning on testifying in either proponent or opposition to the bill? Okay. Do we have any proponents? I see nobody running up here. Okay, so, opponents? And just for your information,

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

Judiciary Committee  
January 31, 2018

---

we're going to take about a five-minute break when we're done with Senator Schumacher, because he may have something to say to close, so go ahead. Good afternoon. They've got big stuff going on over in the Revenue hearings and so I didn't want to pull Senator Harr away from that. [LR269CA]

PAT LOONTJER: Okay. Good afternoon, Senators. I'm Pat Loontjer. I'm the director of Gambling with the Good Life, the grass-roots organization, for 23 years. So we've been down here almost longer than most of you, except for Senator Chambers. And we are opposed to any form of expanded gambling. And I don't know that that's what this does. We were here pretty much to learn, you know, and I learned a lot from hearing from Senator Schumacher. We're not opposed to economic development and building up the 3rd District or any of that. We just have concerns with the vagueness because of when you make something sovereign. We're dealing with an issue right now with the Ponca Tribe in Carter Lake that that land, five acres, was put in trust for the purpose of a clinic. And then the tribe went back and said, we've changed our mind, we want to make it a casino. Well, it took nine years for the ruling to come back and it came back in November to say that, yes, it was deceptive, they did put the land in trust for a clinic, but it wasn't in writing. It was a verbal commitment on the part of the tribe and, therefore, was not valid. And so they're moving forward now to build that casino right in the heart basically of Omaha, right near our airport, near the Old Market, and we're dealing with that. So when we read this, I see the vagueness of what are the possibilities of gambling being expanded, whether it be a casino or slot machines or what. So that was our concern was just the wording and where does this thing go. And Senator Schumacher has never seen a gambling bill he didn't love, and so that always puts up a red flag that we have to watch what he puts forward. And although he's told me personally that that's not the intent of this, that's kind of what the Poncas said when they got the land put in trust. So that was our concern was just to be aware of the vagueness of it.

[LR269CA]

SENATOR EBKE: Okay. Senator Chambers. [LR269CA]

SENATOR CHAMBERS: I think you're aware of my attitude toward widespread gambling. But when it comes to the tribes, all they're doing is showing that they learned from the way Americans treated them. Americans put things in writing and then tore it up. So all that maybe the court looked at is this is the American way: You say something but you don't really mean it. But then when time comes for the crunch, as they say, there is nothing binding, so the tribe can do whatever it chooses to do. And, frankly, despite the fact that it's a gambling issue, I see it in a much broader context. And the monster that America built by breaking treaties, by that Trail of Tears, the horrendous things done by white people, Christians, against the people who were here first, language taken away, traditions taken away, they were put into so-called schools, their hair was cut, they were made to be nonwhite replicas of white people, and all they did was look the white man in his eyes and said, you made me what I am today, I am doing what you sanctified, I

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

Judiciary Committee  
January 31, 2018

---

am playing the American game in the American way. And for my part, I wish they'd build a casino that would encompass the entire state of Iowa. So I applaud them. And I don't know that they were as far...they had a vision of it as far in advance as what I'm suggesting here. But sometimes there might be a principle in the universe which will bring about justice in a way that nobody contemplated. And I don't see how white people can condemn or criticize anything the tribes are doing. And I don't believe there are enough Native peoples to make a casino go. So now through that casino, they're going to be paid back in hard specie for everything that was stolen from them by misusing the law, violating supposedly sacred trust. And if I were them, which I'm not, my emblem for that casino would be a large benign face with a large Christian smile and say come to me, come to me, we make you welcome. I understand your position, but I'm looking at something bigger. And I had not envisioned that land being used for a casino, but if it were turned over to the Native people of Nebraska, then I would go for it. That's all that I have. [LR269CA]

SENATOR EBKE: Other questions? What do you think of the concept, and I know this is a little bit outside of your realm, but what do you think of the concept of charter schools? [LR269CA]

PAT LOONTJER: Oh. All of my five children and most of my 18 grandchildren were all...all went through private schools, which is very, very, expensive. I would be in favor of charter schools. [LR269CA]

SENATOR EBKE: Okay. I mean, and, you know, legal counsel mentioned that in other countries this is oftentimes...these kinds of arrangements are oftentimes referred to as charter cities with the idea that they have a level of independence, sovereignty even, from the central way of doing things. Charter schools are not something that we've gone to in Nebraska in large part because we want to as a body maintain public control. So how is that different from your position? [LR269CA]

PAT LOONTJER: As far as this bill? [LR269CA]

SENATOR EBKE: As far maintaining public... [LR269CA]

PAT LOONTJER: Oh. [LR269CA]

SENATOR EBKE: As far as maintaining public control over, for instance, a hypothetical charter city. [LR269CA]

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

Judiciary Committee  
January 31, 2018

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PAT LOONTJER: You know, this thing is written so vaguely, I don't know how all of those questions would be addressed. And now that they're held by the single subject, I think it'd be so difficult to put this before the voters and to try to explain everything that Senator Schumacher did to us today. It's so very complicated. How do you inform the voters so that they can vote intelligently on all the different ramifications of this bill? [LR269CA]

SENATOR EBKE: Do you think the voters would vote against economic development in central to western Nebraska? [LR269CA]

PAT LOONTJER: Oh, hopefully not, you know. [LR269CA]

SENATOR EBKE: Yeah. [LR269CA]

PAT LOONTJER: But that doesn't mention that, you know, it's...I understand that it's very difficult because of the single subject to put something this complicated before voters and have them vote intelligently. It's tough. It's a very interesting idea. I'd love to see it succeed...  
[LR269CA]

SENATOR EBKE: Yeah. [LR269CA]

PAT LOONTJER: ...minus the gambling aspect. [LR269CA]

SENATOR EBKE: Well, but if you make it a sovereign entity, you can't control that part of it, so.  
[LR269CA]

PAT LOONTJER: Yeah, I know. [LR269CA]

SENATOR EBKE: Okay. I don't have any other questions. Anybody else? Thanks for being here today. [LR269CA]

PAT LOONTJER: Thank you. [LR269CA]

SENATOR EBKE: Any other opposition? [LR269CA]

GLEN ANDERSEN: My name is Glen Andersen, G-l-e-n A-n-d-e-r-s-e-n. I'm a friend of Pat's. I'm a member of Gambling with the Good Life and...but I guess I'm speaking for myself today. I look at this bill and it's...I'm an amateur at this stuff, but that's got to be the most interesting bill

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

Judiciary Committee  
January 31, 2018

---

I've...that I can imagine. It's just kind of fantastic. It's something to consider, something far out, thinking out of the box. I'll give Senator Schumacher that benefit because it is certainly another way of looking at development in Nebraska. But I ask you, is this a bill that's to give away all authority over 36 square miles? Is...does business need release from the state government? Is that what we're saying? And then what's going to go on in this area? Of course we have this interest. We're concerned with expansion of gambling and it might be something we think would be one of these Las Vegas developments where they went out in the desert and started a new city just so they could gamble. We don't know. But I must say that there must be a lot of things wrong with the Nebraska government here because that seems to be what this bill is trying to escape, in other words, the ability to tax and the ability to have laws and regulations. So basically I just have these questions and it's hard to oppose something that has so many...so few specifics, so I'll close with that. [LR269CA]

SENATOR EBKE: Thank you. Senator Chambers. [LR269CA]

SENATOR CHAMBERS: Well, since this would be a constitutional amendment, it...a constitution, the more general the provision is, the proposal, the better. Then it authorizes the Legislature to fill in. It says, oh, lines 11...it tells the persons per square mile, for 99 years, "under such terms and conditions as set by the Legislature at the time of the delegation." So this is not a self-executing provision in the constitution. It gives the authority to the Legislature to delegate to whatever bit of land it is. And I presume that people in the Legislature will continue to be elected, so it would be a matter of making a proposal to the Legislature within the confines of what the constitutional provision says and persuading a majority of the Legislature to do that. And it would seem to me that since Americans love Donald Trump so much, the "Pumpkin Man," and he doesn't like regulations, the Republicans in Nebraska don't like regulations, farmers don't like regulations, so this is doing the very thing that you say maybe shouldn't be done, but you're out of step with the Americans. They don't want regulation. Donald Trump referred to coal last night as "beautiful coal." Coal is not beautiful in any context, in any setting. And to show how Americans say one thing but accept something else, his proposals and the relaxation of rules would hurt the people in the mines. Their health is not protected, the safety provisions for them are relaxed, and the benefit will go to the ones who own the coal mines. But he knows that people are so desperate when they're poor, when their family's welfare is at stake, they might sacrifice their own health and say, I'm going to get black lung but I'll make that sacrifice in order to feed my family. So they'll go down into these dangerous coal pits, as they always have been and are now. There will be explosions of the coal dust and people will die. And a type of insurance that coal miners used to have for a period has been done away with already. But these people don't understand things. They listen to a man who is an inveterate liar, a denier, a falsifier talking about how great the economy is. It's not great for poor people. He talked about the wages going up. Well, the economists say that wages have gone up less than one-half of 1 percent, but he says it and that's supposed to make it so. Now he has a lot of power as President,

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

Judiciary Committee  
January 31, 2018

---

but under this proposal it wouldn't be the Governor doing it, it wouldn't be the Speaker of the Legislature, it would be the Legislature and there would have to be a compelling case presented to accept...I meant to be accepted by a majority of the Legislature. And I think it would be a mistake to put too many details of a specific kind in the constitution because things can change tomorrow. Before this land would be turned over, the Legislature could...they could do it with a committee. They could have representatives of business, every identifiable stakeholder in the state, representatives, and come up with, as the constitution says, the terms and conditions that would govern this piece of land. It could be total sovereignty or limited and the people in the future who would be dealing with this are the ones who would make those determinations. But keep in mind it's not self-executing. If this were put on the ballot and adopted, 95 percent yes, 5 percent no, nothing would happen, nothing. The Legislature would not be mandated to do anything. But if they chose to do it, then it would be a situation where you might have people as varied in view as Senator Halloran currently in this Legislature and me, Senator Baker, Senator Morfeld if we can get him away from his gadgets. And the reason I'm going into it in a little detail is so that people will not have the impression that it's self-executing and all kind of things can happen unless the Legislature agrees. So far, the Legislature has not even agreed to expand gambling, so it might be possible to prevail on that Legislature which might would consider operating under this provision to give some consideration to the things that you are concerned about, my friend was concerned about. I won't call her by name because when I name somebody and unfortunately, unthinkingly, put "friend" in front of it, that curses them in Nebraska. So I'm not going to give a name, then I bear no blame. [LR269CA]

GLEN ANDERSEN: Well, I didn't recognize and I would have used that...wouldn't have understood the term, probably, until you explained it, that it is not self-executing and so I thank you for that explanation. However, the way this would be set up, if the Legislature decided to do something to execute it, there still would be some areas in here that we'd be giving a blank check to this, to whatever is in this 36 square miles, and I'm afraid of, you know, what things might develop there. [LR269CA]

SENATOR CHAMBERS: If you don't mind, how old are you, sonny? [LR269CA]

GLEN ANDERSEN: Pardon me? [LR269CA]

SENATOR CHAMBERS: How old are you? [LR269CA]

GLEN ANDERSEN: I'm 70. [LR269CA]

SENATOR CHAMBERS: I said "sonny." See, I can say that, as old as I am. Fortunately for you and me, and we won't be here anyway and (inaudible). [LR269CA]

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

Judiciary Committee  
January 31, 2018

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GLEN ANDERSEN: Oh, yeah, we're okay (laughter). [LR269CA]

SENATOR EBKE: And as "Bibble" said, the "Bibble" says the dead know nothing. [LR269CA]

GLEN ANDERSEN: (Laugh) Okay. Thank you. [LR269CA]

SENATOR EBKE: Thank you. Any other questions? Thanks for being here. Next opponent. [LR269CA]

LORETTA FAIRCHILD: (Exhibit 3) I have prepared remarks that will take the whole three minutes. I sure would like to have another minute to address a whole bunch of interesting things that have been brought up here today. [LR269CA]

SENATOR EBKE: Get started. [LR269CA]

LORETTA FAIRCHILD: I am Loretta Fairchild, L-o-r-e-t-t-a F-a-i-r-c-h-i-l-d. I am here to provide a bit of watchfulness of the citizen to attempt to reframe some insight on good government. One thing economics gets right is this. It is the assumptions that we all end up arguing about, and that's the heart of the matter here today, not the facts themselves. A key piece for viewing any piece of legislation is this. Every action taken by the Legislature will create losers as well as winners, and every action not taken by the Legislature will also create losers and winners. But in the selling of an idea in the Legislature, those in favor all too often borrow from marketing and present only wonderful benefits. Doesn't good government require that all parties who come with proposals will be expected to present just as much information on the losers as on the winners, exactly who is most likely to be in each group, what pain and what benefits will they get, and how large will those pains and those benefits be? Back to the assumptions, one of mine is that most Nebraskans are very into common-sense, "let's get 'er done" problem solving. Could the following assumptions help break the stalemate? First, agree to focus first on the moral and ethical aspects of each proposal, including identifying the losers and the winners. Then include the economic implications of where will the pain be coming from and where will the benefits arise. And that leaves the purely political considerations on the sidelines initially. Now let's use these standards to apply them to LR269CA. Who will be the likely losers and how will they be harmed? The only thing that is clear so far is that the biggest loser will be the state of Nebraska itself since they would lose sovereignty over part of the state. How could this possibly be in the benefit of the interest of the state? And if the state has no sovereignty, how can it act to defend the interest of the individuals, businesses, or other entities that will turn out to be among the losers somewhere in those other 99 years? Back to the goal of improving government within the legislative process, is this going to be hard to do? Oh, yes. But I feel hopeful because of my confidence in each of you and because there is so much good in

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

Judiciary Committee  
January 31, 2018

---

how Nebraska governs itself. And finally, there is some new research in psychology that also shows how effective you are being. This is from sensorimotor psychotherapy where the body is the central focus within helping the mind. That new research has clarified that for people fear is blocked by curiosity and by playfulness. On the other hand, anger and fear coexist and feed on each other and both hinder good thinking processes. So, please, keep the singing and the kindly laughter going. It's helpful and that makes it effective. Thank you. Reactions: I really would like to come back to the assumption... [LR269CA]

SENATOR EBKE: Dr. Fairchild, why don't you go ahead and finish up. Go ahead and...  
[LR269CA]

LORETTA FAIRCHILD: All right, my...thank you. My...in the...for the proposal that we heard from Senator Schumacher, the presentation, his outline of the problems and the issues are absolutely fabulous. I am interested in rural Nebraska. I grew up in Chappell in the Panhandle and I am very concerned. One of my...part of my issues about moral and ethical framework is the silos that urban and rural Nebraska operate in. Please, Senator Chambers, come out and visit us. I grew up not far from where Cabela's...actually I grew up in the town where Cabela's was before it moved to Sidney. There's a lot out there. The issue is everything about that description is absolutely wonderful. The problem is with that assumption in the middle that says, therefore, the problem is the oppressiveness of the state. Beware of simple solutions to complex problems. We have heard wonderful pieces of these arguments. You cannot go forward to this without another ten-hour hearing that allows us to look at the implications of these assumptions that are floating around here. The bullet train and the broadband, which we sure need, will never come out of the private sector. Profit and loss will not bring money into isolated...he talked about the need for critical mass, all that kind of stuff. Millennials are coming back. The economic development people have some good ideas to bring to this. You are nowhere near ready to bring this forward until you've looked at the breadth of complexities in this. Thank you for a wonderful description of what is needed. [LR269CA]

SENATOR EBKE: Any questions? Senator Chambers. [LR269CA]

SENATOR CHAMBERS: Just a comment. I appreciate good writing. That's what you did in the statement that we were given. This is your statement, right, that we were given? [LR269CA]

LORETTA FAIRCHILD: Yes, it is my statement. [LR269CA]

SENATOR CHAMBERS: Well written. [LR269CA]

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

Judiciary Committee  
January 31, 2018

---

LORETTA FAIRCHILD: Yes, and I did elaborate a bit. But because I had no idea what was coming, it isn't aimed at all of the issues. [LR269CA]

SENATOR CHAMBERS: Thank you. That's all that I have. [LR269CA]

SENATOR EBKE: Question, Senator Pansing Brooks? [LR269CA]

SENATOR PANSING BROOKS: And I appreciate the fact that you have said that anger and fear coexist and feed on each other and hinder good thinking processes, and that's most of our issues that are going on today, so thank you for that. [LR269CA]

LORETTA FAIRCHILD: Thank you. [LR269CA]

SENATOR EBKE: Thank you. Thanks for being here today. I see no other questions, yeah, thanks. Any other opponents? Anybody testifying in a neutral capacity? Senator Schumacher, would you like to close? [LR269CA]

SENATOR SCHUMACHER: Thank you, Chair Ebke. I think it was Robert Kennedy that said some people see things as they are and ask why, others dream things that never were and ask why not. What kind of people are we? [LR269CA]

SENATOR EBKE: Senator Krist. [LR269CA]

SENATOR KRIST: Did you say Robert Kennedy? [LR269CA]

SENATOR SCHUMACHER: Well, that's what this thing said it... [LR269CA]

SENATOR KRIST: Does it? Oh, okay. [LR269CA]

SENATOR SCHUMACHER: I thought it was John myself but I better...I figured I better check. [LR269CA]

SENATOR KRIST: Next time I quote it, I just want to make sure that I quote the right guy. [LR269CA]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: I thought he might be streaming George Bernard Shaw, though, one of my favorite (inaudible). [LR269CA]

SENATOR SCHUMACHER: He might have been. [LR269CA]

SENATOR EBKE: It might have been him too. [LR269CA]

SENATOR CHAMBERS: But anyway, it's a good (inaudible). [LR269CA]

SENATOR KRIST: I did have a legitimate question. [LR269CA]

SENATOR MORFELD: We can discuss it on the floor debate. [LR269CA]

SENATOR EBKE: Okay, Senator Krist. [LR269CA]

SENATOR KRIST: I do have a legitimate question for you. Conditions of sovereignty versus conditions of a 99-year lease, if we had an organization come in and simply wanted to do a 99-year lease and develop within a certain area and we were not giving up sovereignty in any way as a marketing tool or an enticement, could the same thing be accomplished without the issues of sovereignty? [LR269CA]

SENATOR SCHUMACHER: If I were a "multigazillionaire," I would want sovereignty. I'd want to have my corporate group, assuming it's a corporate group or alliance of corporate groups...I'm talking serious money here. I'm talking in the tens of billions of dollars... [LR269CA]

SENATOR KRIST: Right. [LR269CA]

SENATOR SCHUMACHER: ...for what we're...or we're not talking about. I wouldn't just want to lease the land. I want to be able to build my vision. I'd want to be able to do as what states are supposed to do but can't very well, and that is be laboratories of the future. And I'd want that so for a long enough period of time so that I'd be pushing daisies before it was over. And I think that's probably the mentality of the folks who would be interested in this kind of proposition and have the money to do it. [LR269CA]

SENATOR KRIST: Thank you. [LR269CA]

SENATOR EBKE: Any other questions? Thank you. [LR269CA]

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

Judiciary Committee  
January 31, 2018

---

SENATOR SCHUMACHER: Thank you very much. [LR269CA]

SENATOR EBKE: (Exhibit 1) Okay. We're going to take...oh, we do have a...one letter in opposition, Nate Grasz of the Nebraska Family Alliance. We're going to take about a five-minute break and round up our next presenter. [LR269CA]

BREAK

SENATOR EBKE: Okay. We are ready to open the hearing on LB883. Senator Harr. [LB883]

SENATOR HARR: Thank you, Madam Chair, members of the Revenue Committee. [LB883]

SENATOR EBKE: No, Judiciary. [LB883]

SENATOR HARR: Judiciary. (Laughter) [LB883]

SENATOR MORFELD: That's what happens on year eight. (Laugh) [LB883]

SENATOR HARR: A former committee I was on. My name is... [LB883]

SENATOR KRIST: Recommend IPP. [LB883]

SENATOR MORFELD: Second. [LB883]

SENATOR HARR: Yeah. My name is Burke Harr, H-a-r-r, and I represent midtown Omaha, the neighborhoods of Benson, Dundee, Westgate, and Hillside, not Westgate. Sorry. So I am here on LB883, which is a rather simple bill. It provides that if the Nebraska Attorney General has an actual or perceived personal or ethical conflict in the prosecution of an alleged crime, he or she may request that a district court appoint an independent counsel to appear for and investigate and prosecute such action--very simple bill. Concept simple, matter of fact, is being done in every county in the state right now. Every county attorney already has that authority. And our Attorney General, under statute 84-204, "The Attorney General and the Department of Justice shall have the same powers and prerogatives in each of the several counties of the state as the county attorneys have in their respective counties." So I'm not sure why I'm bringing this bill, but there was an incident that occurred where I thought there was a conflict of interest between the Attorney General's Office...within the Attorney General's Office. And I said, hey, will you guys appoint a special...ask for the court to appoint a special prosecutor? And I received a letter back

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

Judiciary Committee  
January 31, 2018

---

from the Attorney General's Office, dated August 24, signed by the Attorney General in which he states he does not have the authority to do that; that when there is a conflict with the Attorney General's Office, it is unable to be cured, which I find to be very curious because there is an attorney in Omaha, Mr. Mark Laughlin, who is acting as a special assistant state attorney because there is a conflict within the Attorney General's Office in that Mr. Peterson used to represent...his firm used to represent the troopers. Troopers are suing the state. Attorney General represents the state. And somehow in a criminal case he's able to cure that, although on ethics--and I know I'm not...I don't think anyone would say I'm an expert in ethics--you're able to cure that but you can't in criminal. And I don't know, I couldn't find anywhere in statute or in the Code of Ethics where that happened, but he's figured that out. That being said, I think we need to have a remedy where there is a conflict, a clear or perceived conflict, of interest, and this bill allows the state Attorney General to do what we already allow every county attorney to do. It's that simple. Now this being my last year in the Legislature, I want to address something I'd be remiss if I didn't address in every bill--the fiscal note. And I want to say to Scott Danigole with the Governor...or with the...our Fiscal Office, thank you, because we have a fiscal note from the Attorney General's Office. And I don't know if you guys had a chance to review it, but it's interesting because they say they're going to have to hire an attorney full time to address this issue to be able to go in front of the courts and ask for conflict counsel. Think what that means. That means they currently have so many conflicts that they aren't addressing right now that they're getting a full-time attorney. Now that's ridiculous. I know that's ridiculous and I know that's not what they meant or at least that's what I hope they didn't mean that. But if you look at the fiscal note, they have expenditures and they have benefits being paid out. So obviously, this isn't for hiring a conflict counsel. This is for hiring an attorney to address the conflicts. That's an embarrassment if our Attorney General has that many conflicts. Because it's not very difficult to go to a judge and say, judge, we have a conflict, will you appoint someone? Sure. To think that's a full-time job, that's scary. I think...and I think Scott probably caught this and that's why...that there aren't that many conflicts, and that's why in the third paragraph Scott states, "Thus, the estimate of \$137,142 being added to the agency's base budget appears unreasonable." Right? There's our Fiscal Office doing its job, not just signing off on what comes from the department. So I want to thank Mr. Danigole for that. And with that, I would entertain any questions you may have regarding this bill and its intent. But as I said, it's very simple. All we're doing is giving our Attorney General the powers each and every county attorney already has. [LB883]

SENATOR EBKE: Senator Krist. [LB883]

SENATOR KRIST: So it's remarkable for me to say in all the time that we have spent together, almost eight years now, that this is the first compliment you've given the Fiscal Office, so I'm sure they appreciate that. (Laughter) [LB883]

SENATOR HARR: I've given them others. [LB883]

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

Judiciary Committee  
January 31, 2018

---

SENATOR KRIST: Okay. Okay. [LB883]

SENATOR HARR: And I've given constructive criticism but always constructive. [LB883]

SENATOR KRIST: So when I was the Chair of the Exec Board, we had several issues that came up where the Attorney General, for whatever reason, didn't want to help, begged out or whatever, and we went out and hired counsel to handle these issues. So it's possible for any branch of government to do this right now. Your issue, though, is that the Attorney General has opined that he cannot do that. Is that the issue? [LB883]

SENATOR HARR: He cannot do that because not just anyone can be a prosecutor, all right, so that's different than hiring a conflict lawyer. So the difference, yeah, and so he has opined that he cannot do that. He cannot ask for a special assistant attorney general to be hired that can then prosecute, even though on the county levels again we as special county attorneys are appointed to prosecute cases when there is a conflict. [LB883]

SENATOR KRIST: So let me give you just a hypothetical. Suppose the Governor and the Attorney General and the director of Corrections decided to buy drugs illegally, just a hypothetical. [LB883]

SENATOR HARR: Decided to what? [LB883]

SENATOR KRIST: Decided to buy drugs illegally,... [LB883]

SENATOR HARR: Okay. [LB883]

SENATOR KRIST: ...the three of them, hypothetical. Who then would...would it go back to the district court? Would it go back to the city of Lincoln prosecution in order to bring that charge forward? And then who would defend them? [LB883]

SENATOR HARR: Great question. So I'd have to think about it a little bit. But first of all, I believe the court they should go to is the court where they attempted to buy the drugs or in the county where they attempted to buy the drugs. [LB883]

SENATOR KRIST: In India? [LB883]

SENATOR HARR: What's that? [LB883]

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

Judiciary Committee  
January 31, 2018

---

SENATOR KRIST: In India? [LB883]

SENATOR HARR: India? Well, let's say Lancaster then. [LB883]

SENATOR KRIST: Okay. All right, hypothetically. [LB883]

SENATOR HARR: And, right, hypothetically, because the crime occurred where they attempt to buy. It was probably in Lincoln from India, right? [LB883]

SENATOR KRIST: Okay. [LB883]

SENATOR HARR: So you would go to a Lancaster District Court judge and you would say, well, hopefully, the Attorney General would say, I have a conflict. Now there's nothing...this is...this is permissive language. There's nothing that would force the Attorney General...or the Attorney General--excuse me, that's correct--to go to the court and say, I have a conflict, I can't prosecute myself. [LB883]

SENATOR KRIST: Which would be (inaudible). [LB883]

SENATOR HARR: But let's pretend it was a deputy and he thought there was some other who had, let's say allegedly, assaulted a girlfriend, a boyfriend, whatever. They wouldn't be allowed to prosecute and they wouldn't be allowed to appoint a special prosecutor. And so, because there would be a conflict in prosecuting that person, and so what happens? Right? Does that person go free? I don't know. And let's say, for whatever reason, Lancaster doesn't want to take the charge. That's the problem you create. You have to always have a fail-safe for when there is a conflict. And we...when you look at the statutes, you always say whatever is most recent at the time is the intent of the Legislature, and they cite case law which comes before why they can't do that. That comes before when we gave the Attorney General all the authorities that we give a county attorney. So again, while I disagree with their analysis, you know, you can't force them to do it. But what I'd like to do is give them the legislative authority and create the record here today to let them know they can go forward. If they feel they have a conflict, for whatever reason, that they can then go forward and prosecute through asking the court to appoint a special prosecutor. [LB883]

SENATOR KRIST: So you do believe that they already have that authority in law? [LB883]

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

Judiciary Committee  
January 31, 2018

---

SENATOR HARR: Oh, I believe they have that. They have chosen not to exercise it; instead hiding behind a statute. I just want to clarify that statute so that if they do decide to go forward. I mean it's obviously a problem, right? They have to hire a full-time lawyer. [LB883]

SENATOR KRIST: Yeah. [LB883]

SENATOR HARR: (Exhibit 1) So it's obviously a problem. By their own admission, they have to hire a whole-time lawyer just to handle all the conflicts within their office. So I also, and I apologize, I have an amendment, AM1654, which strikes part of the bill because I don't want to lose the intent here which is really to deal with the conflict. The other part I think is important, Section 1, but I'll let you pass that around. But I really think the most important part, and I want to make sure that this doesn't get bifurcated, I really want the emphasis of this bill to be if you have a conflict, Attorney General, you have an outlet. We're here to help. We're here to give you a procedure that you can do something so that you don't have the situation that we ran into this summer. You know, fortunately, we went back to a county attorney and the county attorney went to a judge and the judge appointed a special prosecutor. That may not always be the case. And there may be a case where the Attorney General and a county attorney may not agree. And if a county attorney says, I don't think this should be prosecuted, and the Attorney General says, I think it does but I have a conflict, well, where are we? So this gives them an outlet. It gives them more authority to go...gives them the authority I think they already have but clarifies it to go to the court and say, you may appoint. [LB883]

SENATOR KRIST: Got it. Thank you. [LB883]

SENATOR EBKE: Other questions? Senator Halloran. [LB883]

SENATOR HALLORAN: Thank you, Chair Ebke. And this is just a...I'm generally in agreement with this but just kind of a procedural question. People that have a conflict of interest, and some conflicts of interest are glaringly obvious and some are perceived, and people generally who have a conflict of interest or often who have a conflict of interest aren't readily going to admit to it, right? So I mean who determines? If they don't admit to a conflict of interest, someone else has to say, well, there's a conflict of interest? Who does that? Who? [LB883]

SENATOR HARR: Great question. So how do we determine...what happens if they don't think they have a conflict of interest? And this is permissive language, so nothing forces them to go. And sometimes a third party can write, ask for an opinion from...we have, lawyers, have an ethics committee. I've written a letter asking for an opinion as to whether there was a conflict of interest and what should be done in the future of this? I haven't heard back on it yet. But, yes, we

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

Judiciary Committee  
January 31, 2018

---

have, we have Canons of Ethics within the law and if someone thinks another lawyer or a lawyer has violated that, there is a procedure for that already. [LB883]

SENATOR HALLORAN: Uh-huh. [LB883]

SENATOR HARR: All we're saying here is what happens if the AG freely admits they have a conflict or maybe not admits but knows, because by admitting they're hurting one of their clients. This gives them a judicial remedy that allows the case to still go forward without them violating their ethical duty. [LB883]

SENATOR HALLORAN: Gotcha. [LB883]

SENATOR HARR: And as I stated, we already do that for county attorneys. [LB883]

SENATOR HALLORAN: Thank you. [LB883]

SENATOR EBKE: Other questions? Senator Chambers. [LB883]

SENATOR CHAMBERS: Just a comment. When we were dealing with the death penalty, Senator Harr, and the argument was made about the expense, the Attorney General emphasized that there's not any undue expense because we have lawyers doing this all the time so it doesn't cost much of anything; it's not going to burden our office at all. So the data show how much death penalty appeals and so forth cost the state. Now all we're talking about is a lawyer going before a judge--the Attorney General himself could do it--and requesting the appointment. And he already is a full-time lawyer. He's paid more than what he's worth. So I think that is being...I usually use very strong language, not profanity because, as I say, I'm not a religious man, but I think it's being disingenuous to suggest that it's going to be expensive to request that a court appoint a special prosecutor under the circumstances mentioned. So I don't expect that to deter you from going forward with it. But if there was the feeling that you would stand alone in going forward, you won't be alone in arguing that what the Attorney General says is more smoke and mirrors, in my opinion. [LB883]

SENATOR HARR: Thank you. And by the way, there is a cost associated with hiring that outside counsel. I don't deny that. But that was not brought into the fiscal note. The fiscal note said, we're going to have to hire a full-time attorney general to go forward. So it...and it's beared (sic) out by even showing that they're going to have to pay benefits to that person, which if they're outside counsel you're not paying benefits. So I don't know what happened. I just appreciate that our Legislative Fiscal Office notified me. [LB883]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: Question. Let's say that the incident occurred in one of the western counties like when that state trooper used the butt of a gun to hit an intoxicated person upside the head and knocked that person down. The Attorney General can ask that the county attorney handle that case in the county where it happened. [LB883]

SENATOR HARR: Yes. [LB883]

SENATOR CHAMBERS: Isn't that true? [LB883]

SENATOR HARR: Yes. [LB883]

SENATOR CHAMBERS: Because the...and the county attorney...is the Attorney General suggesting that the county attorney's office cannot handle it and they'd have to hire special lawyers or something? Because I'm trying to see where this extra expense would come in. [LB883]

SENATOR HARR: In that case you had a county attorney, I believe it was Joe Stecher, who said...reviewed the reports and said it was done perfectly fine. I haven't reviewed it. I don't know. I'll say that's right. But there was a complaint brought and so the Attorney General had...and I think, by the way, I support our law enforcement. We should support our law enforcement. And so the AG represented the state trooper on that. [LB883]

SENATOR CHAMBERS: Uh-huh. [LB883]

SENATOR HARR: If there was a disagreement as to...between the county attorney and the Attorney General, in that case the Attorney General couldn't do anything because they're conflicted out. [LB883]

SENATOR CHAMBERS: Uh-huh. [LB883]

SENATOR HARR: And so this would allow the Attorney General, at that point, to go to the court and say, hey, we'd like you to appoint a special prosecutor to review this to make sure that what the county attorney did was correct. And that's what we're trying to do here. It's that simple. [LB883]

SENATOR CHAMBERS: And now I'm going to say I accept what he said, the Attorney General said. Because of the seriousness of the issue, the little cost that actually would be entailed is a

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

Judiciary Committee  
January 31, 2018

---

cost of doing business. And no person should be above the law, meaning that the law applies to everybody. And we cannot have a situation where an obvious crime that was committed and it was videotaped will go unpunished because nobody is in a position to file charges. So if it costs a little money to see that justice is done, we as a Legislature will do that. That's all that I have though. [LB883]

SENATOR HARR: Thank you. [LB883]

SENATOR EBKE: Other questions for Senator Harr? Okay. Going to hang around for a little bit? [LB883]

SENATOR HARR: Yes. [LB883]

SENATOR EBKE: Okay. First proponent. Is anybody speaking in favor of the bill? I see no one moving. First opponent. [LB883]

GARY YOUNG: Senator Ebke and members of the committee, my name is Gary Young. I am counsel for the State Troopers Association of Nebraska, as well as the chief negotiator for the State Law Enforcement Bargaining Council. After listening to Senator Harr's comments about the amendment that he is proposing, I think we have a lot less problem with the bill. We're concerned about the impacts on 81-2009 that were in the bill and we would oppose those original...as it was originally written. We agree with Senator Harr that there really is...we don't agree with the Attorney General's Opinion that there is a conflict that presents...that presented in either that case or any case where the Attorney General has the authority to appoint outside counsel to represent a state official or a trooper and so on and to discharge the legislative duty he has to represent troopers who are facing criminal investigation or a proceeding. And as we'll talk about it more later when we discuss LB720 or LB792, but that's the issue we have. That's the reason we would resist the bill. If there's an amendment to take care of it, I don't think we would have any opposition. Thank you. [LB883]

SENATOR EBKE: Thank you, Mr. Young. Questions? [LB883]

SENATOR CHAMBERS: Excuse me. [LB883]

SENATOR EBKE: Senator Chambers. [LB883]

SENATOR CHAMBERS: I didn't get your name or who you're with. [LB883]

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

Judiciary Committee  
January 31, 2018

---

GARY YOUNG: Yeah, Gary Young on behalf of the State Troopers Association. [LB883]

SENATOR CHAMBERS: Oh, the State Troopers Association. [LB883]

GARY YOUNG: Yeah. [LB883]

SENATOR CHAMBERS: So you're not in the Attorney General's Office. [LB883]

GARY YOUNG: No. [LB883]

SENATOR CHAMBERS: Okay. I didn't hear you. I got it clear. [LB883]

SENATOR EBKE: Other questions? Thank you for being here, Mr. Young. Next opponent. Are there any other opponents? [LB883]

JAMES SMITH: I am James D. Smith, first name J-a-m-e-s, middle initial D., Smith, S-m-i-t-h. I am the solicitor general for the Nebraska Attorney General's Office. The Attorney General's Office opposes LB883. There are four main reasons why the Attorney General's Office opposes the bill. First one is we believe it's unnecessary. Second, there are at least two alternatives that already exist under Nebraska law that have historically been used and used successfully to investigate and prosecute officials and others who have committed crimes, including a felony prosecution and conviction of the person who was the Attorney General. I'll return to those two alternatives later. A third reason for opposition is the bill itself is poorly drafted. It creates yet one more expensive, unnecessary, and unlimited layer of government bureaucracy. In this regard, I would recommend reading a very...it's lengthy but it's a very excellent article by a former independent federal counsel, Donald Smaltz, and it's titled "Independent Counsel: A View From Inside." The citation for the article is 86 Georgetown Law Journal 2307, and it goes into a fairly in-depth analysis from independent counsels only, own personal experiences. A fourth reason we would oppose the bill is there is a simple solution to concerns about the Attorney General having a conflict of interest prosecuting State Patrol officials and that would be to repeal state statute 81-2009(1) and that repeal is already proposed by Senator Ebke's bill, LB792, at Section 4, which is scheduled for hearing later today. As far as the two alternatives that already exist under Nebraska law, first of all, county attorneys, local law enforcement officials already have authority to investigate and prosecute state crimes. Secondly, in addition, state statute 23-1205 and 23-1201...1204.01 allow a judge to appoint a prosecutor at the request of a county attorney. As far as some history on the statute, prior to the AG's Office having what I would describe as its current limited prosecution and investigation division, which primarily assists only smaller counties because of our staffing, it was common practice back then for county attorneys to

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

Judiciary Committee  
January 31, 2018

---

request judges to appoint prosecutors. Statutes are still used, as was recently done by the Sheridan County Attorney, to procure a special prosecutor. And I see I hit the red light. May I continue? [LB883]

SENATOR EBKE: Go ahead and finish up, yeah. [LB883]

JAMES SMITH: Okay. The statutes, those statutes are still used, as was recently used by the Sheridan County Attorney, to procure a special prosecutor appointment concerning the conduct of State Patrol officials in that county. Myself, I have personally been appointed for over 35 years as a special prosecutor by judges in numerous Nebraska counties, both before and after I was in the Attorney General's Office, for cases such as official malfeasance, murder, kidnapping, many of which had resulting jury trials, convictions, and appeals. And in my experience, those statutes that are already on the books, they exist, they work. [LB883]

SENATOR EBKE: Okay. Thank you, Mr. Smith. Senator Krist. [LB883]

SENATOR KRIST: Can you...thanks for coming. Can you address the fiscal note? [LB883]

JAMES SMITH: It's difficult for me to do it because I saw it last night for the first time. I don't, frankly, understand the idea of an additional position. My impression is what he was trying to do in the fiscal note was estimating the expense that you might have from having independent prosecutors. I do note Mr. O'Brien's note said: These costs could be quite substantial, could easily double or triple...treble potential liabilities. And as pointed out by Senator Harr, the legislative...or Mr. Wilcox pointed out that the costs could be easily far greater than the estimate they provide; they simply have no way to accurately identify. I don't see that you would have one person hired for the sole purpose of filing applications with a judge. But I think it's more in the context of the way the bill is drafted. The expenses of independent counsel is just going to come out of the Attorney General's budget, whatever they may be. [LB883]

SENATOR KRIST: You heard my comment before about trying to find independent counsel for different issues as the Chairman of the Exec Board. That came out of our budget on the legislative side. One of the things that I find curious about this is if you wanted an independent source and you couldn't do it internally in the office already, you're going to hire an employee who's going to take on that responsibility and he works for you--makes absolutely no sense to me. [LB883]

JAMES SMITH: Well, the bill itself, Senator, is limited to criminal activities, not just general law, general practice. And so to me it's in the...and that's one of the issues with the bill because

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

Judiciary Committee  
January 31, 2018

---

it's...we already have bills on the books for getting prosecutors for crimes and this bill, as I read it, is simply talking about criminal activities. [LB883]

SENATOR KRIST: Okay. Thank you. [LB883]

SENATOR EBKE: Other questions? Senator Chambers. [LB883]

SENATOR CHAMBERS: Did you say you work in the Attorney General's Office now? [LB883]

JAMES SMITH: Yes, I do. I've been in the Attorney General's Office for almost 24 years.  
[LB883]

SENATOR CHAMBERS: For almost how long? [LB883]

JAMES SMITH: Twenty-four. [LB883]

SENATOR CHAMBERS: Twenty-four years? [LB883]

JAMES SMITH: Yeah. Prior to that I was private practice, primarily as a defense counsel. I was the law partner for 12 years with Senator Seiler, former-Senator, so I've got criminal background too. [LB883]

SENATOR CHAMBERS: I'm aiming at something. You were working in the Attorney General's Office when Jon Bruning was the Attorney General? [LB883]

JAMES SMITH: Yes, I was. [LB883]

SENATOR CHAMBERS: When Paul Douglas was the Attorney General? [LB883]

JAMES SMITH: No. No. [LB883]

SENATOR CHAMBERS: Not that far back. [LB883]

JAMES SMITH: I've been in the Attorney General's Office for three administrations, be Don Stenberg, Jon Bruning, current administration. [LB883]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: I have never had a conversation with you that I can recall. But do you remember having one with me? [LB883]

JAMES SMITH: Yes, I do. The first time we met would have been when I tried the partial-birth abortion case that went up to the U.S. Supreme Court. You were in the audience and we discussed afterwards. I've rarely appeared at hearings but I've appeared in front of you and you have questioned me. [LB883]

SENATOR CHAMBERS: We were both in the Supreme Court and that's where we first met you said? [LB883]

JAMES SMITH: Federal District Court here in Lincoln. [LB883]

SENATOR CHAMBERS: But I meant we were both in...wherever this location was, it was in the Capitol Building? [LB883]

JAMES SMITH: It was in the federal courthouse here in Lincoln. [LB883]

SENATOR CHAMBERS: Oh, the federal courthouse. [LB883]

JAMES SMITH: Yes, when Judge Kopf presided over the challenge to the constitutionality of the Legislature's partial-birth abortion statute. [LB883]

SENATOR CHAMBERS: You keep a very low profile. And also, I don't know why somebody like you isn't sent over here more often to talk to us when the Attorney General wants to take some kind of position against a bill. And I'm not trying to denigrate anybody. I'm trying to acknowledge the approach that you take. And don't take this as an offensive statement. It reminds me of the situation at the national level where the person who has to make sense out of what his boss said makes more sense than the boss. And had that person been allowed to formulate a statement in the first place, then some of the confusion would not have occurred. So I think your talents have not been properly or well used. And that's not to cheese up to you because I don't do that. But I think you could do a better job and there would be less antagonisms if somebody like you could present whatever it is the Attorney General wanted presented. That's all that I have to say. So you can respond if you want to, but that's the only reason I wanted to say something. [LB883]

JAMES SMITH: My background is primarily...my time is primarily spent in court. I'm the primary appellate litigator in our Supreme Court, federal courts. I don't end up interacting with

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

Judiciary Committee  
January 31, 2018

---

the Legislature committees that often and I would frankly admit that my time is such that... [LB883]

SENATOR CHAMBERS: But see, that might account for your approach. [LB883]

JAMES SMITH: ...I tend to find out what the laws are that have been passed when I read the bills after the Legislature has adjourned. [LB883]

SENATOR CHAMBERS: And when somebody presents an argument that's well-rounded, even if I wind up disagreeing, the argument that was presented made sense. It's plausible. And it's one of those situations where reasonable people can differ, and that's what it boils down to. You don't come across as an ideologue or anything like that. So the approach maybe that a person uses in addressing the courts will assist because they don't want a lot of the things that might be said in a political context. So I'm trying to not get you in trouble with your current boss while at the same time letting you know somebody sees the approach that you take and the value of it. And now I am through, even if you say something else. [LB883]

JAMES SMITH: I'm done. [LB883]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB883]

JAMES SMITH: Thank you. I usually ask if I could be excused (inaudible). [LB883]

SENATOR EBKE: Sure, you can go. [LB883]

JAMES SMITH: Okay. Thank you. [LB883]

SENATOR EBKE: Any other opponents? We have anybody testifying in a neutral position? Senator Harr. And we have no letters, so. [LB883]

SENATOR HARR: Let me start by saying I take offense to the comment that the legislation was poorly drafted. (Laughter) I didn't draft the legislation, by the way, but I know who did and I think they did a fine job. And so I take some offense at that, especially when you don't come back and say it was poorly drafted; here's how you can do it better. So I take some offense to that. If you're going to criticize, it goes back to constructive criticism. This bill is necessary, folks. We have a county attorney...if this bill isn't necessary then there's no reason to give the state Attorney General any prosecutorial discretion at all because we already have county

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

Judiciary Committee  
January 31, 2018

---

attorneys that can prosecute across the state. So why do we have a state Attorney General? We have that person there as backup. And so what we're saying is we have this person for backup except if there's a conflict with the county...with the state Attorney General's Office, within that office, whatever reason, and we have no way to cure it. I can't imagine that was the intent of our brothers and maybe some sisters back then when this legislation was passed. It wouldn't make sense. Right? The idea here is county attorney makes a decision. State Attorney General doesn't agree with it. State Attorney General steps in to prosecute them. That's how it works. That's what this continues, is that backstop that we have. Mr. Smith, with all due respect, doesn't understand what this bill does. He, in his head, in his political head, hears the word "independent counsel" and thinks Robert Mueller, Ken Starr. That's not what this is. This isn't independent counsel. This is conflict counsel. There's a difference, okay? We already allow this in every single county in the state. And I have not seen probes going into people's sex lives, because we have these statutes, by county attorneys. We trust our elected officials, right? All we're doing is saying, Mr. Attorney General, we are going to give you the same authority that a county attorney has if there is a conflict. Now why would we do that? Because it's already in statute. The Attorney General shall have the same powers and prerogatives that each of the several counties of the state as a county attorney have in their respective counties. We're just clarifying it. I think they already can do it, right? And county attorneys, due to absence, sickness, disability, or conflict of interest, conflict of interest of the county attorney and his or her deputies, upon the request of the county attorney for good cause, the Supreme Court, the Court of Appeals, or any district court, separate juvenile court, or county court before which cause may be heard may appoint an attorney to act as county attorney in any investigation, appearance, or trial--23-1205. It's already there. Now they cite some case from the twenties, I should have a better...it says, well, you can't do that because they can't cure it. Well, all we're saying is, yes, you can. You can cure this conflict. That's all we're trying to do. We're trying to give them the authority they think they don't have based on State v. Douglas, no, based on, sorry, but that's an interesting case, by the way--Paul Douglas, State v. Douglas, because guess what happened in that case, by the way? There was a special assistant attorney general and that special assistant attorney general was appointed by our Supreme Court. So it wasn't as though it was at district court they said you could do it. It was our Supreme Court appointed a special attorney general to prosecute who? [LB883]

SENATOR CHAMBERS: The Attorney General. [LB883]

SENATOR HARR: The Attorney General. Oh, I thought we didn't have the authority to do that. That's what they're arguing now and, yet, we did it already. So this is not a controversial bill. And by the way, if I were the Attorney General, I would want to come in and be able to cure any conflict my office may have. The fact that they come in here and say, hey, there may be a conflict and we don't want to cure that conflict, we just want to be able to have nothing happen, that is crazy talk. I don't understand that one bit. I don't understand if you have a conflict why you would not want to cure that conflict. If there's an ethical reason why you can't go forward, think

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

Judiciary Committee  
January 31, 2018

---

about this: By doing nothing, you're doing something, right? So if you have a conflict of interest and going forward would harm one part and help the other, when you do nothing you are doing something, and that party that is helped by doing nothing is helped and the one who is harmed is harmed. Think about that. Why would you not want to cure that conflict? I don't know. I do. I think they should and that's why I brought this legislation. [LB883]

SENATOR EBKE: Senator Chambers. [LB883]

SENATOR CHAMBERS: What I picked up that Mr. Smith said, Senator Harr, was that he didn't see where it would take a person who would exclusively handle this, and I think he was trying to agree that the way the Attorney General's Office put the, what do you call, the bill... [LB883]

SENATOR EBKE: Fiscal note? [LB883]

SENATOR CHAMBERS: The what? [LB883]

SENATOR KRIST: Fiscal note. [LB883]

SENATOR CHAMBERS: Yeah, the fiscal note. My bills don't have that so I'm just emphasizing that. (Laughter) I'm not familiar with it. That he didn't see where it would take a special person to do that little bit. But here's what I think. I have been aware of various statutes, especially with the concurrent jurisdiction between the Attorney General's Office and every county attorney, so I think the way we should...what we should do is draft a one-sentence bill and put it under that existing law and say, this time we mean it. It's clear what on the face of it that language means. I disregard what the Attorney General's position is. That's why I separated this man from the Attorney General. When he's sent here, he's got to try to clean up the mess. These people who have to clean up the mess behind the "Pumpkin Man," you see them flounder, you see them, their eyes dancing. They can't even make eye contact with the camera because they know they're sacrificing their own integrity. They are compromising the intelligence that people who know them are aware they're not displaying. And I know something about a lot of things because it was my resolution in the Legislature that led to the impeachment of Paul Douglas. I'm aware of that. I was there. I was in the courtroom when the matter was proceeding. In fact, not to boast, but it was my resolution--and I didn't do these things alone--that led to the impeachment of that Board of Regents guy, Hergert, and he was convicted and kicked off. And I was one of the special whatever you call them who sits in the courtroom representing the Legislature to make any incidental amendments we might make to the proceedings. But in the matter of Paul Douglas, a majority of the court did say he should be convicted but you need a supermajority of five. So four of the seven judges said he should have been convicted, but since you didn't have the fifth judge then he escaped. But when the Attorney General comes in with these kind of things, this

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

Judiciary Committee  
January 31, 2018

---

committee has heard me have back-and-forths with Mr. O'Brien. I don't know why the Attorney General sends people here to do the kind of things that those people come here and do. But I saw this man Smith, and maybe I'm misinterpreting and misconstruing, trying to bring a clean thing out of an unclean thing. The Attorney General does not ordinarily send that man to talk to us. That's the first time I remember him ever, and as long ago as he and I have talked I really still don't remember. But I wish the Attorney General would come to an understanding that we might, on the floor of the Legislature, do some things that seem foolish but we're not fools. We do understand what it is that we offer in legislation. When reference was made to Senator Ebke's bill, it doesn't hurt, I don't think, to have the bill that you're bringing. It is...it has a laser-like focus. It says what it means. It means what it says. And it should not be necessary. And you're right, we're not talking about what happens at the federal level when they have...they don't call it a special prosecutor; they call it an independent counsel. That person can engage in a far-reaching, wide-ranging, investigative, ongoing action. We're talking about one specific circumstance, not even calling for an investigation of any kind, but to have a person appointed to do the work that a lawyer needs to do in a situation where action needs to be taken. The Attorney General feels, for whatever reason, he or she has a conflict--I don't know if they call it recusal or what--but cannot go forward. Then just go into the court and ask that a special attorney general be allowed to be appointed, as simple as that. I don't even see why the Attorney General's Office was in here. [LB883]

SENATOR HARR: I'm not sure why they would take offense at having conflict counsel.  
[LB883]

SENATOR CHAMBERS: But he did the best he could. And when that guy with "Pumpkin Man" in Washington gets tired of compromising his integrity and looking like a fool, I'm going to write them and tell them I got a guy in Nebraska. Now I don't know if he'll take the job, but he can do it for as long as his sacrificing his self-respect will allow him. [LB883]

SENATOR EBKE: Senator Baker. [LB883]

SENATOR BAKER: Thank you. Senator Harr, I've listened to what you said. I listened to what Senator Chambers just said. There was some previous testimony that Senator Ebke's LB792 would make yours unnecessary. Do you see, is your bill or Senator Ebke's bill, one or the other, they do different things? What's your take on that? [LB883]

SENATOR HARR: I'd want to look at it a little more closely, but what I'd say is they're complementary. [LB883]

SENATOR BAKER: Okay. [LB883]

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

Judiciary Committee  
January 31, 2018

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SENATOR HARR: Mine deals directly with what happens when there's a conflict of counsel, when there's a conflict for whatever reason within the Attorney General's Office. So if a...and to go back to Mr. Douglas, if the Attorney General can't be...or can't appoint...there cannot be appointment of a special attorney general--in this case the Supreme Court did it--why didn't he appeal his conviction? Right? Why didn't he appeal the even bringing of the charges and asked, said, hey, you don't have the authority to bring this charge forward, only I do and my office, and I didn't authorize that? He didn't do that. He let it go forward. And so I just find it interesting. I understand what they're saying. There's a case from 1921, Lower v. State, and they're saying the appointment of special assistant general is solely the prerogative of the Attorney General and that the specials...are appointed under the authority and direction of the Attorney General and possess no authority other than that of the Attorney General. Then how is there a special assistant attorney general for a civil case when there's a conflict? If you're a special assistant attorney general, it can't be cured. It shouldn't matter whether it's civil or criminal. The Attorney General should go to a third party, the judge, to appoint an impartial party to then prosecute or to take care of the case. In this case, the statute is limited merely to the prosecution. [LB883]

SENATOR BAKER: Thank you. [LB883]

SENATOR HARR: And again, we do it in every county. [LB883]

SENATOR EBKE: Other questions? Senator Halloran. [LB883]

SENATOR HALLORAN: Chair Ebke, this is meant to be a compliment. Do you...you've got a dramatic flair, which I admire. I'm rather monotone, as you can tell at the moment. But have you ever participated in community theater of any kind? (Laughter) [LB883]

SENATOR HARR: No. [LB883]

SENATOR HALLORAN: You should. [LB883]

SENATOR KRIST: Plead the Fifth. [LB883]

SENATOR HARR: I'll have some more free time shortly, so. (Laughter) And it probably pays better. [LB883]

SENATOR EBKE: Other questions? Let's...can we just talk just briefly? We've kind of touched on it already. The whole hearing of conflicts and say conflicts occur with a county attorney, okay, and they're set to...they're tasked with representing county officials, right? [LB883]

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

Judiciary Committee  
January 31, 2018

---

SENATOR HARR: Uh-huh. Yes. [LB883]

SENATOR EBKE: So the county treasurer or the county clerk or whoever does some sort of...some questionable or is charged with some sort of a criminal act, okay? Now the county attorney then has a conflict? [LB883]

SENATOR HARR: Yes. [LB883]

SENATOR EBKE: Okay. What is their obligation in that instance from an ethical standpoint, you know, from the Canon of legal Ethics or whatever you call it? [LB883]

SENATOR HARR: And let me just take a step back and let's just assume the county attorney knows something in their representation of that county official that could be used against them to prosecute the county official. They have a clear conflict of interest. And depending on what the crime is, whether it's a misdemeanor or whether it's a felony, they could either go to the county court judge if it's a misdemeanor and county court judge...or district court judge if it's a felony and say, hey, my office has a conflict of interest; we're asking for conflict counsel to be appointed, which, by the way, is done all the time. And I would argue...I would say the majority of the time that's done the counsel that's appointed is the state Attorney General. Now sometimes they bring in private attorneys to do that, but the majority of the time they bring in the Attorney General's Office to do that because you can't represent someone in that situation. I mean it's against the Canons of Ethics. [LB883]

SENATOR EBKE: So...and that's the key, right, an attorney is ethically obligated to cure a conflict? [LB883]

SENATOR HARR: Yes. [LB883]

SENATOR EBKE: Is that what you would say? [LB883]

SENATOR HARR: Yes. [LB883]

SENATOR EBKE: Okay. Thank you. [LB883]

SENATOR HARR: Because, again, if you don't cure that, you're favoring one party over the other. If you have a conflict of interest and by knowing something it favors one party over the other, you have to pull yourself out. [LB883]

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

Judiciary Committee  
January 31, 2018

---

SENATOR EBKE: Okay. Thank you. Questions? Other questions? Thank you, Senator Harr. [LB883]

SENATOR HARR: Thank you. [LB883]

SENATOR EBKE: We had no letters, right? And so this closes the hearing on LB883. Senator Morfeld, we will move to LB923. [LB883 LB923]

SENATOR MORFELD: Senator Ebke, I have LB923 on my binder, so... [LB923]

SENATOR EBKE: Good. [LB923]

SENATOR MORFELD: ...is it LB943? [LB923]

SENATOR EBKE: Nine...what did I say? It's LB923. [LB923]

SENATOR MORFELD: Oh, I thought you said LB43... [LB923]

SENATOR EBKE: I might have (inaudible). [LB923]

SENATOR MORFELD: ...so just making sure. I don't know what LB43 is but... [LB923]

SENATOR EBKE: I don't either. [LB923]

SENATOR MORFELD: (Laugh) Good. Good afternoon, colleagues. Senator Ebke, members of the Judiciary Committee, my name is Adam Morfeld, for the record, spelled A-d-a-m M-o-r-f-e-l-d, representing the "Fighting 46th" Legislative District, here today to introduce LB923, a bill to include immunity for law enforcement employees from civil action in the use of naloxone and to harmonize the "good Samaritan" alcohol immunity standard with the "good Samaritan" drug immunity standard that we passed last session. Since arriving in the Legislature, one of my top priorities has been keeping Nebraskans, and particularly our students, safe on campuses across Nebraska. As a representative of the state's largest university, it is incredibly important to me that my constituents are protected and have the ability to continue on with their education. I've introduced three bills that address alcohol and drug overdoses in the last three years and all three have passed into law, so thank you. To summarize briefly, just to give you a little bit of background, LB439 was passed in 2015. It grants immunity to persons seeking help for themselves or someone else in need of immediate medical attention due to an alcohol overdose.

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

Judiciary Committee  
January 31, 2018

---

LB980, introduced in 2016, granted limited immunity for persons seeking medical assistance for someone experiencing a drug overdose, again, provided they remain on the scene and cooperate with first responders and law enforcement. And then LB487, passed in 2017, made naloxone more available to those who needed it. In addition, the bill also allowed immunity from civil action for peace officers and first responders who administer the naloxone to a person experiencing an opioid-related overdose. After working with the city of Omaha and several others who reached out to me, I was made aware that Omaha's crime lab did not feel as though they had the necessary protections under LB487, therefore, I'm introducing LB923 as a means to help clarify and make the standards uniform in the previous pieces of legislation. LB923 expands its reach of LB487 by allowing immunity from civil action in the use of naloxone to law enforcement employees who, as a part of their duty, handle or process evidence or property which may include opioids. Further, after we passed the drug overdose "good Samaritan" bill out of this committee on the floor last year, we realized that we need to match the standard in the alcohol overdose "good Samaritan bill," as well, for consistency and clarity, because I think it's important that they have the same standard. This change will make the alcohol overdose and drug overdose bills uniform, in my opinion. I urge your favorable consideration of LB923 and I look forward to continuing Nebraska's lifesaving policies when it comes to alcohol and drug overdoses. Thank you. [LB923]

SENATOR EBKE: Senator Krist. [LB923]

SENATOR KRIST: Thank you, Chairperson Ebke. Senator Morfeld, is this, in your opinion, more of a cleanup and harmonizing provisions that we've put into law before? [LB923]

SENATOR MORFELD: Yes. I think it's harmonizing the two standards, which my intent was always that they be the same standard, but they are worded a little bit differently so I think it could be a little confusing. And then obviously I think that we should have included employees of law enforcement agencies, as well, for the immunity. So to answer your question, yes. [LB923]

SENATOR KRIST: Thank you. [LB923]

SENATOR PANSING BROOKS: Any other questions from the committee? Okay, thank you. [LB923]

SENATOR MORFELD: Thank you. [LB923]

SENATOR PANSING BROOKS: Proponents? Welcome. [LB923]

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Judiciary Committee  
January 31, 2018

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STACI WITKOWSKI: Thank you. Good afternoon. I am Lieutenant Staci Witkowski, S-t-a-c-i W-i-t-k-o-w-s-k-i, with the Omaha Police Department. I'm in charge of our evidence/property unit. I'd like to thank Senator Morfeld for introducing this addition to the bill. The Omaha Police Department evidence/property unit currently has over 320,000 items. The drug room alone has approximately 32,000 items, and that number includes marijuana and all narcotics, to include items that are booked in a suspected or possible fentanyl-related. I have four evidence technicians who work in the evidence/property unit. They receive the packages and the items and they take those packaged items and ensure that they're stored appropriately in our drug room. The technicians also transport all evidence-related drug requests to our UNMC lab for testing. So this means that they are in constant contact with that particular package. Now during the handling of these items, if any possible fentanyl were on the outside of a package, we'd want our evidence technicians shielded from any liability that they would need to administer the NARCAN nasal spray. All of our technicians and crime lab forensic technicians have been trained on how to administer the NARCAN nasal spray. We know that time is essential to saving a life and we'd want a clause to protect our own nonsworn civilians if they were to have to administer. The possibility of transfer to employee to employee is minimal. Our evidence technicians do have contact with general public to release property. While it is unlikely that a cross-contamination would occur, it is in our best interest if everyone in our nonsworn employees to have the same protection as the sworn employees. So subject to any of your questions, that's all I have. Thank you. [LB923]

SENATOR PANSING BROOKS: Okay. Thank you, Lieutenant. Any questions from the committee? Thank you for coming today. [LB923]

STACI WITKOWSKI: Thank you. [LB923]

SENATOR PANSING BROOKS: Any further proponents? Proponents? Okay, what about opponents? Opponents? Anybody in the neutral? Welcome. [LB923]

JOHN LINDSAY: Senator Pansing Brooks, members of the committee, you can't say "immunity" without me appearing (laughter). [LB923]

SENATOR MORFELD: It's come out of nowhere. It's like (inaudible). [LB923]

JOHN LINDSAY: I'm John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. We're appearing in a neutral capacity and the reason for that is while this bill does contain an immunity from liability, we had worked with Senator Morfeld last year and the year before on his...on the original bills. The immunity from liability here is personal to the police officer or, in this case, the employee, but does not extend to the agency to

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

Judiciary Committee  
January 31, 2018

---

which or for which the police officer or the employee works. So it still leaves someone who would be interested in making sure carelessness did not occur and that's why we're here in a neutral capacity, primarily to...if I didn't show up, you'd be wondering where I was. But we have... [LB923]

SENATOR EBKE: Senator. [LB923]

JOHN LINDSAY: We do have no position on the bill and appreciate Senator Morfeld working with us over the last couple years. [LB923]

SENATOR EBKE: Senator Krist. [LB923]

SENATOR KRIST: Do you spell your middle name "I-m-m-u-n-i-t-y"? [LB923]

SENATOR MORFELD: John "Immunity" Lindsay. [LB923]

JOHN LINDSAY: I'll seek a legal change to do that. [LB923]

SENATOR CHAMBERS: Oh, you...well, you got...see, he didn't put the right...it's "n-o apostrophe." [LB923]

SENATOR KRIST: Apostrophe. [LB923]

SENATOR MORFELD: (Inaudible.) [LB923]

SENATOR KRIST: Sorry. [LB923]

SENATOR EBKE: Any questions? Thank you. [LB923]

JOHN LINDSAY: Thank you. [LB923]

SENATOR EBKE: Anybody else testifying in a neutral capacity? I see none. Senator Morfeld waives. We have one letter in a neutral position from Chris Wagner of Project Extra Mile. I will turn the chair over to Senator Pansing Brooks. This closes the hearing on LB955...or, no, LB923. And then you're up... [LB923]

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

Judiciary Committee  
January 31, 2018

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SENATOR PANSING BROOKS: Okay. [LB923]

SENATOR EBKE: ...for the next one. [LB923]

SENATOR PANSING BROOKS: Okay. Well, we're...I thought it was LB955. That's why...  
[LB923]

SENATOR EBKE: Well, it's the last one. [LB923]

LAURIE VOLLERTSEN: No, we skipped that. [LB923]

SENATOR EBKE: We already did...it's the last. [LB923]

LAURIE VOLLERTSEN: We did it first. [LB923]

SENATOR KRIST: You missed mine. [LB923]

SENATOR PANSING BROOKS: Oh, okay. Sorry. [LB923]

SENATOR KRIST: It was real quick. [LB923]

SENATOR EBKE: It was really fast. [LB923]

SENATOR PANSING BROOKS: It was, wow! Okay, Senator Ebke, welcome. Now we're opening the hearing on LB792. [LB792]

SENATOR EBKE: Good afternoon and thank you, fellow members of the Judiciary Committee. For the record, my name is Laura Ebke. That's L-a-u-r-a E-b-k-e. I represent Legislative District 32, four counties southwest of Lincoln. LB792 is a bill that I introduced on behalf of Governor Ricketts. Before I turn the microphone over to other testifiers who will have more information on this proposal than me, I would like to just give you kind of a 30,000-foot view of what LB792 seeks to do. First of all, the bill deals with the Nebraska State Patrol, the Crime Commission, and the Attorney General's Office. The idea here is to expand the duties and authority of the Crime Commission and to eliminate questions about the Attorney General's authority to prosecute state crimes in Nebraska. Specifically with the Crime Commission, LB792 provides expanded ability to track officers who leave a law enforcement agency under certain conditions. Concerning the Attorney General's Office, LB792 eliminates a conflict-of-interest issue that prevented the

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

Judiciary Committee  
January 31, 2018

---

Attorney General from investigating and prosecuting possible criminal wrongdoing within the State Patrol. I expect the representatives of the Crime Commission and representatives of the administration and the Attorney General's Office will be testifying behind me and they will be able to bring you more detailed testimony, more clarity. Again, this was introduced at the Governor's behest and they would be best able to answer any questions that you may have but I will try if you have anything. [LB792]

SENATOR PANSING BROOKS: Any questions from the committee? Okay, thank you, Senator Ebke. First proponent. Welcome. [LB792]

JAMES SMITH: Thank you. James D. Smith, first name J-a-m-e-s, middle initial D., last name Smith, S-m-i-t-h. I am the solicitor general for the Nebraska Attorney General's Office. The Attorney General's Office supports Section 4 of LB772. Section 4 specifically repeals state statute 81-2009(1), which is an 80-year-old statute providing for the Attorney General, a member of his staff, or an attorney designated by the Attorney General to defend all civil or criminal actions against State Patrol officials. We support the repeal of that statute. The reasons we support the repeal of that statute is, first, the Attorney General cannot ethically both prosecute and defend anyone in a criminal case, which necessarily includes State Patrol officials. Second, general law principles, professional ethics have evolved substantially over the past 80 years so that the statute is really an anachronism to another era and should be repealed. The third reason, the State Attorney General already has the duty to defend the state and state officials who request us to defend them by state statute 81-8,239.06, which statute includes an exception against defending those who engaged in acts constituting malfeasance in office or willful or wanton neglect of duty, which acts are the basis of the lawsuit. And obviously that exception would necessarily mean if you've engaged in criminal conduct you've engaged in willful or wanton neglect of duty, for which we would not defend, and that particular statute, 81-8,239.06, shows an existing conflict in Nebraska statutes which is best resolved by repealing the 80-year-old statute, which is accomplished by Section 4 of LB772 (sic). I would say I did not do a detailed review of the rest of the bill. I would describe it generally as a mandatory reporting law. I've assumed others are going to testify in more depth, in support of it, but I would mention and observe to the committee that there already is precedent under Nebraska law for mandatory reporting laws under your existing statutes and existing laws regulating professions. For example, the Uniform Credentialing Act, Chapter 38 of the statutes, regulates all licensed professionals, health professionals in the state, and imposes mandatory reporting requirements for misconduct on those officials, including even a duty to report themselves. Licensed attorney regulation also imposes mandatory reporting requirements, thus, the concept that appears from the rest of the bill is not a new one. It is simply another law that would impose mandatory reporting requirements, which, simply, there's precedent for. It's not a new concept. [LB792]

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

Judiciary Committee  
January 31, 2018

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SENATOR PANSING BROOKS: Thank you. Questions? Okay, thank you, Mr. Smith, for coming. [LB792]

JAMES SMITH: Can I be excused? [LB792]

SENATOR PANSING BROOKS: Yes. [LB792]

JAMES SMITH: Okay, thank you. [LB792]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB792]

DARRELL FISHER: (Exhibit 2) Good afternoon, Vice Chair Pansing Brooks. Members of the Judiciary Committee, my name is Darrell Fisher and I'm the executive director of the Nebraska Crime Commission. I am here in support of LB792. We're very grateful to Senator Ebke for carrying this bill for the Governor, as we hope it will be instrumental in helping the Crime Commission with some ongoing complications. First, LB792 creates a process of notification to the Crime Commission and ultimately to the Police Standards Advisory Council anytime a law enforcement officer is terminated or is allowed to resign or retire in lieu of termination in specific circumstances such as incompetence, neglect of duty, incapacity, conviction of a felony or dishonesty, or violation of the officer's oath of office, code of ethics, or other statutory duties. This notification is necessary because we feel this has become a matter of public trust and there must be transparency and accuracy in reporting change in status of officers to the commission. Second, this bill requires each agency to require prospective law enforcement employees to sign a waiver granting permission to the hiring agency to contact former law enforcement employers to obtain a copy of their record of employment and any reasons for and circumstances surrounding their leaving employment, if they wish to work for a new law enforcement agency. This is necessary to prevent bad actors from leaving one agency and going to another without adequate background checks being done on the reasons surrounding separation from employment at previous law enforcement agencies. Third, LB792 creates new statutory language which gives administrative subpoena powers to the executive director of the commission. There are other speakers here today who will be...who will speak on their specific pieces, but I would be happy to answer any questions you may have at this time. [LB792]

SENATOR PANSING BROOKS: Thank you, Mr. Fisher. Any questions? Seeing none, thank you. [LB792]

DARRELL FISHER: Thank you. [LB792]

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

Judiciary Committee  
January 31, 2018

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SENATOR PANSING BROOKS: Additional proponents? [LB792]

DAVID STOLZ: (Exhibit 3) Madam Vice Chair, members of the committee, thank you for hearing me. My name is David Stolz, D-a-v-i-d S-t-o-l-z. I am currently agency counsel for the Nebraska Crime Commission. I have written testimony in support of LB792 that I would offer. I have eight copies. I won't be redundant with the executive director. I have been a part of the commission since we first started doing revocation actions in 1995. I'm here to talk about the necessary tools in order to do that effectively and fairly across the state, across all law enforcement agencies. One of the big, strong parts of this bill would give the executive director the tools necessary to ferret out officers who are engaged in serious misconduct. There are concerns I've read in the newspapers about this is going to be some type of a witch hunt or some type of a process that impacts officers' due process rights. But I'm here to tell you that Chapter 9 of Nebraska Administrative Code Title 79, which is the revocation administrative law that you empowered with the passage of 81-1403(6), which gives the Crime Commission and the council the authority to revoke licenses for serious misconduct, is replete with due process concerns. In that is, anytime an action happens--that is, a revocation action is contemplated--an informal complaint must be filed by somebody. Anybody in this room could file such an informal complaint. Once that informal complaint is filed with the executive director, the executive director has three choices that he can make. Number one is to reject the complaint outright. If he does that, it must go before the full body of the Crime Commission at a quarterly meeting so they can review his actions to make sure it complies with the law. The second action that the executive director can make is to require an investigation. Now normally that is done in-house using Crime Commission employees, but one of the necessary tools that we're finding is the need for a subpoena to get into some agencies' records regarding officer misconduct. Most agencies in the state willfully comply and provide information on their officers who have engaged in misconduct, but there are a handful, for whatever reason, that do not. Whether it be due to collective bargaining or distrust or distaste of the system, this document, this LB will help empower the executive director to really fully investigate the case. And with that, I'd ask you to advance the bill and I'm open to any questions. [LB792]

SENATOR PANSING BROOKS: Thank you, Mr. Stolz. Any questions? No. Thank you very much for coming today. [LB792]

DAVID STOLZ: Thank you. [LB792]

SENATOR PANSING BROOKS: Next proponent. [LB792]

JASON JACKSON: (Exhibit 4) Thank you, Senator Ebke and esteemed members of the committee. My name is Jason Jackson, J-a-s-o-n J-a-c-k-s-o-n, chief HR officer to Governor

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

Judiciary Committee  
January 31, 2018

---

Ricketts, and I'm here to testify in support of LB792, which is a key component of the Governor's State Patrol transparency and accountability initiative. This past summer, the Governor asked me to conduct a review of the Nebraska State Patrol following reports of misconduct and mismanagement. When I began that review, I expected to find perhaps process defects, perhaps policy violations. What I did not expect to find was the degree to which Nebraska state law and the state's labor contract with the State Law Enforcement Bargaining Council operate together to undermine transparency and accountability at Nebraska State Patrol. My review was administrative, not criminal in nature, so when I became concerned that there may be criminal misconduct involved, I contacted the Attorney General's Office. The AG's Office informed me that because the AG was statutorily obligated to provide criminal defense to Nebraska State Patrol, it was barred from participating in any criminal investigation into that agency. That is what ultimately compelled our office to enlist the help of the FBI and the U.S. Attorney's Office in conducting an independent criminal investigation. NSP is alone among any agency in state government that is entitled to criminal defense from the AG's Office. The removal of that current statute will cure that conflict and put NSP on equal footing with every other agency and employee in state government. Another significant issue that's addressed in this bill is the State Patrol's inability to provide evidence to the Crime Commission of officer misconduct. A bad-actor cop who is dishonest or who preys upon our citizens should not be able to hop from jurisdiction to jurisdiction and continue to wear the uniform of a Nebraska law enforcement officer. The current labor contract poses a bar on State Patrol from being able to report and disclose to the Crime Commission officer misconduct. The problem posed by that contractual barrier is magnified by the Crime Commission's inability to subpoena these records. LB792 addresses this problem by empowering the Crime Commission to provide proactive oversight, first with the grant of that subpoena power and secondly by obligating agencies to report to the Crime Commission when officer terminations flow from misconduct on the part of their officers. These measures are a step forward in reforming our criminal justice system generally and ensuring the Nebraska State Patrol is above reproach. That concludes my prepared remarks and I'm happy to take any questions. [LB792]

SENATOR PANSING BROOKS: Thank you, Mr. Jackson. Any questions? Senator Chambers. [LB792]

SENATOR CHAMBERS: I'm looking at this powerful presentation, which is like an irresistible flood of water, and if I could just get these people through the Governor on my side to abolish the death penalty, we would march into the century we're in proudly. But I don't have any questions other than how can I get you to do what I've just said, and you don't have to answer that. [LB792]

JASON JACKSON: Then I'll refrain from doing so. (Laugh) [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR PANSING BROOKS: Okay. Senator Krist. [LB792]

SENATOR KRIST: Thanks for coming, Mr. Jackson. Were you part of the bill that's being heard in another committee with the removal of sergeants from the collective bargaining issue? [LB792]

JASON JACKSON: I am. LB791, that's the other piece of the Governor's State Patrol transparency and accountability initiative and we support that bill as well. [LB792]

SENATOR KRIST: Why? [LB792]

JASON JACKSON: Why do we support that bill? [LB792]

SENATOR KRIST: Yes. [LB792]

JASON JACKSON: Okay. Well, it's not germane to the proceeding here, but I'll go ahead and respond because these two bills operate together to put the Nebraska State Patrol above reproach. I've spoken with many senators in the body and explained at a high level what our intentions are with that, the first of which is we believe all agencies in state government, but particularly the Nebraska State Patrol and a law enforcement agency, has an obligation to the public of transparency and accountability. That's an obligation and a duty we owe the public that the state should not be able to contract around. Secondly, the state has already established policy for what a supervisor in state government is. The State (Employees) Collective Bargaining Act outlines what a supervisor is. We believe the state, in its wisdom, has done so because it's an inherent conflict of interest to supervise, investigate, potentially recommend discipline, and be a member of the same bargaining unit that ultimately would defend against those same actions. So at a high level, that's what informs our recommendations on that bill. [LB792]

SENATOR KRIST: Well, let the record show that I've never been contacted by anybody in the Governor's Office to talk to me about any of the Governor's priorities. That's happened...stopped happening about three years ago. But let the record also show that it is germane to this conversation because if the Governor intends to collectively put these things forward into committee, it's important for us to know what his intention is. So it is indeed germane because the question that I posed to you has to do with all of the transparency package and the referencing process that goes on within the Legislature, which you have nothing to do with and I have railed on the Legislature as well in terms of the integrity of that process itself. I'm going to have to really look at that bill that's in the other committee and at this bill because I think there are some intentions...although we blame it on transparency, we also have no accountability for

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

Judiciary Committee  
January 31, 2018

---

the people that we sometimes appoint to positions and I think this is a way to change the blame game. So you don't need to respond to that and I wish you wouldn't. I've made my notes on the record. I just want to make you aware that I'll be looking at all those transparency bills to make sure that that's really the intention, is transparency. [LB792]

JASON JACKSON: Well, if you'll indulge me, I would like to respond... [LB792]

SENATOR KRIST: Sure. [LB792]

JASON JACKSON: ...because I do think that our administration has been a leader on this issue in trying to be transparent and hold this agency accountable. To me what transparency looks like is becoming aware of misconduct, in part due to the reporting of some of the media establishments that are represented here in the room, launching our own investigation, terminating our agency director, launching an internal investigation into officer misconduct, publishing a 15-page report that details specifically what occurred, making policy recommendations before this body so as to mitigate those things from having occurred again, referring the impropriety to a federal investigation to occur, supporting a special prosecutor's independent investigation as well, just before the end of the year publishing an update from a policy perspective on the administrative actions that have taken place in the State Patrol to remedy some of these issues, and now being here before you today to answer whatever questions you may have, as broad or as narrow as you'd like, so that we could be as transparent both with this body, as well as the public, about what happened here and ensure that we're working together to make sure it doesn't happen again. [LB792]

SENATOR KRIST: If that's truly your intention, then I'll guess in my research I'll find out that that is...that's where you are. [LB792]

JASON JACKSON: Well, and what's more is... [LB792]

SENATOR KRIST: My comment is we had a chance not to put somebody in place that all of us, or most of us, knew was unqualified and a lot of what happened here is when the buck stops here, the buck doesn't stop some places. So I've made my comment. Thank you. [LB792]

JASON JACKSON: Yeah, and if I may provide additional response,... [LB792]

SENATOR KRIST: No. We're done. We're done. I'm not going to go back and forth with you (inaudible). [LB792]

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

Judiciary Committee  
January 31, 2018

---

JASON JACKSON: Well, perhaps one of your colleagues would ask another question and I'll be able to. [LB792]

SENATOR PANSING BROOKS: Senator Chambers. [LB792]

SENATOR CHAMBERS: But I have something to say because we're being completely transparent here now. You were not here when the Governor was first running for office. And when he was out in a little town--I think it was McCook--he didn't realize that his words would get back to me. But he doesn't have any respect for me whatsoever, and he stated and it was printed in a newspaper that he was going to form a coalition to more or less put me in my place because matters that I wanted to discuss didn't have to be discussed. He was going to form a coalition in the Legislature against me. He had never talked to me. He may have seen me on television. But I'm not aware of ever having been in his presence. So before he became Governor he indicated that, Senator Chambers, you have an enemy here. And I accept that, have it his way. And here's where I have some offense, have taken offense. I have talked about some of the bad things happening in the State Patrol, the high-speed chase that was conducted in a way that violated Patrol regulations, the striking of individuals in a way that was inappropriate. And the Governor's spokesman, a fellow named Gage, had said to the media with reference to what I had to say that I was being ridiculous and what he was referring to was when I said, in view of these things, the head of the State Patrol should be fired. And the Governor's spokesman said that is ridiculous. Then about ten days later he fired the man. So you have a boss who shoots from the hip with a loose lip and will let his personal animosity toward an individual put him on record in such a way that he looks foolish afterward. If it was ridiculous for me to say fire him, what happened between when he put that statement in the paper and less than two weeks later when he did what I said should be done? I'm not asking you to answer. I said I'm saying that in the interest of everything being transparent. Despite what the Governor has shown himself to be and the hostility he has toward me, that will not spill over on to you. And in fact, when I did one of my drawings and wrote one of my rhymes and you were one of the main characters, you were not in a role that would be degrading to you. All it indicated was, I'm the Governor's man and if you give me the word, I'll snap his neck in two, or something like that. But I think in view of the conversation you and I had in my office, and this is for the record, you know that you and I can talk about any issue that we feel we should talk about, whether we might agree on it or not. Am I understanding correctly what the result of our conversation was? [LB792]

JASON JACKSON: Absolutely, Senator. I'm committed to complete transparency and candor... [LB792]

SENATOR CHAMBERS: Okay. [LB792]

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

Judiciary Committee  
January 31, 2018

---

JASON JACKSON: ...whenever I'm representing myself personally or the Governor. So I will take your comments as a moment to just respond both in light of what you said, as well as Senator Krist's remarks that I didn't get an opportunity to respond to before he left the room, because Senator Krist put on the record some concern about how bills are routed to varying committees. And I wanted to hit upon that and I was remiss in not having done so, because I think that's another evidence of our administration's attempt to be very evenhanded on this issue. We've been collaborating with Senator Ebke in spite of the Governor's and the senator's political differences, because we know the senator has passion for this issue and we value her support. We had this bill routed to the appropriate panel of jurisdiction: Judiciary Committee. Likewise, the other bill is going to Business and Labor. There was no attempt on the part of our administration to, in any way, shortchange the proper legislative process with these bills. We think they deserve the proper amount of scrutiny and that the appropriate legislative hearing should apply that degree of scrutiny. As to your comments, Senator, with respect to Colonel Rice, I'll say only that all of us operate with...I presume we all operate with the best of intentions based on the information we have at the time. Colonel Rice did not live up to the Governor's expectations of an agency director in this government. He was insufficiently transparent. He was insufficiently honest. He failed to investigate these issues to their proper conclusion. He shortchanged Internal Affairs investigations. And the moment that that information came to the Governor's attention, he was terminated from his employment with state government. So all I can say... [LB792]

SENATOR CHAMBERS: (Inaudible.) [LB792]

JASON JACKSON: ...is that the Governor and our administration operates with the best of intentions based on the information we have at the time, and when presented with this misconduct we acted. [LB792]

SENATOR CHAMBERS: So are you saying that at the time I said the man should be fired, I had a better take on him than the Governor and that's why the Governor said that I was ridiculous when I said that? That's what he said. It was with reference to my saying he should be fired. And the Governor's man, and I presume he speaks for the Governor: What Senator Chambers says is ridiculous. [LB792]

JASON JACKSON: Well, I think it would be inappropriate... [LB792]

SENATOR CHAMBERS: You can't clean that up and I'm not going to make you clean it up because I don't want to put you and your immortal soul in jeopardy. [LB792]

JASON JACKSON: No, you won't, because, like I said, I'm committed to complete transparency and candor. That's my style,... [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: Okay. [LB792]

JASON JACKSON: ...to my detriment. [LB792]

SENATOR CHAMBERS: But if you can tell me why he said I'm...my calling for the firing is ridiculous, then a few days later he did what I said he should do, reconcile those two things. [LB792]

JASON JACKSON: I'd be happy to. [LB792]

SENATOR CHAMBERS: Okay. [LB792]

JASON JACKSON: And here's how we do so, is the Governor gives deference to his agency directors and holds them accountable but he doesn't necessarily have a presumption that every front-line employee's misconduct, the director is culpable for that. [LB792]

SENATOR CHAMBERS: Here's what I'm getting at. [LB792]

JASON JACKSON: That isn't our presumption. [LB792]

SENATOR CHAMBERS: Why did he... [LB792]

JASON JACKSON: But it is the case when we investigate it and find out that there was culpability on the part of that director for the misconduct of that front-line employee. That's when accountability accrues to that front-line director. And when the Governor took the action he did, it was a result of that new information. [LB792]

SENATOR CHAMBERS: You're as smooth as goose grease, but I'm not going to let you slip away that easily. [LB792]

JASON JACKSON: I don't mind. [LB792]

SENATOR CHAMBERS: He said that I was being ridiculous. That's his term. [LB792]

JASON JACKSON: He said that or Taylor Gage said that? [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: That...the man in his office. [LB792]

JASON JACKSON: Okay. [LB792]

SENATOR CHAMBERS: And if he didn't say it, if the man said that, he should have fired Gage then, but that's the official word in his office. And I'm going to send you the article. Where should I send it so you (inaudible)? [LB792]

JASON JACKSON: No, that's not necessary, Senator. I'm aware of the comment and my statement here on the record is my response to it. [LB792]

SENATOR CHAMBERS: Okay. So you don't think I was ridiculous when I said that. Is that what you're saying? Or you think I was ridiculous? Because you're familiar with the words and the conversation, do you agree with what Gage said, that my calling for the firing was ridiculous? You hesitate. [LB792]

JASON JACKSON: I hesitate, Senator, because it's a more nuanced issue, but I'll say this. I think ultimately you were prophetic about Colonel Rice's shortcomings. [LB792]

SENATOR CHAMBERS: I was pathetic? [LB792]

JASON JACKSON: Prophetic. [LB792]

SENATOR CHAMBERS: I know. [LB792]

JASON JACKSON: Prophetic. [LB792]

SENATOR CHAMBERS: I like to hear that word. (Laughter) That's all I have though. [LB792]

JASON JACKSON: Thank you, Senator. [LB792]

SENATOR CHAMBERS: Okay. [LB792]

SENATOR PANSING BROOKS: Thank you. Any other comments or questions? Yes, Senator Hansen. [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR HANSEN: Thank you, Senator Pansing Brooks. And thank you for coming, Mr. Jackson. In your comment you talked about, obviously, that your review was at more...I forgot the exact term, but it wasn't criminal. And then you referenced a series of other reviews you have supported and cooperated with, including the FBI, the U.S. Attorney, and I believe you referenced a special investigator. Can you tell us which actual investigations...well, I guess, can you tell us the status of what investigations you worked on (inaudible)? [LB792]

JASON JACKSON: Yeah, I'd be happy to attempt to. Before I do so, though, I'd like to take an opportunity to familiarize the panel with some other documents that I had included in my testimony, because I think they're relevant to the reward... [LB792]

SENATOR HANSEN: Sure. [LB792]

JASON JACKSON: ...to the...to what's at issue here, because when we entered into this process back in the summer there was some presumption that perhaps these issues were limited to the Nebraska State Patrol. But what we've seen since then is that this type of conduct is far more pervasive than perhaps we initially imagined. So I submitted to the committee for the record "Ex-Lincoln cop with 'inappropriate relationship' now works for Omaha police" department. This is a cop who was associated with this LPD officer who basically, allegedly, coerced a civilian into a sexual relationship over a period of several years. Apparently this cop was involved in that. Now he works in Omaha. The second article that I submitted for your benefit was "Deputy accused of public indecency surrenders state law enforcement certificate." This is a World-Herald article. Basically what this recounts is the Thurston County deputy sheriff who exposed himself, allegedly, engaged in criminal sexual misconduct, was terminated from Thurston County, was subsequently hired by the Fremont Police Department, because Fremont PD was apparently unaware that Thurston County had terminated this officer under those circumstances. And then this officer subsequently exposed himself to other women. I've also attached this other World-Herald article: Video shows use of force in Sioux County chase, raises more questions about the Nebraska State Patrol. What this article by Henry Cordes does is go into some detail about the Lindsey Bixby incident--this is the rifle butt strike to the passive resisting suspect--and the fact that Mr. Bixby continued to...and never had his certification subject to review until our office initiated our actions this past summer. Likewise: Former State Patrol investigator accused of stealing prescription drugs and controlled substances, this is a criminal proceeding against a Nebraska state trooper that's now in flight. This officer, likewise, did not have his certification subject to review until our office's investigation this past summer. And then finally, World-Herald, are two additional: "Law enforcement agencies don't have to say why officers quit; loophole makes it hard to revoke certifications"--that's what this bill attempts to remedy; and finally, an editorial from the World-Herald, "Disclose why law enforcement officers quit." We couldn't agree more. Senator Hansen, in response to your questions as to the current state of these investigations, basically, folks, what we had here was four different investigations. We had

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

Judiciary Committee  
January 31, 2018

---

my review, which I characterized as administrative in character. We had State Patrol's Internal Affairs investigation. This is the investigation into the six officers that were placed on suspension under suspicion of wrongdoing, which Colonel Bolduc announced the culmination of several weeks ago, including the findings there and the discipline that was imposed. We have the FBI or U.S. Attorney investigation. We've been cooperating fully with that. They have all the materials from our office, though, as Colonel Bolduc said in his testimony at his confirmation hearing. Information to the FBI only flows one direction. We've had no update from the U.S. Attorney's Office or the FBI as to the state of that investigation and, likewise, to my knowledge, no update from Joe Stecher, the special attorney out in Sioux County who was assigned as a special prosecutor to investigate the events out there, no update. But our folks at State Patrol have been cooperating fully with all requests for information. [LB792]

SENATOR HANSEN: All right, I appreciate that because I was just trying to go in...she made a reference. And I don't know if you were here for one of the prior bills, but we were talking about the scope and possibility of the Attorney General's Office doing conflict counsel or special counsel or whatever term you want to use there. So when you referenced the special investigation, I just wanted to clarify what it was. So currently we have, in theory, an FBI investigation, although we have no confirmation to that other than they've been presented with some information. We had your administrative review. We had a State Patrol Internal Affairs review. And we have one county attorney that has a special prosecutor? [LB792]

JASON JACKSON: Correct. [LB792]

SENATOR HANSEN: So there hasn't been a statewide or state purview criminal investigation in part due to the conflict we have in statute. [LB792]

JASON JACKSON: I wouldn't characterize it that way. I would say there's two criminal investigations ongoing into all the conduct that has been exposed. All that conduct has been shared with both investigators to whatever extent they requested it and we're supporting and we're complying completely. I'm not in a position to say what constraints have been imposed upon either of those agencies under the scope of their investigation. [LB792]

SENATOR HANSEN: Okay, and I'm just trying to kind of make sure we have a clear purview of what's going on because, in terms of jurisdiction...and this shouldn't come as a surprise. This is what I asked you in my office a month or so ago when you first presented this bill concept to us. I guess so I was just...I just wanted to be very clear for the record. So there is a single county attorney in Sioux County that is doing the investigation and an FBI investigation, but obviously if it's the FBI and the U.S. Attorney's Office, they're not investigating violations of state law. So I don't necessarily know what allegations have been turned over, but so we have people looking at

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

Judiciary Committee  
January 31, 2018

---

it from the federal level and we have one county attorney looking at specific incidents and those are our two main criminal investigations that we know of that you've cooperated with. Correct? [LB792]

JASON JACKSON: Senator, I believe I've answered this question. There's two independent criminal investigations ongoing, one federal, one state. I'm not in a position to say, because I don't know, what constraints are imposed upon either of those criminal investigations. I would say, since you brought it up, that it sure would have been nice if we had LB792 passed when this process began so that we could have involved the Attorney General from the start and they would have been able to conduct a criminal investigation of their own. Regrettably, that isn't the case, so that's why we're trying to remedy that now. [LB792]

SENATOR HANSEN: All right. Thank you. [LB792]

JASON JACKSON: Yep. [LB792]

SENATOR PANSING BROOKS: Any additional questions? Thank you, Mr. Jackson. [LB792]

JASON JACKSON: Thank you. [LB792]

SENATOR PANSING BROOKS: Next proponent. Good afternoon. [LB792]

SPIKE EICKHOLT: (Exhibit 5) Good afternoon, Madam Vice Chair, members of the committee. My name is Spike Eickholt, first name S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of this bill. Mr. Jackson is a difficult testifier to follow, so I'm just going to summarize. You've got my written testimony. And we'd just like to be on the record that we do support the proposed changes in LB792, essentially the two part...the two components, the one reporting requirement to the Crime Commission for officers who are under investigation or subject to discipline, and then also the repeal of the statute that prohibits the Attorney General ethically from both prosecuting and investigating and simultaneously defending state troopers for malfeasance in office. Again, you have my testimony. I'm not going to read it or...I'll just point out that we do support this bill. [LB792]

SENATOR PANSING BROOKS: Okay, thank you. I'm just skimming through the letter. Anybody have any questions for Mr. Eickholt? No? Okay, thank you. Any additional proponents? Proponents? Okay, what about opponents? Welcome. [LB792]

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

Judiciary Committee  
January 31, 2018

---

KURT FRAZEY: Good afternoon, Committee. My name is Kurt Frazey, K-u-r-t F-r-a-z-e-y. I'm the legislative liaison representing for the State Troopers Association of Nebraska, otherwise referred to as STAN, and I come before the committee today to testify in opposition to LB792 in its current form. STAN agrees with the intent of LB792 and, as always, we look forward to taking every opportunity to work with the Legislature, Crime Commission to achieve a higher level of transparency while serving the citizens of Nebraska. LB792 intends to amend Sections 18-1425...excuse me, 81-1425 and 81-2009 of existing state statute. Senator Ebke, along with many members of the committee, have engaged myself and STAN president Brian Petersen in some very meaningful dialogue prior to the introduction of LB792 and since its introduction, and we're very grateful for that. I would respectfully urge the committee to table LB792 so that we may continue our productive dialogue and work together with Crime Commission Director Darrell Fisher to assemble an amendment to LB792 that achieves the transparency in law enforcement the citizens of Nebraska expect and deserve. Although we have an understanding and appreciation for the goals of LB792 and what it is attempting to accomplish, STAN does not agree with the LB in its entirety. Section 1, paragraph (3) intends to prevent law enforcement officers in certain instances from regaining employment with another law enforcement agency. However, some of the terms are poorly defined and the scope of section (3) is overly broad and has the potential to deny officers due process. The absence of an appeals process in LB792 would be the centerpiece of any future discussions with STAN and any amendments that we would support. "Neglect of duty" and "rational" are two terms in Section 2, paragraph (5), that are not well defined and, as such, could be subjectively applied by law enforcement agencies across Nebraska. The unintended outcome of hindering law enforcement agencies in Nebraska and preventing them from operating in an independent and effective manner needs consideration. STAN adamantly opposes Section 4, paragraph (1), of LB792. The removal of Attorney General representation for members of the Nebraska State Patrol is without merit and it is contrary to the practice of nearly all other 50 states in the United States. STAN does not understand the repeated efforts to remove AG representation and will strongly fight any efforts to do so. STAN intends to advocate for the rights of due process for our officers, just like those of every other citizen of Nebraska. STAN looks forward to working with Senator Ebke and the committee, as well as Director Fisher and the Crime Commission, to create legislation that will secure the transparency we are all trying to achieve while also protecting the individual rights of the officers who have taken an oath that requires them to place themselves in harm's way every day while protecting the citizens of Nebraska. I thank you for your time and I welcome your questions. [LB792]

SENATOR PANSING BROOKS: Thank you, Mr. Frazey. Did you...do you have a copy of that, that we could see? [LB792]

KURT FRAZEY: I can definitely make sure you get it, Senator. [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR PANSING BROOKS: Okay, thank you very much. Does anybody have a question? Thank you for coming today. [LB792]

KURT FRAZEY: Thank you, Senator. [LB792]

SENATOR PANSING BROOKS: Next opponent. [LB792]

GARY YOUNG: Senator, members of the committee, Gary Young. Again, I'm the general counsel for the State Troopers Association of Nebraska. I'm also the chief negotiator for the State Law Enforcement Bargaining Council. I've represented law enforcement for about 20 years and during that time I've... [LB792]

SENATOR PANSING BROOKS: Could you spell your name, please? Sorry. [LB792]

GARY YOUNG: Yeah. Gary Young, Y-o-u-n-g. Thank you. During my time representing law enforcement for about 20 years, I've represented approximately 100 law enforcement officers who have been involved in the use of force under the grand jury statute. It's because of this experience that I'm very concerned about the proposal in LB792 to eliminate the AG's role in assisting officers involved in in-custody death proceedings under 81-2009. We ask our state troopers and sergeants to be prepared to respond to the most unpredictable and violent circumstances that occur in our communities. We ask them to do so in often dangerous settings, day or night and often, for our Patrol officers, alone. Every day we ask them to face new risks and to do all these things without hesitation for our protection. They bear this burden for us. There is another thing that we ask them to do after use of lethal force. Unlike all other state employees, in these cases we also ask them to be the prime suspect in a homicide investigation after the use of force has occurred. In other words, let us be reminded that what we ask of these good people is extraordinary and we have asked them to be in this place. What do they ask of us? Only to do our best to keep them safe, both physically and legally. They will take care of the rest. What does LB792 do to them? It says to them that when a grand jury is convened to investigate them for homicide because they have protected us, they have done what we've asked, if they would like a lawyer to help explain what happened and why they did what they had to do, we are taking the only support that the state has provided in the past of them during that proceeding. From now on, they will be on their own. I have worked many grand jury investigations of troopers and sergeants of the State Patrol. In every case I can remember, we have had members of the Attorney General's Office come and help these troopers. There has never been a problem or a conflict of interest, not even once. If the AG is concerned about any particular case causing a conflict, 81-2009 provides that he or she may appoint a private attorney to represent the trooper to eliminate the conflict of interest. That's present in the current statute. So, too, as Senator Chambers has suggested, a special attorney general could be appointed at any time to address

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

Judiciary Committee  
January 31, 2018

---

any concerns about conflict. This bill is trying to fix a problem that does not exist. In addition, SLEBC, the State Law Enforcement Bargaining Council, has already agreed to sit down with the Governor's Office and discuss the issues in LB792 so that they can be resolved in an appropriate context, and in September we are already scheduled to begin negotiations with the Governor over the next collective bargaining agreement. We would ask that you reject this portion of LB792 and let the bargaining process over these matters continue. Thank you for your consideration.  
[LB792]

SENATOR PANSING BROOKS: Thank you, Mr. Young. Any questions for Mr. Young? Thank you for coming. Next opponent. Welcome. [LB792]

MICHAEL DOWD: Good afternoon. Michael Dowd, M-i-c-h-a-e-l D-o-w-d. I represent the Omaha Police Officers Association in opposition to LB792. It's very interesting when you come to these committee meetings and hear what the intent is versus what the statute at times actually provides. I've heard the proponents indicate that this is to allow for the Crime Commission to allow for greater flexibility in prosecution for misconduct. A reading of the statute as proposed does not necessarily encompass that intent. In fact, it is quite overbroad and overreaching. Section 1 provides that violations of that section shall constitute a neglect of duty, yet when you look at Section 1 it talks about the police chief, in our instance, because that's the relevant figurehead, shall submit changes in status when someone is hired. The police chief shall make a report upon termination. Yet the question then becomes raised, is that going to be a duty that's delegated to the officers? Are they, in fact, going to be the ones, if, in fact, the administration has not asked them to address this more rigorously, be the ones that would be found to be in neglect of duty? So we have the Section 1 talking about this reporting requirement and all these reports are going to go to the commission. So then we find Section 2. What does Section 2 discuss? It talks about the rehiring of a former Nebraska officer, not other officers outside the state of Nebraska but simply rehiring of a Nebraska officer. And what would that officer have to do if he wanted to get rehired? He has to sign a waiver. What does that waiver allow for his former employer to do? Not only to go ahead and release his compelled statements under Garrity but anything involving the IA record, which, from my experience representing officers for over ten years, involves many different officers, all of which are being asked to submit themselves to an Internal Affairs investigation with the understanding that their failure to cooperate could result in a termination of their employment, thus, by virtue of being a law enforcement officer, not a healthcare provider, have a different standard that exists and they're compelled to go ahead and respond to these questions. So we have this situation where this waiver is signed and now the employer is compelled to go ahead and respond and provide these statements. And there is then an obligation that the prospective employer not hire these officers, yet there is nothing within that particular subsection talking about a penalty, damages arising as a result of that hire, or even a right to act. So what does that create? What it creates is further private litigation. It creates a possibility of expansion of the Tort Claims Act and it also expands discrimination because the

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

Judiciary Committee  
January 31, 2018

---

perception, the perception that exists under this Section 2(5), you shall not hire if, it implies, whether it was a rational connection, that someone has incapacity. What about PTSD? What about alcohol abuse? Those matters could be a problem at one point in time, addressed at another, and now the question is, is that prospective employer perceiving that person as being incapable of returning back to that employment? That creates further litigation. If I can make one other point, and I'm simply...with respect to Section 3, the subpoena powers that would be invoked, I'd urge this committee to look at City of Denver v. Powell, 969 P.2d 776, which will provide that if you have a situation in which there is a commission and they're asking to go ahead and use subpoena powers to compel an officer to go ahead and testify, that officer still can invoke their Fifth Amendment right not to go ahead and respond. And so the question becomes, if they are going to go ahead and invoke their constitutional rights not to respond under this particular subsection, are they, in fact, subject to discipline? These are concerns, these are issues that need to be ferreted out with respect to this bill. If you're really going to go ahead and look at the intent of the bill, to go ahead and prevent misconduct and rehiring of officers with misconduct, this bill is far beyond that and that should be considered. [LB792]

SENATOR PANSING BROOKS: Thank you. Senator Chambers. [LB792]

SENATOR CHAMBERS: Did you say you are an attorney? [LB792]

MICHAEL DOWD: I am. [LB792]

SENATOR CHAMBERS: Well, you know that the Fifth Amendment does not apply to administrative or employer-employee relationships. You're aware of that, aren't you? [LB792]

MICHAEL DOWD: Correct, but the... [LB792]

SENATOR CHAMBERS: Okay, so that's irrelevant for the purposes of this legislation. How long had you been representing the police union? [LB792]

MICHAEL DOWD: For over ten years. [LB792]

SENATOR CHAMBERS: In Omaha? [LB792]

MICHAEL DOWD: Correct. [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: And you have been called on. Now I've lived in Omaha for 80 years. Every time an officer did something wrong, the union defended that officer and tried to say he was right; even when they caught them on video misbehaving, the union defended them. When officers are fired, the union defends them. You are paid to represent them no matter what they do, just as a criminal defense lawyer will represent somebody accused of murder. So your testimony is not objective at all from where I sit because I had filed, in the old days when there were city officials more receptive than those now, had gotten officers disciplined when the evidence showed that they should have been. So you did the right thing, I believe, in your capacity as a representative of the police union, but I would not...do you represent the union or the individual officer? [LB792]

MICHAEL DOWD: Both. [LB792]

SENATOR CHAMBERS: Okay. I would be less than candid and, to use that word, transparent if I let you leave here thinking that I felt your testimony was unbiased, objective, and aimed at the truth. You're trying to create a situation where if any of the officers are charged, you will have a built-in defense in the statute, and that's why, in my opinion, you are here. And I'm telling you it's my opinion and it can be taken for what it's worth, but it's on record what I'm saying at the time we're reviewing this legislation. And I don't believe in waiting until somebody is gone and say what I've got to say without that person being able to hear it and respond. So I'm not speaking and then saying you don't have the right to respond. On the record, you have as much freedom now to respond to what I said as I have, as a legislator, to put my views on record.

[LB792]

MICHAEL DOWD: And, Senator Chambers, just to clarify in terms of what the standard of law is, and again citing back to the City of Denver v. Powell, in that particular case, it was a commission that was asking and having...had the subpoena powers. And the court ruled that the Fifth Amendment protections of an individual not only against being involuntarily called against him and in terms of a criminal prosecution, but grants a person the same privilege not to answer official questions in any other proceeding, civil or criminal, formal or informal, where the answers may tend to be self-incriminatory in future criminal proceedings. So I would disagree with you that this particular forum somehow translates the Fifth Amendment rights or waters them down or somehow sets them aside. [LB792]

SENATOR CHAMBERS: Then the lawyer...the officer can be fired. The officer can be fired. When you are in...the U.S. Constitution, the Fifth Amendment talks about being placed twice in jeopardy. The Fifth Amendment, when it was originally put in place, was dealing with crimes and punishment. You cannot be put twice in jeopardy of...for the same offense and you don't have to say anything that would commit...incriminate you. But here is the way to put it into

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

Judiciary Committee  
January 31, 2018

---

layperson's language. When you are charged with a crime, the state has to prove every element of that crime beyond a reasonable doubt without any assistance being given by the accused. The accused can sit mute and the fact that the accused does not testify cannot even be alluded to during the trial as an indication of guilt. If that is done, then the whole thing is thrown out. But I'm trying to get across to you, a cop has an employer-employee relationship with the city or with the county or with the state. I am an employee of Walmart and there are suggestions that I have tapped the till and there is evidence that would substantiate that and I am being questioned and I say, well, I'm not going to answer that question. They say, well, if you won't answer the question, you're fired. And so I go to court and I say they presented what they call this evidence and asked me what role I may have played in tapping the till. And I have a right not to answer that question because, if I answered honestly, then I would incriminate myself; if I answered it falsely, I could be fired for lying. I don't believe you'd get your job back citing the Fifth Amendment to the U.S. Constitution which does not cover employer-employee relationships, in my opinion. That's not what it was put there for. [LB792]

MICHAEL DOWD: But, Senator Chambers, the distinction again between Walmart and a police officer is that they are afforded Garrity rights and Garrity allows for that officer not to have to choose between continued employment and being instructed to go ahead and answer questions in an IA interview. [LB792]

SENATOR CHAMBERS: What did you say was the difference? [LB792]

MICHAEL DOWD: The distinction is that an employee that works for Walmart doesn't have Garrity rights. They're not subject... [LB792]

SENATOR CHAMBERS: Doesn't have what? [LB792]

MICHAEL DOWD: Garrity rights from 1966 case, U.S. Supreme Court, Garrity, where officers were told either answer the questions or you're going to be fired, and the Supreme Court said you can't do that because you're denying them their Fifth Amendment right. So when it comes to law enforcement, because of the paramilitary situation, because of the type of cases that they're involved in, they are compelled during the time of Internal Affairs investigations to go ahead and answer questions and if they don't they will be fired. So these officers are providing statements. Maybe they're the target officer; maybe they're not the target officer. But they are being provided coerced statements and these statements now, according to this particular law, are now going to be released via subpoena to some third-party agency to go ahead and be reviewed. That's the problem here. It's overreaching in terms of what we're looking at. If it's a problematic officer that's been fired for incompetence, we're going far beyond that and we're creating problems that don't need to be created. [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: Then what you're saying is that what we're putting into the law is unconstitutional. You cited a Supreme Court case. Did you read the case? [LB792]

MICHAEL DOWD: I did read the case. [LB792]

SENATOR CHAMBERS: Was there a law in that jurisdiction that gave officers this special status? [LB792]

MICHAEL DOWD: Garrity is recognized nationally. [LB792]

SENATOR CHAMBERS: Say it again? [LB792]

MICHAEL DOWD: Garrity is recognized nationally; it's a well-recognized procedure within law enforcement and Internal Affairs investigation that is uniformly applied in every jurisdiction. [LB792]

SENATOR CHAMBERS: And there was no statute that the Supreme Court based its decision on? It based it squarely on the Fifth Amendment to the U.S. Constitution? [LB792]

MICHAEL DOWD: It based it on the Fifth Amendment. That's correct. [LB792]

SENATOR CHAMBERS: I'll look at that case. Give me the citation. [LB792]

MICHAEL DOWD: In terms of the Garrity citation, I don't think I've written down that but... [LB792]

SENATOR CHAMBERS: Well, you can send it to me down here anytime. [LB792]

MICHAEL DOWD: I will. I will. [LB792]

SENATOR CHAMBERS: Then here's what you can do. You could challenge the law as unconstitutional and have the whole thing struck down, couldn't you, if what you say, if your interpretation is correct? [LB792]

MICHAEL DOWD: Correct, and that's why we're here today to talk about why the...the way this legislation is being drawn is far overreaching and, in my opinion, could be in violation of the

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

Judiciary Committee  
January 31, 2018

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constitution. So if there is going to be amendments, obviously, those are the things that we're pointing out that need to be looked at and considered. [LB792]

SENATOR CHAMBERS: Is an officer protected if an officer lies when there is an investigation and the officer lies during the investigation? [LB792]

MICHAEL DOWD: Of course not. [LB792]

SENATOR CHAMBERS: Oh, because I've seen that happen and that's why some officers were fired in the old days. [LB792]

MICHAEL DOWD: Yeah, and I've seen officers that have been fired for lying also and I don't believe that there is any process that's been put in place or built or protected that would somehow encourage that kind of conduct. I find that, at least with the administration that I've worked with through the course of the years, they enforce that very rigorously. [LB792]

SENATOR CHAMBERS: And the reason I'm doing this, I want to give you the opportunity to spread on this record while we're considering this bill the best arguments you can give, and I think that's probably what you have done. So I don't have any more questions. [LB792]

MICHAEL DOWD: Thank you. [LB792]

SENATOR PANSING BROOKS: Anybody else have a question? Well, thank you for coming today. [LB792]

MICHAEL DOWD: Thank you. [LB792]

SENATOR PANSING BROOKS: Next opponent. Welcome. [LB792]

JIM MAGUIRE: Thank you. Senators, good afternoon. My name is Jim Maguire; it's J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police and we are here to oppose the bill as currently written. We understand that there is a need for some kind of change that has to occur during the decertification process; however, we are concerned about the due process rights of some of the officers that would be occurring under this. I heard Mr. Jackson refer to several incidences where there were officers that were wrong in what they were doing, but there was nothing in there that said that the chief or the sheriff or anybody could have filed a complaint to the executive director to say we want this person to be decertified. The way that the process is

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

Judiciary Committee  
January 31, 2018

---

supposed to work, and this is part of their rules that's in the Secretary of State's Web site, it says, during the investigation, "If the Executive Director deems it necessary, the informal complaint, the respondent's response and all other additional documentation and information shall be forwarded to a designated law enforcement agency or qualified individual for investigation of the allegations." It means he's supposed to turn it over to somebody else but he's asking for the subpoena power and he's supposed to sit on a board that oversees whether or not these officers are guilty or not, should they be decertified. So when would we ever have judges be given this information prior to that? Let the process work. We would be more than happy, our organization, to sit down with any of the individuals that have a vested interest in this. There is...personally, I think that we could hammer this thing out in a couple hours and say, okay, we can live with this. But the way that the bill is currently written is I think flawed. And you can go back to even how individuals are deemed to be...they should be decertified. One of the...let me get the actual language. Here's what it says: conduct that could...resignation or in lieu of termination for conduct that could constitute incompetence, neglect of duty, incapacity, and final conviction of a felony. But they also go into incapacitation when it goes to physical, mental, or emotional factors. What exactly does that mean? Why isn't there certain instances where it's automatic? How about if there's some kind of sexual misconduct or if there's excessive force? Why isn't that in the language? We should all have...it should be spelled out a lot easier. That's why I say this language, we could easily handle this if everybody sat down at the table and just agreed. We all agree we don't want cops that are going to be bouncing from one job to the other and have misconduct everywhere. I don't want to work with them. None of my fellow officers want to work with them. We want them removed. So let's figure out a way to make this language work for everybody so that there are no loopholes or anything else. Thank you. [LB792]

SENATOR PANSING BROOKS: Thank you, Mr. Maguire. Any questions? Senator Chambers.  
[LB792]

SENATOR CHAMBERS: That last statement you made is not true. Officers have seen other officers commit crimes and they did not arrest them and they wrote false reports lying about what actually happened, not realizing that there was video which showed what happened. And in Chicago, there was a number of officers fired because they all falsified reports and some of them were not even in a position to see what happened. So I know what you're going to say. I've been through it for years. You're not going to change my mind. Cops lie for other cops. They've always done it. They always will do it. And they talk about that blue wall of silence where a cop is never going to rat out another cop. [LB792]

JIM MAGUIRE: May I respond? [LB792]

SENATOR CHAMBERS: Sure. [LB792]

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

Judiciary Committee  
January 31, 2018

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JIM MAGUIRE: I would take exception to that only because if we see something that is going on that is a clear violation and there's some kind of a crime, as the former union president of our lodge, I had...you know, we have numerous instances where an employee, a law enforcement officer has filed a complaint against another law enforcement officer and turned it over to our Internal Affairs investigator for a complete investigation. We've had plenty of officers that have been investigated that way, so it's not as if that the officers aren't willing or they're...it's a standing notion that we don't talk about, I guess, misconduct within the job. That's not the case, not within our department. And I don't know of a case of that within some of these other departments, because I know for a fact that if you want to call it, cops do turn on cops because... [LB792]

SENATOR CHAMBERS: There are two officers being prosecuted now in the killing of a Native American. I knew the grandfather of one of them. He was a cop. I had a tremendous amount of respect for him and that's why I think the one who did what he did should be held even more culpable. I watched him grow up and he knew better than to do what he did. And neither one of these ratted on--they used the word "ratted"--on the other one. They beat this man. They Tasered him repeatedly. He was in handcuffs. And if given a chance to lie, they would lie for each other. And I have seen instances where cops lied. There was a young black kid in Chicago. He was shot 16 times and the story came out that he had a knife and he was approach...he was advancing toward the police. That was the story and officers wrote that down. They wrote it. Then the video was released and it showed that he was moving away from them and they shot him in the back and all those cops were then charged. They didn't know that there was a video that caught it. All of them lied and it has happened in Omaha also. And in fact, I made a statement that caused a lot of the legislators to attack me. There was a guy that this happened in...maybe around Cuming Street, by some store. But at any rate, these cops had come on the scene. This one man was on the hood of a car climbing over a fence and this other cop, who subsequently was fired, shot him in the back and killed him. He said that he shot him in the back because this guy was menacing to other officers who were on the other side of the fence. And the question I asked: Why didn't the officers who were being threatened, they had guns, why didn't they shoot him? And this man was not armed. And I was discussing it in a Judiciary Committee hearing. And one of the senators had brought a bill to allow guns to be carried in bars and taverns and I asked him, since white people are good around white people, who are you afraid of when you go to these bars? He said, well, you know, there's al-Qaeda, there's ISIS. I said, you're talking about what's happening someplace else. He said, well, that's a serious problem. I have described that incident where the cop shot this man in the back. I have described other incidents where cops have misbehaved in Omaha. I said: And my ISIS is the police. That's what I said and I say it now. But you know, it went out. When the reporters wrote it, they said Senator Chambers compared the police to ISIS, who cut people's heads off, and mentioned all the things that ISIS does. That's not what I said. I was pointing out to him that the fear you have of ISIS is the fear I have of the police. The police are the ones that come into our community and kill us. I didn't say the police did what ISIS did.

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Transcriber's Office

Judiciary Committee  
January 31, 2018

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And here's why I'm saying that. People, white people especially, want to pretend that they don't understand, and I've dealt with that. And these senators then spend several days on the floor of the Legislature telling me, all, to apologize and I laughed at them. And that goes back to the situation that I'm bringing up with you. There was an incident that happened. You're not from Omaha, are you? [LB792]

JIM MAGUIRE: I am. I work for Douglas County Sheriff's Office. [LB792]

SENATOR CHAMBERS: Okay, then you saw on the video where the cops went to...it was called the Seward Street incident. [LB792]

JIM MAGUIRE: Yes. [LB792]

SENATOR CHAMBERS: And you saw where those cops beat that man. You know that they went into the house and a black woman was in a wheelchair and they pushed her over in the wheelchair. Then they took a phone that they felt had recorded it and destroyed the recording in the phone and that's why they were fired. They destroyed evidence and had it not been caught on video by somebody across the street, they would have gotten away with it because they started fabricating a lie from the very beginning. And that's why some of them were fired. [LB792]

JIM MAGUIRE: They were. There was an investigation that was done during that and those officers that had shown misconduct were terminated and they were charged and that's how the process is supposed to work. With this bill here, when it comes to the decertification, there is nothing that would have prevented the chief or any citizen that said I want that person to be decertified in the state of Nebraska. [LB792]

SENATOR CHAMBERS: Those cops would not have even been charged with anything but for the video. [LB792]

JIM MAGUIRE: We don't know that for sure. [LB792]

SENATOR CHAMBERS: Well, you don't but I do. How old are you, sonny? [LB792]

JIM MAGUIRE: I'm 49. [LB792]

SENATOR CHAMBERS: I'm twice your age...well, not twice. I'm 80. [LB792]

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

Judiciary Committee  
January 31, 2018

---

JIM MAGUIRE: Right. (Laugh) I... [LB792]

SENATOR CHAMBERS: And I can show you articles down through the years because, see, before the police found out how thorough I am investigating, they would give me police reports. And I read every report. I read the time frames and I've charted it out and showed that these officers could not have been where they said they were at the time, that there were police cruisers closer to this incident than those who came from west Omaha, so they were out of their districts. And anybody who was investigating that would have seen what I saw. But they had cleared everybody. But when I brought all of this information up, then they looked at it again. And that's what it takes. What is your role again? [LB792]

JIM MAGUIRE: On which part, for the... [LB792]

SENATOR CHAMBERS: Right now. What do you do? [LB792]

JIM MAGUIRE: Well, I'm representing the Nebraska Fraternal Order of Police. [LB792]

SENATOR CHAMBERS: Oh, the whole...all of in Nebraska. [LB792]

JIM MAGUIRE: Yes. [LB792]

SENATOR CHAMBERS: Oh, well, I know you're not credible. (Laugh) [LB792]

JIM MAGUIRE: (Laugh) Well, I have to admit, though, under...and maybe you will agree with this, that with the advent of in-car video and now body cams and, you know, you have Chief Schmaderer within the city of Omaha, a lot of those incidents that happened years ago are not occurring anymore. You...he does a fantastic job of assigning it to an investigator and they go out and they find the truth. [LB792]

SENATOR CHAMBERS: Now I like the chief and we've worked together on some things. There's communication between him and me. But he hasn't done as he should. I know no cop...a chief cannot do the job as thoroughly because he's still got to work with those cops who are under him. I don't think Chief Schmaderer has handled all the cases that have come up under him in the way he should. That's my opinion. [LB792]

JIM MAGUIRE: Well... [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: I don't think any cop is going to. They can't. [LB792]

JIM MAGUIRE: Are you...would you agree that maybe there needs to be a subcommittee of qualified officers who are Internal Affairs investigators that can go around and investigate these sort of instances? [LB792]

SENATOR CHAMBERS: In the case I mentioned to you, and then I'm not going to drag it out all day but I... [LB792]

JIM MAGUIRE: Okay. [LB792]

SENATOR CHAMBERS: ...since we're on the record, where the two black officers are on trial, a sergeant was condemned for not handling that the way he should have handled it when he arrived on the scene, and it could have come out differently. And that's another reason why sergeants should not be in the unit with these other people, because the sergeants have to do investigating and this sergeant did not handle it the way he should have, because he's in league with them. [LB792]

JIM MAGUIRE: I respectfully disagree with that. [LB792]

SENATOR CHAMBERS: I know you do. [LB792]

JIM MAGUIRE: I just do because I have to...you know, I myself am just a line officer. I'm a deputy sheriff. [LB792]

SENATOR CHAMBERS: Well, you know what... [LB792]

JIM MAGUIRE: And there are sergeants that I have to deal with, but they very, very rarely get to do any type of an investigation. But... [LB792]

SENATOR CHAMBERS: You know why I'm saying this on the record? People, whether they're politicians or not, are afraid to call out the police for what they do. I'm not afraid. I live in a community where we are more afraid of the police, in some instances, than the ones that the police are supposed to be capturing. If somebody comes to say give me your money, he's not going to kill me. I call the police. They don't even wait to find out that I'm the one who called you, man. Why are you treating me like this, because I'm black? He doesn't even take time to find out. There was, outside of my house and about a half a block down the street, a cop had a

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

Judiciary Committee  
January 31, 2018

---

young black girl in the street with his knee on her back. And I went down there and I told him, man, you don't have to do that. And another cop said, I advise you to leave. I said, I advise you to tell him to take his knee off that woman's back. That's the way I intervene. And there was another cop, I don't remember his name, but he was a commanding officer and you can find him. This may have happened about a year ago. There was...I was at the house where my brother used to live, because he had died and I was there. There were family members and I went there. And I saw all these cruiser cars coming down the street, and then some came from up the street, so from both directions cruisers were converging. And then one group of cops came out with a dog. So I looked at the house where they were going. So I went to the one who was a commanding officer. I said, what's going on? He said, well, they're looking for so-and-so. I said, you got all these cruisers. There were about eight cruisers. And I said, I've counted 13 cops. And that's not all of them; that's how many I counted. I said, and they're going in that, they're doing that for that house? He said, yeah. I said, why do you have all those cops doing it? He said, well, you'll notice we haven't gone in the house yet. I said, but you got all those cops, you have people in this community not knowing what's happening. I said, I'll tell you what I will do, I'll go in the house and I'll bring out whoever you want, I will go in the house. And these other officers are standing here and they hear me saying it. He said, well, Senator, I couldn't let you do that. I said, well, suppose I left here and I ran toward the house. He said, we'd have to stop you. I said, oh, because you want to kill somebody in there? He said, well, if some...something might happen to you. I said, you'd get a promotion and you know it. Then, you know what? After they got through, the one they were looking for wasn't in the house. And you know what he told me? Senator, you do live in this community and, with the wisdom of hindsight, I should have agreed to let you go into the house. I live in that community. I wasn't afraid. They might have killed somebody. And if I'm taking on the responsibility, let me help the police. But the police are not going to do that. And I'm not going to sit here and play like they're all right. Cops lie. Cops kill people when they don't have to in my community. And the police are my ISIS. I am afraid of the police like these white people say they're afraid of ISIS. And I'd say that anywhere, but get right what I said. [LB792]

JIM MAGUIRE: Well, in response to that, I do think that there have been tremendous improvements within the communities that Omaha Police and all the other agencies that do provide police protection and in Omaha as a whole. [LB792]

SENATOR CHAMBERS: You know what... [LB792]

JIM MAGUIRE: However, we are...regarding this bill, we all agree on the outcome. It's just: What do we want the language to read? And I'm just here to voice my opposition, to say... [LB792]

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

Judiciary Committee  
January 31, 2018

---

SENATOR CHAMBERS: But I have to deal with you. And I know we're taking time, but you say things that demand a response. First of all, Chief Schmaderer, and I've said this publicly, he's the best chief that Omaha has had during the time that I've been in Omaha, which is all my life. But about a week ago, there was a meeting in the black community and these people were telling how they call the police and how long it would take them to get there, and sometimes they wouldn't get there for hours. And then there was a comparison between that and how quick their response is in west Omaha and there was a white officer, I don't remember his name--well, I didn't get his name--but he was a command officer and he said the responses should be more rapid than that. Then this is what he said: I can't not tell you that won't happen again. They're telling us in our community, yeah, we're going to be slow to respond; by the time we come, we may not be needed, but that's the way it's done in your community. And they can try to prettify it all they want to. I have lived in my community all of my life. I live right now about two miles from where I was born. I have always lived in the heart of what is called the ghetto and I've done that so that I know what happens to people in my community because I'm there, I see it happening. And I've been threatened by the police, but I'm not afraid of them, so they don't do what they tell me they're going to do. They tell me leave. I say, I don't have to leave, what are you talking about? And I'm not interfering with you and you're hollering so that what you're saying will come through your little microphone so I'm going to holler loud enough for them to hear my response to what you're saying. And at...sometimes a sergeant will come and he'll quiet things down. Now I don't believe that that would happen in a white community because they would not mistreat white people the way they mistreat black people, so a white senator would not have to do that. And he'd say, well, I never saw them do that, they do everything just like they should. I'm a voice that's going to be heard, not paid attention to. I have contacted Chief Schmaderer, the mayor, the Governor, ATF, the U.S. Attorney, the FBI about the inflow of guns into my community, the ready availability of guns. One time I went into the barbershop. These young guys were there. I said, if I want a gun, how long would it take you to get it for me? They said, you got the money? I said, yeah, if I'm going to give you the money right now, how soon could you get a gun for me? And this kid was about 16 years old. He says, Senator, you don't...we don't have stores, now I'm able to...I'll get you a gun before I can get you a candy bar, and he wasn't just talking. If these kids know where the guns are, the police know. And I read the paper, I watch television, I see the shootings that occur in our community, then white people like to say, see, you shoot up everybody. Well, the guns come into our community like they don't go into other people's community. And when a white person happens to get shot, then everybody is up in arms this happened out here; we're not used to that happening out here. And it can be a white person who did the shooting. So what am I supposed to do, sit here and listen to you represent your cops when I live in a community and we're victimized by the cops? [LB792]

JIM MAGUIRE: Well, Senator, we could spend... [LB792]

SENATOR CHAMBERS: You could say that they're great. [LB792]

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

Judiciary Committee  
January 31, 2018

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JIM MAGUIRE: ...we could spend a considerable amount of time talking about police response and what I think part of the issue is. I think that you would be surprised to find out that the two busiest police precincts in Omaha are northwest and southwest Omaha. [LB792]

SENATOR CHAMBERS: Yeah, that's...they're busy because they don't do anything in our community. But here's...I'm going to let you go now, but this bill... [LB792]

JIM MAGUIRE: They're...I'll just say the road patrol on Omaha Police is spread very thin. [LB792]

SENATOR CHAMBERS: You know, when you have the Governor and Senator Chambers on a bill, that bill is going to pass. And you're doing your job, you've earned your money, but I'm going to support anything that offers a possibility of bringing these cops to heel. I'm going to do anything that I can. And now I'm going to say this too. There are things that I know that happen and go on in the police department that I couldn't have personal knowledge of, and the only ones who know are cops. And there are cops who will talk to me. And I say you could get a lot more done if you'd say it to them. Chambers, if I said it to them, they might do something to me. So the chief and others will know that I have to have somebody who's informing me of what's going on. But they know that I can't prove it, either, and they know that the cop who told me is not going to come forward. I get complaints from civilians who will say, Senator, don't use my name, and employees, and I'll say, here's what you have to understand. You're the only one who knows this information. I will not use your name, but I'm not going to, since you're afraid to be known, take this information that I can make use of without telling you that they'll trace it back to you. Is that what you want? They'll say, well, I'd rather you not use it then. [LB792]

JIM MAGUIRE: Senator, if I can respond to that? [LB792]

SENATOR CHAMBERS: Sure. [LB792]

JIM MAGUIRE: Within this bill, it gives the executive director subpoena power, so he can compel that person to come down and testify. Is that...and you know that they don't want to go down and have their name attached to anything. But is that...would that...would you consider that an unintended consequence? [LB792]

SENATOR CHAMBERS: Here's what I think. In looking at the bill, being aware of the problem that is to be addressed, being aware that the problem does exist, then we have to make use of remedies that are aimed to correct the problem. And your alternative is to go to court because the courts are open for that purpose, and I would never tell those who have done the kind of work

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

Judiciary Committee  
January 31, 2018

---

that has been done to put this legislation together. I could have written it myself. I could have written a better one. I'm the one who stopped all those so-called law enforcement bill-of-rights bills to come through. Maybe they got them through when I was out of the Legislature. But when old methodologies don't work, you have to try something new. And this is the new thing we're trying. And I think it needs to go forward, I think it needs to be implemented, and then we shall see what we shall see. But I will never say at the outstart that we should take this out of the bill, we should take that out of the bill, because the ones whose conduct is being reviewed are the ones who say we don't want that. In other words, you don't want the spotlight on you. [LB792]

JIM MAGUIRE: We're not afraid of the spotlight. We're not afraid to say that the bill needs to be...all we're saying is the bill needs to be improved. We are not running away from this. We're not threatening lawsuits or anything else. All we're saying is let's sit down, let's figure out what everybody can compromise on,... [LB792]

SENATOR CHAMBERS: Uh-uh, that's not the way we work in the Legislature. Here's what we're going to do. I'm not the Chairperson. Here's what I'd like to see done. I would like to see the bill advanced. I would like to see it scheduled. And then when everybody knows that this bill is moving, if they have anything of consequence, they will put it in writing and submit it. But this idea of saying let's sit down and talk, no, that's not going to get it. This is the time for action. And I'm sure that there are senators who will listen or read whatever you send. I will even look at it. But the bill, I'm hoping, will move forward expeditiously. And if I can do anything, as I say, I would like to apply the spur of expediency to the rump of "do-nothingism" and get this baby moving. But I appreciate your engaging with me, and I selected you because I can see that you're able to hold your own and you're not going to be intimidated or feel like you cannot express your view. [LB792]

JIM MAGUIRE: Thank you. [LB792]

SENATOR CHAMBERS: But I will be in trouble with my colleagues if I drag this out any longer. And I might need police protection and I couldn't get it. (Laughter) [LB792]

SENATOR PANSING BROOKS: Senator Chambers, when have you ever been in trouble with all of us for your... [LB792]

SENATOR CHAMBERS: Let's not start that conversation. (Laughter) [LB792]

SENATOR PANSING BROOKS: Okay, thank you. Any other questions? Thank you for coming tonight. [LB792]

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

Judiciary Committee  
January 31, 2018

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JIM MAGUIRE: Okay. Thank you. [LB792]

SENATOR PANSING BROOKS: Any further opponents? Could we see a show of hands of who else is going to testify tonight on this bill? No one else? Thank you. [LB792]

JOHN LINDSAY: Senator Pansing Brooks, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. We have no position on the underlying concepts in the bill. We have a...take concern with two sections. That would be subsection (4) of Section 1 which would provide an immunity from civil liability for complying with the statute. And I think the concept that you would somehow be liable for doing what the state has directed that you should do kind of gives an example of why you see me so much on these immunities, is that we're kind of shadowboxing. We're...we have to fight a perception that somehow there's all this liability out there for doing even what you're required to do. The reality is we have to go back to negligence law. You have to do something carelessly in order to be subject to liability. I think the language in subsection (4) of Section 1 is surplus language because you would not be liable anyway for doing what the state, that section, requires you to do. The fear is that that would be interpreted by the courts who want to give meaning to each word that the Legislature passes, that they would read that to say that you're immune from civil liability for doing carelessly what the statute requires that you do. The second section is...also has an immunity, and this one is more broad, and that is that the official or administrator or former employer can provide whatever information after the waiver is turned over and what it requires is a good-faith effort to comply, which is a different standard than what a reasonable, prudent person would do. Good faith just means in my head I did not intend to do anything bad. That would be, example or analogy, when someone runs a red light. They don't intend to cause damage to another vehicle. That's a good-faith attempt at driving, but there's still a carelessness in that they were not seeing that red light. Similar kind of thing goes with this type of an immunity, and that is that the person's intent is not what should be counted. It's, did they do what a reasonable, prudent person in the same or similar circumstances would do? We would urge...we have no position on the underlying portion of the bill. We would just urge that subsection (4) of Section 1 and subsection (6) of Section 2 be deleted from the bill. I'd be happy to answer any questions. [LB792]

SENATOR PANSING BROOKS: Section... [LB792]

SENATOR CHAMBERS: Senator Lindsay...oh, did you... [LB792]

SENATOR PANSING BROOKS: No, I was just get...Section 4 and Section 6, is that what you're saying? [LB792]

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

Judiciary Committee  
January 31, 2018

---

JOHN LINDSAY: Subsection (4) of Section 1 and subsection (6) of Section 2. [LB792]

SENATOR PANSING BROOKS: Okay, thank you. Senator Chambers. [LB792]

SENATOR CHAMBERS: What will you be doing tomorrow about 12:15? [LB792]

JOHN LINDSAY: (Laugh) I don't know. [LB792]

SENATOR CHAMBERS: Oh, well, if you have time, my office number is 1302. That's where I live now. [LB792]

JOHN LINDSAY: Yeah. [LB792]

SENATOR CHAMBERS: Come by and we will talk about what you're talking about, if you have time. [LB792]

JOHN LINDSAY: I'll do so, I will do so. [LB792]

SENATOR CHAMBERS: Okay. [LB792]

SENATOR PANSING BROOKS: Thank you. Any other questions? Okay, thank you. [LB792]

JOHN LINDSAY: Thank you. [LB792]

SENATOR PANSING BROOKS: And there's no further opponents? And anybody in the neutral? Okay, Senator Ebke, closing. [LB792]

SENATOR EBKE: Thank you, colleagues, for the hearing on LB792. Thank you to everybody who came in and testified on all sides of the bill. I think that we've had a nice, robust discussion on a lot of different issues. I think maybe there are some places that we can come together and discuss some things. And it almost sounded like Senator Chambers was ready to jump on as a cosponsor of this bill. (Laughter) That's great. And so we will work together, but we will try to move expeditiously, as well, to get things moving. So again, I thank you. If you have any questions. I'd be happy to try to take them. Otherwise, we'll get moving. [LB792]

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

Judiciary Committee  
January 31, 2018

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SENATOR PANSING BROOKS: (Exhibit 1) Thank you. Any questions for Senator Ebke? Okay, and there is a letter of support from Larry Dix that...for the Nebraska Association of County Officials. And that closes the hearing on LB792. Thank you all for coming. [LB792]