

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Education Committee February 24, 2020

**GROENE:** Welcome to the Education Committee public hearing. My name is Mike Groene from Legislative District 42. I serve as Chair of this committee. The committee will take up the bills in the posted agenda. Our hearing today is for your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today, excuse me. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please turn off cell phones and other electronic devices. Move to the chairs at the front of the room when you are ready to testify. The order of testimony is introducer, proponents, opponents, neutral, and closing remarks by the introducer. If you will be testifying, please complete the green testifier sheet and hand it to the committee page when you come up to testify. If you have written material that you would like distributed to the committee, please hand them to the page to distribute. We need 12 copies for all the committee members and staff. If you need additional copies, please ask the page to make copies for you now. If you are not going to publicly testify or need to leave early, you can turn in written testimony with a completed green testifier sheet. I didn't take a long enough nap. When you begin to testify, please state and spell your name for the record. Please be concise. It is my request that testimony is limited to five minutes. We will be using the light system; green for four minutes, yellow for one minute. Please wrap up comments. On the red, stop and you may be asked questions by the committee. If you would like your position to be known, but do not wish to testify, please sign the white form at the back of the room. It will be included in your-- in the official record. Please speak directly into the microphone so transcribers are able to hear your testimony clearly. If you send in the testimony by email or postal, if it came before 5 o'clock yesterday, it, it is being recorded in the, in the transcripts. The committee members with us today will introduce themselves, beginning at my far right.

**MURMAN:** I'm Senator Dave Murman from District 38: Clay, Webster, Nuckolls, Franklin, Kearney, Phelps, and southwest Buffalo County.

**WALZ:** Lynne Walz, District 15, Dodge County.

**BREWER:** Tom Brewer, District 43, 13 counties of western Nebraska.

**KOLOWSKI:** Rick Kolowski, District 31, southwest Omaha.

**GROENE:** My assumption is, since I haven't been notified, that the other senators will be showing up; Senator Morfeld, Senator Linehan,

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and Senator Pansing Brooks; the other members of the committee. Committee members-- to my immediate left is legal counsel [SIC], Nicole Barrett. And she's the research analyst, Nicole Barrett. To my right, at the end of the table, is committee clerk, Kristina Konecko. Our pages today is Nedhal and Noa. Please remember that senators may come and go during our hearing or they might not even show up because they may have bills to introduce in other committees. I'd also like to remind -- trying to make this shorter. Lastly, we are an electronically-equipped committee and information is provided electronically as well as in paper form. Therefore, you may see committee members referencing information on their electronic devices. Be assured that your presence here today and your testimony are important to us and is critical in our state government. We will start with Senator Vargas' LB1206. One more for you regulars, tomorrow's hearings will start at 1:00 instead of 1:30. The reason is that we have members on our committee that are on the Judiciary Committee and they are so far behind they need extra time. So we're going to try to get through ours a little earlier so that Senator Morfeld and Senator Pansing Brooks can attend the Judiciary Committee hearings. Tomorrow, we're going to start at 1:00. Senator Vargas.

**VARGAS:** Good afternoon, Chairman Groene and members of the Education Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I have the pleasure of representing District 7 and the communities of downtown and south Omaha here in the Nebraska Legislature. LB1206 probably sounds familiar to you. Last year, our colleague, Senator Briese, introduced and passed LB590, which streamlined the process by which the Department of Health and Human Services verified the training and credentials of licensed childcare providers by utilizing the existing database in the Department of Education, the Nebraska Early Childhood Professional Record System. LB590 kept childcare provider participation in the NECPRS-- that's the system-- optional. My conversation with supporters of this bill and Senator Briese's bill is that the original idea with LB590 was to make participation for providers mandatory. But that, as a first step towards streamlining the verification process at DHHS, they decided to keep it optional. First is a very brief background and summary. NECPRS was created in 2013 by LB507, introduced by Senator Kathy Campbell. LB507 created the Step Up to Quality Child Care Act and the creation of NECPRS was one component of the big picture in that legislation. NECPRS is operated by the Department of Education and it's essentially a database of Nebraska's early childhood workforce. It includes information about the educational degrees, professional credentials, and trainings

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completed by early childhood providers and employees. This information is put into the database by childcare and early childhood education providers at no cost to them. It is required to report this information if you are applying to be rated as part of the Step Up to Quality Program. But for all other providers, reporting is optional. NECPRS is beneficial to the state because having that information allows us to ensure that licensed childcare providers are maintaining their credentials. The database also gives us a snapshot of the education and training of our early childhood workforce. I'd like to talk now about why I think it's so important that we require provider reporting into NECPRS. First, let's make sure we're clear here. Reporting this information into NECPRS doesn't cost the provider a dime. But because reporting is optional, we policymakers do not have a complete picture of who our early childhood workforce is. As a legislative body, we talk a lot about early childhood education and the things that we should or shouldn't be doing to ensure our kids are ready for school and prepared to be productive workers later in life. But we really can't talk about any of that accurately and we can't come up with policy solutions if we don't have an accurate picture and all of the information. I know that we spend a lot of time debating the use of words "may" and "shall" in statute, but I think this is an area where the answer is pretty clear. If we're serious about improving the quality of early childhood education to meet our workforce needs, this is where it starts. We have to know where our education and training gaps are so we can meet the needs of our early childhood workforce and in turn, meet the needs of our kids and communities. I'll just mention one other thing, which is the enactment date of this legislation. I understand that getting providers who, who haven't been reporting into NECPRS on the system is going to take some time and training. I'd be happy to discuss, with the committee and any stakeholders, what a reasonable set-out date would be for this so that it works for both providers and the folks who manage NECPRS at the Department of Education. With that, I'd close and be happy to answer any questions. The one-pager you have in front of you-- I just want to make sure-- it's just a brief from First Five. For some of you that have been involved in early childhood education or any of the policies have been put forward, you might have seen this convening-- many of you were at this luncheon recently where there was a convening of-- I can't remember the exact number, but stakeholders from all over the state looking at early childhood workforce and they put forward several recommendations. Some of the recommendations were a lot of money. Some of them were policy. Some of them were programmatic. Some of them were data implementation. Before that came out, I had

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conversations with people in this, in this sector. And the one thing that we wanted to do was take advantage of something that already exists, NECPRS, the database; figure out what our workforce actually looks like in the early childhood space. If we can't figure out what it looks like, how can we make educated decisions on where we want to move from here? So with that, I'm happy to answer any questions.

**GROENE:** Senator Kolowski.

**KOLOWSKI:** Thank you, Mr. Chairman. Senator, when you look at early childhood education across the board in the state of Nebraska, you have such an array of differences. My wife worked in this area in the Westside school starting in 1968 and worked for a number of years in that facility before becoming an assistant-- a principal in Millard at a later date, the issues with a full-blown program ranging all the way from that to a day care babysitting service. Is that what you're asking for or is that what this, this survey is, is trying to nail down, that if you have a babysitting service, you get counted just like you do if you're running a full-blown preschool in some way? Could you help us understand that a little bit?

**VARGAS:** I think you're asking the question that I have myself, which is when we're talking about early childhood educators, we don't have an accurate picture of the workforce. We also don't have an accurate picture of what exists and doesn't exist, what their credentials are, what kind of experience they have or employment experience. Because we don't have an accurate picture, I fully can't answer a question about what we would necessarily do. But my hope is if we do have an accurate picture, then we'd be able to make some policy decisions on is the level of education that we currently see across the spectrum of our providers, is it where we want it to be? Maybe it is, maybe it isn't. Maybe there's additional training that we can provide. Maybe we need to have a better understanding of what our workforce is really looking like. How does it compare with other states? But to your point, I think that there's more that we can do and utilizing an existing database can provide us with that data to, to be able to answer your question.

**KOLOWSKI:** And I, and I hope that database does give that knowledge to us as to where to turn to and, and what gets counted as how they do early childhood education in that particular facility.

**VARGAS:** Yeah.

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**KOLOWSKI:** There's-- you know there's a range, I know there's a range, and we just have to accept that and try to find out what we can find out.

**VARGAS:** Yeah. And this is a good-- I mean, you're bringing up a good sort of connection here, which is we want more information. We're not talking about requiring a level of licensing or some sort of certification in this. That is nothing-- that's not what this is about. This is simply trying to get a better-- to get an accurate picture of what the workforce currently looks like. And by creating some government efficiencies, by using the existing database that's already set up, by also making it easier to make this electronic, and it's at no cost to the providers-- there's nothing associated with this-- but this can be a really big win for Nebraska; a very, very simple change.

**KOLOWSKI:** Thank you.

**GROENE:** Any other questions? Thank you, Senator Vargas.

**VARGAS:** Thank you very much.

**GROENE:** Proponents?

**ADAM FESER:** Hello. Chairman Groene and members of the Education Committee, my name is Adam Feser, A-d-a-m F-e-s-e-r, and I'm a policy associate for First Five Nebraska, an early childhood policy organization dedicated to ensuring all children have access to quality early childhood environments. On behalf of First Five Nebraska, I'm here to testify in support of LB1206 and thank Senator Tony Vargas for introducing it. You heard a lot about NECPRS already, so I don't want to repeat all that. I just want to reiterate that it was built with the idea of being able to house the entirety of Nebraska's early childhood workforce. And that among the many advantages of transitioning to an electronic reporting system for childcare provider trainings is that we increase government efficiency. So requiring government staff to travel to on-site visits to review hard copies of providers credentials is-- it's an inefficient thing. It also pulls early childhood educators away from their important job of guiding healthy development of children in their care. So for those that aren't participating in NECPRS, that's the system right now. You have to do a certain amount of ongoing education and training every year and it's verified. For those that aren't NECPRS, it's verified by-- they keep the hard copy, hopefully don't lose it. And then when

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licensing shows up, you pull, pull them out for them to sit and look through. So for larger centers, that's a very time-intensive proposition. And for providers, it's an added amount of time they have to take for that. And if they're losing trainings, it's difficult to verify. So this certainly can streamline that process. And childcare providers also tell us they love NECPRS' functionality because it works-- provides a quick way to find training options and other important information and utilitarian features like this will grow and be more impactful if we pass LB1206. Using NECPRS for providers and employees to easily verify and share fingerprinting information, for instance, could be a huge value add if we add that functionality. Senator Vargas talked a lot about how it's important to understand what our workforce looks like. I'd reiterate that. It would help decision-making, both for policymakers and for administrators, as they figure out the, the best path forward. Ultimately, we feel strongly that this policy will be a net positive for childcare providers in consideration for their needs, as required. Thoughtful implementation of a fully electronic-based system that provides for adequate time, training, and technical assistance will make the process run smoothly. Senators took a positive step forward for government efficiency that benefits childcare providers last session by passing LB590, which enabled childcare licensing personnel to use NECPRS to verify providers' required trainings. LB1206 takes the next, next logical step to move Nebraska's early childhood infrastructure forward. This bill represents a rare opportunity to improve policymakers' ability to make informed, data-driven decisions, while also making government more efficient. I hope you will advance LB1206 to General File. And with that, I'll be happy to do my best to answer any questions you would have.

**GROENE:** Senator Kolowski.

**KOLOWSKI:** Yes, thank you, Mr. Chairman. Adam, is there a common denominator that all community colleges, colleges, and universities use in the state of Nebraska when they're doing evaluations of an early childhood center?

**ADAM FESER:** So I think what, what you're asking is maybe, like, evaluating the quality of--

**KOLOWSKI:** Right.

**ADAM FESER:** --childcare. So there are a number of things-- yeah-- and so you don't have to be in Step Up. This bill isn't requiring

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participation in Step Up to Quality. But for those that do participate, there's a series of looking at qualifications, experience, and importantly, observation as well; how you interact with children. But there are an array of things that have been shown to impact quality that affects the outcomes for children over time.

**KOLOWSKI:** Do you know the number or percent of those that don't come into that evaluation compared to other places throughout the state?

**ADAM FESER:** So participate-- purely on participation, we sit-- I think just over 12 percent participate in Step Up to Quality, the providers, and there's various reasons for that. And I'm part of a team right now that's reviewing Step Up to Quality. And next session, I think we'll have some legislation to try to address some of the concerns providers have. There will also be administrative changes to address the, the needs of, you know, family childcare providers and different types that are trying to make it an inclusive program that accurately depicts, you know, the experience of the child. So hopefully, we'll have a lot, a lot more conversations about this in the coming year because we definitely know there are quality providers that aren't in it. We want everyone to be in the system; to be a marketplace for parents. But I guess that's a little outside this bill, but I'm happy to continue that conversation.

**KOLOWSKI:** Understandable; thank you very much.

**GROENE:** Questions? Go ahead, Senator Linehan.

**LINEHAN:** Thank you, Chairman Groene. Did you just say 12 percent is all that's in--

**ADAM FESER:** I don't have the exact figure, but I believe in our need assess-- it's about 12 percent participate in Step Up to Quality. More than that are in NECPRS, by a little ways, that just participate. It-- like I said, it has a lot of great utilitarian functions.

**LINEHAN:** So how long has Step Up to Quality been around?

**ADAM FESER:** It's been around five-- maybe-- now we're in 2020-- five or six years depending on the exact start date, but-- and it's been growing at a-- we made a choice that Step Up to Quality is voluntary for providers, unless you accept a certain amount of childcare subsidy dollars. But-- so it's, it's been growing slowly over time and that's something we'll look at as to how we can, you know, incentivize

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participation and if there are any kinks we can work out. This group just kind of started as, like, let's review things at five years.

**LINEHAN:** Thank you very much. Thanks for coming.

**GROENE:** Sir, right now, if you have less than three or fewer children, you don't have to be licensed--

**ADAM FESER:** Correct.

**GROENE:** --but you're expecting-- this bill expects them to fill out that to register?

**ADAM FESER:** I would have to look, but for-- I would, I would assume for license exempt, they would be-- they wouldn't have to participate in NECPRS. I can verify with the Senator and with the interpretations, but what we had introduced last year, I know, was for licensed childcare programs.

**GROENE:** My committee counsel reads it that they would have to also do it if they're just registered as a day care, not licensed.

**ADAM FESER:** If it was unlicensed?

**GROENE:** Yes.

**ADAM FESER:** I, I can review that with the Senator after our hearing here. And I-- because I do think the intent would be for licensed childcare, but that's me speaking. That's not me speaking for the Senator or anyone else. And that was our intent last year with what we introduced originally.

**GROENE:** Well, could you-- to be a licensed day care, you don't have to-- the, the qualifications for Step Up, even the lowest level is higher than what it is for it to be a licensed day care. So what area are you-- when they fill out this form, what are they going to put down?

**ADAM FESER:** The qualifications for Step Up to Quality, just to be in the system-- it's no different than licensing, except for you would enter NECPRS and you watch an orientation video and fill out the paperwork. And that gets you into Step Up to Quality. Then, you know, climbing the steps, you're evaluated on a number of different things and-- but there's no, like, limits. You don't have to have a certain



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degree or anything necessary. There is an array of things that are considered.

**GROENE:** So we pass this; your organization, I can see, coming out with a study saying 80 percent of our day care providers are not qualified. They don't have enough training. Is there a relationship to training and outcomes in day care?

**ADAM FESER:** I would say there is research that demonstrates that in, in particular, certain types of trainings lead to better outcomes for children. But our organization isn't--

**GROENE:** I'm talking about day care now.

**ADAM FESER:** Our organization isn't so focused on who's not qualified. We think all childcare providers provide a valuable service that's necessary for communities. We want to give them the supports they need so that they're able to thrive. You'll notice the, the letters that came in today were from family childcare providers across the state. We think any, any environment can be a great environment for children. We just want to ensure we provide the supports needed so that it can be.

**GROENE:** You sure the ones that sent letters that are in the Step Up to Quality and they're competing with somebody who isn't and now they want-- they force them to have to higher costs?

**ADAM FESER:** This, this bill isn't about Step Up to Quality. You can be in NECPRS and not be in Step Up to Quality if you choose not to. It's-- that's still a voluntary program, unless you accept so much childcare subsidy money. So I wouldn't view this as a Step Up to Quality bill necessarily. This is just about, like I said, verifying trainings for licensing staff. Right now, like, going out and doing that takes a long time. This would enable you to do it in a matter of minutes from your desk where you're not in their business bothering them.

**GROENE:** Thank you. Senator Brewer.

**BREWER:** Thank you, Mr. Chairman. If you cross that threshold-- well, the three kids-- and you wanted to look at where the written requirements in order to be a provider is, where do you go to look for that?

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**ADAM FESER:** I would think the Nebraska DHHS childcare licensing page would have the-- what's necessary. I can also email you off-line and make sure you have what you need if you have something specific or specific questions, but--

**BREWER:** If you do, please do. I'm just curious to see what the--

**ADAM FESER:** Sure.

**BREWER:** --left and right limit is on what, what they have to do in order to be a provider. Thank you.

**GROENE:** Any other questions? Thank you, sir.

**ADAM FESER:** Thank you.

**GROENE:** Next proponent? Opponents? Neutral? On LB1206, no opposition and neutral. Letters: support was a letter from the NSEA, from Cathy Martinez of Lincoln; Kim Chase of Papillion; Michelle Rasmussen of Omaha; Jennifer Baumann of Chadron; Erin Branch of Lincoln; Natalie Hanna of Kearney; and Holly Clouse of North Platte. Thank you. Senator Vargas, do you wish to close?

**VARGAS:** Thank you, Chairman Groene and members of the Education Committee. Good questions; the only thing I want to make sure to clarify is yes, this is for Nebraska licensed early childhood education providers. So we need to clarify that. We didn't further clarify it because it's already in this existing area of statute that allowed for [INAUDIBLE] and NECPRS is designed for licensed childhood, early childhood providers. I think this is a simple change that can have a really big impact to provide us with more information. I ask that you support this and if you have questions about the recommendations that came out of that large workforce commission in early childhood, I'm happy to share that as well. I saw many of your faces there. In order for us to make important policy decisions, we need more data. We have systems, database, and tools at our disposal and this creates not only efficiency, but will help and better inform us. With that, I'm happy to answer any additional questions.

**GROENE:** Thank you, sir.

**VARGAS:** Thank you very much.

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**GROENE:** That will close the hearing on LB1206. We'll now go to LB1023. Senator DeBoer.

**DeBOER:** Good afternoon, Chairman Groene and members of the Education Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r. I represent Legislative District 10, which is Bennington and northwest Omaha. I'm here today to introduce LB1073 [SIC], which would create the Extraordinary Increase in Special Education Cost Fund. The fund would consist of money appropriated by the Legislature from the General Funds. The initial fund would begin with an appropriation of \$3 million and would assist school districts with upfront aid when they see a substantial increase in their special education costs from the previous year. Currently, school districts are reimbursed by the state for a percentage of their special education costs. Usually, this reimbursement amount is somewhere between 45 and 50 percent of SPED costs, but varies from year to year. This reimbursement comes a year in arrears, so districts have to pay these expenditures up front before they reimburse, which can be difficult in situations where costs can rise dramatically and unexpectedly year to year. This is especially common in our smaller school districts when one additional student moving into the district can cause a substantial increase in costs if the district does not already have the programs or tools required to address that student's needs. They may need to hire, for example, an ASL translator, buy a new school bus that can accommodate the needs of a student with a physical disability, or hire additional staff members to assist a student with a learning or behavioral disability. The Extraordinary Increase in Special Education Cost Fund-- which does not have a good acronym, sorry-- would seek to address this issue by providing some state aid for special education up front in extraordinary cases. To trigger eligibility to receive aid from the fund, a district must first see an increase of 7 percent of special education expenditures from the previous year. If they meet this threshold, the district receives, from the fund, the amount of new money they are spending on special education compared to the previous year minus 2.5 percent of expenditures from the previous year, which would account for expected growth. So for example, I'm going to use very small numbers here to make calculations easy. Let's say school district A spent \$100,000 on special education in year one. When budgeting for year two, they project that they will spend \$107,000 on special education expenditures due to new students. Since that is a 7 percent increase in spending, they could apply for aid from the fund. They can receive the amount of new spending, \$7,000 minus the 2.5 of the \$2,500 expected growth. So what they would

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actually get from the fund would be \$4,500. So when reimbursements are calculated for the fiscal year in which a district received aid from the fund, the district then will not receive reimbursement for expenditures, which were covered by this fund. Instead, the fund will be reimbursed at the reimbursement rate for that fiscal year. So it is my hope that this fund can assist school districts in meeting unexpected special education needs and help Nebraska better serve students with special education needs no matter what part of the state they happen to live in. Thank you for your consideration of this bill and I'm happy to answer any questions that you may have.

**GROENE:** Questions from the committee? Thank you, Senator DeBoer. Proponents?

**JACK MOLES:** Good afternoon, Senator Groene and members of the Education Committee. I am Jack Moles, J-a-c-k M-o-l-e-s. I'm the executive director for the Nebraska Rural Community Schools Association, also referred to as NRCSA. Today, I'm also speaking on behalf of the Nebraska Council of School Administrators or NCSA. On behalf of both NRCSA and NCSA, I wish to testify in support of LB1023. The bill would provide a safety cushion for districts when they experience rapid growth in their special education budgets. Although most districts see great growth in their SPED budgets as a result of high-needs students coming into their districts, smaller districts often experience a bigger impact on the growth in their budgets when such students move in. Over the weekend, I conducted an informal poll of our member districts. I asked two questions. First was in the past two years, did your district receive a new student or students who caused your SPED expenditures to make a substantial jump? The second question was approximately how much did that cause your SPED expenditures to increase? What you have in front of you is-- I received 48 responses of which 30 indicated they had at least one new SPED student whose enrollment caused a substantial increase in the district's SPED expenditures. Just before I left my office, I checked it again. It was 51 districts and 30-- the other three all said yes, they had experienced the same thing. So 64.7 percent of the respondents said that they had experienced that. A few points from the comments that they made: the average SPED expenditure increase was just under \$53,000 as a result of one or two students coming into their district in the last two years. Four of the districts indicated that the increases in their SPED expenditures were over \$100,000. One district indicated they did not have a substantial jump over the past two years, but will next year. They have a student coming in-- into

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kindergarten that is high need. And then two of the districts indicated they have had a change of placement for students they've had for more than two years that caused a similar increase. But I-- it was outside of my two-year range that I asked for. I then looked at hypothetical situations based on real school district SPED expenditures and the General Fund operating expenditures. And I selected several smaller districts to show what the effect of-- that one or two higher-needs students can have on, on a district's budget of expenditures. For purposes of this study, I used the 2018-19 district numbers for SPED expenditures and GFOE. And if you just look at Sioux County, for example-- they're at the top of the list. One student at-- if the student costs \$50,000, it would have resulted in a 34.79 percent increase in their SPED expenditures. Two students at \$90,000 would have been 62.63 percent and you can read across there. And notice as you-- I've got the school districts according to student count. And as you get to the bottom, you see Crete. The same situation would have had a 1.80 percent increase in their SPED cost, well, one student at \$50,000. As you can see, the addition of one or two higher-need SPED students can have a dramatic effect on a smaller district's SPED expenditures and GFOE. The likely reasons for this, there are a few. One is just simply economy of scale. Second is if transportation is required, the more rural districts often have higher transportation costs. And the third, larger districts often already have the program in place, which means new costs are sometimes not as substantial. So in closing, NRCSA and NCSA thank Senator DeBoer for bringing this bill. We believe this is a way in which the state could take on more of a role in addressing the needs of our SPED students and helping districts when they experience unforeseen SPED expenditure increases. Thank you.

**WALZ:** Thank you. Do we have any questions? Senator Kolowski.

**KOLOWSKI:** Jack, thank you for your comments this afternoon. I know from a principal's perspective, the number of kids that I had at Millard was-- that were special education students-- dear, dear students in every way, shape, or form, but the expense was never, never thought of due to number of students, number of issues that our kids had. What can we do, in a bigger picture of the entire state, when we're deficient and below the line-- our SPED spending-- as we are getting better and better at identifying what kids need; SPED, SPED assistance across the board that will help them with their total work?

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**JACK MOLES:** Senator Wishart had a bill last week that, that really, kind of, would help address that by-- the feds don't pay their-- what they said they originally were going to pay. They said 40 percent, they're much lower than that, of course. I'd like to see that stepped up. The state could-- you know, a 20 percent increase in state support would, would be very meaningful-- would make a pretty substantial impact on a lot of budgets. I, I think one of the numbers I looked at, I used Bellevue, for example, they're a little over 9 percent-- that in their, their SPED cost, would have a positive impact at 20 percent. So, you know, that, that would be-- those would be a couple of things. I think we do a pretty good job in the rural areas of trying to access the programs we can. It's just the programs aren't always there. And so that makes it very difficult for the-- especially the rural schools.

**KOLOWSKI:** Or they coordinate with ESUs across the state as far as any services they might be able to deliver depending on distance and time?

**JACK MOLES:** Yes, yes, we all make heavy use of the ESUs, yes.

**KOLOWSKI:** Thank you. Thank you very much.

**JACK MOLES:** Thank you.

**GROENE:** Anybody else? Most of your members aren't up against their levy limit, right?

**JACK MOLES:** Pardon?

**GROENE:** Most of your members aren't up against their levy limit?

**JACK MOLES:** No, most of them are not.

**GROENE:** Special education is outside of the spending on this, correct?

**JACK MOLES:** Right.

**GROENE:** So you have plenty of taxing authority to-- if you get special education children coming in, you can raise your levy and you have the ability to raise the funds, is that correct?

**JACK MOLES:** Right. Yeah, it's just that sometimes when, when that student comes in the middle of the year, you're not prepared for it financially. But yes, yes, you-- theoretically, yes, you could.

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**GROENE:** Wouldn't it be said that the people who need the help are the ones that are up against their levy limit and then they're, they're paying for their share of the 51 percent and they have nowhere to go?

**JACK MOLES:** I think you're probably correct there, too. They would need that same help.

**GROENE:** Well they need it more than your districts do.

**JACK MOLES:** As far as a levying and like that--

**GROENE:** Well--

**JACK MOLES:** I think, I think you--

**GROENE:** --the ability to have funds--

**JACK MOLES:** Right.

**GROENE:** --to, to-- they have nowhere to go to get funds. You, you-- your-- most of your members do.

**JACK MOLES:** Right.

**GROENE:** Thank you. Any other questions? Senator Kolowski.

**KOLOWSKI:** On one of the-- one of the issues we found in the Millard schools-- you worked very hard to have an excellent SPED department across the board, K-12. And that's a good thing for those kids. Therefore, parents know that you have a good system. Therefore, they move into your district, which increases the amount of-- number of students as well as the services delivered. But that's a good and a bad thing. You don't have the money coming in to make a difference, you know, what you're trying to get done, and that, that is a real challenge when you're-- you don't want negative or lesser services to your students that have needs, but you then have a hole in your budget that has to be paid in some other way.

**JACK MOLES:** Yeah, I've heard, I've heard that from rural schools, too. I heard about my district, when I was there, that we tried to do what we could for our kids. And so as a result, we ended up with some kids coming in.

**KOLOWSKI:** Thank you.

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**JACK MOLES:** Thank you.

**GROENE:** Senator Brewer.

**BREWER:** Thank you, Mr. Chairman. Jack, if I go over your chart here and I just go down, on that first line, it says student at \$50,000. I'll just pick one out of my district here-- Ainsworth; 4.83 and if I slide right to where it turns from red to a green, you got one student, \$75,000. The 50 and the 75 indicate-- is that a base per-student cost or--

**JACK MOLES:** The cost for that student for whatever program you need to provide.

**BREWER:** OK. And then-- and that's because of increased requirements that, that that cost changes so that one student might have a certain disability and so on?

**JACK MOLES:** You know, it could be having to hire new staff and having to go to a program off-site. For example, at the service unit, you'd have to pay for the services there plus transportation costs.

**BREWER:** And when you shift from the, from the red to the green-- because it goes from 50 to 90 and then 75 to 125-- those are just kind of arbitrary?

**JACK MOLES:** I just, just used some scenarios, yeah.

**BREWER:** OK, thank you.

**JACK MOLES:** You're welcome.

**GROENE:** Any other questions? Thank you, sir.

**JACK MOLES:** Thank you.

**GROENE:** Next proponent?

**SUZANNE SAPP:** Hi, I'm Suzanne Sapp, S-u-z-a-n-n-e S-a-p-p. I'm currently in my 16th year serving on the Ashland-Greenwood Public Schools Board of Education and on my second year on the Nebraska Association of School Boards' legislative committee. I am here today on behalf of both Ashland-Greenwood Public Schools and NASB in support of LB1023. Funding special education in public schools is on the rise across the state. What often makes this funding strategy even more



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difficult are when circumstances have extremely high needs that are associated with high costs enter a district's budget unexpectedly. This often happens after a district's budgets have already been set. The ensuing result is a difficult struggle to meet the needs of these students. Since 2014, our school has had a 21 percent increase in our student population. With this increase also came a rapid increase in students with special needs. In the 2013-14 school year, we had 13.6 percent of our students identified with a need, which is below the state average of 14 percent. By 2018-19, our numbers jumped up to 21 percent. There are 13 areas that the state has identified where students would benefit from being placed in the SPED program. Our students cover 12 of those 13 areas, with the only area not being served is a student who is both blind and deaf. This means we have some exceptionally high-cost needs that by law, we are required to serve. I would like to share with you a couple examples that we have experienced at Ashland-Greenwood. The first example includes two siblings who came to our school with a degenerative eye disease that eventually would render them legally blind. The older student, after the school year started, could no longer function reading from text. A process had to begin to hire a vision specialist from our ESU at \$7,000 per year and invest in \$30,000 worth of equipment in order to enable that student to continue her education. This student is one of-- this student and one of our aides learned braille together. And as the years have passed, there was a need to invest in even more equipment to serve those students. A similar scenario played out to accommodate her younger brother. The costs continue to rise to serve these students. Next year, we anticipate spending \$19,000 on high school textbooks and materials that have been translated into braille. LB1023, before us today, would have helped provide funds when our district had to come up with the unexpected \$100,000. This family considered moving to a neighboring community at semester break. Had this occurred, the new district would not have had a vision program in place and speaking from experience, would have been placed with an extremely high cost not anticipated in their budget. Several years ago, we had four students in elementary grade who had discipline issues and were placed in a level 3 educational program. This means that they could no longer function in our school without a drastic impact on the learning environment in their entire class. They were also putting others in the classroom at risk of being physically harmed. Their IEP teams made the decision to place them in the Boys Town Day School program at the cost of \$10,000 to \$12,000 worth of tuition, collectively, per month. In the beginning, their behavior was such or excuse me-- our district had to provide transportation to and

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from Boys Town in Omaha. And in the beginning, their behavior was such that not one van, not two vans, not a small bus, not even a full-sized bus was adequate enough to get them to their destination without a harmful incident toward each other and the staff. For a while, the students were transported in two full-sized buses with two students and an aide per bus. That year, the district incurred \$100,000 in costs for our district in intuition plus the additional transportation and staffing expenses. LB1023 provides an avenue of funding, which is much needed by schools who, like us, can't possibly plan for what we may encounter after their budgets have been set. We were fortunate that we had enough in reserve to cover the costs, but there are many schools who can't. The fact that districts have to wait almost a year to receive any special education reimbursements further complicate the matter. I also believe schools should not be forced to possibly take out loans to cover costs when our state has the ability to assist during unusual situations. If schools are not given help in these unusual circumstances, there will be stress on their budgets and they will be forced to draw resources from other vital school programs. In that case, it will also be detrimental to our students in the general student population. I encourage you to vote yes on LB1023 so that schools do not have to navigate this difficult path alone. It will also prevent defunding of districts' current curriculum, which has been established for the benefit of the majority of the students. Our Nebraska public schools seek to provide quality education and establish meaningful relationships for all of our students. We must have the tools available to accomplish this. I would take any questions if anybody would have any. Yes.

**GROENE:** Was Boys Town successful?

**SUZANNE SAPP:** Of those three-- the four that originally were sent there, only one has been integrated back into the classroom and this is their third year there and--

**GROENE:** So the other three are still attending Boys Town?

**SUZANNE SAPP:** So three of them are still attending Boys Town and unfortunately, we've sent two more to that program. They start out in a 45-day program and hope that that's enough to integrate them back in. Of those two that we sent last semester, one of them is going to have to go full time. So we're back to four going to Boys Town every day.

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**GROENE:** Of that cost now, that's the total cost or your share of the cost?

**SUZANNE SAPP:** That's, that's, that's a total-- that's what we're charged-- the \$10,000 to \$12,000 in tuition is what we are charged by Boys Town, just for tuition.

**GROENE:** The state and the little bit the fed does-- picks up 45 to 50 percent of that?

**SUZANNE SAPP:** Yes--

**GROENE:** Thank you.

**SUZANNE SAPP:** --because they're, they're all, they're all on an IEP.

**GROENE:** Thank you. Any other questions?

**SUZANNE SAPP:** Thank you.

**JENNI BENSON:** Good afternoon, Senator Groene and members of the Ed Committee. For the record, I am Jenni Benson, J-e-n-n-i B-e-n-s-o-n. I am the president of the Nebraska State Education Association. NSEA supports LB1023 and thanks the Senator for introducing the bill. Special education today is focused on helping children with disabilities learn. It is tailored to meet the needs of students with disabilities. The service and support received by one child may be very different from the services another child receives. LB1023 would appropriate \$3 million to the Extraordinary Increase in Special Education Cost Fund. This would help tremendously by covering unexpected and substantial increases in special education costs. It would benefit every school district in the state and especially the small and rural districts where special ed needs students entering a district would have a disproportionate impact on the budget. Special education programs in our schools are dedicated to giving children the resources they need to make academic progress. Federal law requires that students who receive special education services be taught alongside their nondisabled peers as much as possible. I spend a lot of time out in schools. I hear this a lot everywhere I go. I know that we talked a little bit about the ESUs providing services, but I also know that ESUs are a long ways away from some of our, our rural districts. And so getting the services that they need are, are smaller [SIC] sometimes because of the distance and the ability to provide those services. But I also know in large districts, services are much

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different than they used to be. As a special education teacher for 32 years, I know they look much different than they used to look. And I spend a lot of time in D.C. talking to them about IDEA funding. It's fallen on deaf ears for many, many years. I think we're at, like, 17 percent, maybe 18 percent. We were promised at least 40 percent. We're not even close to that. So I really would appreciate that you take this for consideration for the full body. Thank you.

**GROENE:** Any questions? Senator Murman.

**MURMAN:** Thank you, Senator Groene. From earlier testimony in past days, I thought the federal funding for non-special ed was about 16 percent, is that correct?

**JENNI BENSON:** Yeah, 16 to 18 percent, depends on which area it is, yeah.

**MURMAN:** And then in earlier testimony today, I thought I heard the state provides about 40-some percent?

**JENNI BENSON:** I think it raises it to 40 and then the districts have to provide the rest.

**MURMAN:** So the district does the balance of that?

**JENNI BENSON:** Yes, the district does the balance of it.

**MURMAN:** Thank you.

**JENNI BENSON:** I know we've had bills in the past that have tried to increase that amount, but the district does have to provide the rest--

**MURMAN:** OK, thank you.

**JENNI BENSON:** --which varies from student to student, I'm sure.

**GROENE:** Any other questions? We, we were right at 45 or so percent on special education. It was 49.9 in 2017-18.

**JENNI BENSON:** It was about 50.

**GROENE:** But the reality is there isn't a school in the state that we do 49.9 percent of their total funding. We're very generous towards special education, but we've got school districts out there with less than 1 percent of state funding-- support of state funding. So I guess

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I'd like to see everybody get the 49 percent of their funding.  
Wouldn't you agree you have more state funding out there, totally?

**JENNI BENSON:** Well, we're-- you mean as far as state funding for schools--

**GROENE:** Schools.

**JENNI BENSON:** --for schools in general? For sure.

**GROENE:** Thank you.

**JENNI BENSON:** Yeah.

**GROENE:** Thank you, Jenni.

**JENNI BENSON:** Yep.

**GROENE:** Any other questions?

**JENNI BENSON:** Thank you.

**EDISON McDONALD:** Hello, my name is Edison McDonald, representing the Arc of Nebraska. We advocate for people with intellectual and developmental disabilities. Today, I'm here in support of LB1023. We just want to express some of the same things that we've talked about previously. And I think today has really covered the, the issue well. In rural school districts in particular, we see a tremendous increase in need and that variability is huge. I think you could almost go and, you know, take a, take a pen and make-- trace around the state and go from the northeast on all the way throughout northcentral, southwest portion of the state. You see huge issues with special education funding and especially this flexibility. The cost for an individual with a disability sometimes can be significant. Some of those costs can go and rocket up tremendously. And I think that Senator DeBoer's tactic to go and find ways to increase that flexibility is a fantastic, innovative tool that will allow us to more effectively deal with these issues and more effectively support small schools. With that, any questions?

**GROENE:** Questions from the committee? Thank you. Next proponent?

**ANN HUNTER-PIRTLE:** Good afternoon, Chairman Groene, members of the committee. My name is Ann Hunter-Pirtle, A-n-n H-u-n-t-e-r-P-i-r-t-l-e. I'm the executive director of Stand for

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Schools. Our organization supports LB1023 and we want to thank Senator DeBoer for introducing it. Educating students with special needs is one of the most important roles of public schools. It is also one of the most costly. Small districts' budgets can be significantly affected if even one or two students with severe needs move into the district in a given year. Schools must and do provide free and appropriate education to special needs students, regardless of whether state and federal reimbursements are paid, which affects districts' ability to fund other programs and puts additional pressure on property taxes. LB1023 is a step in the right direction and a recognition that special education funding without sufficient state and federal reimbursement is a major challenge for school districts. We appreciate the committee's consideration of the bill and urge you to advance it. I'm happy to take any questions.

**GROENE:** Any questions? Thank you.

**ANN HUNTER-PIRTLE:** Thank you.

**GROENE:** Next proponent? Any opponents? Neutral? We received a letter of support from the National Association of Social Workers and Ralston Public Schools; no opposition and no neutral. Senator DeBoer, would you like to close?

**DeBOER:** I'll just briefly speak. One of the things that I wanted to address with this bill was just the ability to know what's coming and to be able to respond in situations where maybe the budgets have already been set and then a student moves into a, a school district. That kind of uncertainty was something that when I was talking to folks this summer, a lot of the small school district superintendents were telling me just being able to know ahead of time that they would have the money in place should they need it, would help them with their planning for the year. So that was part of the impetus behind LB1023 as well as working on special education funding in general. I do want to say that because this bill doesn't have a priority, I don't anticipate we will get to it this year, but I would love to work with whoever on the committee to develop this idea further for next year.

**GROENE:** Any questions? Senator Linehan.

**WALZ:** Go ahead.

**LINEHAN:** On the fiscal note, Senator DeBoer-- I'm sorry. Thank you, Chairman Groene. On the fiscal note, it says-- at least under the

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education, I suppose this is the Department of Education-- that if we paid-- if this was in law, we picked up the whole thing, it would be \$25 million.

**DeBOER:** Yeah, yeah, this is clearly-- once they did the math and figured out how much it would cost to fund everyone that went up by 7 percent or more past their 2.5 expected growth rate. Yeah, it would be \$25 million, according to the fiscal note.

**LINEHAN:** OK, so, so where does the \$3 million come from?

**DeBOER:** I just picked a number because it came from the General Funds. I picked a number to start with as a beginning program. At that point, we did not yet know how much this would cost. We didn't have the data on what it would cost.

**LINEHAN:** OK.

**DeBOER:** So we picked a number, \$3 million, and put that in the statute.

**LINEHAN:** OK. All right, thank you very much. I appreciate it.

**GROENE:** Did you have a question?

**WALZ:** That was my question.

**GROENE:** We heard something about cash reserves. Every school has cash reserves, they better have them. And it's 35 percent, I think, is what they can have their budget in cash reserves. Isn't that what that's for, that when you have those-- because they're not-- special education isn't up against their spending limits. It isn't against budget limits. It's outside of the needs formula. Every school has cash reserves, don't they?

**DeBOER:** One of the things that the superintendents told me is that because they just don't know, sometimes, ahead of time what's coming their direction, that they wanted to have the ability to be flexible. And so sometimes, they might have to think about, you know, well, those cash reserves were already-- we're thinking they're going to go to a new building or they're going to go to whatever it is they're going to go to. And I, and I honestly don't know what that would be. And then they get hit up with something where some new kids move into the district and they're using that for special education. Now they're kind of stuck. So the idea would be, you know, and as I answered to

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Senator Linehan, \$25 million would be fully funding this. At least at \$3 million, it would sort of be a write a grant to the, the Department of Education and tell them why do you think that, you know, you need this fund because your, your circumstances are extraordinarily extraordinary. So, you know, it's a, it's a first step, but it certainly isn't the, the final solution.

**GROENE:** Thank you. Any questions? Senator Murman.

**MURMAN:** Yes, thank you, Senator Groene. I guess I'm still not quite clear on the funding if \$25 million-- that would cover--

**DeBOER:** Everybody.

**MURMAN:** So all special education in the state?

**DeBOER:** No, that would cover-- so that would cover everybody who rose more than 7 percent in their special education funding in the last-- you know, in the, the year between. So for everyone who had that big of a jump, it would call-- it would cover them from 2.5 percent up. So--

**MURMAN:** OK.

**DeBOER:** --we built in a-- we imagine your special education funding is going to go up by 2.5 percent every year. We're not going to pay for that with this extraordinary fund. We're only going to pay for the amount that it goes up above that in up-front costs.

**MURMAN:** And would you agree that in a small school, just a few students-- special ed students could make a huge impact on the budget?

**DeBOER:** That's precisely why I brought this bill-- was to try to help those small schools. I mean, it's for every school, but it's particularly for these small schools where just one student could be, you know, the entire change in your budget.

**MURMAN:** Sure, thanks a lot.

**DeBOER:** Yeah.

**GROENE:** Any other questions? Thank you, Senator DeBoer. That closes the hearing on LB1023. We'll now go to LB1177. Senator Hunt--



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eliminate both the teachers and other school employees. Whenever you're ready, Senator Hunt.

**HUNT:** Thank you, Chairman Groene and members of the Education Committee. My name is Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in midtown Omaha. I'm here today to present LB1177. The bill amends Section 11-1101.01 [SIC] and outright repeals Section 79-8,108 that requires teachers and employees paid with public school funds to take a loyalty oath in violation of the First Amendment. The original statutes impacted by the bill were passed in 1949 at the height of the second Red Scare. The feared communism following the Second World War led states around the country to implement policies that required public officials to take a loyalty oath to the United States government. So you might ask, what's the harm? Well, the U.S. Supreme Court has repeatedly held that public employees may not be required to sign or take loyalty oaths as a condition of employment. Courts have held that belief requirements that mandate the personal belief systems of teachers or students violate the Constitution. Teachers have academic freedom and may teach from a wide range of materials. And so long as they instruct consistent with a, with a teaching curriculum and comply with all other conditions of employment, they should not be subjected to a political or patriotic purity test. It's just very old fashioned and it has nothing to do with their capacity to be great educators. One reason we need to repeal this statute instead of ignoring it is that we do know some teachers who are asked to do this by their districts. Most districts don't have this because they know full well that it's unconstitutional. In OPS and LPS, teachers aren't required to do this, but the ACLU, for example, has had intake from teachers in other parts of the state where they are required to do it. So for that reason, I think that we should remove this from statute since it's unconstitutional and just make it uniform across the whole state in terms of what our expectations are for this type of loyalty oath. I brought this bill because there's language in state statute that has been ruled unconstitutional by the highest court in the land. The statutes at issue are outdated, unconstitutional, unworkable, and they should be repealed. This bill was brought to me by the School Administrators Association and the ACLU of Nebraska and I urge this committee to advance LB1177. It's a simple bill. I don't want to make it more confusing by overtalking it, but I'm happy to answer any questions you have.

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**GROENE:** Any questions? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for bringing this bill, Senator Hunt. So I'm interested because there's also discussion, of course, about whether people should be required to swear or affirm. So I was interested that also, we didn't-- did you consider changing, like line 12, saying I do solemnly swear or affirm?

**HUNT:** I would be open to that. I think that would be fine.

**PANSING BROOKS:** Yeah.

**HUNT:** I think that would be consistent with the other oaths that we take.

**PANSING BROOKS:** We are, we are given that choice as legislators.

**HUNT:** Of course and other public servants as well.

**PANSING BROOKS:** Yes.

**HUNT:** I would like this just to be completely stricken from statute, but I also think this Legislature is more amenable to incremental change and so that's why I introduced a more limited scope.

**PANSING BROOKS:** Did you, did you look at the history of why they were requiring teachers to swear an oath?

**HUNT:** Yeah, I mean, this is just from the Red Scare. This is McCarthyism. This is being afraid of the other, which is not really an American ideal, honestly. And I think that when you're asking teachers to say things like this in reaction to fear, when you're coming from a reactionary, exclusionary place, that's not really the intention of good education in the United States. And that's also part of why it's been found unconstitutional is because you can't force people to say things like this.

**PANSING BROOKS:** So, so do they actually force teachers to stand up and, like, raise their right hand?

**HUNT:** Well, some people behind me, perhaps from the ACLU or from the administrators, can talk about specific examples because I haven't heard from specific teachers. I just know that some have been asked to do this. I don't know if this was, like, a public thing or just to the principal or what the thing was. But just the fact that people are

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asked to do it and that there's a question among school districts about, well, it says in statute in Nebraska that we have to do it, but the Supreme Court says we don't; like, let's just remove it from statute. I'm against loyalty oaths, period. And I don't think that our public school teachers should have to take this to do their job.

**PANSING BROOKS:** I agree. Thank you very much.

**HUNT:** Um-hum.

**GROENE:** Senator Linehan.

**LINEHAN:** Thank you, Chairman Groene. Thank you, Senator Hunt, for bringing this. So you're saying everybody else still has to, just not teachers?

**HUNT:** That's what the statute would say. I don't think everybody should have to, but--

**LINEHAN:** I know, but that's what the change here is?

**HUNT:** Correct.

**LINEHAN:** Yeah.

**HUNT:** It includes--

**LINEHAN:** Are you sure that the oath here is only after the Red Scare? Because I've been sworn in several times to serve government and I've always taken this oath. And I, I never got the feeling it was because of the Red Scare.

**HUNT:** Did you take--

**LINEHAN:** I mean the military takes this oath.

**HUNT:** Is it this exact oath? Because we take an oath, but it's not this language here.

**LINEHAN:** OK. Well, I don't, I don't know, maybe that's my confusion.

**HUNT:** My-- what I've learned from my research on this bill is this, this is from the Red Scare; this language in this particular part of the statute. And it's not typically used. Like, most people-- vast

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most-- like, more than 99 percent, they don't say this at all because it's been found unconstitutional. This is not what we say.

**LINEHAN:** Some-- for oaths in this statute that we-- that people--

**HUNT:** Yeah, there is--

**LINEHAN:** --take an oath?

**HUNT:** This is a whole section of--

**LINEHAN:** It's not the only place it is in the statute?

**HUNT:** This is a whole section of statute about different oaths and this is the part that applies to teachers specifically. And that's why I want to repeal this part is because, you know, whether public--

**LINEHAN:** But it says all other employees paid from public schools funds, so this is just public schools. You're not touching other-- like, police officers or judges? Judges take an oath. I'm sure of that because it says they're going to uphold the Constitution.

**HUNT:** That's correct, Senator Linehan, but they take a different oath.

**LINEHAN:** OK. All right, thank you.

**HUNT:** Um-hum.

**GROENE:** Senator Brewer, do you have a question?

**BREWER:** Well, I was going to, I guess, kind of jump in on the conversation that they were just going with there. Thank you, Mr. Chairman. I believe-- and I've had to give this oath a number of times, but I usually have a little card to look at so I didn't, didn't memorize it like I should have-- but it, it ends about line 18, in according with the law. And then I think it ends with so help me God. I think that paragraph-- if we start about-- 18 down to 24 must be more specific to teachers in there. So otherwise, like, 12 down the-- I do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of Nebraska, against all enemies, foreign and domestic and will bear true faith and allegiance to the same. And that I take this obligation freely, without any mental reservation or purpose of evasion. That is in the

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military oath that we would take. But 18 down to 24, I think, has specifically been fitted to teachers.

**HUNT:** Thank you, Senator Brewer.

**BREWER:** You bet.

**GROENE:** Any questions? Do you understand parents probably don't-- these are young minds being influenced. Do you believe we ought to leave it-- maybe something like that you will swear that you will not advocate to teach political overthrow of our government and advocate to students that during such time, I posit I will not advocate the overthrow of the government of the United States or of this state-- force or violence-- I mean, isn't it okay for Angela Davis to teach at Berkeley and advocate that, but it-- we wouldn't really want that in our public schools?

**HUNT:** I would, I would question the assumption that making them say these words makes them abide by these words.

**GROENE:** But wouldn't it give the school board grounds to terminate their contract?

**HUNT:** They would have grounds to terminate the contract anyway if they were violating other, other school regulations or things like that. You know, they could still be terminated from their job for teaching kids to overthrow the government. Nothing in this oath makes it so they don't teach kids that. And schools already have the ability to terminate teachers who--

**GROENE:** It says you-- you're not supposed to advocate for it--

**HUNT:** Say it again?

**GROENE:** Advocating would be publicly advocating in front of a class of students, wouldn't it?

**HUNT:** It could be. What's your question? [LAUGHTER]

**GROENE:** Maybe keep that section.

**HUNT:** I just think that just because you say something in an oath doesn't mean that's what you really think. And if there's a teacher anywhere-- which in Nebraska, I've never heard of-- who is a communist or who is teaching fascism or is advocating to their ninth graders

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that we overthrow the government, the school already has ways to have recourse against those teachers and this oath will not prevent that.

**GROENE:** Thank you. Any other questions? Thank you.

**HUNT:** Thank you.

**GROENE:** Proponents?

**SPIKE EICKHOLT:** Good afternoon, Chairman Groene and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB1177. And we want to thank Senator Hunt for introducing the bill. Senator Hunt gave a good explanation for what the bill does. It amends one statute relating to oaths to exclude teachers and it outright repeals a separate statute that you can't really see when you look at the bill because it just references that statute that actually applies only to teachers. And it's got a slightly different oath if you look at that statute and what the bill does before you. But the law is, as Senator Hunt explained, is constitutionally suspect and it's unworkable. There's a number of different cases from our U.S. Supreme Court going back to 1955. And I suppose the most comprehensive discussion the court has is a 1964 case, which is entitled Baggett v. Bullitt-- and it's B-a-g-g-e-t-t v. Bullitt, B-u-l-l-i-t-t. It's a Washington State case or it's a case from Washington State in which a number of teachers and students were required to take an oath. And if you look at the letter or the language of that oath, it's very similar to our statute that exists currently and was written back in the '40s. And as Senator Hunt, explained, that was really just some sort of a concern about communist infiltration, some sort of desire for government employees to take an oath to make sure that they weren't-- that we didn't have subversive communists in government positions. If you look at this-- so in any event, that was something important at the time. It's constitutionally suspect because the terms themselves, in part, are vague. They're subject to different meanings. Senator Groene, when you were asking earlier, I think you touched on some of those. If you are a public school employee, for instance, and you want to advocate for a change in government-- you want to do that, you want to drain the swamp; you should be able to do that. That doesn't mean that if you refuse to take an oath or somehow that you take that oath is going to somehow limit your ability to publicly say things. The issue ought to come down to if you're a government employee, you're doing the job. So it's constitutionally suspect for that reason. In addition, because it's vague. It's also unworkable. If you look at the

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current bill or the current law right now, it applies to all persons in Nebraska who are paid from public funds for other services, not just school funds, but all public services. That would be your staff in your offices. They're not taking oaths now, in writing or, or verbal. It is the pages, presumably; they get paid, right? They're paid by public funds. So it's unworkable. It's overbroad. As Senator Hunt explained, the reason that she targeted this is because it deals with the teacher situation. And I will tell you that for whatever reason, we do get intakes maybe once every 18 months from a substitute teacher who's asked when they apply on a form-- to fill out this form or take this oath. Some districts seemingly aren't enforcing it. Some are applying it, sort of, haphazardly. We don't get that kind of intake from other government employees but for whatever reason, it seems to somehow exist in the teaching world. So for those reasons, we would urge the committee to advance the bill and just outright repeal this, this oath requirement because it is antiquated and it is unworkable. I'll answer any questions if anyone has any.

**GROENE:** Questions? Senator Brewer.

**BREWER:** Thank you, Mr. Chairman. All right. If, if what you're saying is true-- and I, a I have not read this before, so it's, it's a little bit eye-opening to see the difference between what we oath [SIC] in the military and what they're doing here. But if it's fairly clear in the Supreme Court's rule on it, how come there hasn't been an effort to try and push through channels to get it legally forced to change?

**SPIKE EICKHOLT:** Well, you need to have a case. You need to have someone who's, sort of, actually terminated from the job--

**BREWER:** Been wronged?

**SPIKE EICKHOLT:** Yeah, been wronged and I think what you-- and I see that there's someone here from school administrators-- I suspect what's happening is that other state agencies, their legal departments are advising that this is probably suspect, don't enforce it, and it just remains on the books. One other thing that is suspect about this that's a little different from the standard oath, if you look on line 25 on page 2 of the bill, it's got that ending "so help me God." It's got that religious requirement as well, which is another sort of problem with that oath that you have to take, apparently by the letter of law, if you're going to get a job that is paid for by public funds.

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**BREWER:** OK, thank you.

**GROENE:** Questions? So maybe we ought to strike everything but "so help me God" with the way the teachers are being beat up at school. That might help in that prayer, do you think so?

**SPIKE EICKHOLT:** I don't think that's going to get you there as far as it being vague. If you look at the Supreme Court case that I mentioned earlier, the 1964 case, it's got the same sort of-- what are "all enemies, foreign and domestic?" I mean, for a while it was clear back in the '40s and '50s who our enemy was, but now it's not all that clear. Is it Russia? Is it the Ukraine? I mean, who is it?

**GROENE:** Hasn't, hasn't the Supreme Court upheld the "so help me God" on the dollar bill and the "so help me God" in the government is OK, so we wouldn't have to remove that, would you?

**SPIKE EICKHOLT:** Well, I think that's different when-- with the reflection of "in God we trust" on money because that's-- you're not required to, sort of, take an oath as a condition to using that money, to having that money. It's just on the money as an expression of our currency style, if you will; something that we think is important to have. So I think that's different than actually having the oath that somehow is a condition upon employment.

**GROENE:** But Senator Brewer made a good point. Why hasn't the public and the people in Nebraska or, or-- our teachers don't like this. You would think somebody would have brought you the ACLU case because you wouldn't have-- wouldn't have made them pay a legal fee; you would have taken that all the way to the Supreme Court for them. If there is a demand for this from public employees, you would think it's-- the union or somebody would have brought this forward.

**SPIKE EICKHOLT:** Well-- and they have contacted us; individual teachers have. And what typically happens is that we contact the district and they explain that they're not going to enforce it. We've actually had one district that, sort of, really parsed words and said, well, the statute requires them to take an oath, but it doesn't require the district to administer it. So therefore, we're not in the middle of it. I think-- I would suspect that if anyone would look at this and research it, they're not going to come to any other conclusion that it is either unconstitutional or certainly constitutionally suspect.



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**GROENE:** Of course, that's what government does. There's a statute here, but there's-- no enforcement is their mechanism.

**SPIKE EICKHOLT:** Doesn't look like it.

**GROENE:** So every teacher who hasn't taken-- or every public employee that has not taken this oath has broken the Nebraska statute, is that true?

**SPIKE EICKHOLT:** Well, I don't know if they broke it, but they're probably acting outside of what the statute presumably says. But as I indicated earlier, that-- I don't think everyone that works with Department of Roads is taking this. I don't think people are-- who work-- who are doing the construction work here who presumably get paid by public funds--

**GROENE:** So they shall be required to take the-- so if they haven't taken the oath and they're working in government, they've broken this law--

**SPIKE EICKHOLT:** Probably.

**GROENE:** --because it's shall.

**SPIKE EICKHOLT:** Yeah, but I'd argue that the law itself is just unenforceable.

**GROENE:** And this-- there's a law here in front of me.

**SPIKE EICKHOLT:** That's right. But you're right and that just shows how it's unworkable and it really needs to be, if not repealed, looked at.

**GROENE:** Thank you, sir. Senator Linehan.

**LINEHAN:** Thank you, Chairman Greone. What are we repealing here in the first part; Section 79-8,108?

**SPIKE EICKHOLT:** I printed that off. It's a special teachers and employees of public schools pledge form. I've got a copy of it here and I didn't--

**LINEHAN:** OK. So, so this is all about teachers?

**SPIKE EICKHOLT:** This is all about teachers, that's right.

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**LINEHAN:** So is there somewhere else in statute that people do have to take an oath; judges?

**SPIKE EICKHOLT:** There is a requirement in our Constitution that judicial officers take a separate oath. That's Article-- oh, I have it here.

**LINEHAN:** And the Legislature.

**SPIKE EICKHOLT:** And state senators, as well, take that oath. And that's a separate state constitutional requirement.

**LINEHAN:** And you mentioned something about our staffs not having to, which-- I never thought about this but when I worked in the Senate in its state department, much like the military, you have to take an oath. So why would it be that our staff doesn't have to when we have to?

**SPIKE EICKHOLT:** I don't mean to get anyone in trouble, but I think you have to because you're, you're required by our state constitution, as an elected official, to take an oath. Chapter-- this section here, Section 11-101.01, seemingly requires every public employee, everyone paid by public funds to take an oath as well. I don't know what's required for when you were in the U.S. Senate under the U.S. code or whatever might be required. I don't know what that requires.

**LINEHAN:** Well, I, I am pretty firm on what that requires.

**SPIKE EICKHOLT:** OK.

**LINEHAN:** But are you saying that in Nebraska, the only people-- they're elected officials or judiciary? Do all elected officials have to take this or is it just the Legislature?

**SPIKE EICKHOLT:** What I said earlier was that judicial and legislative officials are required to take an oath under our state constitution and that's at Article XXV [SIC], Section 1; an official oath.

**LINEHAN:** Is it just the Legislature or all elected--

**SPIKE EICKHOLT:** Executive and judicial officers and members of the Legislature.

**LINEHAN:** Executive--

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**SPIKE EICKHOLT:** There may be another source for all other elected officials, but I don't think that's what this bill speaks to. This is really only about--

**LINEHAN:** And we're not repealing the constitution, we're just repealing this section?

**SPIKE EICKHOLT:** No, I don't think we can.

**LINEHAN:** OK. All right, that's helpful. Thank you very much.

**GROENE:** Any other questions? Thank you.

**SPIKE EICKHOLT:** Thank you.

**GROENE:** Any other proponents?

**BRIAN HALSTEAD:** Good afternoon, Senator Groene, members of the Education Committee. For the record, my name is Brian Halstead, B-r-i-a-n H-a-l-s-t-e-a-d. I'm here on behalf of the Nebraska Department of Education. We support the outright repeal of Section 79-8,108, which this bill proposes to do. That section of statute was enacted in 1951 and has remained unchanged till this date. And that oath says I, Brian Halstead, do believe in the United States of America as a government of the people, by the people, for the people whose just powers are derived from the consent of the governed; a democracy in a republic; an indissolvable nation of many sovereign states; a perfect union, one and inseparable; established upon those principles of freedom, equality, justice and humanity for which American patriots sacrificed their lives and fortunes. I acknowledge it to be my duty to inculcate in the hearts and minds of all pupils in my care, so far as it is in my power to do, (1) an understanding of the United States Constitution and of the Constitution of Nebraska, (2) a knowledge of the history of the nation and of the sacrifices that have been made in order that it might achieve its present greatness, (3) a love and devotion to the policies and institutions that have made America the finest country in the world in which to live, and (4) opposition to all organizations and activities that would destroy our present form of government. That's the current oath required by that statute. You all, as your previous testifier-- Article XV, Section 1 of the Constitution provides that you shall swear or affirm "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Nebraska and will faithfully discharge the duties of--"

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whatever the office is-- "according to the best of my ability, and that at the election at which I was chosen to fill said office." And then it has a second sentence. I have not improperly influenced in any way the vote of any elector, and have not occupied [SIC], nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, or any promise of office, for any official act or influence (for any vote I may give or withhold on any bill, resolution, or appropriation.) That's the oath you all took to be an officer in that regard, so-- and obviously, this bill also has another statute that applies, apparently, to everybody who might be working in government anywhere; a separate oath. So you have-- if you're a teacher, you may have two or three different oaths you're required to take. And from our perspective, two years ago, Senator Scheer brought a bill that outright repealed the statutes prohibiting religious garb in public schools, which was unconstitutional and thank you for repealing that. And last session, after several years of work, this committee updated the Americanism statute to now provide for American civics, which had remained virtually unchanged since 1949 until you did that. So we don't see a need for 79-8,108. So that's our support for outright repealing it.

**GROENE:** Thank you, any questions? Senator Brewer.

**BREWER:** OK. I must be the slower of one of the bunch here. The one that you just read, 79-8,108, I read on Senator Pansing Brooks' screen here--

**BRIAN HALSTEAD:** Right.

**BREWER:** --and you did it very good; word for word. But it's not what's on the other page here that's actually in the bill. So we're repealing that and we're repealing what's on this page?

**BRIAN HALSTEAD:** Well, the bill proposes to do two things. One, outright repeal the one that--

**BREWER:** Got it.

**BRIAN HALSTEAD:** --you said I read very well. And then it's also making a change to this other statue by just excluding teachers and all other employees paid from public school funds from having to take that oath.

**BREWER:** Which is 11-101.01?

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**BRIAN HALSTEAD:** Right.

**BREWER:** That's all I needed to know, thank you.

**BRIAN HALSTEAD:** Sure.

**BREWER:** Good job reading.

**GROENE:** Any other questions? I guess I wasn't briefed on 79-8,108. Was there anything in there you would disagree with that we expect them to teach our children?

**BRIAN HALSTEAD:** Senator, it isn't about whether I agree or disagree. You are, by this body, mandating every person has to take that oath. Whether I believe those ideals, that's personally to me. It's the oath itself, which I suspect many of the courts-- because of some of those words are not well defined for anyone to know.

**GROENE:** And I don't have it in front of me and I wish I did, but--

**BRIAN HALSTEAD:** Right.

**GROENE:** This one here that we have in the green copy--

**BRIAN HALSTEAD:** Right.

**GROENE:** --says their personal beliefs, inside and outside their job; they could not do this. All right? That's what it says here. They cannot join certain parties in and outside their job. It's not dictated to inside their job.

**BRIAN HALSTEAD:** You're reading the language on page 2?

**GROENE:** "I do solemnly swear that I will support and defend the Constitution of the United States--" inside and outside your job-- "and the Constitution of the State of Nebraska, against all enemies--

**BRIAN HALSTEAD:** Foreign or domestic, right.

**GROENE:** --foreign or domestic." That's your lifestyle, all right? But 79-8 [SIC] is inside the school; what you teach the children. The pledge that-- you can believe anything you want, but we're saying you will agree to teach this to our children. There's a difference there, isn't there?

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**BRIAN HALSTEAD:** In, in respect to the First Amendment of the United States Constitution, probably not because the freedom of speech and the freedom of belief allow each individual to have their own speech and you requiring an oath of someone--

**GROENE:** Excuse me, if I take-- make an employee at Burger King sign an oath that you will not tell everybody that this veggie burger tastes awful or else you're going to have fired, is that an oath?

**BRIAN HALSTEAD:** It's not in statute so it's not a law of the state. Whether you, an employer, make your employees sign that and it's enforceable is a different question.

**GROENE:** 79-8 [SIC] says you will represent this as a teacher to our children. You don't have to believe it, but you will do this to have a job. So what's wrong with 79-8,108?

**BRIAN HALSTEAD:** Because I believe, as prior case law from the U.S. Supreme Court has held, that's not enforceable.

**GROENE:** That's not an oath. It says you will do this or else you don't have a job.

**BRIAN HALSTEAD:** That's a great argument, Senator.

**GROENE:** Thank you.

**BRIAN HALSTEAD:** Sure.

**GROENE:** Senator Kolowski. You've got another question.

**BRIAN HALSTEAD:** Oh, I'm sorry.

**GROENE:** If you want to take it, you don't-- you can't be forced to or lose your job or anything, but if you want to take another question.

**BRIAN HALSTEAD:** [LAUGHTER]

**KOLOWSKI:** Not yet, anyway. Brian, I wanted to thank you for coming in and being part of this today. I think it's important that we look at the, the range of how often this has been used and where it's been used. I've never taken their oath like that, except for the military and the Marine Corps when I joined that. This is different. I don't know where people come from, where they, they think that something is going to happen just because-- let me, let me back up. What takes

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place in my district and when-- the district policies of that particular district supersede whatever this is because I've never seen this followed in all my days, of 41 years in public education. I'll just stop there.

**GROENE:** Any other questions? Thank you. Any other proponents? Opponents? Neutral? We received a letter of support for LB1177 from NSEA, no opposition or neutral. Senator Hunt, would you like to close on your bill?

**HUNT:** Yes, thank you. My assistant printed off some copies of that, that statute that is not included in the bill just so you can see what that language says. To clarify what Senator Brewer asked, yes, what this bill does is it changes the oath, for which the text is included in this bill, to apply not to public teachers or anybody paid from public school funds. And it outright repeals the language that I'm passing out to you. So because of the way it's drafted, I probably should have included that so I apologize. As you've heard today, what this is about is just the fact that our state statutes need to be updated to reflect what's constitutional, what's workable, and to make that uniform for all teachers and all public school employees across Nebraska. It's unconstitutional, it's not uniformly applied across school districts, and it's really wrong to subject teachers to purity tests. This is just a commonsense update to state law and we can't make something like this a condition of employment, which is essentially what this law does. We, we require what teachers teach to students through curriculum, through the work of our public school boards, through the work of our Board of Education. Many people give input into school curriculum that folks who are a lot smarter than me go on to approve and teach to our students, not through oaths. We do that through a rigorous process, not by saying, you know, teacher, raise your right hand. Do you swear to teach the Constitution and not teach anyone to destroy our present form of government? Nothing somebody could say in an oath when they become a teacher would, would make them a good teacher. So this isn't something that we need in statute. And to update our statute and to be a more modern society, this is what we should get rid of. It's a simple bill. Thanks for your time. I'm happy to answer any other questions.

**GROENE:** Just out of-- why didn't you just strike the whole thing? Does-- why does the janitor at the courthouse have to take it?

**HUNT:** Would you go for that?

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[LAUGHTER]

**HUNT:** If you want to introduce that amendment, I would love to, to go on there with you.

**GROENE:** I'm just curious. Now I mean, it was just a legitimate question. If it's good for the gander, why not the goose?

**HUNT:** I think it would be good for everybody.

**GROENE:** All right, thank you.

**HUNT:** Um-hum.

**GROENE:** Anybody else? Thank you, thank you, Senator Hunt.

**HUNT:** Thank you, Senator. Thank you, colleagues.

**GROENE:** That closes the hearing on LB1177 and that closes our hearing for the day.