

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Government, Military and Veterans Affairs Committee February 8, 2019

**BREWER:** Good afternoon, ladies and gentlemen, and welcome to the Government, Military and Veterans Affairs Committee. My name is Tom Brewer from District 43. I'm the Chair of this committee. We will start with introductions, and to my right--

**BLOOD:** Senator Carol Blood representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

**LOWE:** John Lowe, District 37, Kearney, Gibbon, and Shelton.

**HILGERS:** Mike Hilgers, District 21, northwest Lincoln and Lancaster County.

**La GRONE:** Andrew La Grone, District 49, Gretna and northwest Sarpy County.

**HANSEN:** Matt Hansen, District 26, northeast Lincoln.

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

**HUNT:** I'm Megan Hunt and I represent District 8 in Omaha.

**BREWER:** To my right is legal counsel, Dick Clark. Just as general information, the Vice Chair is Senator La Grone. To my left is Julie Condon, who is committee clerk. Directly behind her is our two pages, which is Preston and Kaci. All right, so with that said the committee will hear the following bills today, LB16, LB18-- 118, LB150, and LB123. Some administrative things we need to run through here. Please be sure that all of your electronic devices are silenced. The senators may be using either their laptops or their phones to confirm if they have other committees that they to be testifying in so they're not ignoring you they're just trying to keep track of where they need to be and when. The record for your attendance-- on the table over there, there's a white sheet which you can register either in opposition or support. Your information can go on there. If you wish to testify, please fill out one of the green sheets. When you come up, give it to the committee clerk. If you need copies made of any materials to hand out, the pages can assist you with that. We're asking that you provide 12 copies. Let's see, if you're going to testify on the bill at hand, we'd ask you to move forward so that we have some idea of who all is gonna be presenting-- or gonna be testifying on this bill. We ask that you speak directly into the microphone. We have a light system. We're going with five minutes today. So you'll get a green light. With one minute to go, you get to amber. At the five-minute mark, you'll get

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the red light. I ask when the red light comes on, you, you wrap it up. And if you have any e-mails or written messages that you wanted to go on the record, remember those needed to be in by 5:00 yesterday so they could go into our official record to be read in today. With that said, our first bill will be LB16. Senator Briese, welcome to the Government, Military and Veterans Affairs Committee.

**BRIESE:** Thank you, Chairman Brewer. And good afternoon, Chairman Brewer and members of the committee. I'm Tom Briese, T-o-m B-r-i-e-s-e. I represent the 41st District, and I'm here to present LB16. LB16 exempts from our open records statute information related to critical energy infrastructure. We live in a world of bad actors, some of whom are intent on disrupting our way of life and any means possible. One avenue for someone so inclined is to target our energy infrastructure whether it's our power grid, fossil fuel infrastructure, and so on. As elected officials, we have a duty to help minimize the risk of one of these nightmare scenarios from ever occurring. LB16 is a bill designed to help us protect that infrastructure. Nebraska Revised Statute Section 87-712 [SIC] makes available for examination by all citizens all public records of the state or any political subdivision. Section 84-712.05 allows entities to withhold from public view various categories of records. There are currently 20-such categories of items or information that can be withheld. LB16 adds another category that can't be withheld from public view for, quote, information that relates details of physical and cyber assets of critical energy infrastructure as such terms are defined in 18 CFR 388.13. The disclosure of which would pose a threat to national security public health or safety and so forth. The Federal Energy Regulatory Commission regulations found at 18 CFR 388-112 define critical energy infrastructure information as specific engineering vulnerability or detailed design information about proposed or existing critical infrastructure that relates details about the production, generation, transportation, transmission, or distribution of energy could be useful to a person in planning an attack on critical infrastructure and does not simply give the general location of the critical infrastructure. This bill mirrors that language, but the protections afforded this-- by this bill are somewhat broader than the federal exemption. LB16 also includes as critical energy infrastructure information that information about the identity of personnel whose primary job makes such personnel responsible for providing or granting individuals access to physical or cibel-- cyber assets or operating and maintaining physical or cyber assets, except that this subdivision shall not apply to the identity

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of a chief executive officer, general manager, vice president, or board member of a public entity that manages critical energy infrastructure or critical electric infrastructure. The lawful custodian of the records must provide a detailed job description if requested for any personnel whose identity is withheld pursuant to this section. I believe that in light of the potential risks posed to critical infrastructure this expansion beyond what is found in the federal rules is justified. We live in an era where it is not inconceivable that adverse interests could undermine the economic health and security of our state and our nation by disrupting our energy infrastructure. Providing this exception to our public records laws can help to minimize this risk. I'd like to add that-- you know, much of what we do in this body is simply a, a balancing of competing interests and, and really the same is true here. I submit that the magnitude of the risk that we are trying to protect against far outweighs any purported need for this information. And I believe this is a responsible proactive approach to a risk that does exist. I'd be happy to answer any questions, but I will be followed by folks from within the industry that will have some insight into their positions I'm sure. Thank you.

**BREWER:** Thank you for your opening, Senator Briese. Questions on LB16? All right, seeing none, will you be staying around for closing?

**BRIESE:** Yes, I will.

**BREWER:** All right, thank you. All right, we're gonna go in the order of proponents, then opponents, and neutral. Again, please state your name and spell it. Welcome to the Government, Military and Veterans Affairs Committee.

**SHELLEY SAHLING-ZART:** Thank you, Chairman Brewer, members of the Government, Military and Veterans Affairs Committee. For the record, my name is Shelley Sahling Zart. Shelley is S-h-e-l-l-e-y, Sahling-Zart is S as in Sam a-h-l-i-n-g hyphen Z as in zoo a-r-t. I'm vice president and general counsel at Lincoln Electric System. Today, I'm testifying on behalf of the Nebraska Power Association in support of LB16. The Nebraska Power Association is a voluntary association that represents all of Nebraska's publicly owned electric utility systems including municipalities, public power districts, public power and irrigation districts, rural public power districts, and cooperatives, and joint action agencies. We'd really like to thank Senator Briese and Senator Brewer for cosponsoring this legislation. Senator Briese introduced this bill for us last year as well. It was advanced from

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this committee unanimously with one senator not voting. We simply ran out of time to get it done in a shorter session. It's an important bill that we think is necessary. Senator Briese did a, a fabulous job of walking you through what the bill does and providing some of the background so I'm gonna hit some of the, the things that in addition to the great outline that he provided. It does provide another exception to the public records laws. We know how important those exceptions are. We strive for transparency throughout the utilities in Nebraska. But unfortunately there are some areas that just require a greater degree of, of discretion and not providing some records. So in December 2015, Congress passed the Fixing America's Surface Transportation Act, the FAST Act, and as part of that Act they included among other things provisions to improve the security and reliability of the electric utility infrastructure across the country which has become a key target for bad actors. You can imagine what would happen-- well, you can probably recall when there was a blackout in New York City, when-- if you can bring down major economic centers you can create a lot of havoc across the country. The Act then required that FERC adopt regulations to establish criteria and procedures to designate information as critical energy infrastructure information. So they did that-- they pass-- passed that and adopted that in February 2017. And this legislation would essentially codify that into our statutes here because Nebraskans typically aren't going to go pore through FERC regulations. They're going to look to the Nebraska Public Records Law. As Senator Briese identified, there is one additional provision that's not in the FERC regulations that we've added in LB16 and that is to protect the identity of our personnel who are-- whose primary responsibility is for cyber and physical security. Now I'll give you an example: my-- I've got a communications team and we require everybody at LES to practice good cyber hygiene. Lock your workstations down. Don't click on the suspicious things in a phishing e-mail. That's not who we're talking about here. Those people-- their primary job is communications. Their identity is not protected by this bill. We're talking about the people that run our SCADA systems, our Supervisory Control and Data Acquisition centers, our nerve center. We're talking about people who are responsible for cyber security. They're setting up the accesses to all of our different secure systems. It really is not that widespread. We've also in response to some concerns from Media of Nebraska, this year we've tried to clearly say we're not talking about our executives, our CEOs, our managers, our board members-- those people are obviously in the public domain. We tried to address Media of Nebraska's concerns as much as we can. And I, I would say Media of Nebraska that-- the media outlets in

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Nebraska have been very good about working with us in not disclosing the identities and some of the, the salary records for example they requested and posted. They've been very good about that and we greatly appreciate their cooperation. Unfortunately, media isn't the only people-- they aren't the only folks requesting records from us. And under our public records laws, we can get requests from anybody in the country. Often, they come in an e-mail. I don't know if they're from here or a foreign government. So this really is a broader concern, and we'd really like to tighten that. Unfortunately, it is a situation where if you know somebody's identity you can find out where their kids are going to school. You can find out where they live. You can use that kind of information to threaten or extort information and access from them. So it is, we believe, a, a real major concern and we would greatly appreciate your support in advancing this bill from committee. I'd take any questions.

**BREWER:** All right. Thank you, Shelley, for your testimony. Questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chair. Thank you for your testimony today.

**SHELLEY SAHLING-ZART:** Um-hum.

**HILGERS:** I recall this bill from last year. I have it in front of me that's why. I'm looking at my phone. So one question I have is as, as I read subsection (9) of the proposed language of the bill that is whether or not public health or safety is defined elsewhere if that's, if that's a reference in the Code of Federal Regulations. The reason I ask is this ties to national security which is fairly narrow and I think fairly discrete but public health or safety in other context at least could be very broad, and could be sort of enlarging the exception maybe beyond what we're intending. So is there a definition we can tie that to [INAUDIBLE]?

**SHELLEY SAHLING-ZART:** We will look at that. And to be fair you did raise that last year and I think when I worked with Senator Briese's office to develop the language on this I think I did not look at the last language we came up with and I think we addressed that. But we will go back and look at that and make sure.

**HILGERS:** OK, thank you very much.

**SHELLEY SAHLING-ZART:** Yep.

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**HILGERS:** That's all. Thank you.

**BREWER:** All right. Additional questions? Just as kind of a reminder from, from last year's conversation about this, the concerns I expressed were related to Offutt and to USSTRATCOM. Even though STRATCOM has backup sources of power, understanding how those networks work and how you could negatively affect that, would possibly be a factor with the continuity of government which is part of what their mission there is and the release of thermal nuclear weapons and a, a national response. So there are things that need to be considered in, in why this bill has come to the level it is because those are critical to the mission at Offutt. So no other questions. Thank you for your testimony.

**SHELLEY SAHLING-ZART:** Thank you.

**BREWER:** Welcome to the Government Committee.

**KEVIN WAILES:** Thank you. Good afternoon, Chairman Brewer and members of the committee, I'm Kevin Wailes, K-e-v-i-n W-a-i-l-e-s. I'm CEO of the Lincoln Electric System, and I also serve as the cochair of the Electricity Subsector Coordinating Council, which is the ESCC. And I'll make a reference to that in a little bit, but the ESCC serves as the principal liaison between the electric utility industry and the federal government with respect to physical and cybersecurity. Shelley, excuse me, Shelley and Senator Briese provided a really comprehensive overview of the bill and I don't really want on a Friday afternoon want to be redundant to that, but I'd like to provide just a little bit of color commentary if I could. Hardly a week goes by that we don't get to read in the media about some type of significant cyber event of some major company that has significant consequences to those companies. You also in many cases get to read a lot about the potential threats to critical infrastructure in this country. In many cases, you'll read books and certain things that are published about the electric utility infrastructure and what that could mean. But one of the things that it's really key to look at is all of the effort the industry puts into working on this, and it's a huge and massive effort. Lots of resources are put into it. An example might be for LES, if you looked at us eight years ago we didn't have any dedicated cybersecurity people. We now have a six-person staff that that's all they do. Before that it was just sprinkled among responsibilities for everyone. We are the only industry, and that's the electric utility industry, that actually is subject to mandatory requirements with respect to cybersecurity. We're subject to up to a million dollar a

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day per offence for violations of, of those kinds of standards. So it is something that obviously we take very seriously and we spend a significant amount of time dealing with those issues. But as a public utility, Nebraska utilities have greater exposure to those malicious actors actually than just dealing with the standards. Because we also have the open records law, which we know is extremely important to our customers to provide transparency. But it also has unintended consequences and that's why we're trying to look at narrow protection with respect to that to not infringe on that important transparency but to make sure in fact that we can protect those assets. Clearly, the primary purpose of this, this bill is that direct protection both the critical infor-- asset information as well as to the records with respect to personnel directly related to that. But there's a secondary purpose to that that's really important and that's actually to protect our ability to share information within our own industry. And, and I'll kind of get to that a minute. As the cochair of the ES-- ESCC, I, I guess I want to kind of describe what that is. So-- and I guess it's one of 16 critical infrastructure councils that was established by presidential directive and to the Department of Homeland Security shortly after 9/11. In our particular case, we have a unique structure for our coordinating council in that it's exclusively CEOs so that we can meet with and basically deal with the highest levels of government. So the-- our co-- if you will the, the-- our partners on the other side of the, the aisle with respect to this council includes basically senior administrative, administrative people from the White House, basically federal law, law enforcement, the relevant cabinet agencies as well as military and actually national cybersecurity or cyber-- I'm sorry, national security councils as well. So that's the group we work with. We basically have three formal meetings a year. We have continual communications. If something happens around the globe that they perceive might impact our industry, we're in communication on those issues. But also as a part of that we have a number of initiatives that we're doing at any given time to try to protect basically the resiliency associated with the, with the grid. Now as you might guess information sharing is a key part of that, and that information sharing has really been enhanced a lot not only between the industry but also between the industry and government as part of this. And one of the biggest wins we had when we got to this, this part a few years ago was getting security clearances into the industry. But one of the things that's come up recently are concerns from the private sector about their-- how-- our ability to protect that information from state public records laws as well. So even though we have the, the federal protection that's outlined there has

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been concerns raised about that and we believe this bill helps us address that in being able to demonstrate we have that local as well. And finally just, just one quick thing-- you know, one of the things to recognize in the industry is that-- if, if you look at the electric utility industry, it's 85 percent of the customers are served by private companies either investor-owned utilities or cooperatives that are not subject to public records. So we've got a 15 percent of us that are the segment that we need that information as well. And we need to share our information with them, but we have that concern. And that same reason that con-- that concern with respect to sharing information is the same thing with respect to looking at personnel. Those companies also would never share their personnel information. And so that little small area that we're trying to do to keep the identity of people, but still go ahead and provide, for example, salary information, and everything would be very helpful for us. Thank you very much for your consideration and thank you for what you do for the state.

**BREWER:** Thank you for your testimony. Questions? Senator Hilgers.

**HILGERS:** Thank you, Chairman Brewer. Thank you for your testimony. You've kind of introduced a wrinkle that I hadn't considered before which is-- and I was kind of wondering-- you got to the punch line at the end which is this idea that this will help facilitate meetings of other, other high-level individuals and share information. So when I initially read, read this language it suggests to me, but now that you've said this it doesn't actually explicitly say-- but it suggests to me that what we're talking about are Nebraska's critical infrastructure assets. And what I'm hearing you say, I think, but I would like you to confirm and correct me is that what you're saying is we might get information of someone else's critical information-- a critical, critical infrastructure assets and if that is shared with us we under the current laws we would have-- we might-- we would have to share that with under a, a public records request. Is that correct?

**KEVIN WAILES:** That's correct. But we would, we would still be seeking the federal shield with respect to that-- of that information as we've talked about. But that makes it a much clumsier process for doing it, and that's what makes the private sector a little concerned in some cases what they're sharing of information.

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**HILGERS:** Why would it be-- so I would imagine if someone asked for a records request, you just say, hey look, we've got federal protection, no, you can't have it.

**KEVIN WAILES:** But then,--

**HILGERS:** Why--

**KEVIN WAILES:** --but then we may have to [INAUDIBLE] go to the federal agencies to validate that as well, rather than being able to [INAUDIBLE].

**HILGERS:** But wouldn't the procedures-- and I-- and I'm not, I'm not challenging that, I'm just, I'm just correcting my-- or asking you to confirm or correct my understanding which is my-- and I haven't done that many--

**KEVIN WAILES:** Right.

**HILGERS:** --records request. But as I understand it-- again, correct me if I'm wrong-- if someone requests for information the party receiving the request says here it is or in this case says no.

**KEVIN WAILES:** Right.

**HILGERS:** Here's my basis for saying no,--

**KEVIN WAILES:** Yes.

**HILGERS:** --including this federal shield. The next step is not for the receive-- the party that receiving a request to go to federal court.

**KEVIN WAILES:** Right.

**HILGERS:** It's for the party requesting the information then to go to court and say--

**KEVIN WAILES:** Yes.

**HILGERS:** --hand it over.

**KEVIN WAILES:** And that, and that would be our defense at that point.

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**HILGERS:** So then how does it-- so you said, you said it was clumsy and I'm not, I'm not disagreeing with you, I'm just trying to understand the why-- how that would be clumsy?

**KEVIN WAILES:** Well-- and in, in that, in that determination whether FERC would have to make any determination of whether we were correct with respect to that information because that's the shield we're using. So--

**HILGERS:** OK. I guess maybe, maybe we could speak after at some point after this hearing to get further clarification. I guess I'm not quite following how that would work, but would if-- under your view with this language would the fact that a meeting have taken place between CEOs. Would that be something that would be covered under this?

**KEVIN WAILES:** No.

**HILGERS:** It would just be somebody-- the actual confidential information.

**KEVIN WAILES:** It's, it's explicit information that's--

**HILGERS:** OK.

**KEVIN WAILES:** --in question. And not unlike the example that was used about with respect to people and, and-- you know, the issues that we do with saying we're gonna give names of people. For example, [INAUDIBLE] or titles, titles of people but not their names. We'll give the salary information that type of thing.

**HILGERS:** Yeah, I'm-- I, I hear you on the sal-- on the name of the people. Thank you very much. Thank you.

**BREWER:** Thank you.

**KEVIN WAILES:** Thank you.

**BREWER:** Any other questions? Seeing none, thank you. All right, additional proponents? Come on up. Welcome to the Government, Military and Veterans Affairs Committee.

**JILL BECKER:** Good afternoon, Senator Brewer and members of the committee, my name is Jill Becker, spelled J-i-l-l B-e-c-k-e-r, and I appear before you today as a registered lobbyist on behalf of Black Hills Energy. And we just wanted to offer our support of LB16, and

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thank the Senator for introducing the bill. We supported this bill last year when the committee heard it as well and you've heard some great testimony on why we think this type of information really should not be subject to disclosure. So as you heard from the previous testifier, Black Hills is a public entity so it may be a much more rare situation where we would even be asked for this type of information. But we really don't want to be put in a position of having to disclose-- that may be used in a very bad way. So with that I will be happy to take any, any questions from the committee and certainly encourage you to move it out to the floor.

**BREWER:** We appreciate you expediting our Friday afternoon.

**JILL BECKER:** You're welcome.

**BREWER:** Thank you for your testimony. Questions? Seeing none,--

**JILL BECKER:** All right, thank you.

**BREWER:** --thank you. All right, additional proponents? Seeing none, we will go to opponents? Come on up.

**SHAWN RENNER:** Thank you.

**BREWER:** Green sheet, very good. Stand by for the green light and you're good to go hot. Welcome to the Government, Military and Veterans Affairs Committee.

**SHAWN RENNER:** Thank you, Senator Brewer, members of the committee, my name is Shawn, S-h-a-w-n Renner R-e-n-n-e-r. I'm a lawyer with the Cline Williams Law Firm here in Lincoln, and I'm a registered lobbyist on behalf of, of Media of Nebraska, Inc. Media of Nebraska is a coalition of news media entities and resources that advocates on behalf of matters of interest to that industry. Media of Nebraska opposes LB16, and I'd like to explain why starting with some of Senator Hilgers questions. There are two parts to LB16. The first part mirrors federal regulations which prohibit the utilities in this room that have testified in favor of LB16 from disclosing the information as described in that subsection (a) that federal law preempts state law. It doesn't matter what Nebraska law says. If federal law says they can't provide it, they can't provide it. And when someone makes a public records request for information that would be covered by subsection (a) it's a perfectly legitimate legal response and binding as Senator Hilgers pointed out to say, federal law prohibits me from

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disclosing this. With regard LB494 two years ago, Media did not oppose that provision. The argument on behalf of the utilities was it's easier for us to say Nebraska law prohibits it, too. And since the reach is practically identical, the language is slightly different but not in any way that I can tell that matters. We didn't oppose that aspect of it. Media's opposition comes in the what I would characterize as overreach and that subsection (b) of the section which addresses personnel and keeps the identity of people with jobs related to critical infrastructure secret. That is not required by federal law. The federal regulations went through a lengthy comment process and there was an initial rule put out everybody had a chance to provide input. There is no hint in any of the federal reg-- regulations that FERC thought there was any problem or any concern with the information that the utilities have tacked on as subsection (b) in this section. And it's for that reason that Media of Nebraska opposes the bill. And, and it's not just for the sake of opposing either. The, the news media uses information with regard to identity of public employees and salary information. In fact, if you look at our current exceptions to the public record statute there is one that covers personnel for public bodies. And it says that everything with regard to those members of personnel is-- may be withheld from the public except directory information: name, rank, serial number type of things, and salary. Those things are explicitly made public or kept from being accepted by the personnel exemption already in Nebraska law, and that's been the case since 1979. That hasn't changed since 1979. Both the Omaha World-Herald and Lincoln Journal Star keep databases which are available on their Web sites of public employee salaries including for Lincoln Electric System and the Omaha Public Power District. World-Herald does OPPD, Lincoln Journal Star does LES. And I will tell you, I think this was mentioned by both Mr. Wailes and by Ms. Sahling-Zart, we have-- the Journal Star and the World-Herald have both made accommodations when either of those two utilities have come to them and said we think this is an issue and here's the problem that we've got and would you not run that. And in every instance I'm aware of that's been the responses of the news media. So I, I think this is a, a-- the second aspect of it, subsection (b) is a solution looking for a problem that does not presently exist and is not required by federal law. The, the focus and the pitch that's made to you is we have to do this as a matter of federal-- well, in fact, Mr. Wailes told you his entity would be fined \$1 million a day if they didn't follow federal law. That's a pretty good incentive for them to do that. And federal law clearly allows them to withhold the information in subsection (a). Federal law says nothing-- period

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nothing about what they've attempted to insert in subsection (b). And for that reason, the Media thinks it's not necessary and not appropriate. And again, we've worked with both the utilities that have raised issues in that respect. I'd be happy to try to answer any questions.

**BREWER:** Thank you for your testimony. Questions, questions?

**HUNT:** Can you give me 20 seconds? I'm just reading this part and then may have a question.

**BREWER:** We will--

**HUNT:** I'm sorry.

**HILGERS:** I'll ask a question while she's looking.

**BREWER:** All right, way to fill in.

**HILGERS:** Thank you. So thank you very much for your explanation, Mr. Renner. I appreciate that very much. So just a couple of follow-on questions, maybe you have the answers to the questions I asked. In terms of the public health and safety, is it your understanding that that language mirrors then the federal language or is that different?

**SHAWN RENNER:** I, I can't tell you for sure on public health and safety, but it's very close. I-- when we got the draft-- and, and this language is very similar to the last time around. It's-- I couldn't tell a substantive difference between subsection (a) and the definition of critical energy infrastructure information that's contained in the federal regulation. And I don't know of a definition of those terms and I understand your concern that they're broad. They're broad under federal law.

**HILGERS:** OK. And then in terms of the procedure-- we were sort of having a back and forth on the FOIA procedure. My understanding is how I laid it out a minute ago-- request-- you say, no. Then they have to file a suit. Is there, is there any wrinkle that you're aware of that not having it in state law could sort of inject some complexity or clumsiness [INAUDIBLE]--

**SHAWN RENNER:** None that I'm aware of, and, and none that I believe exists in addition to that. To the extent that-- let's say, that this bill does not pass, and so a, a record request comes into LES for CEII. The response is, no, federal law won't allow us to give you

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that. At that point they don't give the information. If the requester wants the information, it's up to them to figure out how to get it. And that means a lawsuit, or I suppose under Nebraska Public Records statute they can petition the Attorney General. The Attorney General isn't going to be able to order LES to provide that information either. So you'd need to be able to convince a state or federal court or the Attorney General to violate federal law to compel LES to provide the information that federal law says they can provide.

**HILGERS:** Um-hum.

**HUNT:** I'm OK.

**BREWER:** You're good.

**HUNT:** Um-hum.

**SHAWN RENNER:** Thank you.

**BREWER:** Thank you for your testimony. No-- last call. All right, you're good to go. Additional opponents? All right, those in the neutral capacity? We're gonna wrap this up fast. Senator Briese, would you like to close on LB16?

**BRIESE:** Yes, yes, very briefly. And looks like Senator Hilgers stepped out, but in response to his question he, he was concerned about public health and safety and whether that's defined federally. Public health and safety is a phrase used in defining critical electric infrastructure in 18 U.S.C. Section 824. And public health and safety is also referenced in the definition of critical infrastructure in CFR 388-113. So-- but other than that I see nowhere where this definition is defined so to speak. It's essentially a definition itself not defined elsewhere that I see. Perhaps it is somewhere, but I'm not pulling it up if it is. And, and I understand or I, I don't know-- I certainly don't agree with the concerns of Mr. Renner there. I, I don't think I've heard a, a compelling reason why this identity information is necessary when we weigh the competing interests as we talked about earlier, the interest of a threat to our national security versus some interest in getting the identities of these individuals for other reasons. I, I think it's a clear-- the interest of national security and protecting our electric critical energy infrastructure is important and wins in that situation. And I do notice that-- I, I didn't understand exactly where-- what we were talking about there as far as the exceptions to the public record law.

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But we-- at this point I think it's paragraph 7, personal information and records regarding personnel of public bodies other than salaries and routine directory information. And that's some of the information we're trying to protect here with this provision. We want to keep identities and directory information out of the public eye with regard to some of these personnel. And I think, I think this is an important step in doing that and as one of the testifier's said earlier this isn't simply just the media looking for this information. Sometimes these are-- these could be foreign governments actually posing as someone else trying to garner this information. And when FERC adopted these rules that neglected to bring in identities-- you know, they, they were dealing with-- essentially dealing with private, with private utilities. You know, we're, we're a public, a public utility state and-- you know, our, our concerns weren't taken into account, I don't think, when they did that. And so I would ask you to forward this on to General File. I think it's an important step. I think it's something that is incumbent upon us to move forward with. Thank you.

**BREWER:** Senator Hunt.

**HUNT:** Thank you, Senator Brewer. Senator Briese, I just have a question about some of the concerns that were raised.

**BRIESE:** Sure.

**HUNT:** Do you think that anything would prevent members of the media from reaching out to a public utility if they wanted the identity of someone for purposes of a story or purposes of anything the media would have a reason to contact these utilities for their identity?

**BRIESE:** And they're more than welcome to reach out to a utility-- more than welcome to do that. You know, this isn't mandatory disclosure, these are simply records that may be disclosed pursuant to the, to the statute.

**HUNT:** Thank you.

**BREWER:** All right, additional questions? Senator Briese, you, you are an attorney, correct?

**BRIESE:** Yes, in, in a past life.

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**BREWER:** Well I hate it that Senator Hilgers isn't here, I enjoy the bantering you guys do. OK, any other questions? Senator Lowe, you are not an attorney.

**LOWE:** Thank God. [LAUGHTER] Thank you, Chairman. Thank you, Senator Briese, for bringing the bill. Do you have any idea how many employees these utilities employ approximately?

**BRIESE:** No, that information is beyond me. I, I do not--

**LOWE:** Probably, probably more than 1,000, 2,000, something like that.

**BRIESE:** I would certainly guess that, yes.

**LOWE:** And how many employees are we talking about that would-- we would be not letting the information out?

**BRIESE:** That would be a great question for those within the industry. I do not know.

**LOWE:** Yeah, I'm sorry, I, I see hands going that a, that a-- that Shelley knows the answer to that and I'll get together with her and ask.

**BRIESE:** OK.

**LOWE:** But I'm, I'm assuming it's not all that many, probably 200 or 300.

**BRIESE:** I, I would assume it wouldn't be a great number.

**LOWE:** OK, thank you.

**BREWER:** All right. Go ahead, sir.

**KOLOWSKI:** Thank you, Mr. Chairman. Senator, thank you for your presentation today.

**BRIESE:** Sure.

**KOLOWSKI:** I appreciate that very much. I sat here the whole time listening to you and understanding the safety and security that we need at every location of power, production, and all the rest in, in the country. But I also have to flashback all-- in my own life, too, as a high school principal and having the security in the building of 2,500 kids as I had at Millard West for 15 years. That still bothers

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me that we have to have something happen or X number of kids are hurt or killed before, before we take the measures that we need to take to give the safety and security to those families. And wherever that might be, a power plant or lines going out across the country or whatever else--

**HUNT:** The Legislature.

**KOLOWSKI:** --the Legislature-- our, our security is good here, but I think we have, we have to think very seriously about not just the need you're, you're, you're telling us about today but across the board in our communities.

**BRIESE:** I, I, I agree. That's a great comment, Senator. This truly is a pro-- proactive approach, hasn't happened in the state that I know of yet. Maybe it's occurring as we speak, I don't know. But this is truly-- is a pro-- proactive approach and it's good to address this before something does happen that we regret later for not, not having addressed.

**KOLOWSKI:** I appreciate that. Thank you.

**BREWER:** All right, any additional questions? Seeing none, thank you for closing on LB16, and we do have some letters to read into the record.

**BRIESE:** Thank you.

**BREWER:** Yes. Of, of proponents: John McClure, NPPD; Rocky Weber, Nebraska Cooperative Council; Tim Burke, OPPD; Rick Kubat, the Government Affairs, Metropolitan Utilities District of Omaha. We have no letters in opposition and none in the neutral. With that said, that closes our hearing on LB16, and we move next to LB118. Welcome to the Government, Military and Veterans Affairs Committee.

**ARCH:** Thank you.

**BREWER:** Is this your first time here?

**ARCH:** Is it my first time here? Yes, it is.

**BREWER:** We're gonna, yes. All right, whenever you're ready you may begin.

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**ARCH:** All right, thank you. Good afternoon, Senator Brewer, members of the Government, Military and Veterans Affairs Committee. For the record, my name is John Arch, J-o-h-n A-r-c-h. I represent the 14th Legislative District in Sarpy County, and I'm here today to introduce LB118. LB118 would provide for the withholding of a residential address for a physician or an osteopathic physician licensed under the Medicine and Surgery Practice Act upon an application with the county assessor. Basically, this would prevent somebody from accessing a physician's address simply by doing a search on the assessor's Web site. I liken it to having an unlisted number in the phone book. This doesn't mean that this information is no longer obtainable. It is a public record. The information would still be available upon a written request to the assessor. Under the bill the address would be withheld from the public Web site for a period of five years and then the application could be renewed. The Legislature passed a similar bill in 2017 allowing a law enforcement officer to have his or her residential address withheld from public county records. And I believe this morning we also passed Senator Brewer's bill for National Guard members. One of the provisions there being that they could also withhold this information. Senator Wishart sponsored LB624 because due to the nature of law enforcement's profession their safety and that of their family can sometimes be at risk. Unfortunately, this is also the case for physicians. Though there are no extensive studies on the subject a survey conducted by Penn State University Medical Center determined one in five physicians had experience stalking behavior by a patient. Stalking behaviors include spying or surveillance, following, loitering, unwanted personal approaches, unwanted phone calls, unwanted written communication, sending offensive material, ordering or canceling services or goods, spreading rumors, and interfering with property. And though rare, stalking can escalate to physical harm. It was, was tragically the case involving doctors at Creighton. According to research, the motivation behind stalking varies. However, oftentimes the stalker is motivated by the desire to develop an intimate relationship with their victim or the stalker irrationally places blame on the victim for a grievance. A physician's profession puts them at greater risk to be the recipient of this unwanted behavior. An unstable patient may misinterpret the closeness of a doctor-patient relationship as romantic in nature or a person may hold their doctor responsible for an unfavorable medical diagnosis. And I would, I would add one other possibility-- one other potential risk, and that is that I know that in my work I saw pediatricians often having to get into a situation where they were arbiters, arbiters between family conflict and so you had a-- one parent that

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had custody, another that did not have custody and so the doctor was not able to speak to the one that didn't have custody and that was greatly offensive and the doctor became the focus of, of that conflict between the man and the woman or the cou-- the couple involved. Whatever the case, the toll this behavior takes is real. The same Penn State survey indicated 20 per-- 26 percent of the physicians felt the need to increase security at their homes and 11 percent even considered quitting their profession. LB118 is not a panacea. However, eliminating the ability of a quick, simple search would offer a layer of protection for physicians from a person who might not have the best of intentions or might have a poor understanding of appropriate boundaries. The application is voluntary. It costs taxpayers nothing. With the prevalence of the Internet and the ability to access information we must continue to adapt and amend our bylaws to help protect the privacy of those who need it most. And that concludes my testimony. And I urge you to advance LB118. I'd be happy to answer any questions you may have.

**BREWER:** Thank you for your opening on LB118. Questions? Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. And thank you, Senator Arch,--

**ARCH:** Yes.

**BLOOD:** --for that introduction. I do have several questions for you.

**ARCH:** OK.

**BLOOD:** So you referred to it much like an unlisted phone number,--

**ARCH:** Right.

**BLOOD:** --but don't you pay for that privilege?

**ARCH:** I believe you, I believe you used to. I'm not-- I guess with cell phones, I'm not sure.

**BLOOD:** I don't have a landline anymore but in the old days when I had a landline--

**ARCH:** Yeah, um-hum, that's--

**BLOOD:** --we-- my husband was in radio and we had to have an unlisted number for basically the same reasons you say. So why is there no fee attached to this? You say it doesn't cost taxpayers anything but

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surely somebody has to process this. Somebody has to maintain the files. Somebody has to send out the reminders after five years. Why are we not connecting a fee to a privilege?

**ARCH:** I, I think that, I think that-- I think what we're seeing in our society and I certainly see it-- I certainly saw it in medicine, is that privacy is becoming more and more important. Privacy is a right. Right? I have a right to privacy. And I think in this particular case, I would, I would term this to be the right of, the right of the physician. And typically I don't pay for rights. I mean, I think I have a right to privacy and I think that a physician who is in fear or believes that there's a reason to protect that privacy. For instance say, I, I think you would find this in certain specialties and not in other specialties. You'd, you'd probably find it more in psychiatry and less in orthopedic surgery or something like that. But, but I think that, that the right to privacy is there and I think that's probably why I would say that this, that this is not something that you would have to charge for. On the other hand, of course, there's many ways to get information. This, this, this is simply eliminating that easiest, that easiest source which is to go out and search the assessor records. So that's, that's how I would respond to that.

**BLOOD:** But yet they can still get it in writing because it is a public record.

**ARCH:** They can get it in writing, yeah. There's--

**BLOOD:** And they could--

**ARCH:** I mean there's rights, right?

**BLOOD:** Yeah.

**ARCH:** There's right to privacy and there's public records. So--

**BLOOD:** But, but if, if-- so you say-- are you saying another definition of physicians then psychologists are also included in that definition?

**ARCH:** This does not-- this is strictly under medicine and, and surgery so this is, this is M-- MD and, and doctor [INAUDIBLE].

**BLOOD:** So why not psychologists, so why not psychologists?

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**ARCH:** I, I think we may-- I think we may see more and more of this over time as, as the issue becomes larger in our society.

**BLOOD:** So-- but aren't there forms like the 3575 through the post office so they could get the address from them as well. I mean, it just seems kind of futile to just take them off the public records.

**ARCH:** It, it-- again, again it-- you know, we, we saw it with law enforcement. We've seen it with the National Guard. I think this is, this is very similar. Yes, of course, they can find it, they can find it elsewhere. If they're determined to get that address, I think you could probably find that. There's a lot of different public records.

**BLOOD:** Well, and no offense to the, to the medical community because I hold them in high regards, but I think there's a big difference between law enforcement and military and physicians. We're talking about people that have to do with the safety and security of our communities and of our state. There is a difference. And, and my concern is where do you draw the line at. Sometimes I feel that people who tend to make a higher income, as physicians often do, on depending how much school that they have, that there is an expectation of privilege that maybe a working class person might not have the benefit of. Although that working class person may also experience the same type of stalking as you know. Because it, it doesn't necessarily happen to just doctors, it happens to people at all walks of life, women and men and children. So might have two concerns which doesn't mean anything except that I have two concerns right now that I'm gonna do more research on is, is why are we only including doctors-- excuse me, physicians, because you can be a doctor and not be a physician? Why are we not charging a fee? So that's my two concerns. Thank you.

**ARCH:** Yeah, thank you.

**BREWER:** OK, additional questions? Senator Hunt.

**HUNT:** What was your-- what was the reason for, for saying physician or osteopathic physician? Is there a reason they have to be like delineated differently?

**ARCH:** It-- it's, it's a class-- it's a category. And I think that there was just an attempt to-- I mean-- and as, as Senator Blood said this is-- you know, what, what we're seeing in our society is, is this privacy issue just becoming larger and larger. We've all been affected by breaches of, of information. It, it is-- it, it is an attempt for

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this particular class, which is the physicians and the-- whether it be MD or DO, the physician's being protected because they are, they are finding themselves frontline in those situations. And I-- again I personally was, was involved with the, the hospital when, when we had a very serious incident and it, it was an extended period and, and it's, it's a serious situation.

**HUNT:** OK, thanks.

**BREWER:** Additional questions? Just so every-- oh, go ahead, Senator Kolowski.

**KOLOWSKI:** Mr. Chairman, thank you very much. Senator, thank you for being here today in a very interesting topic to say the least. I guess I, I have two questions and I'd ask, I'd ask you to answer them but I would ask something like where do you start with this and where do you end with this? Because I don't see an answer on either side of those questions. I could go, go down the list and tell you hundreds of people that should be secluded and their numbers not listed and all the rest. Yet, where does it end? I, I just had to throw that on the table. Not asking you to respond to that, but kind of rhetorically asking that kind of question on this type of issue, so thank you.

**BREWER:** All right, additional questions? So everyone understands your background, you worked with medical professionals before--

**ARCH:** Healthcare Administration,--

**BREWER:** OK, so that's--

**ARCH:** And, and so I oversaw hospitals and clinics.

**BREWER:** And that's how you had the connection to understand the issue?

**ARCH:** Yes.

**BREWER:** All right, and just so the others in the room in case they weren't on the floor this morning, the bill on the National Guard wasn't for the 4,000-plus national guardsmen, it was for the two dozen that do direct support to law enforcement and most of those are in a category of, of secret duty either with the DEA, the U.S. Postal Service, or the, the State Patrol. So that-- I was afraid people would freak if they understood that we're trying to take it from all

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national guardsmen. Anyway, thank you for your testimony-- you're opening on, on LB118, and are you gonna stick around for closing?

**ARCH:** I am.

**BREWER:** Thank you, sir. All right, proponents of LB118. Welcome to the Government, Military and Veterans Affairs Committee. You may begin.

**SAM HUTCHINSON:** Hi, I'm Dr. Sam Hutchinson, S-a-m H-u-t-c-h-i-n-s-o-n. Thank you, Senator Brewer, Brewer. Thank you committee for having me here. I'm a part of this bill. I am a psychiatry resident. So I think aptly the field should be sitting here and part of this bill stems from a personal experience of mine. I was working at an inpatient unit in Omaha. I saw a patient who was off his medications and agitated. He was making threats and quite frankly although I don't get threatened every day, it's part of the job. I do get threats. But this individual particularly threatened out of the blue just to go to my house and murder my children. He didn't know I was married. He didn't know I had kids. We had him stabilized on medications and several days later he probably didn't even recall making those statements. It was just the state of mind he was in at the time. But it got me thinking when I went home and I thought about it even the next day. Although I am quite busy, I wanted to kind of look into it. So I actually went down-- I live in Sarpy County, I went down and I was told about this great bill that we have for law enforcement because of their constant contact with people with violent intents. And I thought about well-- you know, to speak to your point, we're not actually a part of-- separate from that. Oftentimes when police have someone who are quite agitated or they are concerned about their mental health they bring them to the hospital. And I've been called down in the middle of the night to assist. So we're actually very integrated into that system of helping our community members particularly that law enforcement has to see. So when I do the stats-- Senator Arch did a great job of kind of picking some of the points that I was gonna to make, but to speak to your point about the post office, I went down to the post office and thought, well, what if I open a PO Box and I take that down to the county assessor. And they said, you can do that but we're still gonna keep your physical address on file so there's not really-- you can, you can change it at the post office where someone can't go down there they can just get a PO Box, but someone can still go to the assessor and find your home address. So in those points, kind of looking at it, I actually have with me-- this is from OSHA, Occupational Safety and Health Administration, our federal government, the healthcare industry

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are four times more common in health care than in private industry on average for workplace violence. In fact, I like this quote, this is from Dr. James Phillips of Harvard Medical School and Beth Israel, Medical Center in Boston: Our industry statistically is the most violent non-law enforcement industry in the United States. That's using government statistics that have been shown to underreport the actual violence that takes place by up to 70 percent. I keep that in mind. This-- the state of Nebraska passed statute 28-931 making assault on a health care professional a Class IIIA felony that was done in part because of the dis-- disproportionate amount of violence that we as a healthcare industry are exposed to. Keeping that in mind, we've had-- if you watch the news regularly, physicians are subject to violence and at times murder. I'll point out 2013, even here in Nebraska, Dr. Roger Brumback-- unfortunately, his wife and their child were murdered separately in their home. When I looked into this I was very thankful that someone had done the work for law enforcement. That was a great starting point. We're not asking for anything different. Just the same to speak to your point about others. I'm here in the capacity of the Nebraska Medical Association which represents both MDs and DOs. But we certainly wouldn't be opposed to other professions such as psychologists or nurse practitioners or anybody else who felt that they would like to look into those same kind of support. So the yellow light tells me to stop so I'll stop.

**BREWER:** Actually, it tells you to get ready to stop, but--

**SAM HUTCHINSON:** OK,--

**BREWER:** --it's close enough, close enough for government work.

**SAM HUTCHINSON:** --then I'll, I'll use my last few seconds just to say that we would be supportive of other people and actually other states have included a whole host of logical but certainly unique professions that they felt would benefit from having that removed. And, again, impulsivity by take-- taking it off the Internet you really prevent someone in that impulsive moment of wanting to be angry and lash out where they would actually have to physically go down and show their face, identify who they are, and ask for it in writing, I think makes a big difference in terms of-- you know, potential to your point, why wait for something to happen before it happens.

**BREWER:** All right, thank you for your testimony. Senator Blood.

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**BLOOD:** Thank you, Chairman Brewer. And thank you for your testimony, and you answered part of what I was going to ask. So-- because this bill does not include psychologists and to me it makes actually more sense it-- it'd be psychologists over physicians. My personal opinion, because I do know how much you work with people that can have really serious and dangerous imbalances and, and is very sporadic. You don't know, and I, I know that's a very dangerous situation. I admire the heck out of what you do for a living. I also want to clarify something so you understand what I said in reference to the form 3575.

**SAM HUTCHINSON:** Um-hum.

**BLOOD:** So that's a change of address form. So the fact that you went to the PO Box then you would of had the USPS-- the Postal Service would have had to make that form available because it's public information. So a lot of people that are stalked don't understand that when you try to hide your paper trail by changing where you live or changing where your mail goes, that that is public information when you do a change of address form. So that's what I was referring to.

**SAM HUTCHINSON:** OK.

**BLOOD:** So I'm gonna ask you the same question I asked Senator Arch. So this, this is a privilege to be able to have your name off the list for, for five years. We're asking-- you're asking us to remove it from something that the government is said is, is public information. Would you be willing to pay for that?

**SAM HUTCHINSON:** I would be for my children.

**BLOOD:** Well-- and I, I, I think that as we-- if we open this can of worms I have a really strong feeling there's gonna be a long list of people coming after you. And I, I think this is something that much like an unlisted phone number, that you should pay for the privilege because it is taxpayer dollars that you are utilizing to, to accomplish this.

**SAM HUTCHINSON:** And again, to kind of dovetail to Senator Brewer's point, this wouldn't automatically take all physicians off. They would have to actually go down there and ask for it. So you would have to take into consideration what percentage are actually gonna go down and do that, probably those that have had a bad experience. And when I presented this to the Nebraska Medical Association it was pretty moving to watch multiple physicians get up and share some very scary

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stories of close calls. So I think-- you know, taken into effect you wouldn't get everybody running down there on day one. But as those events happen, I think people would do the logical thing and take those steps to protect themselves and their family.

**BLOOD:** Right. And I, I did read the bill and I understood that-- what it said. So the issue for me isn't that I think we're gonna have a bunch of physicians going down. The issue is that today it's you, tomorrow it's the psychologists, tomorrow it's nurse practi-- practitioners, then maybe grocery store managers, then-- because at every level of life we have stories and dangerous stories of people who have been stalked and harassed including public servants. I'm sure many of us have stories that are really scary. The longer that you're-- you serve the more likely you are to have those stories, and we put our home address when we file for office. So the concern that I have is we are definitely opening up a can of worms whether we want to or not. And whether it's 1 physician or 1,000 physicians or 10,000 physicians, I, I think that people should have to pay for this privilege because it's taxpayer dollars that ultimately addressing what has to be done when you go to the county courthouse.

**SAM HUTCHINSON:** OK, again-- you know, I, I, I didn't sit in the room when this came up for law enforcement. I don't know if that was a concern at that time or what the reasoning is for, but I personally wouldn't oppose to pay for that privilege. I think like most people-- you know, you have to make that decision for yourself. Am I above what the average person in the public is for terms of at risk for interactions with people of violent intents, and I am. I would just like the opportunity to be able to do that. Whether that's at no cost to me or I have to pay for it, I would gladly do so again for my family.

**BLOOD:** Fair enough. Thank you.

**BREWER:** All right, any additional questions? Seeing none, thank you for your testimony.

**SAM HUTCHINSON:** All right, thank you.

**BREWER:** Additional proponents for LB118? Those in opposition? Welcome back to the Government, Military and Veterans Affairs Committee.

**SHAWN RENNER:** Thank you, Senator Brewer.

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**BREWER:** And you got to do the paperwork here. There you go.

**SHAWN RENNER:** Members of the Government, Military Affairs-- and Veteran Affairs Committee, my name, again, is Shawn S-h-a-w-n, Renner R-e-n-n-e-r. I'm a lawyer at the Cline Williams Law Firm. I'm a registered lobbyist on behalf of Media of Nebraska, Inc. Media of Nebraska is a coalition of news media interests and supporters who advocate on behalf of issues of, of importance to that industry. Media of Nebraska, Inc. opposes LB118. I'll be brief. My clients share the concerns expressed by Senator Kolowski and Senator Blood. And that is-- I don't want to minimize the concerns that you just heard from the doctor, or from Nebraska Medical Association, but there are plenty of other folks out there that could express similar concerns and you're likely to see a series of bills thereafter who pass this one in which each of those separate constituencies will tell you that they want a similar consideration. I do think it is different when we're talking about law enforcement personnel as opposed to at least most everybody else out there. When LB624 passed in 2017, that was limited to law enforcement personnel. Senator Brewer has amended LB152 to limit it just to those National Guard members who are doing law enforcement functions. Media of Nebraska did not, did not oppose either of those two bills and wouldn't. Our concern here is where do you stop once you decide the physicians have a legitimate concern. Do lawyers? Do social workers? Do counselors? Do grocery store managers as Senator Blood identified? I don't think you could find a group of people that couldn't make an argument that they're not subject to being stalked, that's unfortunately the society we live in. And my clients, the news media, actually use these records on a-- if not daily basis, a very regular basis. If they listen to a police scanner and there is an address announced on that scanner which is perfectly legitimate activity by a reporter and how they learn the news, the first place they go to find out who lives at that address is the records we're talking about. If there is an incident report which is a public record under Nebraska law that identifies an address but doesn't identify who owns the address. The place they go is to the real estate records to find out who's associated with that incident report so they can report the news to the people who live in their area. In fact, I think you could make an argument that the one group of people or interests that are singled out for being most harmed by this bill are the news media. And that's because of the way the bill is set up. You can make a written request under LB18-- 118 to get a physician's information, residence-- address. That's a written request under the public records statute and there is a four business day

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response period for the register of deeds or county assessor to provide that information. Not always but oftentimes after four business days are gone, particularly if there's an intervening weekend, it's no longer news. And so while a stalker who was interested in causing harm to someone could easily wait that four business days after making the written request, go do the stalking and bad thing he or she may be willing to do. That's not an option for the news media. This is, this is information that they actually need on a timely basis in order for it to be of any value to them. And I'd submit there's a legitimate reason why our real estate records are public records. They-- the-- whether the residential address or not is a public record, the actual real estate record has to be a public record or we couldn't buy and sell real estate. And so we're taking one portion of that real estate record singling out a particular group that says I can opt out of that system if I want. The stalkers who are the concern that lead to that opting out can still get the information by making a written request. The news media who get access to that information now so they can report the news can't use it in a timely manner. That's the concern of my clients. And specifically, Senator Blood and Senator Kolowski, this won't be the last bill of this sort you hear if, if it advances to the floor and is passed by the Legislature. We urge you to indefinitely postpone LB118.

**BREWER:** Thank you for your testimony. Questions? Well, you must have done a good job. Thank you.

**SHAWN RENNER:** Thank you.

**BREWER:** Any additional opponents? Any in the neutral capacity? A familiar face for the Government Committee. Welcome back to the Government, Military and Veterans Affairs Committee.

**LARRY DIX:** Senator Brewer, it is so good to be back, members of the Committee. For the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials, appearing today in a neutral capacity on LB118. So the record is good-- when I look at these bills-- you know, in future years some of the testimony you're gonna hear is gonna be the same as what it was on Senator Brewer's bill so that in future years when we look at the record on this bill it is contained in there. As I said, the last time I was here and as I said on Senator Wishart's bill in 2017, what we're gonna have is a list of people showing up year after year adding to this and a number of senators have certainly made that statement. But on, on our side of it which we're looking at assessment records and register

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of deeds records those are the folks that, that I represent. And to give you a little bit of history-- and we were looking at it in law enforcement. We did get the records from Lancaster County. There were 198 law enforcement folks that signed up. I do not know how many potential law enforcement members there are in the city of Lincoln or Lancaster County or the small villages, but that's the number of requests. We also provide software to a number of counties and of those 50 counties that we provide software to, 21 of those 50 counties had requests made. Out of those 21 counties that had requests, there were 114 applicants. So there are some using it but not overwhelming. As I had said at the last hearing on Senator Brewer's, I did take the time to look up the members of the committee. It took me 3 minutes and 30 seconds to find all of you. Your addresses, your age, and a phone number, quite honestly, and I didn't access any assessor's records or register deeds records. So that information is so relatively obtainable, it's, it's hard to believe, and I did not pay anything for those searches. Those are sites that are just out there and available. So a couple of things-- you know, Senator Blood brought up, I had jotted down also when we're starting to talk about mental health certainly concern would be nurses in my mind. Certainly when we start to go down this path there are a number of folks that make tough decisions. We will have senators on the list. We probably should have county board members on the list. You can only be shocked at how it would look if, if NACO would bring a, a bill forward to take those county board members off there. But we appreciate what the doctor's doing and they're in a tough situation. Senator Wishart has a bill upcoming that you'll hear pretty much the same testimony once again. So on a closing note, I think Senator Hunt had asked a little bit of a question why physician or osteopathic physician. You can imagine if our assessors get an application, they're going to have to make a determination is this person a physician or an osteopathic physician. And if it's a psych-- psychiatrist, is the document gonna say they're a psychiatrist because our assessors are gonna see something that says-- there's a medical, medical document that says-- you know, they're in that profession. So we would ask the committee to look at that. So you could probably refine that to help our assessors and our register deeds make a clear definition of, of who we're putting on that record or who we're removing the address for. And as a little humor on a Friday afternoon, before long we'll have more of these applications than we do driver's license-- or license plate applications coming for the legislation. Thank you, Senator Brewer. I'm happy to answer any questions anybody might have.

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**BREWER:** All right, I'm guessing we're gonna have some for you here. Questions? Senator Blood.

**BLOOD:** Thank you, Chairman Brewer. And thank you for your testimony. Yeah, while you're saying people who might be doing it, I started to think about teachers-- teachers get harassed a lot. So since you do represent the county-- counties, if, if there were a fee that we were to add onto this bill, what would-- what do you think would be a fair fee--

**LARRY DIX:** You know--

**BLOOD:** --to compensate for staff's time?

**LARRY DIX:** --I think if we go back in time-- Sarah Wishart, when she originally introduced the bill, I think she had a fee attached to that bill. Some of the members that were on the committee may remember that. And then at the end that fee was redu-- was removed. And, and I think some of it-- the fee was small. And so then behind it folks like ourselves are gonna have to set up an accounting system--

**BLOOD:** Right.

**LARRY DIX:** --to do that. Now what is the legitimate fee, it, it runs for a five-year period of time. So someone would say, well, is it worth \$20 a year. That would be a \$100 fee. I don't know what the right fee is, but it, it certainly would have a little bit of a limiting effect on it I believe.

**BLOOD:** What's the average hourly rate for somebody that would handle it at that level?

**LARRY DIX:** Oh, I would imagine somebody that if you would make a public records request it would go to some staff in, in the assessor's office and I suppose by the time you got salary and benefits you might be around \$15, \$17 an hour.

**BLOOD:** And just to clarify, psychologists would not be included in this because they're not considered a physician?

**LARRY DIX:** That's right. And, and I found it interesting because that's the issue our assessors would have is the same issue that the testifiers are having is--

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**BLOOD:** Right.

**LARRY DIX:** --are we in or are we out? And of, of course, that would be a very difficult decision for our assessors. Unlike-- you know, I think last year, Senator Brewer, we worked with-- or on Senator Wishart's bill,--

**BREWER:** Um-hum.

**LARRY DIX:** --I came up and I had a visit-- conversation with you of can you help us define who these people are, and you were able to just nail it specifically as to who these people would be that would be making this request.

**BLOOD:** Well-- and again, I think there's certainly a difference between privacy and security. And when we're talking about law enforcement and we're talking about military that work at a high level, we're talking about safety and security. When we're talking about the other, we're talking about-- and it's still scary and I get that. And I don't mean to, to be leaning in any way, but it's still a privacy issue and, and where would we draw the line because, gosh, I can't tell you how many times we hear about people who stalked or harassed or--

**LARRY DIX:** So true. And, and-- you know, from our perspective we don't want them-- you know, it's the Legislature. It's the whole body of how you want to look at whose names are off there, that isn't our position. That's really why we came neutral because we believe it's a legislative decision and may be one that, that should really be looked at in depth. And I think when we have Senator Wishart's bill, we'll have a little bit of a different conversation on, on that bill. A little bit different discussion with the direction she's going.

**BLOOD:** Thank you.

**BREWER:** All right, very good. Additional questions? Seeing none, thank you, Larry.

**LARRY DIX:** All right, thank you.

**BREWER:** Have a good day. Any additional testifiers in the neutral position? Seeing none, would you care to close on LB118?

**ARCH:** Thank you for your time this afternoon to consider this bill. I just have a couple of comments. One, if you go back to February 3 of

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2017, when, when Senator Wishart brought the bill regarding law enforcement, the suggested fee at that time was \$25. And, and as he previously indicated that was removed during the process, but \$25 was the, was the thought there. I, I would say that we're certainly open to psychologists. I think that this can be, this can be worked out as far as, as far as how to identify the individuals as I was thinking. I think you're probably talking about licensed. And so whether it be producing a copy of the license, whatever it might be for the individual, would, would be pretty clear that this is-- you're, you're speaking to a physician, surgeon, and, and could make that clear to the assessor's office. Again this isn't, this isn't removing access to the information, it's, it's removing the on-line access to the information so individuals can still get information and it is that impulsiveness I think we're trying to prevent here. The, the decisions that were called on here in the Legislature, as in my short tenure here, I would categorize in, in, in this way. We are, we are called upon to always balance and sometimes we're balancing risk and reward, sometimes we're balancing cost and benefit, sometimes we're balancing freedom and security. And in this particular case, I think we're, we're balancing safety and transparency. And so our desire to be transparent and have these assessor's records offered to the public is on the one side and then the security and the safety of the individual is on the other side and that's-- these are the decisions that we're called upon to make on a very, on a very regular basis. So I think that in this particular case my perspective is that the balance is that we want to make sure that the individuals that are practicing medicine are secure and as, as best we can knowing that there is an inherent risk to the practice of medicine, you're, you're dealing with a lot of different individuals that goes with, that goes with the practice of medicine. But I would suggest that-- and request that you, you pass LB118. And again, I would answer any other questions you might have at the, at the close here.

**BREWER:** All right, thank you for your closing. Questions, questions? All right, seeing none, thank you for your closing. And we do have some letters to read into the record, LB118 proponents: Travis Teetor, on Nebraska Board of Health; Aaron Lanik, President and Chair [SIC] of Nebraska Academy of Family Physicians. Opponents: Brian Pressler, Papillion. Neutral: Diane Battiato, Douglas County Assessor, Register of Deeds, Omaha, Nebraska. With that, thank you.

**ARCH:** Thank you.

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**BREWER:** All right, we're looking at having a bit of a change in sequence here. Senator Crawford, if I move you forward will you be OK with that?

**CRAWFORD:** Sure.

**BREWER:** All right, let's go ahead and move you up and that way we cannot have you waiting. Welcome to the Government, Military and Veterans Affairs Committee. You may begin whenever you're ready.

**CRAWFORD:** Thank you. Good afternoon, Chairman Brewer and members of the government committee. For the record, my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm here today to introduce LB120-- 123 for your consideration. This bill was requested by the Nebraska Commission for the Blind and Visually Impaired. The Nebraska Commission for the Blind and Visually Impaired is the rehabilitation agency for the blind in Nebraska. It works with blind and visually impaired Nebraskans to help them achieve independent living skills and assist them with finding employment. Under the Taxpayer Transparency Act, the Commission is currently required to publish information about contracts for individuals receiving services. This requirement violates the Commission's confidentiality policy. The Nebraska Vocational Rehabilitation Agency under the Department of Education, which is the sister agency to the Commission, is currently exempted from this requirement under the Act. And that provision vocational rehabilitation contracts for the purpose of providing specific goods, services, or financial assistance on the behalf of, or to a specifically named individual, are exempt from requirements to publish information about active contracts involving expenditures on the state spending transparency Web site. LB123 would add a simple exemption to mirror the current exemption for vocational rehabilitation contracts or the Commission for the blind and visually impaired contracts with individuals. Carlos Servan, the executive director of the Commission will speak after me and can hopefully help to answer questions you have and help to underscore the need for this legislation. Meanwhile, I'm happy to try to answer any questions that you have.

**BREWER:** All right, thank you for your opening. Questions? Seeing none, you'll stick around for closing?

**CRAWFORD:** Yes, thank you.

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**BREWER:** Thank you. First testifier, come on up.

**CARLOS SERVAN:** I don't have copy of my testimony.

**BREWER:** We'll, we'll have a page snag that for you. And don't worry about the time, you just go ahead and--

**CARLOS SERVAN:** I'll make it short, Senator. Thank you.

**BREWER:** All right.

**CARLOS SERVAN:** My name is Carlos Servan, C-a-r-l-o-s S-e-r-v-a-n. My address for the record, 3800 C Street, Lincoln, Nebraska 68510. Very much what Senator Crawford, Crawford mentioned is the same thing I was going to say, except that I want to add that the Vocational Rehabilitation Agency in Nebraska and the Commission for the Blind are under the same federal law and regulations 34 CFR 361. And besides that, I would like to answer any questions if you have any for me.

**BREWER:** Thank you for your testimony. Questions? Wow--

**CARLOS SERVAN:** Making sure.

**BREWER:** --you, you have no questions, so thank you.

**CARLOS SERVAN:** Thank you.

**BREWER:** All right, additional opponents?

**DICK CLARK:** Proponents.

**BREWER:** Proponents, proponents? Thank you. All right, no additional proponents. Opponents? And any in the neutral position? Well, we don't have-- oh, yeah, I suppose I should let you close.

**CRAWFORD:** Oh, that's all right, I'm gonna waive closing.

**BREWER:** You'll waive closing. All right, there's no letters to read in on LB123, so that closes our hearing on LB123. And I will hand the gavel over.

**La GRONE:** All right, we'll now open our hearing on LB150. Senator Brewer, welcome to your Government, Military and Veterans Affairs Committee.

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**BREWER:** Thank you, Senator La Grone. Good afternoon, fellow members of the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer. For the record, that is T-o-m B-r-e-w-e-r. I represent the 43rd District of western Nebraska. I'm here to introduce LB150. This bill was brought to me by the League of Municipalities. Here's the problem this bill is designed to solve, nonresident people and groups outside of Nebraska are using Nebraska's generous public records law to a extent that burdens villages, cities, towns, and county government. Many of these local units of government are very small and have extremely limited capability to respond to large records request involving a lot of research and hundreds or even thousands of copies of pages. For example, Miss-- Municipalities will receive requests for all of their GIS data or all of their information on bidding, purchasing, or all of their information on a miss-- municipality on their official job descriptions and salaries. These requests take hours and hours to complete and for our smaller communities, this is a particular burdensome request. After this work is done by the small towns, the out-of-state companies receive this information and turn around and sell it and sell the data commercially. I think this is only reasonable that a fee for this sort of request be adjusted. And the discussions, discussions that I've had since introducing this bill, I've learned that the language may have some unintended affects. For example, nonresident individuals seeking records pertaining to power of attorney action for Nebraska residents who have terminal illness or are no longer able to maintain their affairs should not be subject to the high fees. I will work with the League and members of this committee to write a committee amendment that narrows the scope of this bill so that we can avoid raising fees on those sorts of record requests. I'll be followed by the League who will address in more detail the issues subject to your question. That concludes my testimony.

**La GRONE:** Thank you, Senator Brewer. Are there any questions? Senator Blood.

**BLOOD:** Thank you, Vice Chair La Grone. Thank you, Senator Brewer. Do you remember when I brought this bill last year to this committee?

**BREWER:** I'm going to say, yes, but I'm hoping you don't ask me a lot of detail on it.

**BLOOD:** I'll do leading questions. [LAUGHTER]

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**BREWER:** Thank you, thank you.

**BLOOD:** So do you remember some of the testifiers such as the Nebraska Historical Society and the huge burden that it created for their organization?

**BREWER:** I do remember. I don't remember the amounts if they brought--

**BLOOD:** Thousands.

**BREWER:** --dollar figures, but, OK, thousands.

**BLOOD:** And so it would be your impression that there are quite a few organizations that people may not think about such as the Nebraska Historical Society where folks aren't looking for information like birth certificates and whatnot but they are literally taking advantage of these organizations, reselling the information outside of this state, and benefiting from that financially?

**BREWER:** I would say, yes.

**BLOOD:** Thank you, Senator Brewer. That's all-- only questions I have.

**BREWER:** OK. And, and--

**BLOOD:** I could tell you also who voted against it. If you want to know that, last year.

**BREWER:** Did I really?

**BLOOD:** Not you.

**BREWER:** Oh.

**BLOOD:** Senator Murante and Senator Hilgers voted against it last year.

**BREWER:** OK, well,--

**BLOOD:** So you have to deal with them.

**BREWER:** --I'm glad that I, I voted for the--

**BLOOD:** You did.

**BREWER:** --bill,-- [LAUGHTER]

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**BLOOD:** I would let you know if you hadn't.

\_\_\_\_\_ : That would be awkward.

**BREWER:** --and I--

**BLOOD:** Totally awkward, and I would not have said that on public record if you had not.

**BREWER:** You were, you were obviously wise to carry that bill. Any additional questions? [LAUGHTER]

**La GRONE:** Thank you, Senator Blood. Are there additional questions? Seeing none, thank you for your opening. We'll now move to proponents-- first proponent. Welcome to the Government Committee.

**ERVIN PORTIS:** Thank you, Mr. Chairman, committee members, I am Ervin E-r-v-i-n, last name is Portis P-o-r-t-i-s. I'm the city administrator of Plattsmouth, and I'll just say I think Senator Brewer and Senator Blood are both wise. So-- and, and, and thank, thank them both. You know, from the statute, the public records statute, is this sentence: citizens of this state shall have the full right to know of and have full access to information of the public finances of the government and of public bodies and entities created to serve them. It would be impossible-- it would be folly to disagree with that. That's good public policy. Then I'll take you back-- those of you who were present or were around the Legislature in 2013-14, we had a conversation with Senator Avery about some revisions to public record statutes and, and Senator Avery argued, and we agree with this, that Nebraska's taxpayers pay for the creation and storage of public records. They shouldn't be charged when requesting access. Again, I would argue it's folly to disagree with that. I don't-- I mean let's talk about LB150, and, and Senator Brewer's points are, are spot on. I, I sit here today because I can share two stories of for profit companies with no investment in Nebraska. They are not citizens of this state. They are not Nebraska's taxpayers, but they're making money off Nebraska's taxpayers. I have no problem with somebody making money. Frankly, I think that's good for all of us, but they're taking advantage of free access to public records to make a profit. And one of those companies is SmartProcure. SmartProcure several years ago flooded local governments all across the state including Plattsmouth with public records requests, they were out of Deerfield Beach, Florida. Probably a good company, but they take advantage of, of Nebraska's public records laws and other states to secure a wide array of local, local

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government records to turn that information around and sell it for a profit. In our case now-- you know, they, they gave us a public records request for all of our purchasing records and asked for them to be formatted in such a way that they had no cost in, in obtaining the information. But then they turn around and they sell that information that we and anybody else who is required to comply with the public records statutes in Nebraska and other states, they sell that information to guess what-- other local governments around the country and to other businesses. When they asked me if I wanted to buy the data that I'd, I'd given them-- well, could I get a discount? No, of course, I could not. You know, another out of state-- another scenario, an out-of-state IT vendor requested all of our I-- IT invoices for the previous six months. Copies of all of our IT contracts, our service agreements, and our maintenance records. It was not intended as a means to hold the local government accountable, but-- you know, they're doing to Plattsmouth what they had done in many other [INAUDIBLE] communities. But in learning the costs of municipal spending to, to help set prices on their bids with other governmental entities, they're making money. Good for them, but at taxpayer's expense. In our case, collecting-- we underestimated the time-- amount of time it would take to collect the data so we didn't tell them that there would be a deposit for it and there'd be a charge. And we, we estimated that we could do it in less than four hours, but it was, it was seven hours. So we told them we were gonna invoice for three hours. They never paid the bill. They never collected the data. But we wasted seven hours. You know, Senator Brewer said, you know, we're a small community-- small, small government. We're not into-- in creating government jobs. You know, our clerk's office was-- is two people, two people-- though they lost a full day in collecting those records. And in, in both these cases SmartProcure and the, and the IT company-- I don't remember the name of the IT company, they're out to make money, not from Nebraska, not as citizens of this state, not as Nebraska taxpayers. And answer any questions you might have.

**La GRONE:** Thank you for your testimony. Are there any questions?  
Senator Blood.

**BLOOD:** Thank you, Vice Chair La Grone. It's nice to see you again,  
thank you.

**ERVIN PORTIS:** Thank you, Senator. It's always good to see you.

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**BLOOD:** Thank you. Well, that makes one of you. It's Friday, we can joke a little bit. So one of the concerns that I remember people having at the last hearing is that this might end up being an abuse of power. That if we give you this opportunity that you're gonna use every chance you can to charge people. And I don't agree with that. But I want to hear what you have to say.

**ERVIN PORTIS:** Well, I, I think we understand the public record statutes quite well and we endeavor to comply in, in all respects. In, in this case, we just think these are not Nebraska's taxpayers. They're not citizens of the state, but they're taking advantage of all of us taxpayers to make money. I have no problem with somebody making money, but there ought to be a price for it if the taxpayers are paying for it.

**BLOOD:** Well-- and to clarify this doesn't apply to when people call for birth certificates or when in general for the, the general stuff that's available to the public already, right?

**ERVIN PORTIS:** Yes, you're correct,--

**BLOOD:** But there's already a process in place-- a fee.

**ERVIN PORTIS:** --you're, you're correct. I'll give you a good example. I have for a number years-- I'm a Nebraskan, but for a number years I lived in the state of Michigan and I had to come back to Nebraska on one occasion to get some of those vital statistics records for my family and willingly did so and willingly paid the price that was,--

**BLOOD:** Right.

**ERVIN PORTIS:** --that was required.

**BLOOD:** Right, because there's already a process put into place,--

**ERVIN PORTIS:** There is, there is, yes.

**BLOOD:** --and that's why I want to clarify because people always confuse the two. Thank you.

**ERVIN PORTIS:** Thank you.

**La GRONE:** Thank you, Senator Blood. Are there any further questions? Seeing none, thanks for coming down.

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**ERVIN PORTIS:** Thank you.

**La GRONE:** Next proponent. Welcome back to the Government Committee.

**CHRISTY ABRAHAM:** Thank you, Senator La Grone and members of the Government, Military and Veterans Affairs Committee, my name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, here representing the League of Nebraska Municipalities and I, too, want to thank Senator Brewer for introducing this bill and for Senator Blood for introducing a very similar bill last year. I think Mr. Portis and Senator Brewer have done a great job of sort of outlining what the city's concerns are about this and that is large out-of-state companies asking for huge amounts of records from every municipality in the state. Last fall we had a company called, and I want to get the name correct, I think it was called American Transparency and they asked for every position in the city and their salary information what other bonuses they had received and we received dozens and dozens of calls in our office about do I, do I have to do this? How do I do this? What do I do? It takes up a lot of our time. And as Mr., Mr. Portis talked about-- you know, a few years ago we did allow the first four hours of staff time to be free of charge to people who make public records requests. So basically what this bill boils down to is if you're an out-of-state person you're gonna pay for records from the beginning. That clerk's time is gonna be charged from the minute he or she starts working on those records. There is a U.S. Supreme Court case *McBurney v. Young*, which I'm happy to share with your excellent legal counsel, that actually talked about this issue. Virginia had a FOIA law that said that out-of-state residents can't get any records. They were prohibited access from any records. And the U.S. Supreme Court upheld that that was constitutional and fine. And the main reason for them saying that is the Virginia taxpayers were the ones who are really footing the bill for the fixed costs of this recordkeeping. So there's no obligation for the state to offer those records to out-of-state citizens. Now this bill does not go that far and I want to be clear anyone from out of state can come in and request records from Nebraska. The last thing the Municipalities want to do is restrict access. You may hear from some folks later who say that's the intent of the bill. It's not. We are happy to provide these records. Our argument is if you're from out of state, you're not a taxpayer of Nebraska, you need to pay for those records from the beginning. You don't get the four hours free. So I'm happy to answer any questions that you have. Thanks so much for your time today.

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**La GRONE:** Thank you for your testimony. Are there any questions? I do have-- oh, sorry, Senator Hunt, go ahead.

**HUNT:** Go ahead.

**La GRONE:** Oh, OK. I just-- I have-- it might not be quick, but it's a language question.

**CHRISTY ABRAHAM:** Sure.

**La GRONE:** I'm on page 5 of the bill, line 17 through 19. Is the term news media defined anywhere in public record statutes?

**CHRISTY ABRAHAM:** Senator La Grone, that's a great question. And we worked with Media of Nebraska on this bill and, and we had those exact same conversations. News media is defined in-- and I apologize I'm gonna muddle through this a bit, but the Supreme Court-- the Nebraska Supreme Court has put out some standards about which news media can have access to the court system. It's a pretty narrow definition. I mean it's pretty mainstream news media. You're registered with the FCC, etcetera, etcetera. We didn't attempt to define it because we do think there are probably bloggers or some nontraditional news media that may also want this information. And so when the news media or the Media of Nebraska had discussed it, we decided not to define it. But if we decide to go down that road certainly the League and Media of Nebraska would like to be involved in those discussions. But we did have an active discussion about it.

**La GRONE:** Because here's my question on that-- let's say I am an out-of-state company-- let's say I'm-- oh, we'll just call it company Y from wherever, and I'm making all these requests and suddenly we pass this law and I decide that you know what I'm actually just gonna start a company Y blog or company Y news LLC, and then all I'm really doing is pumping out information. Oh, I just requested all this information, but then because news media is not a defined term I just come in and get the, the resident rate because all news media get the resident rate.

**CHRISTY ABRAHAM:** Sure. No, I appreciate that concern. And, and Municipalities have had that same discussion, too. Only in the broader sense of what if I'm an out-of-state resident, but I-- you know, talked to my uncle who is a resident of Nebraska to ask for those, those records. And I think-- you know, you really have to weigh the pros and cons of that. We're thinking about our clerks. They may not

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know-- you know, what an FCC regulated news company is as opposed to a blogger. And we're not sure we want to put them in the position of exactly having to figure that out. Our experience with Transparency American and SmartProcure is these are mass e-mails that are sent out to everybody. So I guess what I'm saying is if someone I guess is taking the time to create a blog that they want these records-- you know, maybe we'd say, yeah, OK, fine your news media will do that for you. Our experiences-- these are just mass e-mails that are sent out by companies. They wouldn't even take the time to, to be that clever, Senator La Grone. [LAUGHTER]

**La GRONE:** Well, I guess I might have just given an idea to them.

**CHRISTY ABRAHAM:** That's right, thanks. Thanks for that.

**La GRONE:** All right, that's all I had. Are there any questions? All right, thanks for coming down.

**CHRISTY ABRAHAM:** Oh, thanks so much.

**La GRONE:** Next proponent. Welcome to the Government Committee.

**JON CANNON:** Thank you, Senator La Grone, distinguished members of the Government, Military and Veterans Affairs Committee, my name is Jon Cannon, J-o-n C-a-n-n-o-n. I am the deputy director of the Nebraska Association of County Officials and I'm here to testify in support of LB150. We would also like to extend our thanks to Senator Brewer for having brought this bill. We think this is an important step for the Nebraska Legislature to take as far as defining what exactly a public record is and who has access to that. I would like to recount my own experience with public records request about ten years ago. I had the experience of working with a company that was coming out of Oklahoma that wanted a scrub essentially of all the assessor's records in the state. That would be all property record cards, any taxing information, residential information, etcetera. You know, we pointed it out, OK, well, here's the cost. And they said oh, no, no, no, no, we'd like to actually put a, a, a hard drive-- attach it to your own drive-- to your own server and have you download all that information and scrub it all for us. And we said, that's, that's absolutely not going to happen. And they came back and they said, OK, that's fine. We will go ahead and we'll, we'll just ask you to charge us a reasonable rate. Well, the Supreme-- or the Attorney General has released an opinion which says, ten cents per page is something that is reasonable, reasonable recovery of costs. And when we sent them the

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bill they said, yeah, we don't think that's, that's what we want to pay. We worked with them and we ended up providing them with their information at a reasonably nominal cost. But that illustrates the-- you know, the sorts of clever arguments that people are going to make as far as trying to have access to Nebraska's taxpayers information. We do think that the definition of domicile in this bill could probably be tightened a little bit. We note that the Department of Revenue has regulations for income tax purposes which define a domicile in the state. That's probably some-- a good place to start. Also to go to your point, Senator La Grone, about what defines a news media. You know, I'll just-- this thing right here, I've got a Twitter account with 29 followers, all of whom I am sure are hanging on my every word. Perhaps I'll send something out-- tweet something out about this hearing today and I can probably reasonably say that I'm a blogger as a result. I'm, I'm providing news to all of my 29 followers. It seems that that's probably not the sort of organization that we want to be. You know, if I'm with American news media or some sort of similar organization and I say, OK, that's, that's fine Nebraska you're not going to provide that sort of information to us. Oh, by the way here's my Twitter handle. I'm asking as a member of the media. We think that that definition probably could stand to be tightened up a little bit as well, and we'd be happy to join in the discussion as far as what that should look like. I think someone earlier had referenced that someone came and said, well, Nebraska has got extraordinarily high fees. As I described earlier, the Attorney General has an opinion that says, ten cents a page for a record is reasonable. And so I, I don't think a dime per page is, is a really high fee, but if someone wants to say, well, I'm asking for a million records at ten cents a page that's, if my math is correct, that's a hundred grand. Well, a million records is probably worth that if, if that's what you're looking for. With that, I don't have anything else. I'd be happy to take any questions this committee has. Thank you.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

**JON CANNON:** Thanks much.

**La GRONE:** Next proponent.

**TREVOR JONES:** Vice Chair La Grone, members of the committee, my name is Trevor Jones, T-r-e-v-o-r J-o-n-e-s. I am the director of History Nebraska, also known as the Nebraska State Historical Society, and we supported this bill in its last iteration last year and we think it's

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a great idea as well. For this time, our concern is slightly different than some of your other proponents of the sweeping changes to open records laws in 2014-2015 mean that all of our records are treated as public records whether they came from a private individual or came from state government. So they're, they're all subject to the Open Records Act and, therefore, we have to provide four hours of free research to the largest collection of Nebraska History anywhere in the world. And we like doing that. We love providing access to our collections, but we don't really think that the intent of the Open Records Act was that somebody from New York City could call us and try to use four hours to find out whether or not their great, great grandmother had passed through Custer County sometime in 1886, which is what we get a lot of calls for. So what this change would mean for us is that it would allow us to increase our earnings from answering those questions that we could charge from the get go rather than doing four hours for sort of those fishing expeditions, which we would very much like to do. This is not a huge amount of money for us, it's about \$16,000 a year, which is not a lot. But in terms of staff time, that is great for us which means that we'd have more time to serve the needs of Nebraskans who have research questions. And also for us, it would give us more time to do what is really a core part of our business which is putting our records on-line and making it digitally accessible where it'd be accessible to anybody regardless of where they live, which would give us more resources to get that job done which is sort of our end goal is that, that everything that we have would be more or less on-line. So we think this is a great idea. It would be with some revenue generation for us. It would allow us to serve Nebraskans better.

**La GRONE:** Thank you for your testimony. Are there any questions?  
Senator Blood.

**BLOOD:** Thank you, Vice Chair La Grone. And it's nice to see you again. Thank you for your testimony. Not to put you on the spot but you were one of the ones that had a surprising-- surprisingly large amount of money that you felt that you had lost out of your budget because of that. Do you remember what that number was when you came last time?

**TREVOR JONES:** Well, it's-- I mean, it's more if you look at the request for Nebraskans. You know-- it's a couple hundred thousand dollars per year that we're, we're looking at. The out of state is much smaller for us but it still-- I mean, it's--

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**BLOOD:** Comes out of your very small budget.

**TREVOR JONES:** Yeah, and we have like-- you know, everybody else, we have a limited number of staff who answer these kind of questions and they have a limited amount of time to get them done. And, and so being able to charge would help.

**BLOOD:** And so is with budget constraints and trying to hold on to every dollar-- this is one more dollar you'd like to hold on to.

**TREVOR JONES:** Absolutely-- I mean, revenue generation is a huge part of what we look at. We've got retail outlets. We've got the rest of that. So every scrap of revenue that we can earn somewhere is, is a good thing.

**BLOOD:** Thank you.

**La GRONE:** Thank you, Senator Blood. Are there any additional questions? Senator Kolowski.

**KOLOWSKI:** Thank you, Mr. Chairman. I just wanted to thank you for the excellent job you do in our state. I think it's extremely important that we continue to preserve the past and use the skills and abilities that you have to bring as many people as possible into the realm of the material and to know where you're going in the future. I appreciate that, and we don't say thank you enough. I think it's really important to do that.

**TREVOR JONES:** Thank you very much.

**KOLOWSKI:** You bet.

**La GRONE:** Thank you, Senator Kolowski. Any additional questions? Seeing none, thanks for coming down.

**TREVOR JONES:** All right, thanks.

**La GRONE:** Next proponent. Welcome back to the Government Committee.

**JOE KOHOUT:** Thank you, Vice Chairman La Grone, members of the Government, Military and Veterans Affairs Committee, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of our client the United Cities of Sarpy County, which is a coalition of the five cities-- five municipi-- the five mayors of the five municipalities in Sarpy County: Bellevue, La Vista, Papillion, Gretna,

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and Springfield. I appear today in support of LB150. As we discussed this item at the-- at our meeting, it was, it was interesting-- it was Papillion and, and, and Springfield that we're, we're getting the most requests and they're focused primarily, as I understand it, on a lot of what you've already heard here today and that is, who are your major providers of service? Who are you, who are you paying? Who are your providers of, of, of basic needs? And so as we get those-- as we get these requests and I-- you-- the committee has a letter from the Ralston school district. That was one that they say come in like clockwork every month asking for the indivi-- the companies that they pay money to. So with that, I'd be happy to try to answer any questions that you might have.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

**JOE KOHOUT:** Thank you.

**La GRONE:** Next proponent. Welcome back to the Government Committee.

**BOB HILSKE:** Thank you, Senator, Senator La Grone and members of the committee, my name's Bob Hilske, B-o-b H-i-l-s-k-e. I'm the general manager of the Nemaha Natural Resources District and our office is in Tecumseh, Nebraska. I'm here today representing the Nemaha NRD, of course, and also the Nebraska Association of Resources Districts. The Public Records Act is in place to ensure that all citizens can access, examine, and obtain copies of public records. It helps assure us that the government is transparent and better allows that the public participate in the government process. Historically, the typical public records request is made by a constituent wanting a copy of a document which takes little, or a little or no time to provide or no cost to provide. In fact, most of the time if someone comes into our office and wants that we just provide it to them, we don't charge them anything for that. We just give it to them, that's part of our job. In recent years, however, our district and several other NRDs have been getting time consuming requests from out-of-state companies, that have been previously mentioned, asking for public records that are not used for tracking or participating in the NRD process. Instead, they are obtained to benefit their business operation. Our district received-- has received several requests from the same companies since 2016, and they ask for our vendor records associated with materials and supplies we purchase. They also request that the information be provided in a specific electronic format so that it can easily be downloaded into their computer system. When we received the initial request, I

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consulted with our attorney and he advised us that we-- it would probably be best to provide what they wanted and largely because we assumed it was a one-time request. We were able to provide the records requested. However, it took our staff three to four hours to format the information and eliminate records that were outside of the request, but in our, in our accounting records, and those usually included things like personal information and Social Security numbers from landowners that we pay cost share payments to, that sort of thing. The, the electronic records request was clearly made so that our staff does work on, on behalf of, of the company that requested them and they are not required to reimburse us for those first four hours as have been previously mentioned. The total, the total cost of the NRD was around \$200 and-- but more importantly the work diverts our accounting staff away from their normal duties. Our assumption that it would be a one-time request was incorrect and they've made similar requests every six months to update their records requiring similar effort on our part. We're a mid-sized governmental entity-- obviously state agencies, larger political subdivisions would have to invest far more time and effort than we did-- we do to accommodate similar request. LB-- LB150 does not prohibit anybody from obtaining public records through the Act. The present statute limits the amount of staff time we can assess for fulfilling the request to anything over four hours. This bill allows the state and local governments the ability to cover the full cost of prepar-- preparing and providing the records request from nonresidents of Nebraska. Nebraska residents and the media are not impacted by this bill. On behalf of the Nebraska Association of Resources Districts and the Nemaha NRD, I would strongly encourage the committee to advance LB150 to the full Legislature as it's a reasonable way to address the concern while protecting the rights of Nebraskans to access and acquire their public records. I'd like to thank the committee and certainly, Senator Brewer, for his effort to address this concern and sponsor LB150. With that, I'll take any questions that you might have.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down. Next proponent. Welcome back to the Government Committee.

**JACK CHELOHA:** Thank you, Senator La Grone and members of the committee, my name's Jack Cheloha, that's J-a-c-k, last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I'm want to testify in support of LB150. I want to thank Senator Brewer and his staff for introducing the bill and I also want

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to thank the League of Nebraska Municipalities for working so hard to get this bill in the proper format-- getting-- and get it introduced. The city of Omaha with its 450,000 residents obviously would be one of our bigger political subdivisions and with that comes a lot of requests for public records. As, as a lobbyist for the city, any time I see a bill up on the hearing slate that could affect various departments, I e-mail them out and ask for commentary. And when I sent this bill to the city clerk's office in Omaha and also our city legal department, their, their response was very enthusiastic that they wanted to support it. In fact, the city clerk put, yes, please, with exclamation points behind her commentary that this is so important because when we get these out-of-state requests a lot of times they're asking for a lot of volume, a lot of information. In fact, now in this day of electronic usage, etcetera, these requests also include e-mail requests and so you have to go back and, and go to your servers and check data and you have to be able to download. And it, and it takes a lot of time. And so this bill would be helpful especially for those that are simply looking for information that they can market and they typically come from these outside, outside Nebraska groups. In fact, the-- a lot of times when I attend staff meetings for the city law department, the lawyer that we assigned to this without, without error, every week part of his assignments he'll say is, and I'm working on public records requests for "da, da, da, da" from whatever state or out of, out of the state. And, and so his point was so many of these out-of-state requests are repetitive fishing expeditions. And with that I think it makes sense to differentiate between those who reside in our city, those who reside in our state, relative to documents that are open and available to them versus these out-of-state people that are trying to just search for data and, and then sell a product. So with that, I'll close and answer any questions.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

**JACK CHELOHA:** Thank you.

**La GRONE:** Any additional proponents? Welcome back to the Government Committee.

**WESTIN MILLER:** Thank you, Vice Chair La Grone, members of the committee, my name is Westin Miller, W-e-s-t-i-n M-i-l-l-e-r. I'm the policy and communications associate with Civic Nebraska. We are a nonpartisan, nonprofit organization. We work with the Legislature on

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elections and voting rights legislation. I'm here in support of this bill for a reason that might not really be the point of the bill, but it's still I think a good thing I wanted to note. One of the major areas of focus for Civic Nebraska is civic engagement and I think that an essential ingredient of civic engagement is having access to information about your government. We believe that the duty to be engaged falls on all Nebraskans, not necessarily just those that are legal citizens. So we really appreciate the language clarifying that a Nebraska resident does not need to be a citizen to file a public records request. Page 11, lines 8 through 9 specifically also clarifies that residents and interested parties, not just citizens, can have their rights enforced by equitable relief in the case that a request is wrongfully denied. I think that's a really important touch. We don't necessarily have an opinion on raising the costs for nonresidents to offset the costs for residents, but we do appreciate that news media nationwide has access to the records at a residential rate. So we just wanted to note that support, and I can answer any questions.

**La GRONE:** Thank for your testimony. Are there any questions?

**WESTIN MILLER:** Thanks.

**La GRONE:** Seeing none, thanks for coming down. Any additional proponents? Seeing none, any opposition testimony? Welcome back to the Government Committee.

**JACK GOULD:** Thank you, Senator La Grone, members of the committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d. And I just want to remind you that, that Nebraska organizations are also requesting the same information from other states. So when we put up rules affecting our freedom of information, they may well in turn want to retaliate with rules that will affect entities within the state. I'm concerned about the arbitrary fee. I mean, no one's gonna know exactly what it's gonna cost if they make a request. I mean, if it's based on the salaries of secretaries and administrators and lawyers, they can make the request but they're not gonna know what they pay. And I think that in itself is a problem. And there is no, no way to appeal. There's nothing in this bill that says they can come back and ask, why am I being charged this amount or please explain the expense? If this bill is established and the intent is to discourage bad actors, it should be noted that the bad actors pretty much have deep pockets and they're either gonna pay, or they're gonna find tac-- contacts within the state who are gonna provide that information for them to avoid paying

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anything, or at least to take advantage of the four-hour rule. Also a great deal of information is now on-line and so it isn't terribly difficult to single that out and send it to people. When we do get into archives-- I mean, there, there might be a way of, of providing some kind of a fee that would apply to everybody if they have to go back into the archives, and find paper copies, and make copies and so forth. I've had some bad experiences with that. I don't want to bore you with it, but I have had to pay as much as \$1 a page here in Nebraska for a record. I wanted 3 pages in the end, but I was given 41, and I ended up having to pay for 41 pages and then I ended up having to pay a, a secretarial fee. And so the costs are kind of arbitrary. No one's quite sure what they're gonna pay. And it can be very harmful. It's also interesting that the bill does allow some freedom for the press and I think that's a good thing because the press has a lot of interests beyond Nebraska. They're often making comparisons between states. It's important that they have access to other states and that the other states have access to Nebraska. I, I also-- it raises the question though-- I mean, what about the little guy? The little guy-- the kid in college trying to do a research paper to get a master's degree or PhD. He's looking for records here. He's gonna pay. It doesn't matter. I mean, he's gonna pay something, and then it should depend on a set rule that everybody pays, not just that we give an exemption to somebody. This rule-- this bill does not do that, except for the press. So there's a concern. What do you do for that kid? What do you do for the small business who's looking to come to Nebraska and wants to know about taxes and real estate? He doesn't know what he's gonna pay and he shouldn't be punished for that. Also lawyers who have cases outside of state who are gonna want information, they're dealing with a case that affects Nebraska. They want information. You're gonna bill them. I don't know how much. They don't know how much, but you're gonna bill them. In the end, this bill really is directed at a few poor-- a few bad actors, and in the end it's going to affect a lot of people. A lot of people who have a right to information, who are gonna be hurt by this request. And as I said, the real problem is nobody knows what you're gonna charge them, and we don't know what each of those entities that have been here today are gonna decide what's fair. They can punish you and I've been a victim of that. So I just want you to be concerned about the overall effect on the flow of information within this country. Thank you.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

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**JACK GOULD:** Thank you.

**La GRONE:** We'll now move to the next opponent. Senator Schilz, welcome back to the Government Committee.

**KEN SCHILZ:** Gosh, I never want to be the guy that's in between the senators and their weekends, so I'll get through this as quickly as possible. Good afternoon. Thank you, Chairman-- or Vice Chairman La Grone and members of the Government, Military and Veterans Affairs Committee, my name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here today as a registered lobbyist for the Consumer Data Industry Association, or CDIA. CDIA's membership includes the three national consumer reporting agencies, nationwide credit bureaus, regional and specialized credit bureaus, background check companies, and others. CDIA opposes LB150 because of the increased costs that it would impose on its members who provide critical services for consumers, financial institutions, and employers, including most Nebraskans. Currently Nebraska provides statute 84-712: requires the fee for providing copies of public records to be calculated based on the actual cost of those-- of making those copies when the request does not take more than four hours to complete. For requests that require more than four hours worked, the fee may also include a special service charge that reflects the labor costs for completing the request. That four-hour time limit was established in 2013 through Senator Avery's LB363. As I understand it, Senator Avery, Avery negotiated with, and had the support of several interested entities including the ACLU, Nebraska Association of County Officials, and the League of Nebraska municipalities when LB363 became law, CDIA believes that the current law strikes a fair balance between the need for reasonable access to public records and the costs for the custodians of those records. We understand that there are entities out there who send broad public records requests as we've heard earlier today as part of a fishing expedition or for political purposes. These requests can place a heavy burden on smaller offices. Unfortunately, LB150 may be a case of throwing the baby out with the bathwater. CDIA's largest members are out-of-state entities but provide critical services to Nebraska's residents and businesses. Increasing costs for our members to operate will ultimately hurt the very Nebraskans this bill is designed to protect. Obviously, these costs will probably trickle down and ultimately be paid-- being paid by the consumers who are Nebraskans. As I'm sure many of you have experienced in your day-to-day life, credit reports are playing an increasingly important role in a consumer's life. Our members rely on public records such as court

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records regarding bankruptcies and foreclosures to accumulate credit reports and credit scores. That information is used every time you apply for a mortgage, or a car loan or credit card. Nebraskans need CDIA's members to be able to affordably access public records. I urge you to vote no on LB150, and I will try to do my best to answer any questions you might have. Thank you.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

**KEN SCHILZ:** Thank you very much.

**La GRONE:** Any additional opponents? Seeing none, any neutral testimony? Seeing none, Senator Brewer you're welcome to close.

**BREWER:** Thank you, Senator La Grone. We have heard-- I guess, both sides of it. The thing I'd like to stress to you is if you look at the sheer volume of those who came up and discussed the challenges that they're going through in county, city and local government with some of the requests. I, I think the one comment about being able to get stuff on-line is true. It shouldn't affect this. There probably are a lot of lawyers that will be wanting things but there's fees the lawyers charge, and I think that's, that's, that's not a factor not to consider this bill. And there's no effect on the right to information, it's there. Yes, there is gonna be a fee for it but there's got to be a point where the, the local municipalities and government entities have to be compensated for that or else it's only gonna be a burden, and it's gonna prevent them from being able to do the work that they need to do day in and day out. So with that, I'll be open for any questions.

**La GRONE:** Thank you for your closing. Are there any questions? I do just have one that popped into my head as we're listening to a couple last testifiers. We keep hearing about these bad actors that are requesting large amounts of information, and obviously they, they wouldn't be doing so if no one was buying it. So I'm, I'm curious when we heard that it's being purchased by other governmental entities. I'm just curious as to whether this is information-- and this might be a question better posed to someone else. I wish I'd thought of it sooner, but in case you know, are there instances of Nebraska political subdivisions purchasing information like that from these companies? So then they're kind of benefiting on the back end from that?

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**BREWER:** It was not a part of any discussion we, we had on this bill. And I, I do wish I had gone back and read the testimony on Senator Blood's similar bill and, and hers was very similar. I kind of feel like I may have stole-- you know, a nice toy that she had, and I'm getting credit for it because I think she did do a lot of work on that. But I could go back and look at her testimony to, to see, but it was not a part of any discussions on LB150.

**La GRONE:** OK, well, thank you for your closing. If there's no additional questions, I'll just have a few letters I need to read into the record. Proponents: Coby Coash, Associate Executive Director for the Nebraska Association of School Boards; Rick Kubat, with MUD; Dr. Mark Adler, Superintendent of Ralston Public Schools; Nancy Bryan, City Clerk/Treasurer for the city of Stroma-- Stroma. Letters in opposition: Mary Jane Truemper, President of the Omaha Liberty Lady-- Liberty Ladies; ACLU Nebraska. And that is all the letters we received. That closes our hearing on LB150, and closes our hearings for the day.