

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

SANDERS: Good afternoon. Welcome to the Government, Military and Veterans Affairs Committee. I am Senator Rita Sanders of Bellevue, representing District 45. I serve as the chair for this committee. The committee will take up the bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill the form out completely. When it is your turn to come forward to testify, give the testifier-- the sheet or-- testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sheets in the back of the room. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your name, first and last, to ensure we have an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by the proponents of the bill, then opponents and, finally, anyone wishing to speak in the neutral capacity. We will finish with a closing statement by the introducer if they wish to do so. We will be using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you will have 1 minute remaining, and the red light indicates your time has ended. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It's just part of the process as senators may have bills to introduce in other committees. A final item to facilitate today's hearing, if you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. If you do not have 12 copies, the page can make sufficient copies for you. Please silence and turn off your cell phone. And may-- and you may see committee members using their electronic device to access more information. Verbal outburst or applause may not be permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on

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Government, Military and Veterans Affairs Committee February 12, 2025

the committee statement. I will now have the committee members with us today introduce themselves, starting with the far right.

HUNT: Hi, everyone. I'm Megan Hunt and I represent District 8 in the northern part of midtown Omaha.

GUERECA: Good afternoon. Dunixi Guereca, LD 7. That's downtown and south Omaha.

J. CAVANAUGH: John Cavanaugh, District 9, midtown Omaha.

ANDERSEN: Good afternoon, I'm Bob Andersen. I'm from-- I represent District 49 in northwest Sarpy County and Omaha.

LONOWSKI: Hello, I'm Dan Lonowski, District 33, which is Adams County, Kearney County, and rural Phelps County.

WORDEKEMPER: Welcome. Dave Wordekemper, District 15, Dodge County, western Douglas County.

McKEON: Dan McKeon, District 41, central Nebraska, eight counties.

SANDERS: Senator Bob Andersen is the vice chair of the committee. Also assisting the committee today to my right is legal counsel Dick Clark, and to my far left is committee clerk Julie Condon. We have two pages for the committee today, if the pages would please stand and introduce themselves.

LOGAN WALSH: I'm Logan Walsh. I'm a junior econ and finance major at, at UNL.

ARNAV RISHI: Hi, I'm Arnav. I'm a junior political science student also at UNL.

SANDERS: Thank you. With that, we will begin today's hearing with LB664. Senator Storer. Welcome.

STORER: Thank you, Chairman Sanders. Good afternoon, Chairman and members of the Government, Military and Veterans Affairs Committee. My name is Senator Tanya Storer, T-a-n-y-a S-t-o-r-e-r. I represent District 43, which includes much of the Nebraska Sandhills in north-central Nebraska. I'm here today to introduce LB664 to allow for public comment and submissions relating to the proposal for adoption of rules or regulations, as well as challenges to rules or regulations in locations outside of Lancaster County. Americans and the businesses they run face an ever-increasing regulatory state that discourages

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Government, Military and Veterans Affairs Committee February 12, 2025

innovation and snuffs out competition. Unfortunately, it is difficult, at best, to challenge rules and regulations that have been misapplied or violate the law entirely. These court-venue restrictions place an undue burden on small businesses that cannot afford costly travel and prohibitive legal fees. This deterrence alienates them from fair and equal access to justice. And while mom-and-pop shops struggle to keep their doors open, large companies that can afford these expenses bend the rules, often in their own favor. Worse, taking on the bureaucracy is often a fixed game. The designated courts that try these cases are typically located adjacent to the agency being sued, and each is staffed with appointees of politicians who sit in the Capitol across the street. Small businesses power our economy. And I'm just going to go off script for a minute and, and just share briefly what, what I found I was so proud of as I spent time throughout the campaign season and told people all across, across the district that we don't, in the 43rd District, for example, we don't-- we have one Walmart, we don't have a Menards, we don't have a Home Depot or a Hobby Lobby or a Starbucks, but we have a plethora of privately owned lumber, lumber stores and privately owned coffee shops and, and everything-- grocery stores, everything in between. So we really are a shining example of the importance of small business. There are more than, there are more than 33 million small businesses in the United States making up an astonishing 99.9% of all companies in the nation, and they employ nearly half of all working Americans. So it's no wonder that large corporations and the politicians who count on their financial support have an interest in making the lives of their competition as difficult as possible. Leveling the playing field and allowing business owners to challenge burdensome regulations closer to home will save time and money, freeing up resources for job creation and innovation. Reducing time spent on compliance gives small businesses breathing room to focus on enriching their communities and will expand opportunities for every diner, corner store, and entrepreneur. I passed out just a sheet that provides you with some statistics that we were able to get just today, actually, that illustrates how many cases there have been here in Nebraska with plaintiffs that are not in Lancaster County. And just to clarify, currently these, these regulatory challenges have got to be made in Lancaster, Lancaster court. So all of our, our taxpayers and business owners from across the state have to travel to Lancaster County to, to provide not only those comments and input, but to challenge any of those current regulations that they feel are unduly impacting their businesses. Clearly, this is a large state and, and our, our Capitol is at one far end of our state. And so the current process is undeniably putting an undue burden on really, I would say,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

the majority of business owners in Nebraska. So happy to answer any questions.

SANDERS: Thank you, Senator Storer. Let's see if there's any questions from the committee. Senator Andersen.

ANDERSEN: Thank you, Chairwoman. Thank you, Senator Storer, for being here and the bill. I think it's a commonsense bill. I think it makes great sense. One thing I was just curious was the, the fiscal note. I see \$102,000 this year, \$106,000 in '26-27. Do you know what that's comprised of? I didn't see it delineated as to what the cost is for.

STORER: Yeah, so we received that, I believe, yesterday, as most of us get our fiscal notes in a short time before bill introduction. So we still have some questions. I know we're going to be, be visiting with the Fiscal Office, but as they have explained it here, it has to do with Department of Corrections feeling like they're going to have to hire a legislative coordinator for anticipated workload for compliance. We're going to do a little bit of investigating to, to determine really what the background is there. I don't think that's accurate. I'm pretty confident that that's-- the actual fiscal note would be much lower, if, if not zero. Quite honestly, we, we anticipated the fiscal note to be zero. There does, does-- there is no sound reason for added staff to, to be able to implement this bill.

ANDERSEN: Thank you.

SANDERS: Thank you. Are there any other questions? See none. You'll be here for the closing?

STORER: I will.

SANDERS: Thank you very much. We'll move on to proponents. Good afternoon, Senator.

LAURA EBKE: Good afternoon, Senator Sanders, members of the committee. You're getting a whole packet of things, that's because you're going to see me a little bit more than you want to this afternoon, so I handed everything out in the same packet. My name is Laura Ebke, I'm the senior fellow-- that's L-a-u-r-a E-b-k-e-- I'm the senior fellow at the Platte Institute here in support of LB664, and thank Senator Storer for introducing this bill. I was asked to mention that there should be a couple of proponent letters, one from, I think, the state chamber maybe, and one from an ag group. So please take a look at that. As you will likely hear today in some format, the United States is in the midst of a broad effort to reform and modernize the

regulatory state. Regulations for the health and safety of the public are an inevitable part of the world we live in today. But regulations can also be burdensome and fail to provide benefits that outweigh the costs to the larger economy. When individuals or businesses find that laws impose too much of a burden on them, they have the option of reaching out to their local legislators to find, find and promote statutory remedies. If you haven't yet, you will probably one of these days be walking through the grocery store and have somebody step up to you and say there ought to be a law. Most of us have had that experience, I think, at some point. So when they find themselves in conflicts with regulators, though, they don't have the option of challenging regulations locally. Instead, they have to file court challenges in Lancaster County District Court, resulting in higher attorneys' fees, time away from their business operations, and so forth. The role of government is to serve the people, not to make their lives more difficult. If necessary, regulations should protect the health, safety, and welfare of the public and not impose unnecessary burdens on regulated industries and individuals. Legitimate challenges should-- to regulatory authorities should not be limited to being made in Lancaster County. They should be able to be filed in any district court in the state where the petitioner resides or has a principal place of business. This is a matter of convenience for citizens instead of convenience for the regulators, typically based in Lincoln. We encourage the advancement of this legislation, perhaps as a committee priority bill, as part of a regulatory omnibus. And you're going to hear that from me a lot today, so. Any questions?

SANDERS: Thank you for your testimony. Are there any questions for Senator Ebke? See none. Thank you.

LAURA EBKE: Thank you.

SANDERS: Proponents? Welcome.

JONATHAN WOLFSON: Thank you, Madam Chairman. My name is Jonathan Wolfson, J-o-n-a-t-h-a-n W-o-l-f-s-o-n. I'm the chief legal officer and policy director at Cicero Action. We're a nonprofit that works with the legislatures and governors' offices across the country on reforms to government, to improve government, improve accountability and transparency in government. And we're here in strong support of LB664 today. I'd like to thank Senator Storer for presenting this bill. And we believe, as Senator Andersen said, that this is a commonsense piece of legislation that just opens the courtroom door to individuals across the state of Nebraska who believe that the regulators have overstepped the authority that you, the Legislature,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

have given them and/or, and/or they have not followed the process that is required in your state Administrative Procedure Act. And so when they do that, allowing them to challenge those regulations where they live instead of having to come to the Capitol to do so makes a lot of sense. States across the country have done this: red states, blue states, purple states. This is not one of those partisan issues. This is an issue of giving people access to the courts to challenge the government if the government is not following its own rules and allowing those individuals to do so in their home jurisdiction makes a lot of sense because there's not anything unique about the judiciary here in the Capitol where those judges have any particular expertise in administrative law, any more than any other judge. That's not what they raise-- that's not how they try to convince people to elect them to the judiciary here in the Capitol. It's not how they try to convince people to elect them anywhere else in the state. So allowing those judges to interpret the law as the law is written across the state makes a lot of sense. I think it's also really important that this bill opens the door to make it very clear that the participation in the regulatory process, not just in challenging a regulation on the back end, but in deciding what that regulation ought to look like on the front end is a really critical piece of the process. You, the Legislature, pass a bill and then there are often situations where there's a hole where the, the regulated community was trying to figure out what does this regulation mean? What do I have is an obligation or what the statute means? And so the agency decides to issue a regulation. But as they're doing that, if they are not looking at how that's going to impact all of the people in the state of Nebraska, they can sometimes get lost. They may not be following your lead as the Legislature. They might not be recognizing that they're imposing some sort of burden on certain industries or on certain groups of the population who live in particular areas in the state, because that's just not the ethos that they're being given. But if by allowing the population to comment on those regulations and requiring the agencies to respond to those comments before a regulation can be finalized, that's going to give those people voice. So this bill, we believe, really does provide accountability and empower the citizens of the state of Nebraska. I'm happy to answer any questions that you all may have. Thanks.

SANDERS: Thank you very much for your testimony. We'll see if there are any questions from the committee. See none. Thank you, Jonathan Wolfson,--

JONATHAN WOLFSON: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

SANDERS: --for your testimony. Any other proponents? Welcome.

KILEEN LINDGREN: Good afternoon. Thank you, Madam Chair, members of the committee. My name is Kileen Lindgren. That's spelled K-i-l-e-e-n L-i-n-d-g-r-e-n. I'm legal policy manager at the Pacific Legal Foundation. You're going to see me up here a couple time-- a couple more times. So I'm going to do a quick intro of, of PLF, why I'm here and why we care about the separation of powers and regulatory reform issues that are up in this committee, and then I'll limit the rest of my comments to specific bills later on to save time. So Pacific Legal Foundation is a nonprofit public interest law firm that has brought over 2,400 cases pro bono on behalf of individuals whose constitutional rights have been violated. Of these, 18 are U.S. Supreme Court wins, and several of those are related to the issue that brings us here today with these bills, separation of powers. Articles I, II, and III of the U.S. Constitution, ratified in 1787, reflect the framers' understanding that three equal but separate branches of government were necessary to ensure proper checks and balances and protect liberty. So in their wisdom, the drafters of Nebraska's Constitution did the same thing in 1875 with Article II of this state's Constitution. And I think it's safe to say that neither our nation's founders nor Nebraska's could have imagined the amount of responsibility that all branches and levels of government have, you know, given to administrative agencies, and so much so that sometimes this is referred to as the fourth branch of government. But agencies, however necessary they might be, are always tools to carry out legislative intent. So they-- they're not lawmakers, they're not equal to any branch. And I think that's important context when we're talking about LB664. Voting for this bill will ensure that agencies are performing their proper role as support to actions taken by the people's representatives on their behalf, and that those actions are the least burdensome to the people. So ensuring that engagement in the rulemaking process is easily accessible to all residents of the state increases participation in a process that should always be focused on them, the constituents. Similarly, Nebraskans who need to exercise their legal right in court should be able to do so in the least restrictive way possible. Engaging in the unique and essential American legal process should not be discouraged by limitation of venue. Limiting the venue stacks the deck in the favor of the government and a subset of citizens who reside physically in a certain place. So a vote for this bill is a vote to benefit the citizens across the entire state, and we encourage your support, and I'm happy to answer any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

SANDERS: Thank you for your testimony. We'll see if there's any questions from the committee. See none. Thank you very much, Kileen?

KILEEN LINDGREN: Kileen. Yes.

SANDERS: Kileen, thank you. Kileen Lindgren. Any other proponents? Any opponents? Any in the neutral on LB664? See none. Senator Storer, if you'd like to close. And while she's coming up, for the online position comments: proponents 12, opponents zero, neutral zero.

STORER: Thank you, Chairman Sanders and members of the committee. I think-- I hope all of your questions have been answered. Again, reiterating Senator Andersen's comment, this is just sort of common sense. And I'll be honest, when this was brought to me, I had to ask myself why-- how did it ever become this rule to begin with? That our citizens should be able to access the courts and, and find, you know, remedy to the, the regulatory environment that government continues to pile on top of them. And so if there's any additional questions I can answer, happy to do that. But I certainly appreciate your support in advancing LB664 on to the General File. And, and, again, there may-- you may hear some discussion later this afternoon about the other bills that you will hear and whether or not it makes sense to sort of put them together in, in true fashion of regulatory reform. So.

SANDERS: All right. Thank you. Let's see if there are any questions for you. See none.

STORER: All right. Thank you.

SANDERS: Thank you. This now closes the hearing on LB664. We'll move on to LB565. Good afternoon and welcome Senator Quick.

QUICK: Thank you, Chairman-- Chairwoman Sanders and members of the Government Committee. My name is Dan Quick, D-a-n Q-u-i-c-k, and I represent District 35 in Grand Island. I'm here today to introduce LB565. And this addresses concerns raised by our state's developmental disability providers who serve the individuals with intellectual and developmental disabilities who reside in every community throughout Nebraska. These home and community-based providers fulfill the state's legal obligation at, at a fraction of the cost of state-run institutions, resulting in average annual savings of approximately \$200,000 per individual. Unfortunately, excessively burdensome state requirements that go beyond federal requirements are impeding providers and, and complicating the delivery of these essential services. Over the past year, the Department of Health and Human

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

Services has shifted the consequences of its own audit shortcoming-- shortcomings onto service providers by, by imposing additional administrative requirements through provider bulletins. Rather than utilizing the proper legally mandated rulemaking process, these new requirements impose significant administrative and financial burdens without the accompanying additional funding, funding necessary to implement them. Instead of enhancing the quality of accessibility of care for Nebraskans with intellectual and developmental disabilities, these mandates divert critical resources away from direct services, forcing providers to hire more administrative staff when that is-- when what is truly needed is an increase in direct care personnel. AM239, the white copy amendment, amendment I passed out and sent to the committee aligns the language in the bill with the original intentions behind it. I also filed the amendment publicly, publicly so stakeholders could review it before the hearing today. There are also some other amendments I'm working on that would add more transparency and accountability, accountability to future providers, bulletins, and guidance documents. LB565 refills the guidance documents issued, issued by the Division of Developmental Disabilities of the Department, Department of Health and Human Services after July 1, 2022, and pause future issuance of guidance documents for the next 2 years. I know the bill may need further work because it is-- it has come to my attention that this also has affected providers through-- who receive care through the Division of Behavioral health. And so in conclusion, I, I intend-- instead of burdening-- excuse me. In conclusion, instead of burdening trusted state partners with unfunded, improperly declared requirements, the state should engage in active dialogue with home and community-based development-- developmental disability providers to develop effective, cost efficient solutions to the correct procedures. And with that, I'd take any questions and hopefully there will be people behind me that will answer some of your questions if I can answer them. So thank you.

SANDERS: Thank you, Senator Quick. Let's see if there are any questions for you. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair. Thanks for being here and for bringing this bill, Senator Quick. I'm just looking at the Fiscal Note and I don't understand it. The Department of Revenue would need an economist because of this bill?

QUICK: Yeah. And I don't know if I've seen the fiscal note.

J. CAVANAUGH: Oh.

QUICK: So.

J. CAVANAUGH: Well, that's basically the fiscal note, is that they need modeling software and an economist. Is there a reason? Am I missing something about this bill?

QUICK: No, I don't think you are. As far as I know you're not, but I, I don't-- I guess, maybe they can explain it if they're here.

J. CAVANAUGH: Am I looking at the right fiscal note?

SANDERS: Yeah, I've got it too.

J. CAVANAUGH: OK. All right. Everybody else got that? All right. OK. Thanks.

SANDERS: Thank you. Other questions? See-- Senator Andersen.

ANDERSEN: Thank you, Chairwoman, and thank you, Senator Quick, for--

QUICK: Yeah.

ANDERSEN: --being here. I just had a question, what the impact is in the, the amendment on page 2, lines 7 and 8, where it talks about: all guidance-- everything will be suspended after July 1 of 2022 and until July 1 of 2025. If all guidances are suspended, what impact is a--

QUICK: OK, well, there might be somebody with more technical knowledge about how that works than I have, so maybe they can answer that question for you.

ANDERSEN: OK. Fair enough.

QUICK: Yeah. Yeah.

SANDERS: Any other questions? See none. You'll stick around for closing?

QUICK: I will. And maybe if I can come up with the answer for that, I will, so.

SANDERS: Thank you, Senator.

ANDERSEN: Thank you.

SANDERS: Any proponents on LB565? Good afternoon. Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

JUSTIN SOLOMON: Good afternoon. Good afternoon, Chair Sanders and members of the Government Committee. I'm Justin Solomon, J-u-s-t-i-n S-o-l-o-m-o-n, and I serve as Chief Operating Officer for Integrated Life Choices. We are a provider of developmental disability services across the state. I appreciate the opportunity to testify in support of LB565 today and provide some of those real-world examples of how LB565 will provide relief for our business, at least, across state. In our opinion, LB565 represents a commonsense approach to regulation, it does not remove accountability, nor does it weaken protections for vulnerable individuals. Instead, it ensures that regulatory actions are taken in full awareness of their financial and operational impact on providers. It promotes balanced governance, something that should resonate with every policymaker who believes in fiscal responsibility, business viability, efficient government, and good governance. Regulation and regulatory actions over the course of the last handful of years have been shortsighted, and they've taken the approach that often disregards the financial and operational realities that service providers face and, ultimately, at the end of the day, jeopardizes the very services these regulations are meant to protect. Let me provide some context and examples that may be helpful to the committee. On February 5 of 2024, the Division of Developmental Disabilities released Provider Bulletin 24-01, which is attached to my testimony, this provider bulletin mandates that each provider must use the same training curriculum for emergency safety interventions, which are instances where our staff need to place someone in a physical hold to protect themselves, others, or the person receiving support. And in administering Provider Bulletin 24-01, the division awarded a no-bid monopoly on this training curriculum to a single vendor, forcing providers to adopt the specific curriculum with no opportunity for input or alternatives. The decision was made without a competitive bidding process, without consideration for existing provider training programs, and without acknowledgment of the ongoing financial burden it will impose on providers. For some providers, like ourselves, who have already invested in alternative but equally effective training programs, Provider Bulletin 24-01 renders those investments obsolete, forcing them to spend-- forcing us and other providers to spend hundreds of thousands, if not millions, of dollars just to comply with the mandate that was issued without discussion. If providers had been consulted, we would have pointed out several issues. First, that handing over a monopoly to a single company to provide training to our industry is misguided and frankly, anti-capitalist; two, that the division has already reviewed provider curriculums in the previous years to ensure that they were meeting state statutes; and, three, the division already has broad oversight authority over providers. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

this regulation uses a sledgehammer where a scalpel was more-- was needed. The same critiques can be said for Provider Bulletin 24-24, which requires every provider to-- and staff member to obtain a national provider identification number. The Nebraska Medicaid Division is requiring every provider to spend hours and hours in perpetuity to obtain a number that they cannot articulate how they plan to actually use themselves. But providers must comply without due process and without any insight of the intentions of the regulators. Let me be clear that government oversight in our industry is both necessary and important. However, Nebraska's existing regulatory framework already grants broad oversight authority to state departments. If quality concerns do arise, the state has mechanisms in place to ensure compliance. The solution is not to continuously, continuously pile on these new mandates without recognizing their costs, but rather to use the oversight authority--

SANDERS: Please continue.

JUSTIN SOLOMON: --thank you-- on new mandates without recognizing their costs, but rather to use the oversight authority already granted to ensure services are being delivered at a high standard. LB565 ensures that before millions of dollars are spent in new costs and those that are imposed on providers, there's a full process and fair process to evaluate the necessity and impact of those regulations. This bill does not eliminate oversight. Rather, it ensures thoughtful, measured, and responsive-- and responsiveness to real-world challenges of service delivery. For those reasons, I strongly urge you guys-- and you all to support LB565. Thank you. And I'll answer any questions.

SANDERS: Thank you for your testimony. Check to see if there are any questions. Senator Hunt.

HUNT: Thank you, Chair Sanders. Thanks for being here today.

JUSTIN SOLOMON: Yeah.

HUNT: So I didn't realize this was a problem until you came up and testified. And so my initial reaction to your testimony about how the provider bulletins have basically-- so you're saying that the provider bulletins have kind of replaced rules and regulations or what, what process is the department supposed to go through to change these?

JUSTIN SOLOMON: So we're regulated by NAC 404, Title 404 Regulations. And there oftentimes are provider bulletins are directly in conflict with what the NAC-- what the Nebraska statutes say. For example, here

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

with this new training curriculum, it says, it says in the NAC that just you have to have a provider or a state-approved training curriculum, which we do. But this is going above and beyond the scope of, of NAC. So what they've done is replace that sort of rulemaking process with this, which is essentially they can publish a new standard and at times retroactively expect you to have and comply with that standard without, again, any real due process. And, in fact, our trade association will testify behind me and, and talk about some of the ways that we've tried to combat that with legal challenges and the like. But it's replaced what, what should be that standard which you guys would all obviously play a huge role in.

HUNT: OK. So if-- and I'm, I'm a little ignorant about this.

JUSTIN SOLOMON: Sure.

HUNT: And so if, if what I'm saying makes no sense, like, I'm happy to be corrected, but.

JUSTIN SOLOMON: OK.

HUNT: So if the department were to change the regulations or rules or put, like, a new expectation on you guys, on your industry, would typically there be a hearing or a way for you to provide feedback about that before you receive the, the directive or what's typically the process?

JUSTIN SOLOMON: So there are kind of two ways that they can, they can change things, right? They can change the Medicaid waiver itself, which there's a process of public comment that we're, actually, going through now--

HUNT: OK.

JUSTIN SOLOMON: --that has a CMS level review. Right? But there's that opportunity or there's changing the Nebraska statutes, which, again, would require an act of the Legislature. Right? And so, yes, in, in the alternatives, there's always an opportunity for us to come to policymakers, whether that be at the federal level or at the state level, and make our case, right? However, if the provider bulletin is the only mechanism in which they're rulemaking, which is what it's become, then they're really responsible, responsible to nobody.

HUNT: Have you or any other providers shared these concerns with the department and what did they say?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

JUSTIN SOLOMON: Alana, you could probably mention those a little more specifically than I can. But, yeah, of course.

HUNT: OK.

JUSTIN SOLOMON: And that's not to say there isn't maybe some decent reasons, underlying reasons, for some of these regulations, right? The, the, the problem is we've gotten to the point where it used to be-- we used to have a high amount of, of discussion about them before they were administered, and that's just not the case anymore. And so we're in a constant sort of case of when's the new regulation going to happen? We're scrambling and adding administrative staff to comply with what seems to be what they're trying to fix is the lowest common, common denominator of providers. They have that broad authority to get bad actors out of the system already. They need to use that discretion as opposed to overregulating the, the community where, you know, 95% of providers are an issue or, or greater.

HUNT: Yeah. Well, what concerns me is learning about, like, no-bid contracts, no competitive bidding, bidding process, because then that, you know, that's always a concern for me as a lawmaker. So thank you.

JUSTIN SOLOMON: Concerns us, too.

HUNT: Yeah.

JUSTIN SOLOMON: We have no pricing capability now. And so that-- if this is the only curriculum that you can be in compliance with, then there's nothing stopping that single source curriculum writer of increasing their cost through the roof, right? And we've seen some issues already with the availability of getting staff trained in that curriculum because they weren't expecting it either, so.

HUNT: Understood. Thank you.

JUSTIN SOLOMON: Yeah.

SANDERS: Thank you. Any other questions? See None. Thank you very much.

JUSTIN SOLOMON: Thank you.

SANDERS: Any other proponents? Welcome.

ALANA SCHRIVER: Good afternoon, Chairperson Sanders, members of the committee. Thank you for the opportunity to speak today. My name is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

Alana Schriver, A-l-a-n-a S-c-h-r-i-v-e-r. I'm the executive director of the Nebraska Association of Service Providers, which, as Justin mentioned, is our statewide association for the home and community-based organizations who provide services and supports for individuals with intellectual and developmental disabilities. So I'm here on behalf of the thousands of people we support, but also the people we employ. A recent national survey shows that 90% of DD providers are struggling with severe staffing challenges. 69% are having to turn away new referrals, which means those individuals in need spend even more time on the waitlist. Typically, people spend years on a waitlist for DD services. My own son spent 5 years on that waitlist before getting approved just this past August. We're not immune to the staffing challenges here in Nebraska, but instead of the division prioritizing initiatives that would help providers recruit and retain a desperately needed workforce, Nebraska Medicaid is burdening providers with extraneous regulatory requirements that divert funding and focus away from direct services and are circumventing the proper promulgation in the process. So Justin give you one example with the MANDT curriculum, which I would just say as a parent, I would not have chosen because there's so much focus on physical restraint in that curriculum. And I feel maybe de-escalation is a better use of our training time. Physical restraint does need to happen at times, but a lot of that can be de-escalated and there are curriculums that focus more on those avenues. One provider bulletin I'd like to bring to your attention is 24-24. This is one requiring every staff person, every caregiver in the state to have something called an NPI number, a National Provider Identification [SIC] number. This is typically only used for billing purposes. So the agency would have an NPI number, but individual staff would not have any need for it. And, in fact, I have been told by the director of Medicaid, the deputy director, that they do not have a use identified for these NPI numbers yet, but they would like every staff person to have one before March 15. It takes anywhere from 30 minutes to 90 minutes to get through this 50-page application process for an NPI number. We have 9,000 people that now need them before March 15, which is about on, if we go with the lower number, 30 minutes per application. This is 4,500 hours of time with Medicaid dollars paying for that time. And that's if the staff member can fill it out themselves. It is a government application, so sometimes an admin person needs to sit down with them. Plus, the state people, the state employees, that have to make sure that these numbers are being done for no identified purpose at this time. Another one that we are actually in a lawsuit with-- and, again, not the best use of our time or funds to be in a lawsuit with DHHS--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

is for something called Electronic Visit Verification. EVV is a federal Medicaid requirement. It's great, actually. It shows--

SANDERS: Please continue.

ALANA SCHRIVER: Sure. So it basically just says when we go into someone's home, we clock in, we clock out, and it captures the GPS to show where we were and when we were. The system is designed to allow for manual corrections. So if someone walks in and the person needs help right away, maybe they need help with toileting or they've fallen down or the visit ends up going along at a doctor's office and you're not where the GPS visit is set up for. We're currently, within the software and within CMS, allowed to make those manual corrections. Nebraska Medicaid is now saying zero manual corrections. You will not be paid for that visit if it requires a manual correction. Some of these caregivers are clocking in 7 or 8 times a day at different locations, mistakes are going to get made, people or people, you're going to miss a clock in, you're going to clock in late, GPS doesn't always work. The system goes down. The people that designed the system said 80% is rock star status. If you're only manually correcting 20%, that's amazing. The average nationwide, the, the goal, we shoot for 15 to 25% manual corrections. Nebraska's currently at 7%, 7% manual corrections. This is something to brag about nationally. This is not a problem to fix. This is-- I, I meet with other state association execs on a regular basis. Nobody's at 7%. We're doing amazing. But now they're saying they won't pay you for that visit if you need to do a manual correction, which means agencies whose profit margins are already barely scraping by like 1%, you can't afford to lose 7% through-- you know, as you're going through this appeals process and paying admin staff to go through an appeals process, to go to hearings, state employees are going to be-- need to be paid to go through these appeals process, to go to these hearings, all because a system that's designed for manual corrections, now Nebraska Medicaid is going above and beyond that. So these examples just are three recent provider bulletins that came out without the opportunity for public comment. We regularly reach out to the division. I just met with CEO Corsi and the Medicaid director, deputy director, and Director Green last week. We-- Tony comes-- Director Green comes to our meetings once a month. We do work groups for other things with them. We put provider work groups together. There's public comment period open right now for proposed waiver amendments. We just want that opportunity for feedback on other major changes before they come out with quick turnaround deadlines. So happy to answer any questions.

SANDERS: Thank you for your testimony. Check and see. Senator Hunt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

HUNT: Thank you, Chair Sanders. What did, what did DHHS say about, you know, when you raised the concerns to them about these three? Are-- OK, first of all, are there more than these three things or are these just three examples--

ALANA SCHRIVER: These are--

HUNT: --and what did they say?

ALANA SCHRIVER: --these are the ones that are making it almost impossible to do what we need to do and to focus on what we should be focusing on, so these were our, our three big ones, but they're not the only ones by any means. The other ones just tend to be a little bit more manageable. So they basically, to be perfectly blunt, have said it's-- you know, they got a bad audit from the, from the state and they need to be doing something to combat their own bad audit. And so it's-- it just sort of feels like it's just being pushed on to providers to make it seem like they're doing something to address the audit.

HUNT: OK. Is the-- and they can speak for themselves, too. I'll ask, too. But is there-- does their reasoning for these changes seem to be it's like a cost savings or what's the--

ALANA SCHRIVER: You know, they'll say it's fraud prevention and--

HUNT: Oh, my gosh.

ALANA SCHRIVER: --and I-- no other state, for example, with the NPI numbers, we're not attaching those staff NPI numbers to billing or anything. They're not asking for those NPI numbers. They're just telling them we need them, we need them somewhere. We need to keep a record of everyone's NPI numbers in case we're ever asked for them. But in a congregate setting, which staff-- if something happens, which staff member do you then say, let's use their NPI number for this incident, even though we're in a congregate setting. For example, my son goes to Munroe-Meyer Institute recreational therapy camp during winter, winter breaks, school breaks. It's high school volunteers. These are high school kids who volunteer to be the counselors. They all now need an NPI number, and this is an NPI number for life. This number is like a Social Security number but for a provider. Why does a 16-year-old camp counselor-- how does that prevent fraud?

HUNT: And this is something that follows them around--

ALANA SCHRIVER: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

HUNT: --forever when they just want to volunteer.

ALANA SCHRIVER: Right.

HUNT: And that could be discouraging to people who do want to serve and want to provide service and keep them from participating.

ALANA SCHRIVER: Exactly. And with all the real problems we have going on, there's just been [INAUDIBLE].

HUNT: When did this start? When did you guys get the NPI number thing and the Electronic Visit thing?

ALANA SCHRIVER: The Electronic Visit Verification, that bulletin came out at the end of July.

HUNT: OK.

ALANA SCHRIVER: It was supposed to be implemented August 14. We had about 2-weeks notice. So we filed a lawsuit with a temporary injunction. The division, to their credit, did push off that implementation date. It's now Monday, February-- this coming Monday or not Monday, because it's a holiday, but Tuesday, I would guess, and did take some feedback and, and, and went through their appeals process with us, did some trainings. They're going to try to put a new feature in the app called "schedule and go" but we can't practice the schedule and go until next Tuesday. And if you make any mistakes you get three strikes. They're calling it three strikes and you're out. But they-- they're not giving us a grace period to practice the new features within the app before those strikes start counting.

HUNT: OK. So instead of just using the manual change thing that's been working, you have to learn this new process--

ALANA SCHRIVER: Um-hum. So when the audit--

HUNT: --which is supposed to fix your problem?

ALANA SCHRIVER: Yeah.

HUNT: OK.

ALANA SCHRIVER: So when the state audit happened, those manual corrections were about 25%, which is kind of at that top. You don't, you don't want to go much-- so, so they put out this bulletin saying,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

OK, now you're not going to get paid. So people did start to pay-- I had a lot of calls from caregivers.

HUNT: And that's when it came down to seven?

ALANA SCHRIVER: Yeah. So a lot of times a parent can be a paid caregiver, an independent provider. And so a lot of them reached out and said, I didn't even know I'm supposed to be doing EVV. There was no training on it. Now that I know, I'm going to do it. And now we're-- now a few months later, we're at 7% manual corrections because those conversations happened. Because the state said, here's the problem we've identified, here's what we need to do better. So it's proof that those conversations actually address the issue. And people work in good faith to do better. No one's purpo-- obviously, there's bad players.

HUNT: Brought it, brought it from 25 to 7 with just conversation.

ALANA SCHRIVER: Yeah, with just by saying here's the problem we've identified, we need to do something about it.

HUNT: This just feels to me like the kind of stuff that we're trying to fix with, with, you know, any kind of rules or regulations or interventions that government gives to providers to streamline, to make it more efficient, all this DOGE stuff going on. And now we're doing the same stuff in Nebraska. And this is what worries me, is we're increasing bureaucracy and not actually increasing efficiency. So I will stop asking questions. Thank you so much for the clarification.

ALANA SCHRIVER: Sure. Thank you.

SANDERS: Thank you. Are there any other questions? Senator Guereca.

GUERECA: So has there-- thank you for being here and for your testimony. Is this a recent development, the, the, the reliance on these provider bulletins? Has there been a recent uptick or has this been common practice?

ALANA SCHRIVER: I have been in my role 4 years, and I would say this past year were the-- an uptick, uptick in what I would call unfunded mandates, like, for example, with limiting them to one provider for the ESI curriculum.

GUERECA: Sure.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

ALANA SCHRIVER: They, in the past, said-- like case management software, they were-- the state was going to limit that to one case management software, so the state said we'll pay for it since we're going to make you all use this one system. And it's kind of an expensive system, they'll pay for it because there's no price negotiation ability if the state says this is the one you have to use. So if you take away the ability to negotiate, then pick up, pick up the price tag.

GUERECA: Sure.

ALANA SCHRIVER: So it does seem to be that there's an uptick in unfunded mandates coming out.

GUERECA: Thank you.

SANDERS: Are there any other questions?

LONOWSKI: I have one, Chair.

SANDERS: Senator Lonowski.

LONOWSKI: Thank you, Chair. And thank you. So the CMS-- is that right-- Is that what it's called--

ALANA SCHRIVER: Yep, Centers for Medicaid and Medicare [SIC].

LONOWSKI: --Medicaid and Medicare Services-- they issue these bulletins?

ALANA SCHRIVER: They don't do-- these are Nebraska bulletins.

LONOWSKI: They come from within.

ALANA SCHRIVER: Um-hum. They come from Nebraska.

LONOWSKI: OK. So Nebraska itself is issuing a zero-tolerance policy.

ALANA SCHRIVER: Correct. And no other state, every other state, because I've asked them all, the next lowest state is 15% manual corrections.

LONOWSKI: OK. So certainly our policymakers also visit with other states, correct?

ALANA SCHRIVER: I would hope so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

LONOWSKI: OK. I'm just trying to wrap my head around this. Has it been brought to their attention or, or have we had internal meetings with them to try and solve this problem, I assume?

ALANA SCHRIVER: I have had many, many, many conversations to try,--

LONOWSKI: OK.

ALANA SCHRIVER: --including going to the governor's DD advisory committee meeting this morning, it was brought up again through that group as well. So we are trying our best. My budget's not huge. I don't love paying for a lawyer. We've got a court date on the 28th of this month with it and, and there's-- yeah, we've, we've tried having those conversations.

LONOWSKI: OK. Thank you.

ALANA SCHRIVER: Um-hum.

SANDERS: Any other questions from the committee? See none. Thank you for your testimony.

ALANA SCHRIVER: Thank you.

SANDERS: Are there any other proponents? Welcome.

EDISON McDONALD: Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm here representing the Arc of Nebraska, we're the state's largest membership organization for people with intellectual and developmental disabilities and their families. And we're here today in strong support of this bill and Senator Storer's, but I didn't want to be duplicative in my original comments. You know, Justin and Alana have already, I think, really summed up, significantly, this issue. But I just want to give a little further context as to the big scope of this. Every single year, we have to come here and address the Legislature as we're looking for funding to deal with the inflationary effects to ensure that we can continue to have staffing for my members and make sure that they're able to continue to receive those critical community-based services. But, you know, along with funding, we also want to find ways that are going to be more creative to help ensure that we can cut costs and continue to serve more people. These new standards have really kind of changed the scope of how we are able to operate. And I would point to-- I don't know if you all have read the Epiphany Report, but they talk about how within government we need to not just look at each individual piece's efficiency, but look at the big problem. The big problem that we're

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

dealing with is access to staffing. We can't get it, and that requires more funding or requires creative solutions. These issues, like Electronic Visit Verifications, the changes to shared-living providers, you know, and probably one of the most significant, the changes to the developmental disabilities waitlist, all are creating significant problems on the grounds for families and individuals and they are counter to that point. So they're increasing the costs as we're trying to say, how can we serve all of these people? So I would really encourage you to support this legislation. I think that this helps to really cut back on some of that and make sure that we are here not just saying we want more money, but saying also, let's work on creative solutions to ensure that we can ensure that every Nebraskan has access to the critical services that they need. Thank you.

SANDERS: Thank you, Edison. See if there are any questions from the committee. See none. Thank you for your testimony. Any other proponents? Welcome back.

LAURA EBKE: Thank you. Chair Sanders, members of the Government Committee, my name is Laura Ebke, L-a-u-r-a E-b-k-e, senior fellow at the Platte Institute, here in support of LB565. We thank Senator Quick for bringing it. I've also been asked again to note that the state chamber has asked that we call your attention to, I think, what they sent as a written letter. We were happy to hear from several groups seeking our input on this bill at the beginning of the session. And while it was not originally part of the package of bills that the Platte Institute prioritized, we were happy to add it to our list. A quick Google search for the definition of guidance documents says that: guidance documents are written statements from agencies that provide information and guidance to the public. They are not legally binding, but they can help people to understand how to interpret and implement laws and regulations. If the Google definition were accurate, we likely wouldn't be here today. However, several organizations have raised issues of guidance documents of one sort or another being used as an informal rulemaking procedure to which regulated parties are accountable. While there may be some instances where it is vital to update regulated parties to, to, to change in federal regulations, they need-- we need to be consistent with those federal regulations. If there is not a mandated federal compliance issue, state agencies should be expected to follow the rulemaking process outlined in the Nebraska Administrative Procedure Act. LB565 simply codifies that, that expectation and prohibits guidance documents and provider bulletins from being binding unless explicitly required for federal compliance on those that are regulated. We

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

encourage the committee's favorable action on this bill and think it would be a nice addition to a committee-prioritized regulatory package.

SANDERS: Thank you, Senator Ebke, for your testimony. And we have a question. Senator Hunt.

HUNT: Thank you, Chair Sanders. Good to see you,--

LAURA EBKE: Nice to see you.

HUNT: --Senator Ebke. What was the thing that you mentioned from the chamber?

LAURA EBKE: Well, I think, I think they sent a letter.

HUNT: Did I miss--

LAURA EBKE: Maybe, maybe-- is it there? I don't, I don't know.

HUNT: It's online. OK.

LAURA EBKE: OK.

HUNT: Thank you.

LAURA EBKE: Uh-huh.

HUNT: Thank you.

SANDERS: Any other questions? See None. Thank you again.

LAURA EBKE: Thank you.

SANDERS: Any other proponents? Any opponents? Any in the neutral? Oh, opponent? Welcome.

TIM TEXEL: Chairwoman Sanders, members of the committee, I'm going to-- well, my name is Tim Texel, T-i-m, last name is T-e-x-e-l. I'm the executive director and general counsel for the Nebraska Power Review Board. And we are the state agency with primary jurisdiction over electric suppliers in the state. I have no, no comment on the disabil-- developmental disabilities part or the HHS part that you've been hearing about. Our concern is with the guidance documents. Under this bill, the green copy-- I guess I'll clarify that if Senator Quick's amendment to limit it to that application were adopted, then we're out of it and we don't oppose the bill at all. We have no

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

concern about the bill. But LB565 would revoke all guidance documents issued from July 1, 2022 to July 1, 2025. And then would have a 2-year moratorium on them. That would curtail our flexibility with utilities and private developers quite a bit. We currently have 16 guidance documents and 4 of those would be revoked by this action. So, again, on the green copy of it, that would be harmful to us and we believe it wouldn't be good for the utilities. A lot of agencies use these documents. They're interpretive documents. I don't-- I'm not familiar with provider bulletins or how HHS uses that, so. But these are very useful tools for us to give guidance without making our utilities or developers go to a hearing and get an answer. And so we can provide them with an answer on something that's very helpful guidance to them beforehand and not have to go to a hearing. I'm going to curtail my testimony a little bit. Because assuming that the amendment gets approved, and then we'd be out of it. But the guidance documents are binding on an agency under state law until they're revoked or amended by an agency. So they are useful. I was involved in, when the guidance documents were first enacted, in the Legislature, and that was one of the things that you wanted, was it gives clarity to the regulated entities on what would be done so you don't have to go to a hearing and find out from my board. We don't have regulations as such. We have rules of practice and procedure, so we don't set anything in a regulatory context. You have to go to a hearing to find out from us what the answer is going to be. And I'm going short on time. But a guidance document, it states in subsection (6), is on page 3, line 7 to 8. The bill says, "A guidance document shall not impose greater regulations on Nebraska residents or businesses than federal requirements." That's in the bill. But a guidance document can't do that. It's not a regulation, different purpose. So I would just point that out. Again, I don't want to get in the middle of the HHS issue. But this would curtail our ability to help out. And sometimes the utilities and developers bring these to us and ask us for a guidance document. We go back and forth on time. So I'm out of time, but I'd be glad to answer any questions.

SANDERS: Thank you, Tim Texel. Senator Guereca.

GUERECA: Thank you for coming in and for your testimony. So with the amendment, it narrows it just the division of developmental disabilities for the Department of Health and Human Services. So if we were to pass this amendment, you would withdraw your opposition?

TIM TEXEL: Absolutely. We have no relationship to what you've heard about most of the time. And I saw that amendment this morning. So-- and I spoke to Senator Quick about this. I always tell senators when

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

I'm going to oppose something, that my board authorized me to come in on this. So, yeah, with that amendment, we're completely out of it.

GUERECA: OK.

TIM TEXEL: And our opposition is only to the green copy,--

GUERECA: Gotcha.

TIM TEXEL: --the introduced copy.

GUERECA: Thank you.

TIM TEXEL: Typically, called the green copy.

SANDERS: Are there any other questions? See none. Thanks, Tim, for your testimony.

TIM TEXEL: Thank you.

SANDERS: Are there any other opponents?

JOSEPHINE LITWINOWICZ: No, I'm neutral.

SANDERS: Hold on just another moment.

JOSEPHINE LITWINOWICZ: Oh, sorry.

SANDERS: Go ahead. Opponent. Welcome.

JAIME HEGR: Good after, Chair-- good afternoon, Chairwoman Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Jaime Hegr, J-a-i-m-e H-e-g-r, and I am the agency compliance and privacy officer for the Department of Health and Human Services. I am here to testify in opposition to LB565. LB565 proposes to institute changes on how the agency issues guidance documents. The bill requires an agency to update its guidance document notice to include the public's ability to request a description of the document's fiscal impact on regulated persons or businesses. A public guidance document is defined in Nebraska Revised Statute 84-901(5). Under this definition, a public guidance document cannot regulate a person or business. Guidance documents are designed to provide information to the public on how an agency interprets or implements statutes or regulations. The documents are binding on the agency and not the public. Therefore, there should never be a fiscal impact on persons or businesses as a result of the public guidance document. The bill also requires guidance documents or provider bulletins issued on or after

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

July 1, 2022, to be revoked and prohibits the issuance of any new guidance documents or provider bulletins through July 1, 2027. Under the bill, these documents are revoked pending a formal rulemaking process under the Administrative Procedure Act or the APA. However, under the statutory definition, a guidance document is not considered a regulation and does not have the force of law. The APA rulemaking process only applies to regulations and not public guidance documents. Thus, in most instances, public guidance documents would never go through any formal rulemaking process. The proposed revocation of all guidance documents and provider bulletins may negatively impact Nebraskans by eliminating an agency's ability to provide clarification and information on how the agency is interpreting current statutes and regulations. This could result in increased confusion and less clarity for Nebraskans. It is important to know if a member of the public believes a public guidance document should instead be a regulation. Current law outlines the process by which an individual can make that request. We respectfully request that the committee not advance the bill to General File. Thank you for your time and I'd be happy to answer any questions.

SANDERS: Thank you for your testimony. Are there any questions?
Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair. Thanks for being here. And I'm sorry if I misunderstood, is there a distinction between provider bulletins and guidance documents or is a provider bulletin a subset of guidance documents?

JAIME HEGR: Provider bulletins can be a subset of guidance documents, but they don't have to be.

J. CAVANAUGH: OK. And-- but are they also held to the same standard that they are just-- they are binding on the agency, not on the industry?

JAIME HEGR: My area of expertise is not on the provider bulletins. There will be somebody behind me to discuss provider bulletins. My area is more on the guidance document side.

J. CAVANAUGH: OK. So I should ask my question about the provider bulletin to somebody else.

JAIME HEGR: Yes.

J. CAVANAUGH: OK. Thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

SANDERS: Any other questions? Senator Hunt.

HUNT: Thank you, Chairwoman Sanders. I'm trying to kind of form the question and maybe it's for someone behind you, too. What, what would your reaction be to the proponent testimony, I guess? It seems like-- am I misunderstanding? It sounds like from listening to you speak and reading your testimony, the department is saying that people don't have to follow guidance documents, it's optional. Do I sound crazy? What is-- what?

JAIME HEGR: So I, I think that there is a slight misconception around a guidance document. Guidance documents are meant strictly to provide clarification--

HUNT: OK.

JAIME HEGR: --and help individuals interact with the agency so it explains how the agency is interpreting our own regulations and statutes.

HUNT: OK.

JAIME HEGR: It's not, it is not designed and statutorily cannot provide any restrictions or mandates on individuals.

HUNT: OK. Thank you.

JAIME HEGR: Um-hum.

SANDERS: Thank you. Any other questions? I think it's clear as mud. I appreciate it.

JAIME HEGR: Thank you.

SANDERS: Thank you very much. Any other opponents? Welcome.

MATTHEW AHERN: Thank you. All right. So my name is Matthew Ahern, and I am the deputy director for the Division of Medicaid and Long-Term Care. And I want to thank you, Chairman Sanders, and, and those of the Government and Military Affairs Committee [SIC] for--

SANDERS: Spell your name, please.

MATTHEW AHERN: Oh. M-a-t-t-h-e-w A-h-e-r-n. And I want to again thank you for the opportunity to come and speak with you today about this bill. So I'm speaking in opposition to, to the bill that's proposed for a few different reasons. Basically, the, the, the lack of ability

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

to use guidance documents and the lack of ability to use provider bulletins would significantly hinder our ability to administer the Medicaid program. There are a lot of reasons why we have guidance documents and provider bulletins, a couple of them that come to mind that are of premier importance for us is it allows us to communicate with the specificity that we might need to implement the Medicaid program. So, for example, there will be bills that pass through this legislative body this year, there will be regulations that come out from the federal government, and there will be regulations that may pass on, on the state level. And those are not going to have sufficient detail to administer what's, what's going to be required for the program. They may not give the level of detail in terms of expectations on the provider side, expectations on our side, what they can expect of us. They simply won't have the details sufficient to communicate with the providers what is necessary. And if we go through the process to do so, then we do have to go through the regulation promulgation process, which ideally that's not where we have the level of operational detail. Additionally, the big concern here for me beyond that is the timing of what would be required to implement any of these programs without a provider bulletin. If we have to go through a formal regulation promulgation process, on average, I think we're talking about a year for us to get something through. If we start doing everything that we do and cramming it through that process, that could be catastrophic in terms of our ability to be responsive to the federal government when they change the laws and the laws that pass through the legislative body here, it would put us at significant risk of being out of compliance with federal laws when they submit their requirements if we're not able to get things through in a timely fashion, which may leave us at significant risk of federal funding. You know, additionally, beyond that, the provider bulletins give us the opportunity to communicate more directly with the providers, to communicate our intention rather than exclusively going through the regulation process. Just recently, we had the opportunity to roll out provider bulletins around applied behavioral analysis regulations or, or documents, and we were able to get feedback from the provider community and change those, change those guidance documents accordingly so that we can better meet the demands of the people that we're trying to serve. That's all that I have to say right now. I'm happy to answer any questions you may have.

SANDERS: Thank you, Matthew, for your testimony. Are there any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you. Thanks for being here, Mr. Ahern. So, OK, my question to Ms. Hegr-- is that right-- Ms. Hegr was the-- so is a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

provider bulletin a subset then of guidance documents or something different?

MATTHEW AHERN: So I view those as different. We do have guidance documents. Provider bulletins are more about communicating expectations to providers. So, for example, in the last legislative session, we passed translation services and interpretation services. A regulation would indicate what's going to be covered. Things like that. What we needed to do through a provider bulletin was communicate the nuance of what that would be. So these are the codes you would use, these are the situations in which you would use them. These are the different codes that would be required for each provider in terms of how they do that. If we don't have this mechanism to communicate it, then it would all have to be baked into the regulation and we wouldn't have been able to implement that within the time expected of the, of the bill.

J. CAVANAUGH: OK. And I, I do recall that, at least in the amendment, it says that you would be allowed to make changes in response to changes in federal law.

MATTHEW AHERN: OK. So that would be good. Now, assuming that that's, that's how the law comes to us, right? We do have changes in terms of actual changes in the federal regulation. What happens frequently, though, kind of difficult to predict, is that CMS, especially as we may change administrations, may have a change in interpretation of what that regulation is. Right? So without any official teams of the law, we now have a change in the law that we have to be responsive to, in effect.

J. CAVANAUGH: Just for clarity that the amendment says that you have to use the Administrative Procedure Act unless explicitly required for federal compliance. So--

MATTHEW AHERN: Yep. So that, that may, that may allow us to be more responsive for sure. I'd have to double back on the amendment. So.

J. CAVANAUGH: OK. And--

MATTHEW AHERN: That would be very helpful.

J. CAVANAUGH: OK. I don't know if it has about-- if there's a change in state law, and maybe that's a conversation to have with Senator Quick and the folks that are interested in this bill if there is a similar relief for that. But in terms of the way you, you laid out what a provider document is for, it doesn't seem-- at least maybe I'm

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Government, Military and Veterans Affairs Committee February 12, 2025

missing something-- it doesn't seem to sort of mesh with the-- at least the 2 or 3 that were brought forward by the folks who testified. Can you explain why 24-24 exists?

MATTHEW AHERN: So I missed the proponent testimony, so I apologize. I'm more than happy to speak to whatever the question is if you could--

J. CAVANAUGH: So Provider Bulletin 24-24 is a provider bulletin that requires that every person who works in congregate care-- is that the right word--

MATTHEW AHERN: OK.

J. CAVANAUGH: --any caregiver--

MATTHEW AHERN: Yeah.

J. CAVANAUGH: --has to get one of these NPI numbers.

MATTHEW AHERN: Yep. So the benefit here for the provider bulletin is that we are able to issue that to communicate the need or the change and give them notice in order for them to do that ahead of time prior to the change in our, in our management of the program. If we don't have the provider bulletin, we wouldn't necessarily be able to give them that same level of notice in giving them that preparation. So what, what is kind of tricky about that, it is-- you're right, it's, it's a different thing. It's not like we got a bill that passed. We had a federal law that changed. What's tricky about this is we're implementing the program based, as we understand, the federal guidance to be, right, in terms of the expectations for Electronic Visit Verification. But what happened is we also had received findings from our state auditor that indicated that based on the way we have implemented that in our read of the federal law, which we felt like we were in compliance with, there were still gaps that allowed for significant fraud. So, for example, in this particular situation, one of the identified issues that we're trying to address specifically with the NPI is that people are providing these personal care services for folks through our home community-based waivers and maybe through an agency. And they may also be providing the same care through our personal assistance services, which is handled through an independent contract, right, as they provide-- engage as a, as a sole provider. We don't have the ability in our system to track their hours across all of these platforms that they may be work at, right, which we have seen fraud where they have been able to bill unreasonable amounts because

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

they are providing the service to an agency where it's invisible to us. And through the personal assistant services, which makes it transparent to us, the, the, the NPI, which is a standard thing for all-- for, for most provider types, would be a means by which we could consistently track these people across the different platforms, and then in our systems recognize and identify when they're engaging in fraudulent behavior. So this was a way that we could be responsive in real time without necessarily a preemptive change in the law that would have triggered something in that way, but it, it would allow us-- and this isn't necessarily the sort of thing that would typically be in regulation. It would be in a supplemental document held by, by Medicaid. You know, I-- when, when I worked in Utah's Medicaid program, we had a particular provider manual, there was a document that set out signed of regulation. And, and ideally, that's the sort of thing where this would, where this would land. So this was the, the quickest, most effective way for us to communicate an expectation to them, to give them the lead time to get the NPIs before there was any requirement that we rolled out later for them to have it on claims or things like that. So we had used that as a way to give as much advance notice as we could to the provider community while still being responsive to the audit findings.

J. CAVANAUGH: OK. And so--

MATTHEW AHERN: So that's kind of the use case.

J. CAVANAUGH: Yeah, a, a very brief, concise answer. I appreciate it.

MATTHEW AHERN: Yeah, right. If you want really brief, I mean, we can, we can book all my-- cancel all my meetings. We'll just sit here.

J. CAVANAUGH: So, OK-- so what I'm trying to understand is you're saying that there's going to be a requirement and this is articulating ahead of time that there's going to be a requirement.

MATTHEW AHERN: Yes.

J. CAVANAUGH: And so when you create that obligation of that requirement, does that go through the Administrative Procedure Act?

MATTHEW AHERN: So I'll have to look at the specifics there. I believe that any requirement that we might roll out for the claims, that may go through the regulation process, I would have to double back and see where we are with that. I believe we are communicating the intention in terms of what they would include on a claim. But that, typically, is the operational detail that isn't in law, because that's not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

something we would hold anybody to legally speaking. Right? So if you are required to have certain things on, on a claim here or there, that, that may not be in regulation. I'd have to double check to see if we have intention to, to roll that into regulation. What I would like to see, and where, where I think that there may be room to, to clean things up. This to me, the bill feels like taking a broad sword to a problem that would better be addressed with a scalpel. I'll identify in full transparency--

J. CAVANAUGH: Well, couldn't that be said about the--

MATTHEW AHERN: By the, by the--

J. CAVANAUGH: --couldn't the same analogy about this-- these regulations that you put out, too?

MATTHEW AHERN: Yeah. So, so I'll, I'll give you an example really quickly.

J. CAVANAUGH: 24-24 is a broad sword for the, the auditor?

MATTHEW AHERN: What, what I would like to-- I, I don't think that is, right? And I'll tell, I'll tell you why. My whole career prior to working with Medicaid was working in direct care services for health care. And it was a standard process for us every time we brought a provider on to get through an NPI, make sure they had that, to make sure our providers had insurance, to make sure our providers had background checks, to make sure our providers went through drug testing. That was standard operating procedure. So it doesn't feel too out of alignment with me in terms of a broad sword. But what I was going to say for, for this, rather than getting, getting rid of a very useful tool for us, if we could have some, some refinement around that. One of the things that I identified that I find very frustrating is that we found a, a conflict in our policies with, with a, with a, a provider bulletin that was issued that they didn't close the loop on, which to me is unacceptable. Right? So what I would like to be able to do is make sure that we have better alignment with things that need to-- we need to close the loop either in other policy documents or the regulations. You know, that might be a better way to kind of approach this from, from our perspective without, you know, having us go through the, the more burdensome layers of, of going through the promulgation process for everything that we have to do.

J. CAVANAUGH: OK. Thank you.

SANDERS: Senator Guereca.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

GUERECA: Can you talk me through the internal process you all go through when developing these provider bulletins and specifically with the case of developmental disability, write a bulletin 24-01, and with the Emergency Safety Intervention Certification, which according to the proponents or to some of the testifiers, basically created a no-bid contract situation where one company was the only person that gave the, the certification?

MATTHEW AHERN: So I would have to refresh myself on that particular provider bulletin. I don't, I don't recall the specifics of that one. So I, I wouldn't be super comfortable speaking unless you wanted to elaborate more and maybe that would jog my memory a bit.

GUERECA: I mean, take me through the, the standard internal process that you all go through, and if you can get me later on--

MATTHEW AHERN: Yeah.

GUERECA: --what process you went through to come up with PB 24-01.

MATTHEW AHERN: OK.

GUERECA: That would be fantastic because the creative-- the basis of the creation of a no-bid contract is concerning, right? And that's-- if that's truly what happened, that's very concerning.

MATTHEW AHERN: Yeah.

GUERECA: But can you just talk me through, generally, what your internal process is when developing the provider bulletins?

MATTHEW AHERN: Yep. So I will say that it kind of depends-- and I'll be sure to get back to you on that-- it does kind of depend on the subject matter and the impetus for the provider bulletin. Right? There are times when the provider bulletin may be due to a change in our system and what-- how, how a claim, maybe, has to be submitted or something like that. So we would issue a provider bulletin to make sure people have a heads up, you know, about what's happening. That would kind of start with the impetus. OK, what is the change? When is it going to happen? And who is this going to impact? And then we would walk through a process where our policy team or a relevant operational team would develop a, a provider bulletin that would go through a series of checkoffs and review within our internal team. If it impacts another division, then it would go through a series of review and check through that side of things. And we, we kind of go through the approval all the way up through to being signed by the Medicaid

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

director as applicable. If, if it is related to a bill that passes over a law that we have to, to implement, then that will depend-- again, a lot of times we may have a, a-- an initial sort of provider bulletin to communicate, like, timing and what we anticipate to, to be happening. And then we would follow up with subsequent information with more detail on exactly how it would be implemented. And, again, that works through relevant policy teams or, or operational teams as they match up the requirements of the bill, you know, and how we're able to implement that. That also has to go in concert with all of our layers of sort of bureaucratic paperwork on the federal side, because just about anything that we do in terms of a regulation may require a change in our state Medicaid plan in addition to the regulations that may require a change in our waivers if we have existing waivers or, or implementation of new waivers. All of those things have different sort of rules and expectations in terms of the process through the federal government and getting their approval, some of which have to be in sequence to ours,--

GUERECA: Sure.

MATTHEW AHERN: --where we would have to get the regs first, then that happens, some can be in parallel. That's, that's the basic gist of it. I'm hoping that gets to at least some of what you're trying to [INAUDIBLE] to.

GUERECA: Absolutely. It seems like a very long and complex process. And how, ballpark, on a, on standard PB, you're, you're talking to a lot of agencies, a lot of departments, a lot of policy teams.

MATTHEW AHERN: Yeah.

GUERECA: Ballpark it. How long from the initial idea to the final PB being delivered? How long would that take?

MATTHEW AHERN: Yep. So, again, that depends on the impetus, right? If it's tied to a regulation, it will take as long as regulations take or more than, because then we're talking about a year or so. If it is tied to, we need to clearly communicate the change, we need to clearly communicate an operational process, then it could be out by the end of the week. Typically, it would be a couple of weeks because we're trying to do things in a thoughtful way. If we really need to get something through, though, it can be out pretty quickly. Not on the official checklist, we frequently will discuss some of these things with, with provider agencies and groups and associations to make sure we're understanding intentional and unintentional, unintentional sort

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

of impacts. But, yeah, so, so for those things that are not tied to regulation, it can move much more quickly. Those things that are tied to regulation, it takes a long time.

GUERECA: But it sounds like that, that communication with the agencies aren't happening, which is why we're here.

MATTHEW AHERN: So I would say they are happening some of the times and some of the times they're not. I will also say that some of the times we can't always run an agency to make sure that every provider's super happy with us because we have to hold providers accountable.

GUERECA: And I, and I can appreciate that. But, again, when we're hearing that a PB is basically giving a, a no-bid contract, that's concerning.

MATTHEW AHERN: Well, I will definitely look into that.

GUERECA: Thank you.

MATTHEW AHERN: So I would say that it's going to be an exception case. The real concern is that this takes away our ability to communicate in a formal way with people that doesn't necessarily have the effect of any sort of regulation. And I'm not sure what other recourse we would have to address that if this were gone.

GUERECA: Thank you.

SANDERS: Senator Hunt.

HUNT: Thank you, Chair Sanders. Thank you for the answers you've shared with us. I'll ask about 24-01 and I'll tell you about it.

MATTHEW AHERN: Please.

HUNT: You didn't-- you weren't here for a lot of the proponent testimony, right, you said?

MATTHEW AHERN: Correct.

HUNT: OK. So this is from the first proponent. I won't read all of this, but in his words, he said: in administering Provider Bulletin 24-01, the division awarded a no-bid monopoly on ESI training to a single vendor, forcing providers to adopt this specific curriculum with no opportunity for input or alternatives. And he used your sledgehammer-scalpel analogy, actually. He said: for some providers

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

who have already invested in alternative but equally effective training, it renders those investments obsolete, forces them to spend hundreds of thousands, if not millions, of dollars to comply with the mandate that was issued without discussion, that they're already doing trainings that are approved under state statute, and now they have to change it. And it says: the division already has broad authority and oversight over providers. And this regulation uses a sledgehammer where a scalpel is needed. So what would your reaction be to that?

MATTHEW AHERN: Unfortunately, I don't know enough about that to, to speak intelligently on it.

HUNT: Sure. My, my question, listening to all of the proponent and opponent testimony so far, is why do we need a provider bulletin? Because it should be clear in statute and rules and regulations-- they should be clear enough that it's not necessary because the law and the rules and regulations are subject to a public process, subject to transparency and bulletins are not. These are just unilateral policy decisions made by bureaucrats that are-- actually seem to be costing providers a lot of money. Can you speak to that?

MATTHEW AHERN: Yep. I think that's a really good question. The way I would envision it is that I think that what belongs in regulation would be the, the coverage, you know, who, who can receive a given service, things like that. What belongs in regulation is probably not, that you would have to contact a specific claims vendor, probably not to be updated every single time a CPT change happens, which is-- a CPT code change happens, which happens every year. Probably not to update all of those things to the level that would need to be required to get through the operational components. And that's, that's what I would think is that, you know, we're making sure that the coverage is available, we're making sure that there's not necessarily a limitation where, where the, where the regulation or statute requires that there not be. But the level of detail in terms of the operational implementation of, you know, one vendor versus another vendor versus CPT code changes that happen regularly probably shouldn't be encoded with the force of law.

HUNT: Sure. I agree with that. But it seems like at this level, the, you know, specificity of one vendor versus another, maybe that's where we're getting into, like, the micromanagement when some of these providers are already using a vendor that complies with the law, and that's what's ending up costing them so much money.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

MATTHEW AHERN: So, I mean, I totally understand the, the tension there. And I think that there's something to look at there. Again, I don't know the specific details and I'd be happy to look into it further.

HUNT: Thank you.

MATTHEW AHERN: But I am not sure what other mechanism we would have to communicate the, the minutia rather than kind of having it baked into-- I mean, I guess, I will say as a career sort of bureaucrat right now, to add another layer of unneeded bureaucracy to get to the nuances of operating the program on a day-to-day basis where things change as rapidly as they do, I would feel very, very constrained if we had to go through the process for every, every detail.

HUNT: OK. Thank you.

SANDERS: Any other questions? See none. Thank you very much, Matthew Ahern, for your testimony.

MATTHEW AHERN: Thank you very much.

SANDERS: Are there any other opponents? Opponent on LB565? Welcome.

DARRIN SCHULTZ: Thank you. Good afternoon, Madam Chair and members of the Government, Military and Veterans Affairs Committee. My name is Darrin Schultz, D-a-r-r-i-n S-c-h-u-l-t-z, and I'm here representing the Nebraska Attorney General's Office in opposition to LB565. So we understand that Senator Quick has brought the amendment. We have not yet reviewed the amendment. Therefore, my prepared remarks concern the bill as introduced. I intend to be brief. First, I'll outline what guidance documents are, what they're not, and how they should function. Second, I'll briefly explain why vacating all guidance documents for state agencies as the bill was introduced for the 5-year period may be problematic. First, a guidance document is defined in statute under 85-- 84-901(5) as, quote, any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agencies, rules, or regulations. A guidance document is binding on an agency until amended by the agency. A guidance document shall not give rise to any legal right or duty or be treated as authority for any standard requirement or policy. So a guidance document is not a law. It is not a rule or regulation. Guidance documents do not bind the public, but are advisory in nature for the public's benefit. So that's the key. A guidance document

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

functions to inform the public of how a particular agency will generally interpret and apply its governing statutes and rules and regulations. Thus, guidance documents afford the public the-- and the agency a degree of predictability with agency action. With published guidance documents, the public and the agency can anticipate how the agency will act when it must apply its governing statutes to regulations. This is so because in the guidance documents, the agency has already said how the agency and the public should interpret its governing statutes and regs. LB565, as introduced, would have vacated all guidance documents published in the past 3 years and prohibited any new guidance documents for the next 2 years for all state agencies. This bill, thus, would have potentially had the unintended consequence of removing clarity for the public regarding agency action. And with that understanding, the Attorney General opposed-- opposed LB565 insofar as it prohibited agencies from providing such clarification for the public. Admittedly, not all agencies are created equal because sufficient clarity may already exist under a particular statute or rule or regulation. We take no position on whether an agency should or should not issue a guidance document. I'm also not here to comment on any specific guidance document. Our office, however, just supports the ability of state agencies to issue guidance documents if the agency deems fit to do so. So we simply want to emphasize that we believe those agencies that have chosen to provide this clarifying information to the public in the form of a published guidance document should be allowed to do so. For that reason, we oppose this bill as introduced. However, we intend to review the amendment, and it is my understanding that the amendment substantially limits the scope of, of this bill. And so, as Senator Guereca asked the previous testifier, we are happy to revisit our opposition after we review and, and can follow up with the committee. So that's all we have. Thank you.

SANDERS: Thank you for your testimony. Are there any questions?
Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair. Thanks for being here.

DARRIN SCHULTZ: Sure.

J. CAVANAUGH: So you talked a lot about guidance documents. Do you have any thoughts on the bullet-- provider bulletin part?

DARRIN SCHULTZ: I do not. I'm not prepared to comment on those.

J. CAVANAUGH: Have you ever heard of them?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

DARRIN SCHULTZ: Not before today. No.

J. CAVANAUGH: OK. I looked, I couldn't find them mentioned anywhere in statute either. So I just thought maybe, maybe you had more insight than I do. But all right, thanks.

DARRIN SCHULTZ: All right. Sorry to disappoint.

SANDERS: Check if there are any other questions. See none. Thank you for your information.

DARRIN SCHULTZ: Thank you.

SANDERS: Thank you, Darrin. Any other opponents? Any in the neutral? All right, this closes the hearing-- oh, closing? Oh, oh, I'm so sorry, Josephine.

JOSEPHINE LITWINOWICZ: I hope I get the neutral capacity right, because this is the first time I've used it. No disrespect [INAUDIBLE].

SANDERS: Welcome.

JOSEPHINE LITWINOWICZ: Hi, Chairwoman Sanders and members of the committee. Good afternoon. My name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. Sorry, I got a little lightheaded in the past few minutes. But one of the things that I, I wanted to stress is that communication all the way around is, is a problem. I mean, it doesn't seem like anybody really knows any of the, the primary parties involved. And, you know, I have a problem with, with the overreach of regulation. But we need regulation in the sense, and I don't know how that exactly to what extent it's interfered-- interfering with the providers' profit margins. But definitely with the development-- developmentally disabled, we've got to pay particular attention. And like-- and I'm just going to comment-- oh, I'm, I'm on behalf of the, the Higher Power Church. That is my church and so I, I always put it down. But as a neutral capacity, I just wanted to indicate that-- what I'm speaking on behalf of. And, and so-- and, for example, I'll just bring up anecdotal stuff, I guess. EVV was a disaster when it came out. I get Home Health and that was so-- and I didn't have to be because, you know, the state-- I don't know who they pay and then single bid, don't get me started there, but who do they pay to, to do their apps? I mean, I have a-- my EBT app is just-- I mean, who, who does the state pay to do these, you know? And I, I, I, I say that, a genuine-- I, I guess I should have brought it up to someone before, but EVV was an absolute nightmare for my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

provider owner, Home Health Care. You know, it's so-- and it, it gets in the way of the employee actually being able to do their job, too, because sometimes-- like oftentimes they don't speak a lot of English and, you know, they're an immigrant or, you know. And so when you have them trying to-- they're, they're wasting their time and they head back home to their family and they're trying to [INAUDIBLE] this, this, this-- the situation that they probably called before more than once and still has no solution for. And-- but I want to caution, because-- and it's probably the most important thing, but that's, that's OK. I have a lot to say about everything that was just said. But my problem is when-- I, I can't keep it all together, I can talk about it as it happens, but I can't keep it all together. And I found out I cannot do written testimony. I mean, I'm, I'm just useless. And so, I mean, I suppose I could in addition, but I can't read all of it. Anyway, I'd like to talk-- maybe I can approach if anybody wants to approach me about it. And, you know, the fraud that takes place-- I'm sorry, I'm having real trouble putting-- I'm good. So I'm going to go.

SANDERS: Thank you for your neutral testimony. Are there any other neutral testimonies? See none. Hold on. As Senator Quick is coming up, we have our online position comments: proponents 27, opponents 4, neutral 1. Welcome back.

QUICK: Yeah, thank you, Chair Sanders and members of the committee. You know, ultimately, it comes down to the people that we serve. And I think sometimes when we're looking at some of these, you know, the things that are going with the guidance documents and, and our laws and regulations and that we really have to go back and look at how we're actually affecting the people that we serve. I know there's a difference between the, the providers and, and, and the agency itself. We've heard about the challenges and frustrations that the providers are facing and, and they're just trying to serve the clients that they have and make a, a better, better life for them. And I know it was brought up, too, about the, you know, scalpel versus the broad stroke and that can go-- kind of cut both ways, right? So, I mean, the agencies thinking they can do with a scalpel because-- and not a broad stroke, but then also the providers are looking at it that way, too. You know, how can we, how can we address that? I kind of relate it to my-- one of my life experiences as a welder. And so, you know, we'd have engineers draw up plans, tell us where-- how to put this project in, and then we'd go out there and start to work on it and say, hey, this isn't going to work. You know, you should have talked to us first. So maybe there's that communication level between the, the agency and the providers to try to figure out, you know, how they can-- the providers can best serve their, their population of people

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

and then making it work within the agency guidelines somehow. So somehow there's got to be that communication level, instead of just putting out what you think is going to work, and then the providers can't, can't make that work within, within their business model. I think I talked about the lack of clarity and impact. And so do we need to look at changing the law or, or is it about policy? And if the laws or regulations are confusing then-- are, are the laws and regulations confusing, then we should go back to the drawing board rather than write a guidance or, or, or a document or, or a doc or bulletin. So, you know, I think, from my office, we can provide some, some information about-- with some of the-- with some examples from today, and maybe that will help the committee to make an informed decision. But I think something needs to be done here, whether it's-- but we, we, we need to find something that we can do to help these people that we're serving. So with that, I'll close and, and I would recommend that we vote this out so we can get this fixed or maybe we can fix it in committee so we can move on.

SANDERS: Thank you, Senator Quick. Let's just see if there are any last-minute questions. See None. Thank you for bringing LB565. We will close now on LB65 [SIC]. And we will begin with LB29. Welcome, Senator Conrad.

CONRAD: Hello. Good afternoon, Chair Sanders, members of the Government Committee. It is lovely to be back in the friendly confines of the Government, Military and Veterans Affairs Committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today representing the 46th Legislative District to introduce LB29. So I know you've already heard a lot about some of the other key bills that are in this package of regulatory reform measures that have been brought forward this session and it builds upon our past work together, thanks to Senator Sanders' leadership, in, in reining in judicial review, in the regulatory process, and having a greater, stronger standard for personal liberty when issues are before our regulatory agencies and courts and that we've worked on together in LB43. And we also had the opportunity during the interim period to have a really robust hearing on regulatory reform measures under LR355, which I introduced and was set for a public hearing on September 6, 2024. In addition to that work, I've had the opportunity to really dig into these issues during the interim period and work really closely with a, a host of different stakeholders to really figure out how we can make our government work better in Nebraska, how we can cut red tape and help to unleash economic freedom and personal liberty, and how taking a thoughtful, solutions-based approach to reining in government overreach and antiquated rules and regulations

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

that have been on autopilot for far too long that really will help to benefit small business owners and entrepreneurs in our district, that really will help to benefit Nebraskans who have business before some of the largest agencies of state government and are in a disparate, disparate bargaining position when their rights are subject to discretion and decision-making before those bureaucracies. So I'm really-- it's hard-- it's-- and, you know, it's hard for me to be brief. I-- I'm, I'm, I'm going to try and do my best. I'm very excited and very passionate about the proposals that are before you today. I'm a proud cosponsor of all of them. And LB29, really is focused on a couple of key components here. And let me go ahead and have the pages pass it for you so that you have it for your file. So back in 2017, then Governor Ricketts, now our U.S. Senator, but then-Governor Ricketts issued an executive order asking all code agencies to do a comprehensive review of all these rules and regs that were out there to say what's, what's still working? What do-- what can we wipe off the books? Is there a better way to achieve this goal through legislation or are these rules and regs antiquated and bloated and, and can they be removed? Thanks to Governor Ricketts' order, we saw a reduction of about 25 or 30% of our regulatory code under this thoughtful, orderly review process. Now, that was about 7 or 8 years ago since that, that process was undertaken and we haven't seen that same sort of comprehensive review of our rules and regs in that time for the past 7 or 8 years. So what my legislation does in LB29 is it really borrows upon that approach in the executive order and it says let's go ahead and put this in statute. Let's not be dependent upon the executive orders to say every so many years we're going to have agencies conduct this very analysis, look at what's on your books, figure out what's working and what's not working so that we don't get stuck on autopilot with this bureaucratic bloat. I think that this was a very sound model that we have good results on in Nebraska. It has also worked in other sister states. And I think that it provides a very thoughtful process to ensure at every step along the way we're increasing citizen trans-- citizen engagement and overall governmental transparency, which is important as well as we reset the balance of power away from the unelected administrative state and put it back in the hands of the people and back in the hands of the people's branch of government where it belongs. So when you look at LB29, and it's not a particularly lengthy bill, it says that under this as introduced: every 3 years, starting January 1 next year, each agency needs to designate somebody that they have on their staff to be responsible for this process, to evaluate the rules and regs that they have within their agency oversight, to do an analysis of whether or not these rules are necessary to advance health and safety and welfare of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

public, conduct cost-benefit analysis, see if there's a least restrictive approach that has been considered to evaluate whether or not these rules are effective at achieving their goals and whether or not that these rules are required as a statutory or federal or court mandate. And then they issue a report to say what should stay and what should go. And it comes back to the jurisdictional committees of the Legislature. We have a chance to take a peek at it, and then it goes to the full Legislature for a report as well. And that's all a transparent purpose-- process that then citizens and other stakeholders can engage in at each step along the way. And it makes sure we get, we get off autopilot and happens every 3 years. So what I have communicated to the governor's office and his policy team is I'm not married to a 3-year review. If we need to look at a different time metric, maybe it's 4 years, maybe it's 5 years, whatever that may be, I think we can settle upon the right metric for review so it's not overly burdensome, but so that it does achieve the same goals of continual analysis and reflection. Additionally, I really appreciate the fact that I think there's a lot of good points that have been brought out in the fiscal note, and you can see that some of our largest agencies are anticipating the most amount of work, which makes sense because they have the most rules on the books. But I'm 100% willing to work with the administration and the agencies and this body to try to address any fiscal note concerns. But when you look at the bill itself, all it says is that a state agency has to designate somebody to do this. And many of these agencies operate millions and billion-dollar budgets with hundreds of staff members. I know it's not a one-size-fits-all approach when it comes to state agencies. Some are very large and some are very small, but they should have existing resources to at least be able to take a look and see what rules do we have on the books that are impacting consumers and businesses and individuals. That's not too much to ask with our tax dollars right now. Thank you.

SANDERS: Thank you. Let's see if there are any questions from the committee.

LONOWSKI: I have one.

SANDERS: Senator Lonowski.

LONOWSKI: Thank you, Chair. And thank you, Senator Conrad. So when I look at the fiscal note,--

CONRAD: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

LONOWSKI: --it seems like all these agencies, agencies should have somebody that's checking out their policies and procedures now, right, or--

CONRAD: Yes.

LONOWSKI: I mean-- but now they're saying, oh, we're going to need extra help if-- some extra help if we're going to look at our policies every 3 years.

CONRAD: Yeah. Thank you, Senator. And I, I have two pieces there that I want to share with the committee for your consideration. So, number one, when Governor Ricketts did his executive order back in 2017, it didn't spark a big fiscal note. That governor made it a priority to tell his agencies what to prioritize, and that was cutting red tape. So we should look at that as a first example. Number two, if you look at the legislation itself on page 2, lines 4 and 5, all the bill says is that: Each agency head shall designate an individual responsible for this oversight and review. Every state agency has assistance of general counsel, either on staff or through DAS or the AG's Office. They also have a leadership and administrative team. They also have very talented government actors who are familiar with the rulemaking process before their agency. So I, I do appreciate and understand why the fiscal note came in as it did. But I do think that we can continue to work with them to push those costs down, because I take the governor at his word that cutting red tape is a priority. And if we did it together 7 years ago without spending additional dollars, we can do it now the same way.

LONOWSKI: Thank you.

CONRAD: Yeah.

SANDERS: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair. And thanks for bringing this bill, Senator Conrad, good to see you.

CONRAD: Good to see you.

J. CAVANAUGH: I also had comments on the fiscal note.

CONRAD: Yes.

J. CAVANAUGH: So my one thought or comment is why was there-- what-- if it's a requirement every 3 years, why is there an annual expense? I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

don't get that part. And then the other part is the Department of Corrections gave the exact same fiscal note on Senator Storer's bill.

CONRAD: That's right.

J. CAVANAUGH: And so I wonder if we pass both bills, if at least we could-- that would be covered by the same-- it's literally the same person, they need a legislative coordinator for her bill and for your bill.

CONRAD: Yeah, I-- and I'm not familiar with that kind of general position in state government. And so I would want to learn more about what Department of Corrections was thinking in that regard to, to see how they would plan to implement these. But we'd want to, of course, harmonize it with Senator Storer's bill, because I think that should absolutely move forward and I'm very excited about that. And I also want to be clear, I have been deeply impressed by Governor Pillen's PRO Office in regards to how they're interacting with the Legislature on this package of regulatory reform bills. Kenny Zoeller, the Director of PRO, reached out to my office proactively. We've had very constructive meetings about these matters. We've had very constructive email communications about these issues as well. And I think that we're truly, truly working in good faith to figure out how to address any of the technical aspects, but are aligned on the goal.

J. CAVANAUGH: Thank you.

CONRAD: Yeah.

SANDERS: Any other questions from the committee? See None.

CONRAD: I'll be here.

SANDERS: Thank you, Senator Conrad. You'll stay?

CONRAD: Yeah.

SANDERS: Thank you. Any proponents on LB29. Welcome back.

LAURA EBKE: Thank you. Chair Sanders and members of the Government Committee, my name is Laura Ebke, L-a-u-r-a E-b-k-e, and I'm the senior policy fellow at the Platte Institute, here in support of LB29. And we thank Senator Conrad for bringing it. And I will just note she mentioned LR355, one of the packets-- one of the things in the packet that I sent you was a review that our summer intern put together on potential regulatory reform. So considering that this young man was a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

sophomore in college, I think you'll be impressed if you have a chance to read it. There are a few common themes running through all of the bills that you're hearing today. First, there's a recognition that while the so-called administrative state may, by necessity, need to regulate certain things, there should also be constraints on how and when executive agency power should be exercised. And the best way to ensure that those constraints are effective is to have the process be transparent and responsive. Second, there is a general understanding that those who are regulated should be able to understand the process and have the means to let their voices be heard in opposition. Third, in most of these bills, including the REINS Act, which you did not hear, but the Executive Board did earlier today, we acknowledge the importance of oversight by the legislative branch, the policymaking branch in our system of government. The Legislature has to delegate some powers to the executive branch. Still, it should be diligent in conducting oversight of the actions of that branch because, as a body, the Legislature is ultimately responsible for both protecting the liberties of the citizens and for any impositions on liberties as a result of overreaching delegated power. So LB29 is a very simple bill. It codifies in statute the reviews that then-Governor Ricketts implemented of Nebraska's regulatory code in 2017 through executive order. It requires agencies to regularly, every 3 years, review all existing and pending regulations using a standard that's very similar to what is already in place in the Occupational Board Reform Act, a.k.a., LB299 reviews, which requires occupational regulations to be reviewed on a 5-year cycle. I would just add that since the Occupational Board Reform Act is on a 5-year cycle and it's part of the Administrative Procedure Act, it might be worthwhile to consider switching either this to 5 years or Occupational Board Reform Act to 3 years so that everybody's on the same, the same type of cycle. We're-- we strongly urge your favorable consideration of this bill, suggest it would be another fine addition to an omnibus package prioritized by this committee. And let me just make a quick note. What, what we tend to find in, in 2017 and 2018 when we were working on the Occupational Board Reform Act, LB299, we found a lot of fiscal notes submitted by agencies as well who said that they couldn't do this without additional staff. In the end, they didn't need additional staff. So think positive.

SANDERS: Thank you, Senator Ebke. Check to see if there are any questions from the committee. See none.

LAURA EBKE: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

SANDERS: Thank you very much. Any other proponents on LB29? Welcome back.

KILEEN LINDGREN: Thank you, Madam Chair and committee members. As I mentioned earlier, I'm going to dispense with my introduction except to state for the record, my name is Kileen Lindgren, spelled K-i-l-e-e-n L-i-n-d-g-r-e-n, legal policy manager at Pacific Legal Foundation. So as we've been discussing today, rulemaking, while often necessary, is a tool to carry out legislative intent. And just like the law, which lawmakers review consistently, rules should undergo the same kind of scrutiny. So a vote for LB29 is a vote to ensure that agency rules are performing their proper role as support actions taken by the people's representatives on their behalf, and that those actions are the least burdensome and most clear for those affected. This is a simple bill that clarifies the proper role of legislative branch in reviewing rules made by agencies that it created. This type of legislative oversight is crucial to the functioning of a limited government that represents people well. Rules that have the effect of law should be consistently vetted by the elected representatives. According to a 2024 study by the Mercatus Center, Nebraska has over 76,000 rules and regulations. So this is, this is a significant impact with the effect of law. This reform is not a referendum on agency employees, it's an accountability measure that ensures that Nebraskans are living under rules that are necessary and productive and also cost effective. So I encourage this committee to support this bill.

SANDERS: Thank you. That was concise. Thank you for your testimony. Are there any questions for Ms. Lindgren? See none. Thank you very much.

KILEEN LINDGREN: Thank you.

SANDERS: Any other proponents for LB29? Good afternoon. Welcome.

MICHEAL DWYER: Hi. Good afternoon, Chairman Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I appreciate the opportunity to submit written testimony-- I apologize, there was some drama about whether I was going to make it here today, so apologize for that and you can strike that from the statement-- in support of LB29. Thank you, Senator Conrad, for introducing this important legislation in at least an attempt to return state government to the efficient, effective, and transparent model that citizens, like me, can understand, respect, and interact with. I was a 12-year member of the Arlington School Board, where I served 2 years as president. I was

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

a member of the Washington County Chamber Board for 6 years. I am a 41-year active volunteer firefighter and EMT, and I am the current cochair of the Nebraska EMS Task Force, and I am current chair of the Arlington Planning Commission. And I only gave you that resume to make the point that Nebraskans who volunteer usually wind up interacting with state agencies. In my experience, including my current arm-wrestling match with the Department of EMS in Nebraska, it can be a battle. Case in point would be LB59, and it's in front of Health and Human Services next week, that attempts to get basic data about how we do EMS, particularly in rural Nebraska. And this has been a 2-year process and eventually resulted in a bill just to get basic data. So much of the battle for volunteers between public service and public agencies is because they tend to use, and in some cases hide behind, regulations. I believe LB29 is an important step in shining a bright light on what Nebraska state agencies are doing and specifically what they are requiring Nebraska citizens to do. I strongly support LB29 and Senator Conrad's efforts to shine a bright light. I thank you for the opportunity to testify and would be welcome and honored to answer any questions.

SANDERS: Thank you, Mr. Dwyer, for your testimony. Check to see if there are any questions from the committee. Got off easy. See none. Thank you--

MICHEAL DWYER: I got off easy.

SANDERS: --very much.

MICHEAL DWYER: Thank you.

SANDERS: Any other proponents on LB29? Welcome back.

JONATHAN WOLFSON: Thank you, Madam Chairman. For the record, Jonathan Wolfson, J-o-n-a-t-h-a-n W-o-l-f-s-o-n. Thank you again for having me. I will keep my remarks extremely brief. I, I thank, Senator Conrad, for bringing this bill. One of the important things about this bill that most of the other bills that deal with regulation don't do is this looks at what's already on the books. You know, a lot of these things talk about what are we going to do going forward? Senator McKeon's bill that we're going to talk about in a minute talks about what are we doing with regulations that are going on the books in the future. A lot of the legislat-- even talking about venue and where you can challenge this, generally looking at regulations that are coming up on the books in the future. Senator Conrad's bill really does take a look at what's already on the books, and it requires that those

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

regulations come up for review over time. You know, in Texas, they still require that county board meetings be tape recorded, not recorded, but tape recorded. And it's because they don't have this sort of review that would obviously-- nobody really needs to go find a Texas instruments tape recorder to record your meetings. You've got lots of other ways to do that. But these are the sorts of things that just sit on the books over time. And so Senator Conrad is right that this is a really important piece of legislation that just codifies what your former governor put in place by executive order. Make sure that all future governors, that all future administrative agencies are going through this process on a regular basis. The amount of time that you do it over, I think that that is obviously up for discussion and debate. Different states that do have this sort of review process do it over 5-year periods, 8-year periods, 10-year periods. That is really not the critical piece. The real critical piece is that you're doing this backward-looking review. Does the regulation do what they said it was going to do in the first place? If it does, it stays on the books. If it doesn't, you get it off the books so the people in the state don't have to live under it. Thank you so much. Happy to answer any questions.

SANDERS: That was some fast testimony. Thank you. Any questions for Jonathan Wolfson? See none. Thank you.

JONATHAN WOLFSON: Thank you.

SANDERS: Got off easy. Any other proponents? Welcome.

JENNIFER CREAGER: Thank you. Chairwoman Sanders, members of the Government Committee, for the record, my name is Jennifer Creager, J-e-n-n-i-f-e-r C-r-e-a-g-e-r. I'm a registered lobbyist for the Greater Omaha Chamber. I'm also appearing today on behalf of the Nebraska Chamber of Commerce and Industry and the Lincoln Chamber of Commerce-- the chamber team is a little stretched today so you're getting the weakest link so apologize for that-- in support of LB29 and we want to thank Senator Conrad for introducing the bill. There's no need-- unlike Senator Conrad, I have no problem being brief, so there is no need for me to repeat what everyone has said. I just emphasize that we think it's a good government approach. I think most members of our chamber, certainly the Omaha Chamber, about 90% of our 3,000-member membership is a small business. And I think for small businesses, that's one of the reasons they join the chamber, is the regulatory burden. So it makes sense to us to have a review process in place. We're really agnostic what the time limit is. We would be fine with the change to 5 years if this committee feels like that is ideal.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

We recognize that it seems identical to the Ricketts' executive order, as you've already heard. And then I guess just the last point I wanted to make is, you know, just when you-- because you do a review doesn't always mean you eliminate a regulation. It just-- it probably gives you the opportunity to strengthen the justification behind a regulation if you've gone through a review and you still feel the need or the data to support that review. So I just think this is a really important bill and, as I said, part of a good government approach and the chambers would support that. Thank you.

SANDERS: Thank you. Are there any questions for Jennifer? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair. Thanks for being here, Ms. Creager. Do you have, like, any ready examples of ridiculous regulations that we-- that should no longer be in the books? I mean, the, the tape recording one is pretty good.

JENNIFER CREAGER: That is. I don't, I don't think I can beat that.

J. CAVANAUGH: Well, if, if you do talk to any of your members and they have any--

JENNIFER CREAGER: I will come up with a top 10 list. Yes.

J. CAVANAUGH: --fun suggestions, we don't want serious ones, we only want to hear the fun ones.

JENNIFER CREAGER: I, I will double-- I, I have lots of tax dispute examples, but those are not very exciting.

J. CAVANAUGH: Yeah, those are not exciting. Thanks.

SANDERS: Any other questions for Jennifer Creager? See none. Thank you--

JENNIFER CREAGER: Thank you.

SANDERS: --for your testimony. Any other proponents for LB29? Any opponents? Any in the neutral for LB29? Welcome.

KENNY ZOELLER: Thank you. Good afternoon, Chairwoman Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Kenny Zoeller. That is spelled K-e-n-n-y Z-o-e-l-l-e-r, and I serve as the director of the Governor's Policy Research Office. I'm here today to testify in a neutral capacity on LB29. And I'd like to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

thank Senator Conrad for introducing this bill and focusing on the important good government issue of regulatory reform in Nebraska. Governor Pillen, along with previous administration, has made cutting red tape and regulations a top priority. In large part thanks to EO 17-04 issued by then-Governor Ricketts and continued by Governor Pillen, Nebraska is now the 10th least regulated state in the country. From 2017, Nebraska has slashed regulations from over 100,627 restrictions to 76,201 restrictions and roughly 20,000 pages of regulations. While this is a great-- while this is great progress, we can always do more. Earlier today, I emailed a report that contains information regarding code agencies and their regulations. And I passed out a summary that I'll be referencing. I hope this information can help drive the discussion towards the primary goal of Governor Pillen's, which is cutting unnecessary regulations on Nebraskans. Before diving into the details, it's important to remember that the executive branch agencies cannot promulgate rules and regulations without express authority given by the legislative branch. Moving on to the item that I passed out, this is a summary of an analysis of code agency regulations. On the left hand side is the listing of the agency and in the far right column is the total number of regulations on the books for code agencies. As you can see, there are roughly 2,042 regulations from code agencies. However, 70% of these regulations are required to be on the books due to state or federal law. While we cannot directly control the actions of the federal government to affect the 246 regulations that are required by them, we can collectively control the 1,202 regulations required by state law and the 594 regulations that have been regulated due to permissive authority. Governor Pillen is committed to taking the next step in deregulating Nebraska, Nebraska. He wants to be the best in the country, and he wants to specifically ensure that we continue to beat Iowa and Oklahoma and our regulation rankings. That is why it is the governor's recommendation that we collectively work together, focus on identifying statutes that force unnecessary regulations, and work to repeal or make those requirements to promulgate rules and regula-- rules and regulations permissive. In my remaining time, I'd like to quickly touch on what could be perceived discrepancies of the fiscal note on LB29 and what the executive branch experienced during its regulatory reform. EO 17-04 was done using existing resources. Due to this, the initial review of all of our state agencies was just completed last month with our final HHS regulation being approved by the governor in, in this January 2025. This means that the initial review of EO 17-04 took 7 years and 7 months to complete utilizing existing resources. I hope this provides additional context as to why some agencies may need more resources for a more expedient timeline as

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

proposed in LB29. In closing, we are excited to partner with the Legislature in this endeavor and I'd be happy to try to answer any questions that you may have.

SANDERS: Thank you very much for your testimony. Any questions for Kenny Zoeller? See none.

KENNY ZOELLER: Awesome.

SANDERS: Thank you very much--

KENNY ZOELLER: Thank you.

SANDERS: --for your testimony. Any other in the neutral? Welcome back.

JAIME HEGR: Good afternoon, Chairwoman Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Jaime Hegr, J-a-i-m-e H-e-g-r, and I am the agency compliance and privacy officer at the Department of Health and Human Services. I am here to testify in the neutral capacity on LB29. As written, the bill includes language that would be problematic for an agency the size of DHHS. Beginning January 1 of 2026, LB29 requires the agency to review all regulations and provide a detailed report to the Legislature by June 30 of the same year. With the agency having approximately 350 chapters of regulations, it would be nearly impossible to complete the review in a 6-month time frame. The same difficulty would be encountered by the agency every 3 years. In addition, the bill, as drafted, appears to require the suspension of all regulations within the agency's purview during that 6-month period of time. This could result in a backlog of regulations needing to be promulgated once the review is complete. If the intent is for the suspension to only apply to the chapter under review, it should be clarified in the bill. It is important to note that when amending or drafting new regulations, the agency is already conducting a similar analysis of existing language. While not on a recurring basis, any time a chapter of regulation is modified, the entire chapter is being evaluated under criteria similar to the factors set out in the bill. Thank you for your time and I'd be happy to answer any questions.

SANDERS: Thank you for your testimony. Check to see if there are any questions. See none. Thank you--

JAIME HEGR: Thank you.

SANDERS: --very much. Any other neutral on LB29? See None. Senator Conrad, if you'd like to come up to close. In the meantime, the online

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

position comments: proponents three, opponents one, two in the neutral.

CONRAD: Great. Very good. Thank you, Chair Sanders. Thank you, members of the committee for your time and attention and consideration. Just to follow up on your question, Senator Cavanaugh, while I don't have a laundry list just yet of outdated and antiquated rules and regs specific to Nebraska, I know that when other states have conducted this very similar process, here are some examples that popped up from Idaho, which is a leader on regulatory reform. They combed through their administrative code and rules and regs and found a dress code in rules and regs for deputy state veterinarians from the 1960s. They found regulations for non-native snails that had never been found in the state. They found rules for a lottery television game show that never aired, and they found hyper-specific requirements for female kickboxing uniforms. Those were just a few of the more, maybe lighthearted examples or strange examples that popped up in really a, a very robust and very muscular regulatory review process that they had in place in Idaho. So a couple of things. As we move through this, we can see if we got kind of the first set of the oldest, most antiquated rules and regs kind of pressure washed off in the 2017 executive order. And we can see what's left. Other states have even invited something like crowd participation and have asked citizens to weigh in with, like, a "regathon" where they'd comb through code and kind of lift up or identify potential areas for repeal or reform, which might be kind of interesting to think about. And after seeing what happened in our sister state of Ohio, actually, this fall, they unleashed the tools of AI to comb through their administrative code and to come up with suggestions for what to cut and what to streamline, and actually had some pretty significant results utilizing new technologies for that regard as well. So I had delivered a letter to Governor Pillen's Office in December of 2024 asking that our chief information officer and executive branch agencies, you know, start to explore the utilization of AI for these purposes as well. So that's yet another idea that we can perhaps take a look at that wouldn't even require legislation necessarily. So I'm very enthusiastic about these measures, very happy to continue the conversation with the committee today or moving forward. But I think we have a chance to do something really powerful and cool here where we come together across the state at different points in the political spectrum to really reset the balance of power, ensure a robust separation of powers, and unleash economic freedom and personal liberty for Nebraskans.

SANDERS: Nice closing.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

CONRAD: I've done this once or twice.

SANDERS: Thank you very much.

CONRAD: And I'm particularly passionate about this.

SANDERS: Let me double check, are there any questions from the committee? We see none. Thank you--

CONRAD: Thank you.

SANDERS: --for LB29. Closes the hearing on LB29. We'll now move for LB472. One of our own. Senator McKeon. Welcome.

McKEON: Thank you. Good after--

SANDERS: Any time you're ready.

McKEON: All right. Good afternoon, Chair Sanders and members of the Government, Military, Veterans Committee [SIC]. I'm Senator Dan McKeon, D-a-n M-c-K-e-o-n, representing District 41, Nebraska State Legislature. I'm here to introduce LB472. And I did not hand any fancy handouts to you like the rest of them. LB472 is a brief bill meant to continue the conversation on regulatory, modernization, and reform. While Nebraska may not be as overregulated as some of the states, we have been the beneficiary of early efforts to streamline through executive orders. This bill would further formalize regular reviews and efforts to minimize the regular barriers to business and economic growth. LB472, is modeled on Virginia's Office Regulatory Management. While this office was created through an executive order, we believe that this consistent, consistent with Senator Conrad's LB29 that will-- while that-- while an executive order can be effective, it is important to codify process into law so that the work can-- doesn't stop when the executive leaves office. Section 3 of the bill is the bread and butter of the Regulatory Management Act, creating office and regulatory management. That office would provide a central office housed with the executive branch, which would supervise the, the catalog of regulatory requirements currently in, in effect, and ensure the catalog is fully transparent to the public. The office would also collect, analyze and assess and publish agencies evaluations and reports, do other due diligence to ensure the best practices are utilized before new regula-- regulations are created. The third thing would be establishing a precise analysis and cost and benefits of new regulatory requirements and provide monetary cost estimates to the economy. None of this would require us to start from scratch. Virginia's Office of Regulatory Management has created a manual for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

economic analysis to provide a framework for adopting something similar in Nebraska. The bottom line is that we want to reduce barriers for businesses and individuals to succeed, to make the government accountable to its citizens. The goal of this bill is to reduce unnecessary regulations, simplify regulations, and make it easier for citizens to know what the rules they're bound to. This office would be tasked with doing that. Arguably, this office would be a state of the version of the Trump administration's DOGE, but with legislative authorization. Thank you for your time. Others, including Jonathan Wolfson, will be testifying behind me and can answer your questions specifically about Virginia's experience and about what other states are doing. Any questions?

SANDERS: Thank you, Senator McKeon. I'll check if there are any questions from the committee. No? Thank you very much. You going to stay to close? Thank you. Any proponents on LB472? Welcome back.

JONATHAN WOLFSON: Thank you, Chairwoman Sanders. Again, for the record, Jonathan Wolfson, J-o-n-a-t-h-a-n W-o-l-f-s-o-n. I'm here in support of Senator McKeon's HB472 or LB472. Appreciate him presenting this bill. And I do happen to live in Virginia as well. And so I've interacted with the folks at that office a number of times and can answer some detailed questions if folks have questions. Well, I think the key things, there's really three things to keep in mind about why an office like this in the governor's office makes a lot of sense. As the governor's office just spoke about the last bill, the governor does think about this as a priority. But that's one of those things that sometimes from time to time, that priority can wane. And by creating this office permanently, it does give kind of the information from the Legislature and the governor's office that this is a whole of government priority, that you want regulations to go through the correct process, that you're going to check in on your cabinet agencies, that they're doing their job in the correct fashion that you have laid out by passing laws, that they have followed the rules of the Administrative Procedure Act that you have actually articulated as the Legislature. And so this empowering of the central office inside the governor's office to ensure that that process and those rules are followed really is an effective way to make sure that that signal is sent loud and clear to everyone across the government. By making it a priority in Virginia, in particular, the office was able to find over \$1.2 billion in annual cost savings for the people of the Commonwealth of Virginia. Now, Virginia is a larger state than Nebraska, so we don't necessarily know what that number, in particular, would be. And some of that is you're going to have to get in there and actually dig in and find out. But one of the great examples that they cite all the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

time is that Virginia had adopted the national building code that required any multifamily housing to have a sprinkler system. Makes a ton of sense in a large condominium. But if you're talking about a duplex, having a \$100,000 sprinkler system may not make the most sense if you're trying to deal with the rising cost of housing in your communities. And so things like that that they were able to find that can bring down housing costs can bring down the cost of transportation and the cost of goods and services for the people in your state really does make a difference. And then, finally, I think this also makes sure that everything that's coming out of those regulations, giving someone else to do a last check to ensure that it aligns with policy. Does this align with the dele-- the express delegation that you, the Legislature, have given to that agency to regulation or is this something that may have just popped up over time that maybe there's going to be a lot of controversy as we had an earlier hearing on about whether or not the agency should be issuing that document in the first place? Having somebody who's going to look over their shoulders, who might have more of kind of an overarching view can be really helpful there. And it makes sure that the cost-benefit analysis is complete and is transparent so that you, the Legislature, can see it, so that the citizens can see it when people submit comments and say we think that you're underestimating the cost this is going to impose on businesses in our state, that can all be public and apparent for everybody to see. And this having an office that's going to verify that they do it can really be helpful. With that, I'm happy to answer any questions that you all have and really appreciate your time.

SANDERS: Thank you, Jonathan Wolfson. Check to see if there are any questions from the committee. See none. Thank you very much.

JONATHAN WOLFSON: Thank you very much.

SANDERS: Any other proponents on LB472? Welcome back.

LAURA EBKE: Thank you, Senator Sanders, members of the Government Committee. If you turn to the back of the folder that I turned-- I sent to you later or earlier, there is a PowerPoint from the regulatory reform workshop that Platte posted a couple of months ago in December that has information about what happened in, in Virginia. Also has some links or some pictures of things that you can, that you can refer to. My name is Laura Ebke. It's L-a-u-r-a E-b-k-e, and I'm a senior fellow at the Platte Institute, here in support of LB472. And we thank Senator McKeon for introducing it. LB472 is a little different from the other bills that we have supported today. It creates an office within the executive branch, the Office of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

Regulatory Management, working for the governor and tasked with reducing unnecessary and excessive regulations. The office would do that by establishing a transparent baseline catalog of all regulatory requirements currently in effect. We see this office as supplementary and complementary to the work that the Secretary of State's Office already does. In addition to catalog-- cataloging all regulations, it would also be tasked with analyzing and assessing regulatory requirements, both from an economic cost-benefit standpoint and to determine whether conflicting regulations are imposed upon the same businesses and individuals from different agencies. In many ways, this office would act as an executive branch-- executive agency hub for regulations, attempting to streamline and root out excesses to make regulations more sensible for those who are regulated. We think that having one office dedicated to this makes a lot of sense. This office could also be tasked with providing information to the Legislature as needed, acting as sort of an executive branch Ombudsman for the Legislature. While this bill anticipates a fiscal note, we have one good example of an Office of Regulatory Management in Virginia, the handouts you receive and, and Mr. Wolfson's comment a few minutes ago shows that, that, that while there is some front-end cost in creating this office, the, the Virginia experience suggests that those expenses pay for themselves pretty quickly and improved economic growth. We'd encourage you to advance this bill, again, perhaps as part of a committee-prioritized package. We stand ready to assist the committee and Senator McKeon with any modifications that you see necessary.

SANDERS: Thank you, Senator Ebke, for your testimony. Questions?
Senator Lonowski.

LONOWSKI: Thank you, Chair. Thank you, Ms. Ebke. Have you seen the fiscal note?

LAURA EBKE: I have.

LONOWSKI: So it, it looks to me like we're going to spend \$1.2 million to be more efficient.

LAURA EBKE: Yeah, I think that, I, I think that we need to dig into the fiscal note a little bit. And, of course, you know, as you all know, we all get the fiscal note 24 hours ahead after we've already prepared testimony and all sort of stuff. So we do need to dig into the fiscal note a little bit. There may be some adjustments to be made. I think if this were part of a larger package, I think that there are probably some efficiencies that occur just by combining things within.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

LONOWSKI: OK. Thank you.

LAURA EBKE: Um-hum.

SANDERS: Thank you. I, I do have a question. Do you see the possible sunset on this bill once it becomes a well-oiled machine and, and you have every 5 years or 3 years or 4 years?

LAURA EBKE: Yeah, I don't, I don't know that I see, I don't know that I see a sunset on the office per se. But I do certainly think that we should consider eventually having sunsets on regulations. You know, currently Senator Conrad's bill suggests a 5-- you know, 3 years or 5-year review, which is sort of a soft sunset, which is what we have with the Occupational Board Reform Act. I think that there would be some, and I think it was-- was it Utah or Idaho, somebody is going to have to help me, one of those two has a hard sunset so that basically that regulations go away forever after 10 years or, or something like that. And you have to have a constant review and, and re-- and, and reauthorize. I don't know if we want to do that. I, I suspect that there would be a significant number of folks sitting behind me who would object to that of having to have things re-- reauthorized on some sort of a regular basis. But I do think that a regular review is, is a good thing. And I think-- I, I don't know that this office would go away, but that's the future legislatures' decision, you know. So if, if they decide that it no longer is needed, sure.

SANDERS: Thank you. Are there any questions? Yeah, Senator Cavanaugh.

J. CAVANAUGH: I'll ask one. You guys all seem really--

LAURA EBKE: We haven't talked today.

J. CAVANAUGH: Yeah, well, always a pleasure to see you, Dr. Ebke.

LAURA EBKE: Nice to see you.

J. CAVANAUGH: I was going to ask about the fiscal note, too, was my question. Am I misunderstanding something? I would expect there to be a fiscal note to set up the office, but what is-- why are we getting a fiscal note from these other departments?

LAURA EBKE: I, I don't know. There was one and I think it was this one that said four, four folks on the revenue.

J. CAVANAUGH: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

LAURA EBKE: I don't know, because that doesn't seem like that would require any additional employment. If you've got-- the, the office is the-- is doing the work and just, you know, reaching out to the-- as I see it, reaching out to the agencies to get information. So I-- yeah, I don't know.

J. CAVANAUGH: OK. Thanks.

LAURA EBKE: Yes.

SANDERS: Thank you. Any other questions from the committee? See none. Thank you very much for your--

LAURA EBKE: Thank you.

SANDERS: --testimony. Are there any other proponents on LB472? Any opponents on LB472? Any neutral testimony on LB472? Welcome back.

KENNY ZOELLER: Thank you, Chairwoman Sanders. Once again, my name is Kenny Zoeller. That's spelled K-e-n-n-y Z-o-e-l-l-e-r. I serve as the governor-- Governor Pillen's Director of his Policy Research Office. And I'm here to testify in neutral, neutral capacity on LB472. I don't have any prepared remarks. Just wanted to provide some high-level suggestions to the committee and the Legislature as a whole. First, please focus on a shared goal. We've talked throughout the day, ranging from Exec Board to here, about restrictions, pages, title numbers. All these things are actually significantly different. So if it's the goal of the Legislature to cut down the restrictions, that means from an executive branch standpoint, that's not necessarily the total number of regs, but rather how many "shalls" or "musts" are in those regs. If it's the goal to cut down on the total pages, then, frankly, that's taking a look at, back to the previous document I handed out, how many specific regulations are, are we required to have, to have on the books from the Legislature, from the federal government, or, or in a permissive standpoint? The other thing I just wanted to suggest in the, in the neutral capacity is making sure that we mirror up standards. LB366 from Senator Riepe, which was heard in front of the Exec Board today, referenced there, I believe, primarily because it creates a new office within the Legislature. That bill specifically focused on high-dollar regulations. So moving forward, if it's, if it's the decision of the committee to kick out a package of bills, please keep that one in consideration to make sure that we're utilizing the same terminology, we're utilizing the same standards put upon the executive branch and, frankly, trying to get the same expectations that the legislative branch is expecting from us. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

then, finally, just want to once again express the importance of these reviews. You know, throughout this process from EO 17-04, to Governor Pillen putting further emphasis on it, we've found a number of success stories and one that I would like to highlight from Department of Environment and Energy is Title 179 and AC 13. This is a regulation that specifically deals with ground water and water treatment facilities for municipalities. In a very simple summary, the change that we promoted that's on the governor's desk, it allows a municipality to drill a drinking water well, then test for surface water contamination before having to build out a surface water treatment plant instead of vice versa. And that specific change will save tens of millions of dollars to communities like Fremont, Norfolk. So once again, while this type of hearing can get a little in the weeds in terms of the process of government, it is important and some of the success stories can actually save significant amounts of money. So with that being said, I'd be happy to try to answer any questions.

SANDERS: Any questions for Kenny Zoeller? See none.

KENNY ZOELLER: Thank you.

SANDERS: Another in the neutral? Good afternoon.

ROBERT M. BELL: Good afternoon, Chairwoman Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Robert M. Bell. Last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, the state trade association of Nebraska insurance companies. I'm here today in a neutral capacity on LB472. It was already mentioned. We are the primary trade association of insurance companies. The Federation consists of 49 member companies, members write all lines of insurance. Member-- Nebraska insurers provide high-quality, high-value insurance products to Nebraskans that provide financial protections during difficult times. We also provide significant amount of economic impact on the state of Nebraska. According to a recent study that we commissioned, the industry had a \$25.77 billion impact on the Nebraska economy in 2022 and provided over 32,000 jobs to Nebraskans. And I'm just going to share a little bit about how insurance is regulated. Insurance is regulated on a state regulatory system that relies on the state Department of Insurance accreditation through the National Association of Insurance Commissioners, which is referred to as the NAIC. During the 1980s, a rash of insurance company insolvency spurred the NAIC to develop financial regulation standards in accreditation and an accreditation program to certify that the various insurance departments across the nation meet and continue to meet a variety of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

legal, financial, and organizational standards. Financial examinations done by an accredited insurance department are accepted by other accredited jurisdictions. To bring that discussion back to Nebraska, an accredited Nebraska Department of Insurance means that the financial exams completed by the Nebraska Department on Federation member companies will be accepted by all members of the NAIC. So all other states and jurisdictions. Without accreditation, Federation members would be subject to the time and expense of financial examination by other jurisdictions. Thus, we have a, a vested interest in the accreditation of, of the department. When we were reviewing LB472-- and we don't really mean to get into the affairs of the government. If, if the government wants to form a new agency to review the regulatory requirements of, of other agencies, we don't, we don't have a problem with that. We would just give some consider-- ask the committee to give some consideration to what is a, a regulatory requirement, which is defined, but also a regulatory action is used within this legislative bill. It does state that the new office can't overturn a regulatory action. But a regulatory action could mean if you're an insurance company, you provide all of your documents, your financial documents to the Nebraska Department, and they analyze those and decide, yeah, you're a little bit rich in one investment area. You need to tweek that. That would be a regulatory action. And so don't necessarily want another layer of bureaucracy taking a look at that. If it's rules and regulations-- I'm sorry, I will stop.

SANDERS: Continue your thought.

ROBERT M. BELL: I am unfamiliar with the, the audio.

SANDERS: Yeah, please finish your thought.

ROBERT M. BELL: OK. But-- so if, if it was just a review of requirements or guidance documents and, you know, other things, like, there's many statutory requirements as well, we're fine with. If it gets into evolving second guessing decisions made by the financial regulator, I think that would be something that you would want to consider, so. That's all I have. Thank you.

SANDERS: Thank you for your testimony.

ROBERT M. BELL: Yep.

SANDERS: Thank you. Any questions for Robert Bell? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair. Thanks for being here, Mr. Bell. I particularly appreciated the, the study you cited that you admitted

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

paying for, which I think is good. Do you have-- I mean, is there specific change or language you would propose to Senator McKeon that might help us alleviate your concerns?

ROBERT M. BELL: And I don't even know if that they are necessarily concerns. But, yeah, I mean, we would certainly, certainly work with the senator and the committee on any language change-- changes that we may have. When we reviewed it-- I mean, in subsection (6) and Section 3, it did talk about how those decisions on regulatory actions could not be authorized or rejected. So that gives us some comfort. So maybe we would suggest don't change that, so.

J. CAVANAUGH: Oh, OK, so you're, you're here in the neutral capacity saying leave it be, leave it as is?

ROBERT M. BELL: Well, leave, leave that particular provision be.

J. CAVANAUGH: OK.

ROBERT M. BELL: So.

J. CAVANAUGH: So just to be--

ROBERT M. BELL: And if we find something else we'll, we'll let you know.

J. CAVANAUGH: OK. So as it stands right now, you are just sort of identifying what would make you nervous, but you-- the bill as written is OK?

ROBERT M. BELL: Correct.

J. CAVANAUGH: OK. Good. Thanks.

ROBERT M. BELL: Hence neutral.

J. CAVANAUGH: Neutral. Got it.

SANDERS: Thank you. Any other questions? See none. Thank you very much.

ROBERT M. BELL: You're welcome.

SANDERS: Any other in the neutral? Welcome back.

JAIME HEGR: Good afternoon, Chairwoman Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Jaime

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

Hegr, J-a-i-m-e H-e-g-r, and I am the agency compliance and privacy officer at the Department of Health and Human Services. I'm here to testify in the neutral capacity for LB472. I have many of the same concerns as I did in LB29. A state agency may only promulgate regulations based on the statutory authority granted to it by the Nebraska Legislature. This applies even when there is a federal requirement for regulations. Most chapters of DHHS regulations already include a reference to the authorizing authority for the chapter as a whole. However, regulatory requirements as defined in the bill requires a review of each section of the regulatory chapter. For chapters where there are multiple authorizing statutes or both state and federal laws authorizing the regulation, it will take significant time to go through each section of the regulatory chapter to determine what specific authority applies to each section. The bill also requires each agency to analyze the costs and benefits of new regulatory requirements. It is unclear if this analysis is to be conducted as part of the agency's review or if this is a separate process. There is no time frame established under the bill for the cost-benefit analysis and to the extent this analysis is to be conducted as part of the review of all currently promulgated regulatory requirements, it would be difficult for the department to meet the 6-month time frame. Thank you and I would be happy to answer any questions you may have.

SANDERS: Thank you, Jaime Hegr, for your testimony. See if there are any questions from the committee. See none.

JAIME HEGR: Thank you.

SANDERS: Thank you very much. Are there any other testifiers in the neutral? See none. Senator McKeon, would you like to close on LB472?

McKEON: Thank you.

SANDERS: While you're coming up, position comments online: proponents two, opponents zero, neutral one.

McKEON: In closing, Governor Ricketts' executive order in 2017 and the actions reviewed programs and the regulatory by Governor Pillen have been an ongoing process for nearly 8 years. In Virginia, which is the model for this legislation, they had a director and three full-time employees. No other agency had made hires. So some of the Nebraska agency claims in this fiscal note need to be more-- for more employees is inflated. This shows that the need for LB490 [SIC] and some agencies don't, don't seem to commit to the goals of small efficiency

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 12, 2025

and transparent government that best serves the people in Nebraska. There will be some costs, but the benefits will far exceed those costs. I look forward to working with the committee to see what can be done with this bill and other related bills heard before Government today. Small, efficient, and transparent government that works for the citizens should be the goal that we need to share. This is the purpose of LB490 [SIC].

SANDERS: Thank you very much. See if there's any, any questions to close. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chair. And thanks for bringing this bill, Senator McKeon. So you heard Mr. Bell's testimony, so are you willing to work with them--

McKEON: Yeah.

J. CAVANAUGH: --and leave the bill as is?

McKEON: We talked, we talked. As is, yeah.

J. CAVANAUGH: Thanks.

SANDERS: Any other questions? See none. Thank you, Senator McKeon, for--

McKEON: Thank you.

SANDERS: --bringing LB472 to the committee, and this closes the hearing on LB472, and also closes the hearing for today in the Government Committee. Thank you.