

Testimony of Lynn Rex, Executive Director of the league of Nebraska Municipalities

February 10, 2017 on LB 68

Senator Murante members of the committee my name is Lynn Rex representing the league of Nebraska Municipalities. L Y N N R E X.

What is being passed out to you is a letter from the Mayor of Lincoln Nebraska in opposition to this measure.

In addition a letter from the Police Chiefs Associations of Nebraska, referred to as PCAN.

I'm not here today to testify on behalf of Mayor Beutler specifically or PCAN but I do want to refer to some of the information in their letters for you your review.

First and foremost I do want to say that we too think it's possible to work out amendments to accommodate most of our critically important issue here today. And we appreciate Senator Hilgers willingness to meet with us to do so.

With that I would like to say first and foremost in response to you Senator there is a federal requirement in terms of interstate travel from state to state and one of the amendments that we think needs to apply here that needs to happen in Nebraska law is is to apply that same standard for intrastate travel that being said, one does need to have exceptions for retired law enforcement officers, law enforcement officers, concealed carry permit holders so they do have to take the bullets out in between places if you will.

In addition I do want to emphasize a few things. as soon as you are all in receipt of those letters. **I want to emphasize the unprecedented nature of some of the provisions of this measure and why WE STRONGLY OPPOSE IT in its current form.**

With that I think you all have these letters and first of all have you reference the letter from mayor Beutler. Again, I'm not representing the city of Lincoln, but I do want you to have this letter and I'm going to highlight some of the areas.

Local control: If you look at this element, constituents in different areas of the state may believe that additional ordinances are appropriate or necessary to address the issues faced by their community. I think that the testifier before me representing the Omaha Police Officers Association underscores that what happens in Omaha Nebraska is *fundamentally different* in terms of gang violence and everything else than what may happen and whether it is Gering or Hemmingford Nebraska. Or any other place in the state of Nebraska, maybe not Lincoln.

The scope of this appears to prevent municipalities from prohibiting guns in places like city hall, city agency building courthouses or city parks. While state agencies could prohibit the possession of firearms in the state capital, state buildings, state parks and other similar locations. Again, what applies to local governments would not apply to you.

We think it is important to protect those citizens when they are in municipal facilities as well.

Law enforcement: Clearly would impact the ability of local police to enforce state gun laws and or crimes involving guns.

We have some real significant concerns about that. And **this language has been looked at from city attorneys all across the state of Nebraska that do have these same kinds of concerns.**

It's not just limited to Mayor Beutler and his concerns. And then, I think too, . Again, it would not apply to counties. It would not even apply to the state of Nebraska **but UNPRECEDENTED in terms of allowing to have this kind of litigation.**

If you look on page 15 of this bill it talks about who could actually sue.

Page 15, line 18. "A person adversely affected by an ordinance " and I'm just going to paraphrase line 18 a person adversely affected by an ordinance. Line 20, may file an action.

Then let's talk about who's adversely affected. line 26, the person is an individual who may legally possess a firearm and the individual is or was subject to the ordinance. Going down the line to lines 30 31. Was physically present within the boundaries of the city or village for any reason.

And then my personal favorite is on page 16 line 3. The person is a membership organization. What's that constitute? Two people.

So the Senator John Murante and Lynn Rex Organization for gun owners. We could sue anybody in the state of Nebraska, any municipality in the state of Nebraska, whether we've ever been there or not. Wouldn't matter.

And then look what is at stake on line 11, 12 and 13. **Actual damages including consequential damages, court costs reasonable attorney fees.**

In addition I just want to underscore the letter from Chief Bill Misnier, he is the President of the Police Chiefs Association of Nebraska. He wished he could be here today. But was unable to do so and I will just quickly read you his one sentence letter.

"The Police Chiefs Association of Nebraska wishes to respectfully oppose LB 68. While we respect this 2nd Amendment we recognize that communities need to have the ability to identify local problems and develop local responses to those problems, we also disagree with the establishment of a standard for individuals and organizations to have standing to sue municipalities."

And my parenthesis in such an unprecedented way from counties even in the state of Nebraska itself. As you know there is state political

subdivision tort claims act. This isolates municipalities for the purposes of lawsuits and lawsuits and more lawsuits.

So with that I just first of all, again want to go back and say we appreciate Sen. Hilgers being willing to meet with us and talk about some of these issues. I appreciate that when, Senator, pardon me Sheriff Wagner. I wouldn't want to give him a demotion in pay.[laughter]

That when Sheriff Wagner testified in support of this bill he did note, and I'm going to quote this.

"LB 68 may prohibit cities and counties from enacting an ordinance or rule from bringing an open carry firearm in the building. That obviously is a concern of ours as well. I'd be happy to respond to any questions that you might have. And again we appreciate the willingness to testify today. Thank you very much for your testimony.

Senator Brewer. Thank you chairman, Alright, let's back up a little. Umm understand that uh the concerns I'm getting are, if you are from Valentine Nebraska and you come to Lincoln Nebraska and you establish laws that gonna be more restrictive you could easily commit either a misnomer or felony and never know that that restriction was there. So by having this patchwork, how do you keep from committing a crime without knowing it because of each town deciding whatever combination of laws that they want to establish.

Lynn Rex: Well Senator, I do want to differentiate between traveling from place to place which relates to what Senator Blood's question is, which is making sure that the same laws that apply interstate would apply intrastate. So there is absolutely no problem if you would look at that kind of amendment which is very similar to AM 1915 that Senator Morfeld offered to Senator Ebke's bill LB 289 last year. With some of them it's needed for law enforcement.

That being said, quite frankly it gets to what the individual from the Omaha Police Officers Association noted which is the police officers exercise a great deal of discretion and common sense in my view and indeed I will tell you I don't think that they are out trying to find individual to do that, so I don't believe that this quote patchwork has any negative implications for individuals.

And it gets to the issue that senator Blood noted, which is "Where are these individuals that have been unduly prosecuted?" We see them in Omaha, with gang members where if they don't register, of course they are not going to register, that is one way in which Omaha police officers are able to hold an individual. That in fact have not registered, a way to get them off the streets and maybe prevent some repeat offences that very night. So things of that nature.

But we do think that there are ways to address the very issue you are raising through some amendments and we are prepared to look at those. And work with Senator Hilgers.

Senator Brewer: Did I hear you right that you wanted to change the rules for intrastate to be the same as the rules for interstate?

Lynn Rex: Right, now you go from state to state you are able to do that, and there are certain rules that apply to conceal carry permit holders, certain rules that apply to others as well.

For example, retired law enforcement officers, law enforcement officers are allowed to do that. What I'm suggesting to you is an amendment that would say that interstate from city to city to city would , the same thing would apply.

So when you are passing through Sarpy country and passing from Greta, Papillion, LaVista and you blink your eyes and you are in one city or another, that you don't have to worry about whether or not by passing

through or transporting. or you are going to go hunting, you are leaving Lincoln Nebraska to go off to Scottsbluff or the panhandle, you don't have to worry when you are doing that. Passing through one jurisdiction to another, with certain exceptions, the AM 1915 to LB 289 last year would accommodate that.

Senator Brewer: Okay. Thank you.

Lynn Rex: You're welcome

Chair: Any additional questions? Senator Briese?

Senator Briese Thank you Senators. Thank you for being here. I too noticed on line 3 standing given to a membership organization to sue line 3 of 16, but the two people you mentioned there they have to be adversely affected by the statute or hurt by the ordinance also .

Lyn Rex: Well, but adversely affected, yes Senator that's the issue, because if you look on page 15 line 18 who's a person adversely affected? Line 18 a person adversely affected may file an action, that's on line 20. And then let's see who is adversely affected? Line 24, a person is adversely affected for purposes of this act if, and there is a ONE and there is a TWO, let's look at the small "i" on line 26.

The person is an individual may legally possess a firearm, and I'm just picking out some of the words here, and the individual is or was subject to the ordinance, measure, enactment, rule or policy of the city or village.

Then you go on and continue and it says. Line 30 "If the individual is or was physically present within the boundaries of the city or village for any reason."

But then go to the next page, this is the one that is absolutely open ended, page 16 lines 3 through 7.

"The person is a membership organization that includes two or more people, this is a person adversely affected, " that's **why you can have**

someone from Texas suing any city in the state of Nebraska whether or not they have ever been in Nebraska, whether or not they ever intend to come to Nebraska. This gives them standing to sue.

They would be quote "defined by statute" Senator adversely affected two individuals who say, according to line 4 and 5 basically the person is a membership organization that includes 2 or more individuals dedicated in whole or in part to protecting the rights of persons to possess, own or use firearms for competitive sporting, defensive or other lawful purposes. and again, two individual and that means any place in this country.

Senator ?: As per lines 20-35 on page they had to have been physically present in the boundaries of the city or village.

Lynn Rex: No. Because what, the way that you read that is that everything under the small "i" relates to that person there's two categories that is adversely affected.

One is the person who's actually there, and then you go to the next page, the two lines that starts on line 3 and there you have membership organization. So persons would be defined as either an individual or a membership organization.

A membership organization of 2 or more people. And that is why there are cities in Pennsylvania that I think a previous testifier noted. **Cities, I'm sorry, in Pennsylvania that were being sued by individuals in Texas. The same thing could happen here. This sets up an UNPRECEDENTED level of standing for individuals to sue.**

And more, and even as important outside the political subdivision tort claims act outside the state political subdivision tort claims act. So counties, state of Nebraska you would not be subject to the same types of litigation to which you would subject municipalities. And I would say

on its face LB 68 voids 11 municipalities ordinances just in the city of Lincoln. Thanks for your question.

Senator?: A follow up question, how many ordinances in Omaha would be voided by it?

Lynn Rex: I know the registration ordinance and I would have verify. I will do that and get back to you on their number of ordinances, Senator. Thank you.

Lynn Rex: You're welcome. Thank you for the questions.

Chair: Thank you. Any additional questions? Seeing none, Thank you for your testimony. Thank you for your consideration.

Lynn Rex: And again thank for Senator Hilgers being willing to meet with us.