



March 9, 2017

VIA EMAIL TO COMMITTEE CLERK

Senator John Murante
Chair, Government, Military
and Veterans Affairs Committee
Room #1423
P.O. Box 94604
Lincoln, NE 68509

Re: LB 437 Public Hearing

Dear Senator Murante and Members of the Committee:

On behalf of the Nebraska Investment Finance Authority ("NIFA"), we appreciate the opportunity to respond, as part of the record, to the testimony given during the public hearing on LB 437 by Don Stenberg, State Treasurer.

I can assure you that NIFA is in no way attempting to "hide" or "cover up" any information, financial or otherwise, from the Treasurer or the public. Our intent, with respect to the amendment to the Taxpayer Transparency Act (the "Transparency Act"), was to simply provide NIFA's data (in full compliance with the Transparency Act) through a link to the Treasurer's website, www.statesspending.nebraska.gov. The statements made by the Treasurer to the contrary are completely unfounded.

We have no disagreement with the Treasurer with respect to the type of data and contracts required to be made available on www.statesspending.nebraska.gov. We have made this clear to him on numerous occasions and have repeatedly assured him that NIFA will comply with the Transparency Act. With respect to our request that NIFA be permitted to provide this information through a link from its server to the Treasurer, unfortunately we have been unable to reach agreement with the Treasurer. If NIFA's data is not on a server owned or managed by NIFA, the cyber risk insurance policy currently maintained by NIFA to assist it in managing its cyber risk, is no longer in effect.

With respect to the specific allegations in the Treasurer's testimony to which we take issue or disagree, our responses are set forth below.

1. The Treasurer stated that NIFA is not in compliance with the Transparency Act. This is completely false. NIFA is in full compliance with the Transparency Act. All of NIFA's contracts were posted on the Department of Administrative Services website prior to January 1, 2017 as required by the Transparency Act. With respect to financial operating data, the amending language in LB 851 (enacted

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last year) provides that the Treasurer's website include data for "state entities" made subject to the Act by LB 851 for "fiscal year 2016-2017 and each fiscal year thereafter." The data is required to be available on the web site no later than 30 days after the end of the preceding fiscal year. NIFA's current fiscal year ends June 30, 2017 and it is prepared to provide the data on or before the transitional date provided in LB 851.

2. The Treasurer stated that "the Executive Director of NIFA, Mr. Tim Kenny has, with the assistance of his lawyers, engaged in a campaign of obstruction to conceal financial information concerning NIFA from the State Treasurer." This is false. At no time have we denied access to NIFA's financial information to the Treasurer. Through various pieces of correspondence with the Treasurer, we requested information about the Treasurer's website, including information about security protocols, as we worked to comply with the various provisions of the Transparency Act. The Treasurer refused to provide any of the information we requested.

3. The Treasurer stated that "several meetings have been held, all of which ended with no agreement from Mr. Kenny or his lawyers that Mr. Kenny would obey the law as written..." We have assured the Treasurer in each meeting and our correspondence to the Treasurer that NIFA would comply with the Transparency Act. We understood from the sponsor of LB 851 (the 2016 bill which provided that state instrumentalities, such as NIFA, would be required to comply with the provisions of the Transparency Act) and the Speaker of the Legislature at the time, that the language in LB 851 would permit NIFA to provide its data (again in full compliance and in the manner provided in the Act) through a link from the Treasurer's website to the NIFA server. As it became clear that the Treasurer was not going to permit this method of providing our data to his website, we proceeded to seek a legislative solution through the introduction of LB 437.

4. The Treasurer refers to NIFA's attempt to seek clarity through the public process (i.e., an amendment to the current law), as "cover-up operations." It is clearly unfortunate that our attempt to follow best data hygiene practices with respect to the managing of NIFA data has been twisted by the Treasurer into an allegedly nefarious act on the part of NIFA. We remain stunned by and disappointed in his behavior.

5. The Treasurer stated that "in my opinion, when a government bureaucrat fights this hard to prevent the disclosure of financial information, he is hiding something." While the Treasurer is certainly entitled to his opinion, his opinion has no basis in fact. I have not, nor has anyone on NIFA's behalf, attempted to prevent the disclosure of financial information. NIFA is in full compliance with the provisions of the Transparency Act. Again, it is unfortunate that our attempt to seek legislation to be specifically permitted to provide our data using a link to the Treasurer's website has been construed by the Treasurer that I am "hiding something."

6. The statement made by the Treasurer that he sees "many similarities between what is going on at NIFA and what has happened with the Tourism Commission, the Brand Committee and, to a certain extent, the Omaha Goodwill scandal" is irresponsible, offensive and inaccurate. Without commenting on the actions of those entities, the Treasurer has no factual basis whatsoever to draw such a comparison.

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7. The request by me, as Executive Director, to request that a bill be introduced was a step to seek clarification in the Transparency Act of NIFA's ability to maintain control over its data to ensure that industry standards are in place with respect to the protection of that data. The NIFA Board, once LB 437 was introduced, was requested to vote on supporting the bill. A motion was passed by the NIFA Board to support LB 437.

8. The suggestion of the Treasurer that the NIFA Board is not able to provide the oversight that is needed and an Executive Director who takes important actions without his Board's approval is an insult to both the Board and to me. He suggests that the Board members "simply do not have the time to provide the level of oversight that is needed considering the amount of money involved." The NIFA Board consists of nine very professional members thoughtfully appointed by the Governor who are fully engaged in the matters of NIFA. To suggest that they do not have the time to provide oversight is demeaning. Contrary to the Treasurer's assertion, all important actions with respect to NIFA are not taken without prior Board approval.

9. The Treasurer notes that LB 437 does not require that there would be a search capability for NIFA expenditure information. The information maintained on NIFA's server would be accessed in the same searchable format as set forth on www.statespending.nebraska.gov. As required by the Transparency Act, the information must be submitted in such form as designated by the Treasurer (i.e., searchable). If the Treasurer does not feel that the language is sufficient to ensure that the data be searchable, we have no objection to so amending LB 437. Again, the server on which the NIFA financial data required by the Transparency Act is maintained will be fully searchable in the same (if not better) manner as that provided on www.statespending.nebraska.gov. The Treasurer is incorrect; it will be entirely possible to find the information and will not, as he states, make it all but impossible to discover if some expenditures are not disclosed on the NIFA server site.

10. The Treasurer stated that he intends to write the State Auditor to request a detailed audit of NIFA and to determine whether internal controls at NIFA are sufficient. NIFA is audited annually by a certified public accounting firm, the audits are shared annually with the clerk of the legislature and each of the senators. The audit is also available to the public at www.nifa.org. Additionally, NIFA has very robust internal controls in place to prevent fraud, waste and abuse. These controls are reviewed by our independent auditors as part of our annual audit. We are confident, based on this, that NIFA's internal controls are more than sufficient. That being said, we will accommodate any request from the State Auditor.

11. The Treasurer stated that he is "going to make a public records request for NIFA's financial records in the near future." He further indicates that "based on my past experience with him and his lawyers, I am all but certain that he will not" [produce the records.] NIFA fully intends to comply with any request for public information as required by the Public Records Act.

12. The Treasurer states that "the situation at NIFA is serious." We are unsure what he suggests by this statement. He notes that in the last two years alone, NIFA has issued \$475,000,000 of housing bonds and that NIFA has approximately one billion dollars in housing bonds outstanding. Yet he then

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proceeded to make an inflammatory and patently false statement that the amount of money “sloshing around at NIFA is enormous, and is ripe for abuse.” Rest assured, money is not sloshing around at NIFA. NIFA has, in the past two fiscal years, actually issued \$445,000,000 of its Single Family Housing Revenue Bonds, rated “AA+” by Standard and Poor’s, to finance in excess of \$481,000,000 mortgage loans for low and moderate income Nebraska homebuyers. The Bonds, and the moneys in the funds and accounts related to the Bonds, are governed by the terms of a trust indenture with a bond trustee acting on behalf of the Bondholders. For the Treasurer to suggest that moneys are “sloshing around at NIFA...and is ripe for abuse” is reckless and irresponsible. There is no basis for his statement.

13. The Treasurer made note during his testimony of his offer to provide access to NIFA 24/7/365 to monitor access to NIFA information on the www.statespending.nebraska.gov website. As we explained to the Treasurer, the ability to “monitor” is only part of the equation. Without access and control of the server, NIFA would not be able to take action should it appear that the data is being compromised. NIFA, in response to the Treasurer’s offers, proposed discussing those and NIFA’s other concerns and memorializing our joint agreement in a memorandum of understanding. The Treasurer rejected this approach.

14. The Treasurer suggested in his testimony that by monitoring its server, NIFA would be “spying” on Nebraska citizens in terms of who is accessing the data. This could not be further from the truth. The monitoring and managing conducted by NIFA would be in accordance with recommended best practices for preventing cybersecurity crimes and intrusions. It would in no way hinder the access of legitimate web visitors.

It is important, when managing its data, that NIFA be able to monitor, access and maintain control of the server on which its data is maintained in order to initiate investigations and take responsive action if a breach or misuse of its data occurs. Additionally, if NIFA’s data is not on a server which it owns or over which it has control, NIFA’s cyber risk insurance policy is no longer effective.

NIFA’s intent, with the introduction of LB 437, was to provide a method (the web link) for providing NIFA data to www.statespending.nebraska.gov while still maintaining the ability to monitor and manage that data and keep its cyber risk insurance policy in effect. It is that simple. The motives ascribed to NIFA by the Treasurer are untrue and harmful.

We obviously do not agree with the Treasurer with respect to the method of providing NIFA’s data to www.statespending.nebraska.gov. It is most unfortunate that because we have exercised a legislative avenue to address our concerns that he has turned to responding with personal attacks and allegations that are false and misleading and for which there is absolutely no basis in fact.

Public hearings are a treasured part of the Nebraska legislative process where proponents and opponents meet to share opinions on proposed law in the context of facts and good public policy. Yesterday, in support of LB 437, we believe we presented evidence based on verifiable sources, proposing good public policy and supported, on the topic, from organizations and entities who work daily in a cybercrime challenged environment.

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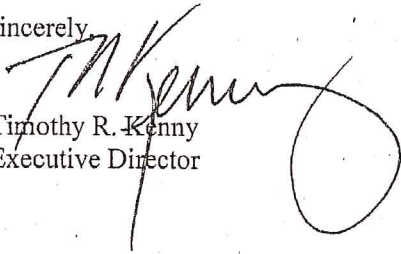
The single opponent of LB 437 appearing at the hearing produced no authoritative "on-topic" evidence or independent support for his opinion. The lengthy discourse of the Treasurer was sustained only by unsupported allegation and unfair innuendo.

One need only to read any national newspaper to realize the daily challenges to our country and particularly governmental agencies of data security and cyber-crime. Steps taken to properly protect such data from improper use, while assuring the public that access and full disclosure to the information is maintained, should be applauded and indeed encouraged, as NIFA, and its Board of public and private officials have always stated as NIFA's goal.

NIFA remains committed to the good public policy proposed by LB 437 by acknowledging the joint ownership of public information and taking responsibility to manage our shared data pursuant to verifiable "best practices" while fully complying with the disclosure requirements of the Transparency Act. We urge the committee to consider the germane facts presented yesterday and advance LB 437 to General File.

Thank you for the opportunity to clarify the record.

Sincerely,


Timothy R. Kenny
Executive Director

cc: Committee Members
NIFA Board Members