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Government, Military and Veterans Affairs Committee
February 21, 2007

[LB233 LB269 LB348 LB392]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 21, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a gubernatorial appointment and LB233, LB269, LB348, and LB392. Senators present: Ray Aguilar, Chairperson; Mick Mines, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Rich Pahls; and Kent Rogert. Senators absent: None.

SENATOR AGUILAR: Good afternoon and welcome to the Government, Military and Veterans Affairs Committee. My name is Ray Aguilar. I am senator from Grand Island, Nebraska. I'll introduce the rest of the committee members as they're here and as they come in. On my far right is Senator Russ Karpisek from Wilber, Nebraska; next to him is our Vice Chair, Senator Mick Mines, of Blair; on my immediate right is legal counsel, Christy Abraham; my immediate left is Sherry Shaffer, the committee clerk; Senator Mike Friend of Omaha; Senator Rich Pahls of Omaha; Senator Greg Adams of York. Bills will be taken up in the following order today: first we'll deal with the appointment, followed by LB233, LB269, LB348, and LB392. Sign-in sheets are at both entrances. Sign in only if you're going to testify and put the paper in the box up here on this table. If you're not going to testify but would like to be on the record either as a proponent or an opponent of the bill, there's another sheet you can fill out and place up there. Print your name and indicate who you are representing. Before testifying, please spell your name for the record. Introducers will make an initial statement, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. Listen carefully to the testimony ahead of you and try not to be repetitive. If you have a prepared statement or an exhibit, give it to the page and he will distribute it. We will need 12 copies of each. Please turn off your cell phones. And our pages today are Adam Morfeld of Sioux Falls, South Dakota; and Bri McLarty of San Antonio, Texas. Could we have Lucinda Glen come forward, please. Lucinda is an appointment to the State Personnel Board, a reappointment. Lucinda, go ahead and tell us a little bit about yourself, if you will.

LUCINDA GLEN: (Exhibit 1) I live in Hastings, Nebraska with my husband and two of my three children. My son is down here, going to school at the University of Nebraska. I've been serving on the State Personnel Board. I served out someone else's term when they left the board. I like that work very much. I'm an attorney in Hastings, Nebraska. I also teach some classes at Hastings College. I teach two different classes of business law, and once in a while they give me the great honor of teaching public administration there as well. I'm open to your questions. Please feel free to ask whatever you'd like.
[GLEN]

SENATOR AGUILAR: Does the committee have any questions for Lucinda? I have one. Lucinda, what changes, if any, would you recommend in the operations of the agency to

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which you've been appointed? [GLEN]

LUCINDA GLEN: At this time I think the agency appears to be running fairly smoothly. I do, once in a while, have some concern with the speed that grievances, in particular make their way through the system. But quite frankly, given the requirement of due process, there just isn't much that you can do about that. Other than that, I had some concerns with the fact that it took us a great deal of time to get our rules and regulations finalized. But I also understand that that takes a while, too, because it has to go through so many different places to get that done. Having worked in state government for as long as I did, I spent eight years at the Nebraska Department of Banking and Finance before I went out to live in Hastings, I came to understand a little bit about how the process is worked. So perhaps my frustration with the time frames isn't as great as it would be otherwise. [GLEN]

SENATOR AGUILAR: Okay. Thank you very much. Any further questions for Lucinda? Seeing none, thank you for joining us today. [GLEN]

LUCINDA GLEN: Thank you. [GLEN]

SENATOR AGUILAR: We're now ready for LB233. Senator Pirsch, please. While he's coming up, can I ask how many are going to testify on LB233? I see two. Thank you. How many in opposition? I see 14. (Laughter) Go ahead, Senator. Welcome. [GLEN LB233]

SENATOR PIRSCH: You got me there, Senator. Chairman Aguilar, members of the Government, Military and Veterans Affairs Committee, it's good to be back in front of you. This time I have taken measures to make sure that everybody has their cell phones off. (Laughter) I'm here as the sponsor of LB233. LB233 makes two adjustments to the current Public Building Commission language, Nebraska Revised Statutes 13-1303. Public Building Commission's exist only in Douglas and Lancaster Counties. There are five members of a Public Building Commission. City council and county board members make up four of the five members. These four members, in turn, appoint the fifth member of the commission. The first adjustment this bill would make is to require the fifth member of the Public Building Commission to be a resident of the county in which the commission is located. This ensures that the nonpublicly elected member of the board has a direct stake in the operations of the commission. The second adjustment this bill would make is to provide clarification to the vague language of the current law, which merely states that the fifth member shall be appointed by the other four. This bill clarifies that the fifth member would be chosen or should be chosen by a majority vote, rather by a unanimous vote. [LB233]

SENATOR AGUILAR: Questions for Senator Pirsch? Senator Mines. [LB233]

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SENATOR MINES: Thank you, Senator. Senator Pirsch, what instigated this legislation? Must have been a problem? [LB233]

SENATOR PIRSCH: Thanks for that question. Yeah, and it's...and this is in many different areas. It's always good to take a proactive approach. I was actually approached by Paul Cohen, who's the chairman of the city of Omaha, Douglas County Building Commission, and asked to clarify the problems that may, they fear, arise some time in the future. And so that was the stimulus of the bill. [LB233]

SENATOR MINES: Okay, okay. Thanks. [LB233]

SENATOR AGUILAR: Further questions? Seeing none, thank you. And we're ready for our first proponent. I'd also announce we've been joined by Senator Bill Avery of Lincoln, Nebraska. Welcome. [LB233]

BERNARD in den BOSCH: Thank you, good afternoon, Senator Aguilar. Bernard in den Bosch. The last name is three words, the first word is lower case i-n, second word is lower case d-e-n, and the third word is B-o-s-c-h, either a blessing or a curse, depending on your perspective. I'm an attorney for the Omaha Douglas Public Building Commission. I was asked by Paul Cohen, who's out of the country, to come appear today and speak in favor of LB233. Senator Pirsch was correct, it's not precipitated by any particular action, other than exploring what...we're likely to have a change in our administration over the next few years, and there was some concern and discussion about what the language in fact meant. The first request that was made was to, frankly, confirm what has always occurred, and that is that the fifth member has always been a resident of the county, to ensure that (one) they not only have a direct stake and, quite frankly, likely to be a taxpayer; and then the second change that was proposed, the language required that the four other members, two members which are county commissioners, and two being city council members, come to agreement. There was always some discussion if that meant there had to be unanimity or not. And this is to clarify that. I would point out that, quite frankly, in order for a fifth member to be appointed it going to require at least one member from both the county commissioners and the city council, the group of people that's appointed, because it's going to require three of those four. So by necessity at least one of those will be either a county commissioner...will have to be a county commissioner and a city council member. I'd be more than happy to answer any questions. [LB233]

SENATOR AGUILAR: Questions from the committee? Senator Avery. [LB233]

SENATOR AVERY: Isn't it true that you have taxing authority, these commissions do? [LB233]

BERNARD in den BOSCH: The commission does have taxing authority. Yes, sir.

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[LB233]

SENATOR AVERY: For what purpose? [LB233]

BERNARD in den BOSCH: For the purposes of constructing a public facility, in this particular case, and Omaha and Lincoln have a different number of public facilities. In Omaha, frankly, the only facility that's been built as a result of the taxing authority, and the taxing authority is used to satisfy bonds, is the construction of the Civic Center, which is shared by both the city and the county. And then it also manages the courthouse, which also is shared by the city and the county. But the taxing authority is generally used to satisfy the bonds that were paid to, not only build it initially, but for improvements. For example, in Omaha recently, there was a parking garage built to serve not only the people who work in the building, but frankly members of the public who are served by those offices. [LB233]

SENATOR AVERY: These are awful low profile positions and lots of times we get complaints about property taxes, and people don't realize how many entities get their hands on the property tax. And this is one of them, I think. Why is it that only Douglas County and Lancaster have these commissions? [LB233]

BERNARD in den BOSCH: And I'm not sure that I can answer the question fully, other than I think when it was first conceived, back in the late sixties, there was looking for a mechanism at least for the counties that had the larger cities to be able to...neither the county, nor the city could afford the bonding, the money to do it. And it was a mechanism by which they could construct a facility that they would share. Presumably there would be no reason one couldn't change that. And certainly as far as taxing authority, it's an observation that I'll make, which is one that I know Paul Cohen would make, is that the Building Commission is well below their maximum taxing authority. And has, frankly, not only not increased it for a number of years, he's given fairly specific instructions never to even contemplate doing so. So it's been an issue that's been well below what they've been able to do. And your comment about it being relatively innocuous and noncontroversial, that's probably true. And I think the members of the commission would like to... [LB233]

SENATOR AVERY: No, I said below the radar. People don't know about it yet. [LB233]

BERNARD in den BOSCH: Below the radar; I think they would like to stay that way as much as possible as well. [LB233]

SENATOR AVERY: Is the taxing authority defined in the constitution, or in statute? [LB233]

BERNARD in den BOSCH: I believe it's defined in statute. [LB233]

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SENATOR AVERY: Are you worried if this gets on the floor that you might lose that authority? [LB233]

BERNARD in den BOSCH: I've not had any discussions with Mr. Cohen to that effect, nor with anybody else. So... [LB233]

SENATOR AVERY: Okay. [LB233]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB233]

BERNARD in den BOSCH: Thank you. [LB233]

SENATOR AGUILAR: Next proponent. Welcome. [LB233]

DON KILLEEN: Good afternoon. My name is Don Killeen, K-i-l-l-e-e-n, and I'm here testifying on behalf of the Lincoln Lancaster County Public Building Commission. I'm the administrator of the Public Building Commission. And the commission, in its January meeting, voted in support of this bill. Again, I think we view it as merely kind of a housekeeping issue. Being in the center of Lancaster County, I don't think it would ever be considered that the fifth member would eve be appointed from outside the county. But I think we feel it's a good move to clarify these issues. Be happy to answer any questions. [LB233]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB233]

DON KILLEEN: Okay, thank you. [LB233]

SENATOR AGUILAR: Any other proponents? [LB233]

CLARE DUDA: Good afternoon, senators. My name is Clare Duda. I am a Douglas County Commissioner and the Vice Chair of the Omaha-Lincoln...or, I'm sorry, Omaha-Douglas County Building Commission. Just seeking your support. This should not be a controversial bill. I really don't see a down side to what we are seeking here. Merely trying to clarify the need for residency of the fifth member. Our Building Commission was created in the 1970's, and we have only had three at-large members in the history of our commission. We've been blessed with having some outstanding people that were willing to serve in this capacity. And we've held onto them as long as we could. I don't see a down side to that, to simply clarifying that it has to be a resident of the county. What is really more important to us is distinguishing on the vote. As a politician, I can speak a little bit to the politics, and I can tell you that the two city council members we currently have serving on this board, I get along very well with both of them, but they don't always agree on which way the sun sets. And to require to even

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possibly be requiring unanimity in a vote, as the language currently may do, and I mean I've been there when we have appointed the chairman before, and there was a question, does it have to be unanimous? And we didn't know; we couldn't figure out from the existing language. And fortunately, we asked Dr. Ron Roskins to serve as our fifth member, and he was a unanimous choice. So we never had to address the point. However, should this come up again where we again have to appoint somebody, we really need to clearly know that only three out of the four votes is required. To require all four votes could potentially put us in sort of a hostage situation that any one member has the right to black ball whoever they want from becoming our chair. So it is important to us before we make the selection process again that we have clarified that only three out of the four votes are required to appoint the fifth member. Thank you. [LB233]

SENATOR AGUILAR: Questions for Mr. Duda? Seeing none, thank you. [LB233]

CLARE DUDA: Thank you. [LB233]

SENATOR AGUILAR: Any further proponents? Are there any opponents? What about neutral testimony? Senator Pirsch, to close. [LB233]

SENATOR PIRSCH: Thank you again, Chairman. This isn't an earthshaking and in the magnitude and reach of the spectrum of bills, but it is a very important piece of legislation because, as the Douglas County Commissioner testified, it does happen. It's not some sort of speculative. And to the extent that this question, as it has in the past, arises again in the future, thankfully it was able to be settled without some sort of lawsuit or some sort of ongoing struggle there. But I think that it is important to settle in a way that we will not encounter lawsuits and therefore use the taxpayers money in an inappropriate measure, in an inappropriate way. So that and the residency requirement, requiring those who serve on the board, to have a direct stake in the outcome of the health of the community, I think those are two not great magnitude but very important type of requirements. So I'd urge you to send it to the legislative floor. Thanks. [LB233]

SENATOR AGUILAR: Thank you, Senator. Are there any questions for Senator Pirsch? Seeing none, thank you. And that closes the hearing on LB233. We're now ready to open on LB269. Senator Burling. Welcome. [LB233 LB269]

SENATOR BURLING: Thank you, Senator Aguilar. Members of the Government Committee, I'm Carroll Burling, that's B-u-r-l-i-n-g, represent District 33 in the Legislature. And I'm here today to introduce LB269. The purpose of LB269 is to harmonize the minimum signature requirements for certain petitions relating to county organization and county libraries. In searching the statutes, I discovered...I have four bullet points here on the Statement of Intent, discovered that there are various levels of signatures needed on petitions to do certain things in county government. So I'll just kind of go down through those with you. Section 23-149 says that if you want to

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determine the number of commissioners on a county board, your petition shall have not less than 200 registered voters in a county signing the petition. If you are a commissioner county and you want to establish a supervisor form of government, you shall have 250 or more legal voters sign the petition of the county. And if you are county under a township organization and you wish to discontinue that form of government, you shall have not less than 10 percent of those voting at the last general election, that's Section 23-293. If you want to circulate a petition to establish a county library, that standard is 10 percent of the registered voters in the county at the last statewide general election. These are all different amounts. And I really got my attention when I saw the number of 200 registered voters of a county, or 250 voters of a county, regardless of the size of the county. I don't know if Arthur County could even get a petition with that many voters. Obviously, it would be very easy for Douglas County to circulate a petition that only needed 200 voters. So the goal here is to establish a common standard for these four different areas that I explained to you. And it would apply the same to all of them. And it would say, 5 percent of the voters registered in the county at the preceding statewide general election. That would be the standard for these four areas, and they would all need to meet the same standard. So it brings uniformity and clarity to the petition process. And I would ask you to advance this, and try to answer any questions. [LB269]

SENATOR AGUILAR: Questions for Senator Burling? Senator Friend. [LB269]

SENATOR FRIEND: Thank you, Mr. Chairman. Senator Burling, any guess or in your case I'm sure educated guess or based on your research in building legislation like this why are there, you know, differences in each of those situations? I mean, I'm not saying that we always create things that, you know, that provide that type of harmony. But were there reasons behind the differentiation that you know of? [LB269]

SENATOR BURLING: I asked that same question. And there wasn't a clear answer. And so I concluded that over the years there have been individual pieces of legislation introduced, disregarding already state law, and let's just have this many for this, and this many for this. And I would say, obviously, the 200 and the 250 voters probably is very old legislation, been on the books a long time. And since then, you know, many of our counties have lost population, and that's really not a good, current standard for most of our rural counties anymore. [LB269]

SENATOR FRIEND: Okay, thanks. [LB269]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LB269]

SENATOR KARPISEK: Thank you, Chairman Aguilar. Senator Burling, how did you come up with the 5 percent of the voters registered? [LB269]

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SENATOR BURLING: Well, I looked at a couple of these said 10 percent of the registered voters, another one was 10 percent of those voting. Ten percent of those voting would be pretty close to the registered...to 5 percent of the registered voters, if you have half the people go to vote. And obviously, the 200 and 250 really wasn't anything to go off of. And so I thought maybe 10 percent of those registered was a little strong, 10 percent of those voting might be pretty close, so I just picked 5. I'm not married to 5, if the committee thinks it's a good idea to create uniformity here, but they want a different figure, 4 or 6, or 3, or 7, I'll work with the committee on that. But that's how I arrived at 5. [LB269]

SENATOR KARPISEK: Okay, thank you. Thank you, Mr. Chair. [LB269]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB269]

SENATOR BURLING: Thank you. [LB269]

SENATOR AGUILAR: Ready for the first proponent. May I see how many is going to testify on this bill? I see one. Welcome, Larry. [LB269]

LARRY DIX: Good afternoon, Senator Aguilar, members of the committee. My name is Larry Dix. I'm executive director of the Nebraska Association of County Officials and here testifying in support of LB269. Certainly we thank Senator Burling for bringing this forward. And we've had a number of discussions with Senator Burling over the past few months. And as we started to dig into this, it did come to light that there were some different standards out there. And the 200 just, as you go through our counties today, and not that I want to pick on Arthur County, but to give you an example what that would be like in Arthur County, Arthur County has right now about 380 residents. And certainly those are not all registered voters. But if you take and say that 70, 80 percent of those are registered voters, that takes it down somewhere in the area of 300 registered voters. And if you have to get 200 of those to change that form of government, certainly it's a much higher standard in Arthur County than it would be in a Buffalo, or a Madison, or so on and so forth. So in visiting with Senator Burling, you know, we talked about it. Senator Burling came up with the 5 percent. I think he had mentioned he's not tied to the 5 percent. From our point of view, you know, we don't know that 5 percent is the precise number or the magical number. But if the committee has something that they can rely on for better logic that says it should be 6, or 7, or 10, or whatever, I don't think we'd have any opposition to that. Certainly we support what Senator Burling is doing because we do, from time to time, get those calls into our offices. And somebody says, well, why do I need 250 for this and 200 for that and a percentage for this? I think it would be wise that we standardize it. We know that it has changed, evolved over many, many years of time. So it's probably time to take a look at it and establish that standard so it is consistent across all counties. [LB269]

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SENATOR AGUILAR: Thank you. Questions for Mr. Dix? Seeing none, thank you. [LB269]

LARRY DIX: Thank you. [LB269]

SENATOR AGUILAR: Are there any other proponents to the bill? Any opponents? Neutral testimony? Seeing none, that closes the hearing on LB26...Senator Burling, would you like to close? [LB269]

SENATOR BURLING: (Inaudible response from audience.) [LB269]

SENATOR AGUILAR: That closes the hearing on LB269. Ready to open on LB348. [LB269 LB348]

SENATOR BURLING: Thank you, Senator Aguilar. Again, members of the Government Committee, I'm Carroll Burling, B-u-r-l-i-n-g, representing District 33 in the Legislature, here today to introduce to you LB348. This bill is a little more complicated than the last one. I anticipate more questions. My staff and I spent hours preparing this bill. And I appreciate your legal counsel's efforts also to work with us on this. It kind of started out visiting with Secretary of State, John Gale, one day. And he said periodically he gets calls from counties with supervisor form of government, and the question is, we're thinking about maybe changing to commissioner form of government; how do we do that? And he would have to tell them that there's no...there's nothing clear in statute about how to do that. But he would tell them, well, the last county that did that, did it this way, and nobody complained, and so I guess that's okay, you can probably do it that way and get by with it. And so LB348 would set in statute a process where a county that would want to change from supervisor form of government to commissioner form of government, how that would be done. The first thing that LB348 does is says this, if it's a county board resolution or a petition circulated for voters to sign, the resolution would have to state whether or not we want to keep the township form of government, or it would have to state, we want to discontinue the township form of government and go to either a five- or a seven-member board of commissioners. This would have to be stated in the petition or the resolution before it went on the ballot. Then the next thing that would happen, let's say it's approved, and it said that we're going to keep seven commissioners, which is allowed now in statute; you can do that, you can change from supervisors to commissioners and keep seven. If it's seven, then no redistricting is necessary. You just change from supervisor and township to commissioners. Districts stay the same, same people on the board. If the vote carries to change from township to commissioner and they want to change to five, then you need, of course, to redistrict. So this bill calls for the county clerk, county treasurer, county attorney, same people that redistrict after a census, they would redistrict the county after this vote was successful. Then you have to reduce your board from seven to five. So this bill says the smoothest way to do that is to make the change effective two years beyond the time the vote took

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place. That will allow the three or four supervisors that were elected two years ago to serve out their four-year term before the change takes place. Then at the election where the change was successful to start the stagger process of a smaller board, the supervisor with the least number of votes at that same election that the change took place would only have a two-year term. Then you get the stagger started in. This is kind of complicated. But, trust me, we spent hours on this. And your legal counsel understands it 100 percent. So when I'm gone she can explain it to you. (Laugh) So last time I checked there were, I think, 27 supervisor counties still in Nebraska. It might have changed one or two since then. But I just thought after being on this committee six years and this subject coming up several times, I thought it might be a good idea if we had something in statute that outlined how to do that. And so it makes a definitive process on how to change. And I'd be happy to answer any questions. [LB348]

SENATOR AGUILAR: Questions for Senator Burling? Senator Avery. [LB348]

SENATOR AVERY: Thank you, Mr. Chair. Senator Burling, in those instances where redistricting would be necessary, does your bill...I couldn't find anything in here, but it might be there, does it specify how the redistricting would be done? Does it require, for example, that you have a proportionate number of people in each district? [LB348]

SENATOR BURLING: Well, that's required now. That's already required. That wouldn't have to be in this bill. I mean the counties now are...that's why they change it every ten years after a census, is so that there will be a proportionate number in each district. So that's... [LB348]

SENATOR AVERY: And there are rules on the books already to specify a certain deviance, you can go 2 to 5 percent deviance from equal distribution, or proportionate distribution? [LB348]

SENATOR BURLING: That's very close to correct. Yeah, it's already law that they be proportioned. [LB348]

SENATOR AVERY: And new redistricting laws are not required every ten years? [LB348]

SENATOR BURLING: Every ten... [LB348]

SENATOR AVERY: It was my understanding that every ten years, at least for redistricting our body, we go into the law. Am I right about this? [LB348]

SENATOR BURLING: So do counties. Counties...most counties, unless there is no population change, redistrict every ten years, just like the Legislature does. [LB348]

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SENATOR AVERY: Um-hum. And we write our rules each ten years, don't we, as to how we're going to do that? [LB348]

SENATOR BURLING: Well, if I understand you right, I think it's already in statute that you need to redistrict, and this is the population of your county, and it shall be redistrict five, you know, take five into the total population and redistrict evenly. That's done every ten years, whether there be... [LB348]

SENATOR AVERY: I know, I know. But you well know that there are some very creative ways to redistrict to cut certain populations out, or to split certain populations, or sometimes you can redistrict in ways to give heavier weight to one district over another. I'm just wondering, you're suggesting these rules already exist somewhere in statute? Or don't we write them every ten years? And if we do, don't you need something in here that would set the parameters for how redistricting will take place. [LB348]

SENATOR BURLING: The reason I chose the county attorney and the county treasurer and the county clerk to do the redistricting in this event... [LB348]

SENATOR AVERY: Um-hum. [LB348]

SENATOR BURLING: ...was because they already do it every ten years. They do the redistricting every ten years. So if you want to add something to this bill relative to the same way it's done at the time of a census, you could do that. But I'd just as soon... [LB348]

SENATOR AVERY: I'm more concerned about the standards and procedures, not so much who is doing it, but standards and procedures that are used to do it. [LB348]

SENATOR BURLING: Well, I was satisfied with the same standards and procedures they use when the census requires it to be done. I was satisfied it would be done the same way. Now, you... [LB348]

SENATOR AVERY: I just got a note that indicates that it's defined in here. [LB348]

SENATOR BURLING: Okay. [LB348]

SENATOR AVERY: ...on page 3, so I'll shut up. (Laugh) [LB348]

SENATOR BURLING: That's fine. [LB348]

SENATOR AVERY: Thank you. [LB348]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LB348]

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SENATOR KARPISEK: Thank you, Chairman Aguilar. Senator Burling, I just have a little bit of a problem wrapping my brain around the coming in two years after. But going back, if it...how many run at a time? If they have seven, how many is it, a three and a four, staggered that way? Okay, so you could possibly have four people running. I guess I don't know how that works, because you're voting on changing from the township to the other, and then you have people running for the four. And is that how...I'm going to answer my own question, if I talk long enough? (Laughter) So those...the same people still run for those four seats, whoever gets on...go ahead, I'll shut up. [LB348]

SENATOR BURLING: If you have four supervisors running for election at the same election that you vote to change, the one of the four receiving the fewest number of votes would be elected to a two-year term. [LB348]

SENATOR KARPISEK: Okay. [LB348]

SENATOR BURLING: So if you don't make the change effective for another two years, you'd have three elected to a four-year term, and those three would carry over. They'd become supervisor...those three supervisors would become commissioners when the changeover is made. And two years hence, you'd have to elect two more commissioners to a four-year term. [LB348]

SENATOR KARPISEK: Okay. [LB348]

SENATOR BURLING: Does that help? [LB348]

SENATOR KARPISEK: I think so. [LB348]

SENATOR BURLING: This is not easy to wrap your mind around, that's true. [LB348]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Burling. [LB348]

SENATOR BURLING: Thank you. [LB348]

SENATOR AGUILAR: First proponent, please. Welcome. [LB348]

J.D. SCHLUNTZ: Thank you. My name is J.D. Schluntz, S-c-h-l-u-n-t-z. I'm a real, live township chairman, treasurer, clerk, been 'em all for a long time. If anybody would like to interrupt, I'd rather have a dialogue than a speech. And I thought back there you could have seven. And the reason we haven't done it in Harlan County is because we can't go to five, because somebody thinks they're going to get ripped off. But if we can

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keep the same supervisors, maybe we could get it done. But I want to tell you that I'm here and no taxpayers are paying my way. Most people come down here and testify, I pay their way down to ask for more dollars. And to tell you how important the townships are in Harlan County, there are 16 townships, 3 people on each township. The ballot, almost 48 positions had 5 names on it, all write-ins. But one township did not get any write-ins, zero, zero, zero, no votes. Now I'll tell you what we do. Once a year we fill out a budget and it changes quite often, and we only do it once a year. And it's kind of complicated, but we get it done somehow. And then the duties of the treasurer, when I was treasurer, I got the money from the county treasurer, I take it to the bank, I write a check, I take it to the county road department. Now a few years ago I figured it out, and there was about a 20 percent slippage between the amount all the townships collected, and they all spent it on the Road Department, because we had to publish. Some of them hired people to fill out their budget, and I don't blame them. But there is that slippage. And there's also, county clerk has got more work to do, county treasurer has got more work to do. Your State Auditor does audit all the township budgets. I know, we've gotten calls, we've gotten reports. There are 27 counties, if they average 16 townships to a county, I don't know how much time that takes but it's just a waste of money. And I think this bill would help get rid of townships. I wish you'd just get rid of them. You just pass a law and get rid of them, I'll guarantee you we won't have to petition to override. Let's see what else I got. Oh, there's one other way to do it. Just eliminate townships and if this don't work, make the counties in charge of all the roads. I think there's one county that does that, I think it's Kearney County. So we still got the townships, but they don't have to fill out a budget, because they don't have any money. Helps a little. Okay. Thank you. [LB348]

SENATOR AGUILAR: Questions for Mr. Schluntz? Seeing one, thank you for coming today. Further proponents? [LB348]

LARRY DIX: Senator Aguilar, members of the committee, for the record, my name is Larry Dix, executive director of the Nebraska Association of County Officials, appearing in support of LB348. And really, Senator Burling addressed really a number of those questions. But let me bring you up-to-date a little bit on historical. This isn't something that happens very often going from supervisor to commissioner form. The last one that we have that we think has been in excess of 40 years ago is really the last time that something like that has happened, and it happened in Loup County. So somebody says, well, if it's only going to happen ever 40 years, how come it's a problem? Well, it's a problem because in the last few years we've had counties have this issue on the ballot. And most recently the issue was in the last election in Lincoln County and in Cherry County, the folks in those two counties were looking to increase their County Board of Commissioners from three to five. And two years prior to that, the folks in Antelope County, the registered voters there were voting to eliminate supervisor form of government. And we've actually been working on this problem actually since that election in Antelope County, because the question came about in Antelope County, they

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got a seven member board. They put a ballot question out there that, shall we go to a commissioner form of government? Unfortunately, the ballot question didn't specify how many commissioners you go to, and so in that event it would have had to resort back to the way it was when the county originally was created, which was three commissioners. And then we went to Antelope County to try to find the records, because when it reverts back to three then it reverts back to those...the lines are drawn as to who they represent. And, of course, over the years Antelope County has had growth. And, to actually make matters worse, in Antelope County there was a fire, and so they have actually no formal records of where those lines were, but they have a newspaper article that said, here's where we think the lines are. So when this all started happening we decided, you know, we need to start this process to really clarify this. Because at some point in time it is going to happen. Now in Antelope County, Lincoln County, Cherry County the voters rejected the idea. So it really has not happened. But we certainly appreciate and have appreciated working with Senator Burling to try to lay out some actual processes that we can go through in the event that this does pass, the voters do pass either one of these, that they want to increase the number of commissioners, or they want to go from supervisor to commissioner. So it's important that we do have this pass, because without that it becomes very, very questionable as to who does the redistricting and how it functions and all those kinds of things. Senator Burling mentioned that there may be less than 27 counties. There are 27 counties that have the supervisor form of government that still is in place. So it's one of those things, and Senator Karpisek, I, too, have that question of, okay, is it four, how do we do this? We've had some great discussions with Senator Burling's office, and it takes quite a little bit of time to put your arms around it and say, okay, what happens to these people when they're elected? How does it work? But that's actually what we came up with in the bill, or Senator Burling came up with in the bill as a resolution to that problem. And I think...we think from our position it's workable the way the bill draws it out. It certainly is better than what we have today. So with that, I'd certainly be happy to try to answer any questions. [LB348]

SENATOR AGUILAR: Questions for Mr. Dix? Senator Friend. [LB348]

SENATOR FRIEND: Thank you, Chairman Aguilar. Larry, can you tell me has there ever been any one of the 93 counties, I guess, that have made the transition in the other direction? [LB348]

LARRY DIX: From supervisor...or from commissioner to supervisor? [LB348]

SENATOR FRIEND: Yes. [LB348]

LARRY DIX: Well, originally, when the counties were all formed, they all started out as commissioners. So they have made that transition, but not anytime in recent history. I mean, I got to believe we're talking early 1900's. But recently...the most recent that

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we've seen any change was over 40 years ago, in Loop County, which went from supervisor to commissioner. [LB348]

SENATOR FRIEND: Thanks. [LB348]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB348]

LARRY DIX: Thank you. [LB348]

SENATOR AGUILAR: Further proponents, please? Seeing none, are there any opponents? Neutral testimony? Senator Burling, to close. [LB348]

SENATOR BURLING: Thank you, committee. I don't have a lot more to say. I wanted to come up, in case there were some more questions. I did think of something I didn't say in my opening, and that is the way this is drafted, it eliminated the need for any board member positions to be appointed. If you do it this way, the committee redistricts the county, if necessary, but the election process fills all the positions, if you do it the way it is outlined in LB348. So there wasn't any need for anybody to be appointed by delaying it and doing it the way it is here. So I urge the committee to advance this and give some guidance to counties that might want to do that. As Larry said, it hasn't been done for 40 years, but the inquiries that the Secretary of State indicated that he had had, means there is interest out there. But there is really no guidelines, and so they're kind of, I think, kind of staying away from it because they don't want to do anything wrong. And this outlines how they could do that. And so I think if it was implemented, it would be used. So any questions? [LB348]

SENATOR AGUILAR: Thank you. Questions? Senator Pahls. [LB348]

SENATOR PAHLS: Yes, Mr. Chairman. Senator, I just have one question. You know it seems like we've studied something like this in the past couple of years. Why did it not...you know, because you were on the committee, what was the reason why we didn't move it on? [LB348]

SENATOR BURLING: This idea has been introduced before. I mean, there has been some legislation introduced before to address this issue. But it was never this extensive. And it seems as though the committee always felt like there's got to be a better way to do it than this particular bill that's before us today. And so that's what I've tried to come up with is something that would be the best way I've heard since I've been here. [LB348]

SENATOR PAHLS: Thank you. [LB348]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Burling.

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[LB348]

SENATOR BURLING: Thank you. [LB348]

SENATOR AGUILAR: That closes the hearing on LB348. Senator Mines, what controversial gem do you bring before us today? (Laughter) [LB348 LB392]

SENATOR MINES: Just another day at the office. (Laughter) [LB392]

SENATOR AGUILAR: Welcome. [LB392]

SENATOR MINES: (Exhibit 1) Thank you, Chairman Aguilar, members of the committee. For the record, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I'm the primary introducer of LB392. Let's just start with if this committee were to design from scratch the best possible structure for local government in Nebraska, we probably wouldn't devise the system that we use today. Two coequal, overlapping governments that directly compete in the setting of public...local public agenda. This would be especially true in Omaha and Douglas County, where 84 percent of all county residents live within the city limit of Omaha, and indeed 95 percent of the Douglas County population lives within Omaha's three-mile zoning jurisdiction. The municipal county concept that we're going to talk about today is not new, in fact I was involved in it back in 2000-2001, and that's when LB142 established the framework that we're working from today. LB392 today simply modifies that language, sanctioning the public, by the petition process, or Omaha and Douglas County officials to reinvent the paradigm of centuries old model of governance into an innovative new twenty-first century model. It sets in motion a process in which we, the Legislature, trust, I think that's the key word, where we trust the citizens of Omaha and the county of Douglas to devise, if they choose to, this is permissive language, if they choose to, a more efficient and more accountable form of local government. It's the same trust that voters placed in Omahans in the 1920 Home Rule Charter that became part of the Nebraska Constitution. The benefits of a metropolitan county form of government are many: efficiency, effectiveness, accountability, just to name a few. Let's talk about efficiency for just a second. There are gains in efficiency, or we call them a cost-savings. They can come from eliminating the overlap and duplication between two governments that serve practically the same population. Although it's impossible to estimate the savings that can be achieved by unifying the governments of Omaha and Douglas County, because those savings would depend on just a host of specific provisions of the charter, and that obviously doesn't exist yet. So we don't know until we create the charter. Unification in other parts of the country has demonstrably reduced total city and county taxes in other metropolitan areas, and it appears to have slowed the rate of tax increases in other areas. An interesting sidebar, I could not find an instance where there was an effort launched to undo a municipal county form of government once it had been implemented. And I also think that it's reasonable to expect that problems of

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coordination and compatibility between two government structures would be eliminated. And that delivery of service would become more efficient by simple economies of scale. Effectiveness, let's talk about how government becomes more effective when citizens can easily understand and access a simpler structure of government. For instance, under a unified government there would be no need for a citizen to determine if the county or the city is responsible for a certain area. Do they contact the city clerk? Do they contact the county clerk? Do they contact the police department? Do they contact the sheriff's department? Effectiveness is also intertwined with efficiency in other areas in the country that have unified, often in fact upgrade their standards in the new government as part of that new implementation process. And accountability--a unification can provide more accountability and responsiveness, eliminating the opportunity for buck passing, conflict, and confusion of responsibility between officials of two separate governments. And in a municipal county form of government there's only one elected governing council that has complete and full authority over the entire structure. And when citizens know who's responsible, they can better hold them accountable for their performance. There are others behind me that will talk about what the bill does. Let me tell you what the bill does not do. First of all, the bill does not affect any other area of the state but Omaha and the Douglas County community. The bill does not force Omaha and Douglas County to merge, that's permissive, it's a local option, it's a local decision by local people that ultimately vote on the form of government, or they choose not to vote on it. The bill does not affect the annexation of Elkhorn, or it doesn't offer any additional powers to a municipal county in order to annex other cities in Douglas County--Ralston, Bennington, Valley, or Waterloo. In the World-Herald last week, Mayor Don Grocer, from Ralston, said that the bill merely sets up a committee to devise a merger plan, and poses no problem to his community. And he's absolutely right. The bill does not affect school district boundaries. The bill does not increase tax levies or shift city or county debt to anyone. In fact, LB392 reduces the levy cap from 50 cents for cities and 50 cents for counties to 45 cents for the city, and 45 cents for the county. The bill does not mandate the dissolution of any local elected offices. The bill does not eliminate sanitary improvement districts. The bill does not mandate the elimination of jobs or public employee layoffs. The bill does not change any preexisting utility agreements. If an area is currently under contract or receives water or natural gas from a private provider, that agreement is unchanged. The bill does not affect the distribution of Nebraska Highway Allocation Fund dollars. And the bill does not increase the rate of taxation for rural only residents on their farmland. You may hear discussion about interlocal agreements, and why can't we just have interlocal agreements to accomplish the same things? Unfortunately, there are inherent, fundamental weaknesses in local, interlocal agreements. Interlocal agreements are necessarily short-term, remember that, it's short-term since one elected governing body cannot ordinarily commit a later elected body to expenditures in the future. Just as we in the Legislature are concerned about committing future Legislatures. Thus interlocal agreements can't provide for long-term service planning. And we all know long-term service planning is essential but it's impossible as well for both governments when they

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can only make short-term commitments. Interlocal agreements can't resolve the fundamental problem of having two bosses responsible for the same service. This leads to continuing conflict over metropolitanwide goals, service standards, and methods of service delivery, even after an interlocal agreement contract is negotiated and approved. Interlocal agreements complicate the lines of accountability for voters. Earlier this year we talked about interlocal agreements and tracking agreements. I forget who introduced the bill that interlocal agreements would go to the Secretary of State rather than the Auditor so that there would be a record of accountability. And frankly, interlocal agreements are not readily available to the public, and that's...it does complicate the lines of communication with our voters. And it's impossible when legal authority is divided between responsibility for dividing...for delivering the services. I'm going to offer an amendment today. This is AM304, and what it does is change the makeup of the seven-member Interjurisdictional Planning Commission. LB392 states that, no local elected officials shall be part of this commission. And this amendment would ensure that one elected official from the city of Omaha, and one elected official from Douglas County would be appointed to the commission. The change makes Section 7 more compatible to the process for an Interjurisdictional Planning Commission when the merger does not involve a city of the metropolitan class. For those of us who live in the Omaha metropolitan statistical area, we know that labor, and housing markets, retail, transportation, entertainment, economic liability, and most importantly people's lives are metropolitanwide. Unfortunately, Omaha and Douglas County governments cling to boundaries more suited to an eighteenth century township than a dynamic twenty-first century metropolitan area. As legislators, we have an opportunity to enable the citizens and taxpayers to prescribe their own course for the future governance of Omaha and the county of Douglas. And I urge you to join me in advancing LB392 to General File. Thank you, Mr. President. I'll entertain any questions. [LB392]

SENATOR AGUILAR: Thank you, Senator Mines. First, one that comes to my mind, if this is good for Omaha and Douglas County, why isn't it good for Grand Island and Hall County? [LB392]

SENATOR MINES: That would be a local decision by Grand Island and Hall County. My bill is only directed at our largest city and our largest county. And if others, throughout debate or on the floor, want to amend and include others, I'm wide open to it. But my position is let's work with the biggest city and the biggest county. [LB392]

SENATOR AGUILAR: I think we're willing to see how it goes and let you guys be the guinea pig, so to speak. (Laughter) [LB392]

SENATOR MINES: Okay. [LB392]

SENATOR AGUILAR: Further questions? Senator Pahls. [LB392]

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SENATOR PAHLS: Senator Mines, have you had lunch lately with Senator Raikes?
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SENATOR MINES: With Senator Raikes? No, I have not. (Laughter) [LB392]

SENATOR PAHLS: Thank you. The reason why I'm saying this, is he believes also in the metropolitan concept. So he believes in bringing in Sarpy County. Because I just heard you say, metropolitan, we are a metropolitan area. So maybe you're thinking too small. [LB392]

SENATOR MINES: Well, if you want to offer that amendment on the floor, more power to you. (Laughter) [LB392]

SENATOR PAHLS: But what I'm saying, I'm just trying to say... [LB392]

SENATOR MINES: I understand what you're saying. This does not preclude Sarpy County, as an example, from becoming part of the metropolitan county. In fact, any counties adjacent to Douglas could also opt in. But at this time, my focus is Douglas and Omaha, just because the population is vastly in the city of Omaha. [LB392]

SENATOR AGUILAR: Senator Avery. I knew you'd have a question. [LB392]

SENATOR AVERY: You did. Thank you, Mr. Chair. I'm looking on page 3 here, Senator Mines. I think that the existing language already permits Hall County and Grand Island to create a municipal county, and maybe even, as you indicated, take in Sarpy County as well. Because here on line 13... [LB392]

SENATOR MINES: Yes, it does. [LB392]

SENATOR AVERY: ...it says, one or more counties, and at least one of the municipalities in each county may create a municipal county to carry out all county services and all municipal services. So that authority is there in the law. [LB392]

SENATOR MINES: You're exactly right, and that's from LB142 in 2001. I stand corrected. [LB392]

SENATOR AVERY: So Lincoln and Lancaster could do the same thing. [LB392]

SENATOR MINES: Could. [LB392]

SENATOR AVERY: And so what you're doing is specifically adding language to apply to Douglas. [LB392]

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SENATOR MINES: To Douglas and Omaha. [LB392]

SENATOR AVERY: Was that authority not already there? [LB392]

SENATOR MINES: There is authority, but there are...there's a real order; there's implementation of, I believe, easier steps, and it allows the citizens to petition for reorganization, if they so choose. It just...I believe, it simplifies the process. And ultimately, I guess, citizens and the voters would decide what kind of government they wish to have. I'm not advocating that we change...that Omaha and Douglas County change government, unless they choose to, or their voters choose to. [LB392]

SENATOR AVERY: But the existing law now does provide for petition by voters. [LB392]

SENATOR MINES: Um-hum. [LB392]

SENATOR AVERY: And that would force a joint resolution to be agreed to. [LB392]

SENATOR MINES: Yes, exactly right. [LB392]

SENATOR AVERY: So I'm really curious as to how your bill changes what we already have in law? Or is it mainly to add punch? [LB392]

SENATOR MINES: Well, is it what, sir? [LB392]

SENATOR AVERY: To add punch to the existing law, or to expand the law? [LB392]

SENATOR MINES: You know, I'm going to...the folks that drafted the legislation will come behind me and they can identify specifics for you. [LB392]

SENATOR AVERY: Okay. Thank you. [LB392]

SENATOR AGUILAR: Senator Friend. [LB392]

SENATOR FRIEND: Thank you, Mr. Chairman. Senator Mines, I've come to the conclusion after a certain period of time down here that there is no such thing as an untroubling legislative bill. But Section 3 of this bill, Mick, is a little bit of a concern to me, and I'll tell you why. Mainly, because we tend to get narrow-minded with our focus on each of these individual committees. In '03, Senator Landis, after years he and Hartnett worked on the State Natural Gas Regulation Act, if you will. [LB392]

SENATOR MINES: Um-hum. [LB392]

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SENATOR FRIEND: And there is certain language in Section 3 being striped, okay? And I think I know why. But, Senator, I guess I'd ask you to maybe comment, or I could ask folks coming in, you know, behind you. I'm worried because I don't know what that's going to do. If you take the language in Section 3 that's being striped out,... [LB392]

SENATOR MINES: Right. [LB392]

SENATOR FRIEND: ...and then you go to Section 5, and I'm not going to read it, but I'm saying that the, and just to paraphrase, the city, under the circumstances that we're talking about, in a merger situation will have that municipal county, if you will, shall have the power and the duties of that city of the metropolitan class. Right now the problem I have, Mick, is that I'm a little worried about the powers of the cities as they relate to the counties and some of the issues that we've tried to resolve. [LB392]

SENATOR MINES: Um-hum. [LB392]

SENATOR FRIEND: ...in the past in regard to natural gas regulation. Were you concerned about that as well. And let me have the answer to the question, because frankly, if we're going to strip that particular language in Section 3, we may have to go to about six or seven other places in order to make something like this work right. [LB392]

SENATOR MINES: Yeah. Frankly, it was not the intention or my intention to strip authority from either the city or the county. I believe that's a local decision on how they set up their municipal form of government, municipal county. And I can pledge to you that if I don't get you an answer today, we will make accommodations. Because I know that Urban Affairs has worked long and hard to come up with some kind of an agreement with public providers and public providers of natural gas. [LB392]

SENATOR FRIEND: I don't know what this...sorry, Mr. Chairman. [LB392]

SENATOR MINES: And I...yeah. [LB392]

SENATOR FRIEND: I don't know what this does. And the thing is we talk about unintended consequences all the time. What I want to try to figure out is if a metropolitan utilities district within its boundaries and soon to be Elkhorn, the metropolitan utilities district has the potential, a good potential, of going in there and taking a heck of a lot of business away from an investor-owned...by law we're going to allow them to do that. [LB392]

SENATOR MINES: Um-hum. [LB392]

SENATOR FRIEND: I don't even know what this will do. I mean are we more or less handing MUD Douglas County? I guess that's my question. [LB392]

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SENATOR MINES: I don't believe so. [LB392]

SENATOR FRIEND: Okay. [LB392]

SENATOR MINES: But I would direct the question to others behind me. [LB392]

SENATOR FRIEND: Okay. [LB392]

SENATOR MINES: And again tell you that it was not my intention to do anything that we're not doing right now. [LB392]

SENATOR FRIEND: Understood. [LB392]

SENATOR MINES: And I'll get you further information. [LB392]

SENATOR AGUILAR: Senator Mines, you stated that this only affects Omaha and Douglas County. But in reality, isn't this more or less a format for any county and city to merge, that they would use this process, if they so chose? [LB392]

SENATOR MINES: If they...they could use the process that's in place today, that we established in 2001. [LB392]

SENATOR AGUILAR: Okay. Okay. [LB392]

SENATOR MINES: So again, it's up to local voters and local elected officials, wherever in the state. They can form municipal counties now. [LB392]

SENATOR AGUILAR: So this legislation doesn't change what's in statute right now? [LB392]

SENATOR MINES: Right, that's exactly right. [LB392]

SENATOR AGUILAR: Thank you. Further questions? Seeing none. [LB392]

SENATOR MINES: Thank you. [LB392]

SENATOR AGUILAR: First proponent, please. [LB392]

MIKE FAHEY: Good afternoon, Mr. Chairman, members of the committee. [LB392]

SENATOR AGUILAR: Welcome, Mayor Fahey. [LB392]

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MIKE FAHEY: My name is Mike Fahey, F-a-h-e-y, mayor of the city of Omaha. I will, I think Senator Mines did an outstanding job of giving the overall view of the bill. I'll try to give you a little different perspective, the way we see it from the city of Omaha. And hopefully, maybe it will help with some of the other questions that were asked here today. This...our state has been for years faced with some economic challenges, to say the least. We have about 1.7 million people, 1,700,000 people in the state. You know, we all need about another 100,000 taxpayers to help us do some of the things we really need to do in our state, or we have to find ways to be more efficient in government. I think it's incumbent upon every officeholder, no matter what office you're holding, to try to be as efficient as you can in providing public services to your constituents. And I have been echoing this since the day I came into office, and have been trying to do...practice what I preach. This piece of legislation, I think, enables us to have an opportunity to look at different areas to try to save money for the taxpayers of Douglas County and therefore the citizens of Omaha. This is an opportunity. It doesn't mean it's a done deal by any means. I think it's incumbent for us if, in fact, we find a way to go forward with the changes that we have outlined in LB392. If we can...if we are successful in moving this forward, we will have the opportunity, and I think incumbent with that the challenge of going before the elected bodies in Douglas County and the voters of Douglas County and prove up on these things. Not every one of these will be home runs. We have done some effective functional mergers. And you'll hear some of that talk. We have merged our Parks Department, we have merged our Purchasing Department, our DAS Department, our "dot com" Department, 911, a lot of these have been very effective. Now over the course of time, of course, as Senator Mines pointed out, these are very temporary functions; they're functional mergers that can be changed. We think during the course of overall time you'll have more opportunity to do cross-training and to save more and more dollars and become more efficient. I think it makes sense because we have, certainly because of the way we're set up under this system, we have a redundancy of services. And that's just the way it is. So it's an opportunity in my mind if you take the largest, most populated county in the state. And we're willing to go forward and prove to our citizens and to our county elected officials that we have a formula that demonstrates that if we do some of these things that we have a chance to be successful, and therefore be more efficient in government. And I think, as Senator Mines also pointed out, it provides us with an opportunity with one form of government, and makes it much more easier for companies to do business with our county, because you're only going to one place for licenses, etcetera; you have one voice in government, so to speak. I think it encourages economic development because people look at this, they do not like the hoops that you have to jump through to do business in counties. And I think it would smooth it out. And we have seen that in other major cities that have done municipality-city-county mergers. So I think it presents us a real opportunity. And I would encourage you to support the bill. Again, it does not make this a done deal, by any means. It provides us an opportunity. And I think it's incumbent upon us as elected officials to look at opportunities, to try to be more efficient in government. That's why we're all elected. So if this works for Omaha, should it work for others? I think it would

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be a good example; I think it would be the right thing to send. Think if we could get more efficient all across the state. It would be a great message to send. And for that I really do urge your support. I'd like to close by reading one paragraph of a letter that you're going to be receiving, and it's come from the Greater Omaha Chamber of Commerce, from David Brown, the president. I think it sums it up, what we're really talking about. LB392 does not cause merger to happen and it does not force merger upon any community within Douglas County that does not wish to participate. Rather it clarifies and streamlines a process whereby unification could be considered by local elected bodies and the voting public in the city of Omaha and Douglas County, and it corrects inconsistencies between current law and the constitutional amendment allowing city-county mergers approved by the voters statewide in 1998. That really succinctly puts it together. I'd be willing and happy to take any questions you have. [LB392]

SENATOR AGUILAR: Questions for Mayor Fahey? Senator Rogert. [LB392]

SENATOR ROBERT: Mayor Fahey, where is your council at on this process? [LB392]

MIKE FAHEY: I think they're probably a lot like a lot of us here, they see this merger thing, and change is scary. I think any time you have an elected official who might have to make a change, it's scary. I can't stand here and tell you that every one of our city councilmen are for this yet. I think there are some that are concerned. I think if you ask them the question, are they looking for finding ways to be more efficient in government? They would say, yes. It's incumbent upon us to form this committee, to prove to them that this makes sense. Nothing happens unless we get their vote and the citizens of our Douglas County to vote. So this is no panacea that just allows us to go forward. This allows us the opportunity to go forward, Senator. [LB392]

SENATOR ROBERT: Thank you. [LB392]

MIKE FAHEY: You bet. [LB392]

SENATOR AGUILAR: Further questions for the Mayor? Senator Avery. [LB392]

SENATOR AVERY: It's good to see you. [LB392]

MIKE FAHEY: Good to see you. [LB392]

SENATOR AVERY: Have you or anybody on your staff taken a look at other cities that have done this to see what their record was? I'm thinking in particular of Nashville, Tennessee, that kind of wrote the book on this merger issue. [LB392]

MIKE FAHEY: We've had...we had a committee that was appointed, several counties had representatives, the city had representatives on it. They did a complete study of

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different locations. Some have been successful, some were not. And what we tried to do was certainly adopt those methodologies that were successful and tried to avoid the pitfalls of the ones who were not successful. So we've tried to fashion our bills under the ones that were more successful. So, yes, they're out there. I think, clarifying a point is the fact that ones who have chosen to go forward here have not chosen to go back. So they have found value in moving forward in this form of government.. [LB392]

SENATOR AVERY: Thank you. [LB392]

MIKE FAHEY: Thank you. Anyone else? [LB392]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Mayor. [LB392]

MIKE FAHEY: Thanks very much. Thank you, Senators. [LB392]

SENATOR AGUILAR: Next proponent. Welcome. [LB392]

STEVE BRUCKNER: Good afternoon, Chairman Aguilar, members of the committee. My name is Stephen Bruckner, 409 South 17th Street, Omaha, Nebraska. I'm with the Fraser Stryker Firm. And my involvement with this legislation was as part of a group that was... [LB392]

SENATOR AGUILAR: Would you spell your name, Mr. Bruckner? [LB392]

STEVE BRUCKNER: Thank you, Senator, excuse me for not doing that. Bruckner is B-r-u-c-k-n-e-r. I was part of a group that included representatives of the County Attorneys Office and City Attorneys Office, at the request of Mayor Fahey, to look at putting together the legislation that is before you today in LB392. So my job here today is to hopefully answer some of the questions that were posed earlier. And I encourage you to interject with those questions at any time. I'd be happy to answer those. As has already been discussed, this bill, LB392, does not in any way approve unification of any cities or counties, including Douglas County and the city of Omaha. But it does simply outline the process by which that could take place, if the residents of Omaha and Douglas County would vote in favor of that. The most important change in the legislation for all of our purposes is one that applies across the board, that is to any county or city that would choose to merge. And I want to try to clarify what in the bill applies across the board, and what in the bill applies only to a merger involving a metropolitan class city, which would just be Omaha and Douglas County. I'll try to do that, and if it's not clear, please allow me to explain it so that it is clear before we finish today. The first change that is made with this bill is to make the legislation consistent with the constitutional amendment that was adopted by Nebraska voters, to allow mergers of cities and counties, back in 1998. Unfortunately, when LB142 got passed into law in 2001, it added a couple of voting blocks that have to approve merger in order for it to

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occur. The constitutional amendment, on the other hand, is quite clear. Merger is approved if, and let's use Douglas County and Omaha for an example, if a majority of the voters in Omaha approve it and a majority of the voters outside the boundaries of the city of Omaha approve merger, that's what the constitutional amendment says. And as we all know, the Constitution of Nebraska trumps any legislation that would be inconsistent. The reason that this change I'm speaking of right now needs to be made is so that if the voters of Omaha and Douglas County choose to go forward, or any other county, we have a process that is consistent with our state Constitution. So that's the very first change that you will see. And for the sake our of reference, that's in Section 11 of the bill, beginning on page 22. The second change, and now I'm switching to those provisions that are directly applicable only to a merger involving a metropolitan class city. The first such change is in Section 2, beginning at the bottom of page 6. And here are some procedural requirements that apply if merger is to be pursued. What we're focused on is a merger process that is initiated by a joint resolution in Omaha, the Omaha City Council, and the Douglas County Board. There's another process that's already provided for in the law, as I'm sure you're aware, and that is a voters petition, 10 percent of those who voted in the last governor's election, can petition to start the process. But I will focus more on the first type of procedure. So you have a passage of a joint resolution. And under Section 2, for a metropolitan class merger what that does is it triggers a process by which a committee is appointed. And that committee has a fancy name, called the Interjurisdictional Planning Committee. It's the same thing that's in the bill or rather in the legislation as it exists today. That is to be created. It's a seven-member group with representation from the county side and from the city side, and then with some experts brought in as well who are selected by the members selected by the governing bodies. And that's the body, and I think the best way to think about it that is the body that does what the bosses say. You know, if you analogize it to a business merger, the CEOs have said, we want to merge, now go do it. And this is a group that would then put together the plan of merger with public input, operating under the Open Meetings Act, in order to go forward and come back to the bosses, come back to the city council and the county board with a plan voted up or down by those bodies before it goes to the voters. So that is all outlined here with regard to mergers involving cities of the metropolitan class. There's really only three components that are mandatory, and they actually exist in the current law. That is first of all the legislation does contemplate a strong mayor-council system, which Omaha has today, with a countywide mayor. It also contemplates and requires that there be 11 council members; currently, there are 7; 11 council members who are elected by district, so that there is representation of all groups throughout the county. Other than that, the details of the merger are to be worked out with a public hearing process before the Interjurisdictional Planning Commission. And then a plan, as I mentioned, is put forward to the county board and the city council for approval before it goes to the voters. So that's the first portion of this bill that applies solely to mergers involving metropolitan class cities. The second component that was important to address for Douglas County and Omaha was the issue of taxing authority, tax levying authority. The current law allows a tax levy of

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up to \$1 per \$100 of valuation. And what that could potentially mean is in a merged county, the counties levy, those outside the city, could see their levy go up. Obviously, that's not desirable. So this legislation which applies, and again this is Section 9, beginning at the bottom of page 18, applies only to Omaha and Douglas County. Would create two different taxing districts. One would be a general tax district, general tax and service district is what it is called in the legislation, that would apply countywide to those residents in the former city of Omaha, also those outside Omaha in the county. And the levying authority for that tax district would be up to 45 cents per \$100 of valuation. That's actually less than the 50 cents that currently applies as a maximum. And I'll just mention parenthetically, that both the county and the city have levies that are considerably below the maximum. I think Omaha is in the range of 26 cents, and the county is 23 cents. Others would know that better than I. But I believe that's the case. Then in addition to the general tax and service district, there would be created, under this bill, an urban tax and service district. That would obviously then apply to the portion of the new municipal county after merger that includes only the city of Omaha, the boundaries of the former city of Omaha. And that taxing authority would have a 45 cent levy, so that the maximum would be, instead of \$1, for those in the urban tax and service district their maximum would be 90 cents, those outside would be 45 cents. No one would see that anything in terms of a tax increase or any taxing authority even that would be increased as a result of the merger. It would be clean, it would be status quo. That's an important provision, and it's also important for the next facet of the legislation that I want to address because it's one that sometimes creates questions or controversy, and that is the issue of annexation. Under the current law, LB142 the original enabling act, established essentially a five year moratorium for any annexations. Now that's something that given the history recently with regard to the city of Omaha that is not going to be acceptable for a metropolitan class city, which has fairly broad annexation authority. But by the same token, you don't want to have an annexation authority that is going to create problems with those municipalities that do not choose to merge into the overall entity, which is their option. Senator Mines mentioned several of those cities in Douglas County. And this bill does not increase or decrease any ability of the new municipal county to annex. So there's no impact, for example, in the current Elkhorn issue, that's going forward under existing law, the metropolitan class cities laws. There's no impact on any school boundaries; that's addressed in Section 5 of the bill. And there is no impact on sanitary and improvement districts, SIDs, or on natural gas service territories, which Senator Friend mentioned, and I'll come back to that in a moment. The reference for the SIDs is Section 14 on page 29, and Section 3, pages 9 and 10, which has already been referred to by Senator Friend with regard to natural gas service territory. The concept would be as follows for annexation: I mentioned earlier the urban tax and service district. That's Omaha, think of that as Omaha. Under current law, as Omaha's boundaries become adjacent to another municipality it has the option, it's not required, but it has the option to see the annexation of that municipality, or SID, whatever the case may be. That's the current law. This creates exactly that same status quo. And there could be no annexation, unless the boundaries of the urban taxing

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service district, as a cities boundaries expand through annexation or addition of new territory becomes adjacent to whatever municipality you might be talking about. So again, the effort there is to create a process that does not lead to any inference by anyone that there is any change in the current state of the law. It simply provides the vehicle, as Mayor Fahey and Senator Mines mentioned, for voters to decide if they believe that this is the form of government that they choose to pursue for themselves. Senator Friend, I indicated I would come back to the provision regarding natural gas service territories. And, Senator, you're exactly right that the Natural Gas Regulation Act, which I'm familiar with because of other work that I do, addresses the boundary issue now. That law was put into effect to deal with all natural gas regulatory matters. And with that in mind, the bill is revised so that the adoption of a municipal county by the voters does not increase or decrease anyone's service territory. Those issues would continue to be dealt with under current law, which currently is the State Natural Gas Regulation Act. Previously, the bill would not allow any merger to go forward, unless the metropolitan utilities district was satisfied that it wasn't affecting it. And that's obviously sort of a poison pill for any kind of a merger involving Omaha and Douglas County. I will also mention that our group made an effort to contact the folks who are involved in that issue on both sides, both for the investor-owned utilities and metropolitan utility district. And they seemed to be satisfied. That's not to say that they are, I can't make that representation, but our understanding was that they seemed to be satisfied with that. I wanted to respond to that. And if there are further questions, Senator, I'd be happy to try to address it. With that, I am...I would be pleased to answer any questions that you may have. I urge the...that this bill be advanced to General File. Thank you. [LB392]

SENATOR AGUILAR: Thank you, Mr. Bruckner. I have a question, but first I want to verify a statement you made. You said that both the county board and the city council must vote to approve this before it would go to a vote of the people. [LB392]

STEVE BRUCKNER: That's right. They actually have two opportunities. The first is the passage of the joint resolution, if it goes that way. Let's put the petition process aside for a moment, which I did mention in passing where voters can petition to begin the process. But if we're utilizing the county board and the city council, you're quite right, there has to be a joint resolution to decide to go forward with the process. That starts the review by this Interjurisdictional Planning Commission. And then the plan of merger comes back to both bodies for a vote before it goes to the voters, quite right. [LB392]

SENATOR AGUILAR: The reason I bring that up is because the state of Nebraska, being the only Unicameral form of government, I've always contended the reason there will never be another one is quite simply in order for that to happen one of the houses would have to vote themselves out of a job. [LB392]

STEVE BRUCKNER: That's a fair point. [LB392]

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SENATOR AGUILAR: Evidently, you don't think that's going to be a problem with (laugh) the county board and the city council. [LB392]

STEVE BRUCKNER: Well, that's a fair point. And the response is, you know, we hope that the issue eventually is compelling enough that there are those who will support it in the interest of better government. Others have done it and been very, very pleased with it. I think it's significant that they...none of them have gone back. And I don't know...that's anecdotal, but it's always significant that nobody wants to change. [LB392]

SENATOR AGUILAR: I see. And another question too, Mayor Fahey testified that there have been some areas that have tried this, that it's failed. Do you feel confident that you've taken a look at those failures and created this language so that it's not going to happen in this instance? [LB392]

STEVE BRUCKNER: Yes, I believe so. And actually, in many states the voting process is simply, for lack of a better term, one-person-one-vote. It would be just one county one vote. In our case we have the constitutional amendment which, as I said, governs, which requires the vote of both bodies. So it's a little more difficult obstacle for the success of merger here in Nebraska. But, yes, I think we've learned from the other communities that have been successful. [LB392]

SENATOR AGUILAR: Thank you. Further questions? Senator Friend. [LB392]

SENATOR FRIEND: Thank you, Mr. Chairman. Thank you, Mr. Bruckner, for the points in regard to the Natural Gas Regulation Act. My fear is this, and if my fears can be alleviated, that's great. But I'm not really sure, in the amount of time that we have here, that that's going to be the case in regard to that specific section. What you pointed out is very true. On the top of that page, in LB392 on page 10, it says, the plan...the new language is, the plan of merger or consolidation approved pursuant to Section 1328.01 shall not increase or decrease the territory within which any metropolitan utilities district shall have, and may exercise the power of eminent domain. And then it goes on, and then there is a bunch of language scratched that goes to direct statutory authority relating to the State Natural Gas Regulation Act. My fear still to this point is that that language could potentially, potentially conflict with statutory authority in some other section of law that the State Natural Gas Regulation Act affords. Now, maybe that can be changed and maybe that can be amended, I don't know. I was waiting for my legal counsel, but I think he's watching us on TV. But I still have the fear, Mr. Bruckner. And it's not a fear that I'm going to lay up at night and, you know, in a cold sweat. [LB392]

STEVE BRUCKNER: Right. [LB392]

SENATOR FRIEND: But if you remember some of those committee hearings, I think you do, and you remember the time that has been put into this, as Senator Mines

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relayed a little bit of that, I see a vicious debate coming on again. Because I don't know, based on what we're talking about, whether Aquila, let's call it what it is. [LB392]

STEVE BRUCKNER: Right. [LB392]

SENATOR FRIEND: We got Aquila and MUD right there, and they're looking at this, and they're looking at this and they're going, hmm, what does this say now? Because the rules of engagement are changing. And Aquila might be able to, you know, squeeze in on MUD, and MUD may be able to squeeze Aquila out, depending on who's willing to throw, you know, the most amount of money into it. That's what I'm reading here. [LB392]

STEVE BRUCKNER: Well, and again, you know in my opinion, and that's no greater than anyone else's really, that is exactly what we're trying to do is to make it clear that it's status quo, no increase or decrease. Look to the State Natural Gas Regulation Act. And certainly if this needed to be addressed, I think a reference in there saying that any such boundary issue shall be addressed under the State Natural Gas Regulation Act would only improve the bill. [LB392]

SENATOR FRIEND: Well, thank you, Mr. Chairman. One of the things that David Landis, on his way out, and I've credited David Landis for a lot of things, I've also fought him on some things, but the fact of the matter is he said, look, this is still a problem. We may have left a problem in there. When we approach it from these type of angles, I wasn't sure that we did, we approach it from these type of angles, you can see the problem glaring in that if Omaha annexes Elkhorn, which we're...it's going to happen, MUD can go out there and they can condemn those pipes. Elkhorn suddenly belongs to MUD. [LB392]

STEVE BRUCKNER: I'm not sure that's true, but I'm following your question. [LB392]

SENATOR FRIEND: Let's...arguably that could happen, right? [LB392]

STEVE BRUCKNER: You know what...the State Natural Gas Act, in dealing with boundary issues, has tried to establish a process by which there won't be double piping. We don't duplicate resources. So that's how that is addressed. And you know, if there's an...I think you're probably familiar with some instance where there have been issues brought before the Nebraska Public Service Commission relating to that. So it really...this whole issue is addressed back to the Nebraska Public Service Commission under the State Natural Gas Regulation Act. And again, when it says, shall not decrease...increase or decrease, we're talking about municipal merger; we're not necessarily talking about annexation. So if a pre-existing annexation results in your scenario, with MUD taking over Elkhorn, that's not something that occurred as a result of a municipal-county merger, it occurred as a result of some other law or some other

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law and the State Natural Gas Regulation Act. And that's what this bill says. [LB392]

SENATOR FRIEND: And that's an excellent point. And I would only add to that, which kind of perpetuates my fear, is that you are empowering a new entity with the same type of power that a metropolitan class city has. And arguably, that metropolitan class city has the power to go out and condemn in a way that a county can't necessarily do right now. So we can carry on off the record. I'd enjoy doing that. [LB392]

STEVE BRUCKNER: Yeah, I think we should address that; it's a fair point. I believe that the issue is addressed. And as I said, we did make an effort to try to engage those most affected. But we definitely should follow up, Senator, in order that you be comfortable. [LB392]

SENATOR FRIEND: Thank you, thanks. [LB392]

SENATOR AGUILAR: Senator Pahls. [LB392]

SENATOR PAHLS: Mr. Chairman, I have a question. Where is Ralston in this whole mix? [LB392]

STEVE BRUCKNER: Ralston remains as Ralston. They are not affected. They're an independent municipality. They are not compelled by either the current law or this bill, LB392, to join with the city of Omaha. They can remain exactly as they are today. The only difference being that instead of having a county government that's out there that has some taxing authority and some other authority and a city government that doesn't affect them at all because they are their own city, you have that all merged together. So it doesn't affect them at all. And the current law already says that, as does the existing law. And that is you leave existing municipalities alone; they continue to have all of their authority up until the time that they are annexed. But again, that's what the current law is. [LB392]

SENATOR PAHLS: Okay. So you're basically interested in new territory, as I see it. [LB392]

STEVE BRUCKNER: No new territory, just think of it as merging the two forms of government, no additional territory. [LB392]

SENATOR PAHLS: Thank you. [LB392]

SENATOR AGUILAR: One quick one here, while it's fresh in my mind. Would this legislation give the municipal county authority to annex say Ralston? [LB392]

STEVE BRUCKNER: No greater authority than already exists. As it stands, you know,

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clearly Ralston is adjacent to the city of Omaha, surrounded by it. And the current authority that exists for Omaha would allow annexation of such, if it so chooses; it hasn't. And this bill would leave it exactly the same. [LB392]

SENATOR AGUILAR: I got it. Thank you. Senator Avery, I'm sorry. [LB392]

SENATOR AVERY: This legislation, the language in it would eliminate the truly rural voters? [LB392]

STEVE BRUCKNER: That's a phrase that I've heard, Senator Avery, yes, that's right. [LB392]

SENATOR AVERY: I can understand the reason for that. How could we maybe amend this to include cities the size of Lincoln? Because I like some of what I'm hearing. But then when I look at the existing law and the language in existing law, it looks like the hurdles for Lincoln and Lancaster would be a little bit higher than what you would be specifying in this law. [LB392]

STEVE BRUCKNER: No, actually not, because the voting provisions that you're referring to, Senator Avery, are being changed for everyone. And the thought being by our group, I mean we're focused on Omaha and Douglas County, obviously. But it seems to...it seemed to us anyway to make sense to change it for everyone because the voting issue, obviously, should be consistent with the constitutional amendment. I mean I think most people would agree with that. So that would apply to Lincoln and Lancaster County. I think it's for others to say whether the provisions that are in here are specific to metropolitan class city merger should be applied beyond that. Certainly I don't see any problem with that from a personal standpoint, and I think Senator Mines indicated that would be fine as well. So the vote could be amended in that regard. [LB392]

SENATOR AVERY: Yeah. Thank you. [LB392]

SENATOR AGUILAR: Further questions? Seeing none, thank you for being with us today. [LB392]

STEVE BRUCKNER: Thank you, Senator. [LB392]

SENATOR AGUILAR: Next proponent. How many more testifiers do we have on this bill? Raise your hand. Thank you. Let's try to be as brief as possible. We have a lot of testifiers, and I don't want to have to install time limits. [LB392]

LOU LAMBERTY: (Exhibits 2 and 3) Mr. Chairman, senators, my name is Lou Lamberty. I am here testifying on my own behalf. I happen to be chairman of the

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committee that was formed, in 2002, by the county commissioners and the mayor to study the issue of merger of the city of Omaha and Douglas County. There were seven of us on that committee. We've spent 13 months studying this issue. We issued a report, which I brought a copy along for your files, something to keep you awake at night, or maybe put you to sleep at night, I don't know which. I also brought along a letter of support from the Chamber of Commerce. I am very happy that this legislation has been introduced. One of the things that we discovered in our study of city-county merger was that the existing legislation had a number of flaws in it that we thought were basically fatal flaws. And Mr. Bruckner's group picked up our recommendations, decided which ones we were right on, which ones we were wrong on. But has introduced now or brought forth now legislation to correct some of the flaws that we found as we went through our study. We did about three things in our study, and we spent 13 months at this, by the way. First, we went back and looked at what had been done in the past in terms of looking at city-county merger in Douglas County and the city of Omaha. And we found, while it had been talked about for as far back as 1937, nobody really ever studied it. There had been lots of efficiency studies and I said a lot of chatter, but ours was the first committee ever formed to really seriously look at the issue. The second thing that we did is that we interviewed and researched very carefully all of the city and all of the county departments, and we made some recommendations on which of those it would make some sense to merge as quickly as possible. We understood immediately that even if we thought that structural merger was a good idea, and in the end we thought it is a good idea, that that takes a long time. And that we thought that there were a number of areas where there could be some mergers. And you heard Mayor Fahey tell you that already three of those have occurred. And we're pleased with that. Unfortunately, most of the rest that we would like to see happen are much harder to do. The third thing that we did is we spent some time looking at other mergers around the country. We did a fair amount of reading, and we brought in a couple of professors who have been active in researching this and also active as consultants to communities that are looking at merging. Mr. Dan Durning, who is with the University of Georgia, and Kurt Thurmaier, at Iowa State University, both came in and spent a day with us and tried to enlighten us a bit on what had happened around the country. What we found is that there's only been 25 structural mergers, that is total mergers of city-county government in the United States since World War II. I suspect one of the reasons there have only been a few of them is because it's very hard to get done. Issues like Senator Friend has brought up complicate the whole idea of merger, because there are so many other things that get tossed into it that can be affected. We found there are at least three different ways to merge city and county government. One of them is simply to merge all of the various departments and assign county to take charge of some and city to take charge of others. Charlotteville, North Carolina and the Mecklenburg County, North Carolina have done that. They still have a county commission, they still have a city government, but each of them has kind of taken on some of the departments, so there is no more overlap. On the other hand, there are many examples of full consolidation. Louisville and Jefferson County; Kansas City, Kansas and I think it's Wyandotte County,

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I'm not sure; Indianapolis and Indianapolis County, which is kind of the poster child for merger. And the third model is kind of forming an overall, what should I say, forming two levels of government. One is kind of a regional government, and then underneath that the various cities and counties, with the regional government having certain powers, major infrastructure, maybe planning, maybe a few other things. Miami Dade County, Minneapolis and St. Paul have done those kinds of things. We couldn't find any model to follow for Douglas County as everybody has done it a little bit differently. There is no one way to do this thing. Everybody wants to know how much money you're going to save. We don't know, and I don't think anybody does. Our experts said, in general, and this is in general, their experience was that there might be savings of somewhere around 5 percent of the combined budgets of the two units of government. I don't have the numbers in front of me, but the combined budgets, when we were looking at this, of the two units is about \$400 million, so 5 percent of that is still some real money. Often merger was a result of a feeling that it would enhance economic development. Indianapolis believes that that has been the case for them. Kansas City, Kansas believes that's been the case for them, and that was the major driving force in their merger. Our experts said, cost really never drove any merger, there was always something else that was driving it. Small towns almost always opt out. In every merger we looked at, the small towns stayed small towns and weren't part of the bigger government. So that's not unusual. In the end, after we looked at all of this, our committee, by a vote of six to one, recommended to the mayor and to the county commissioner that they pursue a full merger of the two governments. And knowing full well that that would take a while, we recommended also that they immediately begin to pursue some of the functional mergers that we had identified, and indeed they have done that, and we're pleased with that. With that, I will stop. If there are any questions, I'd be happy to answer them. [LB392]

SENATOR AGUILAR: Questions? Senator Adams. [LB392]

SENATOR ADAMS: I think I know the answer, but I have to ask. You say that costs drive the mergers that have taken place. What keeps mergers from happening? [LB392]

LOU LAMBERTY: This is my opinion,... [LB392]

SENATOR ADAMS: That's what I want. [LB392]

LOU LAMBERTY: I don't know that I can prove it. I think there are two things, one I alluded to when I talked about the issues like the one Senator Friend brings up. There are so many complications that go with the merger that seem to be unrelated but affect other things. So now we have an MUD issue that could be a very real issue. Another one in our area might be rural fire districts, what do we do about that? That's kind of an American, apple pie deal. And as we looked at it we said, keep on them until such time as they simply don't make any sense anymore. But there are probably another ten

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issues like that. Frankly, I think the other thing is, your Chairman alluded to it, elected officials don't like to give up their jobs. And when you have a merger, somebody has to lose some jobs. [LB392]

SENATOR ADAMS: Thank you. [LB392]

SENATOR AGUILAR: Further questions? Senator Pahls. [LB392]

SENATOR PAHLS: Describe those individuals who served on this commission with you. I'm just curious about their background. [LB392]

LOU LAMBERTY: Yeah, I'm an engineer; I need to get the list, so I can remember. [LB392]

SENATOR PAHLS: Well, just approximate, I'm just trying to... [LB392]

LOU LAMBERTY: Carol Gendler was on there; Carol Gendler is a developer, her family is a developer, family in Omaha; Tim Hart is with the...I forget his title, but I think he's CFO of First National Bank; Kathleen Jeffries is sort of a...she's in...she doesn't work for anybody, but she works for all of us, she's in a whole slew of volunteer activities, been a long-time member of the Omaha Planning Board; Rudy Novacek was a south Omaha neighborhood activist; Chuck Powell, he just told me out in the hall he's just recently become Professor Emeritus at UNO, but at this time he was with the University of Nebraska; Trevis Sallis was with the Omaha School District, I think he was the transportation director for the busing that they do. [LB392]

SENATOR PAHLS: Do you think...the reason I was trying to find out, was this group skewed in any way to go one or the other direction? Or do you think it was a pretty open-minded group? That's what I'm trying to figure out. [LB392]

LOU LAMBERTY: I don't...you know, I think the intent, and I think our intent and I think the intent of the people that put us on there was for us to take an open-minded look at what's possible. And while we ended up concluding that the structural merger idea probably made the most sense, we looked at all the other options too. And even if we never get the structural merger, there's things that already have happened that are good and that we talked about. [LB392]

SENATOR PAHLS: Okay, thank you. [LB392]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB392]

LOU LAMBERTY: Thank you. [LB392]

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SENATOR AGUILAR: Next proponent. Former colleague and seatmate. Welcome.
[LB392]

CHIP MAXWELL: (Exhibits 4 and 5) Thank you. Thank you, Mr. Chairman. Members of the committee, Chip Maxwell, citizen of Douglas County. Quick observations while my materials are being passed out. I stopped at Runza for a bowl of soup on my way into here today. And somebody said, how'd you get that nasty bump on your head? The truth is when a priest sees a politician coming, he digs way down for an industrial strength does of ashes, real sinner, got to lay it on thick. (Laughter) [LB392]

SENATOR AGUILAR: He figures you need the extra help. [LB392]

CHIP MAXWELL: Exactly. I'm going to be brief. I'm going to...I'm sort of teasing you, citizen of Douglas County. I am a Douglas County Commissioner. But I do need to make clear that I'm not wearing my commissioner hat. I'm not testifying for...our board recently took a majority position against the bill. But I do feel I'm speaking for the majority of people in Douglas County, I'll address that point down the road a bit here. I was testified to sign up as neutral and get the chance to come around and get the last word, but I'm not neutral, I do support the concept of the merger. The reason I wanted to be neutral, of course, was to have a chance at rebuttal. I think part of what you might hear today is that this is a terrible idea, what about this, what about that, how you going to provide that service, how you going to merge your law enforcement, etcetera, etcetera? And my answer to all of those concerns right now is I don't know, I don't know, I don't know, and I don't know. We would have to convene this Planning Commission to actually hammer out specifics, and then public hearings, review of governing bodies, ultimately it would have to go to the people. So we are just talking about the concept of merger right now, I want to emphasize that. And I suggest that it's not the job of the Legislature either to actually try to micromanage it. We'll have to hash that out ourselves at the local level. What I'm asking you to consider, what the proponents are asking you to consider is please do everything you can to make the process as clean and as fair as it should be so that we can convene the Planning Commission and run a plan out there and actually see what merger can do. So we're talking about the process today. Give merger a fair shot, I guess is how I'd summarize it. I want to give you some background very quickly, because really I'm appealing to your sense of justice and fairness to address a few problems with the process. You have something before you, "Merger Bait and Switch" there. That was a handout I passed out at a Douglas County Board meeting recently. And it just takes about 60 seconds to go through this. This is the 1998 ballot measure, all right? That's when statewide the public said yes, we support the concept of merger; Legislature, you get rolling and pass the implementing legislation so that it can happen. And the language on the ballot said, no such merger or consolidation, or reversal of such merger or consolidation, of municipalities or counties shall occur unless a majority of the people voting in each municipality or county affected shall approve. That's pretty straightforward language. That's what was on the ballot. And if you take my

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part of the state, the Omaha and Douglas County area, as an example, when you read that language, it looks like, well, okay, we'll take a look at the Omaha voters. Did a majority say yes? All right, we'll take a look at the Douglas County voters. Did a majority say yes? If a majority of both say yes, then it goes forward. If one does not have a majority yes, then it doesn't happen. The actual constitutional provision did something very different, and that's why I used the term "bait and switch" here. Yeah, bait the people into voting yes on it, but then you make a switch, and here's what was actually put into the Constitution. And you can read it for yourselves there. If merger or consolidation is not approved by a majority of voters voting in the election in a municipality proposed to be merged or consolidated or the areas of the county or counties outside the boundaries of such municipality or municipalities, the proposed merger or consolidation shall be deemed rejected. What that means in plain language is, without telling me that it was happening, because this was not explained on the ballot, a separate bargaining unit was created. When we look and see whether a majority of Douglas County supports merger, we're only going to look at the periphery, we're going to look at people outside the city of Omaha. I'm disenfranchised, I pay property tax to Douglas County, I should have the same say as any other resident of Douglas County on whether my county is going to merge or not. I'm not, I'm cut out of the process by that provision, as are eight or nine out of ten Douglas County voters. Had that been explained on the ballot, by the way, there's going to be this special minority veto category created, and the people checked off yes on that, you wouldn't hear a peep out of me. My gripe is that it was not explained, it was a bait and switch, that is fraud on the voters. That's why I say, I'm appealing to your sense of justice and fairness to try to address that. Now, the problem was exacerbated in 2001, and I was a party to it as a state senator. When the bill, the package of legislation to actually implement merger was worked on and passed, the Legislature further divide...you have this minority veto category outside the city, that was divided into even smaller blocks to make it even easier to stop merger. You see, the smaller the block you make it, you could have...if you just get a few thousand people to vote no, it doesn't matter if 100,000 throughout the rest of the county vote yes, merger is blocked if any one of these voting subdivisions, voting blocks votes no. The Legislature...it's there for you to see, and you can see it in the bill as well. This made it even harder. What was said by proponents at the time was, look, hold your nose and vote for this provision; it's the last thing holding up the whole package; we need to get it across the finish line; and we'll come back and work on this minority veto problem later. Well, I hope later is now because one part of Senator Mines' bill is to at least restore this new jurisdiction, Douglas County outside Omaha. At least restore it to what exists in the Constitution, which is just one outside Omaha category. Collapse it back into one category, not these separate blocks that we have now. That doesn't totally eliminate this problem. Sometimes, I think, I'd love to see the Legislature just run a new amendment out there to really clean this up, an amendment that matches. Use the same ballot language, and by the way if anybody wants to see it, I've got it here from the Secretary of State and so forth. It's public record, you can find it if you need it. But put an amendment out there that does match

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the ballot language. That would probably be the simplest, cleanest way to do it. But that's a big rigmarole to get a constitutional amendment moving and so forth. So this is a more modest effort to, not completely solve the problem, but at least it would be a step in the right direction. It would create a more fair playing field for actually getting the proposal and merger out there for people to vote on. It's...you will hear concerns about minority rights. The problem is this, you have before you also a copy of a newspaper column that ran recently. I'm not going to go through the whole thing. I just ask you to look at the last two paragraphs, okay? When that merger vote happened, in 1998, 348 out of 361 precincts in Douglas County voted yes. The overall county total was 65 percent yes vote. And at least 50 percent voted yes in all but 13 precincts in Douglas County. See, one of the mantras repeated out there is, oh this is a smoke and mirrors thing. There's no public support for this. Nobody I talked to is interested in merger. Well, the objective reality is the only time this was actually placed before the people, and they got to express their opinion on it, you've got it there before you, and I've got the vote. I don't want to bury you in paper, this is seven or eight pages. But I've got it, if you want it. The Douglas County Election Commissioner has it; it's public record; 65 percent overall, yes; 348 out of 361 precincts, that means every district of every county commissioner voted yes on this. So anybody who comes before you and says, well, there's no public support for this. This is the objective reality right there the last time we checked with the people on this concept. And that's why, if there's a little intensity in my voice, it's that I don't know what the Planning Commission might come up with, maybe I wouldn't end up supporting whatever the Planning Commission comes up with, I don't know. There are a lot...as Lou Lamberty said, there are a lot of specifics to be worked out. There are so many different ways you could put together a merger package. But what I'm encouraging you to do is at least, as I say, make the process as clean and fair as it should be, so that if a majority of the people paying the tab for Douglas County want the county to merge with the city of Omaha, there should be a clean and fair way for that to happen. So I'm saying I'm not asking you to micromanage the process at all, I am asking you to remove some of the insidious and unfair obstacles that have been put in the way, and let this process work out the way it should. And I thank you for your time and welcome any questions you have. [LB392]

SENATOR AGUILAR: Questions? Senator Friend. [LB392]

SENATOR FRIEND: Thank you, Mr. Chairman. Chip, good to see you again. Chip, I'm not going to beat this dead horse. I mean, we've been down the...and I've got some good information from Mr. Bruckner and Mr. Lamberty touched on it. But you have mentioned part of the initiative, or a good portion of the initiative being a framework, where you say, I don't know, I don't know, I don't know. There are specifics that have to be pounded out. I just can't help but notice, I mean this is a specific that needs to be removed from this bill. I mean,...and Chip, here's why I bring this up, what I thought is probably true. And I'm not contesting it, because Mr. Bruckner doesn't have the ability to come back up here. And we can debate, because we'll have fun with that, off the record.

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But a city of a metropolitan class has the power to condemn and exercise the power of eminent domain within the corporate boundary in the limits of a city of the metropolitan class. So what we're doing is given that county, after that merger, the same functional classification of that city. The point, Chip, is this, we have specifics in this bill. At a minimum, what would it...for Senator Mines, and for this committee, and for you and all proponents, what is it that has to be in here for merger proponents to move a dream to a functional reality? Because this is...this section in here, Section 3 is a pipe dream. I mean that's going to affect nine different statutes, Chip, that's my point. [LB392]

CHIP MAXWELL: When I sat here, Senator, and heard you, I hadn't noticed that or thought of it. And I thought, oh my gosh, we're going to reignite the gas wars here. [LB392]

SENATOR FRIEND: I know, I apologize. [LB392]

CHIP MAXWELL: (Laugh) I thought, oh no. [LB392]

SENATOR FRIEND: I apologize for that. [LB392]

CHIP MAXWELL: Well, that's all right. [LB392]

SENATOR FRIEND: And I don't mean to again beat that dead horse. [LB392]

CHIP MAXWELL: But these are the things that need to surface. The only thing I can say to you right now is, any variable in here, I become a politician. What does the majority of this committee support? That's what I'm for. What will a majority of the Legislature support? That's what I'm for. The one provision in here that really matters to me, and that's why I focused on it was, can we at least collapse the minority veto blocks back into one block, so there's a little more of a fair shot to win in a vote? But the specifics and variables, whatever will please a majority is...that's what I'm for. I hope that doesn't sound cynical. It's just that at some point everybody's got a good solution. Let's find out which one the most people support. Does that answer your question? [LB392]

SENATOR FRIEND: Yeah, it does, because my point is there has to be a reason that so many come forward with an initiative with pieces in it, and they want them to be fairly high level so that you can...so that it can be a structure that we can build around. [LB392]

CHIP MAXWELL: Um-hum. [LB392]

SENATOR FRIEND: What I'm wondering is, what are those pieces of the structure that just can't be removed? Because it would be my guess that we could probably, as a committee, go through here and just dice it up. You know. (Laugh) And that may not be

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a good thing in regard to the way Mick would look at, or anybody else that is in a proponent fashion. Now the opponents would probably say, dice away, Mike. [LB392]

CHIP MAXWELL: Yeah, yeah. [LB392]

SENATOR FRIEND: But I just wanted to get your view on that. [LB392]

CHIP MAXWELL: I hope it doesn't sound like I'm ducking you, but at that stage I would probably defer to the sponsor about what he thinks is nonnegotiable. For me, whatever will get it across the finish line, although if we leave those minority veto blocks where they are, well, then it starts to look like a dead letter. [LB392]

SENATOR FRIEND: Yeah. [LB392]

CHIP MAXWELL: But otherwise...and I'd be glad to visit with others further in any way. I guess, I'd also point out that is why there is this, excuse me Senator, that is why there is this triple-tiered review process for public hearings, the local governing bodies looking it over, and ultimately it would have to get past the people. So hopefully there are enough safeguards built in that there wouldn't be a time bomb in there that would blow the thing up. [LB392]

SENATOR FRIEND: Thanks. [LB392]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Chip. [LB392]

CHIP MAXWELL: Thank you. [LB392]

SENATOR AGUILAR: Next proponent. How about an opponent? [LB392]

JIM MaGUIRE: You did say opponent, correct? [LB392]

SENATOR AGUILAR: Opponent. Welcome. [LB392]

JIM MaGUIRE: Good afternoon, senators. My names is Jim MaGuire, it's M-a-G-u-i-r-e. I'm president the Fraternal Order of Police Lodge Number 2, that's the Douglas County Deputies. I would love to be up here to say that I support the bill. There's only a couple thins that I would like to see that would be put into the bill as existing. The main thing is going to be a job protection section within the bill because within this it all refers back to the home rule charter of the city. And I have spoken to the director of Labor Relations and city officials, and there's nothing in there that protects anybody's jobs or anything. So that would be one portion I would like to see, at a minimum, put in there. Because if it's going to be spelled out that there's going to be a merger between the city of Omaha and Douglas County, we should at least explore, what are we going to do with the

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employees? We should also explore, what are you going to do with the assets? If this was a merger between the library system, the library system sets it out. It says, all assets and all employees will be merged together, and that's how it is. But with a law enforcement section you create some...there's going to be a huge turf war in this. And there's going to be some apprehension. There's some things that we need to look at--it's going to be the seniority, that would be an issue. It may not seem like a big issue, but that's how we're judged. One of the first things, if you have to testify in court, they ask you, where do you work? Well, I work for the Sheriff's Office. The second question they ask me is, how long have you been on there? And that's how you're judged. Are you a rookie? Are you an experienced officer when you went to this call? There's about 100 statutes that refer to the office of sheriff. And I don't think it's any stretch of the imagination that our office would probably have to be eliminated because you have to have harmony between the mayor's office and the office of sheriff. I think we're just being realistic here, and we have two contracts between the county and ours and the city of Omaha and their police union. Our two unions have had extensive talks over what would happen. The only thing that the two of us could not agree on is the issue of rank, and that may be something that when everything comes together. If this Planning Commission is set up they can address that, how they want the rank. But I think at a minimum we have to set up that there's going to be some job protection. Just on a side note, when the city of Omaha annexed the city of Elkhorn, there was some claims made that all of the...all the police officers were going to be offered jobs with the city of Omaha. There were 5 officers out of 13 that were hired. The other officers are fired, they're gone. It creates apprehension with us, within our lodge what's going to happen to us. So if we can just put some basic job protection forms in here, I'd be more than happy to work with any of you. We've had, you know, an attorney that we've been trying to hammer this thing out for about a year. And the only thing that we can't basically come to grips on is the issue of rank. It has, a lot of it, to do with our captain rank. Because when you look at the ratio between captains and officers, obviously, since we're a smaller department our number is going to be a lot different than what the city of Omaha's is. So with that, let me just say one more thing. Within Douglas County if there's any issue when it comes to if we have grievances or anything else, it is mandated by the state that it goes through a mayor commission, and through the city of Omaha goes through like a personnel board. What I'm saying is all this stuff needs to be addressed, this is how it's going to happen. There is no mayor commission within Douglas County if these two departments merge, so everybody knows right off the bat if there are issues, if there are labor issues, this is where it goes. Because if we leave it up...if somebody forgets to do something within just a small word in this bill, it could create massive amounts of problems. And there's going to be morale issues. And the one thing that you don't want to have are morale issues within a law enforcement agency. So that essentially is all that I have to say. I said that I would be brief. [LB392]

SENATOR AGUILAR: Questions? Senator Pahls. [LB392]

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SENATOR PAHLS: Okay. So you're telling me if the labor issues can be cleared up... [LB392]

JIM MaGUIRE: I would absolutely be on board. I'd absolutely support the bill. [LB392]

SENATOR PAHLS: Okay. Question I have is, you brought up captains. Now how many captains are there in Douglas County? [LB392]

JIM MaGUIRE: We have four. [LB392]

SENATOR PAHLS: So it doesn't seem like you're dealing with very many individuals. [LB392]

JIM MaGUIRE: No, we're not. [LB392]

SENATOR PAHLS: Seems like that probably could be resolved, if this were to happen. [LB392]

JIM MaGUIRE: Right. If you would ask the police union, they would say, you're limiting our ability for promotions, because you just don't have a lot of promotional abilities within a law enforcement agency. And that's what they're going to have their biggest heartache over, is going to be the rank. [LB392]

SENATOR PAHLS: Right. But I'm assuming if this would go through, there would be a lot of things that would be...there would be changes made. I mean, just...I think that just... [LB392]

JIM MaGUIRE: Oh, I absolutely agree. This...let me just say this right off the bat, this would create greater efficiency in law enforcement because you're not going to have...I can recall sitting in a roll call room, where they said, you will not respond to a call within the city of Omaha, no matter how close you are or anything. So I can recall being off of 170th and Q Street and there was a prowler call, up at 163rd and Q Street, which was within the city, and the city of Omaha had to dispatch a cruiser from 60th and L, which is probably ten miles away. I could have gone there and handled the call, but I would have been insubordinate if I would have gone to that call. So that is something that...that's just the reality of the two departments. You have burglars that don't see jurisdictional lines, they don't have that, that's just the reality of it. So you're going to have one officer handling that. So you may get a greater clearance rate. [LB392]

SENATOR PAHLS: Okay, let me ask you one more question. What is the base salary of a...let me use a word, I may use the wrong one, a rookie police officer and a rookie sheriff in your department? [LB392]

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JIM MaGUIRE: Let me just...the very base salary, we make...I want to say we start off at probably about \$37,000. The city of Omaha probably starts off at maybe \$33,000, but there are step levels. That's how it's done. [LB392]

SENATOR PAHLS: Right. [LB392]

JIM MaGUIRE: There's a greater range for them, it's shorter. So within...they make about 7 percent more than a deputy does right now. [LB392]

SENATOR PAHLS: Okay. So the salary actually is better? [LB392]

JIM MaGUIRE: So when you're talking...excuse me? [LB392]

SENATOR PAHLS: So you told me the salary is better as a police? [LB392]

JIM MaGUIRE: Oh, absolutely. Well, the biggest thing that's going to happen is going to be the pension plans, which would have to be addressed. And it may need to be addressed in here, or may just have to sit down, because the city of Omaha doesn't pay Social Security, but we do. So you're going to have...plus their pension plan would be the Cadillac, and ours would be probably a Honda Accord. [LB392]

SENATOR PAHLS: It probably would last longer. (Laughter) Okay, thank you. [LB392]

JIM MaGUIRE: But I mean, those are just issues that are...they will have to be addressed at a later date, whether or not it has to be statutory, I don't know. That may be something where they say, you know what, you guys can just buy into this, you were...you've been on 15 years, like I have, if you want to opt into Omaha's plan, we'll say that you have 8 years. [LB392]

SENATOR PAHLS: Okay, thank you. [LB392]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB392]

JIM MaGUIRE: Thank you very much. [LB392]

SENATOR AGUILAR: Next opponent. [LB392]

TOM DOYLE: (Exhibit 6) Senators, my name is Tom Doyle and I'm the Douglas County engineer, and I've served in that elected position since 1983. I left the Legislature after a very short stay to find a real job. And I (laughter) sympathize with you this late in the afternoon. I'll try to be brief. But you know, you heard Mayor Fahey talk about streamlining government. But what you have in LB392, that streamliner is coming down the track, and this is no less than a rail road job, in some people's opinion. And I don't

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say that to be critical, but just to maybe dramatize at the opening that there are some things you haven't been told about LB392 that are there if you want to read the bill. I've got a statement here that I will work from, but I won't read it verbatim. And I apologize for only having 10 copies instead of the 12. In the first place, LB392's genesis was through the Chamber of Commerce, the Omaha Chamber of Commerce, who paid the law firm to draft the bill. And Mr. Bruckner did serve on that committee, and there was a city and a county attorney representative on that committee, too. But they were not charged with drafting legislation, but only to study how the two bodies could get together and work jointly to address some of these problems. One of the things that concerns me personally, and I attended all of the...all except two of the meetings that chairman Lamberty had referred to here on city-county merger, and did a lot of studying in the interim. And Senator Pahls asked the question about how the committee was structured. That seven member committee consisted of six residents of the city of Omaha, and one resident of an SID. There was no representation from Valley, Waterloo, Ralston, Elkhorn, the rural areas. So it's not surprising that they came up with a recommendation that probably a city-county merger would be a good thing. One of the members of that committee, Senator Chuck Powell, or professor Chuck Powell is here. He'll be having something to offer. But one of the things that LB392 would do is it would eliminate the present four-year exemption from annexation that exists under present law. Presently, a city-county merger under LB142 provides that if you vote no, you can stay out for four years. You heard testimony here earlier it doesn't change anything on the annexation authority. That actually freezes Omaha's annexation authority for those communities for four years. So that's a substantial change. Another thing that it would do is to change the makeup of the Interjurisdictional Planning Commission. In all the other 92 counties, that planning commission is anywhere from 9 to 23 members, and each jurisdiction, all the cities and the counties involved, are guaranteed at least one seat at the table to plan the...to develop the plan. And that's very important. Now Senator Mines has offered an amendment, which is a step in the right direction, to guarantee that there will be an elected official from the county and one from the city that will serve on that commission. Another thing that has been brought up here that seems to be an issue and is really the whole crux and that's what Commissioner Maxwell has referred to as the so called rural vote. In all the other counties, except with the possibility of Sarpy County, merging the rural vote with the SID vote probably wouldn't make that much difference in the overall voting power of the rural areas. However, the Lamberty report pointed out that in 2000 the population of the rural areas in Douglas County was about 8,000, where in the SIDs the population was something on the order of about 50,000. And what that would do then, by lumping those two together, not giving the rural voters the opportunity to vote as a separate unit, would submerge them in at least more than six times their numbers in that SID/rural block. And what that then...that's...you say, well, maybe that isn't too bad. But the fact of the matter is that if a merger would go forward those 50,000 folks would pull the rural people in. The SID residents stay outside of the municipal county, they don't come in. You can't...you have no...the county would have no taxing authority in those SIDs, except for a countywide

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sales tax. But the SID residents stay out. So the question becomes, what is more unfair, to give the rural voters a protection with a separate block, voting power, or to have them submerged in a voting block that's going to possibly drag them in and literally deprive them of the voting power that they're entitled to? It just seems to me...and then, of course, Commissioner Maxwell mentioned the fact that that language wasn't included within the constitutional amendment. The Supreme Court decision on the annexation of Elkhorn that just was handed down took note of the fact that even though the statement that for purposes of this section that annexation would not be considered a consolidation or merger, notwithstanding the fact that that wasn't on the ballot, that language the Supreme Court let stay...let stand. And it's possible that Elkhorn could come into the city of Omaha as a result of language that wasn't in the constitutional amendment that was voted on by the voters, but showed up there somehow through the product of the Revisor of Statutes. So the fact that it wasn't in there, I feel, is not a good argument to say that that's why you should deprive these rural residents of this opportunity to vote. Another thing that is different is that current law provides that in any merger of the counties and the respective cities, only the voters can decide on that merger plan. In other words, if you're going to eliminate some elected offices, county attorney, county clerk or whatever, that has to be in the merger plan that goes before the voters in all of the counties, all 93 counties. But for a metropolitan-type merger the rules change once you've got a metropolitan county because it says that the metropolitan county can eliminate any office, any elected office. So if you want to talk about bait and switch, if I were promoting a merger, I'd leave those offices on the ballot, and once they get my municipal council, then I would eliminate those offices, probably, if that's the ultimate goal. And another provision that I think is also very important, and it's on page 14 of LB392, lines 22 to 25, it says that, where there is a...unlike in all the other 92 counties; where there is a conflict between the statutes governing counties and the statutes governing a merger that involves a metropolitan city, that the statutes relative to the metropolitan class city shall prevail. In other words, in all the other 92 counties the county and the state...city and state law is balanced. But in Douglas and Sarpy County home rule charter prevails; you in effect extend the home rule charter from border to border, from north to south, and east to west in Douglas County. So this is not an innocuous bill. It is not something that is just streamlining a process. It's crafted for the primary purpose of making it as easy as possible for Omaha to act as they have, and as they have the authority to do, in the annexation or incorporating of other communities. And I believe it would be wrong to take that protection from the smaller cities of being exempt from annexation and also from having the rural people have their right to vote. And I would urge that your...and I'm sure I left some things out, and I could stay here for a week, but I'll...I would urge that you indefinitely postpone LB392. And at the very least, if you don't...you choose not to amend LB392, maybe we ought to just throw those SIDs right into the municipal county, if a merger would go through. But, no, the municipality wouldn't want it because their debt load is about a half a billion dollars, compared to the cities...of Omaha's current debt load of somewhere up around \$1 billion. So they're going to pick these people off or these SIDs off one-by-one, ultimately.

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But they're going to leave those 50,000 people have the right to bring these other people in unwillingly. I've probably spoken more than I should have, but if you have any questions, I'd be glad to attempt to answer them. [LB392]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB392]

TOM DOYLE: Thank you very much. I either did a very good or very bad job, if you don't have questions. Thank you. [LB392]

SENATOR AGUILAR: Next. Next opponent. How many more opponents are there? You're fine. Six. [LB392]

CHUCK POWELL: This brings another point of view to the committee. I sometimes wonder... [LB392]

SENATOR AGUILAR: Would you give us your name and spell your last name, please. [LB392]

CHUCK POWELL: Pardon? [LB392]

SENATOR AGUILAR: Would you give us your name and spell your last name, please. [LB392]

CHUCK POWELL: Chuck Powell. [LB392]

SENATOR AGUILAR: And spell your last name. [LB392]

CHUCK POWELL: Chuck Powell. [LB392]

SENATOR AGUILAR: Would you spell it. [LB392]

CHUCK POWELL: P-o-w-e-l-l. [LB392]

SENATOR AGUILAR: Thank you. Proceed. [LB392]

CHUCK POWELL: (Exhibit 7) I'm sorry. I sometimes wonder if the topic of city-county merger and its concomitant efficiency, cost-savings, responsibility, and other...is another urban myth? There may be a few proven advantages, but on the whole, many are unproved. Commissioner Maxwell's recent article, printed in the Omaha World-Herald, argues that the city-county merger is advantageous. Mr. Joe Egler, in his letter to the editor, discussed some disadvantages. Harold Anderson had it right in his recent column. These issues have been talked about for at least 75 years. If city-county merger is also popular, why have there been so few of them? After participating for over

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a year and a half as an appointed member of the Joint Committee to Study City/County Merger, I can assure you that merger or consolidation is a very complex issue. Consolidation can be achieved in two ways: structural merger, or interlocal agreements. A structural merger would require changes in the city charter, county regulations, state statutes. After studying numerous governmental consolidations around the country, I found that structural mergers are rare, less than 1 percent of city-county governments have chosen this vehicle. In terms of structural mergers, a classic example is Indianapolis and Marion County, Indiana. Analysis of the present government shows the following: residents of consolidated Indianapolis are served by 11 school districts, more than 10 police departments under control of an elected sheriff, 8 fire departments, 20 special service districts, and 85 different taxing units. The consolidation has changed the image of the community. They have spent lavishly on sports facilities, but service delivery is spotty. On the other hand, interlocal agreements are most commonly used. This agreement utilizes negotiations between the interested parties, it assigns accountability and obligations of each is clearly defined and services to be delivered. For many years the governments of Charlotte/Mecklenburg County, North Carolina have used interlocal agreements to solve community problems. Since the end of World War II, services in Charlotte and Mecklenburg County have pursued functional consolidations. As far back as 1972, they combined services in water and sewers; in 1982, election, purchasing, communications were combined; in 1984, planning and zoning services were merged. At the present time, both Omaha and Lincoln use interlocal agreements. For example, Omaha and Douglas County have recently combined Parks and Services Departments, as well as 911. The Lincoln-Lancaster Health Department is a combined approach to public health. Under Nebraska statutes, the state, the county, the city have specific obligations and are not to be duplicated. Especially a structural merger would include sanitary improvement districts, unfunded liability of police and firefighters, Omaha Housing Authority, Eastern Nebraska Human Service Agency. Very few studies report cost savings in a merger, unless the population is below 100,000. Professor Dan Durning, Carl Vinson Institute of Government, University of Georgia, who visited at our site, said that if you fired a group of middle managers, you could affect cost savings. A group of myths has followed the Pied Piper in the clarion call of cost savings, efficiency, responsibility and bigger government is not necessarily the better government. Thank you. [LB392]

SENATOR AGUILAR: Questions for Mr. Powell? Seeing none, thank you. Next opponent. [LB392]

MASON STEINBERG: (Exhibit 8) Mr. Chairman, ladies and gentlemen. My name is Mason Steinberg, S-t-e-i-n-b-e-r-g. I live at 1808 South 228 Street, Waterloo, Nebraska. I live in the rural agricultural part of Douglas County, and I'll address that in a few minutes. Reference has been made by the city of Omaha and Mr. Lamberty concerning Professor Kurt Thurmaier, who was brought in by the Merger Study Committee. He is director of public policy and administration at Iowa State University. He has authored

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many books and papers involving formulating study commissions and consolidation agenda development processes, those are his words, to you and me, city-county merger, okay? Some key points that Dr. Thurmaier discussed with the local committee almost all of the structural and functional mergers that have taken place since 1940 have had several common problems. The most important of all these problems and what he told the study committee is one word, "crisis." I haven't heard anything said about Omaha has a crisis. Let's break that down a little. Kansas City, Kansas/Wyandotte County has been mentioned, crisis. The political structure fell apart. Louisville, Kentucky, they had a problem, they were about to become the second largest city in Kentucky. They had an identity problem if that happened. And the grand daddy of them all that is always talked about, Indianapolis, Indiana. Back close to 40 years ago they were searching for an identity. They wanted to become a destination city and they used professional sports, as has been brought up already, to achieve those results. There are a lot of other highlights I could give you, but time does not permit. So far the proponents of the merger have not shown any crisis in Omaha and Douglas County. But as Dr. Thurmaier said, when government is ineffective in their view of answering their problems, what they do is to start an agenda, starting with the media, and events to propel the vision of consolidation as an answer into the minds of the voter. Is this why the Omaha Chamber of Commerce has made merger one of their primary agenda items? This includes trying to get the federal government to designate the metro area, in the next census, to include Lincoln, Nebraska. So far, it is my understanding that when Omaha sent a delegation to Washington they were turned down. Back to Dr. Thurmaier. He suggested that other factors boil down to annexation problems, or economic, tax base and credit ratings. Quoting him, he said, who's got what? Where is the distribution of wealth? What are we going to do to keep the city or bring back the city, bring back the core, bring back the metropolitan area? And what we see in these cases is that people who are involved in economic development emerge as the elites in the community, which is why the Chamber of Commerce acts almost exclusively as the flag carrier for consolidation. Well, if economic beliefs see their survival in the metropolitan area, then what do they need? They need a streamlined process for economic development. And that's what city-county merger is, in my opinion. The good doctor also indicated that savings of dollars ain't gonna happen overnight, we're probably not going to save money anyway, why? Because there are a lot of costs to restructure, and more important there's an important thing to know about--counties and cities, for the most part, do different things. Time doesn't allow me to continue along that line. I have not heard any real crisis in the city of Omaha, have you? But maybe they have one and are not facing up to their mistakes and now want others to bail them out. Is that really necessary? Should bedroom communities who spend most of their dollars in Omaha, Nebraska, and I live in the rural area, for me to get to the river in Omaha, Missouri that is, not the Elkhorn or the Platte, I have to drive almost 30 miles. Where do I buy my gasoline? Omaha, Nebraska. Where do I buy my clothes? Omaha, Nebraska. Paying sales tax, paying for gasoline taxes. Where do I go for entertainment? Omaha, Nebraska, and I pay a seat tax, entertainment tax when I go to a lot of venues in

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Omaha. Just look at the annexation of Elkhorn, talking about big government. Right now in Elkhorn they have one city councilman for approximately 1,400 people, the city of Omaha has one city councilman for 54,000 people, approximately. These are some thoughts you ought to consider, big government versus little. Hal Walker, who is an attorney and he was the one that wrote what was accepted as the merger agreement for Kansas City, Kansas and Wyandotte County. And he suggested to me that because of the topography of Douglas County it is not suited to have a structural or functional merger. And we're going to get into some of the things you were talking about. I happen to know Hal because of the barbecue industry. We enjoyed a little bit of barbecue now and then. All right? He said, merger is not an answer. And he comes to Omaha regularly because his sister lives in Omaha. He knows, as well as I do and probably not many of you on this committee, that one-third of the land area of Douglas County, which is the western portion, sits approximately 300 feet lower than the rest of the county because there is a bluff on the west side of Elkhorn that overlooks the Elkhorn Valley. I happen to live there on a farm, a family farm that we have. The topography where I live, or call it the elevation where I live is over 300 feet lower than the developable part of Douglas County. If you will not add to this bill two suggestions of mine--one is that you leave SIDs as their own entity, they can opt out, won't affect city of Omaha for whatever else they want to do, and also the rural community, I'm talking about us who live down, which could become hell one of these days, because you all know as well as I do in a sparsely populated part of the county they aren't going to spend, or as Dr. Thurmaier says, they ain't gonna spend any money on us down there, but yet we go into town and we pay taxes in there, everything but a property tax. What happens to the rural community? Four years ago and three years ago I tried to get a bill passed by the Legislature to protect farmers who, when property is annexed, like happened two years ago over in Valley, Nebraska, they can remain in the Greenbelt. Never got out of committee. Nebraska has two very important statutes that can help cities and counties. I was on the Douglas County Planning Commission for 26.5 years. We used extensively interlocal agreements with the city of Omaha, with all the surrounding communities, they've already been named. Tom has already...Mr. Doyle has already told you the advantages of interlocal agreements. They're time tested, they're written so that if it doesn't work out or one group or the other needs to get out, they can. But in a merger of city and county government, it's going to take a state statute to let you get out of a problem. I hope that I can have you all consider what I suggested in leaving it so that they can't stop the merger, but they can opt out, the SIDs can by SID, and the rural community, those of us who are out there in that no mans land, we can opt out, because we will receive no benefits from a city-county merger. One last point of interest, I went to all but one of the City-County Merger Study Committee meetings. The one that I missed, Mr. Doyle went, and I went to the one he missed. It's interesting that the city of Omaha put up \$50,000 for this study; county put up \$5,000. Mr. Doyle and I have been asking ever since 2003 for a financial statement on where all that money went. This is February 21, 2007, we have seen absolutely nothing. What is somebody trying to hide? I do have some handouts that you may have. And I'd answer any questions that you

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may have. [LB392]

SENATOR AGUILAR: Questions for Mr. Steinberg? Senator Pahls. [LB392]

SENATOR PAHLS: Mason, I did...I heard you say that you could come about to the idea of a merger on a couple conditions. [LB392]

MASON STEINBERG: Senator, I've heard them talking about streamlining government. I've read you a quote that Dr. Thurmaier has said about how governments get it through. Louisville, Kentucky, and I have friends who used to live in Louisville, until they had the merger. It takes eight... [LB392]

SENATOR PAHLS: But, Mason, I'm talking to you though on, you told, I heard you say if the Greenbelt... [LB392]

MASON STEINBERG: I'm going to answer that, I'm going to answer that... [LB392]

SENATOR PAHLS: ...and also the SID. [LB392]

MASON STEINBERG: ...but I wanted to give you the background on my answer. It took Louisville eight votes before they wore down the voter to pass it. But it still is not working out. You can read about it elsewhere. I am a realist. I realize that one of these days the elites, chamber of commerce, maybe a few other people are going to force this down the throat of the electorate. If this is going to happen, I can't stop it, but I'm asking you, if you go along with allowing that to happen, at least allow those SIDs who individually opt out and us in the rural community, allow us to opt out. It might be fairer for everybody then. [LB392]

SENATOR PAHLS: Okay, thank you. [LB392]

SENATOR AGUILAR: Senator Avery. [LB392]

SENATOR AVERY: Thank you for your testimony. You mentioned Professor Thurmaier's work. Actually, I've read some of that, and you're right, he does identify crisis as the common denominator of most of these mergers. But does the absence of a crisis itself make mergers less viable or less desirable or less workable? [LB392]

MASON STEINBERG: In what I heard him say, and you've been on this committee for a while, that's why you probably have a copy of what he said to the committee, because it was handed out a few years ago. He did not say specifically any area in which a crisis did not take place. Now there may be some, I don't know, but he did not indicate that in his talk. [LB392]

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SENATOR AVERY: My point is that that argument does not really address the strengths and weaknesses of mergers, which is what we need to be talking about. What is good about mergers and what is not good about mergers? Maybe it's better to act by way of a merger before a crisis develops so as to avoid the crisis? [LB392]

MASON STEINBERG: That's possible, except when you look at most of the mergers that have taken place. Dr. Thurmaier classifies them in two, separate categories: one, which is a tad over 50 percent of the ones he studied, which were close to 30, that in the opinion of him and his group who just got through publishing a three or four volumes of information concerning city-county mergers, they were unsuccessful for various reasons. Those that in their mind were successful, were successful in certain areas. Now you talk about Indianapolis, Indiana, three years ago, after they had a merger, I'm sorry, gentlemen, after they had a merger they figured out, after 33, 34 years, that they had a problem. The problem was they needed a city prosecutor. Since then they have merged, tried to merge sheriff and police. It was not well thought out. And now they are suffering the repercussions. Same thing in Louisville, Kentucky, happened within the last six weeks. They have more chaos there today than they did before because they're starting to realize that certain jurisdictions have certain responsibilities that do not overlap onto others responsibilities. Sheriffs have certain responsibilities, they're also the ones who take care of the jail, things like that. City police, they enforce the city laws. It's a shame that there cannot be an interlocal agreement between the two entities to allow pursuit into somebody else's territory. When you are the closest law enforcement officer, why not have an interlocal agreement to that? City of Omaha and Douglas County jointly built a jail, saved money, great idea. Problem is Omaha will not let the people that normally do the prison work book their arrestees in, it's kept separate. Why? Go ask them. You know, and then they want to have a merger. We should know why they want to have a merger. Just to say, let's have a merger, like Kathy Jeffries did, and we'll figure out how we can do it better than anybody else. Is merger for merger's sake the way that government should go? And why are you going to look at one portion of a bill to change things, when if it's good for the goose, why isn't it good for everybody in the state? This state has problems, we all know that. They have problems, tax problems, they're being sued by schools, they have water problems because they're being sued. We all have to sit down and figure out what is going to happen to the structure of what we know as government. [LB392]

SENATOR AVERY: I think you're making a case... [LB392]

MASON STEINBERG: But merger is not...merger for merger's sake is not an answer. [LB392]

SENATOR AVERY: I know, but it sounds to me like you're making a case for structural and functional merger, rather than separate. [LB392]

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MASON STEINBERG: I'm trying to make a case for interlocal agreement because we have a statute on the book. [LB392]

SENATOR AVERY: That's functional integration. I think you can't do one without the other. I think you need the structural as well. [LB392]

MASON STEINBERG: The functional part...I personally think you can from the experience I had for 26.5 years and seeing what has happened in...we have an advantage here in that a lot of states don't have the kind of interlocal agreements that we have on the statutes. We also have an advantage for the city of Omaha and for the state of Nebraska that no other state in the United States has. We can annex you without your approval. We're the only state in the Union, according to the experts, where those being annexed cannot vote whether they want to be annexed or not. [LB392]

SENATOR AGUILAR: We've got a lot more testifiers. Can we wrap up here. [LB392]

MASON STEINBERG: Okay. [LB392]

SENATOR AGUILAR: Thank you. [LB392]

MASON STEINBERG: Thank you very much. [LB392]

SENATOR AGUILAR: You're welcome. [LB392]

JERRY STILMOCK: (Exhibit 9) Good afternoon, senators. Jerry Stilmock, J-e-r-r-y, Stilmock S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association in opposition to the measure. This is my first opportunity to visit with the committee in terms of so much of what was talked about last year during four of your campaigns and reelections was institutional memory. And if I would, I'd like to invite you to think of who you would look to on the floor of the Legislature now if we were dealing with issues of education? Who would you look to for answers in education? Who would you look to for guidance in terms of natural gas, in terms of constitutional law? Education, as I said. I'd invite you to go back with me to 2001, when this bill, LB142 was discussed and debated. This wasn't the first time, in 2001, that an item to put into gear the constitutional amendment was discussed. Senator Wickersham and Senator Schimek were leaders on the floor debate throughout the day and days in which this bill was discussed. In order to take care of the rural vote that has been discussed already, which appears in Section 11 of the bill, that this bill would do away with or change, there was an amendment offered. And seven senators signed onto that amendment. And I just ask you to consider the names on that amendment: Senator Schimek, Senator Wickersham, Senator Jensen out of Omaha, Senator Quandt out of Omaha, Senator Brown out of Omaha, Senator Thompson out of Papillion, Senator Dwite Pedersen, Elkhorn. There was a great deal of thought, I believe, in putting

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together the amendment, AM1103, that became a part of the bill and formed the four different tiers of voting where we end up with a fourth tier, the rural vote or the farm vote. Senator Wickersham, in one of his comments during floor debate, he said what we have to avoid is causing any situation in which the taxpayers in a particular jurisdiction or area are disadvantaged, his word "disadvantaged", by the majority. And I have a handout. I look at my role as providing quick and accurate information to the committee. And what I've done is I've provided a condensed version of that floor debate with typed references, and then the actual pages that were included in that. And it isn't in the attitude of it's a show me type of thing. I just ask you to reflect, if it was good in 2001 by the leaders who were heading up this debate, what has changed? Why should we change it? And are the changes meritorious for you to consider? We know one thing, there's not been a vote by anybody to have a city-county merger. We haven't attempted it. We don't know if this veto power that's been discussed by both the proponents and the opposition is in fact the killer sword. But I'd ask you to consider if this legislation is based upon institutional memory and the knowledge of those that sat before you, then I'd ask you please to consider that, what were the merits of it? And why did Senator Wickersham, during floor debate, and I've highlighted that portion on page 2 of my handout to you, why did he say, in discussing this rural-rural vote, finally, what I would characterize as the most important veto power is the persons who live outside of the SIDs and outside of the municipalities; they have an absolute veto power. I think it's the position of my client that to change this voting requirement to do away with what appears in Statute 13-2810 is an injustice to the farmers and the rural voters. My last comment, they started in 2001. In 2004, there was another bill; in 2005, there was a second bill; and yet again now in 2007. And at each one of those hearings there was a question that the constitution was more strict than what the language in the existing law is. And it, the statutory language went too far to require four different categories of voting. But not once was ever, to my knowledge, was an Attorney General's Opinion ever requested, though it had been talked about. If it's believed that...people come and say that it's problem, if the statutory language, when compared to the constitution, by all means, maybe the thing to do is to ask for an Attorney General's Opinion, if you're so inclined. Thank you. [LB392]

SENATOR AGUILAR: Questions for Mr. Stilmock? See none. Thank you. [LB392]

JERRY STILMOCK: Thank you. [LB392]

SENATOR AGUILAR: Next opponent. [LB392]

MARY ANN BORGESON: Good afternoon, senators. [LB392]

SENATOR AGUILAR: Welcome. [LB392]

MARY ANN BORGESON: (Exhibits 10 and 11) My name is Mary Ann Borgeson,

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M-a-r-y A-n-n B-o-r-g-e-s-o-n. I am chair of the Douglas County Board of Commissioners and I am here today to discuss the county's resolution and opposing LB392. I do have a quick question on protocol, Senator. I was also asked by the Mayor of Valley, who was unable to attend, to provide you with her letter. [LB392]

SENATOR AGUILAR: You may distribute those to the page. [LB392]

MARY ANN BORGESON: Just distribute it, do not read it? [LB392]

SENATOR AGUILAR: Please do not read it. [LB392]

MARY ANN BORGESON: Okay. And then here's mine to pass as well. Thank you. Current law allows for sensible mergers. Douglas County and Omaha have conducted numerous and extensive studies on mergers that you've heard about today. And we have merged or consolidated departments when and where it is most practical. Functional mergers have occurred with our 911 centers, parks, information technology, and our purchasing department. There are many reasons why LB392 is not in the best interest of Douglas County residents or the Nebraska residents, but I won't go through, since I'd be redundant in all the testimony that's been given, and I'll try to be short today. But besides the issues that have already been pointed out in the reasons bad in LB392, merger proponents have failed to provide convincing arguments or evidence on how this legislation would improve the quality of life, produce efficiencies, or add quality to service delivery, enhance citizen's participation in government, and they failed to prove relief of tax burden to the citizens. In Nebraska, besides the current merger law we have on the books, we also have the Interlocal Cooperation Act, which permits local governments to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on the basis of mutual advantage and the best use of tax dollars and the best services for the citizens in which they represent. For the 12 years I have been on the Douglas County Board, arguments for merger have changed for whatever reason best suits the proponents of merger. The first argument was merger is the silver bullet to saving tax dollars. When opponents challenged the arguments and proponents could not produce evidence of any savings, they just changed their reason to merge. Suddenly it was necessary to merge in order to create efficiencies. Again, when challenged to provide results, the bag came up empty, and the reasons to merge again changed. Most recently the reason to merge is for economic development purposes. The development community has not been beating down our doors to merge the county and the city for any reason. Just drive from the Missouri River to the Platte River and you will see for yourself there is not a lack of development occurring in Douglas County, in fact it would be just the opposite. In conclusion, if merging Douglas County and the city of Omaha was such a good idea, I believe it would have happened by now. I have maintained for the last 12 years that merging Douglas County and the city of Omaha would reduce services, raise taxes, and create a bigger and less responsive government. We have the tools already in place

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that provide for cooperation and merger, if we want it. And we have demonstrated the use of those tools when it best suits the citizens. LB392 reminds me of the Alice in Wonderland, where the queen says, verdict first, trial later. It is a solution in search of a problem. Senators, I urge you, please do not let LB392 out of committee. I thank you for your time and attention today and would answer any questions you may have. [LB392]

SENATOR AGUILAR: Questions for Mary Ann? Senator Friend. [LB392]

SENATOR FRIEND: Thank you, Mr. Chairman. Commissioner, thanks for coming down today. I know it's been a long...that's the nature of the beast. You know, I watched this debate when, you know, you, Chip, everybody, Clare is back there smiling (laughter). I watched it. My wife looked at me and goes, what are you doing? Watch this, it's fascinating. No, I don't think so. (Laughter) Is this...a bill like this, let's say it gets functionally...let me give you a couple of hypotheticals. Let's say it gets functionally changed, let's say it moves in some form or something, or let's say it gets IPPed, whatever happens to it. This issue goes away, or doesn't go away from a county standpoint? I mean what is the commissioner...what are the commissioners views on that type of idea? I mean, does this go away? I know how Chip feels about it, I've talked to him. But where do we go from here? [LB392]

MARY ANN BORGESON: Again, I guess I would point back that we already have the tool in place, which was put in place through LB142. And so it's always there. I think you will probably have the proponents who continue to bring it up, even after, I mean people coming down even after the County Board has taken opposing arguments against it. You'll probably have people who will continually bring the issue forward. But until, I guess, in my eyes, they have not given any solid reasons as to why, why should we merge? [LB392]

SENATOR FRIEND: But it... [LB392]

SENATOR AGUILAR: Continue. [LB392]

SENATOR FRIEND: Thank you, Mr. Chairman. But it didn't occur to me when I was watching it that there was an attitude by you and other commissioners, even though it got somewhat...the debate got vibrant, it wasn't a situation like how dare you bring this in here. It was more of, okay, here we go again. Is that what we're dealing with here? Is this goes away, what's the...I know what you're saying. But what's the next step? Are there study measures that the county can do separate from what other states have done, separate from what Marin County has done? Separate from what Wyandotte County has done to try to come up with some closure to the subject matter? We just had the Mayor of Omaha in here. I mean, and I'm saying that, you know, we all bow and kiss his ring. But what I'm saying is obviously there are others who believe that there is a subject matter that needs to be addressed. So I guess the question sits out there,

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lingering like...what do you think is going to happen from here? [LB392]

MARY ANN BORGESON: I think we continue down the path in which we've gone. And that is, one, the use of interlocal agreements; and two, that we look at areas in which...just use the ones that we've done when we looked at parks. Did it make sense to do it? Well, you know what, we really looked at whether or not it would be of economical benefit, if it would be efficiencies, if it would be all those things that would be a reason to merge or a reason to consolidate a service. We went through all that with those areas. And it was deemed that, yes, it probably made sense to do that. And so I would say we would continue to do that in areas in which there were...there's no other duplicated services. People keep saying law enforcement is a duplicated service. It's not. The Douglas County Sheriff has many, many, many more statute responsibilities than just patrolling. So that is not a duplicated service. But that doesn't mean we don't continue to have those discussions of where that cooperation could happen between the city of Omaha and Douglas County, or between the outlying communities and Douglas County. We continue to do that. That's why we continue to use the Interlocal Agreement Act...Cooperation Act. [LB392]

SENATOR FRIEND: Thanks, Commissioner. [LB392]

SENATOR AGUILAR: Further questions? Senator Adams. [LB392]

SENATOR ADAMS: One of the advantages of being a freshman here is that I hope to sit in a rather objective position. And as I have listened to all of this today, something keeps coming back to my mind and it's SIDs and discussion we had earlier on in the session in regard to a bill that I think you and Senator Rogert had introduced. So if we leave things as they are, how sympathetic should this body be to the cries of SIDs for ordinance power to solve the noise issues, to solve the junk car issues in the SIDs? I mean my inclination at this point is to say that if I'm willing to say that let's let things stand as they are, then I'm also willing to say to the SIDs, you're not part of the municipality, hence you don't get some of the benefits that municipalities have in terms of noise ordinances, and animal ordinances, and those kinds of things. How might you respond to that? [LB392]

MARY ANN BORGESON: I wasn't aware the SIDs were asking for that, so I apologize. [LB392]

SENATOR ADAMS: Well, they are. [LB392]

MARY ANN BORGESON: That was new, that's news to me. But I guess I would tend to agree with you on that issue, that they aren't a part of a municipality and probably shouldn't have that ordinance making authority. [LB392]

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SENATOR ADAMS: Okay. Thank you. [LB392]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mary Ann. [LB392]

MARY ANN BORGESON: Thank you. [LB392]

SENATOR AGUILAR: Welcome. [LB392]

CLARE DUDA: Senator Aguilar and members of the committee, thank you for your time. I know it's been a long afternoon. My name is Clare Duda. I'm the vice chair of the Douglas County Board. I would like to mention one thing Mary Ann did not mention is that our board is on record in opposition to this bill now. I have several points that I would like to make, most of which have not been made, and I'll be brief on the others. With regards to changing the voting requirements for passage of this, why aren't the SIDs part of the municipal county when it is created? Why are they exempted? And I truly don't understand that. This is not a rhetorical question. I don't know the answer for why they're not. When you ask, how sympathetic should you be to the SIDs with their plight, they're not part of the municipal county under the merged system, and I don't know why. But since they are not part of it, why does their vote determine whether I, as a farmer in Douglas County, I'm one of those rare birds, they dictate whether or not I become part of the merged entity, and they're not even part of it? It's convoluted. The bill says that they will reimburse the county for services provided. Doesn't say what services provided. I am paranoid, I fear manipulation. The merger proponents can some how structure for the SIDs to make it financially advantageous for them to come into this, pass off as much as they want onto the rest of the county, the other third of the county that doesn't have a voice. And we get stuck carrying a load that we should not have to. I don't understand why the SIDs would not be part of this entity. One question I have always had with merger, and somebody asked how long can we expect this to go on? Senator Dan Lynch told me he has a newspaper article from the 1890's advocating city-county merger. It's not going to go away in our lifetime. It is also not going to happen in our lifetime, I firmly believe. This is a whole lot of talk. A politicians favorite thing to do is to tax someone else's constituents, and that's what Omaha smells here. When Omaha discovered that they had the authority to impose a wheel tax outside the city limits, once I talked to the city attorney and said, how is this possible? He told me. I said, there's no point in fighting this, it's a "no-brainer," of course they're going to pass this, of course they're going to impose a wheel tax on somebody else's constituents, somebody that doesn't have the opportunity to voice, through the polls, what they think of this. Omaha has always wanted to, I believe, expand their tax base countywide, to be able to tax those other people out there. Through this they can put the sales tax to go countywide. I believe you follow the money, that's what this is really all about. If they wanted to provide...if we truly would best be served by one government, then why don't they just annex the whole county? They have the right to do that today. They could just annex Ralston and everybody. I mean the Platte Valley, they could go all the way to the

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county line and just have one entity. But they don't advocate for that. The County Board last year, before we had a very significant change in our makeup via the election box, we passed a resolution that said we want to merge the city and county, and we aren't going to extend any city services beyond the city limits, but we want a uniform tax rate countywide. We want the whole county to pay for Omaha's services. And, boy, the Omaha Commissioners jumped on that. Oh course they would like to do that. Why not? It is a politicians dream, tax somebody else's constituents. If this is about saving money, I have one question and that is, when we the county built our new jail a few years ago we included in it a section for booking Omaha's prisoners for them. Everybody was in agreement that we should consolidate this. Omaha shouldn't be running their own jail anymore, put it all over in the county jail. We built it with that in mind, we designed it that way. Once they get looking into the details, I'm sorry I didn't bring it down with me, but I can produce for you a letter from Mayor Fahey saying, we are not going to be consolidating booking because we can't afford it; it is going to raise our costs so much to consolidate these that we have no intention of doing it. So we built this space for them that they won't even come utilize because they can't afford it. Where are the cost-savings? My biggest question that I have always wondered is, why can't somebody show us a plan now? Why do we have to change the legislation, create this planning commission to give us an example of a plan? I was chairman of the County Board when we created the Lamberty Commission, and incidentally, it was a stacked deck. When I tried to put Mason Steinberg on that commission, Mayor Fahey said to me, why would we put somebody on there that's not an advocate for merger? It was a mistake that Chuck Powell slipped through. They could have voted on day one, and the vote would have been six to one. Nothing changed. They spent \$55,000 studying this. I thought they were going to give us a plan for debate, for consideration. They just threw their hands up in the air at the end and said, let's go merge, we can't figure it out, just do it, six to one vote. They could have voted on day one, saved \$55,000, and we would have known just as much as we knew when they got done. We didn't learn anything through that process. It was a waste of time and money. Get used to it, it's going to be going on for the rest of our lifetimes. It is not a problem that is going to be going away. We have the tools today, through interlocal agreement, through functional merger to consolidate what makes sense to consolidate. I negotiated the 911 merger with Hal Daub; it made sense. It didn't save a nickel, but I'm a volunteer fireman, I knew of some of the communications problems. It enhanced public safety, it made sense, and therefore I supported it, we got it done, we made it happen. Those areas that make sense, we can do today. I don't see why we need to be recreating the wheel. We've got the tools that we need right now to make functional consolidation. And any opportunity for efficiencies it is our job to seek those out and make them happen. Thank you. [LB392]

SENATOR AGUILAR: Questions for Mr. Duda? Yes, Senator Friend. [LB392]

SENATOR FRIEND: Thank you, Mr. Chairman. Commissioner, I think you were the one addressing the other commissioners when my wife walked into the room and said, what

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are you doing? (Laughter) I'm just kidding. I don't remember who it was. Thank you, thank you for the...your insight on the subject matter, appreciate it. [LB392]

CLARE DUDA: Thank you, Senator Friend. [LB392]

SENATOR AGUILAR: Thank you. [LB392]

CLARE DUDA: Thank you. [LB392]

SENATOR AGUILAR: Next opponent. Welcome. [LB392]

DON EIKMEIER: (Exhibit 12) Senator Aguilar, members of the committee, my name is Don Eikmeier, E-i-k-m-e-i-e-r. I've had the privilege of working for 8,000 citizens of Elkhorn for the last ten years. And we, at least at the time of the beginning of this committee hearing, still are Elkhorn. However, I'm in a position, I have a resolution to distribute that's in opposition to the bill from the Mayor and council. I am in a position, though, to speak to the fact that as an appointed city government official I am not in a position to either benefit from or be harmed by this legislation. So I think I do offer a bit of perspective. I also have had the opportunity of working with many senators referred to earlier, in 2001, in developing the safeguards that were put into this bill. Let me start by making one point very clear that I don't think has been made today. LB392 does not allow for city-county merger. I'm going to repeat, it does not allow for city-county merger. LB142, adopted in 2001, provides for city-county merger that exists today. What LB392 does is it says everybody in the state of Nebraska is good under LB142, but for Omaha and Douglas County we get special provisions, we get to gut, excuse me, we get to gut the safeguards put into LB142 in 2001 and make it so that we can plow through this process quickly, we can plow through this process with minimal input from our citizenry. We can plow through this process without representation from our municipalities in Douglas County. This bill is to streamline and is to consolidate power. It is not about efficiency, it is not about saving tax dollars, it's not about delivery of better services. It is about consolidation of power into one room so that the corporate world can focus on that one room rather than having to deal with more than one local government entity. Earlier it was described, I think, by one of the proponents that if we were to reconstruct local government today, we probably would not do what we have. I tend to agree with that, but I come with a different conclusion. The local government that we should create today should be focused on providing good, sound delivery of service. It should not be about power, it should be about providing service. My community has just gone through a process in which, as 1 state out of the 50 states of this United States, we do not have the power for our citizens to vote on whether to be annexed into another city or not. We tried to point out, and our citizens pointed out very eloquently, the fact that what happens with this annexation is a loss of service. I contend to you that LB392 is to do nothing more, it's to streamline, it's to gut the voice of democracy and allow for it to go forward so that power can be consolidated into one room. Thank you. [LB392]

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SENATOR AGUILAR: Questions for Mr. Eikmeier. Seeing none, thank you for coming today, sir. [LB392]

DON EIKMEIER: Thank you. [LB392]

SENATOR AGUILAR: How many more do we have? You're it. One more after you. [LB392]

BETH BAZYN FERRELL: Good afternoon, Chairman Aguilar, members of the committee. For the record, my name is Beth Bazyn B-a-z-y-n, Ferrell F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I won't repeat the testimony you've heard before. I would just echo the comments of the Douglas County Commissioners and have NACO be on record as opposing the bill. [LB392]

SENATOR AGUILAR: Thank you. Questions? Seeing none. Thank you. Okay. Any more opposition? Neutral testimony. Welcome. [LB392]

DOUG CLARK: Good afternoon, Chairman Aguilar and members of the committee. My name is Doug Clark, C-l-a-r-k. I'm with the Metropolitan Utilities District. Senator Friend raised an interesting point here this afternoon regarding utilities and expansion of the Metropolitan Utilities District. I just wanted to clarify that the language that was in this bill, LB392, has been reviewed by the Metropolitan Utilities District and by the investor-owned utility in the area. Both parties felt that it was neutral in nature, and therefore both parties kind of said we'd have no issue with that language. The Metropolitan Utilities District is neutral on a city-county merger. We do not have a dog or a cat in that fight. And our only goal is to make sure that as the city of Omaha grows, for the last 97 years, so has the Metropolitan Utilities District. We just want to maintain that consistency in our statutory authority to grow with the city of Omaha. And I'd be happy to answer any questions, if you have any, Senator. [LB392]

SENATOR AGUILAR: Questions for Mr. Clark? Seeing none, thank you. [LB392]

DOUG CLARK: Thank you very much. [LB392]

SENATOR AGUILAR: Any more neutral? Senator Mines, to close. Whoa. [LB392]

LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. There's been a lot of testimony, I think some excellent points raised for and in opposition to this measure. However, I do think that one of the issues that was raised by Jerry Stilmock really does need to be addressed, and that is to basically make sure that there is a clear understanding of what the Constitution does require and what it does allow. And whether that is through an

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Attorney General's Opinion and others, I think that might be very important. I know your committee counsel worked very hard on LB142. The League supported LB142, fully supported LR45CA which was adopted and became basically the constitutional amendment. So conceptually, we support the concept of voluntary city-county mergers. But I also think it's very important to understand what and how those votes can and should be structured, who has veto power, who does not, and have that clear understanding. Because without that, you simply put people in a position of trying to go through a process that may, in the end, no matter what happens, if something moves forward, whether it's Scottsbluff-Gering, with Scotts Bluff County, whatever the circumstance may be, that it ends up in litigation. And so I think that this committee certainly could do a lot to clarify what can and cannot be done right now. And obviously, when LB142 passed there was, I think folks believed at that point that that structured vote could in fact be done and could be done constitutionally. And I think at this point there needs to be a clear understanding of if that is, in fact, still the case and if the Attorney General believes that. So I think that's critically important for your consideration. I'd be happy to respond to any questions that you might have. [LB392]

SENATOR AGUILAR: Questions for Ms. Rex? Seeing none, thank you. [LB392]

LYNN REX: Thank you. [LB392]

SENATOR AGUILAR: Now, Senator Mines, to close. [LB392]

SENATOR MINES: (Exhibit 13) Chairman Aguilar, members of the committee, thank you for your patience. Been a long afternoon and you've heard great testimony on both sides of this issue. And you've heard great testimony on why a unification of Douglas County and Omaha would be difficult. I don't think anyone is blind to the fact that there are details, that this is a monumental undertaking. And again, you've heard many of those, including from Mr. MaGuire earlier, that just instances in law enforcement where those things to be addressed. But I think it's wrong to presume, as many have here today, Mr. MaGuire included, wrong to presume that perhaps the county form of government might be the choice of the voters of Omaha and Douglas County. Whose to say in advance that it would necessarily eliminate county government? Maybe it eliminates city government, but places a chief executive officer at the head of a county government in itself. This Legislature shouldn't presume that we're going to dictate what local folks want. That's what this does, it allows local citizens to dream, and I think that's probably the most important part. Let me clarify a couple of things, a couple statements I think Mr. Doyle brought this one up. The chamber has been wrongly identified as the instigator of this legislation, so has the city of Omaha. Let me tell you up front that I had legislation prepared to come to this committee before I learned that the city of Omaha and that there was other...I wrongly said that, that there was other legislation that had been crafted that would do pretty much what I was going to do. I took that legislation. It has been...it includes ideas from both legislation drafted by Fraser Stryker, and my staff,

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and other ideas. This is not...I'm not carrying water for anyone. I've not met with the chamber to discuss this legislation. I've not met with the city of Omaha to discuss this presentation. This is my bill, ladies and gentlemen. And I understand, I had a note passed to me that Mr. Doyle suggested that the chamber paid for the Fraser Stryker draft. That is absolutely not true. They have done that at no charge and provided that, Fraser Stryker has done...has written language at no charge. So I think the record needs to be set straight on that. Let me look back to 2001. And I was one of those that was involved, through the League of Municipalities, in that legislation and early on. I can tell you that, as you all know, any time legislation is advanced there are compromises. And LB142 was full of compromises. I, personally, it was flawed legislation, and I, personally, believe that there were too many compromises involved, and many of those are set straight in LB392. You also heard from Commissioners Borgeson and Duda. They are obviously against city-county form of government. Last year, the County Board was in favor of city-county government. And I think that highlight, just because you've changed people on their board, last year they would have been here, not those two representatives, the board would be here in favor, supporting, as Chip Maxwell was. I think that points out a flaw in interlocal agreements themselves. Because elected officials change, moods change, politics change. And not only are interlocal agreements short-term in nature, and inefficient in long-term planning for municipality and/or municipal county, I think that interlocal agreements change based on politics. And to rely on that form of agreement long-term is improper. And let's see. Omaha again is driving this, and again my bill, I'm not looking to tax anyone else. In fact, if you look at the bill, this actually limits, and set a 50 cent limit on what is now county and city, drops those to 45 cents. And finally, Mr. Duda said, this won't happen in our lifetime. Bet me. (Laughter) I will...if this comes out of committee, I will prioritize this bill and we'll see what happens on the floor. I would entertain any questions. [LB392]

SENATOR AGUILAR: Senator Pahls. [LB392]

SENATOR PAHLS: Senator Mines, I have a question or at least maybe a statement. Earlier in the conversation with one of the...I can't remember if it was an opponent or a proponent, said a lot of times crisis causes things like this to happen. And I'm wondering, I'm sitting here, okay, what crisis do I see in Omaha? And the only crisis that I can see coming up, possibly, would be the megabucks it's going to cost for the new...or you know, the sewer system. Because we're talking about millions and millions of dollars. Would that cost be then spread out over... [LB392]

SENATOR MINES: Remember the structure, because you still have an urban portion of a municipal county, and then you have the rest of it. [LB392]

SENATOR PAHLS: Okay. [LB392]

SENATOR MINES: Those initiatives are...fall under the 45 cent limit. [LB392]

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SENATOR PAHLS: Okay. [LB392]

SENATOR MINES: And that's not why...and to go back to the crisis, there is not a crisis. [LB392]

SENATOR PAHLS: Right. I'm trying to find one. [LB392]

SENATOR MINES: And I think Senator Avery made the point, why must we wait for crisis to allow for efficiency in government and to allow for, I believe it's even more accountability. I don't think crisis is the point. I think efficiency in government is the point. [LB392]

SENATOR PAHLS: Okay, thank you. [LB392]

SENATOR AGUILAR: Senator Mines, you had made the statement, who says the merger will be governed by city or county? Good question. Who makes that determination? [LB392]

SENATOR MINES: That would be the commission that's established, the seven member commission, two members appointed by the city of Omaha, two members appointed by the county of Douglas, one each would be an elected official, and the other three would be appointed by those four. Those other three, by the way, could be elected officials. They would craft, again with input and with oversight by the public and oversight by the bosses, I was going to ask to have these passed out, this reenforces the process itself. But that commission would craft the municipal county form of government. And then that's what the citizens of Douglas County and Omaha would vote on. [LB392]

SENATOR AGUILAR: Senator Friend. [LB392]

SENATOR FRIEND: Thank you, Chairman Aguilar. Senator Mines, one of the points in dialogue earlier, Senator Maxwell and I were talking about the devil in the details type of discussion. Doesn't a bill like this...I mean, to me I've seen some details. I've read this thing. I've seen some details, I haven't seen other details, things that you're going to have to implement for a quasi judicial body and also a lawmaking body like that commission is going to end of being. How do we know...let's fast forward, Mick. How do we know what that commission is going to get, as that quasi judicial body, in regard to process and procedure when this type of thing is implemented? Let's, just for fun, Douglas County and Omaha says, you know what, love, let's get together. (Laughter) [LB392]

SENATOR MINES: You think? Do you think? [LB392]

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SENATOR FRIEND: It's all going to work out great. We get that commission together, and that is one of the most powerful lawmaking bodies in the state. Now, frankly, Senator Aguilar likes that terminology for this committee, the most powerful lawmaking body in the state. (Laughter) But you see the concern that I have. That's a problem, I think. [LB392]

SENATOR MINES: You know, they're not lawmaking. This is a commission that's established, in a handout I just gave you, there are six principles that they must follow, and that's to determine how the Omaha government and Douglas County government would be dissolved, it would dissolve those two to create a new government. They would decide how the executive and legislative functions will be merged, and there would be a mayor and 11 representatives. And a mayor is more like a CEO, if you will. To call him a mayor indicates that it's a city form of government, that's not fair. It just happens to be what the language is. They have initial division of boundaries of the 11 council districts, the elected offices, if any, that would be eliminated, we're not saying they eliminate, but if they're going to they have to identify them, the effective date that the municipal county would be created. And the council can eliminate any offices within the municipal county, other than the office of the municipal county mayor. They have...the council at the end of this has the ability to create government, to become efficient. They can't today. The commission that's charged with that has tremendous power and tremendous range, but they do have public hearings, they do have input. And oh, by the way, there is the oversight that both the county and the city of Omaha officials would vote on, on that ultimate plan. Now if they choose not to vote, the courts will take care of that and move it forward. But, yeah, the devil's in the detail. And I'm not prescribing that we know what that's going to be. [LB392]

SENATOR AGUILAR: Further questions? Seeing none... [LB392]

SENATOR MINES: You have been patient. Thank you very much. [LB392]

SENATOR AGUILAR: And that closes the hearing on LB392 and the hearings for today. [LB392]

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Disposition of Bills:

LB233 - Advanced to General File.
LB269 - Advanced to General File, as amended.
LB348 - Held in committee.
LB392 - Held in committee.

Chairperson

Committee Clerk