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Government, Military and Veterans Affairs Committee
February 14, 2008

[LB745 LB889 LB927 LB1112 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 14, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1112, LB889, LB927, LB745 and gubernatorial appointment. Senators present: Ray Aguilar, Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Scott Lautenbaugh; and Rich Pahls. Senators absent: Kent Rogert, Vice Chairperson. []

SENATOR AGUILAR: (Recorder malfunction)...Veterans Affairs Committee hearing. We're struggling to get a quorum up here, but we're going to go ahead and try to get some of the preliminaries out of the way. I'll start off with the introductions of the people that are here. On my right is Christy Abraham, our legal counsel; I'm Senator Ray Aguilar, Chair of the committee from Grand Island; on my immediate left is Sherry Shaffer, the committee clerk; and next to her, Senator Mike Friend from Omaha; followed by Senator Rich Pahls from Omaha; and Senator Bill Avery from Lincoln. Our pages today are Ashley McDonald of Rockville, Nebraska; Courtney Ruwe of Herman, Nebraska. The bills will be taken up in the following order: LB1112, LB889, LB927, and LB745. There are sign-in sheets at both of the entrances and sign in only if you're going to testify, put the sheet in the box up here in front of me. If you're not going to testify but would like to be on the record either as a proponent or an opponent on the bill, there's another sheet that you can fill out. Those are also at the tables by the entrances. Before testifying, please spell your name, it's for the record, even if it's a simple name. Introducers will make the initial statement, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for introducing senators only. Listen carefully to the testimony ahead of you and try not to be repetitive. If you have a prepared statement or exhibit, I'd like you to give it to the page and they will distribute it to us. Please turn off your cell phones and pagers at this time. First up today will be a gubernatorial appointment, Mr. Steven Virgil, to the State Emergency Response Commission. He is a new appointment. Mr. Virgil, you can take the chair but we're really not going to get started until we get one more member and it's up to you or you can sit there. We're now being joined by Senator Greg Adams from York and Senator Russ Karpisek from Wilber, Nebraska. Okay, and we're going to go ahead and begin with Steven Virgil. Steve, we'd like you to start off with, of course, give us your name, spell it, and then tell us just a little bit about yourself and why you'd like to have this position on the Emergency Response Commission. [CONFIRMATION]

STEVEN VIRGIL: (Exhibit 1) Yes, sir. My name is Steve Virgil, S-t-e-v-e, last name V-i-r-g-i-l, and Mr. Chairman, I want to thank you for inviting me here today to talk about this appointment and the position. I'll tell you a little bit about my background. I'm a clinical professor at Creighton Law School where I teach in the areas of community development and nonprofit corporations. I've been affiliated with Creighton since 2003. Before that I've done a number of things as a lawyer over the past 15 or so years. Much

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of my work is involved with building community organizations, helping grassroots organizations, and my interest in this position stems from that. I've done a lot of work with environmental organizations over the past 20 years, both in Nebraska and my former state of Ohio. I'm very familiar with environmental regulation and very familiar with community engagement on environmental protection, environmental quality. I think I would offer that perspective and frankly I'm looking forward to the opportunity to serve and to be a part of the commission and its work. I'd be happy to answer any questions about my background or experience. [CONFIRMATION]

SENATOR AGUILAR: Thank you very much. Mr. Virgil, could you give us a little of what you would perceive to be the biggest challenges facing you as you get on this commission? [CONFIRMATION]

STEVEN VIRGIL: Well, I think the biggest challenge is probably going to be effectively representing the voice of the communities that are living with concerns about hazardous materials, hazardous wastes in their community. Effectively can mean maintaining sound communication with community-based organizations, neighborhoods that are concerned, but also having a certain fairness in what's being said, not being reactionary, being principled and somewhat disciplined in how to maintain those communications. [CONFIRMATION]

SENATOR AGUILAR: Thank you. Further questions from the committee? Seeing none, appreciate your efforts in making it down here today. Thank you very much. [CONFIRMATION]

STEVEN VIRGIL: Thank you, Mr. Chairman. May I leave? [CONFIRMATION]

SENATOR AGUILAR: I would note that we've been joined by Senator Lautenbaugh from Omaha. Okay. Is there anyone who would like to speak in favor of this appointment? In opposition? Neutral? And that will close the hearing on that appointment. We're now ready to hear LB1112. Is somebody going to go get Senator Erdman? Welcome, Senator Erdman. I'll just announce we're ready to open on LB1112. Proceed at will. [CONFIRMATION]

SENATOR ERDMAN: (Exhibit 1) Thank you, Mr. Chairman, members of the Government, Military and Veterans Affairs Committee. I am Philip Erdman, representing the 47th Legislative District, here to introduce LB1112. Before I comment on that, we do have an amendment that we'll offer to you. The technical part of it is about three pages of different line and pages that we had to correct. And so instead of giving you that, we actually had a white copy drafted so that way you can actually see how the language works, as opposed to you trying to figure out how it fits into the green copy, which is a fun legislative sport. But we're trying to make it a little easier on you to understand the purpose. LB1112 would repeal the Campaign Finance Limitation Act and would amend

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the Nebraska Political Accountability and Disclosure Act to require greater disclosure of contributions and expenditures. Currently all contributions and expenditures are required to be disclosed over \$250. Under LB1112, all contributions and expenditures over \$50 would be required to be disclosed. Fifty dollars is chosen because that's the requirement in current law for cash contributions before that amount has to be required, and so \$50 is tied to that amount. So that's already consistent and that's where we arrived at that. The bill also imposes a contribution limit on corporations and PACs for state races and introduces daily electronic filing of contributions and expenditures. The daily electronic reporting of contributions would be voluntary beginning in 2010 and become mandatory in 2012. Let me give you the nonpolicy rationale and then if you have questions, we can discuss that. Over the time that I've been in the Legislature, we've had a great deal of discussion about Campaign Finance Limitations Act. Whether it was individuals violating that act and never being prosecuted and never being impeached for their actions or there was individuals that did violate the act were prosecuted and impeached for their actions. That's under CFLA. Both of those cases were for the Board of Regents. Both of those cases, depending upon where you found yourself in the debate, either were looking for consistency or clarity as far as what the Legislature's role was going to be. There was no question at the point as to whether or not there was a law. In the course of those two campaigns, we discovered some errors and issues that needed to be addressed or updated since the original passage of Campaign Finance Limitation Act, which I believe Senator Avery and others were a part of in 1992. That has since been done. So there have been changes made to CFLA to try to improve its application or ability to be effective in its intent. Fundamental of the idea behind Campaign Finance Limitation Act is consistent with what the courts have ruled our limitations must be in regards to spending on campaigns and it must be voluntary. So in a sense what we have with CFLA is a candidate A, as you're well aware, either decides to abide or not abide and therefore they will either voluntarily agree to campaign limitations or not. And depending upon whether they agree or not or whether an individual within the campaign or their campaign would do certain things, there is potentially public funds available. The public funds that are available are not tax dollars at this point. They are funds that are generated from fees and other fines that are levied against other campaigns as such held by accountability and disclosure for those purposes of fulfilling the funding requirements for eligible candidates under CFLA, such as former Treasurer Lorelee Byrd and I think a few members of the Legislature recently. The reason you have two different provisions in the bill is because I don't like CFLA, but I do believe in political accountability and disclosure of campaigns, and I am willing as a Nebraskan and as an officeholder and as a potential candidate--I'm assuming if somebody would ever want to vote for me again--I'm willing to subject myself to a greater level of disclosure. I candidly think CFLA is fundamentally misguided. I can't in good logic say that my constituents care whether or not you're limited funding A and B from this campaign versus that campaign. Most generally what people want to know is who's supporting you? Who's giving you money? Where's it coming from? What are you spending it on? And to the extent that you can do that now,

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and I would argue very effectively based on the amendments that those that support CFLA have gotten adopted, initial at \$100 and now at \$250, you can do quite a bit of business at \$250 without ever disclosing that. Granted if you get to an aggregate amount, you still have to disclose that. But you can generate and you can hold fund-raisers at \$100 a piece, \$250 a piece and you can generate thousands of dollars without ever disclosing who your supporters are. I think that's what the people want to know. Call me crazy, that's a fact. When I run for office, people say, I see that you got money from this group and from that group. Reporters want to know when you're debating issues, who's giving money to your campaigns. I think that's all fair game. I think that's part of disclosure, and to be candidate with you, it wasn't CFLA that required that. It was the Accountability and Disclosure Act that was in place regardless of whether you abide or not because there are offices that don't fall under CFLA. One of the interesting ideas behind CFLA is that somehow we will allow or we will live with certain candidates to have the appearance of being tainted outside of CFLA, but others not. For example, in the past we specifically excluded the Governor's race. So evidently we can have no limitations there, but for members of the Legislature we somehow have to have greater level of restrictions on the way that we run our campaigns, and there's some logic behind that. Obviously in any public debate or any policy decision as we've debated today on the floor, we'll debate in the future, you have to decide where you draw the line. My question to you is what should we do, not where do we draw the line. I think the trade-off of allowing greater disclosure of candidates and their campaigns an offset for what I believe potentially could be interpreted or has the effect of limited political speech is a fair trade-off. I think greater disclosure, greater accountability is what the public wants. Here's the way that we do it and I think that this is important as well. In working with the Accountability and Disclosure with Mr. Daley, we've tried to come up with a process that makes sense. And we're aware that the Accountability and Disclosure Commission is going to be working, if they aren't already, on a process to require lobbyists and other similar organizations to disclose via a Web-based system their contributions and activities. That makes sense. We have the technology, let's utilize it. What this bill would require is that an individual who generates or receives a contribution of \$50 or more would go to a Web site that would be created by Accountability and Disclosure, they would log in similar to the way many of you log in to check you bank accounts or check your e-mail if you're doing the Web-based mail that you do here at the Capitol at home. You would log in, you would enter that information for that business day and its business days if you got it on Friday, it would carry over until Monday, and it would post it on their Web site. And it would be real time disclosure within one business day of your campaign activities. It wouldn't be 3 months, 2 weeks, 6 days, and then 35 days after the election. It would be one day. And the idea is that we move closer to what I believe the public is interested in when it comes to political campaigns, and that's knowing who's supporting you and why. I recognize that there are a lot of people that have invested greatly in the creation of CFLA and I think they should be commended. At the heart of this matter I fundamentally disagree with public financing of campaigns, whether it's through fees, fines, General Funds or otherwise. I

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fundamentally disagree with that. One may make the argument that there is public funds available for running for president and other things and obviously we're not talking about that here today. But from the same standpoint, there has to be a logic in what we're doing. I think what we are currently doing or what we have tried to do is to create a better mousetrap to catch a couple mice. I think the public...with the exception of one known case and again, I'm not here to argue whether Drew Miller should have been impeached and Dave Hergert shouldn't have or vice versa. The fact is is that under the existing structure there is an incentive, there is a great opportunity for independent expenditures and independent campaigns, some of which were ran against me when I ran for the Legislature because my opponent had reached their maximum limitations, and they have decided then that they were going to get their friends in the lobby to create an independent committee to spend more money on their behalf. Those things are easily attractable or are options in our process. The other thing that's in the bill as written are some limitations on the donation amounts. Again, those are offered as ideas. Whether or not they need to be in there or not is open for discussion. The basis for what's in there, however, is based on what limitations are placed on individuals at a national level for federal campaigns. So what would be limited for PACs in corporations in Nebraska would be the same equivalent as what individuals would be required or limited to under federal election law. So if I'm an individual and I can give \$2,300 to candidate X running for Congress, then that's the same limitation that's going to be placed on PACs. And the logic behind that further is that again, if the public's interest is ensuring that individuals have access and association and that political speech is something to be protected, then we should empower the individuals to determine that process and to provide them an incentive to be involved in the process directly and not through some conglomerate to pool their funds that they may or may not agree with. But fundamentally that we not only provide the disclosure requirements, but that we provide an incentive for individuals to personally take advantage of the opportunity to be a part of campaigns financially and otherwise. I have no illusions that this is not an easy discussion and in fact, I don't even know if anybody will be here to support it. It candidly matters not to me. But if there are ideas that we need to improve and the committee feels that this is a fundamental policy that we should have, I'm willing to consider those options. But I will not accept an idea that we're going to go down greater disclosure and greater responsibility on candidates as long as we maintain CFLA. So you get both...or excuse me, you get what you have or you get a different proposal, you don't get both. And I think that's what the option is at this point on the table. I can spare you all the legal arguments in history and fun because I'm sure folks that will be opposed to this will have their own to share and we'll see where we're at. But on this Valentine's Day, I just wanted to share this little valentine treat for you to consider. [LB1112]

SENATOR AGUILAR: Thank you for sharing the love. (Laughter) [LB1112]

SENATOR ERDMAN: I hope it's reciprocal, Senator Aguilar. [LB1112]

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SENATOR AGUILAR: Absolutely. Are there questions for Senator Erdman? Senator Avery, fire away. [LB1112]

SENATOR AVERY: Thank you, Mr. Chair. Welcome, Senator Erdman. [LB1112]

SENATOR ERDMAN: It's always a pleasure to see you, Senator Avery and I mean that. [LB1112]

SENATOR AVERY: Just a little bit of history, when this bill was first put together, it did in fact include the Governor and other offices. But over time, I believe, the Legislature...every time it was about...when the law was about to kick in and include Governor's races, the Legislature would take action to exempt it. And I think that happened over and over and over until finally it was eliminated altogether. It may not even be in the law anymore. There are things about this that I like, but there's a lot more that I don't like. [LB1112]

SENATOR ERDMAN: You could have stopped. That would have been... [LB1112]

SENATOR AVERY: The underlying logic behind limiting spending in campaigns is to reduce to the extent possible and to reduce reasonably the influence of money in campaigns. The group that prepared the original document or the original proposal for the CFLA was a bipartisan group. One of the cochairs was Duane Acklie, who at the time was chair of the Republican Party. The other was John Cavanaugh from Omaha, former democratic senator. We met for six months every week and came up with a proposal that everybody thought that they could live with. We had Walt Radcliffe on the task force, we had teachers, we had the newspaper people. It was a broad coalition and I don't know if you remember this, but the bill was sponsored by the Speaker, Dennis Baack, who named it his priority bill and helped work it through the process. And since then, it's undergone some changes, I know that. But here's the key point, and I don't want to turn this into a monologue but just want to make a few points. [LB1112]

SENATOR ERDMAN: You're doing good, keep going. [LB1112]

SENATOR AVERY: The spending limits are voluntary. You're not forced to do that, that's unconstitutional. But there is a mechanism in there, a very clever one too, that if your opponent decides not to abide by the spending limits, then there is a mechanism in there to protect you so that you don't get overwhelmed by the influence of your opponent's money if you're abiding. And that is you file the affidavit that says this is how much I expect to spend and once you reach a certain percentage of that and it's a lot more than your opponent who is abiding, can spend then that triggers the release in public money. I don't particularly like the idea of public financing. But this is a mechanism that is there to make this a fair fight. It is not a way to just willy-nilly spend public money. And as you pointed out--and I thank you for doing that--this is not tax

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money at this point. And in fact, I think the Legislature appropriated \$50,000 to fund the program in the beginning and that was it and never have they put more money into it. I guess my question is what is your fundamental objection to the CFLA? I know that your so clever strategies say, well, let's kill this and then I'm going to give you something in exchange. So what's your fundamental objection to the CFLA? [LB1112]

SENATOR ERDMAN: Senator Avery, I think I explained that but I'll try to expound a little bit further. I think the philosophical point...and again, I said earlier that there are a lot of people that worked on this. Putting Walt Radcliffe, the teachers, and others that are subject to the act on the task force to draft the act, it sounds like what Walt Radcliffe would want, and that is you tell me what the law is, I'll figure out a way around it. To be candid with you... [LB1112]

SENATOR AVERY: That's a quote. [LB1112]

SENATOR ERDMAN: ...and that is a quote to be attributed to Mr. Radcliffe. But to be candid with you, what the appearance is different than what the realities are. If it's the appearance we're concerned about, then we can continue with CFLA and say we are appearing to provide the public what they want, we're appearing to try to promote the best public interest in limiting spending--voluntarily--according to what the courts have ruled, whether it's in...numerous cases and citations up and down the scale. What you didn't say, however, was the purpose of CFLA isn't to deal with corruption. It was to deal with the appearance that more money is bad for the process. I'm not here because I outspent my opponent. Quite the contrary. (Phone ringing) maybe that's him calling now. (Laugh) my opponent outspent me 4-1 and he raised an independent committee on top of that. He abided. I abided. If the rule was that I was going to get public funds for my opponent messing up somewhere along the way, I'd take it. But at the same point the issue is are we not promoting devious behaviors and potential corruptions, which has been evidenced in Mr. Miller's campaign, which was evidenced in the campaign against me, which was evidenced against Senator Foley when he ran for election, for individuals to figure out a way around the law and literally provide themselves a legal mechanism to subvert the intent of the law. That is a difficult process to resolve. So fundamentally where I come down is, is it realistic to create a better mousetrap? No. Let's just create better disclosure, which is ultimately what the people want. I cannot think of a candidate that puts on their campaign statements or on their literature, I'm an abiding candidate by CFLA. It's not an attraction to the electorate. What's attractive to the electorate is they know who's supporting that candidate. That's where the public is. If you can't raise the money to get elected, I have to question whether or not you should be elected. But I will also say at the same breath: money don't win elections, people do. And when I got outspent 4-1, when they started independent committees against me, I had already knocked on every door I could find, I had already bought every advertising I could find in my Legislative District. I can buy a full page ad in any newspaper in my district for about \$200. It's not the issue of the money, but how you spend it. But most

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importantly it's about the individual. I'm interested in saying to Nebraskans who are adults running for office and who are adults voting for them, I want to give you the information. You decide whether I'm a worthy candidate. I don't want to be propped up as a worthy candidate because my opponent believes that it's in their best interest, and it's best for the political process to get the issues out that they care about to be able to utilize the resources that they have to get that message out. More speech is not bad. Money is not the problem. As we all know or at least a lot of us know, it's not money that is the root of all evil, it's the love of money that's the root of all evil. And yet sometimes in this debate we think that less money in a campaign means better quality candidates or some arbitrary limitation on what they can spend means a higher quality of individuals. There are many issues. I'm simply saying, take that off the table, let's go with greater disclosure, let's provide greater accountability, let's provide a logical system that in 1992 nobody knew what the Internet was except Al Gore. Well, actually the Department of Defense who created it. But the reality is, is that we have tools to be more effective in providing the public information about campaigns. Is CFLA just a ridiculous process? No. I just fundamentally disagree with it and in order for me to candidly come to you and say, we should get rid of it, in good conscience I feel I have to offer you an alternative that I believe still fulfills the intent. And that is we want people to feel or to know that there is accountability in an election process and it's not based on whether somebody hit a 40 percent affidavit filing or some other things. It's based on every dollar that comes in or to the extent that we can as close to that provide accountability and disclosure for those individuals so that the public knows who's supporting the candidates, what they're spending their money on, and how they intend to operate once they're a candidate. That's all part of a process. So there's going to be a philosophical divide about what should happen, but in good faith, as you said it's clever, I think it's practical. I can't come to you and ask you to repeal CFLA unless I'm willing to say this is what the public, I believe, would want in return. [LB1112]

SENATOR AVERY: Well, I like parts of half of your proposal. What is the spending limit now under the new law passed in '06? [LB1112]

SENATOR ERDMAN: We've just raised it. I don't have that in front of me. [LB1112]

SENATOR AVERY: Eighty-three thousand, something like that? [LB1112]

SENATOR ERDMAN: I believe that's right. It used to be \$72,500. I don't know what the new number...\$72,600, \$72,500? [LB1112]

SENATOR AVERY: Would you agree that that's enough money to spend to get elected? [LB1112]

SENATOR ERDMAN: In my district, it probably is too much money to spend to get elected. [LB1112]

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SENATOR AVERY: Yeah, it is probably in... [LB1112]

SENATOR ERDMAN: In your district, it probably is about right. And Senator Friend's district or Senator Lautenbaugh's district...you know, the World-Herald and the JournalStar don't give ads away. The TV stations don't give their ads away either. I mean, it costs a substantial sum of money to be in the market of ideas in the news cycle. So what we're doing is creating an arbitrary process in trying to figure out where we draw the line. Again, I think drawing the line is problematic from the standpoint that you're assuming that it's the amount of money that you spend that is the solution. One of the things that happened in a lot of campaigns and will continue to happen is individuals that don't abide or individuals that do abide, but still outspend their opponents greatly. It's a great opportunity for the opponent to use it against them, to try and buy an election. That doesn't work in Nebraska. [LB1112]

SENATOR AGUILAR: Further questions? [LB1112]

SENATOR AVERY: I'm not going to dominate this, but we'll have the opportunity to continue this later. [LB1112]

SENATOR AGUILAR: Too late. [LB1112]

SENATOR ERDMAN: But Senator Avery in all seriousness, I'm not here to be a naysayer. I'm here to be a part of a solution. If this isn't the solution, then the committee and the Legislature ultimately decide that. We don't need to ignore what's gotten us here, but I think going forward, it makes sense for us to reasonably, objectively look at what may be in the best interest of political campaigns, but most importantly for the public knowing what's going on in those. And I think that there is a balancing act that you have to be able to strike and where we come down, whether it's a CFLA idea, whether it's greater disclosure, I'm going to be on the side of greater disclosure. I candidly don't support the ideas behind CFLA as a justification for what it does. And even though it is voluntary, it does require mandatory things upon those who don't abide. And I think that potentially is an obligation and is problematic but again, you have to figure out a mechanism to affect the triggers, otherwise you have no way to provide CFLA. [LB1112]

SENATOR AGUILAR: Senator Friend. [LB1112]

SENATOR FRIEND: Thank you, Mr. Chairman. Senator Erdman, one of the things, and I'm glad Senator Avery brought this up because I believe he's correct on this, the Campaign Finance Limitation Act...part of the thought process or a section of the thought process was that we'd like to create some fair fights out there. When I was thinking about running for office...and this is quick and there's a question here. When I

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was thinking about running for office, I went and talked to some folks and they said, you know, it's going to cost you \$80,000 to do it and I said, no, it's not. And they said, if you want to win, it is. I said, no, I'm going to win and it's not going to cost me \$80,000. So they said, boy, you're cocky and I said, yeah, I am. Here's what happened, I was outspent in the first election that I had, both were contested. I was outspend \$68,000 to \$26,000 and I won. In the second one I spent over \$40,000 and my opponent didn't even register on the Richter scale. Neither of those were fair fights. Now... [LB1112]

SENATOR ERDMAN: Because you won or because of the money? (Laughter) Sorry. [LB1112]

SENATOR FRIEND: Neither of them were fair fights. Now if part of CFLA, if part of the purpose, was to create an environment where an underdog or somebody that's not ensconced in this process can be easily uprooted, I don't think that CFLA has accomplished anything. If we wanted a fair fight...have you seen a fair fight in this state in regards...the fairness is what? [LB1112]

SENATOR ERDMAN: Well, you're assuming one thing very important in this discussion of a fair fight. You're assuming that the ingenuity of one campaign is equal to the other and the only limitation is the money. In other words, I bought all the things that I could think of buying as far as ads. I was ad for ad on the radio--my first election, second election I was uncontested--but ad for ad on the radio, ad for ad on cable television, ad for ad in the newspaper, yard sign for yard sign, four by eight sign...I mean, everything that was done on one side, I did. They probably spent \$25,000 on consultants. They probably did things that...direct mailings and things that didn't matter. The fair fight idea is, again, only tied to the aggregate amount of spending. We're not actually talking about whether it's a fair fight. You won, I won. [LB1112]

SENATOR FRIEND: You're not promoting an idea that we can come up with a fair fight. Final thing, there were contests in Omaha and one of our colleagues...or actually a couple of our colleagues, they were spending over \$100,000 a crack. I mean, and the losers spent over \$100,000. What has...can you tell me what CFLA...something good that it's accomplished because if there's a limit...if we want limitation on the spending, how is that accomplished in that area of Omaha? Was it? [LB1112]

SENATOR ERDMAN: Well, it probably wasn't and constitutionally it probably can't and shouldn't because of the fact that we have to voluntarily require spending limits. What you get into from the standpoint of elections...again, goes back to the idea of how campaigns are run are different, and if you think that it's only about the money, it's not about the message, it's not about the candidate, it's not about the issues, then you missed the point. What CFLA has given us? It has given us the appearance, it has given us the ability to say we are trying to provide a more fair process for people to access elected office. [LB1112]

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SENATOR FRIEND: And have you implemented some things in the white copy that capture that? I mean, you can't dislike every piece of it. I mean, you fundamentally disagree with parts of it, but you're not throwing the baby out with the bath water here. You could have. [LB1112]

SENATOR ERDMAN: CFLA goes away and what takes its place is what I would consider to be a full disclosure of campaign funds. And again, as I shared with Mr. Gould from Common Cause and others, when we were debating these issues in the past, this was my position. I stood up on the floor and said let's have full disclosure, real time reporting, and let's get rid of CFLA because then it's not a matter of am I cleverly creating a mechanism in which I can get funds or prohibit my opponent from getting funds. What I'm doing is saying to the public, here's an open book, here's who I am as a candidate, here's the people who are supporting me as a candidate. And ultimately at this day and age with the interests involved in campaigns and politics, that's what people want to know. So what we have done with CFLA is created an appearance. We have not actually accomplished that. [LB1112]

SENATOR FRIEND: I'll let others. [LB1112]

SENATOR AGUILAR: Further questions? Senator Lautenbaugh. [LB1112]

SENATOR LAUTENBAUGH: It almost sounds like you're saying we shouldn't be all about leveling the playing field, is that it? [LB1112]

SENATOR ERDMAN: Not necessarily. Level the playing field to the extent that...I ref high school football. We play on the same rules on the same field. There are some teams that are going to win and some teams that aren't. We don't have collective bargaining agreements or players associations or things to ensure that the New England Patriots don't go undefeated and the Kansas City Chiefs go one and whatever. The reality is, is that in life not all things are level and not everything can be accomplished at a level playing field. What I am saying is that level playing field goal needs to be the disclosure. It needs to be the fact that when I raise the money, I tell you where it came from. That to me is a level playing field. Under the existing act there isn't a level playing field if you're an incumbant because you and I all know that you can have fund-raisers around here, \$100, \$250 at a pop. They never show up on your statement. That is not an opportunity to the challenger unless you're an incompetent incumbant, and then they have more money thrown at them then you know why. But again, it's not a matter of saying everybody gets the same amount of money, see what you do with it. It's the reality of saying if you are viable, you'll be able to raise the money. If you raise the money, tell us where it comes from, and most importantly, let the public know or give the public a reasonable way to accomplish the knowledge of your campaign. That's the level playing field I think is essential for any of these discussions. To my knowledge,

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I don't know of any other state or entity that does this type of full disclosure. If there was, we wouldn't have spent months trying to draft this. We would have simply said they're doing this. I think that's where we need to go. If I'm ahead of my time, fine. If this isn't the right way to do it, fine. But I think it's problematic if you simply say that the problem is the amount of money being spent and somehow by giving somebody else some other money that that will be fair for them. It's not realistic and again, under the existing examples that I've experienced, Senator Friend has experienced, it's not technically a fair fight if you're simply looking at dollar for dollar under CFLA. [LB1112]

SENATOR AGUILAR: I'm going to finish it up with one last question and first a statement. Senator Erdman, I don't think people care. I can't imagine someone in Grand Island caring if my neighbor down the street gave \$51 to my campaign. I just don't see that as a problem. Call me crazy. [LB1112]

SENATOR ERDMAN: So then why does the Accountability and Disclosure require you then to collect the name and address of that individual if they give you \$51? [LB1112]

SENATOR AGUILAR: That's what the law says, that's what the law...it should be there. [LB1112]

SENATOR ERDMAN: I know. That's my point. [LB1112]

SENATOR AGUILAR: But I've never had anybody call me up and ask me that question. [LB1112]

SENATOR ERDMAN: And I think that's a fair point. Obviously you have to set the limit somewhere. There is a requirement in existing law that any contribution over \$50, you have to collect the name and address and have that information available so that way you don't have to disclose it on your forms, but as a campaign you have to have that information. Whether or not people care or not is subjective. It's a matter of whether or not I think they care. Whether or not someone's going to go to a Web site and look at all the \$50 donations or not, you know, I don't know. But if you're going to get to what I believe is the most valuable way of policing or of providing sunshine into political campaigns is you go to the lowest, logical denominator of funding or of expenditures, and you say to those candidates, here is an effective way of doing it. An on-line version, you pull it up, you enter your amounts on a daily basis, you submit that, it posts on a web. If people care, they can go get it. People may not care now at \$250, Senator Aguilar. I'm not saying that they do. What I am saying is that I think they would care more about knowing who's supporting campaigns than whether or not you've created some clever way to avoid the law that gives your opponent funding. I think you're mixing apples and oranges with what the intent is and that is knowledge of the campaigns, and if people want to know, they should have that information. You can't get a lot of the information that would be under LB1112 currently because of the fact that the limits are

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set so high, and as many times as I've read editorials and different things about the breakfast clubs and things of fund-raising, my hope is is that the folks that have sent those editorials will come in and support the bill and work with us to get it out because it's their language that allows those things to happen, not mine. [LB1112]

SENATOR AGUILAR: Thank you. [LB1112]

SENATOR ERDMAN: And I don't know if anyone's even here to testify in support, but I'm assured that there will be people opposed. [LB1112]

SENATOR AGUILAR: Will you be around to close? [LB1112]

SENATOR ERDMAN: We'll see. [LB1112]

SENATOR AGUILAR: Okay. [LB1112]

SENATOR ERDMAN: Thanks (laugh). [LB1112]

SENATOR AGUILAR: (Exhibit 2) Can we have the first proponent, please? Seeing none, are there any opponents? Please come forward. While they're coming up, I would like to read into the record a letter from Laurel Marsh of the ACLU in opposition. Welcome, Frank. [LB1112]

FRANK DALEY: Well, thank you very much, Senator Aguilar and members of the committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission, and I'm here today to express the commission's opposition to LB1112. There are really two primary reasons today why the commission is in opposition to this bill and one is practical, the other's somewhat philosophical. So maybe we can start with the practical. Starting in about 2001, the Legislature and this committee it seems has been engaged in continual discussions about the Campaign Finance Limitation Act or the CFLA. It seemed that every year there were one or two bills, one to eliminate, one to improve, and that's gone back and forth. And in 2006, ultimately the Legislature decided to improve the CFLA following some of the suggestions that the commission had regarding what we saw as flaws in the CFLA. So that has taken place. The Legislature has adopted amendments to the CFLA. Those amendments took effect in 2007. So we are currently in the first election cycle in which the new CFLA has had some application, and I guess as a practical matter having retrained the staff, redone the forms, redone the publications, tried to get the word out about what the changes are, we'd kind of like to see this through one cycle before we pull the CFLA apart again. So that's kind of the practical thing. There's just a lot of time invested in it and I guess we'd like to see how it works out. The second is kind of a philosophical reason and bear with me if you would. There's a little bit of a lesson in campaign finance disclosure that's required here. There are two basic models

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in campaign finance disclosure. One is what I'll call the pure disclosure model, and the other is what I'll call the limitation model. By and large, Nebraska has a system which is closer to the pure disclosure model. That is most campaign contributions from most sources in any amount are permissible under our law with a couple minor exceptions, but everything is disclosable if it's above a certain amount. That's the disclosure model. LB1112 inserts what's more in the nature of a limitation model. There would be limitations on what certain types of entities could give to candidates, and that's the type of system that exists on the federal level and in many states. The problem with that is that in those types of systems a lot of games playing goes on. In other words, if someone runs up against the limits, there's a tendency for organizations to funnel money through other organizations. You see a multiplication of organizations that are putting money into the system with the net result that there is actually less disclosure of the actual sources of contributions. In other words, the system encourages spin off organizations, and sometimes the relationships among these spin off organizations are apparent, sometimes they're not. But again, the result is less disclosure to the public. I do want to alert the committee that there's some aspects of this bill which are impediments to the administration and enforcement of the Accountability and Disclosure Act and public disclosure. However, I know that Senator Erdman has passed amendments around and some of these things may be addressed by those amendments. So I don't want to focus on those things. Also, Senator Erdman's staff has been very open to suggestions from the Accountability and Disclosure Commission. In this bill the commission notes an emphasis on the electronic disclosure of campaign contributions and campaign expenditures. We applaud that. We think that's a great idea and in fact, we are working toward that now. We're currently testing software programs for the electronic disclosure of campaign contributions by PACs, corporations, unions, and other associations. And once that's tested and those bugs are out, we're going to extend that to candidates. They're a practical reason why we started with the PACs, but I think the same system will work for both. Finally, I guess I do want to thank Senator Erdman for the opportunity to comment frequently during the drafting of this particular piece of legislation. Even though the commission is opposed to it, we recognize that it's the Legislature that decides what the law is going to be and we appreciate the opportunity to have some input into it. That completes my presentation. Is there anything I can answer for anyone? [LB1112]

SENATOR AGUILAR: Questions for Mr. Daley? Seeing none...except for Mike's. [LB1112]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Daley, thanks. And I didn't find it humorous but we all want to say what you said and that is it's broken but it's going to be so painful to fix it that we'd like to see how the fix affects us before we make a wholesale change. Mr. Daley, if somebody violates the Campaign Finance Limitation Act it's your responsibility as a quasi enforcement agency to effect those fines and those punishments. [LB1112]

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FRANK DALEY: Yes. [LB1112]

SENATOR FRIEND: Has that been effective in the past? I mean, one of the things that I've been exposed to...and if you ever had a meeting any more than ten minutes with Kermit Brashear, you'll know it eventually comes back around to this discussion. [LB1112]

FRANK DALEY: I've had those meetings, by the way. [LB1112]

SENATOR FRIEND: Yeah, I would think. In all seriousness though, set those fixes aside in '07. Campaign Finance Limitation Act has been problematic from the standpoint of...let's take the Hergert situation. He was fined, right? [LB1112]

FRANK DALEY: Yes. [LB1112]

SENATOR FRIEND: He was punished. [LB1112]

FRANK DALEY: Yes. [LB1112]

SENATOR FRIEND: And then punished again because we didn't feel like it was strict enough. Now Senator Erdman brought it into the situation. I brought it up on the floor, there was another individual, a regent from Papillion who was fined but not further punished. I mean, did we have a system that was broken and now with 2007 and the things that we've done, everything is going to be fine? Is that what you're telling us, Frank? [LB1112]

FRANK DALEY: Actually I'm glad to have the opportunity to address that specific situation, and the reason I say that is I continually get that same question. With Mr. Hergert and Mr. Miller under the Accountability Act with the CFLA. [LB1112]

SENATOR FRIEND: They were both punished. [LB1112]

FRANK DALEY: And they were charged with different things. There were more charges against Mr. Hergert. The charge that they had in common, there was about a \$500 difference in their fine. It was only one charge in common that they had and you can attribute that to a lot of things. For example, it was a number of years earlier and there were different commissioners, there were different lawyers, and so forth. So to the extent that they violated the same law, they were actually pretty close in how they were treated under that specific law. As far as the impeachment process, which is the further punishment I assume you're alluding to, understand that that's wholly a legislative process. That has nothing to do with the Accountability and Disclosure Commission. So if the Legislature back in 2000 thought it was appropriate to impeach Drew Miller, the

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Legislature certainly could have done that. But as in the Hergert case, with the Miller case, once we had taken care of those particular charges, we were done. And with the Hergert case the same thing. Once he had been assessed a civil penalties, we were done and it was up to the Legislature to take further action. [LB1112]

SENATOR FRIEND: And that's absolutely...thank you, Frank. But the point is Campaign Finance Limitation Act does not prevent politics and punitive political actions from taking place. I mean, it would occur to me that it would be wholly appropriate if we had something in statute, express statutory authority to say, look, this dude has been punished, let's move on. I'm not defending anyone here or condemning anyone. What I'm saying is that in those 10 or 15 minutes with Kermit Brashear, things got really, really funny and strange and it appeared to me that it all boiled back right around and down to the Campaign Finance Limitation Act. I got too much history probably here. I'd rather hear from others. [LB1112]

FRANK DALEY: Let me start out by saying that I respect Kermit Brashear both as a lawyer and as a legislator. [LB1112]

SENATOR FRIEND: I think we all do in a way. [LB1112]

FRANK DALEY: While we have had our differences, what's unknown is that at different times we have worked together on aspects of the Accountability and Disclosure Act to improve it. So I mean, we have a differing type of relationship, I suppose. But understand that sometimes it's difficult to separate things you are personally involved in from legislation or other aspects. By way of example, I mean, Senator Brashear for whatever reason has been involved in situations where he's represented people attempting to restrain the enforcement of the Accountability and Disclosure Act. He's done that as a lawyer. That's fine. I take no exception to that, but the lawsuit didn't go anywhere. The judge ruled against it. Later on he represented an individual who was charged with significant violations of both the Accountability and Disclosure Act and the Campaign Finance Limitation Act. I don't know how that fits into the whole debate but frankly Senator Brashear, lawyer Brashear, you know, there's kind of a merging of thoughts there. There's a merging of activity and interest and you know, perhaps that colors how he views the Campaign Finance Limitation Act. Perhaps he was representing clients because he didn't like the Campaign Finance Limitation Act. But I always have to take that into consideration when I'm having discussions with Mr. Brashear about the CFLA. [LB1112]

SENATOR FRIEND: Yeah, I understand and I don't want to drag him into this. [LB1112]

SENATOR AGUILAR: Further questions? Thank you, Mr. Daley. [LB1112]

FRANK DALEY: Thank you very much. [LB1112]

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SENATOR AGUILAR: Any other opponents? Please come forward. Welcome. [LB1112]

ROGER HOLMES: (Exhibit 3) Good afternoon. My name is Roger Holmes, H-o-l-m-e-s, like the detective, and I am here representing and making a statement for Common Cause Nebraska. Common Cause Nebraska opposes LB1112 because it would repeal the Campaign Finance Limitations Act. We believe that the CFLA which has been funded and operational since 1996 has been a resounding success. By establishing voluntary campaign spending limits, the act has fulfilled its intended purpose, which we believe is to encourage and, in many cases, make possible the participation by citizens of ordinary means in elections for state offices. Prior to the enactment of the CFLA, campaign costs for legislative seats were escalating. For seats in Lincoln and Omaha they were beginning to exceed \$100,000 per candidate by 1990 in those cities. These increasing costs threatened to make running for office prohibitively expensive for all but those with personal wealth or connections to wealthy individuals, businesses or special interest groups. In the nearly 12 years that the CFLA has been in force, almost every legislative campaign has stayed below the spending limit established by the act. It was only last year that the act's fair fight funds were triggered for legislative races for the first time. These funds, which help level the financial playing field for candidates running against opponents who exceed the limit, were provided for, I believe, three candidates. One of those candidates, Senator Pirsch won election in Omaha's District 4. By 2006, the Legislature raised the original limit of \$73,000 per legislative candidate to \$89,000 and added a provision permitting modest yearly increases based on the cost of living. LB1112 offers further improvements to the disclosure requirements for state office campaigns and we support those by and large. But we urge the committee and the Legislature to support those improvements because they will strengthen the Campaign Finance Limitations Act, not replace it. To ensure that election to public office in Nebraska remains accessible to as many citizens as possible, it is essential to retain the Campaign Finance Limitations Act. [LB1112]

SENATOR AGUILAR: Questions for Mr. Holmes? Seeing none, thank you. Any other opponents? [LB1112]

PEGGY ADAIR: (Exhibit 4) My name is Peggy Adair, A-d-a-i-r, representing the League of Women Voters of Nebraska. And I'm not going to be redundant. I think everybody has pretty much said what I would say as well. I do want to point out that the League of Women Voters mission is to encourage the informed and active participation of all citizens in their government. So we are a grassroots organization and we do work for the betterment of the citizenry. And I've noticed that the discussion among the senators has had some personal viewpoint, some personal way of being effected by the CFLA, either pro or con. And I just want to say that, you know, looking at it from the citizen's viewpoint and not looking at it from a personal viewpoint, we would be in opposition to any rescinding of the CFLA. And I welcome any questions. [LB1112]

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SENATOR AGUILAR: Questions for Ms. Adair? Seeing none, thank you for being here. [LB1112]

PEGGY ADAIR: You're welcome. [LB1112]

SENATOR AGUILAR: Any other opponents? Is there any neutral testimony? Senator Erdman, would you care to close? [LB1112]

SENATOR ERDMAN: I would, I would. The onslaught wasn't as bad as I had thought, but maybe it's the calm before the storm. We have been working with Mr. Daley regardless of his commission's position to try to ensure that if the bill would become law that it would be effectual, that it would have the ability to be administered. The amendment that you have moves the dates of the bill back to 2011, and I noticed in the amendment on page 44 that we had missed that the CFLA would go away with the reporting requirements in 2011. So on line 10 that's supposed to read "2011" instead of "2009", I believe. That would give two actual full election cycles for the changes proposed in CFLA to take effect and to be utilized, and then it would be the election beginning with the year 2013. So the election of 2014 in which the requirements would be mandatory to be electronically disclosed. If you want to believe that we have a disclosure model, go for it. Okay. If you're going to tell me that we have a disclosure model in place and that there are less gamesmanship being played under our proposal than what I'm proposing, there's a simple solution. Strike Section 10. Section 10 eliminates the limitations on any entity in the state of Nebraska to restore it to the unlimited contributions that we currently have, whether it's a corporation, whether it's a PAC, whether it's an individual. That would be Section 10 of the bill. There are more games that are being played under CFLA than any one wants to tell you and it's evidenced by the independent committees that are being created. It's evidenced by the fact that people aren't donating over \$250. They're giving \$250 even. To sit at the table and to say that we have what we would call a disclosure model and not a limitation model is only a half truth. We have disclosures, but it is not consistent with what some would consider to be true disclosure, which is what LB1112 would provide. Under CFLA we do limit spending. We do limit contributions. If you abide, you can only raise half of that money from individuals and half of...or a maximum half from nonindividuals. We have limitations now. You can't sit at the table and say we have a disclosure model when it's clear that there are components of our law, which are voluntary, that truly provide limitations on the funds and on the ability to spend those funds. It's good to know what the intended purpose of CFLA was. The intended purpose of CFLA was to get people like me elected. You too, Senator Friend. People of ordinary means. Now I don't know how much more ordinary...I'm assuming the means are typical. I'm assuming they're meaning that it's not the wealthy that run for the Nebraska Legislature. Senator Adams, I'm pretty confident that teachers aren't wealthy. But from the standpoint of what the actual effect is, people of ordinary means can either afford to be here or they can't

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and it's not based on CFLA that they get here. It's based on the passion, it's based on their desire to serve their fellow man and woman in the Nebraska Legislature, and it sure as heck isn't for the money. So if one wants to come up here and say that the intended purpose was to ensure that people with ordinary means can win, we're not doing it now. We're giving the appearance that we're doing it now. But the fact is is that candidates can win elections with enormous amounts of money or with small amounts of money. It's about the effectiveness of that candidate to present the proposals that they see are in the best interest of their constituents in the state of Nebraska or the office that they're running to get 50.1 percent of the vote. And I think any arbitrary argument or any argument to the contrary that somehow it's because of CFLA that we have ordinary people in the Nebraska Legislature or at the State Treasurer's Office or at any other office that's subject to the act to me is laughable. It's not saying that that wasn't the intent. That is the intent. I'm saying it's not realistic that we've accomplished that. So what's before you with the amendment is a clarification of the bill as introduced to provide a full disclosure model. With the elimination of Section 10, it would be complete disclosure with no limitations, which is what I heard one of the concerns to be from Mr. Daley. But again, we're willing to work with them. What games have we played? What will be damaged? One argument is is that if you require a greater disclosure that some people may not be willing to give. I don't know. I've never had that problem. I've never had that problem of getting somebody to come to me and say I feel strongly about this and I believe you are supporting or share that philosophy, I want you to represent me in office. I think there's the potential of that, but I think what the real issue there is is that people are concerned that they're going to be found out about the games that they're playing now. I have no use for those games. I don't and to the standpoint that I think we can make our public policy better, sure. Let's give CFLA a couple of spins around the track, two more election cycles, but then let's utilize the technology and the insight that we have gained. It's somewhat ironic. Senator Baack, former Senator Baack, is here. Former Senator Baack is from District 47. I'm from District 47. Evidently this has come around the track a time or two and we look forward as we have on other legislation in working with the committee to address any concerns if possible, but ultimately of having an honest conversation about what our public policy needs to be in the area of disclosure of campaigns. And I will yield to a rebuttal from Senator Avery. [LB1112]

SENATOR AGUILAR: Follow up questions? [LB1112]

SENATOR AVERY: I don't know if we get a chance to debate this on the floor, but I suspect if we do, it'll be largely you and me doing it. [LB1112]

SENATOR ERDMAN: Will you vote for it? Really? The Speaker wants to be a part of that, Senator Avery. He just said that. (Laughter) He said, no I don't. [LB1112]

SENATOR AVERY: Does it worry you at all, Senator Erdman, that without the CFLA

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that you could have a candidate essentially buying election without even spending their own money, I mean, because they...an incumbent, for example. I mean, we know what the advantages of incumbency are. I mean, they are significant, and even though the spending limits are voluntary, they're generous. And even though they are voluntary, the truth is that there is a kind of expectation, I think, by voters that you will abide by the spending limits. If you do not, it can become a campaign issue. Now I happen to have run in a race where everybody abided. It was a fair fight. Everybody raised and spent the limit. [LB1112]

SENATOR ERDMAN: You won. How was it fair? I'm just teasing. [LB1112]

SENATOR AVERY: Because I was a better candidate. So that was your point earlier. [LB1112]

SENATOR AGUILAR: Question. [LB1112]

SENATOR AVERY: Why I asked the question, I mean, don't you think that it is possible without the CFLA for one candidate to have an advantage in raising money, particularly incumbents, that could really, really tilt the so-called playing field? [LB1112]

SENATOR ERDMAN: Senator Avery, you have that problem now. It's voluntary. What you're speaking of is some mandatory requirement that we create a limitation and we can. Again, it comes back to the fundamental principle. I ran in a campaign where the individual abided, but they still spent four times as much money as I did. The issue wasn't whether they abided or not. They didn't run on their campaign statements that this individual abided. I have never seen that. Maybe it was in your campaign statement because of your involvement with Common Cause and your previous experience, but I've never seen that. I don't think that...to steal Senator Aguilar's comment, I don't think the public cares. You ask me what the limitation was for a member of the Legislature for expenditures. I have no clue what the new number is. I knew what it was when I ran, but if you had asked anybody that was helping me campaign or anybody that supported me if that mattered to them, the answer was no and more importantly, they had no idea what the number was. Again, you're propping up a theory whether or not it's capable of effecting the goal that you want is a different discussion. But does it bother me that somebody may try to buy an election? They can try to buy it now. We saw that in a State Treasurer's race where an individual said they were going to spend \$200,000 in the primary. When they got to 40 percent of that, which was actually the maximum that they were going to spend, the difference went to the incumbent and the incumbent then got all the money that they needed to buy all the air time that they could find for the last three days before an election to get the primary win. I mean, the gamesmanship or the concerns are here now because it has to be voluntary. The question is do we create a system that provides better disclosure to eliminate the gamesmanship, but more importantly to effect the opportunity for the public to know? The public doesn't know

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what CFLA does. The public has an idea that somehow the people running are going to be following the rules. The question is what should those rules be? [LB1112]

SENATOR AVERY: One thing, the limits are a disincentive. I mean a disincentive for people to say, well, I'm going to spend whatever I can raise and I don't care what the spending limit is. That is a disincentive there for people to overspend, a disincentive there for people not to voluntarily comply. [LB1112]

SENATOR ERDMAN: I didn't comply... [LB1112]

SENATOR AGUILAR: Question, Senator Avery, please. [LB1112]

SENATOR ERDMAN: I didn't comply with the spending limits when I ran for reelection. Senator Avery, I'll just...I didn't comply with the spending limits when I ran for reelection. [LB1112]

SENATOR AVERY: Well, you didn't have to. You didn't have an opponent. [LB1112]

SENATOR ERDMAN: But even if I had to file that at a point in which I knew what...regardless of whether I had an opponent or not, I filed when I filed. But the point is that you have the problems now. You have the gamesmanship now. If there is a solution that you can come up with that you believe is better that brings us both together, I'm willing to have that conversation. I think you and I share a common interest in this area. [LB1112]

SENATOR AGUILAR: I'm going to interrupt here because this just turning into a debate and that's not what this is about. Our responsibility is to ask questions and that's what we need to focus on. Thank you, Senator Erdman. [LB1112]

SENATOR ERDMAN: My pleasure to be before you, Mr. Chairman. [LB1112]

SENATOR AGUILAR: Welcome. Senator Flood to introduce LB889. [LB1112]

SENATOR FLOOD: (Exhibit 1) Thank you, Mr. Chairman, members of the Government, Military and Veterans Affairs Committee. For the record, my name is Mike Flood, F-I-o-o-d. I represent Legislative District 19 and I will be very brief. (Laughter) [LB889]

SENATOR AGUILAR: We're all about that, sir. [LB889]

SENATOR FLOOD: I'm here to introduce LB889. This bill would allow a political subdivision to utilize, in addition to the more traditional design bid build method, two additional construction project delivery methods: Design-build and construction management at risk. Under our current law only school districts have the authority to

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enter entities other project delivery methods. This bill would give all political subdivisions, including community and state colleges, this same authority and option. These alternative project delivery methods have been used effectively to shorten project schedules, control cost, and increase collaboration between the parties involved in the construction process. I'm glad that there are several folks here today who will provide some background about these construction methods. These folks have a wealth of experience in this industry. In fact, Mr. Buster Beckenhauer is here today from my home town of Norfolk. He is here representing Beckenhauer Construction, a business that is in its fourth generation and has been operating in Norfolk since 1909. On the client side, there are also representatives from the state and community colleges who will give helpful perspectives. I'd like to thank all these folks for making the trip to Lincoln today for their testimony. One last thing you'll hear from the others about the bill, I've prepared an amendment that will do three things. Number one, and I'll pass this out, Mr. Chairman, it would remove the prohibition against using a design-build or construction management at risk contract for a project on parcels of land that are not contiguous. The benefit would be that a political subdivision could then use one of these methods if the project happens to involve two separate parcels. Number two, the second change under my amendment would also be to require approval for one of these contracts by two-thirds of the governing board instead of the current 75 percent. Such a change would make sense for a political subdivision, like the city of Lincoln which has a seven-member city council. The 75 percent rule would require six or seven to vote where two-thirds would be five out of seven. And finally, the third item in my amendment would not allow a political subdivision to use a design-build contract or a construction management risk contract for road, street, highway, water, wastewater, utility or sewer construction project. With that, I'd like to thank you for your consideration and given the condition of our state's roads toward the north, I'm going to waive my closing and get on the road this afternoon. [LB889]

SENATOR AGUILAR: Questions for Speaker Flood? Senator Pahls. Oh, I'm sorry. Senator Adams. [LB889]

SENATOR ADAMS: Just very quickly, Mr. Speaker, why was it schools that were given this opportunity and not political subdivisions? Do you know the history? [LB889]

SENATOR FLOOD: In 2002 or 2004, I can't remember, Mr. Ruth would remember the exact date, the schools came back and specifically brought this issue to the attention of this committee, and I'm sure your legal counsel can provide some perspective. They just did schools because it is a better method. I think for some school districts, they feel they're more comfortable with it and they didn't do anybody else. The university does do this construction management at risk, but they are governed a little bit differently following a decision of the Supreme Court and State Board in Exon v. Board of Regents. They rely on severed authority to do this. But I really can't comment as to why schools didn't include anybody else, but I think Mr. Ruth did assist the schools at that

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time with that effort. Sorry. [LB889]

SENATOR AGUILAR: Further questions? Seeing none, you are excused, Mr. Speaker. Drive carefully. [LB889]

SENATOR FLOOD: Thank you. Have a good weekend. [LB889]

SENATOR AGUILAR: First proponent. May I see a show of hands how many plan on speaking on this issue? I'll remind you to be as brief as possible. We all have to deal with the road conditions, as you do. Welcome. [LB889]

DALE MUNHALL: Okay and as I do. My name is Dale Munhall, M-u-n-h-a-l-l. I'm from Omaha. I'm an architect and I am also appearing here as an individual. But I am a member of the Design-Build Institute of American, as well as former chairman of the Design-Build Committee for the ACEC engineers group as well. For Senator Adams' question about the...a brief history of...there's a lot a history actually. And briefly, initially this process started under LB391 that then became the statute, I believe, went into effect in 2002. It was in three years in the making, so it started back before the turn of the century and it was long enough that it could have been many centuries. But at that time the schools....the reason that they haven't used it, it became very bureaucratically difficult for schools to use it. As an architect I've done a number of schools. The people that initially started this hadn't done schools. Schools have, as you are probably familiar, a difficult situation with school boards and administration, they had a lot of turnover, and there's a big threshold for schools that other political subdivisions don't have, and that is that they have to go through a policy setting, separate procedure prior to even undertaking the consideration of one of these other alternatives. And I worked with Jim Luby (phonetic) at the Nebraska Schools Association who was trying to do seminars to help them do that. But it became very much more difficult for schools to do it. There was also a compromise done in that original legislation that limited some of those things to different sized projects and different congressional districts, and it was very complex formula, very difficult, very administratively intense. That has been..one of the primary changes to this legislation that Senator Flood has introduced, eliminating all that bureaucracy that was involved in it. And as far as I can tell, the only other change that was made by Senator Flood in doing this was to substitute the word "school district" and removing that and putting "political subdivision". So it does give an alternative to different governing bodies that have a need for, as he mentioned, a particular circumstances for time, compressing the schedule for doing technically overlapping certain phases of construction, and to know up-front their costs. That's not a small thing for most owners and particularly for governmental subdivisions. That budgetary process, you're well familiar, I think all of you, that that is a real need and in some cases it's life or death to a project. And in those cases where they can justify that they have an extraordinary need that the linear process of design, then bid, then build, which is the longest possible way you can do it, the way we typically and traditionally have done it,

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sometimes kills their whole project in the beginning and it certainly has some adverse impacts on their outcomes. So that's the short answer for that. The recommendation that I would make in having been a construction manager and have doing as architect and builder, I'll tell you that it is a tool. It isn't one size fits all. It's another...the hammer is the only thing that they right now have in any political subdivision design-bid-build. It gives them a screwdriver and a pair of pliers as a couple of other alternatives. Construction management risk is the other alternative that's in that LB391 that now became the act that's in place. What it does in a nutshell...and this is why I've recommended...I'm no longer actively in the committee, so the American Institute of Architects or the ACEC engineers council or administratively DVI. But when I was, we don't have a lot of institution in those organizations and some of the people now on those committees don't remember what we went through six years ago, eight years ago, in doing this. But what it did in this particular statute establishes the qualification-based selection procedures that are currently the means under the statute of the Nebraska Competitive Professionals Negotiation Consultants Act...the terminology escapes me, but it basically has a qualifications-based procedure under which architects and engineers are currently selected by those governmental subdivisions. This applies, that same procedure, in the same techniques and the same protocol to those cases where the construction is also part of the project. So the construction and design would be both selected as a team as qualifications-based to do the project to accomplish the particular goals of that organization. Furthermore, there is a requirement in that statute that says that that political subdivision needs to have a criterion consultant retained, who's also a licensed professional, to give them a definition of what their needs are, programming--is we refer to it in architecture--to identify their needs, identify their project, their needs, resources, and the general description of what their needs are the methods that they are going to employ. Then they would solicit interest from teams of design and construction people that then would be selected on the same exact methods now of request for proposal, review of proposals, interviews, and competitive negotiations on fees. Those basically invite my construction friends into their world of being selected as a professional in under those same kind of terms. It gives the political subdivisions the ability where their needs are such that their time and budgetary constraints have a need to do that that they can undertake this process and it spells out the procedures under which they do that now to comply with those same statutory requirements that are done for selection of professionals. [LB889]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB889]

DALE MUNHALL: Okay. Thank you. [LB889]

SENATOR AGUILAR: Welcome. [LB889]

JIM SUTTLE: Senators, good afternoon. My name is Jim Suttle, City Councilman, city of Omaha. I need to share two qualifications with you on my testimony today. First of all, I

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am appearing as an elected official. I am not representing the city of Omaha, nor the City Council. Secondly, as a professional engineer and a former senior exec at HDR for 27 years, I spent some 15 years actively involved in design-build, CM-at-risk, and I laid out the programs to let HDR as a design firm enter into these areas coast-to-coast to compete for projects and other things. In that capacity, I gained a great deal of knowledge about how these systems work, these new delivery methods of design-build and CM-at-risk. I was on the speaker circuit. I was testifying. I was counselling and coaching corporations, state departments of transportation, legislators, and others in that capacity in a very open manner of describing the good, the bad, and the ugly of any of these delivery models that are not all perfect, but they do have advantages and applicability. Now having said that, I joined Larry Ruth and others as a co-author of this original bill that is before you to be amended today. I am comfortable with what the senator said with the amendments he gave to you, with the exception, I think the time is here and long overdue for Nebraska to include all jurisdictions of government and all infrastructure items of government. So please do not restrict this and leave in the roads, the sewers, and the other aspects. I want to use a sports analogy and part of my real purpose today is to try and take some of the technical aspects of these delivery models down to something very, very simple so you can put it in perspective as you deliberate on the pros and cons of this legislation. Let's use a sports analogy. Every fall in this country, coast to coast, in locker room after locker room we have a coach giving the last minute instructions to his football team. And they bust through that doors with a lot of emotion as they leave the locker room and they go down the hallway and out onto an ice hockey rink. What do you think is going to happen? They're suited up for the wrong game and that's the point I want to leave you in the analogy. That traditional method of design-bid-build is football. When we go to an alternative method of design-build, it's hockey. And when we further go to an alternative method of CM-at-risk, that's soccer. If you keep that in mind everyday and every moment as you start talking about these delivery models, it will help you in some way try to stay and not mix the rules. Because if you start playing hockey with football rules, you're going to have a disaster whether you're the owner of the project or whether you're the constructor, the designer or a manager or whatever else. And that's what we wanted to keep from happening as this law was put together at a time when this country was beginning to get back into using design-build and CM-at-risk and other forms of delivery. Our statutes in this state, our statutes in all the other states, our statutes at the federal level are written for the football game. What we need to do for liability reasons, for clarity of how to give the proper procedures to select the teams and to administer this and have success, success, success for the owners and all the players is to put in the statutes clear language on the rules of the game for the hockey and the soccer. That's what this is about. And that's what we attempted to do at the time we did the legislation focused entirely on schools at that time. Well, a lot has happened in the last seven, eight years nationally. Keep in mind that for 6,000 years on this planet design-build was the way you got things done, from the pyramids to the aqueducts, to the major bridges in New York, to the Union Pacific Railroad construction, and so forth. It was in the early 1900s and the 19-oh-oh's

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or something that the federal government decided that constructors and designers should be separated in contracts, and that's what started this whole thing on design-bid-build. With the success of the United States Post Office and getting back into design-build in the early '80s, wisdom began to come back and see that there are advantages, and I want to share some of those with you in a few minutes that I have in front of you. The purpose in using the design-build or the CM-at-risk...they are totally based on selection on trust, trust between the owner and the other players. If you don't have trust, don't go any further with those models because that's how they really get started. With the trust factor in place, you end up having the owner, the designer, the builder, the manager or whatever all pulling on the same end of the rope and the name of the game for all players is "meet or beat the budget". "Meet or beat the budget." Beating the budget in this case means coming under it. The name of the game is to "meet or beat the schedule." "Meet or beat or come under the schedule." They're all pulling on the same end of the rope. This does not happen in the traditional delivery model of design, low bid, and construct. It just doesn't happen. There's competing interests there. When to use these new models? They really come into play on projects that you have a crisis of time or a crisis of budget, and you've got a perfect example that we're doing in this state, whether it's legal or not, with the pedestrian bridge in Omaha. We had a crisis of budget because the first bid came in under the traditional model at \$44 million and we had only \$20 million to spend. We had a crisis of time because the clock was ticking on the grant for that bridge received from the federal government through Senator Bob Kerry. So it's a perfect bottle and as you watch it come into play and we open it this fall in November--please, come up, let's have some fun walking across it--you're going to find a project that was constructed at or within budget with no change orders because the only way to have a change order is if the client orders one. Secondly, it's going to come in at or under the schedule, and the reason for that is the design builder, in this case APAC and HNTB, joint venture, has guaranteed the maximum price and guaranteed the schedule. Every day they save on the project is dollars that go into their column. Every day they exceed or go in the wrong direction are a cost. This is how it works and how it disciplines itself. The biggest obstacle in this country is fear and we all have that fear, but I think enough time has happened here in Nebraska that we're over that with our contractors, with our owners, and with our designers, that we have an opportunity here...and I applaud Senator Flood for introducing this to expand it to all jurisdictions, and let's leave it as a tool in place to be used. I will tell you the city of Omaha is going to need it as we go into this \$1.5 billion sewer separation. It will be an extra tool that we can have in order to get things done and try to stay on the schedules and budgets that we must manage as a city and as we must meet the federal obligations of the EPA. So we need that tool. Let's talk about two things and then I'm going to close and let you ask questions. This law that we put in place some seven, eight years ago that you are now being asked to amend is matched perfectly with the rewrite of the architect-engineers licensing law. The biggest fear that the designers have about design-build is losing control of the design. This would be like going into a hospital and the hospital is telling the doctor the procedures to use on heart

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surgery or brain surgery. The medical professional must control what goes on in that surgery, not somebody else. And that's the way the law now reads and has protections for the designers to walk with no liability assigned to them per the law of the state of Nebraska. That's the check and balance. Now, I'll tell you an experience in my dealing with construction contractors coast-to-coast. I have never had a construction contractor put me on the line nor my people nor my staff and threatening them to design something the improper way. The respect was always there from the construction industry back to the designers. Secondly, let's talk about bidding, big point. We're all trained in that. Low bid, low bid, low bid. Design-build and CM-at-risk are not about low bid. They're about setting a real budget, a real number, a real time line that everybody can agree to early, and you design the budget and you design the schedule and then you get it done and you meet it. That's why there is no change orders to speak of, there's no liabilities, the claims are less, down to nil, and you don't get into litigation because you can't. If you've got a dispute on the site, you've got to get it settled within hours. You can't fiddle around for days, weeks, and months trying to let the lawyers settle on a claim. You can't do it. So this is how it functions. Let me close and let's see what questions you have and if you have other questions after this, I'll leave my card with phone numbers on it with your staff so that you can give me a call and I'll be glad to help you in any way I can. [LB889]

SENATOR AGUILAR: Thanks, Coach. (Laugh) Questions for Mr. Suttle? [LB889]

JIM SUTTLE: Touche'. Any questions? [LB889]

SENATOR AGUILAR: Seeing none, thank you. [LB889]

JIM SUTTLE: All right. Then I must have done a good job. [LB889]

SENATOR AGUILAR: (Exhibit 2) You done a great job. Next proponent. Please, come up forward. Tell us a story. Tell us something we haven't heard yet. While he's getting ready, I'll read into the record a letter of support from Gretchen Dolson, Professional Engineers Coalition president. Welcome. [LB889]

LOWELL BECKENHAUER: (Exhibit 3) Good afternoon. My name is Lowell Beckenhauer, B-e-c-k-e-n-h-a-u-e-r. Senator Flood graciously introduced me by my nickname, "Buster". My predecessors have covered most of the important points, so I'll be extremely brief for you. I want to give you just a small amount of history. Beckenhauer Construction, as he noted, is an old company. We celebrate 130 years in general contracting, commercial general contracting this year. During that time frame not only my family-owned business, but the construction business in general has transformed from a point where building buildings we used to use up to 60 percent of our own people to build those buildings. Nowadays we're lucky if we self-perform 5 percent. We, as an industry, especially with sophisticated buildings and structures, have

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come to be where we're managers of construction. And by being managers of construction, we have become more on the same level as architects and engineers in our capacity to help clients get what their ultimately after, and that's the most building they can build for the budget that they have to work with in the time frame they need it done. For us to do that, we need to have laws like this so that that allows us to be hired in a fashion that brings us on board with part of the team early enough to implicate the changes to help make those things happen. If all we can do is be a bidder on a project that's already designed, we can't have any positive impact with hundreds of years combined experience to make things better. Many, many times we've been in the situation of bidding on a project that was designed without any outside input from construction only to find out that the estimate that was given to the owner was insufficient for the money that they had, and that either resulted in significant wholesale changes and negotiation with that low bidder or there was a complete redesign of the project and then everybody had to bid again. Both instances were harmful to the client. We've been involved in construction management as a delivery system where we're able to...for many, many years, the first large significant project was back in 1994. We have personally been contacted by different agencies or different institutions within both the state college and federal college levels wanting to use this because they see that the school districts and the university using those systems to stay within budget to get done what they need to do. We're here today supporting everything that Senator Flood has given you. I think that personally from a construction expert background, all the changes are exactly what need to be in there so that we can take care of our client. We're here about trying to serve our client the best way we can and these options help allow us to do that. [LB889]

SENATOR AGUILAR: Thank you, Mr. Beckenhauer. Are there questions from the committee? Seeing none, thank you for coming today. Next proponent. [LB889]

MARK BENJAMIN: (Exhibit 4) Good afternoon, senators. My name is Mark Benjamin, that's B-e-n-j-a-m-i-n. I am the president of BD Construction in Kearney, Nebraska. I want to give you just a brief history. The previous proponents have done a wonderful job of explaining these processes. So I won't bore you in going down through that information again. However, I did give you a handout that may at some time be worthy of your attention. It simplifies maybe the process in a manner that you can see how each individual process is broken down, and will also show you the benefits that have been shown in a study that is referenced showing the efficiencies of these delivery systems and not only that, how these systems are being used nationwide on a public basis. Again, we are a general contracting firm. We have been in the business over 47 years. I have been in the business over 25 years. And the reason I bring this to your attention is when I first started in this industry, the primary delivery method that we were seeing out there was design-bid-build or basically an owner hiring a design team and putting it on the streets and awarding it to a low contractor. Well, naturally what I saw happening over a period of time was a system that I felt was not fair to the owner. It did

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not provide the best possible quality. It had built in it adversary relationship potential, and I kept coming up with potential solutions to how do we get away from this system and build a better product for our owners? And fortunately we have been doing design-build for a long period of time. We feel that that specific system has allowed us to do, again, many of the things that have been mentioned previously and give our particular clients a better product at the end. Our primary markets over the 25 years we've been doing this have been commercial, medical, and industrial related. Lately there biofuels and more recently education, and one of the reasons that we're in the education field today is specifically because the delivery methods changed and allowed us to bring what we felt were delivery methods and construction processes to the table in that public section, similar to what we had been using in the private sector that would deliver, not only a quality project, but create a team relationship and build to budget. It's been something that has grown rapidly in the state of Nebraska because it is indeed delivering these specific situations and these specific issues are being resolved. I want to end with one project that kind of tells you in a nutshell how these project delivery methods can salvage or make a project become reality where typically the old design-bid-build system actually allowed this project to go the other direction. Several years ago, University of Nebraska-Kearney put a process together by which they actually wanted to increase the number of units available for student housing on campus. And we talked to the chancellor on numerous occasions and we helped educate their team on what delivery methods were available. They chose to go back to the design-bid-build method and if any of you are from that area or have followed that process, what happened is unfortunately one of the biggest issues that we see with design-bid-build is that they had an unrealistic budget. Their budget was actually determined on bid day and it was multiple, multiple million dollars over the funding that they actually had in place to build these facilities. So unfortunately this institution was put into a situation where they had options. Do we kill the project? Do we go back and try and redesign this and rebid this project? And ultimately they made the right choice. They decided to go back with the same concept and entertain CM-at-risk proposals, and I will tell you today that that project...that scope has not changed. There are techniques within that project that have changed but they're getting the same number of bids, they're getting the same footprint, they've developed a team relationship, and they're getting a project built to budget and on schedule. It's a perfect example of where these types of delivery methods can come into play and can actually provide advantages over some of the other delivery methods that are out there. Now that being said, again, we're in Nebraska and as has been said earlier, depending on situations, all of these delivery methods have some use. We currently do about 5 percent of our work in terms of design-bid-build and, again, that's because of the problems that we see. Design-build we do 60 percent of that, and construction management we do about 35 percent of our work and, again, that varies. I would encourage you to look at this piece of legislation seriously. I think it has wonderful advantages for our public sector and I'm open for questions. [LB889]

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SENATOR AGUILAR: Questions for Mr. Benjamin? Seeing none, thanks for being here today. [LB889]

MARK BENJAMIN: Thank you. [LB889]

SENATOR AGUILAR: Next proponent. Welcome. [LB889]

MIKE AYARS: (Exhibit 5) Good afternoon, Mr. Chairman and members of the Government Committee. My name is Mike Ayars. I am president of Ayars&Ayars. We are a Lincoln-based construction company. In an effort to listen, I'm going to be short and sweet and I will tell you that I agree with the comments from the prior two speakers. I would like to add that we currently have a project that is being delivered, design-build, to a public school in Dorchester, Nebraska, under the act that was passed six or seven years ago. So if you have any specific questions regarding that procurement, I would be glad to offer anything there. Otherwise, I will just tell you that I'm a supporter of the bill and move on. [LB889]

SENATOR AGUILAR: Thank you very much. I'm very appreciative of your brevity. Are there any questions for Mr. Ayars? Seeing none, thank you for your appearance today. Senator Adams, did you have some? [LB889]

SENATOR ADAMS: Very quickly. Mike, how might see this...and maybe while I was gone this question got answered, how might you see this working for infrastructure like sewer, water, streets? [LB889]

MIKE AYARS: Well, my personal opinion is design-build is a choice and it's an option that should be given to everyone, and given the option, the owner of the project can best decide how to facilitate those needs. And so I'm a believer that you need as many cards in the deck as you possibly can have. As with the prior legislation and the question came up as why only schools? You know, there's a lot of lobbying and effort that goes into each and every bill and every change in our society. And therefore, you know, we're just learning to crawl before we walk before we run, and inevitably I think all of the options will be available. But we're just trying to make improvements in our delivery. [LB889]

SENATOR AGUILAR: I was a part of that original debate and I can remember the school districts coming in and testifying on behalf and that made it much easier to get done, get accomplished. [LB889]

MIKE AYARS: Um-hum, and really that was the goal. [LB889]

SENATOR AGUILAR: Further questions for Mr. Ayars? Thank you for coming down today. [LB889]

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MIKE AYARS: Thank you. [LB889]

CRISTY K. JOY: (Exhibits 6,7&8) Good afternoon. I'm Cristy K. Joy, J-o-y, and I again will keep it simple and brief. I'm a practicing licensed architect in the state of Nebraska and have managed the office in Lincoln. I am a member of the American Institute of Architects and serve on the Joint Committee for Professional Practice in the state of Nebraska. I'm here representing my architectural firm, Architecture Etcetera, and in support of LB889. In front of you there are three pieces of information where I just wanted to share with you from the 2007 design-build conference in Kansas City, which was our American Institute of Architects design-build knowledge community. We focus there on some presentations and we've listed there some of the advantages of the design-build delivery system, specifically focusing on scheduling--as was mentioned before--and overall control and better design control from the architectural side. Again, the second handout there is a colored handout from the Design-Build Institutes of America, the fact sheet summarizing the design-build method of construction delivery. Again, using this again as a option for delivery choices for political subdivision is what I am in support of. And then the last handout is from our Web site with the AIA and it is a design-build as an owner speaks and really focuses on developing facilities in a cost effective manner utilizing the design-build delivery method. And I want to, again, keep it short and sweet so you have those handout in front of you. So thank you, Mr. Chairman. [LB889]

SENATOR AGUILAR: Thank you, Cristy. Are there questions for Ms. Joy? Seeing none, thank you for participating today. [LB889]

CRISTY JOY: Thank you. [LB889]

SENATOR AGUILAR: Welcome, Dennis. [LB889]

DENNIS BAACK: Mr. Chairman and members of the Government Committee, for the record, my name is Dennis Baack, B-a-a-c-k. I'm the executive director of Nebraska Community College Association. I am here to support LB889 and it's just one more tool that we can use as we do projects. Is it going to be the plan that we're going to use for every project? No, probably not. But we will be...but there are some of our projects where it's very, very important that we get things done on time, and I think one of those is when you're talking about dormitories and they have some very, very tight schedules. We need to make sure that those get done on time and we feel that this is a method that will help us meet some of those goals and also to stay within budget. So with that, I would end my testimony at (inaudible). I will say that I did enjoy the discussion on the Campaign Finance Limitation Act (laugh). I may have had a little bit to do with that. I had a minor role in that when it was originally passed, but it was interesting to listen to the discussion many years later. [LB889]

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SENATOR AGUILAR: Any questions for Mr. Baack? Seeing none, thanks for being here today, Dennis. [LB889]

STAN CARPENTER: Good afternoon, Mr. Chairman, members of the committee. My name is Stan Carpenter. I'm chancellor of the Nebraska State College system and I'm here in support of this bill. And as Mr. Baack said, we think this is just one more arrow we could have in our quiver as we go about trying to be good stewards of the state's money as we go through the construction process. There have been times in the past where in the under design-bid-build where we've had to go back and value engineer the project because the bids came in higher than we thought they were going to be. There were folks who won't bid on our projects now because that's the only way that they operate. It's not the only thing we would ever use, but it does give us one more method to find the best way to build a project and save as much money and that process is possible. And with that, I will get up out of this seat. [LB889]

SENATOR AGUILAR: Any questions for Mr. Carpenter? [LB889]

STAN CARPENTER: Thank you. [LB889]

SENATOR AGUILAR: Thank you. Hi, Jack. [LB889]

JACK CHELOHA: Good afternoon. Good afternoon, Mr. Chair and members of the committee. My name is Jack Cheloha. Last name is spelled, C-h-e-l-o-h-a, and I'm the registered lobbyist for the city of Omaha. We wanted to testify in support of LB889 today. I heard a rumor about that amendment that was coming and so it caught me, not off guard, but a little bit. One of my boss' has already testified just because of his expertise. But I'm here officially on behalf of the city of Omaha and our Public Works Department in support. We think this would be a tool that could help us. Specifically I'd like to add some things. Omaha is facing a huge challenge in complying with federal mandate on control overflows from our combined sewer system. We're currently under a consent order from the Nebraska Department of Environmental Quality to construct an estimated \$1.5 billion of improvements over a 51-square-mile area within 15 years. And so we have basically until 2009, which is next year, to refine this plan, and we are concerned that traditional design-bid-build approach may prevent us from meeting the compliance schedule and result in program delays and fines. We'd like to evaluate alternate contract delivery mechanisms, which this bill would allow for, like those allowed here and then we can make a local decision on project-by-project basis. So it would be nice to have this bill passed and hopefully in the original green form because we would like to look at it for, you know, sewer projects. I guess based on the notes that public works have given me, we haven't really considered it for the street or road improvements, but it would be key and it could help us, especially with the sewer problem we're facing. So for those reasons we're in support of the bill and I'll try and

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answer any questions. [LB889]

SENATOR AGUILAR: Thank you, Mr. Cheloha. Are there questions for Jack? [LB889]

JACK CHELOHA: Thank you. [LB889]

SENATOR AGUILAR: You're off the hook. Welcome. [LB889]

BETH BAZYN FERRELL: Good afternoon, Senator 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 would just echo the comments that you've heard today about the benefits of having this tool for counties to use. Be happy to answer questions. [LB889]

SENATOR AGUILAR: Thank you. Questions? None. Any other proponents? Are there any opponents? Now that's a surprise. Welcome, Larry. [LB889]

LARRY RUTH: Senator Aguilar, members of the committee, my name is Larry Ruth, R-u-t-h, and I appear today opposing the bill on behalf of the Associated General Contractors Nebraska Chapter. There are two chapters of the Associated General Contractors. One of them is the building chapter and the other one is the one that I represent, the Nebraska Chapter which is the chapter of a heavy contractors. Those would-be companies who build roads and other infrastructure. Appearing today to be in opposition, but I've talked with Senator Flood and it is the amendment that he has that would take us out of opposition. The amendment that he has...I was unable to be here when he spoke. I was in the committee next door, so I'm not sure exactly what he said. But I believe it is an amendment that excepts out infrastructure such as roads and streets and possibly sewer of the utilities. I would like to speak to that for just a moment if I could. Associated General Contractor of Nebraska Chapter has followed the development of design-build for a number of years and I was, in fact, involved with the drafting of the original bill for schools. So I'm somewhat familiar with it. We recognize that qualification-based selection process has been allowed in the professional consultants area. It's also been allowed in energy finance contracts and of course with this Alternative Schools Construction Act. Over the years there have been some concerns voiced about departing from the design-bid-build process, which has been in effect in many years and is an accepted procedure in the area where our folks work. Design-bid-build is what they generally do, both with roads construction and particularly in roads construction in working with the state and with other political subdivisions. The AGC-NC, that's the Nebraska Chapter advocates a go slow approach relating to design-build for public construction of infrastructure. We think it's wise to wait until we see if design-build works well with the so-called vertical construction as opposed to the horizontal construction of the infrastructure. I'm using that term because I understand it is occasionally used. Vertical construction meaning buildings and horizontal

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construction meaning roads and that which is under roads. Our members are steeped in the design-bid-build process. They trust it. They are comfortable with it, with those in the political subdivisions who they work with. They don't want to see that successful partnership jeopardized by a new procedure. They suggest that you proceed with care in this area and allowing political subdivisions to use it in other than infrastructure would seem to me to be a good first step for political subdivisions other than schools. We value the high quality of work that's now being done with political subdivisions and I know, Senator, you talked about in York a little bit about the question, and we value that high level of work being done. We think it's being done at a good price and the good relationship that we have. So that's the basis of our objection. There have been different concerns voiced about design-build over the past years. I think many of those have been answered. Certainly it's interesting to see how the Schools Construction Alternative Act has been put on the books and then I don't think it's ever been used if my memory is correct. I think that there's a variation of it that is a design-bid-build variation that now is developed because of the design-bid-build process over here as a possibility. In other words, we've seen movement from the old traditional design-bid-build to a variation of that. But I don't believe I know of any design-build projects under the new act and perhaps I'm wrong, but that's my understanding. So we really haven't had a test of that concept. And that's basically what this bill is, is a use of the design-build process for schools, which I think has not been thoroughly tested yet. [LB889]

SENATOR AGUILAR: Thank you. Questions? Senator Avery. [LB889]

SENATOR AVERY: Thank you, Mr. Chair. Larry, the amendment that you like, would this not remove from the bill the language that the city of Omaha does like? They were talking about possibly using design-build for their \$1.5 billion sewer problem or wastewater problem. [LB889]

LARRY RUTH: Yes, Senator. I think it would. [LB889]

SENATOR AVERY: So they would not be able to use it for this. [LB889]

LARRY RUTH: That's correct. The way that it's written, including sewer construction I would assume would work out or write out that aspect of it. [LB889]

SENATOR AVERY: Would this lead to additional cost for the city of Omaha? [LB889]

LARRY RUTH: I think that's very speculative, Senator. The question of whether or not design-build saves money has always been an open question. It may under some circumstances save money. It may under some circumstances save time. But that has yet to be tested in the school's area, and that is the bill that they're building on. [LB889]

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SENATOR AVERY: So you're not aware of any estimates or studies that show what the actual cost differences would be moving from one model to another? [LB889]

LARRY RUTH: I think you could probably find some projects that go in either direction. I'm not familiar with ones that would show that it would be either cheaper or more less expensive--I hate to use the word "cheaper," that gives a different connotation--less expensive or not. I'm sure that there are studies on both sides of that. But I want to emphasize that what you're doing here is you're taking a bill that was passed several years ago dealing with schools which has not yet been used truly in the schools community. It's there but it is not as I understand it been used and you're grafting on an extension of it. Now, we don't object to thinking about that as long as you go slow and it's not in the area that it directly effects the kind of work that the Associated General Contractor's Nebraska Chapter does. But when you get into that area where we have a great partnership with many of the political subdivisions in the state and we feel that we're doing a good job in that area, we don't want to see it develop into that area until you've really seen that it has worked in the other areas. And the only other areas where it's allowed now, where it has worked as I understand it is in the Consultation Selection Act. I believe that's for engineers and that may not be exactly the right name, and then also the energy finance contracts that you have a bill on, Senator. [LB889]

SENATOR AGUILAR: Further questions? Senator Pahls. [LB889]

SENATOR PAHLS: You just sort of turned me upsidedown via your testimony. You're saying schools have not used this? [LB889]

LARRY RUTH: Well, I would like you to check into that, but my understanding is that they have not used it. What it has done, it's been out there as a tool for them to use. It's been really interesting as I understand how that's evolved. You've had basically design-bid-build over here and design-build here that's authorized, and what has evolved is kind of something in the middle which fits the law of design-build but doesn't go all the way to design-build. [LB889]

SENATOR PAHLS: Okay. Thank you. [LB889]

LARRY RUTH: That would be a good question to ask some of the school's representatives, Senator, and I know that you are close to that construction and that would be of value. [LB889]

SENATOR PAHLS: All right. Thank you. [LB889]

SENATOR AGUILAR: Further questions? And we've just recently built some schools in Grand Island, so I'll certainly have a conversation with the district. [LB889]

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LARRY RUTH: Sure. There's a law firm here in Lincoln that sort of specializes in how to take advantage of some of the benefits of design-build, but keeps it in a design-bid-build legal framework so that it fits. If you find something out to the contrary I, of course, stand corrected. [LB889]

SENATOR AGUILAR: Thank you. Are there any other opponents to this bill? Is there any neutral testimony? Seeing none, we're going to close the hearing on LB889. I see Senator Johnson is with us to open on LB927. Rustle your way up here. [LB889]

SENATOR JOHNSON: Is it significant that everybody is leaving? [LB927]

SENATOR AGUILAR: That's not a bad thing, Senator. [LB927]

SENATOR JOHNSON: You guys want to stretch or anything for a second? [LB927]

SENATOR FRIEND: No, let's rock. [LB927]

SENATOR JOHNSON: Okay. [LB927]

SENATOR FRIEND: Me and Ray hold all the cards anyway. You know that. You want this bill out, you're talking to the right guys. [LB927]

SENATOR JOHNSON: All right. Well, let's go ahead and start then. Chairman... [LB927]

SENATOR FRIEND: That was a joke. [LB927]

SENATOR JOHNSON: What's that? [LB927]

SENATOR FRIEND: That was a joke. [LB927]

SENATOR JOHNSON: (Exhibits 1&2) Oh, I was serious. Chairman Aguilar and members of the committee, I'm Senator Joel, J-o-e-l, Johnson, J-o-h-n-s-o-n, representing the 37th District. What prompted me to come here today was as I listened to the Governor's State of the State speech, after having put in last year's budget \$115 million for property tax relief, here again shows up another item for \$75 million in property tax relief. This got me thinking about something that I actually did, I think it was four years ago, and what it was is to come before this committee to engage them, but I think not only just the committee. But I think that all of our rural areas of Nebraska have to become engaged in what were going to talk about. It's critical to their future. I'm not here as a big city guy trying to tell these people what to do. The rural areas of Nebraska have been extremely kind to me. I grew up and went to high school in Axtell, have the fondest memories and these people were extremely good to me. This is not meant to tell these people how to correct their problems, but I think they have to recognize the

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problems that we have and take action to solve them. What this is then is a reintroduction of LB955. And what it does is this, is that if we are going to reduce property taxes, it must be because of the efficiencies that we must correct in political subdivisions that are funded by these taxes. In December of 2005, we released LR226 that examined Nebraska county government structure. LB927 was introduced for the purpose of continuing this discussion. I am sharing with you the map of the Nebraska Department of Motor Vehicles for the hearing on LB911. This was about REAL ID. What this map shows that 84 percent of the drivers licenses are issued at 27 communities in Nebraska. On that map these are circled with a 50-mile radius. Interestingly enough a couple of years ago, just out of curiosity, I took a map of Nebraska and circled what would ideally be the county seats if you were to start today and were given absolute power. I think that all 27 are the same ones. What LB927 does is lay out the general criteria for county consolidations. I might just add as an aside that I guess I wonder if we shouldn't start looking at other consolidations as well. We have 93 counties, but we have more than double that as the number of electrical entities in this state. What we suggested here is rather modest and we're cutting the 93 counties to 44. A study with LR226 revealed that small population counties have a higher property tax burden than larger population counties. I think one of the things that we have to also as this is examined by the citizenry of Nebraska is to look who you would combine with. To have a poor, large county and have it merge with another poor, large county might be counterproductive to what we would intend to do. Now for your reading--and this will be one of the more instructive things that you get in your time down here--we've given you the 1995 tax research council about the high cost of maintaining "ghost town" government in Nebraska. We'll go through a few of the things in this report, but you will find it very good reading. One of the things is that distance is no longer an issue. You know, whether it was true or not, we've always heard that the county courthouse was...you could go there and back in a day on horseback. I think one of the things that is more interesting is perhaps this was so that they could go register their claim for the Homestead Act. And of course the thing there is that all of the land from the Homestead Act was basically gone by 1890. Nebraska's population went from 35,000 in 1865 at the end of the Civil War, 25 years later 1 million people had come to Nebraska. Ironically with this we go back to the Appropriations Committee from which I just came, and at this committee hearing what I suggested is that we take these \$75 million that the Governor has allocated in his state of the state budget and use it for road construction to build Nebraska economically. We've done a pretty good job with some important elements such as education, both the K-12 and university levels, and some other places. But virtually nothing has been done on the expressway system that was authorized in 1988. So with this, let me turn to just another thing or two to call to your attention. I'm going pretty much pass by...but let me call a couple of attention to the things in this recognizing Nebraska's local government structure, that is the maintaining the "ghost town" government. As a percentage of funding that comes from outside communities continues to increase funnel back through state aid property tax relief, etcetera, the motivation for a change is reduced even further. When local control works in a

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self-serving manner, it can be costly to all of the state's taxpayers. And as the proportion of state funding of local government will likely continue to rise in the future, inefficient local government operations will grow increasingly burdensome to the state as a whole. Since shifting taxes to provide property tax relief is becoming less practical as an option for Nebraska...and we must remember as we get the population shift to the Lincoln and Omaha area, that's where the votes are going to be as far as where taxes are distributed. So if these areas that are struggling and we are now bailing out with property tax relief don't become more efficient, some point in time if we don't correct the course of this ship, we're going to have a major shipwreck in the nonmetro area in Nebraska. One last thing I'd like to read to you, and it's I think the last paragraph in this report. And what it is is this, if Nebraskans want lower property taxes and a more efficient local government structure, they will have to become more and more accepting of change in the future. If they don't, then they can always fight change as they have in the past. But fighting change and keeping the system the way it is doesn't come without cost. As the Legislature has continually had to increase taxes to subsidize and here the report says...the tenth largest local government structure. No. We're now fourth. We are fourth in the United States in the number of government employees per citizen. As the Legislature is continued to have to increase state taxes to subsidize this, it has hurt Nebraskans ability to be competitive with other states in our population growth and attracting new industry. I think this is critical that if we are going to grow this state, we have to spend our money more wisely than what we are doing and again, I think that we need to approach this not in a punitive way with our counties. But when I first came to the Legislature, I went to a meeting of one of our better groups in the state and I can still remember what the speaker said. He says, change is going to occur. He that is best able to adopt to that change will be the most successful. I fear that we're not being able to adapt to the changes that have occurred in this state. The railroads have come and gone. Highways are here now that we can go further in an hour than you could in two days on a horse. All of these factors have come and they are not going to go away. So with that, committee members, I would ask for your study of this. But I think we need to go beyond this committee. I think our academic communities, our citizens in all of these areas and so on have to make a conscientious effort to do this. I've got grandchildren planning on setting up their homes in western Nebraska and, you know, it's pretty important that we look ahead for the generations to follow us. [LB927]

SENATOR AGUILAR: Thank you, Senator Johnson. Are there questions for the senator? Seeing none, thank you. Will you be here to close? [LB927]

SENATOR JOHNSON: No, Senator Aguilar. I've got other places to be today. Thank you very much. [LB927]

SENATOR AGUILAR: Are there any proponents of this? Are there any opponents of this? Neutral testimony? Seeing none, that will close the hearing on LB927. We are ready to open up on LB745. Senator Lautenbaugh, would you assume the chair?

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[LB927]

SENATOR LAUTENBAUGH: Thank you, Senator Aguilar. You may proceed. [LB745]

SENATOR AGUILAR: Good afternoon. My name is Ray Aguilar. I represent District 35. That's A-g-u-i-l-a-r, and I'm here today to introduce to you this bill at the request of the Department of Correctional Services. LB745 from the State Personnel System...excuse me. LB745 exempts from the State Personnel System the chief executive officer of each facility operated by the Department of Correctional Services and the medical director for the department. All personnel employed by the department as pharmacists, physicians, psychiatrists or psychologists are also exempted. The Department of Corrections employees covered by this bill have the choice of whether to opt out of the State Personnel System. If an individual decides to remain part of the State Personnel System, the position would only be filled as a discretionary position when it becomes vacant. If the individual decides to opt out of the State Personnel System, they become employees under the discretion of their director in terms of pay, personnel policies, and grievance procedures. The department believes this legislation is important to provide more flexibility in the management of its operations and would allow the department to appoint key individuals. Also the department has had difficulty retaining personnel such as pharmacists, physicians, and psychologists. By allowing these positions to be exempted from the State Personnel System the department will be able to pay competitive wages. The Department of Health and Human Services are already exempt from such personnel, which makes it difficult for the Department of Correctional Services to compete for those positions. The department is here today to explain the bill in greater detail and answer any technical questions you may have. Thank you, Mr. Chairman. [LB745]

SENATOR LAUTENBAUGH: Thank you, Senator Aguilar. Any questions for Senator Aguilar? Seeing none, first proponent. [LB745]

BOB HOUSTON: (Exhibit 1) Good afternoon, Senator Aguilar and members of the committee. My name is Bob Houston, H-o-u-s-t-o-n, and I am the director of the Nebraska Department of Correctional Services. I am before you today to speak in support of LB745. I'd like to express my appreciation to Senator Aguilar for introducing this legislation on behalf of the department. LB745 removes the following individuals from the State Personnel System. The chief executive officers of all the facilities operated by the Department of Correctional Services, commonly known as wardens, the DCS medical director, as well as other high level medical professionals inside our department such as pharmacists, physicians, psychiatrists, and psychologists. These exemptions are similar to the exemptions provided to the Department of Health and Human Services. Current law already provides eight exempted positions to DCS. I utilize these positions for staff who are in highly critical positions and there is some overlap between the eight exempted positions and the individuals enumerated in

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LB745. However, we have ten facility wardens and I do not have enough exempt positions allotted for these critical staff members. Facility wardens are pivotal to the mission and serve and protect the public and are compensated as such. Because of the critical nature of their positions, I feel it is appropriate to remove them from the selection process, compensation rules, and career protections provided by the State Personnel System. Placing the listed medical professionals outside the State Personnel System is a matter of recruitment retention. The medical care of inmates is dictated by the Nebraska Community Standards Care Act 83-1,154. Over the years, DCS has had difficulty hiring and retaining pharmacists, physicians, psychiatrists, and psychologists. The result has been an increased cost. As an example, DCS is unable to hire and retain adequate number of pharmacists, causing us to contract some pharmacy services. Contract pharmacy services are nearly double per hour the cost of a DCS pharmacist. This has been problematic and costly for some time. DCS has found that it is increasingly less unable to compete in the private sector for wages. The story is similar for the other medical professions. Our agency hopes to gain flexibility in hiring wages so to compete with the private sector, and the long run drive our cost down. I'd be pleased to answer any questions that you would have. [LB745]

SENATOR LAUTENBAUGH: Thank you, Mr. Houston. Senator Avery. [LB745]

SENATOR AVERY: Mr. Houston, what do you expect would be the increased cost of such a change? I mean, you would expect some changes in cost, wouldn't you? [LB745]

BOB HOUSTON: Yes. There would be some increased costs and...Kate, do we have any figures on what those increase costs would be? [LB745]

KATE MORRIS: Senators, my name is Kate Morris. I'm the budget management analyst for the Department of Corrections. While there would be some additional cost, at the moment what we are experiencing in having to go with our contract pharmacists where we have four positions for pharmacists, we only have one pharmacist remaining. And the cost even with benefits we're paying \$90 to \$100 an hour for our contract pharmacists, rather than the \$25 to \$35 we would be. So there would be almost immediately if we could even go to the \$75,000 to \$80,000 range for our pharmacists per year range, a significant savings in that, which we think would help offset... [LB745]

SENATOR LAUTENBAUGH: Ma'am, we'll probably need you to sign in and testify separately if you have information beyond just the increased cost. [LB745]

KATE MORRIS: Okay. So Thank you. [LB745]

BOB HOUSTON: Okay. Good. Yes. [LB745]

SENATOR AVERY: So there would be additional cost. Can you say with any confidence

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that this would be a sword in your current budgetary allocation or are you expecting you would be coming back for more? [LB745]

BOB HOUSTON: Well, our budget is kind of stretched to the limits and so this is something we'll work into our biennium budget for next year. [LB745]

SENATOR AVERY: So we might expect an increase request of the Appropriations Committee, right? [LB745]

BOB HOUSTON: I would expect you would have some increase. There would be some decrease, but I don't know that it would offset the increase. The wardens for the most part are well compensated. For example, there are a couple of the wardens that if you match them up with people around the state government that have similar responsibilities, may need a bump up in pay. For the most part they're within a very small...a couple a thousand or a few thousand dollars where they should be. When it comes to the physicians, hiring a pharmacist, hiring the medical doctors, I think that's where there would be the biggest increase. But we have those positions. I think the one in Omaha is like \$149,000 and we haven't been able to fill that position. So we have to bump that up a bit. The psychiatrist position, we have that somewhere around the \$161,000 mark and we'd have to move that up closer to \$200,000. And so there would be some increases. Yes. [LB745]

SENATOR AVERY: Are you currently in a situation where what you can pay is fixed by the state personnel code? [LB745]

BOB HOUSTON: Yes, we have parameters which we can compensate. [LB745]

SENATOR AVERY: Yeah, and what you really need is to get out of that so that you can hire in areas of critical need where you're short on staff? [LB745]

BOB HOUSTON: Yes, exactly, and then there's the other thing that it does is that as things bump up in the private sector and we need to compete, we can move the competitive dollars up a bit. And so this gives us the flexibility to do that. [LB745]

SENATOR AVERY: You are aware, aren't you, that the Appropriations Committee is in a nasty mood? (Laugh) [LB745]

BOB HOUSTON: I've been in front of them, but they did treat me pretty well. So I must say that. [LB745]

SENATOR LAUTENBAUGH: Thank you. Senator Friend. Any other questions for Mr. Houston? Bill, did you get your question answered or would like the additional witness to testify? [LB745]

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SENATOR AVERY: Yes. Thank you. [LB745]

SENATOR LAUTENBAUGH: Thank you, sir. [LB745]

BOB HOUSTON: Thank you, sir. [LB745]

SENATOR LAUTENBAUGH: Any other proponents? [LB745]

MARSHALL LUX: Good afternoon, senators. My name is Marshall Lux, L-u-x. I am the Ombudsman for the state of Nebraska and I am here to testify today in support of LB745. I'll try to be brief but I do have to start by offering just a little bit of historical perspective. Back in 1999 the Ombudsman's Office, our office, issued a report which was critical of the Nebraska Correctional Medical Care System, a long and very critical report, got a lot of media attention. And so the Governor at the time, Governor Johanns, appointed a task force of eminent Nebraska doctors to review the situation, decide whether what we had said in our report about the Correctional Medical Care System in Nebraska was accurate. In July of 2000, that task force returned its own report. They found that there were in fact serious problems in the Correctional Medical Care System in our state and called for immediate reforms. Fortunately those reforms did follow, basically from two sources. Number one, the Nebraska Legislature passed LB154 which was a bill which substantially restructured the medical care system in our correctional department. And number two, the Department of Corrections appointed Dr. Randy Cole to serve as the new medical director in the Department of Corrections. And the result of all this was that what we have seen the following six years is that the Correctional Medical System in our state has substantially turned around. We have gone from a situation where medical care in our correction system was poor to a situation where I think arguably we have one of the better Correctional Medical Care Systems in the country. The credit for that goes to Dr. Cole for his hard work, to the Legislature for having the foresight to pass LB154, and I believe Senator Aguilar was one of the cosponsors of that bill, and it also credit...a lot of credit goes to the person who just testified, director Bob Houston of the Department of Corrections who supported Dr. Cole in his efforts to reform the Correction Medical Care System in our state. That brings us to LB745 because over the years, the last several years, our office has had periodic meetings with the medical staff, Dr. Cole and his staff, to periodically talk about how the medical system is going and what issues they have encountered in their efforts to improve the system in Nebraska. And what we have discovered in those meetings is that there has repeatedly been problems in retaining certain medical staff in specialty positions like the ones that are covered in this bill, pharmacists in particular. I think Mr. Houston may have indicated that they have four pharmacist positions in their department, only one of them is filled. The problem is, of course, that they cannot in the system that exists now, as long as these positions are in the classified system, they are not able to hire and retain pharmacists because their wage is not competitive with the

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going rate. I support LB745 because it will fix that and I have sat down repeatedly with Dr. Cole and his staff and listened to him talk about this problem. I'm convinced that it is a problem. I think it's a serious problem. I think it's reached the point where it's acute when you have only one pharmacist to manage a system where medications are being handed out daily to hundreds, if not thousands of inmates. I'm fearful for the inmates and for the potential of state liability if we don't do something to make sure that they can run the system that they have the way that they need to. And I think that the problem has gotten to the point where it's acute and that something needs to be done, and LB745 will do that in taking these positions out of the classified system. I would encourage the committee to support LB745 and I would encourage you to purport it out. If you decide to do that, I would also suggest that if at all possible you do something to try and expedite this bill because I don't think that this is a problem that can wait until next year to be solved. As I said, they're down from four pharmacists to one and I wouldn't be surprised if some day soon if nothing is done they'll be down to zero, and I'm not sure what they'll do then. I'd be happy to answer any questions. [LB745]

SENATOR LAUTENBAUGH: Thank you, sir. Any questions for Mr. Lux? Seeing none, thank you. [LB745]

MARSHALL LUX: Thank you. [LB745]

SENATOR LAUTENBAUGH: Any more proponents? Any opponents? [LB745]

MIKE MARVIN: Good afternoon, Senator Lautenbaugh, members of the committee. My name is Mike Marvin, M-a-r-v-i-n. I'm the executive director of NAPE/AFSCME. I think I might be the bogeyman here in this one. I want to give you a little history of this and tell you that I could have signed an exemption and granted an exemption that they could have gone and paid a higher wage to attract the pharmacist that they need. I refused. And the reason I refused, and I want you to understand this, we were in collective bargaining. We had asked repeatedly for market adjustments for people who were underpaid. DAS stood firm and said they had no interest in market adjustments. Everybody gets a 2.5 percent raise and we don't care whether about what comparability is. We ended up having to spend a lot of money going first to the special master to have this heard. Two days after the special master hearing, they came to me and asked me to grant an exception for the pharmacist. They didn't want to talk about this when we were going to talk about other people that needed market adjustments either. They tried to back door this. I didn't feel it was the right thing to do. I refused. So we were at the table. You wanted to talk about this. You should have talked about it then. We tried to talk about it, DAS did not. So I refused to grant the exemption. We're going back into contract negotiations again this September. We are interested in market adjustments to bring people in and keep and retain qualified people. But we're interested in it not only for the high skilled jobs, but we're interested for the lower end jobs, the developmental techs at the Beatrice Developmental Center, at the veterans homes. We just strongly

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believe that this is a matter for the collective bargaining. I would also say that not all of the HHS pharmacists, psychologists are exempted from the collective bargaining agreement. I did not have adequate time. This bill kind of snuck up on me and I apologize for not having all that information for you, but I can get it for you, who is covered under the HHS. And with that, I would gladly answer any questions. [LB745]

SENATOR LAUTENBAUGH: Thank you, sir. Any questions? Senator Pahls. [LB745]

SENATOR PAHLS: Thank you. I have a question. There are some of the individuals who are exempt already? [LB745]

MIKE MARVIN: Yes. In the HHS, yes. [LB745]

SENATOR PAHLS: Okay. And how did that happen? [LB745]

MIKE MARVIN: Senator, that happened before my time and I can't give you an answer. That's why I say, it will take me a little bit more time to adequately prepare for that. [LB745]

SENATOR PAHLS: Thank you. [LB745]

SENATOR LAUTENBAUGH: Any other questions? Senator Adams. [LB745]

SENATOR ADAMS: Maybe I'm naive with the collective bargaining process, but wouldn't it be advantageous to your efforts beginning in September if these folks were exempted in order that their wages be more market-driven as you proceed on with other employees? [LB745]

MIKE MARVIN: Why...Senator, in my mind is why should we exempt them to make it market-driven when we have the same problem with so many more? Do we exempt everybody where we have a market-driven problem that the state refuses to address? And that's...because we have it in a lot of areas. [LB745]

SENATOR LAUTENBAUGH: Senator Karpisek and then Senator Pahls. [LB745]

SENATOR KARPISEK: Thanks, Mike. So are you saying like the BSDC downsizing, that part of kind of what you're saying, we can't get people there so why are we trying to incentivize this particular... [LB745]

MIKE MARVIN: That's it, Senator. You know, I say we tried to address the market adjustments and we really want to address these market adjustments and get them fixed. You know, but we can't pick because places like Beatrice Developmental Center gets hurt, the veterans homes are being hurt, the regional centers are being hurt. We

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can't hire enough child protective services workers. Let's address those too at the same time because these are pharmacists, granted they have a lot of education. [LB745]

SENATOR KARPISEK: I would like you to bring us that on Tuesday. Do you think you could get us the information? [LB745]

MIKE MARVIN: It would probably take me a little longer to go back and get the history of the exemptions because I'll have to do some research on how those exemptions came about in where they were because they happened...I've only been with NAPE two years and there were some exemptions back. But I could also get you the information if you're asking about the people whose jobs are out of comparability. Are you asking about that? [LB745]

SENATOR KARPISEK: Yeah, anything that you could get us to kind of help me understand the whole thing. All right? [LB745]

MIKE MARVIN: Sure. [LB745]

SENATOR KARPISEK: Thank you. Thanks, Mike. Thank you, Senator. [LB745]

SENATOR LAUTENBAUGH: Senator Pahls. Any other questions for this witness? [LB745]

MIKE MARVIN: Thank you, Senators, appreciate your time. [LB745]

SENATOR LAUTENBAUGH: Thank you. Any other opponents? Any neutral testimony? Seeing none, that closes the hearing. Would you like to close, Senator Aguilar? [LB745]

SENATOR AGUILAR: I would. Thank you, Senator. Suffice to say that the situation that we're...the road we're heading down and what we're looking at here could become a situation where...I mean, let's look at this realistically. We have a shortage of pharmacists, psychologists. That's medical care and I was here when the first bill was introduced and you know who caught the brunt of the media damage. That was the Legislature because it's our job to make sure the oversight and the health is protected and taken care of and the medical care is available for prisoners. Just because they're a prisoner doesn't make them second-class citizen. They deserve proper medical care and that's what we're talking about here. And I don't want to see this turn into a situation where this bargaining factor becomes a pawn in trying to get something else for somebody else. You know, we'll deal with those situations as they come before this. This is a separate issue as far as I'm concerned, and I'm going to request that this committee consider this for one of its priority bills. And I'll take any questions you may have at this time. [LB745]

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SENATOR LAUTENBAUGH: Seeing none, thank you. Senator Aguilar. [LB745]

SENATOR AGUILAR: And that ends the hearings for today. [LB745]

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Disposition of Bills:

LB745 - Advanced to General File.
LB889 - Advanced to General File, as amended.
LB927 - Held in committee.
LB1112 - Held in committee.

Chairperson

Committee Clerk