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Urban Affairs Committee  
February 19, 2008

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[LB971 LB1117 LB1166]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 19, 2008, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB971, LB1117 and LB1166. Senators present: Mike Friend, Chairperson; Abbie Cornett; Steve Lathrop; Kent Rogert; and Tom White. Senators absent: Amanda McGill, Vice Chairperson; and Ray Janssen. [LB971]

SENATOR FRIEND: We actually can't start with testimony until we have a quorum but what I will do is get some of our housekeeping out of the way, if you will, by kind of giving some instructions and idea of how to approach the testifying table. If you could...I'll introduce senators as they come in and here in a little bit. I am Mike Friend. I'm from northwest Omaha. I represent District 10 and I'm Chair of the Urban Affairs Committee. If you're looking for education or something of that nature, you're a little ways away. We will start off with legislative bills 971, 1117 and 1166 in that order. If I could ask you now to turn off or silence your cell phones or your pagers, we would appreciate that. Everything is transcribed in here and it causes a little bit of difficulty for our transcribers if they hear cell phones going off. I'll check mine as well. It's a Blackberry. I hadn't figured out how to silence it yet. If you are wishing to testify on a piece of legislation, either a proponent, or opponent or in neutral capacity, you should kind of make your way to the front of the room as you're, you know, coming close to your bill number. And when someone finishes testifying, you kind of just, you know, musical chairs, move up as close as you can to where Senator Pedersen is sitting. If you do not wish to testify but you'd like your name entered into the official record as being present at the hearing, there's a form by each door that you can sign and that will make it a part of the official record for the hearing. If you are going to testify, if you could fill out a green sheet, fill it out completely and first name, last name, and print if you would, so that the transcribers can, we make sure that they get that recorded properly. And the green sheets are by those doors as well. If you're testifying on more than one bill, you'll have to fill out more than one sheet. So if you're testifying on two bills, you fill out two green sheets. If you...when you take the testifying table, if you could spell your name for the record. If you don't, I will stop you. Not to be rude but I will stop you for, again, the transcribers so that they can get that properly set up on the committee statement. So spell your first and last name, tell us where you're from, and then continue with your testimony. If you have handout material, you can deliver it to Molly. Molly's the page. Molly is a, I believe, are you a junior? She's a junior marketing major at the University of Nebraska-Lincoln. She's helping us out today. If you could hand her the handout material, she will distribute it to the committee. If you just want to submit some comments in writing, you could also hand those to the page and she will get those to committee members and also to the committee clerk. I will introduce the committee. On my right is Senator Tom White, he's from District 8 in Omaha; and to my immediate right is Bill Stadtwald. Bill is the legal counsel for the Urban Affairs Committee. Again, like I said, my name is Mike Friend. Beth Dinneen, who is 29 today, by the way. No

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display of support one way or the other. Beth is the committee clerk. Senator Abbie Cornett; Abbie is from Bellevue, to Beth's left; Steve Lathrop is from Omaha, Senator Steve Lathrop; and also Senator Kent Rogert, Kent's from Tekamah and we have a quorum. I believe Senator...we will wait for...senators come and go by the way and don't be offended by that. As a matter of fact, I'm going to be going because I have a bill to introduce in about five minutes. One of the other senators will take the chair and will move forward with Senator Dwite Pedersen's bill. We will start with LB971 like I had mentioned. Senator Pedersen is here. Welcome. [LB971]

SENATOR PEDERSEN: Thank you, Senator Friend, and my colleagues who sit on the Urban Affairs Committee. For the record, I am Senator Dwite Pedersen representing the 39th legislative district. I am here today to introduce to you LB971. I introduce this bill because I promised the people in my district that I would do so. Everything I could do to ensure that what happened to the city, now community of Elkhorn, last year would not happen to another city in the state, unless that action was agreed to by the people who live in the city being annexed. This bill changes the statute to provide that no city of any class in the state of Nebraska can annex any other city or village unless the action is approved by a majority of the registered voters of the adjoining city or village who would vote on the issue at a statewide primary or general election. LB971 is intended to keep cities from annexing unwilling cities or villages without the residents of those cities or villages having an opportunity to voice their opinion on whether or not they want to be annexed. Many people say that it is time for Elkhorn to get over it. I can tell you that the life goes on in our little city, now village, things are not the same, and there are hard feelings that will never be forgotten. There has to be a better way to encourage growth in our larger cities than to simply allow them to decide to annex another city whether or not the people of that city want to be made a part of the larger metropolis. Allowing for a vote of the people would at least provide an opportunity for those whose lives are profoundly affected by such a takeover to feel as if they had some say in the situation. I brought this bill to the Legislature because I think it needs to be considered, and I hope that the committee will listen with open minds to those who will follow me as they express the concerns they were not allowed to voice when Elkhorn was annexed by the city of Omaha. I hope that the committee will seriously consider forwarding this bill to the full Legislature for further debate. Thank you. [LB971]

SENATOR FRIEND: Thank you, Senator Pedersen. Questions from Committee?  
Senator Rogert has one. [LB971]

SENATOR ROGERT: Senator Pedersen, just to clarify the way this is written. Would you have to have 51 percent voter turnout? [LB971]

SENATOR PEDERSEN: Pardon me? [LB971]

SENATOR ROGERT: If you're talking a majority of all those registered in the, to be

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annexed city... [LB971]

SENATOR PEDERSEN: A majority of the voters. [LB971]

SENATOR ROBERT: Right. So as this is written, maybe I'm just reading it wrong. Does that say you have to have, if there's 5,000 registered voters, you've got to have 2600 of them there voting in favor? [LB971]

SENATOR PEDERSEN: No, I think the way we hopefully have drafted it, that it would be the majority on the, that who'd vote for it would... [LB971]

SENATOR ROBERT: Of those that showed up. [LB971]

SENATOR PEDERSEN: Yeah. [LB971]

SENATOR ROBERT: Okay. Thank you. [LB971]

SENATOR FRIEND: Thank you. Further questions from committee members for Senator Pedersen. Senator Lathrop. [LB971]

SENATOR LATHROP: I don't need to pick a fight with Elkhorn but it seems to me that what this would stop is those communities that form just outside of a large metropolitan area. The metropolitan area has its own expenses in running a big city. That these people are allowed to enjoy by coming into the big city every day to work, to shop, to enjoy the amenities of a big city and then go back to their small village and essentially say, we don't want to pay for any of that but we just want to stay out here and be our own freestanding village. [LB971]

SENATOR PEDERSEN: They're paying for the same, one way or the other. They come into that city and spend their money, their hard earned money, and the city has already taken that off in their sales tax as I see it. [LB971]

SENATOR LATHROP: Okay. Is this...can I just ask, is this a priority bill for you or do you know anybody that's making it a priority? [LB971]

SENATOR PEDERSEN: No, no, it is not a priority bill. [LB971]

SENATOR LATHROP: Okay. Thanks. [LB971]

SENATOR FRIEND: Thank you. Further questions from committee members? Senator Pedersen, from Elkhorn, I don't see any. [LB971]

SENATOR PEDERSEN: Thank you. [LB971]

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SENATOR FRIEND: You notice I said, from Elkhorn. [LB971]

SENATOR PEDERSEN: I will be in and out just for a little bit because I do have the next bill. [LB971]

SENATOR FRIEND: Okay. Thanks for the introduction. Can I see a show of hands of folks who are wishing to testify either in support or against this bill? Okay. We will start with supporters of LB971. You can step forward and take the chair. [LB971]

LORI PONEC: My name is Lori Ponec, my last name is P-o-n-e-c. I live in Elkhorn. I've lived there for the last 16 years and I currently represent a group called Citizens for a Free Nebraska. We would like to show our support of Senator Pedersen's LB971 regarding annexation. It's paramount to small towns and for the people that live in them. Should the state or local government determine where a person lives? We don't believe so. We believe if we make a decision to live in a small town, a small town that has happened to have been around as long as Omaha, a large city or a farm, no entity should be able to take that choice away. Why do we want to see smaller towns given a vote? More control over what is going on at our local level. Small towns can make changes to their town quicker than larger cities by calling up their local representatives and talking about issues. A small town with its local control has fewer problems than a large city because you have fewer layers of administration to go through to get things done. Large cities and small towns can live next to each other, we feel, very harmoniously. We believe the current annexation law that is on the books for Nebraska is antiquated and doesn't make sense to have any more. Maybe there was a reason in the early 1900's why this law was enacted but we feel that it has taken too many voices away from the people of small towns in the eastern part of Nebraska, and it won't stop unless an action is taken. Regarding Elkhorn. Since Omaha has taken over, our voice is gone. We were given a mayor, and council members that we did not choose, and won't be able to until 2009. Our fire and our police equipment were taken away. Our bank accounts were drained. Land that was given to the city of Elkhorn for a library is now considered Omaha's. Is this what our founding fathers fought for when they fought for our freedoms? Cities like Omaha should take care of their infrastructure and the people that are in their city and the private sector will be begging to build and move to that city. It shouldn't be allowed to move in on another town, its people and its established government and take its tax dollars and sovereignty away. If the state of Nebraska thought it was going to die if it did not expand its boundaries, would it be allowed to take over a neighboring state? Why should a city in Nebraska be able to do the same without a vote? Thanks. [LB971]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you. [LB971]

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LORI PONEC: Thanks. [LB971]

SENATOR CORNETT: Next proponent. [LB971]

REX MOATS: Good afternoon, my name is Rex Moats, and I'm speaking in favor... [LB971]

SENATOR CORNETT: Sir, I'm sorry. Could you spell your last name for us? [LB971]

REX MOATS: M-o-a-t-s, 131 South 202nd Street, Elkhorn, Nebraska. My wife, Diane, and I are from the Elkhorn area. In fact, my wife's family has lived in that community for over 90 years. We have four children under age 11 that we're raising in this community of family and friends. After I graduated from the University of Nebraska College of Law I could have gone any where to live. I could have gone to New York. I could have gone to San Francisco, a variety of different places but we decided to make, to continue to make Elkhorn our home. We did this because of the small town feel, because it had a great school district and we had accessibility to our elected officials. When Elkhorn took steps to preserve its identity three years ago, Omaha, the only city of the metropolitan class in this state, initiated its own ordinance, which ultimately led to the death of this great and good city. A city which had stood proud for over 100 years as it weathered good times and bad. I have been, and will continue to be, a very vocal opponent of this type of annexation. It's wrong. There are over 150 metropolitan areas in this country and our state is the only state which believes that this 1917 law on the books, which gives no respect or concern for the citizens that it impacts, is still good law. Many of these other metropolitan areas throughout our country live peacefully with their surrounding suburbs and communities. There's a cordial give and take between labor and services. And if I might, Senator Lathrop, to answer a question of yours earlier that you directed to Mr. Pedersen, Senator Pedersen, it's a two-way street. Yes, the people of Elkhorn, and Valley, and Papillion, and all the others, Council Bluffs, come into the city of Omaha to work and provide labor and they do spend sales taxes and things like that. But it seems to me, that Omaha is the one that's benefiting because they don't have to pay to provide services for the very people that are coming in to provide them the labor services that it takes to run that community. They are not paying for people in Valley, Waterloo, Bennington, or Papillion or Blair, Tekamah, any of these other places where people commute in. So I throw that out there as a contrast because the Omaha World-Herald has done a pretty good job of painting it like it's a bunch of freeloaders out there that are somehow living in their own Mayberry, and then going to work in the big city and then going back out there and not having any accountability, and I would respectfully disagree with that characterization. A mayor and city council who were elected by the citizens of Elkhorn were stripped of their offices and the town ceased to exist as the result of the law that is now on the books in this great state of Nebraska. There's no special election that was conducted. Representatives were appointed to represent the people and the citizens of this fine community much as they would be in a

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military operation. They weren't given any say. They had no input. There's no public hearing. They just decided to slice and dice what was Elkhorn into two city council districts and said, here's your rep and if you don't like him, then the 2010 census is coming soon and we'll redo it then. I think that's very disingenuous to do to those citizens that are out there. They're taxpayers that are citizens of this state. Any person who was at the last town meeting in March of last year at Common Ground Community Center in Elkhorn, can confirm what a horrible thing it was for a community to endure. It's not right that these citizens didn't have a vote and it's not fair that the residents of this town were stripped of their identity and ceased to exist. One of the things that has impacted our community as result of the law that would be restored if the event that this bill were sent to the full floor of the Legislature for debate is the ability as a community to raise money. We previously had three nonprofit fireworks stands that were sponsored by the American Legion and the Elkhorn Masonic Lodge, the Eagles and the St. Patrick's Church men's club. Each year those organizations netted approximately \$40,000 per organization that primarily flowed back into the community in western Douglas County. Because Omaha has an ordinance prohibiting the sales of fireworks, that moneymaker in the community is lost. Although we've attempted to locate some of these stands to Waterloo, none of them have enjoyed the financial success as they did when they were located in Omaha. When Saddam Hussein annexed Kuwait, we sent in American troops. When Omaha annexed Elkhorn, the citizens of that community were without power to stop an antiquated 1917 law. The bill before you is a good bill. It is a bill that should be made law and at a minimum, it is a bill that should be debated on the floor of the Legislature in this session, not some other session, this session. And I know it's a short session. And I know it's not a priority bill but the people of Elkhorn deserve to have this issue looked at by the full body so that they can determine in good conscience whether or not it makes sense to have this type of law on the book. Now I understand that the only city in the metropolitan class is the engine that drives this state. And I also understand that there are 49 bright people down here that can figure out ways to compromise and still protect their interests and when at the same time protecting the interests of these citizens that had their very identity stripped away. You have it in your province to advance it from this committee to floor debate and it's my hope and intention that you do so. Thank you very much. Any questions? [LB971]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you. Next proponent. Are there any further proponents? If there are more proponents, could you please move towards the front so that we can move on with testimony. [LB971]

DON EIKMEIER: Members of the Urban Affairs Committee, Senator Cornett, Don Eikmeier, former administrator of the city of Elkhorn. Resident and here speaking as a citizen of the former city of Elkhorn, 21201 Brentwood Road, Elkhorn, Nebraska. I wasn't necessarily prepared to testify today and I... [LB971]

SENATOR CORNETT: Can you please spell your name? [LB971]

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DON EIKMEIER: I'm sorry. [LB971]

SENATOR CORNETT: That's quite all right. [LB971]

DON EIKMEIER: E-i-k-m-e-i-e-r. But I do want to make just a few short comments. It's been about one year since Elkhorn closed its doors on March 1 last year and things are going along. There's no headlines about all the travesties going on in Elkhorn or the great successes in Omaha. In fact, the opposite is there. But I do want to point out some of the things that are different that need to be analyzed, I think, by this committee and by the Legislature as a whole. Number one, is the citizens of the Elkhorn community no longer believe in the democratic system, the democratic form of government the way they used to believe in it. A part of that system was taken away from them, and it affects not only those natives that are in their 80's and 90's but it affects those that are in the second grade and third grade and fifth grade of that community. Other things that are happening in Elkhorn, we are seeing a rash of burglaries that we didn't see in the ten years that I was present as administrator. I had nothing to do with that but we had a law enforcement that was much more immediate and much more responsive than what we have today, and there has been a rash that has not been addressed at this point in time. Another point to be made, is that we now have our walking trails cleaned on the day of a snow when it takes two days to three days later to get our residential streets cleaned. That's because the bureaucracy of Omaha doesn't allow the parks department equipment and manpower to work on the streets. It's two separate departments and they can't work for each other or with each other. Those are some of the obvious things on Elkhorn's part that I think it's worth noting. On this part of Omaha, I would tell you that I think the same issues that Omaha was fighting and working on a year ago, are still in front of them today. I don't believe there's any greater success as a result of that annexation than there would have been if Elkhorn still existed today. A final point to be made is that this bill does not restore Elkhorn. This bill does not do anything for those Elkhorn citizens that lost their right to have their own municipality. This bill prevents the same action being taken against other municipalities in the state of Nebraska whether it is in the metropolitan area or elsewhere. I think it's important to note that what is being asked by Senator Pedersen's bill is not one for the Elkhorn community. That step has been lost and I don't think this bill addresses any chance of restoration of that. This bill is for the balance of the state of Nebraska and the municipalities within it. The only state of Nebraska, according to Omaha's own expert in court, that has a law that allows the takeover of one municipality by another. Thank you, and I'd be glad to answer any questions. [LB971]

SENATOR CORNETT: Seeing none, thank you. [LB971]

DON EIKMEIER: Thank you. [LB971]

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SENATOR CORNETT: Are there any further proponents? Seeing none, we'll move to opponents. [LB971]

ALAN THELEN: (Exhibit 1) Good afternoon, members of the committee, my name is Alan Thelen, A-l-a-n T-h-e-l-e-n. I'm an attorney with the Omaha City Attorney's office and I'm here today representing the city of Omaha in opposition to LB971. What I'm passing out right now is a letter from the Omaha Planning Director, Steve Jensen, who is detailing some of our points in opposition to LB971 and I would urge you to consider those remarks. Mr. Jensen was unable to make it here today and apologized for that, but I'm here taking his place. For many years...I'd just like to make a few remarks, kind of paraphrasing what Mr. Jensen says in his letter. For many years, Nebraska has had relatively flexible annexation statutes. These statutes have enabled cities like Omaha and Lincoln to grow in an orderly and progressive manner. Urban planning experts have told us that Omaha's healthy growth can be attributed, at least in part, to our flexible annexation statutes and we've already heard the uniqueness of those annexation statutes. Those are actually an asset to our state. What those statutes allow us to do, is that they allow us to avoid what we see in cities such as St. Louis, Des Moines, Minneapolis, to some extent Kansas City, where we see a basic city gets hemmed in, unable to grow, is surrounded by competing governmental entities. LB971 would, in fact, promote that type of situation, promote the situation where a basic city would be surrounded by a multitude of competing political subdivisions. So in summary, I'd ask you to consider the points detailed in Mr. Jensen's letter in opposition to LB971 and unless there are any further questions of me, I'd like to thank you for your time. [LB971]

SENATOR CORNETT: Seeing none, thank you. Further opponents? Are there any more opponents to the bill? Seeing none, anyone in a neutral capacity? Seeing none, Dwite, you're welcome to close. [LB971]

SENATOR PEDERSEN: Just a few closing comments. Senator Lathrop asked me, you know, if this was going to be a priority bill. No, it's not my priority bill and I will not see it as a priority bill but passed out of this committee, which I hope you will do, it's a simple enough bill that could be possibly added to any other bill. I would not be trying to skirt around any other behavior but to let you know that up front. I think it's a simple enough bill that it could be amended into many other different places to be heard in the Legislature in the last half, we're about half done, because we'll be going to full day debate within about another week and a half. I want you to consider what I heard on the radio, both last night and this morning, in travel. People on talk shows calling in to complain about not being able to have a word in the new baseball complex that is proposed in Omaha by the mayor and his board. Two different times I've heard, this is just like Elkhorn. We don't get a vote. Consider that, people. What Mr. Eikmeier said about democracy and a vote of the people, Elkhorn didn't get that and they're not going to get it in the future. But there are a lot of other little towns and kid you not, we already

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know that there's been a bill introduced that this committee will hear about crossing county lines. It will be no more than cross the county lines, and then there will be bills in this committee about raising it from 10,000 people to 50,000 people to 150,000 people, whatever they need to take in the other cities. There's got to be a stop to it, people. And this is a simple, simple way to do it. Thank you. If there are any questions, I'd try to answer them for you. [LB971]

SENATOR CORNETT: Seeing none, Dwite, I think you have the next bill. [LB971]

SENATOR PEDERSEN: Thank you. Into a different hat here and a different area. My name is Dwite Pedersen. I thank you, committee members, for hearing me today in introducing to you LB1117, LB1117 deals with homeowners' associations within sanitary and improvement districts "SID's." It provides that each SID must provide information to the county listing the annual amount of any fees, dues or charges owing to a homeowners' association when membership is mandatory for all property owners in the SID. And the association holds title to and is financially responsible for the upkeep and maintenance of any real and personal property in the district. The bill provides that in any such sanitary and improvement district the voting rights shall be allocated on a uniform basis such as the lot area, front footage and a similar determinable standard and that any dues, fees or charges owed by the homeowners' association shall also be calculated on a uniform basis. The intent of the bill is to ensure that property owners who are forced to be a part of a homeowners' association, have voting rights and shall pay fees that are allocated uniformly among all property owners including the homeowners' association if it holds property in the sanitary and improvement district. The idea for this bill was brought to me by one of my constituents, Mr. Roberts, who is here today to testify on the bill. He will be better able to articulate the reasons why such a bill is wanted, and will be able to give the example, so what is currently going on and that would necessitate a change in the law. If you have any questions for me, I'd be more than glad to answer them but Mr. Roberts would probably be better able to convince you of what is going on than I. Thank you. [LB1117]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you, Dwite. [LB1117]

SENATOR PEDERSEN: I will not be closing on this one. I want to sit around for a little bit and listen to Mr. Roberts but I have a bill in another committee. [LB1117]

SENATOR CORNETT: Okay. [LB1117]

JON ROBERTS: My name is Jon Roberts, J-o-n R-o-b-e-r-t-s. I live in Omaha, Nebraska, at 18711 Howe Street, and I am here in support of LB1117. The following is based on several situations that I feel are unfair, unethical and even illegal. In corporation issues and covenants at homeowners meetings, we were incorporated on

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or about September 24, 2003, and we had our first homeowners meeting on January 17, 2006, well over two years, after several of us homeowners had a meeting among ourselves first. According to the bylaws of page 1, section 1, annual meetings, the first annual meeting of the members shall be held within one year from the date of the incorporation of the association and each subsequent regular annual meetings of the members shall be held on the same day of the same month of each year thereafter at the hour of 7:00 p.m. or at such other date and time as determined by the board of directors. I find it very unethical that the following occurred. Consent of incorporation in lieu of an organizational meeting. Of the three directors, two of them of which were developers, one of the directors sent me a letter dated March 22, 2005, stating, as to this date, I have no information on or if there has been an SID or homeowners meeting. Since I am not on the board, I would not be informed. This person was a director and vice president of the association and did not even know it. Even though three members were supposedly meeting, one person did not even know she was a member and therefore did not attend any meetings. Before the first publicized meeting on January 17, 2006, the homeowners sent a list of questions to be addressed. At the meeting, the questions were never acknowledged and their attorney told us that the concerns could not and would not be addressed. This attorney was somebody that was hired by the developer to represent the homeowners but only the homeowners were paying dues. In other words, only, the fees were coming to the attorney from the homeowners, not the developer. Voting classes. At the January 17, 2006, homeowners meeting the voting classes discrepancy was discussed. The discrepancy involves wording in the article 7 of the articles of incorporation voting rights versus the declaration of covenants. The articles of incorporation states that they have three votes for every lot owned and the homeowners' association will be turned on or over on June 1, 2010, or sooner at their discretion. However, the declaration of covenants states on page 8, that they will have seven votes for each lot owned and that the homeowners' association will be turned on or turned over on June 1, 2012, or sooner, or at their discretion. We were told that this discrepancy does not make any difference because it would just be amended. On a related note, LB681, approved by the Governor in April 12, 1996, the Nebraska Nonprofit Corporation Act, page 11, Nebraska Revised Statute 21-1938 with regard to the admission of members, the articles or bylaws may establish criteria for procedures for admission to members. B. No persons shall be admitted as a member without his or her consent. Homeowners dues. I called the development company before closing on my residence on July 26, 2004, because the information on the annual assessment for each lot was left blank. I was told that the assessment was \$500 per lot at the time but the assessments were going to be lowered at the next meeting. My understanding is that there was a meeting but the assessment was lowered only for the homes that do not back up to green space for a water feature. All homeowners assessments are not the same. The green space behind my house is SID property and it's maintained by the SID. I am being double-billed or taxed twice for the same service and I feel that they are profiting as a result of this. The first amendment to the protective covenants. The protective covenants were amended on July 8, 2005. I moved in in July 26, 2004. At

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that time there was no disclosure of any decorating street lights issue. Street lights became an issue when we found out, we knew that our homeowners dues were very high. We wanted to know where the money was going. We couldn't get that information so we had to hire an attorney. Actually 23 people signed on the dotted line to retain the services of an attorney so we could get that information. We should have, by law, been able to get the information at the development company office at normal business hours and as you can see from my earlier testimony, that when I asked for the information when I got a response back from the director they didn't know about the SID, you know, meetings or who was on the board. It was one of the directors. Okay, so anyway, the street lights became an issue for the homeowners who discovered that the lights had been upgraded and the homeowners were going to be held accountable for the costs. We were told that according to the law by their attorney, the homeowners had to pay for the upgraded decorated street lights which they apparently forgot to include in the SID. The covenants in the articles of incorporation are one-sided in favor of the developer. The developer and the builders do not pay any homeowners dues on the lots they own. Only the homeowners that are moved in. The developers and builders do not pay any upkeep for maintenance on the lots they own. The developer has all the voting power. They have seven votes to our one or three to our one, whatever. They can change the bylaws and covenants at will and require the homeowners to abide by their rules. [LB1117]

SENATOR CORNETT: Mr. Roberts, if you have quite a bit of written testimony, why don't you just leave a copy of that with the committee instead of reading it to us and just tell us what you basically want, because we're more than happy to read that. [LB1117]

JON ROBERTS: Okay. [LB1117]

SENATOR CORNETT: We don't have...we have limited amount of time so just sitting and reading is probably not the best idea. [LB1117]

JON ROBERTS: Okay. They told me to try to keep it under seven minutes. The information that I have is only about a fourth here. It's overwhelming and the bottom line, what the people want is this, they don't mind paying homeowners dues. They do mind not knowing about it, that it's not disclosed and it's easy for everybody to point their finger at everybody but the bottom line is, the homeowners are the only ones paying. The developer and the builders are not paying, okay? [LB1117]

SENATOR CORNETT: That's perfect. That's what we were looking for in the way of testimony. [LB1117]

JON ROBERTS: Okay. So they don't know about it, the dues are excessive. The reason they're excessive is because the developer isn't paying, okay. Also they want everybody to pay the same. Now I know that there's an awful lot of things have happened. It's

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overwhelming. We have come to grips of addressing several of the situations which is good but the problem is, when you go through the material that I'll leave here, you'll even find that we've got three big things that are very expensive. They've hired a management company. It cost us \$1,000 a month, \$12,000 a year. Well, when there's not that many homes, that eats up an awful lot of it, okay? Then we've got electricity and the maintenance, you know, of the area which is another big concern. And its expensive and we've had eight promissory notes of over \$160,000. They were finally forgiven but they shouldn't have to be forgiven because I moved in in July of 2004 and they decide to, that they needed more money a year later so they come up and they make a promissory note. We couldn't even get the promissory notes. Our attorney got them. I went with him to the attorney's office and we got them, spent, you know, some time and several pages getting it documented. We had to send demand letters. We sent, I think, two or three of them and the information wasn't quite as forthcoming. We're doing a lot better but we just want to be on level ground. Okay. Are there any questions I can answer for you folks? [LB1117]

SENATOR CORNETT: Okay. Thank you very much. [LB1117]

SENATOR LATHROP: Yeah, what subdivision are you talking about? [LB1117]

JON ROBERTS: It's West Bay Springs. I believe the subdivision is, I think it's 485. [LB1117]

SENATOR LATHROP: Okay, and that's in... [LB1117]

JON ROBERTS: It's in Omaha, Nebraska. [LB1117]

SENATOR LATHROP: In Douglas County. Okay. I think we got the idea. [LB1117]

JON ROBERTS: We just want it to be fair. [LB1117]

SENATOR CORNETT: And we don't...and since it's such a large volume of material, I'm not going to have the page copy it but if you leave one copy with us, then I will...Beth, will make sure that the committee has that available. [LB1117]

JON ROBERTS: Okay. All right, thank you very much for your time. [LB1117]

SENATOR CORNETT: Thank you very much. Any proponents? Are there any proponents to the bill? [LB1117]

ELOISE SHUEMAKE: Just that... [LB1117]

SENATOR CORNETT: Ma'am, you have to come up, and you'll need to spell your

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name for the record, please. [LB1117]

ELOISE SHUEMAKE: I'm Eloise Shuemake, S-h-u-e-m-a-k-e. I live at 3816 South 187th Street and I just want to cosign what Jon just said. A lot of those things, all of those things did go on and what we really are looking for is equity. Equal voting power, equal understanding, equal knowledge of what's going on. You know, if we just have that then we could do fine because then we'll know where the money's going, where it's, you know, and we have a chance to vote. [LB1117]

SENATOR CORNETT: And you have some say in the matter. [LB1117]

ELOISE SHUEMAKE: And that's basically what we want. [LB1117]

SENATOR CORNETT: Thank you very much. Are there any questions from the committee? Seeing none, thank you very much. [LB1117]

ELOISE SHUEMAKE: You're welcome. [LB1117]

SENATOR CORNETT: Are there any further proponents? Are there any opponents to the bill? [LB1117]

AIMEE HALEY: Good afternoon, members of the committee, Aimee Haley, A-i-m-e-e H-a-l-e-y, on behalf of Eastern Nebraska Development Council in opposition to LB1117. First, there are several reasons for our opposition and let me go back, I'm sorry. Eastern Nebraska Development Council is made up of developers, builders and financiers of urban neighborhoods in Omaha that include sanitary and improvement districts. First, with respect to the disclosure aspect of this bill, it isn't a bill that has an SID statute being amended to place an obligation on the SID, which is a public entity to disclose private entities responsibilities, which is a homeowners' association is a separate entity, separate and apart from an SID. And we don't believe it's appropriate to have the disclosure be placed on the SID's back, so to speak. It would be more appropriate to have it be a lot seller, where the homeowners' association itself make the disclosure instead of using public monies for a private purpose. Second, this bill also singles out homeowners' associations with an SIDs instead of all mandatory homeowners' associations statewide. Homeowners' associations in Lincoln typically don't have SIDs. They're typically created by covenants, a developer has a neighborhood, he's not using an SID for public financing, yet there's still a mandatory homeowners' association. So we believe that this bill also has an issue there. Third, with respect to requiring uniform dues and voting structure. This is contrary to the Nebraska Nonprofit Corporation Act which specifically allows in 21-1941 for the articles or the bylaws to provide for different classes of voting and for different rights and obligations of members. Part of the theory behind the difference in a voting structure, when you're dealing with a mandatory homeowners' association, is to ensure for the orderly development, to ensure for the

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developers ideas of the neighborhood to be carried through, so that he's able to sell lots and increase the tax base for SID purposes and for property values. There could be situations where, if you don't have that type orderly development where it affects not only the property values of the developers lots, but everyone else's in that subdivision. With respect to uniform dues, as Mr. Roberts testified, there could be situations where you have, for example, a lot that abuts an amenity that another lot doesn't get the benefit of because they have no access to. Because you can have situations where lots surround an amenity and there's not public access to it. So there may be basis for having different types of dues in that instance. With respect to a townhome owners association. Standing Bear Village in Omaha on 144th Street between Fort and Ida is an example. It involves townhome lots where they provide sprinkler system maintenance, snow removal, mowing and other maintenance. To have uniform dues, where vacant lots are paying the same, wouldn't make any sense. It would mean that the vacant lots would be bearing some of the burden for the built upon lots. So having a situation where you have nonuniform dues, in that instance, would make sense. In addition, for vacant lots owned by a developer, where in some cases developers don't pay, they exempt themselves in other cases. Some developers do pay. If you have a requirement that you have uniform dues based on all lots, the dues that the developer pays would likely just be passed on in the form of an increased lot price which then could possibly stagnate the development, make it less likely that people would want to buy lots. We don't have any problem with disclosure of the dues structure and the voting rights. In fact, they already are disclosed in the covenants that are recorded against the property before the lot owners purchase a lot. These aren't situations where the lot owners are forced to become members. These are situations where the lot owners voluntarily agree to become members according to the contract documents that are involved in their lot purchase, which would include the covenants that state, as an owner of the lot, you agree to become a member. So this isn't a situation where it's being forced upon them in a nonvoluntary way. The other issue is, using the SID statute to put an information on disclosure of HOA dues and dealing with uniformity of dues or voting rights, would add to the confusion that many homeowners now have between what an SID is and what it's obligations are, and what a homeowners' association is and what it's obligations are. In my experience, I have dealt with homeowners who have called thinking the SID can enforce covenants, can do maintenance on private lots, that type of thing. And this would just serve to create additional confusion. We believe that the covenants of record currently which require that you state what the voting rights would be, the Nebraska Nonprofit Corporation Act requires that you state if there's going to be different voting rights. The articles which are of record with the Nebraska Secretary of State also disclose that. We think there are certain disclosures that are already made. If there's a disclosure in addition to these that are required, we don't think adding it to the SID statement, which is recorded with the Register of Deeds, would do anything different than the disclosures that are out there now, and we respectfully oppose this bill. I'm available for any questions you may have. [LB1117]

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SENATOR CORNETT: Seeing none, thank you. [LB1117]

AIMEE HALEY: Thank you. [LB1117]

SENATOR CORNETT: Further opposition? Is there anyone else in the opponent position wishing to speak? Is there anyone in the neutral capacity? The hearing on LB1117 is closed. That brings us to LB1168, LB1166, pardon me. Senator Nelson. Senator Nelson, you are recognized to open. [LB1117]

SENATOR NELSON: (Exhibit 2) Thank you, Madam Vice Chairman and members of the Urban Affairs Committee. For the record, my name is John Nelson, J-o-h-n N-e-l-s-o-n. I'm a state senator representing District 6 and I'm here today to introduce LB1166. I would like to begin by thanking Mayor Tim Gilligan and all the Sarpy County mayors for the civil discussion over the past two months. Gretna is the fastest growing community in Nebraska due in part to the forward thinking of Mayor Gilligan. Mayor Gilligan and I met recently to discuss LB1166 and it's possible affects. Despite the high emotion of this subject matter, Mayor Gilligan was friendly and courteous and I look forward to further discussions with him on annexation and the development of the metropolitan area. Before describing LB1166 what it is, I would like to discuss what LB1166 is not. LB1166 is not an effort by the city of Omaha to take over Sarpy County. Prior to drafting LB1166, I had not spoken to Mayor Mike Fahey, any member of the Omaha City Council or any representative of the city of Omaha. To my knowledge, the city of Omaha has no plans to annex any area in Sarpy County. LB1166 was introduced to clarify an ambiguous statute. Section 14-117 grants cities of the metropolitan class the authority to extend it's own corporate boundaries. To quote a portion of that statute, the city of any metropolitan class city may at any time extend the corporate limits of such city over any lands, lots, tracks, street or highway such distance as may be deemed proper in any direction. Neither this statute, nor any other, explicitly prohibits cities of the metropolitan class from annexing across county lines. In 1966 the Nebraska Supreme Court ruled in Barton vs. the City of Omaha that because the statutes do not explicitly permit annexations across county lines, the city of Omaha could not annex portions of Sarpy County. However, the court also maintained that statutes do authorize a scenario whereby a city could annex portions of another county. For example, a village situated in two or more counties may annex territory in still another county. The court further ruled that a city of the metropolitan class could annex such a village and exert power over that land, which is in a foreign county. Accordingly, there is a precedent in Nebraska for annexation across county lines. The benefits of annexation have been felt across the country. At this time 42 states allow annexation in some form. Of those, only four prohibit annexation across county lines with one prohibiting annexation across time zones. The push for more open annexation laws is a nationwide effort. I have distributed an article from a South Carolinian publication. The authors discuss the problems of restrictive annexation policies and some of the benefits of more proactive annexation laws. An example of the appropriate use of annexation is

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occurring in Albuquerque, New Mexico. So called, white flight or fragmentation has endangered the core of Albuquerque. In response to the changing area dynamics, Albuquerque aggressively annexed its suburban areas. By preventing the development of geo-political boundaries, annexation precludes subregional populations from cutting off the tax base of the expanding metropolitan area from the older core city. Consequently, Albuquerque does not suffer from the severe fiscal disparities that plague many central cities in the United States, and is able to avoid the conundrum that arises when poor central city residents pay disproportionately high taxes to fund inadequate public services. I have attached an article from the New York Times detailing additional problems existing due to the lack of annexation. Clearly, annexation can be a positive tool for building communities, and I recommend both of those publications that I've distributed for your reading. The metropolitan area can also benefit from annexation. Although the issue of annexation has been extremely controversial over the past five years, there are important distinctions between the Elkhorn annexation and what is being proposed in LB1166. First, it's appropriate to note that there is a significant difference between annexing a municipality and annexing unincorporated land. The hostile takeover of a city, as was the case in Elkhorn, results in the termination of jobs for community employees, changes in valued city services, and loss of a sense of community. None of these negative results would occur if LB1166 becomes law. LB1166 is not intended to impact or threaten the municipalities of Sarpy County. Since the cities of Sarpy County are either too big in population or separated by large areas of agricultural lands, which cannot be annexed, it is my belief that the city of Omaha will never be able to annex any of Sarpy's municipalities. I am opposed to Omaha annexing any of Sarpy's cities and can offer an amendment to this bill to ensure that such an annexation will never occur. Often forgotten in the aftermath of the Elkhorn annexation, is that Omaha made an additional annexation in 2007 of over 3,000 people in 800 acres of unincorporated Douglas County. Unlike the Elkhorn annexation, the latest annexation was met with little opposition, with most citizens expressing thanks for reduction in property taxes. It is the 2007 annexation that is most similar to what the future might hold if LB1166 becomes law. Now that we have determined that the cities of Sarpy County are not in danger, let's discuss what area would be available for annexation by Omaha should LB1166 become effective. I have distributed a map of the northwestern portion of Sarpy County. This area, largely bordering Harrison Street to the north, Giles Road to the south, Interstate 80 to the east, and highway 6 to the west, is made up entirely of unincorporated neighborhoods. Thorough research has uncovered that every homeowner in those neighborhoods would see a property tax reduction if annexed by Omaha. Some property tax reductions perhaps exceeding 20 percent. Furthermore, this area is almost entirely within the Millard public school district and the homes in this area already have Omaha mailing addresses through the post office. Simply put, the citizens in this area send their children to school in Omaha, they work in Omaha, they play in Omaha, and largely already consider themselves part of Omaha. The benefits of these citizens will be great with no significant sacrifice. Simple fairness dictates that the city of Omaha should be a

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part of the discussion of the future of these neighborhoods. Senators, I appreciate the opportunity to present this bill. I look forward to continuing the constructive dialog that has occurred over the past few months. The development of the metropolitan area is a serious issue that deserves thoughtful and practical consideration. Thank you for your time, and I'm open to any questions that you may have. [LB1166]

SENATOR FRIEND: Thank you, Senator Nelson, and thank you, Senator Cornett, for chairing the committee and Senator Cornett had a question. [LB1166]

SENATOR CORNETT: Senator Nelson, you are putting forth the idea that because the children go to a Millard school district, which is in Omaha, that they should be residents of the city of Omaha, am I correct? [LB1166]

SENATOR NELSON: I am suggesting... [LB1166]

SENATOR CORNETT: And that they have an Omaha mailing address? [LB1166]

SENATOR NELSON: They have mailing addresses. Yes, I am suggesting that they consider themselves part of Omaha right now and probably would be amenable to annexation if that ever occurred. [LB1166]

SENATOR CORNETT: So would you propose that we should introduce legislation like we have in the past that is opened up a whole can of worms on the school district boundary issue? There are five separate school districts in the city of Bellevue alone. Should we just make those all Bellevue? [LB1166]

SENATOR NELSON: Well, Omaha extends into Bellevue, does it not, the Omaha school district? [LB1166]

SENATOR CORNETT: Two schools. Yes. [LB1166]

SENATOR NELSON: Yes, okay. And it... [LB1166]

SENATOR CORNETT: Should we just take those schools then from Omaha? Omaha's getting that property tax. [LB1166]

SENATOR NELSON: You're just saying taking those districts away from Omaha and making them part of Bellevue? [LB1166]

SENATOR CORNETT: Uh-huh. Bellevue. If you're talking about one city, one school, one...basically, that's the reverse argument you have here. [LB1166]

SENATOR NELSON: That could be a reverse argument but that's not what I'm

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proposing here. I don't see why there would be... [LB1166]

SENATOR CORNETT: But you're using the school districts as a reason to do this. [LB1166]

SENATOR NELSON: Well, I'm just showing that they already go across a line. Would you suggest the same thing for MUD? That goes across county lines, Senator. [LB1166]

SENATOR CORNETT: Uh-hum. Postal districts were drawn before the cities were. We have Omaha postal districts in Bellevue. I mean a good section of Bellevue is Omaha for mailing address. [LB1166]

SENATOR NELSON: These were circumstances that exist and... [LB1166]

SENATOR CORNETT: And since they exist, that's a reason to change the law? Wouldn't it be better just to change the postal district? [LB1166]

SENATOR NELSON: I really don't think this has anything to do with that. We're just talking about extending the metropolitan city beyond county lines. [LB1166]

SENATOR CORNETT: Based on reasons that since their children go to school there, that's a reason to make it part of it? [LB1166]

SENATOR NELSON: No. No, that's not the reason. The reason is, not boxing a metropolitan city in and having it stagnate. I'm not saying that it would ever be necessary to come across the line into Sarpy County but if it ever does become necessary, then a metropolitan city ought to be able to do that regardless of where the school districts extend, what the post office districts are. [LB1166]

SENATOR CORNETT: So then you'd be taking a tax base away from one county to give to another besides the land. [LB1166]

SENATOR NELSON: That's true. [LB1166]

SENATOR CORNETT: And so basically you're cutting off one county in favor of another one. [LB1166]

SENATOR NELSON: I don't look at it as cutting off the county. I look at it as allowing a larger entity to bring people in that would like to come in. [LB1166]

SENATOR CORNETT: So you've done a survey or poll of the people in this area that say they'd like to be part of the city of Omaha? [LB1166]

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SENATOR NELSON: No survey, but I have had e-mails from people that consider themselves part of Omaha and I don't believe I've had any objections from that unincorporated area at all. [LB1166]

SENATOR CORNETT: Well, I have probably as many e-mails objecting to it, but thank you. [LB1166]

SENATOR NELSON.: All right. [LB1166]

SENATOR FRIEND: We'll sing "Cum-ba-yah" later for you two. (Laughter) They are friends by the way, it's not... [LB1166]

SENATOR CORNETT: I was going to say when it comes to this bill I don't think there's going to be any "Cum-ba-yah." [LB1166]

SENATOR FRIEND: Are there any other further questions from committee members? Senator Nelson, real quickly. I'm sorry I missed the majority of your opening but I did read the bill a couple of days ago. One thing that's always...I've never really got a great answer to this because I remember when the whole situation happened with Elkhorn, I mean, with the idea that Omaha needs room to grow. Do you think that, I mean, is it your philosophy, and I'm asking you for kind of a high level feeling about this, philosophically, I mean, do you think a city could actually from a geographic standpoint get too big to service what it needs to service? Does it depend on the city? Does it depend on how efficient the city operates? I mean, would it...you and I have never really talked about that but I almost want your feedback on that. [LB1166]

SENATOR NELSON: Yes, in answer, Senator Friend, I think perhaps cities can get too big but I certainly don't think Omaha is too big at the present time. It's a fairly small city in comparison with L.A. and New York and Boston, places like that. And where they have been able to expand over large areas, so far as I know, the amenities that they provide and the services have not suffered. [LB1166]

SENATOR FRIEND: Well, and it's interesting that you bring that up. I feel that when you talk about what the city is supposed to provide, and I'd like your reaction to this after I say it, when you talk about what a city is supposed to provide or what the state statutorily argues that the city should provide for its citizens, you know, the EMS services, the type of things that folks depend on for the city to provide, the garbage pickup, the keep the streets clean. I would argue that we're almost geographically pushing it right now with the addition of Elkhorn. Is it really important that something like this is...let me just say it. Is it really important for something like this to happen because Omaha's really that boxed in. I mean, I don't know that we can provide what we, you know, for what we have but now you bring us a bill that would expand that statutory authority and I've seen Omaha's actions in the past and I'm not really sure...I'm not

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saying that what they were wrong. What I'm saying is, it's going to stretch. It's going to push the envelope on what they can provide. You're reaction I guess to that. [LB1166]

SENATOR NELSON: Do you have a copy of the map that was distributed? It's not a very large area. There are, I think, 31 SIDs or something like that. That's basically in my testimony or in my presentation what I presented, saying Senator, that none of the cities in Sarpy County are in any danger in any way. Gretna is far enough away. For instance, there are agricultural lands that cannot be annexed in between and they will undoubtedly reach 10,000 before this ever happens. So we're talking about some unincorporated areas at the most right south of Harrison Street which exists right now and as I said, consider themselves part of Omaha. I don't think, if Omaha in the future felt that they needed to expand, if they were so boxed in, I don't think it would unduly hinder or that it would result in overextension of the services that they provide in any way. I'm just saying that I don't think...and let me stress that, as I said earlier, no one in the city of Omaha from the mayor on down contacted me about this or suggested that I do this. This is just an effort in taking a look at the statute and kind of brought on a little bit about the ELkhorn annexation, that it seemed to me that now might be a good time to try and let the Legislature determine rather than our court as to whether it was possible for a metropolitan city to annex across county lines. And if the committee should see fit to forward to the floor of the Legislature, we can have a good discussion there as a matter of policy as to whether we should clarify that statute and either provide, yes, they can for the good of the whole community and for the metropolitan area and its development or whether they should not. I look at St. Louis, which is a great example of a stagnating city, because they can't go beyond their present lines. [LB1166]

SENATOR FRIEND: Thank you, Senator. Any further questions from committee members? Thank you, Senator Nelson. [LB1166]

SENATOR NELSON: Thank you. [LB1166]

SENATOR FRIEND: Can I see a quick...and I'm sorry I missed your opening. Can I see a show of hands of the proponents, please? Can I see a show of hands of opponents? Okay. If we could kind of work our way toward the front and try not to repeat what anybody else says, we can get started. Again, one more call for proponents. I see no proponents. Opponents. We'll start with them. [LB1166]

JAMES BLINN: Good afternoon, Mr. Chairman and Senators, my name is James Blinn, B-I-i-n-n. I am the mayor of the city of Papillion. I'll begin by apologizing. I had my very best suit jacket that I left in my office and so I'm still wearing my coat from the outside here so but I hope that you'll take it on my word that it was going to be my best jacket because this is so important to us so. (Laughter) I am here on behalf of the United Cities of Sarpy County and the city of Papillion. The United Cities of Sarpy County is a group

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of five cities that have decided to start working together. We've always worked together in an unofficial capacity but began working together to work on issues amongst ourselves, and then soon we realized that we really should develop a voice down in the Legislature as well, though that wasn't the original intent of our group working together. And we have a substantial amount of interlocal agreements amongst each other. Those include Bellevue, Papillion, LaVista, Gretna and Springfield and I'll tell you, I will try to be brief with my remarks but in consideration of those, I hope that you'll grant me just a little bit of time based on the fact that I'm testifying on behalf of all of those cities. I'll note that the mayor of Gretna, Mayor Gilligan is here, but I don't think he intends on testifying unless I actually miss something so I'm really testifying on behalf of a large group with my testimony here today. I took a couple of notes and so I may move out of order here for a little bit but let me start off by, there's sometimes there's a misconception about these cities in Sarpy County and how they began formation and the fact that, you know, Omaha sprouted up and then as a result of that, some suburbs kicked off and I'll just note that I think Omaha celebrated its 150 birthday celebration a couple of years ago. Well, Papillion is 141 years old and was a good days ride away from Omaha when it formed. Gretna is 125 years old and was probably two days ride away from Omaha when it formed and Bellevue is at least 140 years old. I think it's older than Papillion but I don't have that number in front of me here and I don't know the dates of the other cities but I can tell you that these are cities that have been in existence and have a base and have been growing, and Omaha grew and these cities are growing and frankly our cities were probably the size of what Omaha was at one date and time. So, you know, I just want to set the stage as to what we're talking about here. You know, a couple of comments, I guess. First of all, I appreciate Senator Nelson meeting with our group. He certainly was cordial in the discussion and we appreciated his kind words about Mayor Gilligan as well, and I certainly will be cordial in my discussion and points. I want to start off by responding to a couple of his points. I think, that he cited L.A. and New York and Boston as prime examples and I think you'd be hard pressed to find people living in my neck of the woods that would aspire to be L.A., New York or Boston both in the level of delivery of services, crime rate, symptoms that go along with that, and so, you know, the people that have chosen to live in our area of Nebraska have chosen there for specific reasons. I'll note that one of the reasons that Senator Nelson offered for introducing this bill is that he felt the law was ambiguous. Well, I'll also note that he indicated that from 1960 the law has been clear and decided, that Omaha cannot annex across county lines. And so any action that the Legislature or the committee takes to change that law won't be clearing up any ambiguities that exist. It will be an actual change in the law that is occurring. And he cited several studies and I don't doubt that there are studies that show that there are in certain circumstances there are probably, there is some advantage to annexation and I am sure that if we search the country, there will be certain circumstances where it shows that cities developing and having representation of smaller groups is more advantageous for their citizens. I'm sure you see study after study as members of the Legislature. I know we do in our city as well and there is a study for everything, I guess. I can tell you that, you know, he indicated that the people

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of this area consider themselves part of Omaha and I don't have a study that shows what the people in that area consider themselves of but when I read the article in the World-Herald that came out the day after this was introduced, saw a comment of someone that lived in Chalco Hills, the area that's exactly being talked about here and I certainly didn't pick that person. But that person said they consider themselves part of either LaVista, Papillion or Gretna, but not Omaha. They consider themselves part of Sarpy County and potentially one of the cities in Sarpy County and that's certainly not a knock on Omaha. They are plenty of people that live in Omaha and people that move from Papillion to Omaha and people that move from Omaha to Papillion and they made a decision to do that and for whatever purpose that is. I would just note that, you know, whether Omaha annexes a subdivision or Papillion does or LaVista does, the subdivision almost always sees a tax reduction frankly, and so the fact that the taxes will go down for that subdivision is a little bit of a red herring because Papillion can annex that subdivision and the taxes will go down. In fact, they'll go down more than if Omaha annexes the subdivision and LaVista can certainly annex it. And so that shouldn't be a factor that really comes into consideration. Those subdivisions want to be annexed and frankly, they want to be annexed by cities around them because it does offer reduction in taxes and it offers an improvement in services typically. You know, Sarpy County has almost 150,000 residents. Over 100,000 of those residents live in one of the five cities in Sarpy County and so this is a 100,000 citizens living in cities that have decided that they live in communities that have been planned and designed and governed by one of these five cities with the anticipation of these five cities properly growing out from each other, and providing their services based in a center hub and growing out from there. And so, you know, really all the 140 years worth of growth and the designing that's been going on, and the particular attention we've paid to planning has been with the intent of these cities all growing out, and frankly we have an annexation agreement with Bellevue, Papillion does. We have an annexation agreement with LaVista, meaning how far we would annex out so that there isn't any type of argument over annexation areas and I know that Gretna and LaVista have entered into an agreement. We've had discussions with Gretna and I'm confident we'll reach an agreement and also with Springfield and I'm sure Gretna and Springfield will at some point. We get along great in Sarpy County working with each other in developing those boundary lines. You know, and it's also, you know, there's always talk about the providing of services out in Omaha and I don't have any doubt that, you know, Omaha has benefited frankly from Sarpy County. You know, there's probably the reverse is true. There's probably some jobs that are created that if those jobs didn't exist, the populations probably would not be quite as high but I'll tell you that, frankly I can list half a dozen different ways that taxes are delivered out in Omaha. An ideal city from a tax purpose, if it only existed of businesses and had no residents, that would be from a tax government purpose the ideal city. Because businesses bring in far more in taxes than they cost in services. Residents cost more in services than they deliver in taxes, and so it's the mix of those business and residences that actually make up a tax base that's in between. And so, I'll note we did a study in the city of Papillion where 50 percent of the

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spending that goes on by Papillion residents five years ago, 50 percent of that was occurring in a city outside of Papillion. That was other cities, Omaha being one of them, I am sure, that was benefiting from the residents living in the city of Papillion. You know, fees that are paid when people in Sarpy County attend other events. Services...the services that are provided to our citizens we don't have that sales tax that's being lost to other cities to provide those services. There's also property taxes on the businesses that are in Douglas County and in Omaha and certainly Omaha benefits from those property taxes as well. There's occupation taxes on the phone lines that those businesses have, and occupation taxes on the utilities. So it's...it really is unfair and I think the question gets shifted off center when you talk about the fact that, you know, Sarpy County or Papillion or any city has benefited from Omaha. Omaha frankly benefits as much from us being there as the reverse, maybe more so. And so I would say that don't let the question get off center as to who benefits who more. I think we should look at the fact that these are growing cities and areas that are going to develop, and have a self determination going forward and there's not a need to change a law that's been in place well over 40 years that prohibits that type of annexation. Certainly the...allowing this law has a couple of things that need to be looked at. Unanticipated consequences, I guess, based on Senator Nelson's testimony. One thing he didn't discuss is that it would immediately expand Omaha's planning jurisdiction three miles into Sarpy County. If they annex a foot across the county border their ability to extend their zoning jurisdiction would extend at that point three miles into Sarpy County and certainly start affecting the determination and the growth of the cities that already have planning in place for these areas. The cities of Gretna and Springfield clearly would be exposed, you know, to annexation being under 10,000 residents, and so I think that they would feel much more comfortable in the situation with the law as it is today than crossing. And certainly, Papillion, Bellevue and LaVista, being over 10,000, are not in immediate risk for annexation of the city core but there are people that live in our SIDs that consider themselves part of Papillion, part of LaVista, part of Bellevue. They clearly are at risk of being annexed immediately. In addition, at that point, cities being boxed in. Papillion could be boxed in. LaVista could be boxed in. Bellevue could be boxed in and so we're certainly at far bigger risk of being boxed in than Omaha is based on the size of growth in Douglas County. And I just want to be clear. We don't have any animosity towards Omaha. We work with Omaha on a lot of issues and frankly I think that I attend a lot of events in Omaha and Mayor Fahey, frankly, has come down and attended some events in our area, and we get along great and have a good working relationship so far and I'd hate to upset that with something that goes along these lines. Finally, I'll show you how economic development benefits from the current situation. If you look, and this isn't bragging about Papillion. This is LaVista, a city just next to us. For a long time, there was discussion about an economic incentive bill that needed to be brought in to capture Cabela's in our area and that economic or that bill didn't end up passing in the Legislature but I'll tell you, LaVista went forth and they did get Cabela's and that saved the state money having to put forth to get that Cabela's to build in that area. They built a convention center that I can, you know, that proper planning, I guess, from Omaha's

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perspective would be in there and they would be encouraging growth at the Qwest and you know, they're having discussions about a stadium. It doesn't seem to me a priority would be this convention center that got built and will now result in economic development. Paypal, Embassy Suites, Hampton Inn has certainly developed in that area. I think LaVista has shown a ripe example or prime example of the type of growth and economic development that is fostered by this current relationship. In addition to that, there are developments that have occurred in Papillion that I can certainly cite from retail to economic in our business development park and Bellevue certainly has things they can talk about that have grown in their area from Ameritrade to other type of organizations. So I think the economic development is actually encouraged by this type of relationship that we have right now. You know, I'm going to...you know, people chose to live in our area because that's where they wanted to live and the people in Omaha want to live in Omaha. We don't have any beef with them wanting to live in Omaha and I hope they don't have any argument with us wanting to live, at least now, where we want to live. You know, if we want to change our mind, we can move and if they want to change their mind, they can certainly move. There's no need to force it upon anybody at this point in time. I'll close by saying, let me be clear, the law has been clear for 40 years now by Senator Nelson's testimony. There is no ambiguity. The law has been clear for 40 years now as to what it is. There's no need to change that law at this point in time. Now, I would certainly be willing to answer any questions. I apologize if I went very long but I hope I provided information on behalf of all the cities and I certainly apologize if I left anybody out. [LB1166]

SENATOR FRIEND: Thank you, Mayor Blinn. You were close, let's put it that way. (Laughter) [LB1166]

JAMES BLINN: Thank you. [LB1166]

SENATOR FRIEND: But are there questions from committee members? I don't see any. Thank you. [LB1166]

JAMES BLINN: Thank you for your time. [LB1166]

SENATOR FRIEND: Next opponent. Mayor Blinn got ten minutes. I'm not going to give everybody else ten minutes. And next time, he won't. (Laughter) [LB1166]

LYNN REX: Senator Friend, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities and Rex is spelled R-e-x. We strongly oppose LB1166. Our League executive board voted unanimously to oppose this measure. We are 15 members and of those 15 member elected board, Mayor Fahey is a member of that. He was unable to participate on that telephone conference call but he did want the members of the executive board that date to understand that he does not support this legislation and in fact, opposes it. We want in addition to the

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hundreds of members that we do represent, we've had discussions about this type of legislation over a period of years although it did not have this bill number attached to it. And there is no support in our membership for this type of legislation. I don't think there's a compelling reason to change the law. The law is clear that Omaha cannot annex across county lines and that is due to a court case, a 1966 court case. I'd be happy to respond to any questions that you have. I think Mayor Blinn has done an excellent job outlining the compelling reasons and the damage that this type of bill could do. We do think it could have an impact on Sarpy County cities. I was very pleased to hear Senator Nelson indicate that he does not believe that it would and he'd be supportive of amendment to make that clear. We think that amendment would not be necessary if this committee would be prepared to kill the bill, and we urge you to do so. I'd be happy to respond to any questions that you might have. [LB1166]

SENATOR FRIEND: Thank you, Ms. Rex. Questions? I don't see any. [LB1166]

LYNN REX: (Exhibit 3) For the record, I did want to indicate, Senator Friend, that I passed around a letter from the Nebraska State Volunteer Firefighter's Association and they wanted to make sure that you were aware that they strongly oppose this measure as well. [LB1166]

SENATOR FRIEND: I was going to read that in at the end, but thank you. [LB1166]

LYNN REX: Thank you. [LB1166]

SENATOR FRIEND: I don't see any. Thanks. Next opponent. [LB1166]

FRED UHE: Senator Friend, members of the Urban Affairs Committee. My name is Fred Uhe, the last name is spelled U-h-e. I'm the deputy county clerk and registered lobbyist for Sarpy County. I will not reiterate some of the previous testimony but Sarpy County is also totally opposed to this legislation and actually, we are probably one of the players in this thing that has the most at stake. The area that Senator Nelson described basically is unincorporated areas, served by our law enforcement, hooked into a sewer line that Sarpy County developed many years ago and the planning, both from our point and the city's point, I think, has been designed for the orderly growth of our cities. We've made investments to Giles Road, the aforementioned sewer, and we've worked cooperatively, most of the time, with our cities to ensure the growth of our communities. And in this case, as mentioned, the interlocal between Gretna and LaVista, which I believe is at 168th Street, so a lot of thought has been gone into the fact that LaVista will eventually get part of this area and then eventually Gretna will also. And the counties participated and aware of those discussions and again participating providing law enforcement, which raises an issue on 911 calls dispatching Omaha police officers into Sarpy County. Currently Omaha fire serves part of Sarpy County, those calls are actually transferred to Omaha for dispatch. There's a potential public safety hazard to

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these citizens. If this would occur, the landlines could be rerouted to Douglas County which would negatively impact our 911 collection fees on the landline surcharges. There's a negative impact on motor vehicle taxes, road construction would further suffer in the communities and the counties so I'm just trying to touch on some of the high points. I will tell an antidotal story. Back in 1997, the Millard public schools conducted a bond issue on the same day as the Omaha city elections. We did have a few citizens in Sarpy County wonder why they did not get an Omaha ballot but the vast majority of them understood they do not live in Omaha despite the mailing addresses and such. So I think it been reiterated or stated previously, that people make a decision to live in the communities in Sarpy County for a reason. We've attempted to corroborate and cooperate even with the economic development arm of the Omaha chamber. The county has been a very strong supporter of the Sarpy County economic development corporation and has led to development of firms such as Paypal, Claas, etcetera, come in tune and we think the whole metro area benefits by a spirit of cooperation which would be imperiled by the passage of this legislation. So with that, I'll close and be willing to answer any questions. [LB1166]

SENATOR FRIEND: Thank you, Mr. Uhe. Questions from committee members? I see none. Thanks. Next opponent. [LB1166]

JILL BECKER: Good afternoon, Chairman Friend and members of the Urban Affairs Committee. My name is Jill Becker, B-e-c-k-e-r, and I am the Nebraska government affairs manager for Aquila. I'm here today to speak on behalf of Aquila in opposition to LB1166. Aquila provides natural gas distribution to more than 110 communities in the eastern third of Nebraska and LB1166 proposes to grant authority for a metropolitan city, Omaha, to extend their corporate limits into an adjoining county. One of the unintended consequences that this legislation could result in, is that by granting this authority to Omaha means that MUD will enlarge its service territory as far as the city of Omaha goes, giving it the exclusive right to provide gas service within the corporate boundaries of Omaha. This action would preempt existing negotiated franchise agreements between Aquila and four of the five cities in Sarpy County. Aquila supports the cities and the counties that we serve believing that they have knowledgeable elected officials and professional staff to plan for and lead the communities into the future. They should be able to serve their citizens without concern for intervention from a city in a neighboring county. We encourage the Urban Affairs Committee to not advance LB1166 and I'd be happy to answer any questions. [LB1166]

SENATOR FRIEND: Thank you, Ms. Becker. Questions from committee members? Senator White. [LB1166]

SENATOR WHITE: So expanding MUD would be a bad thing? [LB1166]

JILL BECKER: In our view, yes, Senator, assuming we would lose customers.

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(Laughter) [LB1166]

SENATOR WHITE: Thank you. [LB1166]

JILL BECKER: Thank you. [LB1166]

SENATOR FRIEND: Further questions? I can't believe that you think MUD would...never mind. (Laughter) Thank you for your testimony. [LB1166]

JILL BECKER: Thank you. [LB1166]

SENATOR FRIEND: Next opponent. [LB1166]

REX MOATS: Rex Moats, M-o-a-t-s, 131 South 202nd Street, Elkhorn, Nebraska. I'm here today to speak in opposition to this bill. As I spoke earlier on Senator Pedersen's annexation LB971, I believe that this committee needs to hear some of the information and context and twice today you've heard the cities of Des Moines, St. Louis, Minneapolis, and Kansas City be thrown about and as I testified earlier, there are 150 different metropolitan areas that live peacefully with their suburbs, including San Francisco, Orlando, Oklahoma City, and Dallas and I would offer that for some context as you're looking and evaluating whether or not it makes sense to send this bill to the floor. One other thing I might note is, that the way the annexation statute currently reads in a former look at a geopolitical map of Omaha, what areas are in the Omaha city limits and what areas are outside of the city limits, and specifically those unincorporated areas of those SIDs, you would see that it is quite a patchwork and does not seem orderly at all. Quite honestly, at 132nd and Maple where the Champions Golf Course is at, that is an area that is in the county. It is serviced by the Douglas County sheriff, yet in the, what was formerly the city of Elkhorn at Ta-ha-zouka Park, which is near 212th and West Maple Road, that is an area that is now in the city of Omaha. And I would, you know, respectfully submit that it may make sense to take care of those areas that are, truly are contiguous to the boundaries in the city limits of Omaha prior to wanting to take any more property or land in Sarpy County or any other county for that matter. And with that I would thank the committee. [LB1166]

SENATOR FRIEND: Thank you, Mr. Moats. Questions? Senator Cornett has a question for you. [LB1166]

SENATOR CORNETT: You live in Elkhorn, correct? [LB1166]

REX MOATS: That is correct, Senator Cornett. [LB1166]

SENATOR CORNETT: Since you've been annexed, would you consider your services are better or worse than before the annexation and this brings back Senator Friend's

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question for Senator Nelson earlier? [LB1166]

REX MOATS: Senator Cornett, I would say that without equivocation our services are worse. I mean, our trash pickup is not the same as it was. Our fire and police, the city administrator, former city administrator Eikmeier, commented earlier about the rash of burglaries. We've had...I actually was one of those unfortunate victims that had my car broken into in my driveway as it was parked outside one evening about two months after the annexation was complete, which as many of you are aware, was March 1 of last year. So city services have gone down and perhaps even more important than that is, you know, the sense of community that you had is something that it's hard to measure. It's not necessarily quantifiable but it's the glue that makes the community a community and, you know, we miss that and we're sad to see it go. We would certainly be sad to see it happen to any of our neighbors to the south in Sarpy County. [LB1166]

SENATOR CORNETT: You may not know this but there are actually less police officers working for the Omaha Police Department on the street today than there were when they annexed Elkhorn. Do you see that the number of officers per population is a problem now? [LB1166]

REX MOATS: Well, one of the problems that we have had is visibility. And what I mean by that, and this has been documented ad nauseum, we had a local community based police department. If you left your garage door open, they would come by and they would shut it for you. They were there as traffic control in the morning as kids were going, driving to high school. Not so they could write tickets but so they could be a reminder that you need to slow down. We have tried, I've been one of the community activists that has tried to interact with the Omaha Police Department on that issue. We have sporadic compliance where they'll be out for a while and then you won't see them again in the long-term after that. We recently dealt with an issue this fall in October where, you know, Elkhorn had been on 911 for a period of ten years, yet the city planning in Omaha felt that it was in the best interest of the officers and in the interest of public safety to change the streets of about 2,000 residents out there. Well, that not only inconveniences those residents that were in the city of Elkhorn, every person that they have a bill with or an account with or anything else, I mean, they made the problem worse because now you have situations where there have been documented identify theft because of the dual address system. Bad enough that these people didn't get to vote for their current city councilmen, now they won't be allowed to vote unless they change their registrations, you know, prior to the next election. So to say that we've had some problems with public services and some of the hierarchy of it would be an understatement. [LB1166]

SENATOR CORNETT: Thank you. [LB1166]

SENATOR FRIEND: Further questions? I don't see any. Thank you, Mr. Moats.

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[LB1166]

REX MOATS: Thank you. [LB1166]

SENATOR FRIEND: Next opponent. No more opponents? We will move to neutral testimony. Anyone wishing to testify in a neutral capacity? I don't see any. Senator Nelson to close. [LB1166]

SENATOR NELSON: Thank you, Chairman Friend, and members of the committee. I've been on pins and needles all afternoon because I'm supposed to present another bill on another committee and, but I was able to stay for the duration of this, missed a little bit of the testimony. I will only say that with reference to the court decision back in 1960, we described it as an ambiguous, perhaps it's not ambiguous, it's just a bad decision. The court at that time talked about the ability of school districts to cross county lines, municipal utilities and things of this sort and yet, for some reason, held that because there wasn't anything affirmative in the statute that would permit cities of the metropolitan class to go across county lines, that therefore they should not. That may have been okay back in the '60s but times have changed. We've seen from the learning community what happens when the tax base in an area, largely populated by minorities and lower income, what is likely to happen to that area from the area of being able to provide and afford what you need to do. I just think the time has come in light of things as they are now, that we ought not to draw artificial lines and say, we've got a county line here for Douglas County and by gosh, you can't cross that county line if it's going to be in the best interest of the metropolitan city and the area surrounding it to develop it all in one movement. I'm not going to offer arguments to some of the others. I think the discussion here has been very good. I can understand the communities of Sarpy County and the affection that they have for their own communities and developing there. So as I said, I think now is a good time before down the road we get into a very emotional issue and it becomes necessary for a metropolitan city to take action and assert itself. Why not make the decision now and correct the ruling by having legislation that says, it can be done. Thank you, Mr. Chairman. [LB1166]

SENATOR FRIEND: Thank you, Senator Nelson. Further questions from committee members? I don't see any. [LB1166]

SENATOR NELSON: Thank you. [LB1166]

SENATOR FRIEND: Thank you. That closes the hearing on LB1166, closes the hearings for the day and I believe closes the hearings for 2008. [LB1166]

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Disposition of Bills:

LB971 - Indefinitely postponed.  
LB1117 - Indefinitely postponed.  
LB1166 - Indefinitely postponed.

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Chairperson

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Committee Clerk