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Health and Human Services Committee
February 14, 2008

[LB994 LB1074 LB1123 CONFIRMATION]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 14, 2008, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1123, LB994, LB1074, and gubernatorial appointment. Senators present: Joel Johnson, Chairperson; Tim Gay, Vice Chairperson; Philip Erdman; Gwen Howard; and Dave Pankonin. Senators absent: Tom Hansen; and Arnie Stuthman. []

SENATOR GAY: (Recorder malfunction)...23, we're waiting for Dr. Steven Dokken to call in. But let's get started and we'll go from there. So go ahead, Senator Johnson. []

SENATOR JOHNSON: Thank you, Senator Gay, members of the committee. I'm Senator Joel Johnson, J-o-e-l J-o-h-n-s-o-n, representing the 37th District. I'm here today for what constitutes a relatively simple thing that we do need to change. Let me tell you just what happened briefly this past year. We had what I consider to be just an excellent Children's Behavioral Health Task Force group, did great work. We then came down to a time when we needed to make some decisions and have record votes. Unfortunately, and somewhat because of miscommunication, etcetera, we ended up with a situation where our people on the board from HHS did not think that they should vote because it was a conflict of interest. We then were left shorthanded as far as having sufficient number of people to vote. We have had discussions with them since that time, and so this is a result of that. LB1123 changes the membership provisions of the Children's Behavioral Health Task Force. The bill provides that the representatives of the Department of Health and Human Services and the administrator of the Office of Juvenile Services will be nonvoting ex officio members of the task force. This bill also contains an emergency clause. [LB1123]

SENATOR GAY: Thank you, Senator Johnson. Senator Johnson, before we get to questions, just for the record, what we're going to do here for Senator Howard, we've got a gubernatorial appointment and he hasn't called in yet. But in the process to get moving, we opened the public hearing on LB1123. Many of us will be in this for the public too. Many of us will be in and out today because of bills. So that's what we're doing, and so Senator Johnson has three or four bills and we're going to be in and out. So we're now having the public hearing on that. [LB1123]

SENATOR HOWARD: Thank you, Senator Gay. [LB1123]

SENATOR GAY: And that was for the record, too, Senator Howard. [LB1123]

SENATOR HOWARD: Thank you. [LB1123]

SENATOR GAY: It's all my fault. Anyway, any questions for Senator Johnson from the

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committee? I don't see any, thank you. All those proponents on LB1123 that would like to speak? A show of hands. Come on up. And then, a show of hands, are there any opponents to LB1123 or anybody neutral? One neutral. Okay. All right. So we will hear from the...and can we please state your name and spell it out for the record? [LB1123]

TOM McBRIDE: (Exhibit 1) Sure. My name is Tom McBride, last name is M-c-B-r-i-d-e. Happy Valentine's Day. And I'm here as a proponent for this bill. I was fortunate enough to be selected... [LB1123]

SENATOR GAY: Excuse me, Tom. [LB1123]

_____: Health Committee. [LB1123]

STEVE DOKKEN: Yes, this is Steve Dokken in Pawnee City. I was requested to call this number for...this is a... [LB1123]

SENATOR GAY: Appointment. Steve, this is Senator Tim Gay and we've got Senator Gwen Howard is here, myself, Senator Phil Erdman, Senator Dave Pankonin, and Senator Joel Johnson. You're a little late and we got started on LB1123. So we're going to put you...can you just hold for us a minute? [LB1123]

STEVE DOKKEN: Why, sure. [LB1123]

SENATOR GAY: And then we'll get to you. So we're going...just hold on a minute, all right? [LB1123]

STEVE DOKKEN: Okay. [LB1123]

SENATOR GAY: Thank you very much for you patience. Go ahead, Tom. [LB1123]

TOM McBRIDE: As I was saying, I was fortunate enough to be appointed as a member of this task force and the...Senator Johnson identified, we ran into some problems there. You know, the members identified in subdivisions H and I of subsection 1 are valued, they bring great expertise, the ability to implement change, and they're a conduit for information and data, and we need to continue to utilize their professional experience. LB1123 keeps this resource available, but it releases them as voting members and they become ex officio members and we would support that. As an addition to this, if I may, I've had discussions with several people and if an amendment might be possible in the future to enhance what we feel a task force board member might be would be to consider an amendment that might bring the administrator of the probation division on as a member of this task force, as well as they...they touch virtually every area that we had, you know, examined and made changes, recommendations for changes. So in short, we support LB1123 and the reasons behind it. [LB1123]

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SENATOR GAY: Thank you, Mr. McBride. Are there any questions from the committee? I don't see any. Thank you. [LB1123]

TOM McBRIDE: Thanks. [LB1123]

SENATOR GAY: Any other proponents? Any opponents? Anybody in a neutral capacity in LB1123? Come on up. [LB1123]

COREY STEEL: Thank you. I'm Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm here on behalf of the Office of Probation Administration. I'm the juvenile justice specialist. I've reviewed LB1123 which make some changes to the Children's Behavioral Health Task Force. I'd like to suggest an additional amendment to that bill, which would be adding the probation administrator to that task force. Many of the youth involved in the juvenile justice system across Nebraska are supervised by probation. We currently have over 5,700 juveniles in our care that we supervise. We consider ourselves one of the states experts when it comes to juvenile justice, and I know that's what this task force needs and has on it currently. This task force is charged with creating change pertaining to juvenile justice issues that would ultimately impact probationers under our supervision. We'd like to be a part of the solution to a lot of these issues. Here are some specific examples in the original Legislative Bill 542, which was a creation of the Children's Behavioral Health Task Force, that dealt (sic) directly with probation clientele. The first one is the scope of the plan shall include juveniles accessing public behavioral health resources. A lot of our juveniles that are in our supervision are those that access those public services. The second one would be plans for the development of a statewide integrated system of care to provide educational, behavioral health, substance abuse, and support services to children and their families. The integrated system of care should serve both adjudicated and nonadjudicated juveniles with the behavioral health or substance abuse issues. This directly impacts the youth that we deal with on probation because they are adjudicated youth in the juvenile court system, and they also are in need of behavioral health and substance abuse issues. The third would be the develop of need capacity for provisions of community-based substance abuse and behavioral health services for children. Once again, when we talk about community, that is what probation is. Juvenile probation is involved in the community and in the community. So if there's provisions to add substance abuse treatment facilities or services in the community, that would directly impact the probation. The fourth would be funding sources for the provision of community-based substance abuse and behavioral health services for children. The fifth would be identified a necessary and appropriate statutory change for consideration by the Legislature. If out of this committee there becomes a legislative bill that is enacted to change some form of how the system operates, that would definitely impact how juvenile probation would do their day-to-day operations. Probation is forming relationships and working hand in hand with the Department of Health and Human Services Office of Juvenile Services and many other juvenile justice

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serving agencies across the state of Nebraska. Probation and DHHS-OJS have realized that we are supervising many of the same youth. Right now we're currently going to track how many youth are dually supervised, which means not only probation is supervising these youths, but also there are state wards and caseworkers or juvenile service officers are supervising these youths, that's dually adjudicated. We're seeing how many of those across the state of Nebraska are dually supervised. We are working on a coordinated seamless juvenile justice system across the state, which includes behavioral health services. In order to provide a comprehensive meaningful system of behavioral and mental health services for children in Nebraska, it is important to include the probation administrator on the Children's Behavioral Health Task Force. On behalf of the Office of Probation Administration I would like to suggest an additional amendment to Legislative Bill 1123 to add the probation administrator to the task force as probation feels we can provide great insight to the task force regarding juvenile justice issues. Thank you. [LB1123]

SENATOR GAY: Thank you, Corey. Any questions from the committee? Senator Howard. [LB1123]

SENATOR HOWARD: Thank you, Senator Gay. Corey, I'm familiar with when you refer to dual adjudicated and under two systems. For example, youth can be under Health and Human Services for neglect and when they reach the age of 16 and for some circumstance be under your program as well. Do you find that to be problematic? Do you have a suggestion for that? [LB1123]

COREY STEEL: That's one of the things that HHS and probation are meeting on to make sure that we have a lead supervision agency on that, and that also when we come to the table in court if it's an adjudicated law violation and a dependency that we come to the conclusion this same recommendation to the court. So we're not coming with two different recommendations. It is an issue when you're dealing with two state agencies supervising one youth. But we're working through those issues and feeling we can collaborate and come together (inaudible) instead of separately. [LB1123]

SENATOR HOWARD: Well, I think we made some progress on that a few years ago where we opened up the foster care system where you could access placement in the same system as the state wards. So hopefully that's been helpful. [LB1123]

COREY STEEL: Correct. I think it has helped HHS. Yes. [LB1123]

SENATOR HOWARD: Thank you. Good. [LB1123]

SENATOR GAY: Any other questions? I don't see any. Thank you, Corey. [LB1123]

COREY STEEL: Thank you. [LB1123]

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SENATOR GAY: Anyone else would like to speak in a neutral capacity on this issue? Senator Johnson, would you like to close? Senator Johnson will waive closing, and we will get to the gubernatorial appointment. Dr. Steven Dokken, can you hear me?
[LB1123 CONFIRMATION]

STEVEN DOKKEN: Yes, I can. [CONFIRMATION]

SENATOR GAY: Well, thank you for joining us. Thank you for your patience waiting, too. [CONFIRMATION]

STEVEN DOKKEN: No problem. [CONFIRMATION]

SENATOR GAY: Your appointment to the Nebraska Rural Health Advisory Commission. I have here Senator Gwen Howard; myself, Senator Tim Gay; Senator Dave Pankonin; Senator Joel Johnson are here. And if you want to go ahead and we've got your resume' in front of us and your application. But if you want to go ahead and introduce yourself to the committee. You are on a speaker phone, so if you want to go ahead and introduce... [CONFIRMATION]

STEVEN DOKKEN: Certainly. [CONFIRMATION]

SENATOR GAY: Thank you. [CONFIRMATION]

STEVEN DOKKEN: This is Steve Dokken. I'm a dentist in Pawnee City, Nebraska. Would you like me to tell you a little bit about myself or how can I be of service to you this afternoon best? [CONFIRMATION]

SENATOR GAY: Well, just if you'd state why you wanted to be on the committee and is this a... [CONFIRMATION]

SENATOR PANKONIN: Reappointment. [CONFIRMATION]

SENATOR GAY: ...reappointment. So how are you...I guess your experiences on the committee and if there's anything you might want to share with us that we could improve or any input you have. [CONFIRMATION]

STEVEN DOKKEN: Well, I think that...first of all, I'm keenly interested in rural health. Not only from the standpoint of dentistry, but also from the standpoint of medicine. Pawnee City is a small rural community and we're particularly fortunate here in that we have two excellent primary care physicians and two physician's assistants that serve our immediate area. I'm incredibly fortunate from the standpoint that I have taken an associate and actually sold my practice and I'm now working part time. That's no mean

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chore out here in the hinterland (laugh). Attracting professionals to rural Nebraska is a difficult problem right now. I guess as I see it, you know, we have two fundamental goals. One is to increase the service. That is attract professionals to the rural area. And you know, if we can decrease the need, you know, that is access to care is still one of our principal problems here. And I'm not telling you anything that I'm sure that you don't know. But you know, I think that as...well, right now, LB395 is...I certainly hope that that's going well because I think that that's very important to the rural community. I'd also tell you that one of the things that I'm interested in is a school nutrition law, and I understand that there are some federal incentives or federal things that are occurring in that area. But you know, I think nutrition is just a huge issue nationally and statewide, you know, where carbonated soft drink obviously is incredibly important to dentistry as far as dental carries. But the influence with respect to osteoporosis, obesity, diabetes, and so forth I think is just undeniable. And I think right now, you know, what's happening is that culturally we're kind of training our young people to perhaps be unhealthy adults. And if they're...you know, I think that there may be some things that can be done in that area. [CONFIRMATION]

SENATOR GAY: Right. All right. Well, thank you. Doctor, we're going to see if there's any questions for you from the committee. [CONFIRMATION]

STEVEN DOKKEN: Okay. [CONFIRMATION]

SENATOR GAY: Let's see, are there any questions for Dr. Dokken? Senator Howard has a question for you. [CONFIRMATION]

SENATOR HOWARD: Thank you, Senator Gay. Doctor, I'm just wondering if you had the opportunity to participate in the annual dental day that's held here in Nebraska? I believe it was held first in Lexington, and then more recently in Grand Island. [CONFIRMATION]

STEVEN DOKKEN: You're talking about the Mission of Mercy or Dental Day? [CONFIRMATION]

SENATOR HOWARD: I am. Thank you. Thank you. [CONFIRMATION]

STEVEN DOKKEN: I'm sorry? [CONFIRMATION]

SENATOR HOWARD: Yes, I am. Thank you for having the correct name. [CONFIRMATION]

STEVEN DOKKEN: Now, what was the question? [CONFIRMATION]

SENATOR HOWARD: I was just wondering if you had the opportunity to participate in

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that? [CONFIRMATION]

STEVEN DOKKEN: No, I have not. But that is something that I'm definitely interested in trying to pursue this next year. [CONFIRMATION]

SENATOR HOWARD: Good, good. I'd like to know your impressions of it. It sounds like it's a wonderful endeavor. [CONFIRMATION]

STEVEN DOKKEN: Oh, I think it is. I have several colleagues who have been involved with that. You know, one of my huge problems is that in previous years it's been somewhat difficult just...not only because of my own advancing years, but because of the demands to just keep my practice in order. So that's one of the things I guess I'm looking forward to as I have a little bit more available free time. I did...you know, I've had actually four areas professionally. My main emphasis has always been on my private practice. But I did teach a day a week in the Department of Surgical Specialties at the university for 33 years. I was a officer in the Army Reserve. And then I was also on the Nebraska postmortem dental identification team. So you know, and I think those are all, you know, things that are important. I think you need to pay your civic rent, and you know, you can't be everybody's hero all the time unfortunately. [CONFIRMATION]

SENATOR HOWARD: Well, thanks for offering to be ours by serving on this committee. [CONFIRMATION]

STEVEN DOKKEN: I do have a question for you. [CONFIRMATION]

SENATOR GAY: Go ahead. [CONFIRMATION]

STEVEN DOKKEN: You know, I do have a certificate of appointment for this next term that expires the 30th of September in 2010? [CONFIRMATION]

SENATOR GAY: Yes. That's... [CONFIRMATION]

STEVEN DOKKEN: Now is this...the purpose of this... [CONFIRMATION]

SENATOR GAY: Pursuant to reconfirmation. [CONFIRMATION]

STEVEN DOKKEN: Okay. [CONFIRMATION]

SENATOR GAY: And so what we're doing is going through that process and this won't take too long. It sounds like you have outstanding credentials. But that's what will happen, I assume. And maybe someone will correct me, but we will confirm you and we want to make sure we visited with you and that will be done fairly promptly. So you'll be notified of that. [CONFIRMATION]

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STEVEN DOKKEN: Okay. [CONFIRMATION]

SENATOR GAY: And then we'll get back to you. And I'll just say, we've got some other hearings here. But Senator Howard, thank you, and thank you on behalf of the whole committee for your service and continued services on the commission. We really appreciate it. It sounds like you're doing a great job and best of luck on that transition that you're working on. I hope that works out and thanks to whoever is helping you out with that. [CONFIRMATION]

STEVEN DOKKEN: That's working wonderfully. [CONFIRMATION]

SENATOR GAY: Good, good. [CONFIRMATION]

STEVEN DOKKEN: And like I say, I think our whole community feels very fortunate to have managed to attract this young man. [CONFIRMATION]

SENATOR GAY: I'm sure they are. [CONFIRMATION]

STEVEN DOKKEN: This guy just fell out of the sky (laugh). This was not with respect to the programs that happened to be available. But I do think the incentive programs are very important to the state of a whole. [CONFIRMATION]

SENATOR GAY: And we agree. All right. Thank you, Doctor. We appreciate it. [CONFIRMATION]

STEVEN DOKKEN: Okay. If I can be of any further help, please call me. [CONFIRMATION]

SENATOR GAY: You're being a great help. Thank you. [CONFIRMATION]

STEVEN DOKKEN: You bet. Bye-bye. [CONFIRMATION]

SENATOR GAY: Goodbye. With that, we'll close the hearing on the appointment. Senator Johnson, you want to open on LB994? We'll open the public hearing on LB994. [CONFIRMATION]

SENATOR JOHNSON: (Exhibit 1) Thank you, Senator Gay. I'm Senator Joel Johnson, J-o-e-l J-o-h-n-s-o-n, representing the 37th District. I am here to introduce LB994. The following consists of the reasons for this bill and the purposes which are sought to be accomplished thereby. LB994 extends the termination date of the Behavioral Health Oversight Commission of the Legislature from June 30, 2008 until June 30, 2009. The bill also contains an emergency clause. One of the things that I would like to comment,

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and I think there's actually two things that I'd like to comment on, is I have sat in on many meetings of this commission and feel that it has been composed of outstanding citizens who have helped in the process to which they were asked to participate. So from that point, there is no question at all. However, and I just received this letter from the Speaker of the Legislature, Senator Flood, and I want to make you aware of this and certainly we need to look into this issue. And what it is is this, is that Speaker Flood has reviewed the legislation that created this Behavioral Health Oversight Commission and the question that he raises is this, it says to oversee and support implementation of the legislative act, in addition to administering funds for the purpose passed by this law of the Legislature, etcetera. Now, here's the issue that he raises, is the issue of the commission violating the separation of powers provision of the Nebraska Constitution? He thinks that there is certainly a question of whether this is the case or not. And I think that there is no question that this needs to be looked into further. Like I say, this is just been in my hands a matter of minutes. But so I want to include this in the testimony in an official manner. And so therefore I will give it to the page to be entered into our official proceedings today. [LB994]

SENATOR GAY: Thank you, Senator Johnson. Are there any questions from the committee for Senator Johnson? Senator Pankonin. [LB994]

SENATOR PANKONIN: Thank you, Senator Gay. I'm actually asking this on behalf of Senator Erdman, Senator Johnson. He wondered why only one year--and obviously we have this other issue now about the separation--but why that the date of the oversight commission was extended one year versus multiyear. [LB994]

SENATOR JOHNSON: I can't give you an explanation for that. Perhaps some of the people behind me. And it might have been in the original legislation that it had to be renewed every year. [LB994]

SENATOR PANKONIN: Every year. All right. [LB994]

SENATOR GAY: All right. Any other questions for Senator Johnson? I don't see any. Thank you, Senator Johnson. [LB994]

SENATOR JOHNSON: And Senator Gay, I might say that I have three or four other bills to introduce this afternoon elsewhere. So I'm afraid that I will not be able to stick around. [LB994]

SENATOR GAY: You'll waive closing then, Senator? [LB994]

SENATOR JOHNSON: Yes. [LB994]

SENATOR GAY: Okay. Thank you. Can I see a show of hands, all the proponents?

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Two, three, about four, five. Any opponents going to testify on this? Anybody going to testify in neutral? Okay. All right. We'll have proponents and come on up and state your name and spell it, please, for the record. [LB994]

TOPHER HANSEN: Senator Gay, members of the committee, my name is Topher Hansen, T-o-p-h-e-r H-a-n-s-e-n, and I sit today as president of the Nebraska Association of Behavioral Health Organizations. I should say to you also as a point of information that I am one of the original appointees to the Legislative Oversight Commission, and I also am executive director of CenterPointe, which is a treatment program for people with cooccurring disorders. We come today in support of this bill. We would suggest an amendment that it be extended out to three years, that it cover not only the remaining year of the biennium, but also into the next biennium. That is not currently as part, as Senator Pankonin just noted. But we think that this makes great sense in terms of the intent of the Oversight Commission to monitor the reform implementation, and to help with the administration of the change in systems which involves dollars and whole system structures. And we think that then the Oversight Commission provides a valuable piece to that effort. First though, we want to also say NABHO resoundingly is thankful to each of you and your predecessors for your work in not only helping to move this state towards behavioral health reform, but remaining vigilant to the continued effort because it isn't an act, much like treatment is not an act; it's a process. And in order to complete that process and have it be effective in the ways that we originally intended, it's necessary to be vigilant to the original intent and to remain focused on the goal. So our thanks to you for that effort. We have seen in this effort an unequaled investment from the Legislature in speaking for those that are powerless. The people that are in the behavioral health system in Nebraska by and large are one of the most powerless and vulnerable groups and need a voice. And if that is not the role of the state, then we are missing our focus, I think. The Legislature has taken on that role in a deep way and we are appreciative for that. The Oversight Commission is made up of a diversity of providers and community members and consumers and people who represent the state and the system and this particular issue and bring a good voice. And that voice would go unheard if it weren't for the Oversight Commission. The accountability factor would be missing if not for the Oversight Commission. And the quality assurance of meeting the original intent would go without unless we have the Oversight Commission. It is part of what checks and balances is about. This is a check. The issue raised by Senator Flood, while I won't provide an opinion on that at this time, what I can say from my standpoint as a provider, as an Oversight Commission member and a member of NABHO is that this group sits as an advisory body to the Legislature to be advised of and report to the Legislature on the progress of behavioral health reform. It does not take away the power of the executive branch, but we certainly listen to what information the executive branch has to offer about carrying out the intent of the Legislature, and then providing feedback to the Legislature on how that goes. And are we hitting the points or are we missing some points? Indeed, the Oversight Commission's role has been fulfilled in coming up with the

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"found money" that has moved into the system. We're now aware of at least \$19 million that has been raised as a result of voices at the Oversight Commission about transfer of behavioral health dollars from institutions into community-based systems. So that alone, I think, speaks of the value of this process. This body then assures the Legislature that the quality assurance to the goal that was originally set is met. HHS says we know from the newspapers has been having trouble meeting some of their quality assurance items. And to have such an important function, as behavioral health reform, go without assistance in directing the goals and the intent, I think we would be remiss. And we have passed legislation before directing that behavioral health dollars be moved into community-based systems and it's in statute and that hasn't happened. With this process we have seen it happen, and I think the Oversight Commission is an important piece of that. I can tell you that the resounding consensus that we've received at the Oversight Commission that's within NABHO virtually within any body I personally sit in that has a discussion around this has been to support its continuance. And again, we would urge that an amendment be put to this bill that would extend it to three years, and so it's not reviewed until the end of the next biennium budget. [LB994]

SENATOR GAY: Okay. Thank you. Are there any questions from the committee? I don't see any at this time. Thank you. [LB994]

TOPHER HANSEN: Thank you, Senator. [LB994]

SENATOR GAY: Other proponents? [LB994]

TOM McBRIDE: (Exhibit 2) Good afternoon again. It's Tom McBride, M-c-B-r-i-d-e. I would echo much of what Mr. Hansen had said, and also when we're passing out thanks, thank Topher for his service on this commission. Behavioral healthcare is an evolving system in Nebraska. It's not a completed product. LB1083 passed in 2004 with 7 key focus areas and 3 purpose areas, it was a broad stroke and to assume that it's a done deal or a greased wheel would be an overstatement. The need for continuation of the commission is needed, I think, in roughly four different ways. One for...you know, some sections of just LB1083 have not been developed to their potential yet. Coordination between the stated purpose of the commission initially in any subsequent legislation to provide a checks and balances and a mediator to that legislation, I think, would be a very important function of this commission. The reorganization of Health and Human Services has an impact in that as they...you know, it's a welcome redesign, but there are things they're still, you know, working out within that and accountability. I think it goes without saying that the commission is the eyes and the ears of the Legislature for all of the behavioral health changes that are going on in the state. Mr. Hansen referenced the Nebraska Association of Behavioral Health Organization. I'm also representing the Children and Family Coalition of Nebraska. So you know, just in those representative bodies we have a lot of people out there, a lot of organizations, a lot of agencies that are interested in this and see the value in the Behavioral Health Oversight

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Commission. I would agree also with Mr. Hansen that if there was anything to be done to this bill that would improve it, I believe would be to go out three years. And as Senator Johnson indicated, he'd let us talk about it and I just think that the value of this commission, its function and purpose that three years would be a minimum to see this continue. [LB994]

SENATOR GAY: All right. Thank you, Tom. Any questions from the committee? I don't see any. Tom, I do have one for you. I've heard three years now. Do you envision this thing as an ongoing if it's kind of a checks and balance, could it be an ongoing thing do you think down the road? [LB994]

TOM McBRIDE: Yeah. I think that anytime you have something like this, you need to put an end date on it and revisit, you know, whether you need that to continue. And at this point, think that it's warranted. As we continue to develop that system and it's being developed in several different, you know, parties, several different ways. And there's some significant changes that are being made. But you know, now I think that we would need, you know, three more years and at the end of that time if it's not necessary, then it goes away. [LB994]

SENATOR GAY: And just another question though. I'm reading in this green copy, there are 25 members on this. [LB994]

TOM McBRIDE: Correct. [LB994]

SENATOR GAY: Is that...how well attended are the meetings? Is that enough, not enough? I mean, what do you...just your own view. [LB994]

TOM McBRIDE: I'm not on that task force. I think Topher would better answer that. It is a diverse group. [LB994]

SENATOR GAY: It's a big state and there's a lot of different entities, I understand. But sometimes 25... [LB994]

TOM McBRIDE: It's a large commission. [LB994]

SENATOR GAY: Yeah. We know how it is with 49, so...okay. Thank you. Any other questions? I don't see any. Thank you [LB994]

TOM McBRIDE: And I neglected to leave my written comments for LB1123, so I'll do that now. [LB994]

SENATOR GAY: Okay. Thank you. We'll put it in a record. Other proponents? [LB994]

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ALAN GREEN: (Exhibit 3) Senator Gay, members of the committee, my name is Alan Green, A-l-a-n G-r-e-e-n, and I'm executive director of the Mental Health Association of Nebraska and I'm here to speak in support of LB994. Much of what's been said is what I would have spoken to also. There are just a couple of other things maybe that I would stress. The words in talking about the need for oversight and extending the length of the commission I believe is imperative. Given the size of the Department of Health and Humans Services, the size of the budget, and most particularly the number of people whose lives their programs and resources directly impact, I feel that it is imperative that there is some mechanism in place to help guarantee some transparency and some accountability in the system. Our concerns arise...I'll just speak to two of them that have happened in just the fairly recent past. One deals with the allocation of the found money that Topher Hansen spoke about. Those dollars we learned, more than half of those are going to go to support part of it to support a 30-bed unit at Norfolk Regional Center, which is a continuation of services that were supposed to be phased out. And then a portion, \$2 million, is to go to the construction of a 16 beds secure unit in Region 6. Our concern isn't necessarily that a high level of care be available. It's just that these decisions were made with no data to back up the need for these facilities. It's my understanding that right now in Norfolk there's only 1 person within their psychiatric unit, and yet if you have 1 person, you fund a 30-bed unit; and they want \$3.5 million to fund that 30-bed unit. The other part of my question is, of the \$10 million that was spoke of earlier, of dollars that were left over that had been allocated over since behavioral health was initiated are being held back, and we don't know what the status of that is. So there's a large chunk of dollars that are not being provided to community-based services as outlined in the Behavioral Health Act. The other deals with primarily with the inclusion of...the law is quite specific in the inclusion of consumers and families in all facets of the reform and service delivery process. And yet there has been no strategic planning, no comprehensive strategic planning to date. What process was started was ended two years ago, and in the last years...well, fiscal '08 block grant application it quotes HHS CEO Christine Peterson as saying that the divisions will decide priorities. They'll set their goals and they will establish their own performance measures. And this is being done because it's supposedly going to show better support for the priorities and help DHHS become more accountable, accessible, and action oriented. I don't agree. I think that a process that allows a public entity to identify its own priorities, set its own goals, establish performance measures without a formal process that guarantees public participation or oversight violates again the letter and the intent of the law. Next, the only thing else I would add again is in the length of tenure for the commission. I would even extend it even farther. I would like to see this commission be a standing committee. I think again given the size of the charge, the size of the unit of the department and the number of lives that it affects, that some level of oversight that guarantees adequate coverage is necessary. So I would add that suggestion and then one other. I was distressed to learn that information on the Oversight Commission was pulled from the legislative Web site. I would like to see that put back on the legislative Web site so the proper notice of meetings and access to minutes and agendas could be

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readily available to people across the state. With that, I thank you. [LB994]

SENATOR GAY: Thank you, Alan. Any questions from the committee? Alan, I have a question for you. Senator Johnson alluded to Senator Flood's letter about, you know, kind of where does this fit in legally. And as I read through here...and you kind of mentioned, well, they should do Health and Humans Services, that department should do this, this, and this without your consultation. But on page 2 and line 20 it says the commission under the direction of and in consultation with the Human Services Committee of the Legislature working with...I guess at that point, we're at...you know, oversight is one thing. But then if you're running a large organization like that just division, how do you...you know, I guess I can see what Senator Flood is saying. It's kind of like this: You want to have a say in what's happening. I can appreciate that. But at what point if they say this is the direction we want to go, this is where we're going, and as a consultive arm, you would give an idea. But that doesn't necessarily mean they have to follow it. So are you saying you'd want to...that they'd need to implement everything you say? Because you talked about a couple of where you had some disagreements, I think. But I mean, at what point are we crossing a line here? [LB994]

ALAN GREEN: I meant those mostly just to illustrate a lack of communication, a lack of openness, a lack of participation. That is spelled out in statute that the process would be accessible, in particular to consumers and families. No, I do understand what you're saying. But I think that the legislative branch obviously has a charge of not only writing laws, and I would hope then making sure that the laws they write are adhered to; but also the power of allocation, and that might end up being the only other way there can be. But checks and balances are very, very important to help ensure that there isn't...well, that there's an understanding and that there's a cooperation between all the branches of government and the services that this department would provide. We are not in objection to the department itself. We are...I mean, they're charged with an incredible, incredible duty. But it is very, very frustrating and we've been very, very frustrated with trying to be a part of the process as we read the law. And in talking with Senator Jensen and the intent that he saw when the law was first written just kind of bolstered our belief that this is what the point was, was that the process was supposed to be ideally consumer-driven, consumer-centered, and it can't be either of those without consumer participation. Right now, consumer input, although it's getting better, primarily is done by government employees or quasi-government employees. We are still told of decisions after they're made without any kind of process. And I do understand the whole bureaucratic process to the extent that they have to have the ability to do their duty. Part of their charge is interpreting the law and establishing policy. But I just can't help but believe if we could open up the process and identify common goals, that we all could work together to make this system work instead of working at opposing ends. [LB994]

SENATOR GAY: Yeah. And I appreciate your answer. I think the point is, you know,

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everyone could use a little...and this is public funds and we're trying to do a public good and everyone can use a little input, there does become a point though. You know, I agree. Maybe it's just it needs to be working together a little more and I'm new to...I'm learning about this as well. But I don't mind the...and I'm sure they don't mind the input, but at some point somebody has to make a decision. You know what I'm saying?
[LB994]

ALAN GREEN: Oh, absolutely. Um-hum. [LB994]

SENATOR GAY: But anyway, thank you very much. That's very... [LB994]

ALAN GREEN: But there's nothing leading up to that decision. I've worked with Jeff in trying to come up with some sort of process too. [LB994]

SENATOR GAY: Yes. What you're saying would be more involvement. Yeah. Okay.
[LB994]

ALAN GREEN: But that's...no, I understand the structure and I'm not suggesting we have a revolution or anything. [LB994]

SENATOR GAY: It's good input. No, it's very good input. Thank you very much. Any other questions? I don't see any. Thank you. Other proponents? [LB994]

BRAD MEURRENS: (Exhibit 4) Good afternoon, Senator Gay, members of the committee. For the record, my name is Brad Meurrens, B-r-a-d M-e-u-r-r-e-n-s, and I am the public policy specialist and registered lobbyist for Nebraska Advocacy Services, the Center for Disabilities Rights, Law and Advocacy. I'm here today to support LB994. To be brief, while some gains have been made in achieving the goals and objectives and outcomes of LB1083, Nebraska cannot say mission accomplished just yet. The role of the Oversight Commission is critical to successful reform of Nebraska's behavioral health system. It increases accountability, transparency, and holds the state true to the tenets of LB1083. The Oversight Commission provides an opportunity for the public to view and comment on the progress of behavioral health reform. And without such accountability, transparency and public opportunity, it would be easier for Nebraska to stray from its stated principals and regress in the reform of its behavioral health system. We also echo the desire to extend the operation date of the commission at a minimum to 2010 to harmonize with the biennial legislative schedule in process. That concludes my testimony this afternoon. I'd be happy to answer any questions that you may have.
[LB994]

SENATOR GAY: Okay. Thanks, Brad. Any questions? Nope, I don't see any. Thank you very much. [LB994]

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BRAD MEURRENS: Thank you. [LB994]

SENATOR GAY: Further proponents? [LB994]

J. ROCK JOHNSON: Senator Gay, members of the committee, my name is J. Rock Johnson, J. R-o-c-k J-o-h-n-s-o-n, and I am a member of the Behavioral Health Oversight Commission and have been from the beginning and was, at that time, the only person self-identifying and self-disclosing as having a mental illness. So I had a major job representing the thousands of people in this state who are in our public system. Senator Foley's concern is an interesting one, and I think it may have some ramifications as we look farther at other groups that the Legislature has created and the various task forces. I would say about the...to respond to your comment about the role of the Behavioral Health Oversight Commission is really one of having a public forum of bringing people together, of asking questions, exchanging information. I would not say in any way, shape or form that it has had the power or the capacity or have I seen an impact on the state's activities of feeling like it has to do what we say, so to speak. One of the areas that's very interesting to me is the area of data. And that's a question that I asked meeting after meeting after meeting after meeting. Eventually, there was a data briefing, and subsequent to that, I learned that the way that the state could tell us who was in the community was because their name was not on the list of people who were in any of the state's psychiatric hospitals. So that was quite a surprise and that's been one of the...I can't think of the right word, when you make an amendment. That's the word. That was one of the amendments to LB1083. Finding that this was a problem. So it's been noting in many ways what the problems are and encouraging by bringing attention to them, and by providing a public forum for the public to literally come to these meetings. I think if I were to say just one thing about the Behavioral Health Oversight Commission it would be, the salvation of the state is watchfulness in the citizen. And this is the...the Oversight Commission has provided that kind of watchfulness. The second thing I would say in terms of what has been accomplished and what hasn't is we've got two major things. One is housing. People now have housing that they didn't have access before. You can't have a life without having a place to live. The other was a program that the Mental Health Association runs and that supported employment. So those are two major issues. There are two areas that are very positive. But two other threads that run through the law have to do with the inclusion of individuals in their own treatment plans, in policy. That's a major decision that this Legislature made was to change the policy as to how we feel about people and their relationship to decisions and how decisions are made. We are woefully behind on that. In fact, I would say that this administration has not yet embraced that as its own policy. And it's very difficult because we or I as an advocate cannot require them to...all we can really do, all I can really do is to continue to ask questions and to continue to bring up issues. The other area, of course, was funding. And there isn't a premise or a fact, I think--other than the exclusion of consumers in the processes--that hasn't changed since this law was written. So in terms of what needs to be done and what the Oversight Commission has

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as a responsibility and what I say to the administration is read the law. The thing I have been focused on and have gotten quite a bit of push back is it says in our law comprehensive statewide planning. We have not had planning in this state since the late '80s. But there's no interest in really doing planning and really looking and involving people because you have to involved people. We're the ones who have got the answers. We know what our lives are like. We know what's needed. That's another aspect of LB1083 that we have not had the attitude and the speed that we would look for. There have been a lot of community services that have expanded, but they've been the same services that we've had before. What we don't have are what's called the nontraditional services, services that are run by individuals who have gone through this experience. The helper principal is part of it. Now, I know that these are the kinds of services that are actually working, keeping people out of the hospital all over the country. But we have not engaged ourselves in getting that information and bringing it in and have people talk about it. It's still in so many ways a black box. And that's why I think that we really must keep the Oversight Commission going, and we must have that kind of exchange. And perhaps we need to have more encouragement that we do have more exchanges and task forces and research that will help bring us up to where this law intended for us to go. So when I say the salvation of the state is watchfulness in the citizen, we intended to do a major change. We intended to make a change from 125 years ago. It's not going to happen fast. And it's going to need that kind of cooperation. So I, too, feel that it's necessary to continue for the next three years or possibly longer. Or as one of my cohorts has suggested, maybe because of the need for working together and bringing in new ideas, perhaps this should be changed from being a code agency. Maybe it needs to have that kind of public involvement and scrutiny. But in any case it needs to continue to work. We've made some progress so far, and as your question that you had asked about the size of the group being 25 people, there are 3 of us who have lived experience in the public mental health system; mine is not in Nebraska. It would be useful to have more individuals. But one part of what the state needs to do and continues to say, well, it's the region's issue, not ours, is we need to help people become educated, know how to work through these processes, and be a part of them instead of really ignoring them. And that's what's happened. We can't change until we change the people. And that's going to have to be a responsibility of the state. That's why it's funded and the comments that have been made about that funding. We were told that the Oversight Commission on the 14th of December, we were told about there will be \$3.5 million going into Norfolk--no data, no information, no rationale, no nothing. Two million will go to Region 6 for a 16 bed locked unit. Again, no data, no information. There will be \$500,000 going to law enforcement, and when I saw it written out, it was for the long or short-term incarceration actually, which is really how the law enforcement thinks about it. Nothing there for prevention. Nothing there for these services that keep people well, that keep people not only out of the hospital, but in the community and in jobs. There was no consultation there at all. And now I understand we're going to learn what this other \$10 million, which we wouldn't have known about if it hadn't been for the Oversight Commission and the diligence of people

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in the community and providers. We wouldn't have even known about this \$20 million, which needed to go into the community. And I don't know what the process is going to be. I hear we'll hear about it in April. But it's like a black box and that's no way to run lives of people. Thank you. [LB994]

SENATOR GAY: Thank you. Any questions from the committee? I don't see any. Thank you for that. Any other proponents? Any opponents? Anybody would like to speak in the neutral capacity? Okay. And Senator Johnson waived closing, so we will close the public hearing on LB994. Senator Nantkes has joined us to open the public hearing on LB1074. [LB994 LB1074]

SENATOR NANTKES: Good afternoon. [LB1074]

SENATOR GAY: Your timing is good. [LB1074]

SENATOR NANTKES: (Exhibit 1) For once. (Laughter) Good afternoon, Senator Gay, members of the committee. My name is Danielle Nantkes. For the record, that's spelled D-a-n-i-e-l-l-e N-a-n-t-k-e-s, and I represent the "Fightin' 46th" Legislative District. I'm here today to introduce LB1074. And as you know, on this cold and blustery February Nebraska day, I thought the committee might appreciate an opportunity to think about a subject which we don't have to pay a lot of attention to on a day like this. So just kind of take a moment, close your eyes, think about sunshine and swimming pools and we'll get into it. LB1074 would require all owners of a swimming pool, unless exempt, to employ at least one certified pool operator who must take certain training to achieve certification. This was brought to me by the National Pool Foundation, who has a member here to explain more fully why this legislation is needed in Nebraska. I'm also aware that there is an amendment that would clarify some concerns people have brought to us and that changes some definitions and dates. I'll go ahead and provide a copy of that proposed amendment. Hopefully the clerk or the pages can make some copies of that and then distribute it. A couple broad public policy reasons why I wanted...why I became interested in this legislation and wanted to bring it to your attention today. Number one, I really think this is an issue of consumer protection. And additionally, this is an opportunity that we can address this issue before mass tragedy would occur, and instead have a chance to get in place some additional safeguards to be a responsible partner with parents and families and individuals who utilize different public swimming facilities across the state and who take great care to ensure that, you know, when they're visiting those facilities they and their families have, you know, proper swimming abilities, they go in with their life jackets or their water wings. And maybe we haven't paid enough attention to the water itself that they're wading into. And I want to make sure that we make that as safe as possible as we can so that people aren't set up with false assumptions about the propriety and the safety of the activity that they're going to engage in at those facilities. There's a lot of people here today who have expertise from a frontline perspective that I think that you'll find informative. And so

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with that, I'm happy to entertain any questions. But I'm really learning on this topic as well, so. [LB1074]

SENATOR GAY: Okay. Thank you, Senator. We'll see if there's any questions. We're a little shorthanded today. [LB1074]

SENATOR NANTKES: I can see that. [LB1074]

SENATOR GAY: And the "Fightin' 46th," we don't want... [LB1074]

SENATOR NANTKES: Quality. Quality, not quantity. [LB1074]

SENATOR HOWARD: They're all at the pool. (Laughter) [LB1074]

SENATOR PANKONIN: I've got some questions. [LB1074]

SENATOR GAY: Senator Pankonin. [LB1074]

SENATOR PANKONIN: Senator Nantkes, a couple questions. First of all, just what happened that you got interested in bringing this bill? [LB1074]

SENATOR NANTKES: Well, I'll tell you. This was an issue that was first brought to my attention from a representative with the--let me make sure I get it right here--the National Pool Foundation. And they said, you know, we're really trying to take a look at the lay of the land across a variety of different states to see how they've addressed some of these consumer protection, public safety issues. And Nebraska has a ways to go in kind of getting up to the appropriate level of certification, licensure, and ensuring that, you know, we really do have safe facilities available. And then, you know, looking at...in Nebraska we've actually seen some instances where kind of unsafe facilities have caused actual injury and illness amongst the public. And I guess, you know, it always seems to me to be a wise move, if we can, before more serious tragedies occur to try and at least bring some education and awareness to an issue and to see where Nebraska needs to go next. But that's kind of the impetus for it. [LB1074]

SENATOR PANKONIN: Second question would be the training to get this certification. There again, thinking about the wide expanse our state consists of and you go further out west, and if you're at Ogallala and there's a motel pool and...you know, how can those people...how do they access and...I mean, and maybe people behind you can tell a little more about how that works. Just so that...well-intentioned, I think it is well-intentioned, but just so that it's feasible that people can access the training and don't have to drive 200, 300, 400 miles to get it. [LB1074]

SENATOR NANTKES: Right. No, Senator Pankonin, we've heard some of those same

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concerns. And of course, you know, we want to be responsive to all different types of communities when we're looking at legislation. And you know, to be honest, I don't have any preconceived notions. Maybe a one-size-fits-all approach is appropriate; maybe it's not. I think that we need to think about those things as we move forward. But you know, at the end of the day I would also like to see, you know, the same opportunities for safety to be out there all the way across the board. But I know that there are some folks who are going to be following me that have thought a little bit more deeply about some of those access issues and that might be able to give you some more specifics. [LB1074]

SENATOR PANKONIN: Sure, great. Thank you. [LB1074]

SENATOR GAY: Senator, are you going to stay around a little bit or do you have to get back? [LB1074]

SENATOR NANTKES: I will for a while, but I'm not...it's my understanding there may be an extensive list of opponents here this afternoon. [LB1074]

SENATOR GAY: We have a few letters here. [LB1074]

SENATOR NANTKES: Wonderful, wonderful. And we're, of course, in committee over in Appropriations on some roads issues that I have a deep interest in, so I'm going to try and manage my time between both, as you are all very sympathetic to those duties. But...so I guess at this point I reserve the right to close, but... [LB1074]

SENATOR GAY: Sure. If you're here, we'll ask. [LB1074]

SENATOR NANTKES: ...I will most likely end up waiving. [LB1074]

SENATOR GAY: Understandable. Thank you. [LB1074]

SENATOR HOWARD: Don't let the opponents frighten you. Senator Raikes handles it really well. (Laughter) [LB1074]

SENATOR GAY: You're in good company, look at that. Let's see. How many proponents on this issue? How many opponents? Oh. (Laugh) All right. Thank you, Senator. We'll hear from proponents, if you want to come on up. If you could state your name and spell it out for us. [LB1074]

TRACYNDA DAVIS: (Exhibit 2) Senator Gay, members of the committee, good afternoon. I'm Tracynda Davis--for the record, that's T-r-a-c-y-n-d-a D-a-v-i-s--director of environmental health at the National Swimming Pool Foundation, a nonprofit organization whose mission parallels the government and health departments to reduce

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illness and injury in aquatic settings. I'm here today to testify in favor of LB1074 and I do have a few handouts that I hope everyone has already received. I will be talking about some of the handouts in the presentation. To give you background on my experience, I have a master's degree in public health. I have dedicated my career to promote education and protect the public for over ten years. I'm a former health official who managed the swimming pool program for the state of Wisconsin where I crafted rules and regulations and trained health officials to inspect over 4,000 pools and water parks throughout the state. Currently, I lead environmental health efforts for the National Swimming Pool Foundation to promote education on a national level. Today, I'm going to show you how important required pool operator training for all public pools is for the health and safety of Nebraskans. Ignorant people do not save lives. The benefits of educated pool operators are less recreational water illness, less injuries, and less drownings. I will explain a nonprofit mission to provide training programs that meet the standard of care. Cost benefit will be discussed as well as the negative consequences of untrained operators running public pools. The National Swimming Pool Foundation is a nonprofit 501(c)(3) organization committed to improving public health by encouraging healthier living through aquatic education and research. We have educational programs that help prevent drowning, illness, and injuries. Our certified pool operator program was created in 1972 and includes a 250-page reference handbook written in 3 different languages--English, French, and Spanish--and it's updated regularly on the most recent information available. The course takes 14 hours to complete and is followed by a proctored exam. For convenience, the course is offered in a blended format with an online component to keep costs down. This is the book, this is our certified pool operator book, and I can pass this around for you. We can see the chapters and everything that's discussed in here. Goes over detail about pool operation, water quality, pumps and filters, chemical safety including chemicals that are not compatible with each other, proper storage, and proper use. Every day I see headlines all over the United States that pick up accidental chemical releases, spills, and misuse resulting in employee and bather exposures to chemical spills. The handbook is used as a handy reference tool. The student is exposed to topics and knows where to find additional information without necessarily needing to memorize it. The foundation has certified over 200,000 pool operators to date. In 2006 alone, about 20,000 people were trained. The certificate is valid for five years. Though our class is recognized nationally, state issues are addressed at the classroom portion of the course with the instructor. Each instructor certified by the foundation is required per contract to teach the state and local administrative rules and ordinances. We also have other educational products, including a pool math workbook, aquatic play feature supplement, and we annually organize the World Aquatic Health Conference where over 30 leading scientists share in a global exchange of knowledge. We invest the money we earn from our educational products into prevention and health benefit grants. We've committed a lot of money to research in the last few years, about \$2 million. We funded the CDC, the Centers for Disease Control, to reduce recreational water illness, the American Red Cross, the YMCA, U.S. Lifesaving. Currently in Nebraska, only municipal pools, which are defined as Class A

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pools by the Department of Health, require an operator to be trained. The Department of Health created a four-hour course which they offer. However, they do not have a handbook, the material is in black and white, there are no diagrams or illustration, and is not offered in other languages. And of course, it's limited to what they can discuss in four hours. I also have a copy of their book and what it looks like, so we can pass that around as well. Thank you. We continually receive evaluations stating that even 14 hours is not enough time to properly understand pool operation. Many of the things in their handout are also not updated, which I won't discuss. Since our course is valid for five years, updates are sent to the latest issues to all of our current operators and they learn about the potential increased risk and liability at their facility. For example, in December 2007, President Bush signed into law the Pool and Spa Safety Act, requiring all public pools to have antientrapment drain covers within one year. The Department of Health course does not discuss this and therefore misleads a pool owner to think they have a knowledgeable staff member when, if they do not meet federal law, their facility will now be open for liability if an accident does occur. The Department of Health oversees more than just the pool program and is not up on the latest issues as the foundation is because it is our primary focus. When you or your family stay at a hotel in Nebraska, work out at a health club, swim at an apartment community or condo pool, the pool operator may have had four hours of training or none at all, since there's no requirement. Maintenance people who are untrained in pool operation put people's lives at risk. The risk for users of all pools are the same. It is irrelevant whether a pool is run by a municipality or a private entity like a hotel, apartment community or health club. Disease transmission and injuries can happen at any facility if an operator is not trained on safety and illness procedures. It is critical to Nebraskans that pool operators follow the minimum standard of care by attending a training class of national recognition. We recommend the state of Nebraska require operator training consistent with the established benchmark accepted by 20 other states--Alaska, Colorado, Florida, Georgia, Iowa, Maryland, Maine, Minnesota, New Jersey, New Mexico, New York, North Carolina, South Carolina, Utah, Wisconsin, and Wyoming--and many other counties. Allowing operators to become certified with less training than the established benchmark of 14 to 16 hours suggests that training is insufficient to understand the rudimentary mathematics, chemistry, microbiology, public health, and facility management topics required for effective pool and spa operation. Inadequate training places the citizens and guests of the state of Nebraska at greater risk. We think the legislation should be based on cost benefit. Under current law, only municipal pools which are Class A are required to take a four-hour training class that does not provide a reference book for \$50. Next year, the cost will increase to \$90, which was already approved by the Division of Licensing. Their course is two years. So every 2 years, you will be paying \$90. On average, our cost is \$200, which includes a reference book that I just showed you, and the certificate is valid for 5 years. Small municipalities and pools in rural areas can contract with independent certified pool operators or service companies as long as there is someone who ensures the pool is properly maintained and complies with the local health codes. Additionally, there is no reason why the Health Department

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could not teach our course and still return revenue. They could license the operators and require a license fee if they cannot support their program without this. Municipalities who hire seasonal employees can train a permanent staff member or hire students that can take our class online. Currently, the Department of Health in Nebraska has a similar training and certification requirement for restaurant food managers. They recognize an accrediting organization called ServSafe and delegates state authority to the third party. Some counties then require the certificate to be sent to the Health Department with the license fee. There is nothing in the bill language that prohibits this same licensure. Pool operator certification can be handled the same way. Direct costs will increase but the tax burden will be reduced. Tax money funding public servants who purchase equipment to teach, provide handouts, and other materials will be reduced. Their program will be more sustainable if they can reduce the amount of manpower, supplies, and utilities. The training program must be sustainable for instructors to teach here in Nebraska. If Nebraska comes up to the standard, trainers will come. We have over 500 trainers in the United States that travel. Currently, the market is subsidized by the government. We could hold instructor classes if this passed. We are looking at ways to make it more affordable for even health officials to become instructors. What about the cost of liability of not having someone trained? Many insurance companies view a certified individual on staff as less risk and perhaps less in terms of insurance premiums. This proposed bill minimizes pain, suffering, and liability to municipalities and businesses in Nebraska. The cost of not requiring training in all public pools in Nebraska is high. Consider the New York Park and Recreation Department who is currently a defendant in a class-action lawsuit where 3,000 people became sick from a type of pool, it's called a splash pad where there's interactive water fountains, where a parasite, cryptosporidium, got into the filtration unit and was recirculated in the water for weeks to unsuspecting users. I have two articles in the handouts on this. The outbreak was preventable if the pool was maintained and designed properly. The park and recreation department ran the pool and under New York law they were exempt from operator training requirements. In response to this massive outbreak, the legislature enacted an emergency rule to prevent further exemptions and removed the grandfather clause. The cost of trainings are inexpensive when considering the costs of outbreaks, drownings, and injuries. Outbreaks continue to increase throughout the United States, and Nebraska is no different. Please see both the morbidity and mortality weekly reports published by the federal government, the CDC, in your handout. Nebraska suffered through a cryptosporidium outbreak as well, including a large outbreak in 2000 involving multiple health club pools with 225 people ill. Another recent outbreak in 2006 affected 35 people and sent 1 poor 6-year-old into the ICU. The investigation determined the pH of the water was not within an acceptable range of 7.2 to 7.8. In fact, the pH of the water was 1,000 times more acidic than what is required for human recreation and ingestion. The water was tested at a pH of 4, which is as acidic as lemon juice. The operator had no training and allowed the pool to be open for use while the bathers were essentially swimming in lemon juice, and this is how a six-year-old boy ended in the ICU. If you continue reading the handouts on this outbreak, you will see that the Department of

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Health was so shocked by this outbreak they spent money to conduct a study to evaluate the association between operator certification and chemistry violations on the basis of Nebraska state regulations. And guess what? Their results demonstrate with significance that pools without certified operators are more likely to have water chemistry violations and might pose greater health risks as a result. This study was actually sent to a journal for peer review publication. Why would any municipality or health department in Nebraska oppose operator training when the study was done on their own pools and they admit the inherent risks without one? Required pool operator training minimizes pain, suffering, and liability to municipalities and businesses. The costs to implement this requirement are inexpensive when considering the costs of outbreaks, drownings, and injuries. The four-hour course currently provided by the Department of Health is not up to the standard of care. To expect an operator to be thoroughly knowledgeable about pool operation with less than 14 hours of training is not reasonable or realistic. Over 20 states require certified pool operator training and who best not to provide it than a nonprofit whose mission parallels the Health Department. I can't tell you that if you approve this bill in Nebraska that you will not have any drownings or disease outbreaks ever again. But if you make the change to require people to be educated, you will reduce the risk of these incidents occurring, benefiting the lives of all Nebraskans. Thank you. [LB1074]

SENATOR GAY: Thank you. Any questions from the committee? Senator Pankonin. [LB1074]

SENATOR PANKONIN: Thank you, Senator Gay. I don't know if I want to go swimming again. (Laughter) [LB1074]

TRACYNDA DAVIS: I know. I'm scared here, too. I'm staying in a hotel. [LB1074]

SENATOR PANKONIN: Okay, I just want to get this straight. You came from this foundation in Colorado Springs. [LB1074]

TRACYNDA DAVIS: Um-hum. [LB1074]

SENATOR PANKONIN: And this foundation is a nonprofit foundation that someone just got interested in trying to have this be better for public health in the United States. And it sounded like there was about 20 states that have implemented this sort of regiment. [LB1074]

TRACYNDA DAVIS: Yes, correct; 20 states. [LB1074]

SENATOR PANKONIN: Okay. If I remember, you know, the states kind of around us--for example, what about South Dakota? [LB1074]

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TRACYNDA DAVIS: South Dakota is not one of the states but the county...Sioux Falls is. [LB1074]

SENATOR PANKONIN: In that area. [LB1074]

TRACYNDA DAVIS: They're working on that, yes. [LB1074]

SENATOR PANKONIN: Okay. Well, and that's why it gets back to my question to Senator Nantkes a little bit on...there again, I think it's well-intentioned and I think there's some good goals here. And this might be one of those issues that gets raised and then we start to dive into, no pun intended (laughter), dive into the details of how in a state that's sparsely populated to a certain extent and widespread geographically that it couldn't be done. Because you go to these smaller communities, they might have motel pool, but they might not have folks that are available to do this training. But you know, those are kind of the details that maybe need to be looked at. But how big is your foundation? How many people involved? [LB1074]

TRACYNDA DAVIS: We have eight people that work for us. [LB1074]

SENATOR PANKONIN: And your funding comes from? [LB1074]

TRACYNDA DAVIS: Well, the program that we have, and also we accept donations. [LB1074]

SENATOR PANKONIN: Okay, great. [LB1074]

TRACYNDA DAVIS: We've been around since 1972. [LB1074]

SENATOR PANKONIN: All right. Thanks for your testimony. [LB1074]

TRACYNDA DAVIS: Thank you. [LB1074]

SENATOR GAY: Thank you. Any other questions? I don't see any. Thank you very much. [LB1074]

TRACYNDA DAVIS: Thank you. [LB1074]

SENATOR GAY: Any other proponents that would like to speak on this issue? [LB1074]

DAVID LOCKE: Senator Gay, and also committee members, my name is David Locke, D-a-v-i-d L-o-c-k-e. I'm out of Omaha, Nebraska. I am...have been a CPO and also a CPO instructor within Nebraska. And I also instructed for the Iowa State Health Department for many years. I have been on both sides of the fence on where I have

been an aquatic facilitator and have to do all the budgets and know the costs. And then I've become an educator to help combat that. To answer your question about how do we get instructors out to remote locations, when I was an instructor I would go to those locations, pull people from the outside communities, and put a class together. And a lot of times that would be coordinated through HHS; whoever is in charge of the aquatic division there, we worked closely with them. So it's not like we have to have people come to us. As an instructor, I would go to them. I'm one of the guys that you would call when everything that was taught here would fail. You know, with the course it's sort of like you get taught the very minimum and we all can agree: pools cost money. Everyone will agree that, you know, operators, maintenance, personnel training. This course is not only about getting the standards raised, which is very important, but it also gives you an effective way to combat costs of a facility. Out of Omaha--I worked in Omaha, Douglas and Sarpy County area, the Pottawattamie area over in Iowa--I would be one of the hundreds of guys they would call and say, my pump is broke, something is not working, why? I go, well, let me come out and take a look. And of course, you know, they would get charged, cost them money, but it was all mostly preventative. Take a look at some of the pools, older pools you have in your communities. The walls are pitted, the paint is coming off, it's not sticking. Some of that can be prevented. It's called a calcium hardness test. You add calcium to the water. Water removes calcium from the walls. Nebraska codes do not require a calcium hardness test. Is that good, bad? Well, healthwise it's not bad, but it helps to prevent repair costs. Education on multiple levels within this program is outstanding. You go out and see pumps that should last five years; they're corroded, they're not working, they cost to fix them. Is your water balanced? Well, what do you mean, is it balanced? Water is water. Do the chemicals in your water balance? I don't know, how do you find it? This course teaches that. How to store chemicals. I've personally walked in to a facility in Sarpy County, had calcium hypochlorite, which is a chlorine you can pick up at any Menards, for example, and they also sell a trichloric product which is a chlorine. The operator went through the Nebraska state course, but he didn't realize when you put those two chlorines, because they're both chlorines, in the same container and screw a cap on tight it's explosive. Two things you pick up every day you go to the store. You put muriatic acid with calcium hypochlorite, a chlorine; the fumes mix, it's a form of mustard gas. You keep both of them in the same container, the container lid is closed. Should be fine. Someone could get hurt--eyes burnt, skin burnt, lungs burnt. That's just some of the few reasons or the few things I've seen out and about doing pools. I could sit here for 16 hours and tell you, I mean, it's phenomenal. Of course, being the guy you call, I get to charge them to fix it. It's highly cost-effective. If this costs \$200, the last pool I painted in Sarpy County I charged \$4,500. You could add more chemicals, get it the level you need to be, save yourself painting and repair for a couple more years. It's basic preventative maintenance versus reactive. Every time I got a call, it's not, hey, how can I keep this from happening--something happened, fix it. I've never...as being certified here in Nebraska as an operator, I was never given a class on chemical reactions, on how much chemicals you have to add to get a desired reaction. There was no formulas. If you're

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an engineer, you know, know big that pool is. But say I had a \$10 maintenance guy who's working at any facility or seasonal worker; how's he going to know how much water is in that pool? I don't know. Someone probably told him sometime. Well, this course teaches all that. It teaches you, you got 10,000 gallons of water, it takes 1 ounce of X product, this will get you the desired results and you can multiply it out. It's not just...it's not as simple as going out to a pool and sprinkle whatever chemical in there and hope it works. I've been to pools with test kits, that's what they call a dip strip. You dip it in the water, look at it, match up the colors. Ah, that's close. All right, we write it down on a piece of paper. All right, that meets Nebraska health codes. They don't have any tailor test kits, more advanced test kits, which really aren't much more expensive and they last longer for reagents. You actually have like six or eight tests you can do instead of four. It's about their safety, their facility's safety, and the people who come to your pool. You assume it's safe. And if the state doesn't require the codes, why should anyone test for it? Why should anybody change? State doesn't require it. It's all about what it costs. I've worked in the small rural pool. Didn't have any money to operate. Well, we break down, the pool needs to be shut down; we lose our generated revenue. What happens if I was taught? I could fix it. It was broken down. We show diagrams, we bring it to classes, continuing education. I just hope that this committee would not table this bill, to give it serious thought. It's more than just health safety issues. I believe that's it. Thank you. [LB1074]

SENATOR GAY: All right. Thank you, David. Any questions from the committee? I don't see any. Thank you. [LB1074]

SENATOR PANKONIN: I had one. [LB1074]

SENATOR GAY: Oh, I'm sorry. [LB1074]

SENATOR PANKONIN: It's okay. David, thanks for coming. You work in Iowa as well? [LB1074]

DAVID LOCKE: I used to, yes. [LB1074]

SENATOR PANKONIN: What's their regiment right now or their test? Is it real similar or does it have this advanced testing? [LB1074]

DAVID LOCKE: They require minimum...well, for standard there's a CPO course, and then for water "testment." Dip strips are not allowed. They do require a tailor-like test kit you can pick up at most of the pool companies. There's also a few other brands that are out there that are reagent. [LB1074]

SENATOR PANKONIN: Okay. So the question is...but they haven't implemented this program either, Iowa hasn't, to your knowledge? [LB1074]

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DAVID LOCKE: Yes, they have. [LB1074]

SENATOR PANKONIN: They have implemented it. [LB1074]

DAVID LOCKE: Yes, they have. [LB1074]

SENATOR PANKONIN: Okay. [LB1074]

DAVID LOCKE: I was a CPO over there for almost ten years, an instructor for seven, and worked with the Iowa State Health Department and taught for them. [LB1074]

SENATOR PANKONIN: So your statement would be that Nebraska is a lot less regulated and doesn't have as many requirements? [LB1074]

DAVID LOCKE: That is correct. [LB1074]

SENATOR PANKONIN: So that's a concern of yours? [LB1074]

DAVID LOCKE: Yes. I haven't been in a Nebraska pool since 2000, other than to fix it. (Laughter) But I won't go swimming in it. And there's no regulations on therapy pools or spas that I'm aware of, which, due to the water temperature, that increases hazards. [LB1074]

SENATOR PANKONIN: The temperature increases hazards? [LB1074]

DAVID LOCKE: Yes. Higher water temperatures let cultures and bacteria grow. I used an analogy when I used to teach: being in a spa that's not sanitized correctly--I'm talking a commercial facility, not one that you have at your house and use on the weekends--if there were six people in a spa, that's the closest you're going to be to the person, especially if they're strangers. [LB1074]

SENATOR PANKONIN: I don't think I want to hear the rest. (Laughter) [LB1074]

DAVID LOCKE: You get the picture. [LB1074]

SENATOR PANKONIN: Yeah. [LB1074]

SENATOR GAY: All right. Okay, any other questions? Okay, this time I don't see any. Thank you, David. [LB1074]

DAVID LOCKE: Thank you. [LB1074]

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SENATOR GAY: (Exhibits 6-9, 11, 12) Appreciate it. Any other proponents that would like to speak on this issue? Okay. And then a show of hands of the opponents here. Okay, there's several of you. And then I got neutral. Department of Health and Human Services was going to testify neutral but I don't know if they're here. But I do...I'm going to read into the record real quick those opposed, that we have letters up here from the city of Seward, YMCA's of Nebraska, city of La Vista, city of Papillion, League of Municipalities, and the city of North Platte. So they've all submitted letters that we'll enter into the record. And then if you can come up, we'll have opponents' testimony now if you want to come up. And we've been a little generous on...there's more opponents here, obviously, than proponents. We've been a little generous on our time with them. But if we can not be repetitive, it would be helpful because we do read all the testimony that we get as well. So thank you. [LB1074]

CHERYLL PETERSON-BRACHLE: (Exhibit 3) I guess my constituents think I need to go first. I'm Cheryll Peterson-Brachle. I'm with the city of Omaha Parks and Recreation Department. I do have a letter that I would like to submit for you for the record. Interesting testimony today. And I'm... [LB1074]

SENATOR GAY: Can you spell your name, ma'am, for the record? It's being recorded. Thank you. [LB1074]

CHERYLL PETERSON-BRACHLE: I'm sorry, spell my name. All right. Cheryll, C-h-e-r-y-l-l, Peterson, P-e-t-e-r-s-o-n, hyphen Brachle, B-r-a-c-h-l-e. I'd just like to highlight a couple of things on the letter that our director had prepared for us that I'd like to share with the committee today. And then I'm happy to answer any questions pertaining to some of the testimony that has already gone on this afternoon. First of all, the city of Omaha has been the recipient of the National Excellence in Aquatics Award from the National Recreation and Park Association in 2003 and again in 2008. We feel the reason...one of the reasons that we were the recipient of this distinguished award is because the quality of certified pool operators that we currently employ. We have 19 facilities that we operate and we hire approximately 60 individuals throughout the course of the year to operate our facilities. The current pool operators that we have do take the state certification course and have operated in a very safe, efficient manner for us. This particular course does exceed the standards of 35 other states in the country, and we feel that we have excellent support from the Douglas County Health Department and the state of Nebraska Department of Health. Another concern of ours is the fact that we do hire individuals that are part-time seasonal, probably a single-year employee, and we're concerned about their willingness to pursue this type of certification considering they're looking at this as a part-time job. We think that there's some concerns with that, being able to have a pool of candidates that would be willing to work in that capacity. Another point is that we have such good support from the Douglas County Health Department and the state of Nebraska Health Department when we do have problems on site. Those are the folks that we call if we don't understand what we're doing with our

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water or if our pool operators don't understand. They're a resource that's in our community, that's easily accessible for those pool operators. I don't see that that is going to be as easy a resource for us if we go to just a national certification in the state. A number of my colleagues will testify to some similar points or a few others that we prepared. We wish that the committee would consider opposing this bill or not passing this bill forward. And that ends my testimony for today. [LB1074]

SENATOR GAY: All right, thank you. Any questions from the committee? I don't see any. Thank you. Other opponents? [LB1074]

TRACY STRATMAN: I also have a letter. [LB1074]

SENATOR GAY: Go ahead and state your name, and spell it. [LB1074]

TRACY STRATMAN: (Exhibit 4) My name is Tracy Stratman, T-r-a-c-y S-t-r-a-t-m-a-n. I'm the president of the Nebraska Recreation and Parks Association. I am here representing 154 of our members, which is 22 entities from across the state. Our members' main concerns with LB1074 are that our state currently does have high standards for our pool operators as compared to other states, and that if this is passed it would be an additional cost and regulation to pool operators from across the state. And those are our two main concerns. [LB1074]

SENATOR GAY: Okay. Thanks, Tracy. Any...Senator Pankonin. [LB1074]

SENATOR PANKONIN: Thank you, Senator Gay. Tracy, appreciate your coming today. [LB1074]

TRACY STRATMAN: Uh-huh. [LB1074]

SENATOR PANKONIN: Obviously you represent these groups that, you know, a pretty wide group. [LB1074]

TRACY STRATMAN: Yes. Very wide; large municipalities to very small ones. [LB1074]

SENATOR PANKONIN: Okay. What's your...how long have you been there? [LB1074]

TRACY STRATMAN: I've been with the organization for five years, and I've been in my current position with the entity that I work for, which is the city of Omaha, also for five years. [LB1074]

SENATOR PANKONIN: Okay. How many instances do you recall where there has been serious problems that could have meant problems for folks, from the health standpoint especially? [LB1074]

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TRACY STRATMAN: Honestly, I really can't think of any large ones. As Cheryl alluded to when she just spoke, any cases that I am personally familiar with, we do call our county health department. And they are...they come out, they help us, they walked us through it. They don't just show up for their two random checks throughout the summer. They're there any time you need them. The entity that I work for currently acquired two new swimming pools within the last year, both of which the health department came out and, like I said, walked us through everything we needed to know, any questions we had about the history of the pool and what we could do for preventative maintenance beings that one is an extremely old pool and one was an extremely new pool. So...but I do think that, for as large as our state is and as you go out further west, the smaller entities that are out there, this would be hindersome for them to get what they needed from a national organization. [LB1074]

SENATOR PANKONIN: One additional question: Do you think...have you reviewed some of the materials that this foundation has or... [LB1074]

TRACY STRATMAN: I currently hold a CPO from that organization. [LB1074]

SENATOR PANKONIN: Okay. So if you look at that and you look at what we have now, is there some middle ground where we could make some improvements, in your opinion, that would help the state and the program that it already has? [LB1074]

TRACY STRATMAN: The program from the National Swimming Pool Foundation is very extensive; not in just the time, but the manual is obviously longer and it goes into further detail on things. The state one is a brief overview of many things. Is there a middle ground? I'm sure there is. Like I said, I do currently hold that, but from a standpoint of, you know, I'm a recreation professional. This is what I do. When you go to some of these smaller municipalities, they don't have a recreation professional. They don't have necessarily a parks and recreation department. And so I do think some of the things that the class goes into is almost too deep for some of the needs of a part-time seasonal staff. [LB1074]

SENATOR PANKONIN: Think of another question. As a professional in this area, do you have fears in, you know, outside of the metro areas possibly where, just a situation you just described, where people are not able to or have not had the kind of training and background you've had? Does that concern you? [LB1074]

TRACY STRATMAN: I think that I wouldn't necessarily say it concerns me, no. But I do think that different entities have different relationships with their county health department. I do think some county health departments work better together with separate municipalities. So I think some get more assistance than others or maybe some feel they're small and are afraid to ask. And I think from a state standpoint, that's

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where we need to say, you know, our health departments, whether it's county or state, are accessible to you and they're more than happy to do this. And maybe that's where we go and encourage these smaller entities to say, you know, if you have a question, don't be afraid to ask because they're here, they're local, they can be there faster than an organization in another state. [LB1074]

SENATOR PANKONIN: I promise, last question. Do you swim in the pools? [LB1074]

TRACY STRATMAN: Do I swim in the pools? Yes, sir, I do. [LB1074]

SENATOR PANKONIN: Okay. [LB1074]

SENATOR HOWARD: You didn't ask if in Nebraska. (Laughter) [LB1074]

TRACY STRATMAN: In Nebraska, yes. [LB1074]

SENATOR GAY: Senator Howard. [LB1074]

SENATOR HOWARD: Thank you, Senator Gay. I'm wondering, have you seen a health risk in the baby pools? Elmwood is a park that I'm familiar with that's close to where I live. [LB1074]

TRACY STRATMAN: Yes. [LB1074]

SENATOR HOWARD: And I know they've switched over from an infant wading pool to more of a, kind of a sprinkler arrangement for the little ones. [LB1074]

TRACY STRATMAN: Correct, um-hum. [LB1074]

SENATOR HOWARD: And I know that with diapered babies there's a problem or a concern--maybe that's a better definition--a concern with illnesses such as giardia. And I'm just wondering if you've seen that. [LB1074]

TRACY STRATMAN: No, I have not, but I do know that the regulations that the state of Nebraska does have on wading pools is stronger and higher than that of the large tub. So the levels and the turnover rate and everything that is in your wading pool at Elmwood is at a faster rate and at a higher standard to keep that cleaner because obviously, there are more things to worry about in a baby...in a wading pool than in an adult pool. [LB1074]

SENATOR HOWARD: Yeah, exactly. Well, the baby wading pool is gone at Elmwood. As I described it, that sprinkler arrangement, which I think is probably... [LB1074]

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TRACY STRATMAN: You're saying Elmwood in Omaha, right? [LB1074]

SENATOR HOWARD: In Omaha, right. [LB1074]

TRACY STRATMAN: It still does hold...the agency that I work for is Omaha, it does still currently hold some water. There's the sprinkler in the middle. [LB1074]

SENATOR HOWARD: Right, right. [LB1074]

TRACY STRATMAN: But there is still some standing water. So the circulation that is held up to is that of a wading pool. [LB1074]

SENATOR HOWARD: But you haven't seen any giardia either in Omaha or in other places across the state? [LB1074]

TRACY STRATMAN: Not that I'm aware of, no. [LB1074]

SENATOR HOWARD: Okay. Thank you. [LB1074]

SENATOR GAY: Tracy, one more. I've got one for you. You touched about the local health departments. And Douglas County is very fortunate, they've got a very good public health department. But you know, we established some health departments through the Legislature throughout the state. And I like your idea, what you're saying. Maybe they need to get a little more up to speed here and be a resource--you know, they're full-time employees--be a resource to their area. I think that's a very good suggestion or idea that maybe we need to look into as well. So...but do you think that would be...are they...in your organization, do you use the local health departments right now? [LB1074]

TRACY STRATMAN: Yes, we do. And I, like I said, in my personal, not Nebraska Recreation and Parks Association, but in my personal interaction with our local health department, I have called them, spoke to them on the phone. They've come out to the pools that I oversee and walked me through things step by step. And I think that that's the type of relationship that we possibly need to get into some of the other...in the other entities. [LB1074]

SENATOR GAY: Okay. Well, I guess this would be a suggestion, not a question. But you have a large membership here, it looks like, pretty diverse throughout the whole state. I think maybe that would be something that your organization can pursue, to request from your local health associations. I don't know. I mean, they've got a plateful but this sounds to me like a very good public health issue that they should be involved in or at least aware of. [LB1074]

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TRACY STRATMAN: Yes, I agree. [LB1074]

SENATOR GAY: So I would encourage you to maybe bring that up on an agenda sometime. [LB1074]

TRACY STRATMAN: I will. Thank you. [LB1074]

SENATOR GAY: Oh, Senator Pankonin has one more question. [LB1074]

SENATOR PANKONIN: I think the point, what Senator Gay is getting at, that...whether we talk about this bill, move it forward, but I think there is a concern here and I think it's to think that all the whole state has got the same kind of support that you have in Douglas County is not realistic, as you well know. And that if there is another solution that can come without legislation, sometimes that works and we have better, you know, obviously the potential here is there is there's...it's a lot of risk. [LB1074]

TRACY STRATMAN: Yes. [LB1074]

SENATOR PANKONIN: I'm sure you would agree. And so I think it is important that we do follow through with this topic to see if we can make it better because people, I think they assume that someone in greater Nebraska may have these resources like you do. It's just probably not going to happen. So we need to try to have that coverage to be better one way or the other, whether it's through this legislation or some kind of effort on your organization's part to provide that. [LB1074]

TRACY STRATMAN: Yes, I agree. [LB1074]

SENATOR GAY: All right. Any other questions? I don't see any. Thank you very much. [LB1074]

TRACY STRATMAN: Thank you. [LB1074]

SENATOR GAY: Next opponent. [LB1074]

KENNETH COOK: (Exhibit 5) Senator Gay and committee members, my name is Kenneth Cook, K-e-n-n-e-t-h C-o-o-k. I'm the owner of Havco Pools here in Lincoln, Nebraska. I'm a commercial swimming pool operator for over 32 years, servicing mostly commercial pools in Lincoln and eastern Nebraska. We do most of the health clubs in Lincoln along with over half the hotels. So I'm pretty used to operators and what I'm seeing out there in the public. First of all, a couple corrections to a couple things that were said earlier. First of all, the state of Nebraska, as of two years ago when the statutes were rewritten, does inspect hot tubs and therapy pools as long as they're not in a hospital setting, which takes care of pretty much everything in the state. Second of

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all, the statement was made that only Class A pools in Nebraska are required to have certified operators. That is correct, except for Lincoln. Lincoln requires Class A and Class B to have certified operators. And that study that was done was done between Lincoln and Omaha, showing that Lincoln had fewer incidences of problems because we do have certified operators at our Class B pools and Omaha does not. I have not read the amendments to the bill, so my comments are to the existing bill. My first problem is with...has to do with the testing. Currently, the course to obtain an operator's license in Nebraska is similar to getting a driver's license. We're testing people and telling them what the rules and regulations are; we're not teaching them how to do drive. If they don't know how to use their pool or operate their pool, it's the job of the pool professional to come in and teach them how to operate that specific pool. There's so many varieties of swimming pools, equipment out there that there's no way that you can teach that in 1 book or 14 hours. Obviously, the more education someone has, the better. But sometimes having someone come out and show you specifically what goes on at this pool with this piece of equipment takes someone a lot further a lot faster and provides that kind of a service. There's another problem that this national testing, the way it was written in the current LB1074, does not require testing or education towards Nebraska rules and regulations. I guess that's, from what I heard, that's been addressed in the amendment. But other states, such as Florida, require an hour or two of testing and education specifically on Florida rules and regulations. Also, how are we to say that somebody in western Nebraska, let's say, that goes to Colorado to take this test. How would they know Nebraska rules and regulations when they're having an hour spent on Colorado rules and regulations? They'd come back with a CPO license but no Nebraska testing. So there's no follow-up or follow-through on that. My third concern is operator supervision. Currently, all Class A pools in Nebraska, and additionally Class B pools in Lincoln, require a pool to be under the immediate supervision of a certified operator. If the pool has no operator, the pool must close until one is obtained. LB1074 currently states that the owner of a pool has up to 90 days to replace a certified operator when they quit. I fail to understand how this bill equates the need for operator training with the need for less operator supervision. In Nebraska, with our short summer swimming season, an operator could quit one day into the summer and the owner could get away without hiring one for the rest of the summer. That time period is way too long. One day is more in the public health. In extreme case, the bill with the 90-day lag period would allow an owner to hire a person for 4 days out of the year and that would be all they would have to have a person on duty. My fourth concern is the added cost of LB1074. Currently, as it was stated, it costs \$40 to \$50 to obtain a Nebraska license. When I walk into a hotel here in town or any other public facility where I'm training an operator or someone on the staff, I have everyone that is possible go to the operator training course. That way if somebody is sick, not there for a day, on vacation, there's somebody else at the facility that has some basic knowledge of how to handle the situation. A lot of places, somebody quits, they either close or they have to hire my company to come out and be the operator until they can hire a new one. Currently, there's over 1,150 pools that are Class A and Class B in Nebraska. So we have over

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1,000 operators. At \$250 per person for the course, you're looking at almost a quarter of a million dollars in expenses just to train people to get up and running here. Based on what I can find out, there's only one currently trained CPO here in the state who could train people. They've offered to bring more people in, but the timetable of July 2009, there's no way that that could be met and have everybody trained and up and running by that time. And for these reasons, I feel that LB1074 is unnecessary and provides very little benefit to the citizens of Nebraska. [LB1074]

SENATOR GAY: All right, thank you. Any questions from the committee? I don't see any. Thank you. [LB1074]

KENNETH COOK: Thank you. [LB1074]

SENATOR GAY: Other opponents? [LB1074]

DOUG CLARK: Good afternoon. My name is Doug Clark, D-o-u-g C-l-a-r-k, 405 Brentwood Drive, Gretna, Nebraska. I'm the environmental health division chief with the Douglas County Health Department in Omaha and I'm here to testify in opposition to LB1074 as it is written. And I should correct one other statement while it's fresh in my mind. A statement was just made that Lincoln was the only other city that required Class B pool operators to be certified. It's also a requirement in Douglas County. We've always been a proponent of education and training for swimming pool operators. And...so it might seem odd that a health department is testifying against this. But we feel that there's three deficiencies in the bill. And I'm not going to read this word for word, but in Section 2, page 2, lines 22 through 25, it gives the definition of a certified pool operator. And you can read it for yourself. But I'd like to point out that the Douglas County Health Department currently provides swimming pool operator training courses and certification, which are recognized and equivalent to those presented by the state Health and Human Services System. But the way the definition is written up in the bill, it precludes our health department from providing this training as we are not a nonprofit organization, but we're a governmental agency. But we'd recommend that the words "provided by a nonprofit organization" being deleted or that the words "governmental agency" be added. And I should also point out that our health department licenses and inspects roughly 400 pools per year. And last year we trained roughly 500 pool operators under our program, and those pools included therapy pools and spas. Okay, the second thing, Section 2, page 3, lines 4 through 8, it specifies that the training must include a minimum of 14 hours with 6 in a classroom setting. We feel that the training currently provided by our health department--and like I said, it's equivalent to that provided by the state and the Lincoln health department--which consists of a half-day classroom course and completion of a written exam is adequate. We cover the subjects of water chemistry, state and local regulations, filtration, pumping equipment, sanitation, disease prevention, and safety. So we'd recommend that all references to the number of hours be deleted or changed to be equivalent to the current certification programs. And

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actually, I wanted to make reference to a study that Tracynda pointed out earlier, but I'd like to approach it from a different angle. But the independent study that she made reference to, which was an analysis of swimming pool inspection records throughout Nebraska which was conducted by Health and Human Services and demonstrated that swimming pools with certified operators under the existing program had significantly less water quality violations than those without certified operators, which further supports the adequacy of the current program. And last but not least, in Section 3, lines 15 through 18, the bill allows a 90-day period to replace a certified pool operator. So that, in essence, means that you could have a pool or spa operated for three months without a certified pool operator. And even though this would not be recognized in our local ordinance because we don't allow for any lapse, we don't think this would be in the best interest for public health in Nebraska. So that concludes my testimony and I would be happy to answer any questions. I should also add that when I was talking about my qualifications, I have 34 years' experience in public health, both with the state Health Department and Douglas County Health Department. I used to coordinate the pool program for the state Health Department when I was there. [LB1074]

SENATOR GAY: Oh, okay. Good. [LB1074]

DOUG CLARK: So I had a lot of experience in this field. And like I said, it is a good course. I have the certification myself. We're proponents of education, training. We just feel that these are things that need to be addressed. [LB1074]

SENATOR GAY: Thanks, Doug. Any questions from the committee? I've got one for you, Doug. [LB1074]

DOUG CLARK: Sure. [LB1074]

SENATOR GAY: We had talked about...you had heard me say earlier, other health departments, and I know you're doing a great job. But are other health departments throughout the state being trained or could you offer that training to somebody if pool season, I guess, is coming up? But do you ever offer that out to other communities and health departments? [LB1074]

DOUG CLARK: Yes. That training that is offered in other areas of the state outside of Omaha and Lincoln is provided, at the current time, by the state Health and Human Services System. There's a gentleman that goes out to a lot of different areas of the state, primarily in the spring and early summer, and puts on these certification courses because it is a requirement for Class A pool operators in the other areas of the state outside of Lincoln and Omaha. [LB1074]

SENATOR GAY: Okay. All right, thank you. Any other questions? I don't see any. Thank you, Doug. [LB1074]

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DOUG CLARK: Thank you. [LB1074]

SENATOR GAY: Senator Howard, could I ask you to finish taking the opponents? I've got to go testify on a...thank you. [LB1074]

SENATOR HOWARD: Sure. Thank you, Senator Gay. Do we have anyone else who's going to be testifying in opposition? Any neutral? Well, that was easy. (Laughter) [LB1074]

SENATOR GAY: You did a great job. [LB1074]

SENATOR HOWARD: Thanks. Any time. Well, that will conclude the hearings for today and I thank you for coming. (See also: Exhibit 10.) [LB1074]

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Disposition of Bills:

LB994 - Held in committee.
LB1074 - Indefinitely postponed.
LB1123 - Held in committee.

Chairperson

Committee Clerk