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Natural Resources Committee
February 08, 2007

[LB530 LB534]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 8, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB530 and LB534. Senators present: LeRoy Louden, Chairperson; Carol Hudkins, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Deb Fischer; Gail Kopplin; and Norman Wallman. Senators absent: None. [LB530]

SENATOR LOUDEN: We will start our hearing for the Natural Resources Committee today. I am Senator LeRoy Louden, chairman of the Natural Resources Committee and I'll introduce the Senators now. To my right the first Senator is Tom Carlson, from Holdrege; next to him is Senator Gail Kopplin, from Gretna; sitting to my near right is Jody Gittins, our legal counsel. To my left is Senator Carol Hudkins, from Malcolm, vice chairman of the committee; and next to her is Senator Deb Fischer, from Valentine. Our committee clerk is Barb Koehlmoos, and our pages today are...anyway, we'll get to our pages here pretty quick (laughter) here when I find the list...Erin Frank and Steve Scharf. Both are students at the University of Nebraska-Lincoln. I ask that you turn off your cell phones or else put them on silent so that they do not disturb anyone in the hearing room. Those wishing to testify on a bill should come to the front of the room when the bill is to be heard. As someone finishes testifying the next person should move immediately into the chair at the table. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, please raise your hand and the page will circulate a sheet for you to sign. This list will be part of the official record of the hearing. This year we are using a computerized transcription program and it is very important to complete the green sign-in sheets for testifiers prior to testifying. They are on the tables by the doors and need to be completed by all the people wishing to testify, including senators and staff introducing bills and people being confirmed. If you are testifying on more than one bill, you need to submit a form for each bill. When you come up to testify place the form in the box by the committee clerk; do not turn the form in before you actually testify. Please print and it is important to complete the form in its entirety. If our transcribers have questions about your testimony they use this information to contact you. As you begin your testimony state your name and spell it for the record, even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify it may be necessary to place time limits on testimony. If you have handout material give it to the page and they will circulate it to the committee. If you do not choose to testify you may submit comments in writing and have them read into the official record. No displays of support or opposition to a bill vocal or otherwise will be tolerated. And if you need a drink of water while testifying, please ask the page. With that I will mention for the record that Senator Dubas, from Fullerton, has arrived, one of the committee members, and with that we will begin testimony on LB530 and Senator Nantkes. Welcome, Senator Nantkes. [LB530]

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SENATOR NANTKES: Good afternoon, Mr. Chair, members of the committee. My name is Danielle Nantkes, N-a-n-t-k-e-s. I'm representing the "Fighting 46" legislative district, and I'm here to introduce LB530. Legislative Bill 530 clarifies the Stormwater Management Program's funding distribution statute and clarifies that the county's share will be based on the county population less the population of city applicants within that county. Funding for stormwater management was provided at the level of \$2.5 million for '06-07 and '07-08 to be distributed proportionately to cities and counties having requirements under the Clean Water Act based upon population. The distribution of funding between cities and counties within urbanized areas which are eligible to receive 80 percent of the total program funds, was based on a literal interpretation of the language contained in LB1226 which resulted in the double-counting of populations. For example, in Lancaster County both the city of Lincoln and Lancaster County got the benefit of those populations as it relates to the funding distribution. This bill would help to take care of that problem and create equity. I'd be happy to answer any questions but I know there's a few testifiers behind me who have considerable expertise in this area. [LB530]

SENATOR LOUDEN: Questions for Senator Nantkes? Seeing none, thank you, Senator. [LB530]

SENATOR NANTKES: Thank you, and Mr. Chair at this time, I'd like to waive my close. [LB530]

SENATOR LOUDEN: You are waiving closing? Okay. How many people wish to testify for proponents for LB530? One? Okay. How many wish to testify as opponents of LB530? Okay. Anyone in the neutral? Very good, proceed. [LB530]

NICOLE FLECK-TOOZE: (Exhibits 1 and 2) Thank you. Good afternoon, Chairman Loudon, members of the committee, my name is Nicole Fleck-Tooze, spelled N-i-c-o-l-e F-l-e-c-k - T-o-o-z-e. I am the special projects administrator with the Lincoln Public Works and Utilities Department, here today representing the city of Lincoln. I do have copies of my testimony and a fact sheet on the bill if those could be distributed please? The city of Lincoln supports LB530. As Senator Nantkes outlined for you, the purpose of the bill is to clarify the distribution of stormwater funds from the Stormwater Management Plan Program that was created last year by LB1226, and the intent of the bill was to provide funding based on population to correspond with responsibility for stormwater management, basically. The clarification that's proposed in the bill as Senator Nantkes said, relates to the distribution of funding between cities and counties that are located in urbanized areas. And I have included a list of those cities and counties which are defined as urbanized areas that have stormwater permits. And the bill simply clarifies that the grant funds that are distributed to counties will be based on the county population minus the population of the city applicants within the county. This would be consistent with the population for which the counties have stormwater permit

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responsibilities and would reflect the intent of the original legislation. There is one important correction that's needed to LB530 as it was drafted. I think it was an inadvertent omission and I understand that there is an amendment that's being prepared. The clarification language was added to subsection (2) which relates to cities and counties that are outside of urbanized areas. And in fact currently there are no counties with stormwater permits outside urbanized areas. It would be appropriate for that language to remain in that section in case there are in the future, but in order to reflect the intent of this bill, it should be added to subsection (1), which is page 3, line 3, to apply to the urbanized areas as intended. The city of Lincoln would really like to thank Senator Nantkes for introducing this clarification language and thanks to the committee for the opportunity to comment today. I'll be available to answer any questions. [LB530]

SENATOR LOUDEN: Okay. Any questions for Nicole? Senator Carlson. [LB530]

SENATOR CARLSON: Senator Louden. Nicole, this is a pretty simple question but I need a simple answer here. [LB530]

NICOLE FLECK-TOOZE: Sure. [LB530]

SENATOR CARLSON: Just in the wording in there, if the county population is ten and the city applicants are seven, ten minus seven is three, so that would be 30 percent then? [LB530]

NICOLE FLECK-TOOZE: Are you talking about the county population that would include the city? [LB530]

SENATOR CARLSON: Well I'm just going by the wording here. [LB530]

NICOLE FLECK-TOOZE: Yes. [LB530]

SENATOR CARLSON: The county, the distribution shall be based on the county population of ten less the population of city applicants which is seven... [LB530]

NICOLE FLECK-TOOZE: Okay. [LB530]

SENATOR CARLSON: ...ten minus seven is three so that's 30 percent, that's the way... [LB530]

NICOLE FLECK-TOOZE: That's correct, yep. [LB530]

SENATOR CARLSON: Okay, thank you. [LB530]

NICOLE FLECK-TOOZE: You're welcome. [LB530]

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SENATOR LOUDEN: Other questions? Senator Hudkins. [LB530]

SENATOR HUDKINS: Now, I don't know that this would happen but let's say just for example, Lincoln and Lancaster County, Lincoln doesn't have any applicants. So then would the county because Lincoln is within the county, the county would get all of the funding? [LB530]

NICOLE FLECK-TOOZE: If Lincoln does not apply, for example, as a community for those grant funds, my understanding is what DEQ does, is they take the funds that are available to urbanized areas in general and they would distribute it proportionately amongst those applicants. So the county wouldn't get the balance but they would be one of those applicants who would get the balance. [LB530]

SENATOR HUDKINS: Okay. Thank you. [LB530]

SENATOR LOUDEN: Other questions for Nicole? Senator Fischer. [LB530]

SENATOR FISCHER: Maybe you could clarify this for me, Nicole. Under current statute how has the money been divided? [LB530]

NICOLE FLECK-TOOZE: It's been divided in, I guess, two groupings. One grouping of 80 percent of the funds are distributed to cities and counties within urbanized areas, and 20 percent for cities and counties outside urbanized areas. And so the intent here is really just to make a modification to the distribution for cities and counties in urbanized areas. [LB530]

SENATOR FISCHER: Correct. Out of the 80 percent that's going to those cities and counties right now, how much went to Lancaster County and how much went to the city of Lincoln this last year? [LB530]

NICOLE FLECK-TOOZE: Well Lancaster County doesn't currently have a permit and they didn't...they were... [LB530]

SENATOR FISCHER: But they can get a permit? [LB530]

NICOLE FLECK-TOOZE: Yes. They have received a notice as I understand it that a permit is required and but it has not been issued yet. So in the future if they have a permit and they apply, then they would be part of that distribution but we wouldn't know that until that time. [LB530]

SENATOR FISCHER: Under current statute if Lancaster County would have applied and had a permit and received funds, what percentage would have gone to Lancaster

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County and what percentage would have gone to Lincoln? [LB530]

NICOLE FLECK-TOOZE: You know, I don't have that information because what, the information that we received from the Department of Environmental Quality was based on the communities that have permits and they had broken out that funding distribution because Lancaster County was not part of that, I don't have that information in front of me. But that certainly might be something that the Department of Environmental Quality could provide. [LB530]

SENATOR FISCHER: Under this bill would the proposed change...if Lancaster County would have received any, what would be your best guess with this change...what would Lancaster County receive and what would the city of Lincoln receive? [LB530]

NICOLE FLECK-TOOZE: Boy, I don't have the Lancaster County population in front of me so it's difficult for me to answer that question. I can tell you the difference as we had projected it for Omaha, for example, versus Douglas County. [LB530]

SENATOR FISCHER: Okay. [LB530]

NICOLE FLECK-TOOZE: That would help to give you an idea... [LB530]

SENATOR FISCHER: Yes, that would be helpful. [LB530]

NICOLE FLECK-TOOZE: ...okay...the city of Omaha had basically identified, let me get to the right section if you'd give me a moment. Okay, DEQ's distribution between city of Omaha and Douglas County was essentially \$587,000 for Omaha and \$698,000 for Douglas County. And if this bill is revised based upon the population of the county outside the city, the city of Omaha would receive \$922,000 and Douglas County \$143,000. [LB530]

SENATOR FISCHER: My goodness. Do you think that would apply to most of the other cities and counties that would be affected by this? That the cities would end up gaining money; the counties would lose money? [LB530]

NICOLE FLECK-TOOZE: Well, I think in this case that Omaha and Douglas County work closely together under an interlocal agreement anyway as the majority of the cities and counties probably would do to handle this. That was a little bit skewed because there are other communities in Douglas County that also got a share of that cost. I guess it's just a fairness issue relative to what the county is responsible for, so they're not responsible for the stormwater management in the city and so the idea is that the funding would be distributed based on what they're responsible for. So that's probably the most drastic change, as an example. [LB530]

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SENATOR FISCHER: Thank you. [LB530]

NICOLE FLECK-TOOZE: Um-hum. [LB530]

SENATOR LOUDEN: Other questions for Nicole? Seeing none, thank you. [LB530]

NICOLE FLECK-TOOZE: Thank you. [LB530]

SENATOR LOUDEN: Next proponent? Any more testifiers for the proponents? Any, okay now, opponents...testifying in the opposition? Testifiers in the neutral? Seeing none then I guess we can close the hearing on LB530 and we will open the hearing then on LB534. Welcome, Senator Schimek. [LB530 LB534]

SENATOR SCHIMEK: (Exhibits 3, 4, 5) Thank you, Mr. Chairman, I don't have the pleasure of coming before the Natural Resources Committee very many times, so I'm delighted to be here. Chairman Louden and members of the Natural Resources Committee, for the record my name is DiAnna Schimek, I represent the 27th Legislative District, the "Historic District." I'd like to tell you that this bill was brought to me by a coalition of communities including the city of Lincoln which wants the option to develop a local utility to deal with stormwater requirements required by the federal Clean Water Act. I do have two handouts for your consideration that give you the key points of the legislation as well as identifying the communities across Nebraska that are required by this federal act to develop and implement stormwater plans. Currently, in addition to Omaha and Lincoln there are 18 communities statewide required to comply and four counties and that's more than we had, I think, last time when this bill was presented. More communities will also be required to develop and implement plans in the future. This issue is not going to go away. One way or another our local communities will need to find ways to fund these requirements. Right now the only option these communities and counties have are to pass specific bond issues or to raise local property taxes. Legislative Bill 534 enables impacted communities that receive local approval the option of assessing a fee to owners of structures based on their building's contribution to stormwater runoff. Larger spread-out structures and parking lots would be assessed at a higher level because they contribute more to the problem. I feel this is a fairer way to pay for this federal requirement than increasing property taxes on local homeowners and businesses. If you contribute more to the problem you pay more than the owner of a single-family home. And of course, that is why this is controversial. I also want to note here that LB534 differs from previous legislation introduced on this topic in one very key element: it excludes public building sites across the state. This includes all state buildings, public schools, the university, and the state's political subdivisions. The goal is to compensate local entities that choose to set up a stormwater utility through a state grant program previously developed by the Legislature. Many of these public building sites in communities that are impacted by the federal requirement have already worked to mitigate the stormwater runoff impact, and they can work to mitigate so that their

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costs towards this utility are not as high. I would like to present an amendment that would address a drafting error on page 11, if you would look at that and...here we go, thank you. It changes the word "may" to "shall," so it would read on page 12, "...the city or village shall also establish a system of exemption from stormwater charges for the property of the state and its subdivisions..." etcetera, etcetera; it's what I really just talked about. There should have been a shall on there. There are several individuals who will testify who can give you much more detail on this issue including a short presentation that will give you a clearer picture of how this process works. If you have any questions now, I'd be happy to try to answer them. [LB534]

SENATOR LOUDEN: Questions for Senator Schimek? Okay, and seeing none, do you wish to close? [LB534]

SENATOR SCHIMEK: Probably not because I have another bill to introduce in another committee, but I am going to stick around for a while and I reserve the right to change my mind. But I probably won't. [LB534]

SENATOR LOUDEN: Okay, if you're here why, you may close is you so desire. [LB534]

SENATOR SCHIMEK: Thank you. [LB534]

SENATOR LOUDEN: How many people wish to testify in favor of this bill? Seven. And how many wish to testify against this bill? Fourteen. And any who wish to testify in the neutral? I guess you are either for or against it, not in between (laughter). [LB534]

NICOLE FLECK-TOOZE: Well good afternoon again, Mr. Chair, members of the committee, again I'm Nicole Fleck-Tooze with the Lincoln Public Works and Utilities Department, representing the city of Lincoln today. Being handed around are copies of the PowerPoint which will serve as my testimony and also a letter from Mayor Seng expressing Lincoln's support for the bill. [LB534]

SENATOR LOUDEN: Now this would be about 15 minutes? [LB534]

NICOLE FLECK-TOOZE: Yes. [LB534]

SENATOR LOUDEN: Okay. Can you spell your name again for the record? [LB534]

NICOLE FLECK-TOOZE: Certainly, it's Nicole, N-i-c-o-l-e, last Fleck-Tooze, F-l-e-c-k - T-o-o-z-e. [LB534]

SENATOR LOUDEN: Thank you. [LB534]

NICOLE FLECK-TOOZE: (Exhibit 6, 7) Well I did have this in focus earlier, but...if you

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could give us just one moment, please? Thank you. What we wanted to do today is to provide you an overview of the bill as well as an overview in general of how stormwater fees work and function. First LB534, just a little bit of an introduction as to why we need it. Nebraska communities need dedicated resources to comply with the federally mandated stormwater program; that's perhaps our most urgent issue. Certainly we also need funding for infrastructure to protect families and businesses from flooding. Just a couple of springs ago we had a good example of significant flooding in Grand Island that resulted in millions of dollars' worth of damages. That's still very fresh in our minds. There is a need for a funding source that doesn't require the elimination of other essential services. And there's a need for flexibility to adopt individual programs based on local needs. I think it's important to get through the acronym of the day here before we go any further because it does come up again and again so this is just an overview of the NPDES program. For anyone who isn't already familiar with it, the NPDES stands for National Pollutant Discharge Elimination System. And the NPDES stormwater permit is a federally mandated and required for discharging stormwater from urbanized areas into waters of the state which are basically our streams and lakes. The Department of Environmental Quality is the state agency in charge of overseeing the NPDES program in Nebraska. Lincoln received its stormwater permit under the Phase I program in 2002 and the city of Omaha received their permit in 2003. There are now 18 other Nebraska cities and counties including ten that just had requirements that came due last year that are facing this federal mandate for clean water under Phase II of the program. Lincoln's near-term water quality costs are exceeding basically \$6 million annually. When we looked at the near-term statewide costs for stormwater quality, we estimated those at about \$24 million annually. If we include those other related flood and stormwater costs, we're more in the neighborhood of \$32 million annually for our cities and counties in urbanized areas. The stormwater fee system is how the majority of the states around the country are dealing with these issues. Stormwater utility or a stormwater fee system, I'd like to just give a little bit of background about how this works, how other communities are doing it nationwide. It's a fee-based utility that looks an awful lot like your water or sewer utilities. It's based upon the amount of stormwater contribution of the site which with today's technology we have very sound engineering principles that we can apply to determine what that contribution is. And stormwater is going through what historically, if you look at wastewater and water went through, probably in the '50s and '60s where it evolved from being funded by the General Fund to being a fee-based system where the fee was based on your impact to that system. For stormwater, often impervious surface area like pavement, rooftops, concrete, is used as a measure of the contribution. That's not the only way to do it; that is one way of doing it. And all funding in the stormwater fee system goes to an enterprise fund that's dedicated to a stormwater program. The purpose of the stormwater utility is to be a funding option and again, let me remind you, this bill is permissive legislation only. It allows cities and counties who have these requirements to adopt something going through a local public process if they wish to. It's a fair and equitable system that's based upon the amount of stormwater contribution of any one property. And if you look at, without the stormwater

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fee, it's really the homeowners who are bearing a disproportionate share of the costs of the program through their property taxes. It's got to get funded one way or another. If it's funded through property tax the residential homeowners are paying a disproportionate share. And to try to help visualize that we take a look at these two pie charts. Essentially on the left, what you've got is, and this is just an example, for Lincoln, an estimated cost distribution for property tax versus stormwater fees. Again looking at just your stormwater costs, essentially 70 percent being borne by the homeowner under a property tax contribution versus 30 percent for nonresidential. And if you take a look at the pie chart on the right, that reflects the true contribution, the impact to the system from those properties. Twenty percent you can see in Lincoln which is high compared to other communities comes from the public sector. Thirty-six percent would be only coming from the residential homeowner, and 44 percent from nonresidential so commercial industrial properties. And the public sector, as Senator Schimek identified for you, has been removed from this bill. The goal would be to access grant funds to compensate for that loss, but this gives you an idea, again, of that distribution, where that impact is coming from relative to land use. Now, just to give you an idea of how this works, we thought it might be helpful to visualize it a little bit better, and this is an aerial photograph--and I'll try not to get anybody in the eye with this, I'll be careful--that's showing in this example a single-family home. What is outlined in red is basically the building area of the home and the storage area, or garage behind it, and then in blue is the paved area--the sidewalk, the driveway, essentially associated with that single-family home. And just to provide a comparison here looking at a typical single-family home, which in Lincoln is around 2,200 square feet of impervious surface area. So when the rain falls on that rooftop and that one and the rain falls on that sidewalk, it runs off and it goes down into the storm drain system and into our streams and lakes untreated. And so when we look at that area, that is how we look at calculating basically the stormwater contribution in many cases. And this is trying to give a contrast between what that property owner is paying for stormwater through their property taxes annually, \$55 a year, versus what they will pay under a fairer system that reflects their actual impacts to the stormwater system, \$30 a year. So that's the contrast for the homeowner. And typically nationwide, the fees range from about \$3 to \$6 a month for a homeowner on their bill, and often you'll just see it right on your water and sewer bill, will be your stormwater fee. Another example, and what we've done is to try to pick some examples from Lincoln, Nebraska. This is one of our downtown banks. And so again because the structure is a high-rise structure, it's a commercial business and here's the building area but the overall footprint is small and so their impact to the stormwater system is small. And so again, if you compare the property tax for a year estimated that is devoted to stormwater versus the stormwater fee, you're actually paying much less under a stormwater fee scenario. By contrast and I know we have some folks with concerns with this kind of situation, but if you have a larger area, more spread out, a big building area, a big parking lot where all that runoff and those pollutants run off, here is a building area in this example--this is another, this is a grocery store in Lincoln, Nebraska--and here is the parking area. And you can see that

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the stormwater fee is more than the property tax because it reflects their contribution or their impact on that stormwater system. To give you an idea of the funding use for the stormwater fee system, that enterprise program, it would include capital projects, water quality projects of course, flood management, and storm drain projects. Also other programmatic elements of the NPDES stormwater-mandated program. Public education and outreach is a requirement. Control of erosion and sediment control on construction sites; that's a huge water quality issue in many communities in Nebraska. Again, public education and we also have an obligation to address illegal discharges into the storm drain system or pollutants running off of sites like a car wash that are going untreated into the stormwater system. That's another obligation that we have. Who has stormwater utilities? Well there are 38 other states that have enabling legislation that allow their communities nationwide to adopt stormwater utilities. Some neighboring states that we have with enabling legislation include Iowa, Kansas, Colorado, and Wyoming. And we have over 400 communities nationwide who have adopted stormwater utilities so it's not a new system, it's been going on for quite some time, particularly in light of all of the federally mandated stormwater regulations. And there are a lot of models out there that have been quite defensible and have been used over and over. Specifically now on LB534, I just wanted to kind of walk through the major points of that legislation. Again as I think Senator Schimek said, it allows cities or counties that have this federally mandated NPDES stormwater requirement to establish a stormwater utility. It is permissive legislation. Charges are to be proportionate to the stormwater contribution of the premises served and based on sound engineering principles. This kind of locally adopted stormwater utility can also include credits for stormwater, what we call BMPs, or best management practices, where a property owner would go above the standards and install water quality or a retention pond or other features. Those need to be credited back to drop down that fee. And as Senator Schimek pointed out, the bill has been written that it must include exemptions for property of the state and its governmental subdivisions. This would include all state and local government, local public schools, etcetera as written, would be exempt from the fee. Fees to pay the costs would go to pay the costs of development, the establishment and implementation of stormwater management programs, and there's a clear hierarchy in the bill so that no property can be charged a fee by a county if a city is already charging a stormwater fee so that we don't have that double charging. In summary, stormwater requirements have been varied with each community; each of the NPDES permits are different. We need a local determination of the best funding option. Local communities in Nebraska, we are the ones that bear the burden ultimately of meeting this federally mandated stormwater regulation. And we also have significant stormwater infrastructure needs to reduce our flood threats. Nebraska is really behind the curve in not providing this option to communities when you look nationwide what other states have done to enable communities to adopt this locally and this is really Nebraska's urban water issue. We've heard a lot about the rural water issues; this is the urban water issue and it's not going to go away for our communities. We are going to have to find a way to address it. We'd really like to thank Senator Schimek for introducing this bill and thank you very much to

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the committee for the opportunity to testify today. I would like to answer any questions you have. [LB534]

SENATOR LOUDEN: Any questions for Nicole? Senator Kopplin. [LB534]

SENATOR KOPPLIN: I'm sure it's in here but in your definition of public, does that include churches, and... [LB534]

NICOLE FLECK-TOOZE: No, it does not. [LB534]

SENATOR KOPPLIN: It does not. Okay. Thank you. [LB534]

NICOLE FLECK-TOOZE: Um-hum. [LB534]

SENATOR LOUDEN: Senator Dubas. [LB534]

SENATOR DUBAS: Thank you, Senator Louden. Thank you, Nicole. Could you help me understand some of the definitions in here? And what is the difference between an urban cluster and an urbanized area? And the urban cluster talks about numbers 2,500 but fewer than 50,000. That's...could encompass a lot of Nebraska. [LB534]

NICOLE FLECK-TOOZE: Yes. And essentially what we were trying to do here was to make it clear that, I think we had some concerns that we might be out in the farmland and the county charging stormwater bills, or charging stormwater fees, rather, to agricultural properties. And this is really right out of the census and how the federal regulations are applied. They are applied to urbanized areas and to urbanized clusters which would be those basically urbanizing areas of the county, smaller communities within counties where the federal government has determined that they are obligated to get a permit. [LB534]

SENATOR DUBAS: Okay. [LB534]

NICOLE FLECK-TOOZE: So essentially this sets it up to just apply to those areas that have those stormwater regulations. [LB534]

SENATOR DUBAS: This would be...they'd fall under federal requirements? [LB534]

NICOLE FLECK-TOOZE: Correct. [LB534]

SENATOR DUBAS: Okay. [LB534]

SENATOR LOUDEN: Other questions for Nicole? Senator Hudkins. [LB534]

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SENATOR HUDKINS: Nicole, I have heard that we already have ways to address this stormwater funding mechanism, that we don't really need this bill? Tell me why that's wrong? [LB534]

NICOLE FLECK-TOOZE: Well, I think all of our legal advice from the city of Lincoln, city of Omaha, all of our attorneys who have looked at it, have identified that we don't have the enabling legislation that we need to, to adopt a fee locally. So I think it's been researched thoroughly on our end, we've looked into it now for a number of years and essentially we must have the enabling legislation to allow us to do this. [LB534]

SENATOR HUDKINS: In one of the letters that are being made part of our record, I'll just quote, furthermore, cities and counties currently have means to generate funds to address funds to address stormwater and other infrastructure needs giving these entities, cities and counties, the ability to levy a fee for stormwater management would allow these entities to bypass normal budget and revenue-generating channels and would still leave taxpayers subject to property tax exposure for other projects. [LB534]

NICOLE FLECK-TOOZE: I would say absolutely not. Certainly the way that it would be set up would have to first of all, go through a whole local public process for adoption through the local elected body. So that would all have to be set up and go through a process locally for adoption. A stormwater utility fee would be subject to just the same type of scrutiny and review as a water or wastewater utility; it would be set up based on that same system. And really, if you take a look at Lincoln, for example, the only way that we have to generate dollars for capital projects for stormwater are general obligation bond issues approved by the voters. And we're seeing many other competing interests for those. Certainly I suppose, General Fund would be another way to do it; that's not how we've done it in Lincoln. You're going to increase property taxes further and the property tax burden just gets bigger and bigger really, under any scenario for the homeowner. [LB534]

SENATOR HUDKINS: How would you see the county setting up this fee structure? [LB534]

NICOLE FLECK-TOOZE: Well I think there are a number of different ways to do it. I think the county could set it up based upon property--they look at the assessor's records and probably set it up in that way. You could do it through an interlocal agreement with the city, I mean, if Lincoln and Lancaster County, you know, at some point were both looking at this same type of system, that could be done through an interlocal agreement. I think there are a number of different ways that you could do it and it wouldn't have to be dissimilar to the way that a city would do it. [LB534]

SENATOR HUDKINS: So if you have a homeowner in rural Lancaster County with grass completely around their place of residence, they are still going to be charged

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something for Lincoln's stormwater runoff? [LB534]

NICOLE FLECK-TOOZE: No, no, not at all. What Lincoln would be charging would be within the city of Lincoln. And if Lancaster County at some point in the future had their stormwater permit and this legislation passed and they wished to set up a stormwater utility, Lancaster County can only apply that basically to the urbanized area of the county. And I think that's easier to visualize in a circumstance like Douglas or Sarpy County where you have more urbanized areas of the county. In Lancaster County it would be a much smaller area obviously. But that's one of the reasons why these definitions were added to make it clear that the application of this fee system would just be for that urbanized area and that's the same area that the city or county would be required to regulate under the federally mandated program. [LB534]

SENATOR HUDKINS: So it's only for the urbanized areas that we're talking about? [LB534]

NICOLE FLECK-TOOZE: Right. That's exactly right. [LB534]

SENATOR HUDKINS: But yet I think I'm still missing something because I still understand you to say that the county is also going to be responsible for the urbanized area? [LB534]

NICOLE FLECK-TOOZE: The county is responsible for that portion of the county that is designated as an urbanized area but not for the balance of the county. And essentially when the state issues a permit, they actually have a map that shows--here's the urbanized area within the county. And that's identified based on census tracts. And so the county, that's the only portion that the county would be responsible for addressing as part of the mandate. [LB534]

SENATOR HUDKINS: So the rural areas are still paying for the urban areas. [LB534]

NICOLE FLECK-TOOZE: No. Well, the rural areas would not--well, the rural areas might be paying if the county funded their program entirely through property tax. But they would not be paying under a fee-based system because you'd only be charging a fee to those properties that were in the urbanized area. Does that make sense? [LB534]

SENATOR HUDKINS: Okay. I think I understand and I've seen some heads nodding behind you, so if you can elaborate further when it's your turn to speak, I'd appreciate it. [LB534]

NICOLE FLECK-TOOZE: Okay, okay. [LB534]

SENATOR HUDKINS: Thank you. [LB534]

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NICOLE FLECK-TOOZE: You're welcome. [LB534]

SENATOR LOUDEN: Questions? At this time I'd like to mention for the record that Senator Mark Christensen from Imperial has joined us a little while ago. Senator Fischer. [LB534]

SENATOR FISCHER: Thank you, Senator Louden. I've a few questions here. You mentioned that one measure of the contribution was by the impervious surface area. What is another measure of contribution used in other communities on this? [LB534]

NICOLE FLECK-TOOZE: Well you can get very, exceedingly technical and look at the runoff from impervious surface areas and calculate also based on pollutant loads what you might get out of a total site. When you look nationwide at how most communities have done it, the impervious area is the most straightforward and it seems to be a very defensible utility. [LB534]

SENATOR FISCHER: On your chart that you handed out with the examples with the property tax versus the stormwater fee and it was also in your presentation, if the public sector, I believe I heard you say that was removed from the bill? [LB534]

NICOLE FLECK-TOOZE: Yes. [LB534]

SENATOR FISCHER: And the goal was that the political subdivisions then could access grants... [LB534]

NICOLE FLECK-TOOZE: Right. [LB534]

SENATOR FISCHER: If they are not able to access grants or don't receive any grants, who is going to pick up the 20 percent, the residential or the nonresidential, or on the fee structure? [LB534]

NICOLE FLECK-TOOZE: Well you could do it a couple of different ways. If you funded it through the fee structure you could just basically take that 20 percent and distribute that proportionately amongst or between the residential and nonresidential based on their piece of the pie, or you could fund it through alternative means. You could fund it through property tax, you could fund it through another means. I think each community would have to determine how they were going to handle that locally. [LB534]

SENATOR FISCHER: And the shift I see on these charts, I mean, it's...even if you put the 20 percent in that belongs to political subdivisions right now into the 36 that you have for residential, you know, it's 56 percent. Right now you have that 70 percent is residential. We hear a lot about tax shift and I know this is a fee, but I believe a fee is a

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tax. So you're having a tax shift in my view from residential to nonresidential property owners. Would you like to comment on that? [LB534]

NICOLE FLECK-TOOZE: I'd be happy to comment on that. I think, you know, again, if we go back to the examples of water and sewer, and I don't know if you consider those also to be tax but those, I think, have been demonstrated over time, this is what you pay and everybody just doesn't think twice about it for your impact to the system. Here's how much wastewater you're routing down the sewer pipes and have to treat. Here's how much water you're using up and this is your impact to the system. And I think when people start out it might be hard to look at--they're thinking, well, it's just rainwater; are we taxing rainwater? But what we are really doing is looking at the impact of that land use on the ground. And historically a huge portion of the rainfall that fell would have filtered into the ground or wouldn't have had all these pollutants on it, wouldn't have had pollution from cars or whatever else is on the ground. And so all of these things that we're doing in the built environment, those are really what is impacting the system and costing the community real money to go out and identify through flood management programs, through our stormwater infrastructure, and particularly now with this water quality mandate, some very real costs. And so I think this is just simply identifying...it's a fee-based system that's very consistent with historically how we have looked at when you have an impact to a system, and identifying that you would pay based on your impact to that system. [LB534]

SENATOR FISCHER: Will you have to build, will Lincoln have to build other cities some kind of treatment center? You know, one of your slides you show a car wash and the runoff there. So are you going to have to have some kind of treatment centers? I would think you'd have to have them all over the city and instead of it just running down the gutters and into the sewers, storm sewers. [LB534]

NICOLE FLECK-TOOZE: That is a really, really good question because if you look at some of the other states and what is happening nationwide, that's where we don't want to go. That would be far more expensive than anything that we have projected here. If we had to treat stormwater, that would be huge and one of the things that DEQ I know has testified on before is that there is always the potential in the future for a Phase III of this program. And it's been remarked I think, in their testimony, maybe the year 2010-2014 and that if we do a good job on Phase II and putting measures in place that are not hard treatment facilities, that we won't have to go there. But that I think, really underscores the importance of doing it right now and addressing things through other measures versus having to treat our stormwater in the future. [LB534]

SENATOR FISCHER: Thank you. I have lots more questions but I'd better stop, thank you. [LB534]

NICOLE FLECK-TOOZE: You're welcome. [LB534]

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SENATOR LOUDEN: Okay. Senator Hudkins, do you have a question? [LB534]

SENATOR HUDKINS: I do, yes. Nicole, in one of your slides you said that the Lincoln's near-term water quality costs exceed \$6 million annually. So that is currently what it's costing to treat whatever we're doing at this point? [LB534]

NICOLE FLECK-TOOZE: Yeah, basically what we are having to implement as part of our stormwater permit, is at that level. [LB534]

SENATOR HUDKINS: Okay. And so...and then the next article on that slide shows that the near-term statewide costs estimated at \$24 million and including other costs, \$32 million. Where did those figures come from? [LB534]

NICOLE FLECK-TOOZE: Well basically the Coalition of Cities got together in counties, and identified basically, Lincoln and Omaha have had some time now because they were under Phase I, to look at what our requirements are and what those costs will be. Now with several of the other communities coming in under Phase II, they have outlined their costs and so we took basically a couple of the Phase II communities, Lincoln and Omaha, and extrapolated based on population, an estimate for the state. So I think it's a you know, it's our best guess but I think it's a pretty good rough estimate to try to at least convey the magnitude of the costs. [LB534]

SENATOR HUDKINS: Okay. And one final question. This bill would allow the cities to impose a fee on impervious surfaces and that would raise the revenue to bring in the money that's necessary to treat these issues. But you're also allowing the cities to exempt certain entities, schools, other political subdivisions and so forth. Churches you said were not exempt and schools are exempt. [LB534]

NICOLE FLECK-TOOZE: Yes. [LB534]

SENATOR HUDKINS: Hospitals? [LB534]

NICOLE FLECK-TOOZE: Basically only political subdivisions of the state. The idea was, I think we heard some concerns about the taxpayers are already funding these state and local government properties and facilities, local public schools, those kinds of ideas, and so it would basically only apply to those state and governmental subdivisions of the state where people are paying property taxes to support. [LB534]

SENATOR HUDKINS: So the university would be exempt then, of course? [LB534]

NICOLE FLECK-TOOZE: Yes. [LB534]

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SENATOR HUDKINS: Yes, okay. Then to wrap all of that up, with this amount of money being necessary, \$32 million, is that even going to come close to what it's actually going to cost? [LB534]

NICOLE FLECK-TOOZE: Is the \$32 million going to come close? Well it certainly could be more. Lincoln is in a position right now where we're just about to renew our five-year permit. During this same time the state is drafting some basically, as they are required to do by the federal government, some limitations on pollutants, very numeric limitations on pollutants for specific stream reaches. So things are getting more and more strict all the time and certainly if we move to Phase III in the future as we talked about, it could be much more costly. So I think they are only going to go up, I think that's a pretty good idea of what it's going to be in the near-term and if you saw communities implementing this, what those kinds of costs would be. [LB534]

SENATOR HUDKINS: And then of course with the properties that are exempt, then everyone who isn't is going to be paying a larger share? [LB534]

NICOLE FLECK-TOOZE: Ultimately that portion will have to get paid for somehow because there's still going to be that impact to the system. [LB534]

SENATOR HUDKINS: Thank you. [LB534]

SENATOR LOUDEN: Senator Dubas. [LB534]

SENATOR DUBAS: Thank you, Senator Louden. Could you explain to me what the different phases are and what determines where you're at in those phases and will you always stay in those phases or if you move up and down? [LB534]

NICOLE FLECK-TOOZE: I'd be happy to. Basically what the phases relate to are phases of the federal regulations. And without going into a dreadful amount of detail, basically in response to some of the amendments of the Clean Water Act, EPA developed Phase I of the NPDES Storm Water Program in 1990. And that required permits for stormwater discharges from what they called medium and large cities basically with populations greater than 1,000, and then some other just industrial activity that was separate from municipalities. And in Nebraska that applied to Lincoln and Omaha. We were both Phase...now we are called Phase I communities just because we fell under that threshold where that phase of the regulations applied. Then as time went along and there was a second phase which became effective in March of 2003, and that added first class cities or urbanized areas over 10,000 in population and counties associated with urbanized areas. And then there were some program elements that were broadened beyond what was required in Phase I, and you could go on at length, but essentially it relates to a couple of different phases of the program starting to impact cities with lower and lower population thresholds. [LB534]

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SENATOR DUBAS: Thank you. [LB534]

SENATOR LOUDEN: Other questions for Nicole? Seeing none, thank you, Nicole. [LB534]

NICOLE FLECK-TOOZE: Thank you very much, appreciate it. [LB534]

SENATOR LOUDEN: Now as we go into the next proponent testimony, we'll try and limit that to about five minutes or a little bit under, if we can? [LB534]

STEVE RIEHLE: (Exhibit 8) I've got a copy of the written testimony and the presenter sheet. Good afternoon, Senator Louden and members of the Natural Resources Committee, my name is Steve Riehle, I am the city engineer and the public works director for the city of Grand Island. We are a Phase II stormwater community over 10,000 in population. Thank you for the opportunity to speak before you. The city council supported enabling legislation by passing a resolution supporting the legislation that would be permissive to allow us to create a stormwater utility or stormwater fee in September of 2005. Grand Island as well as some other communities across the state including Beatrice, Columbus, Fremont, Hastings, Kearney, Lexington, Norfolk, North Platte, and Scottsbluff, were issued the stormwater permits, or the NPDES permits that Nicole mentioned. For our storm sewer systems the effective date for our permit is a five-year permit and it's effective on January 1, 2006 through 2010. That permit requires the communities to develop and implement a stormwater management plan and then we have another acronym that we're creating in this confusing and sometimes overwhelming issue. To deal with this unfunded mandate and an issue that is overwhelming and can be confusing, we've learned a lot from the communities of Lincoln and Omaha and we've also learned a lot from ourselves. So all of our communities, Beatrice, Columbus, Fremont, Hastings, Grand Island, Kearney, Lexington, Norfolk, North Platte, and Scottsbluff, have been meeting once a month since August of last year to try to learn about this complicated issue. Try to deal with it; figure out how we go forward in this five-year permit that we've been working on. We even started in January doing once-a-week phone calls because there is a lot of work that we have to do. Nicole mentioned that there's near-term costs; we are just starting to see some of those costs and people are having to hire extra staff and fund those positions with the General Fund right now. We do support the legislation and recommend the committee advance it. I'd like to touch just a little bit on urbanized areas and on the taxability--property tax versus a stormwater fee. The EPA under the Clean Water Act of 1977 is where all this started. And they use the urbanized area as defined in the census to pick areas that come into stormwater requirements for Phase I or Phase II, and then grab an urbanized area. So if you have an urbanized area in Lancaster County that's just outside of Lincoln where you might have 300 or 400 homes, then that area might fall under the requirements of the stormwater permit. And

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so then Lancaster County would have to take certain measures for that cluster of 300 or 400 homes that's outside the city limits and then they would only be able to charge a stormwater fee for those 300 or 400 homes that are not adjacent to the city. The other thing is about taxes. I've formerly been involved in the highway construction industry and I always thought there never was a fair tax, but if there was a fair tax I thought gas tax was sometimes a fairer way to do it. Having worked for the city for eight years I'm glad that when I first started we didn't pay for sanitary sewer with property taxes. Up in Grand Island we've got a very large packing plant that produces about 56 percent of the load to our wastewater treatment plant. If they had to pay wastewater treatment plant based on property tax values instead of use, it would not be fair to all the citizens of Grand Island, and so we've got a system where they pay based on how much they send us and how strong it is. I know taxes...there's no such thing as a fair tax but I think it's a fairer way to do it and it's fairer than putting all the burden on property taxes. I'd be willing to answer any questions if anybody has any. [LB534]

SENATOR LOUDEN: Any questions for Steve? Senator Fischer. [LB534]

SENATOR FISCHER: Thank you for being here today, I appreciate it. You saw the chart, I think that was of... [LB534]

STEVE RIEHLE: Yes. [LB534]

SENATOR FISCHER: ...that compared, or showed the percentage of stormwater costs by property tax. And I'm assuming that this chart applied to Lincoln with 70 percent residential, 30 percent nonresidential. How would that compare in Grand Island? [LB534]

STEVE RIEHLE: I do not remember our residential and nonresidential but I do remember our government was around 7 percent so our government usage is quite a bit smaller. [LB534]

SENATOR FISCHER: Okay. Thank you. [LB534]

SENATOR LOUDEN: I'll mention for the record at this time that Senator Norm Wallman joined us, and he hails from Cortland and is a member of the Natural Resources Committee. Other questions for...Senator Carlson. [LB534]

SENATOR CARLSON: Senator Louden. I think I heard you that the one business was contributing about 56 percent? So when you bring in the other businesses that would get that percentage up significantly different than what we're looking at on this chart, wouldn't it? [LB534]

STEVE RIEHLE: For Grand Island it would. The one customer we've got that's a

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packing plant is contributing 56 percent of the load into our waste treatment plant, and their bill is based on how many gallons they send us as well as how strong their sewage is. And so are the other customers in Grand Island. I think that the next commercial customer we've got on the sanitary sewer system is a single digit number. I think it's in the 8 percent range. So they are the big player in our town for sanitary sewer use and they are also a big customer for water and electric as well, and they pay according to how much they use. [LB534]

SENATOR LOUDEN: Senator Kopplin. [LB534]

SENATOR KOPPLIN: That wouldn't necessarily be true for stormwater runoff though, would it? [LB534]

STEVE RIEHLE: It's not true for stormwater runoff. The stormwater runoff from a facility is more related to how much parking lot they have, how much building they have. One of the things that a number of communities across the nation do if they create a stormwater utility is if a business chooses to take measures on their property, and a number of them do, then their stormwater bill can drop because they reduce their impact on the stormwater system. A number of them would do it with detention cells and we have businesses in Grand Island that have done that. They build a detention cell on their property to reduce the impact their property has on the stormwater system. There's even new technologies out there where businesses can develop parking lots that are pervious pavement and the parking lot rather than contributing to the stormwater system, actually is pervious where it lets the water run through it. And then they don't have to worry about a detention cell flooding their parking lot and then they save money on the stormwater utility. [LB534]

SENATOR LOUDEN: Senator Hudkins. [LB534]

SENATOR HUDKINS: So let's take a commercial building for example. Let's assume that you have the pervious parking lot and the water that's running off of their roof comes down into the gutters and down and down and down, can it run across that pervious parking lot and then they're home free? [LB534]

STEVE RIEHLE: Yes, it would run into the pervious parking lot and soak into the ground and into the groundwater and have essentially no impact on the storm sewer system. [LB534]

SENATOR HUDKINS: Thank you. [LB534]

SENATOR LOUDEN: Senator Fischer. [LB534]

SENATOR FISCHER: On the pervious pavement, you said possibly credits would be

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available then for companies or areas, shopping malls, whatever that would have those large lots? Obviously the Grand Island city codes permit that...that certain areas can have those pervious parking lots, is that right? [LB534]

STEVE RIEHLE: Yes. What I think is happening across the nation... [LB534]

SENATOR FISCHER: Can Conestoga Mall in Grand Island have a pervious parking lot? [LB534]

STEVE RIEHLE: They could. Actually what they do have is they do have detention cells on their property so they've already reduced their impact on the storm sewer system for the city of Grand Island, so they receive credit for that. And if they chose to go pervious payment they would receive credit for that. I think what we're seeing across the nation is the industry is adapting and finding ways to deal with it and one of those ways is pervious pavement, and then that's lowering their costs of doing business. [LB534]

SENATOR FISCHER: Do you know if other cities permit parking lots to have pervious pavement in their codes? [LB534]

STEVE RIEHLE: I would anticipate that it's an engineering design thing and that the code would actually not prohibit it. If the developer working with their architect and engineer have a parking lot designed that would carry the load of the trucks or the cars that they could in the pervious payment and then it would be the design of the stormwater system that calculates their contribution to the stormwater system. And it would be reduced because they had pervious pavement so they would receive credit for that. And I think that would be more along the lines of the stormwater utility calculations of what they receive credit for. [LB534]

SENATOR FISCHER: Do you see the time coming when businesses that were able to afford to put in these different systems where they would get credits and wouldn't have to pay as much then in for the stormwater utility that it would be I guess, smaller businesses, maybe not the big chain stores or whatever, that couldn't afford to put those in that would carry the burden? And wouldn't the burden then shift back to the residential owners, to the homeowners? Wouldn't they have to be paying a larger amount in then if the businesses can afford to make these changes? [LB534]

STEVE RIEHLE: I think everybody gains if the business is able to minimize or eliminate their impact or contribution to the stormwater system, and the residential homeowner is only having to design and build a system to accommodate the drainage from their property because they're not having to accommodate drainage from the commercial property because the commercial property took care of all of their own drainage, so that there would not no impact on the residential. They would just be paying for their contribution. I think it would start out with the larger businesses that have the research,

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the consultants on board, the ability to look at the newer technology, and then it would eventually filter down as we learn more about it to the smaller businesses being able to find ways to minimize their costs. It's, I think it's related to sanitary sewers as well. A business that's a small business and a sanitary sewer bill is a small portion of their costs, doesn't look at saving money there. And then if you have a business that's small but is a significant sanitary sewer user, then they look at ways to reduce their sewer bill. I think they would do the same thing on a storm sewer. [LB534]

SENATOR FISCHER: Thank you. [LB534]

SENATOR LOUDEN: Any more questions for Steve? Seeing none, thank you. [LB534]

STEVE RIEHLE: Thank you. [LB534]

MARTY GRATE: (Exhibit 9) Senator Louden, members of the Natural Resources Committee, my name is Marty Grate, M-a-r-t-y G-r-a-t-e, and I am the environmental services manager for the city of Omaha. I want to thank you for the opportunity to speak before you on LB534. Distributing around is a letter from Mayor Mike Fahey, and a unanimous resolution from our city council supporting this legislation. We believe that it would provide an important funding alternative for Nebraska communities that are struggling with these unfunded federal mandates. The speakers before me have certainly done a good job of explaining LB534 and giving you an overview of the statewide needs for funding in this area. In addition to stormwater management, that is management of separate storm sewers, Omaha is kind of unique in that we face a major challenge in dealing with a control plan for the overflows from our combined sewers. Currently we estimate that in coming years the costs to control the overflows for our combined sewers will be an additional \$500 million to \$3 billion. I've recently been involved in Omaha with a number of community meetings and what I've heard from residents of Omaha is that they're very concerned about how Omaha is going to fund these huge costs. We understand that there are limited federal and state funds available to assist Omaha as a community in this area. And if we're going to fund all of these federal mandates under the Clean Water Act, what I hear from local residents is that they would like a wide variety, a wide range of different funding alternatives to consider before they make these decisions. Now I expect that later on you'll hear testimony from opponents to LB534 that will include claims that somehow a contribution-based system is unfair for them or their constituencies and I guess what I want to remind you of is that LB534 is indeed enabling legislation, that we are not asking the Nebraska Legislature to decide how these funds should be gathered to decide what is equitable. All we're really asking is that you give Omaha and other communities across this state the opportunity on a local level to evaluate this alternative and see if it makes sense as part of a funding mechanism for these federal mandates. Again, I want to thank Senator Schimek for introducing this legislation and you as a committee for your commitment to Nebraska's water resources. I'm not here today to speak on behalf of Douglas County but as a

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Douglas County resident, I did want to let you know that this Tuesday the Douglas County Board did also unanimously support a resolution supporting LB534 and I'd be happy to answer any questions that you have. [LB534]

SENATOR LOUDEN: Any questions for Marty? Senator Kopplin. [LB534]

SENATOR KOPPLIN: Yes. I wanted to ask a few questions because you have a unique problem in Omaha with the one system to serve a dual purpose. My first question, is that system only in the older sections or does it cover you citywide that you have this dual... [LB534]

MARTY GRATE: The combined sewers are confined to the eastern portion of the city, roughly 51 square miles of combined sewers. Our total surface area is about 275 square miles that includes surrounding communities and Omaha proper has about 130 square miles. But it is those 51 square miles east of 72nd Street that are a combination... [LB534]

SENATOR KOPPLIN: And the rest is okay with... [LB534]

MARTY GRATE: The rest of them are separate storm sewers but they're storm sewers with stormwater management challenges just like other communities. [LB534]

SENATOR KOPPLIN: Right. I understand that. I was trying to envision your problem because I don't have any suggestions how you can solve that other than it isn't all just a stormwater problem. I mean this is an infrastructure problem that may have to go to bonding for instance, would that be correct? [LB534]

MARTY GRATE: Well certainly we plan to use bonds to help finance our controls but bonding is really just a financing mechanism. It's not a funding mechanism so the funding to repay the bonds still has to be determined regardless of whether or how much bonds are used. [LB534]

SENATOR KOPPLIN: Okay. Thank you. [LB534]

SENATOR LOUDEN: Other questions? Senator Fischer. [LB534]

SENATOR FISCHER: Thank you, Senator Louden. Thank you for being here today; I appreciate it. You spoke about there was a wide range of funding and financing options. Could you give me some idea on what those options would be besides the one that we've heard about so far? [LB534]

MARTY GRATE: Well again, I think what a lot of communities now rely upon is property taxes. Certainly it's an option to use a portion of sales taxes. Other communities across

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the country have had different kinds of fees that they've established. In Omaha part of the money that we use to fund the erosion control, the construction activities, is from fees we charge from those individual applicants, and just like we're struggling in coming up with a way to fund the combined sewer overflow issue, I think the stormwater issue is one that can have multiple funding sources--the ones that may be most equitable within a community. [LB534]

SENATOR FISCHER: Thank you. [LB534]

SENATOR LOUDEN: Other questions? Senator Wallman. [LB534]

SENATOR WALLMAN: Thank you, Senator Louden. A question here, you know, like nonprofits? The hospitals, the churches, how, would they be expected to pay this? [LB534]

MARTY GRATE: Under LB534 it does specify that the cities will not charge fees to state properties and state subdivisions and so forth. It does not preclude us from including hospitals and other nonprofits but it does again allow us on a community basis to make that decision that in Omaha or Scottsbluff or wherever, that that community could decide that, yeah, in our community it doesn't make sense to charge churches. [LB534]

SENATOR WALLMAN: So the county government would be under the same scenario probably? [LB534]

MARTY GRATE: As a political subdivision, county properties would not be assessed the fees. [LB534]

SENATOR WALLMAN: Thank you. [LB534]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. Next testifier please come forward? Okay, then are we done with proponent testimony? Now we are ready for? Oh well, then get up in the saddle, whoever is going to testify next. [LB534]

LYNN GARTON: (Exhibit 10) Good afternoon, Senators, my name is Lynn Garton, L-y-n-n G-a-r-t-o-n. I am with the city of Scottsbluff, Nebraska. I am the wastewater-stormwater superintendent for at that community and I'm here today to...and would like to thank each of you for this opportunity to testify on this specific bill. I am really here not to address you in any other fashion than from an operations standpoint. As a state of Nebraska certified water and wastewater operator, I have personally worked in this field for well over 15 years for the city of Scottsbluff. For many years we have relied on water and wastewater infrastructure to protect the wellbeing of our communities and the environment. Our health depends on safe water. In fact today

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most Americans can turn on the tap and flush the toilet without giving it a second thought. One of the reasons we have been able to achieve these undaunting tasks is simply because of legislative actions taken over the years that have provided operators such as myself, the necessary funding that allows us to continue to develop the technical treatment processes required to provide those clean, safe drinking waters and discharges back to waters of the state. Even though we have achieved such success it has become even more important that we consider the quality of our water resources. We read about it every day, we view it on the news, and we hear it at our local coffee shops. Things such as well moratoriums, watershed allocations, and drought. We could not continue to ignore our water resources anymore. With increasing growing water issues within our state we need to be even more vigil about the pollutants we allow to enter our diminishing water supplies. Each year our wastewater treatment plants prevent billions of tons of pollutants from reaching America's waterways yet we still allow those same pollutants to enter through stormwater discharges. As you can see from all of the testimony today, we have a pretty undaunting task still ahead of us and we will do our very best to accomplish that task with minimal burden to the citizens of our state. However, I am not going to stand before you today and tell you that none of this comes without a price. At some point along our endeavor we will really need to find the necessary financial means to meet the intent of this unfunded mandate. Currently other speakers have talked about several ways to fund things and currently under state statutes, one of the ways that we have to afford...is through surcharges of utility bills or increases in water wastewater rates. And I can say the city of Scottsbluff has just done that recently and I'm kind of glad I'm here today and not listening to my telephone (laugh), and it's not for stormwater that we raised those rates. The simple truth of the matter is this. Phase II stormwater is here to stay. It began in our state with the two metropolitan cities having populations of 100,000 or more. In seven short years it now has come to affect ten more communities and other entities within our state with populations as little as 10,000. We know the trend will continue until most if not all communities within our state will eventually be faced with this dilemma. We have been working toward the passage of bills similar to LB534 for several years. We have worked diligently to refine the content and feel that we have found it to be fair and equitable to all citizens within our great state. Delaying this bill the opportunity to move to the floor will only prolong the inevitable and create undue hardship on citizens of our communities. I think the time to act is now. And with that I would like to thank you for the opportunity to testify and would be willing to answer any questions. [LB534]

SENATOR LOUDEN: Any questions for Lynn? Senator Christensen. [LB534]

SENATOR CHRISTENSEN: Thank you, Chairman Loudon. I get hesitant on anytime making a new tax or fee. Is there anything to make sure we get an automatic offset on property tax, that's not an add-on, that would be my concern? [LB534]

LYNN GARTON: Well I think the bill pretty much takes care of, if we set it as a

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fee-based issue, then at the time when we feel it's necessary to do that, we'll do that through our local governmental process and it won't be a real issue to the tax base. [LB534]

SENATOR CHRISTENSEN: So as you read the bill you didn't find it either to guarantee that we're going to offset and lower the property tax? [LB534]

LYNN GARTON: I don't understand it as that, I'm sorry. [LB534]

SENATOR CHRISTENSEN: Okay, thank you. [LB534]

SENATOR LOUDEN: Senator Hudkins. [LB534]

SENATOR HUDKINS: Mr. Garton, what would happen if Scottsbluff just said, I know we're on the map and I know we are one of the listed towns, but we are just not going to do it, it's an unfunded mandate. What's the worst thing that can happen? [LB534]

LYNN GARTON: I think we'll find NDEQ and the EPA at our doorstep. We'll be faced with fines and issues that will probably, might bankrupt our community in reality. [LB534]

SENATOR HUDKINS: All right. Thank you. [LB534]

SENATOR LOUDEN: Lynn, I have a question. First of all thank you for driving that far because I know about how far that is (laughter). And I'm sure you probably find out it's about just as far or a little farther to go home. [LB534]

LYNN GARTON: Yes it is. [LB534]

SENATOR LOUDEN: I'm not familiar with how these, Omaha or Lincoln handles some of their wastewater but I am a little bit more familiar with Scottsbluff. Again, how do you handle your wastewater? I mean, you know, you've got these ditches around there and I know where you dump all your salty snow and all that, off the streets, in the ditches and stuff, but where does all of that drain to so that it's treated or before it goes back in the Platte River? [LB534]

LYNN GARTON: Well I think first of all we probably ought to separate the two issues of wastewater and stormwater. When we talk about wastewater, wastewater is what we flush in our toilets and what we allow to go down our sinks. When we talk about stormwater we are literally talking about rainwater and snow, what you're talking about...two different systems altogether. A lot of people have the misconception that just because something goes down the drain in your street into the storm drain, it ends up in a wastewater treatment plant. And in actuality it does not, it goes directly to the river, or in our case, directly to the river. So when we adopt areas of snow that we take off of our

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streets, we go to snow dump areas. We try to put those in areas that they have vegetative silting areas that will pull the salts out, get the silt removed, before it actually drains into the street. So we try to take care of it on the sense of the city trying to make their contribution to it. We do realize that cleaning our own backyard is probably one of the most important things we do in the beginning of this program just simply because it's going to be easier to talk to developers and contractors and people of that sort and explain to them the importance of the issue. [LB534]

SENATOR LOUDEN: Now you're tell me then that your stormwater, where it drains off the streets, that goes directly into the river? You don't have any kind of a holding basin before it settles out to asbestos or anything like that? [LB534]

LYNN GARTON: That's correct. And in most communities across the state are that way. [LB534]

SENATOR LOUDEN: Um-hum. Okay. Well thank you, thanks for testifying. It looks like one more question. Senator Wallman. [LB534]

SENATOR WALLMAN: Thank you, Senator Louden. The storm runoff then, does it get checked by the EPA or by your...for pollutants or...oils, or whatever comes off the street? [LB534]

LYNN GARTON: Through the permitting process now yes, it will be and we'll be checking those flows from residential areas, industrial areas, and commercial areas. That's part of the requirement of the permitting process that the NDEQ and the EPA have placed upon us. One of the things that we're trying to do right now is trying to find out how good a job we really are doing? And we're going to start taking samples there in those locations in the near year and we are going to continue to do that and see how well we do through the education process, of eliminating some of those contaminants. And we feel that's really important because just like everyone else, we really don't want to get to the treatment process. That's really going to create a nightmare not only for communities, but for each individual within those communities. [LB534]

SENATOR WALLMAN: Thank you. [LB534]

SENATOR LOUDEN: Any other questions for Lynn? Seeing none, thank you, thanks for coming to testify today. [LB534]

LYNN GARTON: Thank you. [LB534]

SENATOR LOUDEN: Next testifier? [LB534]

LANCE HEDQUIST: (Exhibit 11) Thank you, Chairman Louden, members of the

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committee here today, my name is Lance, L-a-n-c-e Hedquist, H-e-d-q-u-i-s-t. I am the city administrator of the city of South Sioux City. The city of South Sioux City is here in support of these stormwater bills here today and for the same reasons that you've heard by many other testifiers. We were actually the second rung of cities that were required to be under the Phase II program. Lincoln and Omaha were first, South Sioux City and Dakota City and a portion of Dakota County was the second group to come in. And then the other cities came in, in the third tier of requirements. I want to comment on two or three things is one, I think it was Senator Hudkins that asked the question about who's paying under the current system? Since a portion of Dakota County is included and a portion isn't, currently any expenditures that they have for this program is being borne by all the county residents to pay for any of their particular costs, even if they're not in that district because they can only have property tax to pay. So primarily the industries that are located close to the city of South Sioux City and close to Dakota City are actually being, for what their costs are, what their in fill to the stormwater system, is actually being paid by the rural interests, the rural communities outside of that particular area. I think you also asked a question in terms of noncompliance. In our discussions with the National League of Cities, if a city fails to do that, not only is the city likely to be sued but every individual council member as an individual will be sued by the individual for failing to do their requirement as per the federal law. And finally I think it was Senator Fischer I think had asked a couple of questions about what some people can do. One of the things we are looking at doing is what's called a rain garden. They are actually doing those in Kansas City and I think Minneapolis and other places where you put down and develop nice green spaced areas that are designed to take the water off of that residential lawn or off of that particular area which can be done in very small areas so it's not a huge cost. And instead of us paying for huge pipes going through the community and increasing pipes through our growing community, we see this might be a viable alternative and an attractive alternative to look at for our particular community. With that I appreciate to be here today and encourage your passage of this bill. [LB534]

SENATOR LOUDEN: Any questions for Lance? Senator Carlson. [LB534]

SENATOR CARLSON: Thank you Senator Louden. Mr. Hedquist, you mentioned the rural people paying as I understood it, a pretty good share of what the industry was benefitting from. Is that going to be changed? [LB534]

LANCE HEDQUIST: It would be changed under the bill because the fee would be only for those areas that are covered as an urbanized area. Since Dakota County is not all covered, right now the property taxes are spread out over the entire county. Where if you had a fee-based schedule those industries would actually be paying the costs for what they are contributing to that system, not the rural residents. [LB534]

SENATOR CARLSON: Is that a concern of yours as far as the response of the industries? [LB534]

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LANCE HEDQUIST: Not really. I think that the industries themselves in our area realize that they are the contributors to that. And then quite candidly, in the scheme of things, in the large industries, the fee on the square foot basis is not an onerous one. [LB534]

SENATOR CARLSON: Okay, thank you. [LB534]

SENATOR LOUDEN: Senator Dubas. [LB534]

SENATOR DUBAS: Thank you, Senator. Thank you for being here. We're going to be charging the businesses this fee, correct? [LB534]

LANCE HEDQUIST: It would be charged to anybody that's contributing... [LB534]

SENATOR DUBAS: To any...contributing...correct. All right, okay. [LB534]

LANCE HEDQUIST: ...to the stormwater problem. [LB534]

SENATOR DUBAS: So is there anything that even though it may lessen our property taxes, is there anything that's going to keep those businesses from passing that expense back to their customers? [LB534]

LANCE HEDQUIST: Well just like any tax and any fee, whether it's water fees, sewer fees, obviously in your course of business it's ultimately the consumer that pays. So yeah, if there is increased costs for any of those reasons...if we raise our sewer rates, that's going to raise their costs, and ultimately it's going to be the customer that pays. [LB534]

SENATOR DUBAS: Thank you. [LB534]

LANCE HEDQUIST: It's a good point. [LB534]

SENATOR LOUDEN: Senator Kopplin. [LB534]

SENATOR KOPPLIN: Yes. Thank you. A mention was made, I don't remember who mentioned it, but of the testing for the pollutants that the EPA might do, am I correct in figuring that they are going to do that at the point that it enters the stream? So you...in an urbanized county, you may not determine where the pollutant actually came from. It's just there, which then makes it the county's expense? [LB534]

LANCE HEDQUIST: It would be the county or the city's expense and basically what happens right now when you take the test at the pipes and you are correct that where it enters the stream where you take those, and we're being asked to take a pipe that

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represents residential area, commercial area, rural area, industrial area, you take different pipes. But if you do find excessive pollutants it's the intention of the program to start working back upstream so instead of taking it at the end of the pipe, you might take two or three places that are coming into that pipe and see where that's coming from. So eventually you'll come back to find out what the source of that pollutant is. And that's the intent of taking it at that place to find, do you have a problem? And then take remedial action to take care of that. [LB534]

SENATOR KOPPLIN: Okay, thank you. [LB534]

SENATOR LOUDEN: Other questions for Lance? Seeing none, thank you for testifying. [LB534]

GARY KRUMLAND: Senator Louden, members of the committee, my name is Gary Krumland, it's spelled G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB534. Seems like the last couple of times I've appeared before this committee I talked about mandates, and I'm going to talk about that again. This is a mandate that the federal government has passed through the state and imposed on cities and counties. They are going to have to take care of this problem whether LB534 passes or not. They're going to have to do it, raise money through property taxes or other sources of revenue. They're going to have to impose regulations on residences and businesses to handle this problem. They don't have that choice. We do think, though, that LB534 gives a tool to local governments, to these 18 cities and four counties. It's very narrowly drawn. It only kicks in if the city or county is under the federal mandate. It doesn't open it up for all cities or all counties. But it does give the tool to local governments and it puts the onus on the local elected officials, that they're the ones who are going to have to decide whether, to determine whether to pass an ordinance to do this. So it just gives them another tool and we think an effective tool to deal with this mandate that's come down from the federal government. So I'd be happy to answer any questions. [LB534]

SENATOR LOUDEN: Any questions for Gary? Senator Fischer. [LB534]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Gary, for being here. From the previous presentation, we saw that there are a number of states around us--I believe it was Iowa, Kansas, Wyoming, Colorado--that have a similar stormwater fee, stormwater utility. Do you know what they charge? [LB534]

GARY KRUMLAND: No, I don't. I don't believe we could... [LB534]

SENATOR FISCHER: It would be the local communities in those states, is that correct? [LB534]

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GARY KRUMLAND: Generally, I think it's the state gives the authority to the local governments and then they look at their local situation and determine what their costs are and what's the best way to charge the fee. [LB534]

SENATOR FISCHER: But you don't know what any of those communities would be charging? [LB534]

GARY KRUMLAND: No. I mean, we could see if we could find out. I just don't have that information. [LB534]

SENATOR FISCHER: Okay. Do you know if there's, in those states that surround Nebraska that have passed a similar law, is my understanding. Would that be correct? [LB534]

GARY KRUMLAND: Yeah. [LB534]

SENATOR FISCHER: Do you know if there is any community that, I guess is under this federal mandate...is there any community that hasn't taken advantage of the state giving them the authority to charge for, or to set up a stormwater utility? [LB534]

GARY KRUMLAND: I don't have that information but I would, just from knowing some of Nebraska's communities who are under the mandate, I would guess there are several who would decide not to adopt an ordinance. But I don't know what the record is in other states. But I think, in Nebraska, several would need to do it. There are several who have indicated they probably wouldn't do it. [LB534]

SENATOR FISCHER: And do you know if, is there more stuff like this coming down from the feds? And if so, would there be a problem with the state giving up, I guess, our ability to levy some kind of fee or tax to take care of it when, in the future, the state may have the responsibility for cleaning this up? [LB534]

GARY KRUMLAND: I don't. From everything I've found out, at least there's nothing on the horizon under this program for adding additional cities. But based on the record, there seems to be continually more and more mandates from the federal government on this. I assume we will be getting more. As you heard, under this program, if the city who has required to do it fails to do it, they're subject to penalties. I was trying to recall, I thought it was \$10,000 a day fine. But someone told me it was \$20,000 a day fine plus the elected officials being liable. So I'm assuming that that's a pretty good incentive to do something. [LB534]

SENATOR FISCHER: Okay. Thank you very much. [LB534]

SENATOR LOUDEN: Other questions for Gary? Seeing none, Gary, thank you. [LB534]

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JOE SOUCIE: Senator Louden, Committee, my name is Joe Soucie, J-o-e S-o-u-c-i-e. I'm the public works director for the city of La Vista and I appreciate the opportunity to speak to you today about LB534. I'm here today representing the city of La Vista, which is in full support of LB534. Since the inception of Phase II stormwater regulations, the city of La Vista has managed to squeeze existing budgets to fund activities to date. This has only been possible by the formation of the Papillion Creek watershed partnership. This partnership has saved the city thousands of dollars and provided expertise in area the city of La Vista does not possess. The time has come in this program where we will no longer be able to fund the programs at current budget levels. The city will be developing strategies to fund the real nuts and bolts infrastructure requirements, as well as continue to maintain the administrative end of the program. LB534 is not a cure-all answer to the funding dilemma. What LB534 is to the city of La Vista is another tool for our toolbox. The decisions that need to be made for future funding will not take place at the legislative level but rather at local level. City of La Vista is only asking for the opportunity, have a stormwater utility, is an alternative funding source. The biggest advantage of the stormwater utility is that funds generated for the utility get spent only on stormwater activities, just as existing sanitary sewer and water utility functions. The stormwater utility directs funding to its intended uses. As a current local and national member of the American Public Works Association, I have had the opportunity to travel throughout the United States and visit a number of the over 400 communities that have developed stormwater utilities. Each community has an outstanding program that has been embraced by the community. The formation of the utility did not force anyone out of business or stifle future development. To date, I have not heard one horror story or a water quality utility that has gone wrong. In closing, the city of La Vista knows that it will find ways to tackle this unfunded mandate. We are asking only for enabling legislation on this matter and we will work with local, public, private entities and the citizens to find common ground on this issue. I thank you for your time and be happy to answer any questions. [LB534]

SENATOR LOUDEN: Any questions for Joe? Senator Dubas. [LB534]

SENATOR DUBAS: Thank you very much, Joe, for being here today. And I can appreciate your circumstances and those of the people in this room. But it's been stressed on more than one testimony that this is permissive legislation. Do you think there's anyone who wouldn't take advantage of it should it pass? [LB534]

JOE SOUCIE: Nationally, there are some communities that I've seen that have, states have the enabling legislation and they have not taken advantage of it. But again, we're talking about cities that have got a very large tax base as far as some industrial and commercial stuff, it's offset by sales tax or possibly property tax. They've still got that within their toolbox. If they have some funding shortages, they can probably do that. But yes, I have encountered communities that have not taken advantage of that. [LB534]

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SENATOR DUBAS: Okay. Thank you. [LB534]

SENATOR LOUDEN: Any other questions for Joe? Seeing none, why, thank you for testifying. [LB534]

JOE SOUCIE: Thank you. [LB534]

SENATOR LOUDEN: Now that would be the last proponent? I guess we're ready for opponents now. [LB534]

LARRY RUTH: (Exhibits 12 and 13) Senator Louden and members of the committee, my name is Larry Ruth, R-u-t-h, and I appear today with--you can pass this out--I appear today on behalf of the Associated General Contractors Nebraska Chapter, the Chief Industries, Heartland Community Bankers Association, Nebraska Association of Commercial Property Owners, and the Nebraska Press Association. I'm also having handed out to you a list of other principals, of other registered principals, that is, who have gone on record in opposition to this bill. And I would hasten to add that it's before Senator Schimek's amendment so I can't speak on their behalf because of that. But most of the folks there, I think, would probably still continue to oppose the bill. I won't speak on their behalf. I assume they'll be here to testify if they wish to appear. We do have several other folks testifying on behalf of their groups. But I wanted to get this to you. My purpose today is to just reflect on a couple of features that I don't expect other folks to handle in their presentation. And they are dealing with some specific language in the bill that I want to bring your attention to. And some of my, don't have questions, I mean I don't have answers to, and some of them I do. The first question that I'd have, and I'd like you to look at LB534 specifically, at page 3, because I'd like to understand something with you on an expansion of a definition by the proponents. In LB534, Section 3, page 3, there's an expansion of the definition of "sewerage system" to include storm sewer--this is page 3, line 18--"the natural drainage components of such system." I haven't heard the proponents discussing why they want to have this language in there and I think that's something that I would like to have them inform me about, perhaps you, too; why we're looking at extending the reach of the sewerage system to include the natural drainage components of the system. And I think that's important because, gee, the Lincoln is within all of the drainage system of the Lower Platte South, I believe. Papio starts way up in Washington County and comes down through Omaha. And that's all the drainage system. So that's just one small aside that perhaps is easily the answer. But something a little bit more substantive perhaps deals on page 4 with current law. And on page 4, very curious, the current law allows cities some flexibility in how they meet problems of this nature. There will be a subsequent witness who will talk about the possibility for a special levy and that occurs on page 4, lines 6 through 16. Current law allows for a special levy. But I'd like to draw your attention to sub (4), which starts on line 17. And if I'm reading this right, it would say that if a storm sewer system

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does not comply with the provisions of any other law, and I would take that to mean Environmental Protection Act or any other law at the federal level, relating to sewer systems or water pollution, then the city shall levy a tax of seven cents on each \$100. I don't know whether that's being levied now in Lincoln or in Omaha. It perhaps is and if it is, then that's part of the property tax. But if it's not, then I would suggest that there is current law that already looks forward to the point when a sewage system or water pollution does not comply with a law and therefore you have a requirement, and I read that as mandatory, incidentally, a mandatory imposition of a levy. Could be that it's being done now. If it is, I'd like to know that. I've asked that question before and I've never really gotten an answer. Now a couple of other points that I think are important. Page 6 and page 11, those are really the significant sections of law. When you deal with what this fee is going to look like, page 6, it goes into, on lines 12 through 23, this is the guts of the bill. I mean, really when you get down to it, this is how you build the fee, how you bring some in and how you leave some out, as far as paying it. I just reflect for a moment about the word "may." And the word "may" is complete discretion, it doesn't have any real standards there as to what you're going to ask a city to do. And you're giving the city, with this bill, the discretion to allow or not allow adjustments in credits. I really tell you, that's significantly troublesome to folks who are looking at what the level of this fee is going to be. When you give to the city the authority, unbridled authority, to adjust what is going to be a cost, that's very troublesome and we raise that. And it's that same section twice then, because the second time it has to do with whether or not you're going to be able to exempt certain kinds of properties. And once again, there's no guidance as to what that exemption is going to be based on. And when there's no guidance on an exemption, I can tell you, it's a political exemption. It's who can get in and who can get out. And the more you have people getting out, the more the people who are in have to pay. Someone else already said that, I think. Senator Christensen, you remarked specifically about the fact that there's nothing that says that with this fee, that there's going to be a reduction in property taxes anywhere. And the way that my clients, our clients see this, is, yes, you're going to have an additional fee and that fee is to help build appropriate stormwater infrastructure. I don't think they expect there's going to be any reduction in real property taxes. And the real property taxes are going to stay right where they are and this is going to be an addition. And furthermore, it's not just going to be because of the increase in the cost, what it's going towards. But it's just going to be an add-on, an additional source of revenue for the city or the county. And it's a terrible problem but I don't see that, as far as discretion and as far as what it does or doesn't do to the property tax, really being the proper solution. Now one other question and it has to do, I think, with something you talked about, Senator Kopplin. And it's pretty important. You zeroed in on the fact that Omaha has a significant amount of land, I think it was 51 square miles if I caught it right, which is called combined sewers. And let me tell you what I think that means. Historically, you have the sanitary sewer and the storm sewer, stormwater sewer running together. And then as the city expanded, I assume, or somewhere along the line they appropriately decided to separate the two. But in parts of Omaha, the older parts of Omaha, you still have some of the sanitary

sewer and the stormwater sewer running together. Now I have no idea what the cost is going to be to separate those two. I'm assuming at some point that will be done, maybe not. Maybe you can continue to do it, maybe there's a federal law that says somewhere you're going to have to do it by a certain date. But let me bring your attention to page 11, Section 18 there. And I want you to look at, if you could, please, to a very curious way that the law, the current law would work. Page 11, actually starts back on page 10, Section 10 at the bottom of page 10 talks about this charge. Now that carries over to the next page and then we have this language about how this charge is going to be fixed. Now page 11, line 18, it says "all money raised from the charges" in subsection 1 "shall be used for maintenance or operation of the existing system." So we see this fee as being an open-ended fee to pay not only for the additional infrastructure that might be required by the federal law, but as a really handy way to find additional revenue to fix some of the problems of the existing system and the operation of it and the maintenance of it. Now I don't know if it means to build new system or to separate the two out. But if it's to be used for the operation and maintenance of the existing system, that can mean the combined system. And I've talked about this before, the proponents. And I've been told that it's extremely difficult to separate out what is and what isn't and how you would take this fee and make some monies go in this direction but not in this direction. I just raise it as a comment, that that's one of the problems we see in the long-term implications of this bill. Just about done, I know we have a couple others to testify. Talked about the discretion and I do have, on that issue of discretion, I do have a legal opinion that we've had generated to look at this bill, as introduced, not with Senator Schimek's amendment, so there might be something changed in the body of it but I've talked with the author of the opinion and she says that the conclusion remains the same, and it raises questions about the constitutionality of the exemptions and how that plays with those who are remaining and those who have to pay the bulk then of the cost of the infrastructure. And I'll just hand that around rather than bore you with it, I'll just give it to you. I'm sure the legal counsel will have a question or two about it. There are other alternatives. I'm not sure I've heard very much of a discussion about them today. But it was interesting, several years ago the city of Omaha, when they were going through this, said, well, let's have a group of people get together and look at this and decide what the community thinks should be the way that we pay for this infrastructure. And one of the later witnesses here will talk about how he was on that committee because they had people from different sectors of the community that they selected. And they didn't come up with this source as the way to fund it, they came up with the existing sources, property taxation. Now I know the question will be, and should be asked, whether or not it's fair on property tax. But I can suggest this, that the property tax system, as much as people don't like property taxes, there are ways to make sure that there is equality amongst the different property owners. You have an assessment, you have a protest, if you don't like it, you have an appeal to the TERC, and all these ways to make sure you have a fair property tax. It may not be that it's fair to have a property tax, but at least within reason, one property owner to the other has some sense that it's fair. In this particular case with this unbridled discretion and without

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any ability really to respond to it in a way to make sure that it's fair, these folks just think it's an unfair fee and it would not be capable of being made a very fair fee. Thank you. [LB534]

SENATOR LOUDEN: Okay. Questions for Larry? Senator Kopplin. [LB534]

SENATOR KOPPLIN: Thank you. Larry, there could be different perceptions...I mean, this is new stuff and we can all have different perceptions so you're going to have to give me yours again so that I'm not mixed up. Because I've heard a couple comments on, well, if we put in a fee, it's going to reduce property tax. I don't think it can because the property tax has not been levied. What it might do is stop the property tax from going up but it certainly wouldn't reduce. Am I correct in my perception? [LB534]

LARRY RUTH: Yeah, I think we're talking, probably saying the same thing. I don't think anybody expects that it will complete, that it would be dollar for dollar reduction of it. But it should be that you wouldn't see the property taxes having to be increased as much. I think that's their argument. But Senator, with a new source of revenue that is for an existing problem, that is the maintenance of their existing system, for example, I can imagine that they're going to be taking that new source of revenue to pay for things that property taxes pay for now. And that's what I think we're worried about because that will not, then, result in any reduction in property tax. Or put another way, when you have a new source of revenue for an existing, for something new or existing, you will...we do not believe you'll see any reduction in the role that property tax would pay. [LB534]

SENATOR KOPPLIN: Okay. Thank you. [LB534]

SENATOR LOUDEN: Other questions? Senator Carlson. [LB534]

SENATOR CARLSON: Senator Louden. Larry, in listening to your dialogue here with Senator Kopplin, and I'm following and I understand how that it be, probably bring in more revenue and it doesn't lower the property tax at all. But to go back to the whole idea of the problem at hand is additional expense that's coming. If it's not here right now, it's coming. And that has to be paid for. And so it's either going to be paid for by fees that has been discussed, and you're saying if fees are used, need to be careful that we're just not going to leave the property tax the way it is. But are you also saying you'd prefer it through property tax? [LB534]

LARRY RUTH: I think that's the alternative, yes, I think it is. Unless there are some other ones and I haven't, just was asking back here what other alternatives there are. So I can't answer with an alternative. [LB534]

SENATOR CARLSON: Okay. And one other question, and not to try and zero in on you, but you pointed out several things that might be questions in the bill as presented. You

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didn't really specifically say it ought to be changed this way. [LB534]

LARRY RUTH: Yeah, because I don't know what the reasons are for them being there. For example, on the watershed, I don't know exactly why they're saying that. And if we don't have a reason why it should be changed to say that, let's take it out. You know, I would recommend that one, for example. And if you want some specific language, for example, on not being able to use a new fee for existing system maintenance and operation, that would not be difficult to draft. [LB534]

SENATOR CARLSON: Thank you. [LB534]

LARRY RUTH: Sure. [LB534]

SENATOR LOUDEN: Other questions for Larry? Senator Fischer. [LB534]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Mr. Ruth, for being here today. When you started your testimony, you said you were representing Associated General Contractors and you mentioned a number of other associations or businesses. And you handed out this sheet... [LB534]

LARRY RUTH: Yes. [LB534]

SENATOR FISCHER: ...with a list of registered principals opposed. On that sheet, I see at least four public schools and I see the Nebraska Association of School Boards. Do you know if those groups are still opposed to this bill even though they are not affected by it? [LB534]

LARRY RUTH: I do not know that, Senator. That's why I suggested at the beginning that if folks, with the Schimek amendment specifically, wanted to address that they could come forward. I think one of the difficulties with this bill, as I've been hearing from other people, is that when you have exemptions and some people are paying then for other people's contribution, you're going to find that there's going to be more and more support for no exemptions. [LB534]

SENATOR FISCHER: Also, you brought up the question on page 3 of the bill where you believe that on line 18, it's extending the reach of the sewer system with that language. Do you see the federal government possibly expanding what areas in the state and in the country are affected by stormwater runoff? [LB534]

LARRY RUTH: Senator, I don't have enough background on that to give you a good reason. [LB534]

SENATOR FISCHER: If that would be the case, would you see line 18 in this bill as

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becoming, I guess in my opinion, it would become more and more problematic and dangerous to what I would view as federal control of the water in this state. [LB534]

LARRY RUTH: I can't answer that, Senator. All I know is that the last two variations on this bill talked about application outside the city of Omaha into the drainage area of whatever is going through Omaha or Lincoln or whatever city you had. And there's an obvious sense to many of us that we're looking at something broader than just within the urban area. And I leave it to the proponents to tell you what that is. I realize it says pretty specifically here it's supposed to be just the urban areas. But if it, this is one area where it's not. This is one area where they've gone outside. I don't know why. [LB534]

SENATOR FISCHER: I guess my comment would be that the water problems that we face in this state, in my opinion, aren't urban and rural. And I don't view this bill as setting up some kind of problem between the urban and rural areas in the state and trying to find solutions. So thank you. [LB534]

LARRY RUTH: Thank you. [LB534]

SENATOR LOUDEN: Senator Christensen. [LB534]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Larry, do you see it's, I know you mentioned preferred to property tax, but do you not see people that contribute the most problem should pay the most of the damage or not? I understand, I don't like the new fee direction. That's my objection. But when you contribute to it, just like they use a utility or sewage this way, don't you think you should pay the majority of it? [LB534]

LARRY RUTH: Well, there are a lot of things in our life where we socialize the risk and have everybody paying for it; police, fire, so on. And there are certain things that are a community problem, not just a user problem. So that's what I would answer. [LB534]

SENATOR CHRISTENSEN: Okay, thank you. [LB534]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Larry. Oh, excuse me. Senator Hudkins. [LB534]

SENATOR HUDKINS: Thank you. Larry, going back to the slides, and I think you were here during that... [LB534]

LARRY RUTH: But I could not hear very well. [LB534]

SENATOR HUDKINS: Okay. Well, I will help you out there then. (Laughter) There was a single family dwelling and the impervious surfaces would be, of course, the roof line, the

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roof on the shed, the sidewalk, the driveway. On a property tax basis, that individual family would pay \$55 a year; on a stormwater fee, \$30 a year. So they really want the fee. Then you look at a commercial property downtown which I think Nicole said was a bank. Property tax was \$2,700 a year; stormwater fee, \$320. Now obviously a bank is valued quite high so the property tax is going to be high. But they go straight up. So there's not a lot of area for them to have stormwater runoff. They really like the fee. And then if you look at another area, grocery store, car dealership, whatever, because they don't pay property taxes on their vehicles maybe before they sell them, they have the building which is big because it has the showroom, it has the shop, it has all this. And then of course they have to have all of this inventory of cars so they're on a parking lot. In that case, the property taxes are \$1,600 a year versus the stormwater fee of over \$3,000. Now they really want the property tax. And I think that's where the problem is. If you have a large area, you're going to get hit with the stormwater fee. But I agree with Senator Christensen that because you do have that large area, hard surface, roof, that you are a contributor to the problem. Now, there is also in this bill the best management practices. This car dealership can put in holding retention ponds, plantings, I don't know, whatever it is to stop some of this water from getting into the sewer system. So I would think that the people who contribute to the problem would have the responsibility and then of course using their best practices, reduce some of their responsibility. How would you respond to that? [LB534]

LARRY RUTH: Well, part of the problem is there are an awful lot of folks who aren't able to address those kinds of changes in their property. I think about some of the churches that I know of in town. Small membership, old membership, large parking lots, lot of roof. That's just the way it goes anymore. But looking not only at churches, you look at a lot of businesses have the same problem. They're locked in, they can't make that change. They can't put in a holding pond or...we're talking now about things you can do sort of in the planning process and they're being done now. And fortunately they are being done now because that's having an effect. Those businesses, those commercial properties that can't make those changes would still find it very burdensome to have that. [LB534]

SENATOR HUDKINS: I'm sorry... [LB534]

LARRY RUTH: They still find that very burdensome, if they can't make those changes. [LB534]

SENATOR HUDKINS: But then isn't it burdensome for the individual families to pay for something that they really are not contributing to the problem? [LB534]

LARRY RUTH: Well, there's a, there may be some difference in opinion as how you contribute to the problem. I've been in residential areas before. Sometimes you can see water going down the street and so on. I see contribution coming in many ways. [LB534]

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SENATOR HUDKINS: All right, thank you. [LB534]

SENATOR LOUDEN: Any other questions for Larry? Seeing none, thank you, Larry. [LB534]

LARRY RUTH: Thank you. [LB534]

SENATOR LOUDEN: Okay. Now we'll try and rush this along if there's still 13 more left to testify, can we hit it in about five minutes, Jerry. [LB534]

JERRY STILMOCK: Yes, sir. Good afternoon. Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of the Nebraska Bankers Association, the National Federation of Independent Business, and also the Nebraska Pharmacists Association. I have to address, if I may, four points. I'd like to address four points. The estimate of \$32 million in the state of Nebraska, if I was listening closely enough and I understood the comment, it was based upon hard numbers from Omaha and Lincoln. But then they were extrapolated out for the population for other areas. And so far I haven't heard anything as to why population would be brought into it. We're not talking about population. We're not talking about a number of head. So we end up with a \$32 million number that, it's nice perhaps to hear this afternoon that there is some target number, there's some number out there in space. But how the proponents arrived at that number, I do not know how because, other than saying it was based on extrapolating out from Omaha and Lincoln. The second point is, this provision in the bill also refers to the county being able to provide a system and provide charges. In the county's portion of the bill, it refers to an appeal process. I haven't seen anything that allows for an appeal process. The appeal process for the county is based on and given to those parties that are aggrieved. There's not much of a definition, it just says those aggrieved parties. The thing I'm wondering is, I didn't see anything in relation to the city charges or the city rates. And I don't know if I just missed it, I don't know if it appears in one of the sections of the statute that this is being pulled from, 18-506 is not in this bill, the other rest of the sections of the statute go right in sequence. So maybe 18-506 in fact has an appeal process or maybe it's because the county is based on ad valorem taxes and they're trying to push the county back so it mirrors more the property tax situation. My question is, would a city resident, would a city business have that same appeal process afforded apparently to the county resident or commercial business? The proponents, my third point, the proponents have used the comparison that, folks, you just don't complain when you're paying for the use of utilities now. You pay for it, you don't complain for using water. You use and you do not complain for using the sewers. But yet, political subdivisions also are using the same water, they're using the sewer, they're paying for those services. But the parallel goes away at that point because that group of users or contributors, the state and the political subdivisions, they are contributing. But yet they're exempted out. So the analogy doesn't quite fit that the users, utilities, water and

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sewer, they're...no complaints. Those businesses, those people are using the services. But yet when we jump over to the bill, the contributors, the political subdivisions of the state, though they are contributing to runoff, they aren't participating in the payment. The fourth and final point, if you would please, I think if I was tracking with Senator Fischer, she was right on. First of all, what's a pervious pavement? To me, I'm thinking that means a rock parking lot. And there's no way in God's green earth the city of Grand Island, I would speculate, is not going to allow a rock parking lot. It's unsightly, the codes in our cities, our municipalities restrict that type of parking lot. They make you put in pavement and it's not only asphalt pavement in some circumstances, it's concrete. Without being sarcastic, and I have no intent to be that way in front of this committee or any of the senators, if rock parking lots go in place, guess what's going to happen when those consumers, those business frequenters trip and fall. They're going to come back and the businesses of Nebraska are going to be sued because we forced them into a way to deal with one problem, the water runoff, without allowing a remedy for having to put in pervious, if I'm correct, rock parking lots. Those are my four points, Senator. On behalf of my clients, the business people that I represent, I'd ask you to indefinitely postpone the measure. [LB534]

SENATOR LOUDEN: Okay. Questions for Jerry? Senator Carlson. [LB534]

SENATOR CARLSON: Senator Louden. Jerry, until you made your last statement here, I thought that I was tracking pretty well. So in answer, yes or no... [LB534]

JERRY STILMOCK: Senator, then for the record, I shouldn't interrupt but I'd like to withdraw my last comment then. (Laughter) Excuse me, sir. [LB534]

SENATOR CARLSON: Okay. In coming as an opponent, first of all, that doesn't mean you don't see there's a problem. [LB534]

JERRY STILMOCK: I'll recognize there is a problem. Yes, sir. Thank you. [LB534]

SENATOR CARLSON: Okay. And I'm not trying to steer you anyplace here. Secondly, is it an emergency problem? Is time of the essence? [LB534]

JERRY STILMOCK: You know, Senator, I don't have the knowledge to be able to answer. Are we in...with the E clause on this bill, do we need to run fast or are we walking? I do not know, sir. [LB534]

SENATOR CARLSON: Okay. And I guess the third thing would be then, if there is a problem, how much of a factor is time? And if the method presented for paying for it isn't appropriate, then how should it be paid for? And I don't expect a long answer here. But those are the things that run through my mind in listening to the, being an opponent to the bill, and then indefinitely postpone. That made it sound like it's way out in the future

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some place; let's quit worrying about it now. [LB534]

JERRY STILMOCK: This probably isn't a good answer, but I'd say if the proponents are breathing fire that we have to act tomorrow or else doomsday is coming, then I assume that's the message they're carrying for you. If I understand Phase II having to do with pollutants, I don't know why businesses with parking lots are involved in this type of charge in the first place, Senator. I'm missing that part of it from the proponents' testimony, sir. [LB534]

SENATOR CARLSON: Thank you. [LB534]

SENATOR LOUDEN: Other questions? Senator Hudkins. [LB534]

SENATOR HUDKINS: Jerry, I'm going to add something else to your testimony. You would be directing this to the proponents. How is it determined how much water comes off this car dealer's parking lot, this shopping center parking lot, this grocery store's parking lot? Would that also be one of your concerns, how you measure that amount? [LB534]

JERRY STILMOCK: Well, if I remember the language of the bill, it's based upon sound engineering principles. We could talk all day about sound engineering principles. And then the second issue, Senator, if I may, is it actually at the point that was brought by one of the other senators on the panel? Is it at the point of emptying into the stream and how many properties does it cross to get there? You raise a very important question that I think has to be resolved. But I don't know how to answer it. How do you measure it other than, you know, via language of the bill, sound engineering principles? [LB534]

SENATOR HUDKINS: Thank you. to raise that point. [LB534]

SENATOR LOUDEN: Other questions for Jerry? Seeing none, thank you, Jerry. [LB534]

JERRY STILMOCK: Thank you. [LB534]

LOY TODD: (Exhibit 14) Senator Louden, members of the committee, my name is Loy Todd, that's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association, testifying in opposition to LB534. I also have been asked by Tim Keigher of the Petroleum Marketers Association to submit a letter on his behalf. He had to be out of the state on a prior commitment. I want to start, I want to go a beginning that we never had in this hearing, that I was amazed that we didn't hear from the proponents. The very first thing you need to know is that Phase I of the Clean Water Act dealt with the kind of pollutants and contaminants that you would expect to be subject to this kind of legislation or to the federal mandate. And that is, you know, the solvents, the hazardous kinds of things, the really, really ugly stuff. And this may

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surprise you, but my car dealers were exempt from Phase I. And the reason they were exempt from Phase I is because there are so many other federal laws, state laws, rules and regulations that we already were complying with that we weren't a contributor to that. We don't dump things, solvents and things like that, into sewer systems or into the groundwater or anything else. We never did do that. So we were actually exempt. Now we're at Phase II and no one has told you this yet. Phase II is about two kinds of materials that they're seeking to clean out of the stormwater; dirt and fecal matter. That's the objective. That's the stated objective; dirt and fecal matter. Now I will submit to you that there's a lot less dirt and fecal matter coming off of the roof of one of our car dealerships and even the parking lot, the paved parking lot of one of our car dealerships, then on any piece of bare ground or on any piece of real estate that's got grass or whatever else on it. You know, I look at my house. What comes off my paved driveway is pretty clean in the storm. What comes off the roof is pretty clean. What comes off of my yard isn't. What comes off of my gravel driveway isn't. But this, and then the proponents do this to you and they've done it consistently and they're masters at it. They come in and say, we've got a horrible, horrible problem, we've got an unfunded federal mandate and we've got to do something about it. And so the way to do something about it is to address stormwater runoff. They don't say, let's address the pollutant, let's address where the dirt is coming from or where the fecal matter is coming from. They say, we've got a horrible problem. So what are we going to tax? We're going to tax volume, not contributors, not volume of dirt, not volume of fecal matter. We're going to tax the volume of water. So if my dealer contributes 10,000 gallons of clean water to a storm sewer system, you know what the federal government says? Great, that's fine, no problem, clean, get a pass. Your permit can say we're not going to do anything because all we've got is car dealerships contributing to the problem. That's not the situation. We've got a lot of dirt coming from other property. Because when it used to rain in Nebraska (laughter) the rain fell on everybody. And if it ever rains again, the rain is going to fall on everybody. This is everyone's problem. It is not uniquely hard surfaces. And let me tell you what the city of Lincoln does to my car dealers. And I don't want to make this just about car dealers because it's about everybody. We are required by city ordinance to have a paved parking lot. We don't have an option. We're required to have a paved parking lot. And if it's a new dealership, which most of ours are, we're required to have a retention area and a retention pond. We don't contribute anything to this. And this bill says, does it say you get a credit? No, it says they can develop a system. One thing I can assure you of is that the system won't exempt us. And if it gives us a dollar for dollar credit, okay, so we spent \$100,000, \$200,000 improving our property so that we don't contribute, so when we use up that expenditure are we just full bore? And the first time ever I've seen the city use real numbers that, on comparisons with what will happen, and I did four of my dealerships in town. And I can tell you that, two years ago when property taxes were lower, that we would go to basically double our property tax. We're at a stage in life right now where the cities are coming to you saying, give us a new property tax. They can call this a fee, they can call it anything they want. It's a new property tax based on square footage of a certain type of property. And it's

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even more evil than the property tax. You know, one of the arguments is, look how unfair the property tax is. Well, if they want a proponent of how unfair property tax is, we'll join the club, okay, but we didn't invent that. And they act like homeowners are the only ones that pay property taxes. My goodness, you know, the valuations of our car dealerships and other businesses, what we pay in property taxes are substantially. Please understand something. It is isn't taken lightly that I sit here and say property taxes ought to be one of the ways to fund this problem. And remember, we're talking about dirt and fecal matter. And they've got this jump shift to get their blank check. I assume that some city managers were giddy when they saw this unfunded federal mandate that lets them come in and say, let's do this. And I want to clear up one other distinction that they just blur as masterfully as you can blur one. There is a world of difference between a stormwater utility, which is a methodology, and the stormwater fee. No federal law mandated the fee and no federal law mandates a fee on this. Some cities, some areas of the country have chosen to do a fee based upon something. In fact, we even went...and this thing has been going on for five years. This committee has heard this bill year after year after year and rejected it year after year after year. We have offered to the cities time and time again to support them creating a utility. They don't want the utility, they want the fee. This bill is about money. It's not about stormwater. Certainly, there are huge stormwater problems out there. There are drainage problems out there. The city of Omaha with their unique situation has a problem. But it wasn't created by Phase II of the Clean Water Act. And it ought not be saddled on the backs of the businesses and the businesses alone. It's a community problem. And that's why the property tax was invented. And the property tax will be quite low and I can tell you why it's going to be low and it will stay low, because property tax dollars spend hard. The newspapers are there watching. The little old ladies in tennis shoes are there watching them. All the taxpayers are there watching them. And that's why they don't want to put this on property tax. And so instead of hiring 30 employees to go out and paint fish on the lid of the sewer lid, they're going to find ways to get the Boy Scouts to volunteer to do it. And they're going to do these rain gardens. The rain gardens are marvelous, we just found out about them the other day. Lance Hedquist mentioned it, I believe. What it is, is just a planted area in front of...and it reduces stormwater runoff by 90 percent, the pollution part of it. I'll close with one thing, I know I've taken more time than I'm supposed to. I was on the city of Omaha's committee, the task force that they put together. In fact, I was stunned when I heard the proponent from the city of Omaha say that anecdotally that's kind of what people want, is a mix of things. We studied for weeks. And this was a committee handpicked by the city of Omaha. And I'll be honest with you, they handpicked it so they could sell their stormwater fee proposal. They brought in a consultant from Florida who came in to force feed us this concept of the fee. But everybody attended in good faith. The taxpayers of Omaha were there. Churches were represented, schools, lots of people. When they finally gave us the alternatives, they said one...the overwhelming vote was to put it on a mix of property taxes and some type of utility fee. And the first thing that was rejected is this fee as proposed by this legislation, fee on impervious surface. And you

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know what, after that study, weeks and weeks and thousands of dollars? They never published it. We had to beg them to get a copy of the final report and they never published it and you sure didn't see it today. [LB534]

SENATOR LOUDEN: Questions for Loy? Carol. [LB534]

SENATOR HUDKINS: Loy, thank you for being here. You've given us a lot more to think about. You say that the mandate is to cover dirt and fecal matter. [LB534]

LOY TODD: Yes. [LB534]

SENATOR HUDKINS: And obviously the dirt can't be swept up out of everybody's parking lot, nor the fecal matter out of everybody's yard. But in defense of the proponents, I think that they say that all this water has to be treated to get these pollutants out. If that's not the case, how would you suggest--you don't like the mandated fee, you want the methodology changed. How, since you were on this committee, how would you see that the dirt and the fecal matter are taken care of in another way? [LB534]

LOY TODD: Well, there were several things brought up. One thing I will point out, the permit that the city of Lincoln has doesn't call for them to treat anything. They've got a permit. And in fact, it references the parking lots and the streets and those kinds of things and says they're not a significant contributor to anything. What they have to do is identify point source contributors to that. Pass local ordinances, rules and regulations, stopping people from letting that loose dirt...the biggest areas that contribute it, new construction, agricultural practices, those kinds of things. And one of the biggest charges, one of the identifiers here is to go around, find out where it's coming from, and then prescribe by ordinance or law that people do corrective practices. If someone is maintaining something that is flowing into the stream, stop them, find them, punish them. If the rain garden idea, the barrier things, and to do what they're doing. All of our new parking lots are required by local law to have retention ponds, and to do those kinds of things. And if they're required to pay for it out of property taxes, they're going to do it the most efficient and cheapest way possible because the people are watching them. And you take a look at their ultimate numbers, we used to run them. The city of Lincoln was trying to get about three times what the federal government was projecting as their cost. It was a similar figure for Omaha. And this, look at it, this fee is unchecked. There is no cap. There is no lid. And everything is permissive. You may exempt. And I'll tell you, I'll give you my favorite part of the bill. Take a look at Section 10, page 11, line 17...I'm sorry, Senator, but it allows them to exempt anybody they want for any reason. [LB534]

SENATOR HUDKINS: Thank you. [LB534]

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SENATOR LOUDEN: Other questions for Loy? Thank you, Loy. [LB534]

LOY TODD: I apologize for my enthusiasm, Senator. (Laughter) I've been held down for almost three hours, I had to let it go. (Laughter) [LB534]

SENATOR LOUDEN: Apologize to the other eight or nine behind you. (Laughter) [LB534]

JIM CUNNINGHAM: (Exhibit 15) Senator, I can assure, I'm going to change the pace a little bit and I wished I had the ability to have that equal amount of enthusiasm. Senator Louden and members of the committee, my name is Jim Cunningham, that's C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Conference, which represents the mutual interests and concerns of the Catholic archdiocese of Omaha and the dioceses of Lincoln and Grand Island, primarily with regard to matters involving public policy. The Nebraska Catholic Conference remains firmly opposed to any legislation proposing to shift stormwater infrastructure operation and management from a tax-funded general purpose obligation to a fee-based utility. We opposed this bill's predecessors, LB32 during the Ninety-Eighth Legislature and LB102 during the Ninety-Ninth Legislature. Nothing about LB534 causes us to change that position. Nebraska Catholic Conference is opposed to LB534 because it would erode the validity and value of tax exemption for nongovernmental, nonprofit institutions and organizations that carry out special functions and fulfill important public purposes, thereby producing significant public benefits and generating considerable tax savings as well. LB534 fails to honor Nebraska's long-standing traditional policy of allowing exemption from property taxes for qualifying property owned by religious, educational, charitable, and cemetery organizations and used for qualifying purposes under Nebraska law. In this regard, LB534 damages a trust that has existed for well over 100 years. In our view, the expanded authority proposed by LB534 is the exercise of taxing authority, irrespective of the way the authority to impose the so-called user charges is described. It is taxing authority because notwithstanding the fact that authority already exists to raise revenue for these purposes, it is intended to raise governmental revenue to pay for infrastructure improvements and management programs that encompass the general public purpose and broad-based benefit of stormwater management and pollution abatement, purity of water being a benefit shared by the public at large. Moreover, what this bill purports to establish as a utility is not really a matter of contract for services provided. It is a fiction because true consistent measurement in terms of unit rate for actual generation or consumptive use is a practical impossibility, especially given all the variations from the source of stormwater. The pretend consumer is unable to exercise any control over where it rains, when it rains, or how much it rains. From our perspective, this significant and substantial change in public policy is made even more significant and substantial by the fact that imposition of these so-called user charges can only have negative financial repercussions for properties that comply with every procedure and satisfy every requirement for exemption from general taxation. It is

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irrefutable, we think, that tremendous social and human advantages arise from the presence of religious, educational, and charitable entities within communities throughout Nebraska. They give collective voice to societal values of altruism and pluralism. If your expectations as policy makers are that religious, educational, and charitable entities will continue to meet human needs, carry out social action, charity, and ministry, provide education, and perform the special function of religion in society, assisting people in finding meaning in their lives, then exemption from taxes, both straightforward taxes and those such as this that are taxes by another name, that should not be eroded. And I've listed in my written testimony, Senators, an analysis of all the various ministries and functions that churches, at least our church, perform in the state. But I do want to reference one specific instrumentality of ours. The Catholic dioceses in Nebraska operate the largest systems of nongovernmental elementary and secondary schools in the state, providing quality academic, social, and values-based education to nearly 30,000 Nebraska youngsters at a significant cost for their families but generating millions of dollars of tax savings for taxpayers as a whole. Religious, educational, and charitable institutions and organizations that satisfy all of the requirements for exemption from property taxes are not nameless, faceless entities that enjoy special treatment on the basis of their activities. They are most often nonprofit associations of individual Nebraskans who voluntarily organize themselves for worthwhile purposes, providing significant public benefit. These individuals pay their obligations toward the costs of government. The very same people who already pay their personal taxes are also going to be paying these taxes by another name, should they be authorized and imposed. On the other hand, by not authorizing the imposition of these taxes by another name, you will be honoring and continuing a policy that permits the value of supporters' contributions to be used for the purposes intended. LB534 will diminish the state's encouragement of the role of religious, educational, and charitable entities and negatively affect the ability of these entities to carry out their worthy functions. Therefore, we urge you to indefinitely postpone this bill. Thank you for your time and attention. And I have just a couple comments off my statement I'd like to make. It's interesting, on page 13 of the bill, on lines 7 and 8, specific mention is made that this shall not be deemed to be special benefit assessments. Well, if it's not special benefit assessments, that is, specially, particularly, and specifically benefitting the property impacted, then indeed it is a general public purpose and I think that that establishes the intent or the fact that this bill really is about taxes and not about anything else. Also, I'd like to make mention of the fact, just for the record, that one of the sections that's not included in the bill is Section 18-512. I don't believe that it's ever been repealed and it's in the current law. And it says that "for purpose of creating a fund out of which antipollution of water measures may be financed, any city or village in this state is hereby authorized and empowered to make a special levy of not exceeding three and five-tenths cents on each \$100 upon the taxable value of all taxable property." I just mention that because Larry Ruth commented about some other provisions regarding levy for this purpose. It might already be part of the property tax, as Larry indicated. But that section dealing specifically with antipollution of water is already a part of Nebraska

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law. And finally, one comment about the permissive or the discretionary nature of these exemptions. And perhaps someone can say, well, you know, you're just shifting the confrontation over exemption to the local level. I'm not sure that as a matter of the Constitution of the state of Nebraska that a local subdivision of government can grant an exemption from a tax. I believe that that authority under the constitution rests in the Legislature. And so I'm not sure that that is a consequential section of the law and it might need some analysis in that respect. That occurred to me as I was listening to some of the prior testimony. Thank you very much. [LB534]

SENATOR LOUDEN: Any questions for James? Senator Hudkins. [LB534]

SENATOR HUDKINS: A quick question, Mr. Cunningham. In your remarks you said that authority already exists to raise revenue for these purposes and then you quote a particular statute. Was that what you were talking about? [LB534]

JIM CUNNINGHAM: That statute, the one that Larry Ruth mentioned as well, and then the general property tax authority as well, plus also, you know, some cities have sales tax authority in addition to that. [LB534]

SENATOR HUDKINS: Okay, thank you. [LB534]

SENATOR LOUDEN: Other questions for James? Seeing none, thank you for testifying. [LB534]

JIM CUNNINGHAM: Thank you, Senator. [LB534]

KORBY GILBERTSON: (Exhibits 16 and 17) Good afternoon, Chairman Loudon, members of the committee. For the record, my name is Korby Gilbertson, that's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of a number of groups, so I'll go through, I'll have to take a few breaths, the Nebraska Realtors Association, the Nebraska State Homebuilders Association, Girls and Boys Town, Boys Town National Research Hospital, the Nebraska Health Care Association, Alltel Communications, Windstream Communications, the Nebraska Cable Communications Association, and Lincoln Public Schools in opposition to LB534. Out of those, you might notice that I did include Lincoln Public Schools. I wanted to make special mention of that fact because in both the introduction and in the proponents' testimony, they both stated that public entities would be exempt under this act. However, it's always kind of been a "trust me" with this issue since we've been following it for the last five years. And when you read the language in the bill it actually says they can establish a system of exemption. Does not say they will be exempt. And that has been our concern all along. Coupled with that concern is if they then exempt different groups and it's not just limited to the public entities, those costs will shift to the other two parts of that pie chart that were on the wall. And I think Senator Fischer pointed that out

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earlier so I won't drag that out again. But when you look at the differences in the cost to the different based on property taxes or the stormwater fee, those differences significantly erode when you get rid of all three of the pairs to that pie chart. The things that I wanted to cover in my testimony today were pretty much to give the committee, since all of you haven't been here since we've started this five years ago, was that there are other ways to pay for this. Some people before me have spoken about them. Senator Hudkins, you brought those issues up before. One idea that has been floated many times before is that cities can earmark a portion of their city sales tax to pay for this. There are mandatory levies and special levies that can be assessed to pay for these issues, as well as bond issues. For those of you that read the Lincoln Journal Star this Tuesday, you will see that there is another \$11.8 million stormwater bond issue that is probably going to be on the ballot again in Lincoln. This follows another bond issue that I believe was for \$10 million that was approved overwhelmingly just two years ago, which proves that the voters of these cities will overwhelmingly support the city in the needs to pay for these projects. It does not have to be through a fee that is assessed through this type of legislation. In the second article that's in the little blue packet, if you're wondering if this is just Lincoln, it is not. There were bonds totalling over \$103 million in the city of Omaha. I believe \$4.1 million of that was for sewers, were passed by a margin of two to one. So voters have overwhelmingly supported these measures when they know what the money is going for and it's not just, as other opponents have said, an open checkbook for the cities to pay for these types of services. I think that everything else I was going to say has been said and so I'd be happy to try to answer any questions if I could. [LB534]

SENATOR LOUDEN: Any questions for Korby? Seeing none, thank you. [LB534]

KORBY GILBERTSON: Thank you. [LB534]

TIP O'NEILL: Senator Louden, members of the Natural Resources Committee, I'm Tip O'Neill, that's O-'-N-e-i-l-l. I'm the president of the Association of Independent Colleges and Universities of Nebraska. It's a consortium of 14 privately controlled nonprofit colleges located here in Nebraska. We have many of the same concerns as Jim Cunningham with the Nebraska Catholic Conference. We, you know, I can't say like he did, don't tax God for making it rain, which I think is what he said. But I do want to say that, you know, I listened to the short debate we had on the floor last year when Senator Raikes, I think, talked about hungry water and stormwater and how it picks up dirt and stuff when it drains. I don't think the water at Nebraska Wesleyan University is hungrier than the water at UNL. I don't think the water at Creighton University Medical Center is hungrier than the water at the University of Nebraska Medical Center. I think the institutions that I represent serve great public purposes. That's why we are exempt from property taxes. We believe the stormwater issue is, cleaning up the stormwater serves the greater public purpose and should be a common tax, just like other things that are commonly funded from the property tax. I'd be happy to answer any questions you

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might have. [LB534]

SENATOR LOUDEN: Any questions for Tip? Seeing none, thank you. [LB534]

TIP O'NEILL: Thank you. [LB534]

MIKE RYAN: (Exhibit 18) Good afternoon, Senators. My name is Mike Ryan, that's M-i-k-e R-y-a-n, and I'm from Omaha. Before I start my hopefully short presentation, it seems like there's been a little confusion about what permeable pavement is. I happen to know that it isn't just crushed rock. I've got here the card of a gentleman from the Nebraska Concrete Aggregates Association. And I think he'd love to talk to anybody that's interested about what they call pervious concrete. And there's also something called pervious asphalt. And I've seen demonstrations of both of these systems. And let me tell you, when water hits either pervious concrete or pervious asphalt, it's down through that material right away. It doesn't run off. It goes right through the material. And this guy has got a demonstration that he'll show you if you're interested. So if one of the pages would like to make a copy of this card and give it to the committee clerk, you can contact him in the future if you're interested. To give you a little background on me, I'm on a joint Douglas-Washington County committee that is working to design a policy for stormwater management. I want to stress that I'm here to testify as a concerned citizen and not for this committee. I'm an advocate of the Clean Water Act and its goal to stop contaminants from being carried into our surface waters by stormwater. While I generally agree with the stated intent of LB534 and most of the content in it, I feel it contains some language that can be used to justify and finance a strategy that should not be used in a stormwater program that's designed to satisfy an NPDES permit. I don't think this use was intended by Senator Schimek. When I first read the bill, I was glad to see one of the stormwater program funding styles outlined in it. I'm referring to the funding mechanism that is based on the amount of stormwater that flows off a piece of property. It's a concept that says he who creates a greater part of the stormwater problem pays for a larger part of the solution. It is also attractive that this funding system can be used to reward a property owner for reducing the stormwater runoff by allowing for a stormwater fee reduction or a credit. I've done enough research to know that this is the funding mechanism that is used for most stormwater programs around the country and it is the one recommended by the EPA. But as I said, it is possible to interpret some of the language in this bill the wrong way. This is why I'm objecting to LB534 in its present form. I think, however, these potential problems, or language land mines, can be dealt with by a simple amendment. The dangerous language I'm talking about would allow an entity to use a stormwater program and stormwater funding to develop and implement a bad plan. This plan would utilize dams with permanent reservoirs as a strategy to deal with stormwater contamination even though the EPA recommends against them and offers other solutions. I'll talk more about these solutions in a minute. As you may know, all county and most city governments in the Papillion Creek watershed joined an alliance back in 2001 called the Papillion Creek Watershed

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Partnership. The partnership was sold to elected officials by our Papio NRD as a group they could join, one that would deal with their upcoming NPDES permit hassles for them. As elected officials with a lot of other things to worry about, this partnership looked attractive. To make a long story short, what some of the partnership members didn't realize was, this was ultimately a scheme to use dams built by the NRD as the main strategy in the NPDES stormwater programs. The dam strategy will not address the problems that an NPDES permit tries to address. And as I'm learning, it's harmful for the process. These dams are contained in the stormwater programs of most of the members of this partnership and are being actively promoted by them. Here are examples of language in the bill that could be interpreted to allow for dams. On page 2, line 15, it allows an NPDES city to construct a storm sewer system which includes any system or works above ground for storage of stormwater of a city. This could mean a dam with a reservoir to somebody wanting to build one. Now you might say, come on, we're talking about a storm sewer system here. Remember, in this same paragraph, the bill defines a storm sewer system as any system that conducts or carries stormwater, even above ground. Then on page 3, line 18, it makes the Papio Creek, in our case, part of the storm sewer system when it says that that system can "include the natural drainage components of such system." I'm concerned that this makes the Papio and its tributaries fair game for large reservoir or dam construction. Section 11 allows funding for the development, establishment, and implementation of a stormwater management program. Again, most governments in the partnership have adopted stormwater policies that call for the use of dams in their stormwater programs and the funds will be used to build those dams. Page 5, line 4, allows for the issuing of bonds now for the building of dams now, with the bonds being retired later by the funding mechanism noted in the bill or by a fee paid to a utility. This would apply to cities and counties that are required to have a stormwater management plan by their NPDES permit. And our NRD would love to use an interlocal agreement with one or more of these entities in order to use their bond money to build the 31 dams that are on the drawing board. It is very important that you know that dams are not a solution for the contamination of our streams by stormwater. The EPA itself says they are not. And nowhere else in the country can I find them being considered for that purpose. I've spent numerous hours and days researching this on the Internet, as well as speaking to scientists locally, stormwater program representatives in other cities, and at the EPA in Washington. What they are using elsewhere and what is recommended by the EPA are best management practices, including low-impact design. Therefore, I urge you to adopt an amendment to this bill that takes these land mines out of it. Something like this: nothing in this bill should be construed to allow for or provide funds for dams with permanent reservoirs. This would make LB534, as currently written, a much better bill. Thank you and if you have any questions, I'd be glad to... [LB534]

SENATOR LOUDEN: Any questions for Mike? Seeing none, thank you, Mike, for testifying. [LB534]

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RANDY LENHOFF: Senator Louden, members of the committee, my name is Randy Lenhoff and I am a member of the Nebraska Association of Commercial Property Owners. I also live in Omaha. Listened to a lot of testimony here today and I'm going to try to keep this short. I know it's getting long. [LB534]

SENATOR LOUDEN: Can you spell your name for us, Randy? [LB534]

RANDY LENHOFF: Lenhoff, L-e-n-h-o-f-f. [LB534]

SENATOR LOUDEN: Thank you. [LB534]

RANDY LENHOFF: I work in management of properties. I manage shopping centers and apartment buildings across Nebraska. We're in many communities; Grand Island, Norfolk, Columbus, as well as Omaha and Lincoln. And we do have a serious concern about the stormwater runoff as proposed. I do think it's a problem and I think it's unfair. Some of our properties that we manage are moderate, low-income people live there. Our rents are set based upon, because they're restricted rents, through the Department of Housing and Urban Development. We can't raise our rents except if we've got an increase in expenses. Obviously this is an expense we'd have to pass through. So we'd have to pass that through to our low-income residents. So this does cut across just, you know, big business and that sort of thing. It's going to cut a lot of people. I think the best way to pay for it is through the property taxes. It's really unfair to say that, you know, 50 percent of the problem is the quality of the runoff. And that's a big part of the problem and it needs to be dealt with. I'm on the Armbrust Acres board out in west Omaha. I got a call last spring from one of the neighbors there saying the lake smelled bad. Went down and looked at it and it was clear what happened. First thing in the spring, everybody went out and fertilized their lawn. And they probably, the setting said three, they set it on four or five because they wanted to have a greener lawn than everybody else. So guess what? You've got a problem in Zorinsky Lake. Eventually that's going to have to be paid for. That would be paid for out of these funds. I think it's a lot fairer to pay for it out of property taxes because I do think everybody contributes to the problem. The other thing you need to think about is all the streets are in here. And that's where most of the problem is at. I like the fact that we salt our streets and everything else but that all runs down into the stormwater runoff. We all drive those streets. And certainly the commercial property owner who has one car isn't causing all that problem. So I think it really is fair. It is a problem for everybody and I think we all need to pay our fair share. I think it needs to be paid through property taxes. I also will say, I do like dams, they're not all bad. So I'd like to see you not do away with all of them. Zorinsky Lake, for instance, gets a million people a year. So needs to be careful about saying we can't do anymore dams in the Omaha area because I think that is a good thing. Any questions? [LB534]

SENATOR LOUDEN: Any questions? Senator Kopplin. [LB534]

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SENATOR KOPPLIN: Just one. You mentioned if it's a fee you're going to have to pass it on to these low-income people and so on. If it's a property tax, are you going to pass it on? [LB534]

RANDY LENHOFF: Sure, we do. Yeah, it's in either way. [LB534]

SENATOR KOPPLIN: Thank you. [LB534]

RANDY LENHOFF: I just think that it's going to put more on because of the fact that it's going to shift it heavier. And like I said, 50 percent of the problem is actually the quality of the runoff, it's not the volume. And yet this fee is based upon volume and that's what it's based on and that's what's unfair about it. I will also say I grew up on a farm. I can tell you that there is some runoff off farms. I remember the creeks filling up. So there is kind of a feeling that this is only in Omaha. But water does run out of Washington County into Douglas County. So there is, you know, you're taking a small group of property owners and saying you've got to pay for the whole problem, even though everybody contributes to it. [LB534]

SENATOR KOPPLIN: So I'm reading you right, saying the Papio and its tributaries really are a part of this problem. [LB534]

RANDY LENHOFF: Yes, yes, sir. [LB534]

SENATOR KOPPLIN: Okay, thank you. [LB534]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Randy. [LB534]

RANDY LENHOFF: Thank you. [LB534]

JIM OTTO: Senator Louden, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and also the Nebraska Restaurant Association, and I'm here to speak in opposition to LB534. First, I will just try to sum up what I think has been kind of maybe some of the other people have said but maybe say it in a little bit different way. I would just like to start out with maybe, do you all remember President Harry Truman and some socialite came up to Bess Truman and asked her to have the President quit saying the word "manure" because she just thought it was inappropriate. Bess's answer was, you don't know how long it took me to get him to say "manure." So I say that because that will tie in to some of the other things that I want to point out here. First of all, the federal mandate, as Randy said, 50 percent. But the actual federal mandate, as I understand it, dictates the quality of stormwater, not the quantity of stormwater. And in fact, I have a copy of an editorial that was written way back when, when we originally had LB32. And it points out, this is actually written by

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proponents at the time, public works people for both the city of Lincoln and city of Omaha. I have a copy if you'd like it. But anyway, the thing that was pointed out, as has been brought up before, is that the biggest problem with the quality of stormwater is fecal coliform and sediment. Now to me, that's manure, only I wanted to use the other word, and dirt. And the point is that if we're really coming up with trying to solve the quality of stormwater problem and if that quality problem is based on manure and dirt, I submit to you that most of that doesn't come from roofs and parking lots. As Senator Kopplin pointed out, where is the origination of the pollutant? If you actually measure it at the stream, how do you know who's doing the polluting? And I would just say that this is a problem. As was previously testified, we believe that the best way to address it is through property tax. I'd submit to you that it was pointed out on the \$33 and \$50, I believe it was \$55 on property tax, \$30 on fee for a homeowner. I would submit to you that, if they're presently paying, I don't think their property tax will go down so they're actually going to pay \$85 because I don't think the property tax will go down. They're still going to pay the \$30 fee. It's a source of more property tax. I would simply end with another story. I remember as a Boy Scout that one of the, you'd always have campouts and you'd have these campfires and you'd have these little skits. One of the skits was, one Scout would go up and be on his hands and knees searching around the campfire. Second Scout comes up and says, what's the deal? And he says, well, I lost my compass. So the second Scout gets down and starts searching with him. And finally after a few minutes, the second Scout says, well, where did you lose your compass? First Scout says, well, over there in the trees. And he says, well, why are you looking here? And he says, because there's more light. (Laughter) I would submit that we have the same ridiculous comparison. Why are we looking here when it's really about quality and not quantity? It's because there's more money. I'd submit to any questions. [LB534]

SENATOR LOUDEN: Questions for Jim? Senator Kopplin. [LB534]

SENATOR KOPPLIN: Well, I'm just curious about one thing. Jim, I keep hearing about we're dealing with dirt and manure. I mean, I've heard others say that. And I'm sitting here thinking, well, what about all the antifreeze and oil and grease that's dropping off these cars in these big parking lots? That's not part of the problem? [LB534]

JIM OTTO: Well, I'm sure it is part of the problem. And if there were some way, I would submit, as was pointed out before, I would submit that there's way more of that on the city streets than there is on the parking lots. [LB534]

SENATOR KOPPLIN: Possibly. [LB534]

JIM OTTO: And everybody should bear that through property tax. But if that is, and through sound engineering principles, if we can determine that that is a pollutant, to me, that's how you base the fee because the fee is supposedly to clean up the quality. And so we have to go after those who are polluting it, not just after the quantity. [LB534]

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SENATOR KOPPLIN: Okay, thank you. [LB534]

SENATOR LOUDEN: Other questions for Jim? Senator Christensen. [LB534]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Maybe more of a comment, but would you agree if Phase II is about dirt and fecal matter, then the larger the quantity of water the better off we are? It's going to dilute it further. [LB534]

JIM OTTO: Could be. I don't know. I would point out, too, if I have that opportunity, nobody was talking about actual cleaning up, facilities actually cleaning the stormwater like we clean the sanitary sewer. [LB534]

SENATOR LOUDEN: Other questions for Jim? Thank you, Jim. [LB534]

JIM OTTO: Thank you. [LB534]

TYLER MOHR: (Exhibits 19 and 20) I have a couple sheets to hand out. Senator Louden and members of the committee, thank you for the opportunity to speak today. My name is Tyler Mohr, T-y-l-e-r M-o-h-r. I'm from Omaha and a resident of Douglas County. I think there's a number of things that I probably agree with in LB534. I think it really provides a reasonable way to fund NPDES stormwater requirements. Certainly the most urgent need in the Omaha area is a stormwater sewer separation to prevent the discharge of sewage into the waterways. And these maps I've given you, if you hand it out, it shows you there's kind of two distinct different areas. The one map with the red dots shows where the storm sewer outlets dump into different creeks or tributaries or rivers. And this is all generally east of 72nd Street in Omaha. And in a watershed where the water generally flows from north to south, the other map is a proposed plan of a group of dams. And most of that is to 120th Street and west. So these are two distinct different areas where the storm sewer outlets are and the proposed dams. In the past, we have seen tax dollars diverted into reservoir-based private development projects with enormous financial benefit going to a few individuals and very little benefit going to the public. It concerns me that some language in this bill, such as storage or natural drainage components, could imply the building of reservoirs. It concerns me that the stormwater management policies formulated by the Papillion Creek Watershed Partnership condones a public funding of private development projects. As a property owner and taxpayer, to ensure the funds are used where they are needed most, to improve existing infrastructure, I'm asking this committee to consider either amending this bill or clarifying the language to ensure that our tax dollars are not misused. And thank you and I won't take any more of your time unless you have some questions for me. [LB534]

SENATOR LOUDEN: Questions for Tyler? Thank you for testifying. [LB534]

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TYLER MOHR: Thank you very much. [LB534]

MIKE HYBL: Senator Louden, members of the committee, my name is Mike Hybl, spelled H-y-b-l. I'm the registered lobbyist for the Nebraska Trucking Association, offering testimony in opposition to LB534. The association has in the past opposed previous iterations of this bill. I think just two points. I think you've heard probably everything you can possibly hear on the bill. First, there is an issue here that has to be dealt with. However, it's our belief that there are existing revenue sources in place that can be relied upon to address the issue. And secondly, to the extent that the bill proposes creating a new type of utility, and we heard the comparison of water and sewer, to the extent that you are going to have a utility-type approach to this, then everyone who benefits from the utility being there should be required to contribute to the operation of that utility. With that, I'd close my testimony, take any questions you may have. [LB534]

SENATOR LOUDEN: Any questions? Seeing none, thank you. [LB534]

MIKE HYBL: Thank you. [LB534]

RON SEDLACEK: Good afternoon, Chairman Louden and members of the Natural Resources Committee, for the record, my name is Ron Sedlacek, that's spelled R-o-n S-e-d-l-a-c-e-k, and I'm appearing here today in opposition to LB534 on behalf of the Nebraska Chamber of Commerce and also authorized to enter the testimony of the Greater Omaha Chamber of Commerce, as I said, in opposition to the bill. In taking a look at the funding mechanisms, and I think that has possibly not been looked at as much, the various funding mechanisms that I've found that have been used in other jurisdictions, and most commonly used for stormwater programs in other states, one finds a variety of options, several options that haven't been discussed. Certainly general revenue appropriations in the form of property taxes, we've talked about that, and/or local option taxes. And then the stormwater user fees or in some jurisdictions, stormwater service fees. We also have plan review, development, inspection, and special user fee programs, special assessment programs, bonding for capital improvement programs, in lieu of construction fee, legislation, capitalization recovery fees, impact fees, development extension fees, or latecomer fees, and federal and state funding opportunities, for example grants, loans, and other cooperative programs. All in all what I find, and certainly I cannot at this point give you a percentage comparison, but it still appears that even with the subsequent to the federal Clean Water Act and the implementation and proliferation of stormwater utilities, the continued use of general tax revenue remains the most common source, though not necessarily the nonexclusive or the exclusive source, of stormwater management funding. In other jurisdictions that use General Fund appropriations it appears in review that the funding of stormwater management is typically embedded in whatever resources are assigned to that primary

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function such as public works, or engineering, or transportation, street maintenance, wastewater treatment, and even in some cases, recreation. Without reading a couple of pages of testimony I would just like to highlight a couple of areas, however, and not concentrate on the General Fund issues as well as the bonding alternatives. Generally when you compare a fee versus a tax, it's done on a pure legal basis. When you are dealing with a tax it's mandatory and you don't need to show the benefit particularly. Second of all, it raises revenue. And when you look at a fee it's a payment in exchange for specific services, it's paid by choice. The fee reasonably reflects the service received, and it's dedicated to defraying the costs of the service. And that's generally recognized in many of the court cases that have looked at these types of fees, and there have been several court cases and challenges to discriminatory aspects of stormwater management fees. In some of the litigation, essentially the conclusion has been you can, if it walks and quacks like a duck, it's a duck...it's a tax, and it's not a fee. Therefore you have to take a look at this particular piece of legislation and say, well, we, for example, exempt, it appears, on page 11, the state and governmental subdivisions, it certainly didn't say anything about federal properties or instrumentalities of the federal government, that seems to be left out. There's several, there's so many weaknesses in this bill, it seems, that need to be addressed and I'm not going to go into detail on those particular areas, but all in all it would appear to apply to property owners who are using best management practices. They may have the capability whereby that water, that...there is no runoff, but obviously there are holding tanks and reservoirs and so on, they are not contributing to the problem whatsoever. They maybe have a system whereby that is naturally depleted into the ground as opposed to ever entering into any streams. There is no guarantee in this legislation that utilizing those best management practices is going to give you any credit. In fact you may, because of a large impermeable area that requires, and often by ordinance, all these particular additional investments, they may be stuck with some of the large bills in regard to that fee assessment. And for that reason we really feel it's unfair and discriminatory. And with that I'd be happy to entertain any questions. [LB534]

SENATOR LOUDEN: Any questions for Ron? Seeing none, Ron, thank you. [LB534]

RON SEDLACEK: Thank you, Senator. [LB534]

KATHY SIEFKEN: Chairman Loudon and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I'm here today in opposition to this bill and I'm representing the Nebraska Grocery Industry Association. I'm going to try and keep this just as short as possible because I know we all want to get out of here. One of the things that the bill does is it allows each jurisdiction to have its option of designing its own stormwater management program. The concern is that some of the areas or some of the communities may decide to go after a hybrid system instead of a standard system. Also, the activities that are funded by this bill are not limited and it could very easily shift things, present projects over that are being funded by the General Fund,

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could be shifted over to pay for this new fee. In addition to that, the stormwater budgets, we believe, will probably grow to take up the expanded funding that is set out in this bill. So whatever money they raise is the money that they spend because that's generally the way it goes. Property tax dollars and dollars that are raised via bonds are harder dollars to spend because local governments are held accountable. They have to talk to their citizens about what those dollars are being spent for. It's not just a fee anymore, it's actually set out and citizens are pretty much yelling and screaming right now about the property tax values or levels that we've got right now. So we think it will contain those costs and keep things under more control. And then the last thing I wanted to add was that we've been working on this, it's been before this committee for the last five years. And when I pulled out the records from last year and looked them over, my notes said that the federal government through EPA estimated that the cost of compliance with Phase II of the federal Clean Water Act for the city of Lincoln, was \$1.8 million and for Omaha it was \$3.2 million. Yet Lincoln came to the Legislature last year and was asking for \$5.4 million and Omaha was asking for about \$10 million. And that's why we're concerned about how these dollars are spent and how the dollars are, how the fees are raised. So if you have any questions I'd be happy to try to answer them.
[LB534]

SENATOR LOUDEN: Any questions for Kathy? Seeing none, thank you. [LB534]

KATHY SIEFKEN: Thanks. [LB534]

BRUCE BOHRER: Good afternoon, Chairman Loudon, members of the committee, Bruce Bohrer, for the record that's B-o-h-r-e-r, appearing on behalf of the Lincoln Chamber of Commerce. We are in opposition to LB534. I think most of what's been said already we agree with. I think there's two issues...or, I guess two things we agree, everybody that seems to, on both sides of this issue, agree on. There's a federal mandate and there's a problem we need to deal with somehow. It's a little bit frustrating; I've been dealing with this issue for five years too and it seems like we're really talking past each other a lot here. The cities keep coming in or a few of them do, with this idea. It's clearly not a proposal that is a consensus proposal. I'd like to see that study that Mr. Todd was involved in that suggested these other ideas. We're mainly concerned because it looks as if this system really is a way to get to mostly urban and mostly commercial or business owners or deep pockets and let them pay the freight. It is a problem that every one of us contributes to and it is an issue that every one of us should help pay for too. We're willing to pay our fair share but we don't think this is the right solution. It's already been mentioned there's a lot of legal issues; I hadn't thought of the exemption granted. I certainly agree with Mr. Ruth too earlier about the discretion and basically that this is just going to be a political exemption. That's not a good system, that's not the right type of system that we want to have for dealing with this type of issue. There is no doubt in my mind that quality water should be a priority issue for us to deal with. But with that said, I also agree with what Kathy just said. Local accountability

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and local dollars spend awful hard and I'm not so sure you guys can sit here and say that, really, you know for sure all of these different local entities that are maybe spending money, are really spending some of that money on priority issues that they should be before you give them a little bit more authority to have a fee. So, with that I would end my testimony and answer any questions that you might have. [LB534]

SENATOR LOUDEN: Any questions for Mr. Bohrer? Senator Kopplin. [LB534]

SENATOR KOPPLIN: This bill would enable entities to issue a fee or property tax. In my mind if doesn't...if property taxes ride, do they still need this bill to enable them to do that? [LB534]

BRUCE BOHRER: I don't believe so. [LB534]

SENATOR KOPPLIN: Okay. [LB534]

SENATOR LOUDEN: Are there any other questions for Mr. Bohrer? Seeing none, thank you. [LB534]

BRUCE BOHRER: Thank you. [LB534]

JOHN DICKERSON: Good evening, Senator Louden, and thank you... [LB534]

SENATOR LOUDEN: Yeah, we're glad to see you here. (Laughter) [LB534]

JOHN DICKERSON: I think I'm the last one, so... My name is John Dickerson, J-o-h-n D-i-c-k-e-r-s-o-n. I represent and am a member and legislative chair for the Institute of Real Estate Management, the Nebraska Chapter. I will echo that I am on board with everything that has been said by the predecessors who are opponents of this bill, so I'm going to speak more as from a homeowner's standpoint. I also was on the Omaha focus group, and I can tell you that there were 17 people there who were there when we voted on what alternative we were going to use to take care of this issue. And of the 17, 65 percent said, by property taxes; and there were three people who abstained so that percentage goes up to 79 percent of the people who participated in the actual selection--property taxes. The second thing I would like say is I think fees, even though they are a tax, would be inflationary. I think it was said before or brought up before that if you put a huge fee that's greater than property taxes on businesses, they will pass those fees on to their customers and so that's inflationary to us all. I'm not an economist so I can't qualify that very well but that's my commonsense look at the effect. The last thing that I would talk about is the fee itself and to the homeowner. The slide on the screen talked about it to be \$30 if it was a fee to a homeowner and it would be \$55 if it was a tax. And I'm sure the municipalities feel that that's their intent to begin with. But I may not look old enough but I'm old enough to not be fooled. In five years that fee will

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exceed the tax; I'm sure of it. The other thing is the way, and this is coming about through all the past bills that have been submitted on this issue, they want to take a 2,600 square foot impervious coverage as an average for all homes and the fee would be based upon that. If a 900-square-foot two-bedroom bungalow pays \$30 and a 9,000-square-foot mansion pays \$30, that to me is a regressive tax and would you agree? That's all I have. If you have questions, why... [LB534]

SENATOR LOUDEN: Any questions for John? Seeing none, thank you. [LB534]

JOHN DICKERSON: Thank you. [LB534]

SENATOR LOUDEN: (Exhibit 21, 22) And I presume since he was number 14, he's the last opponent? Sixteen? Oh, one more. Okay. Okay, we have the two letters to read in opposition now. We are ready for neutral testimony. One is from the Nebraska Farm Bureau Federation in opposition, and one is from the Nebraska Association of County Officials in opposition to LB534. Go ahead. [LB534]

DENNIS BAACK: Senator Louden and members of the Natural Resources Committee, for the record, my name is Dennis Baack, B-a-a-c-k, and I'm executive director of the Nebraska Community College Association. And I am also speaking, I have had conversations with my counterparts at the state colleges and also at the university and I'm here to express just our concerns about one part of the bill and we're only going to talk about the exemption part. And I know it's been stated a couple of times by the proponents that there is an absolute exemption for us, for the public entities in there. I will argue with you that that is not the case in the bill. It does not say that; we are not getting an exemption. If you are going to exempt us it ought to say right in the bill that we are exempt and that's not what it says. It says, they shall establish a system for exemption. And the reason that I'm testifying here is that you have to understand that there's a little bit of history that goes with this. Up until this year, there has not been an exemption for the public entities in there and in fact, we've asked for that a number of times and we were always turned down. And now if you pass this bill you will turn over to the same people who wanted us in all along and wanted to tax us all along and wanted to make us pay the fee all along, you are going to turn it over to their judgement to decide if we have to pay a fee. I can almost tell you what's going to happen. I have a pretty good idea of what's going to happen when they make that choice, and so that's our concern with it. But I don't want people to think that we have an absolute exemption here; I don't think this bill does that. I think it opens it up to them to decide what that system of exemptions is going to be and we're concerned about that. And with that I'd be happy to answer any questions. [LB534]

SENATOR LOUDEN: Any questions? Senator Carlson. [LB534]

SENATOR CARLSON: Senator Louden. Senator Baack, I appreciate your testimony.

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How's it neutral? (Laughter) [LB534]

DENNIS BAACK: Well it's, you know, I can't say that, you know, I mean if we are exempt then I can't say that, you know, that we have...that we are in opposition to the bill. If we are not, you know, then I can't say we support it either, because of this part. So, I, you know, I know, and whenever anything is neutral, it's negative neutral or positive neutral, you can classify this as negative neutral, okay? (Laughter) [LB534]

SENATOR CARLSON: Okay...I'm trying to have some fun after three and a half hours, you know? (Laughter) [LB534]

DENNIS BAACK: I understand, I understand. (Laughter) I understand completely? When I was the chair of the Government Committee I had signs made up for neutral testifiers. You either had to hold up positive neutral, negative neutral or neutral-neutral, and it better be that because that was the rules. [LB534]

SENATOR LOUDEN: Any other questions for Dennis? Thank you. [LB534]

DENNIS BAACK: Thank you. [LB534]

SENATOR LOUDEN: Jay, could you come up and give us some answers for our questions, or questions for our answers? (Laughter) Neutral testimony? [LB534]

SENATOR CHRISTENSEN: Now, is it neutral-neutral, neutral-positive, oh... (Laughter) [LB534]

JAY RINGENBERG: Mr. Chairman, members of the committee, my name is Jay Ringenberg, J-a-y R-i-n-g-e-n-b-e-r-g. I'm the deputy director at DEQ and stormwater is one of the programs I'm responsible for. I'd be glad to try to answer any questions that you may have. [LB534]

SENATOR LOUDEN: Okay. As our counsel is (inaudible), what pollutants are you and the federal government concerned about in this program? I mean, we've heard all kinds of pollutants but are we talking about quality or quantity, or... [LB534]

JAY RINGENBERG: Well, for sure the program is designed for quality, not quantity. And I would echo some of comments that were made. The program is designed for water quality improvement, not quantity being floodwaters. I can tell you though that at times it is difficult to sort those two pieces out. Many times you're dealing with the same water for the quality basis as you are the quantity basis but our interest is strictly quality and as well as the pollutants in that quantity. For sure we're interested in many more parameters other than sediment and fecal coliform as commented earlier. Examples would be and this comes from sampling of various sites across the country, and if you'd

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like we'd be glad to provide you some of those numbers or data and such, but we're interested in nitrates, fertilizer-type components, we're interested in chlorides coming from particularly road salt. We are interested in oils and greases. Parking lots in particular are notorious for oils and grease. I think if you go look at any parking lot every stall has got a big oil spill from the last person that dripped out. We are interested in metals, heavy metals, mercury, lead, cadmium coming primarily from deposition of auto exhausts as well as we're interested in BOC balt organics, benzenes, toluenes, petroleum-based products, all of those. One of the observation that I would offer is there has been a lot done and we have two sites in Nebraska we've required sampling for parking lot runoff. We know for a fact we get most of our pollutants in the first 15 minutes and then you get good quality water after that in general. So any type of best management plans are geared toward that first flush which really goes to nonstructural BMPs, or best management practices such as sweeping parking lots, curbing, various activities that are non-treatment oriented. In general we don't promote treatment, we don't...trying to promote handling all this stuff, we are more interested in the nonstructural stuff. A couple of things that we see now that is directly related to the stormwater program. You see the Department of Roads, they're not using salt, they're using other things. You are seeing them spray road surfaces, particularly bridges now instead of in the past when they were loaded up with salt. They are using food-based sprays on those for ice control. Some of those are directly related to stormwater management. There is a condition in all the city permits that requires them to do maintenance on the streets and parking lots and for them to do street cleaning and sweeping on a regular basis and those kind of things. So we are interested in the pollutants and with that sediment comes many of the other things. When I'm looking at lead and I'm looking at, many of those are bound up in sediments so indeed sediment may be an indicator of the problem but there are more serious pollutants that we are dealing with. [LB534]

SENATOR LOUDEN: They were talking about the costs of program, one person talked about \$10 million for Omaha and then...do you know what the estimate for the federal costs of these programs are? [LB534]

JAY RINGENBERG: Well there are some charges that the EPA put out based on the size of the communities. I think if you use those numbers, the numbers are even probably larger, particularly if you add in operation and maintenance costs, your street sweeping and some of those activities that you do year-round, not just during rainfall events. Those items are constituent particularly if you include all the communities in the state, you got ten outstate, and if they're paying half a million dollars each a year, you got \$5 million right there. And in Omaha, seven, eight, Lincoln, you know, those numbers may be right. I haven't looked at the numbers but if you'd like to have us review those and provide some input, we'd be glad to do that. But there are EPA numbers based on population and size but a lot of it has to do with how much area you're really covered, how many square miles you covered, how many miles of sewer

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you have, is it all impervious surface? Are there a lot of grass areas? It depends on what you have on it, but. I would probably suggest, particularly Lincoln and Omaha, had an opportunity to run a program for a couple three, four years. They have some real numbers and but what those are they would have to answer that. I think probably the point for DEQ that we kind of stress is that it is expensive. And one of the things we encourage people is if you don't do the program, particularly in Phase I and Phase II, if you don't it, make an effort and make it happen, eventually we may end up in treatment in Phase III which is the worst of all the worlds where you actually have to treat the water at the end of the pipe. And you got to go to some mechanical or lagoon-based treatment and the state is working hard to try to keep that from happening which is why we continue to put pressure on the cities to do what they have to do. This as an example. [LB534]

SENATOR LOUDEN: Okay. What about violations? They mentioned, somebody asked if what happens if they don't do it, or something like that? [LB534]

JAY RINGENBERG: There have been a number of enforcement cases around the country. We have taken individual enforcement action here in Nebraska and most of them relate to not carrying out the program that they have. The courts have been very active on cities that have programs and don't implement them. And that's really the number one priority for EPA and the water programs is implementation of what they call wet weather programs which is stormwater, combined sewer overflow, corrections as well as CAFOs. Those three are the top water issues. We fully expect EPA to be in the state this next summer doing inspections on construction sites and on cities to see if they are doing what they're supposed to be doing. We have taken individual enforcement actions on various sites, both industrial and housing development, and we have sought and have got penalties in both cases here in Nebraska. And I think we, as well as the federal government, do see a stormwater program as serious and people will have to do it. And I think very clearly that history has shown that if they don't, somebody is going to make them do that, either the federal government or third-party suits and the courts. So I think what's why you see the cities looking for means to do some of the things they know ultimately they have got to do. [LB534]

SENATOR LOUDEN: What about years ago when they were redoing these whole laws on sewer systems I think in the '70s or some time like that? Is that's what's left over for Omaha when they were having their stormwater and sewer water mixed up or what... [LB534]

JAY RINGENBERG: Well and I've commented in the past that various people--it reminds me a lot of the discussion I heard in the late 1970s and I was actually around them during those when the issue is, well the concept you ought to charge sewer use fees based on your actual contributions versus everybody pays a flat rate and no relationship, that's how they used to do it. Every household, every industrial, every

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commercial, all paid \$2 a month or whatever. There was no relationship to the fee and what it cost to operate the utility as well as who was contributing. Environmental Protection Agency and the states in the late '70s forced the cities virtually to adopt ordinances and user fees that related to contributions--the more you contributed the more you paid. And that fee had to cover the costs of operation and maintenance and replacement. Different faces, different names in opposition and support but it was the same argument of how you pay for this, how you pay for this system? And at that time it was all the larger users, the meatpacking industry, dairy processing, food processing in particular and they were in opposition. But it's the same arguments. People in the wastewater world and the engineering world, they would say, well the utilities, it's a no-brainer, that's just how you do it. But I can also understand the problems with the exemptions and who all has to pay, how to do that. But it's very, very similar to the past. [LB534]

SENATOR LOUDEN: Anybody got any questions for Jay? Senator Christensen. [LB534]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Jay, wouldn't it be the more roof space you have, the more water you got the better you're going to help the system though? You keep talking about the larger the quantity the more damage. I can see on the parking lot, the more area, the more potential damage, but the more roof area actually is going to help you because you got more ways of diluting it. [LB534]

JAY RINGENBERG: Well for sure you get dilution based on the amount of roof area you've got and the more water you get off of it, but as you expand that roof area you also expand the pollutant base. So if you make an assumption that every square foot has the same amount of pollutant on it the more you expand that square footage, you increase the pollutant load even though you are also increasing the water load. Now if that's true or not I can't really answer that, but there is indeed, data out there. For sure the impervious surface space gets you water and you got to manage that based on the flows. Ideally, right now there are no limitations on the parameters for oils and greases and all those. Phase III if it comes eventually would be numerical numbers on the parameters, and then indeed, when you monitor a roof based on the size, you may actually be in compliance with a larger of the small, I don't know that. But the regulator will tell you that dilution is not the solution to pollution but indeed with stormwater sometimes it probably helps. You have still got to handle the water. [LB534]

SENATOR CHRISTENSEN: Correct. I understand that part. Is there funding mechanisms in place now without this, in your opinion? [LB534]

JAY RINGENBERG: Well for sure they have to fund it in some form. The agency traditionally has not got involved too much in how it is funded other than I can tell you when we do our state revolving loans where we give loans and some grants for water

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and wastewater systems, we require those cities to pass the ordinances and pass the user fees that will pay off the operation, maintenance, and the loan, and it is a condition of the loan. And most of those are user fee related versus property tax related. The courts habitually have always said, even to the point of being somewhat silly which is, we don't care if you raise the money, user fees, property taxes, sales tax, or bake sale, as long as you raise the money. And I think part of that is unfortunately you're stuck with the bake sale at the moment here with you guys, but, yeah, for sure it would make it simpler, you know a user fee system is something that the cities and municipalities are used to doing, know how to do, and they know how to administer. And it would be from an operating costs standpoint for them and it's probably going to be the cheapest way for them to do it. Now they could probably comment on it but I would be, because they are already charging people on user, sewer, water, everything else. It will be just another line on their bill which would be my bill as well. But, just a thought. [LB534]

SENATOR CHRISTENSEN: Thank you. [LB534]

SENATOR LOUDEN: Senator Fischer. [LB534]

SENATOR FISCHER: You just confused me on one of your comments... [LB534]

JAY RINGENBERG: Oh. I'm sure I did. [LB534]

SENATOR FISCHER: ...I'm still awake...I'm still awake over here. You said bake sale or whatever, but unfortunately they can't do that. Cities right now, they don't...just to clarify this, in my opinion, they wouldn't have to have this stormwater utility because they already can access property taxes if I think most of the cities involved in this have a sales tax and couldn't they designate that, a certain portion to go? [LB534]

JAY RINGENBERG: Um-hum, right. [LB534]

SENATOR FISCHER: So there are other methods besides the bake sale... [LB534]

JAY RINGENBERG: Oh yeah, I would agree with you that they have existing taxing mechanisms... [LB534]

SENATOR FISCHER: Okay, I thought you were saying the bake sale is the only option they have if we don't pass this. [LB534]

JAY RINGENBERG: No, no, I think, no, I think from DEQs...how they get that money is not an issue from us of how they make that mix, but I would agree with you, they have other mechanisms available to them today. [LB534]

SENATOR FISCHER: Okay. I, yes, to clarify it because I thought you were saying their

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only option right now if... [LB534]

JAY RINGENBERG: No, no, no, no. [LB534]

SENATOR FISCHER: Let me finish... [LB534]

JAY RINGENBERG: Oh, excuse me. [LB534]

SENATOR FISCHER: Their only option right now is if we don't pass this is a bake sale. That is not correct, would you agree? [LB534]

JAY RINGENBERG: No, oh, no, that's not true and if I implied that, I apologize, that's not what I meant. [LB534]

SENATOR FISCHER: Okay. Thank you. [LB534]

SENATOR LOUDEN: Questions for Jay? Well thank you, Jay, for coming up for us... [LB534]

JAY RINGENBERG: I thank you. [LB534]

SENATOR LOUDEN: (Exhibit 23)...and if there are no other questions, or in the neutral, well then I guess we'll close the hearing on LB534. [LB534]

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Disposition of Bills:

LB530 - Advanced to General File.

LB534 - Held in committee.

Chairperson

Committee Clerk