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Urban Affairs Committee
February 10, 2009

[LB467 LB526 LB647]

SENATOR MCGILL: (Recorder malfunction)...I will be chairing the majority of the committee today. We'll introduce the folks who are here. Our committee clerk is Beth Dinneen; we've got Senator Tanya Cook from Omaha; Senator Kent Rogert from Tekamah. To my left is committee counsel Bill Stadtwald; and to my right is State Senator Colby Coash, also from Lincoln. One quick reminder to go ahead and turn off your cell phones or pagers or put them on vibrate. We are recording the testimony, and when those ring it can be a big distraction for the folks who are trying to type up what everybody is saying. If you're planning on testifying today, we'd like you to fill out a green sheet, which is on the tables in the corners as you walk in the door. If you're not going to testify but still want to list your support or opposition to a bill, you can fill out one of the white sheets and turn them into the page. Testifiers, we'd like you to go about five minutes. We're not going to be using the light system today, but we'd still appreciate it if you'd stick to around five minutes so we can get through all of the bills we have on the agenda today in a timely fashion. And when you are up there, go ahead and state your name and spell it for us so we have a good record of that. And if you have any materials, the page who...the page for our committee is Courtney Ruwe from Herman, Nebraska. She is a political science and philosophy major. She will take those and distribute them to the committee for us. And with that, let's get started with LB467. Senator McCoy. [LB467]

SENATOR MCCOY: Well, thank you, Senator McGill and members of the Urban Affairs Committee. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th Legislative District. I'm here this afternoon to introduce LB467. This bill was brought to me because I represent the community of Elkhorn which was annexed by the city of Omaha in 2007. LB467 proposes to require voter approval for the annexation of cities or villages. LB467 amends the Revised Statutes of Nebraska to require voter approval for actions related to annexation of cities or villages. LB467 requires the annexation of any adjoining city, town or village in the state of Nebraska to be supported by the majority of the registered voters of the adjoining city, town or village voting on the issue during a statewide primary or general election. Many of you will recall the bitter divisions between two communities wrought by the city of Omaha's decision to annex the city of Elkhorn. LB467 would prohibit municipalities of a larger class based solely on population from annexing smaller municipalities without the consent of the majority of the voters in the municipality being annexed. I understand that the actions of the past cannot be undone. The intent of LB467 is not to undo the past. The community of Elkhorn is now within the legal boundaries of the city of Omaha. My intent in introducing LB467 is to protect the rights of other small communities in Nebraska. And I would be happy to answer any questions if I can. [LB467]

SENATOR MCGILL: Do we have any questions for Senator McCoy? Oh, Senator Coash. [LB467]

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SENATOR COASH: Thank you, Senator McGill. Senator McCoy, just have kind of a general question about how annexation works. If the larger...if the town that's looking to be annexed happens to be next to obviously the municipality but in a different county, what are the implications of that? I'm thinking for example Gretna, which is a growing city in our state and close to Omaha but in a different county. How would that legislation affect a city like that? [LB467]

SENATOR McCOY: Well, I believe, Senator Coash, it would be my understanding and I believe there was a bill last year that I believe Senator Nelson brought to the body. But as I understand it under current statute, it's unlawful to annex across county lines, to my knowledge anyway. And I think that's what the bill that Senator Nelson brought last year sought to be able to change was the ability to annex across county lines. But under current statute, as I understand it, that's not allowed. [LB467]

SENATOR COASH: Okay. Because I'm getting a lot of...not a lot, but I'm getting some correspondence from citizens in Gretna. [LB467]

SENATOR McCOY: Um-hum. [LB467]

SENATOR COASH: At this point since they're across the county line, that's something that they don't have to worry about. Is that correct? [LB467]

SENATOR McCOY: No. At this time, they would not. [LB467]

SENATOR COASH: Okay. Thank you. [LB467]

SENATOR MCGILL: Do we have any other questions for Senator McCoy? I don't see any. Thank you. [LB467]

SENATOR McCOY: And I will waive closing. [LB467]

SENATOR MCGILL: Okay. [LB467]

SENATOR McCOY: Thank you. [LB467]

SENATOR MCGILL: Sounds good. Thanks. Senator Tom White from Omaha has just joined us. And we will now begin taking proponents. Are there any proponents here? Proponents? [LB467]

TOM FENCL: My name is Tom Fencl. It's spelled F-e-n-c-l. I live at 3404 North 202nd Street in Elkhorn. And I'm a proponent of the bill hoping to gain voting rights to the citizens. Equality before the law. It's our state motto. Were the citizens of Elkhorn

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treated with equality? Over the past 20 years, Elkhorn made a number of attempts to reach a nonaggression agreement with the city of Omaha. P. J. Morgan, the only mayor willing to talk about it. Neither of the next two administrations wanted to hear of it. Mayor Fahey who claimed a few months after his first election that he was not interested in Elkhorn changed his stance and announced he would annex Elkhorn within two years. Polls taken in Elkhorn revealed that 90 percent of the citizens want to remain independent. Polls also showed that over 65 percent of the Elkhorn citizens would be willing to take a significant tax increase in order to put up a legal fight for survival. The Omaha City Council held one hearing in which the citizens from both cities could voice their opinions. The line was long and filled with Elkhorn and Omaha citizens voicing their opposition. The plea fell on deaf ears. After many biased editorials and articles by the Omaha World-Herald showing falsified charts, maps proclaiming the imminent death of Omaha if they were not allowed to expand, 10,000 citizens of Elkhorn were allowed to be forcefully taken over without any voice or any vote. No other state in the union allows one city government to force its laws, its taxes, and below standard services upon another city government without a vote of the people most affected by it. Is this equality before the law? Many years ago, our state had a similar debate regarding who is allowed to vote. Granting women the right to vote was merely the first step for women who demanded freedom and power in their attempts to change home and marriage. The right to vote is a privilege of government granted only to those whom the government sees fit to grant it. These are the viewpoints printed by the Nebraska Men's Association opposed to women's suffrage, an Omaha-based men's group. Nebraska was one of the last western states to allow women to vote. Furthermore, Nebraska never truly granted women full voting privileges, the federal government forced it on them. Why does our state seem to fear the vote of the people? Why is it so difficult to embrace the wishes of individual citizens? Why are the wishes of one group of citizens more important than the rights of another group? We were only asking to be heard. We don't want you to change the outcome of the annexation. We simple ask that you give us the opportunity to choose. Thank you. [LB467]

SENATOR MCGILL: Thank you, Mr. Fencl. Let me see if there are any questions from the committee. I don't see any. Thank you very much. [LB467]

TOM FENCL: Thank you. [LB467]

SENATOR MCGILL: Do we have any other proponents? [LB467]

JASON FULLER: (Exhibit 1) My name is Jason Fuller, and do you want me to spell it? [LB467]

SENATOR MCGILL: Spell your last name. [LB467]

JASON FULLER: F-u-l-l-e-r. I'm a member of the organization known as the Citizens for

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a Free Nebraska, and we're basically about annexation reform. We met with the city of Bennington City Council last night and they drafted a letter of support for LB467. And I'm sure you all have a copy, but it's very short and I'd just like to read it, so. Dear Urban Affairs Committee members: The cities and towns of Nebraska are the heart and soul of each community. Through their local self governance, each community's individual needs for essential municipal services are met. Before a city or town is unilaterally annexed and a community is lost, the citizens should have a voice, a vote, regarding the local government size and structure for their unique community. Accordingly, the city of Bennington supports LB467 and respectfully requests that the Urban Affairs Committee move LB467 to the floor of the Legislature for open debate and consideration. And I just have a...I'll be blunt today, I'll be quick and fast for you. So first, thank you to Senator McCoy for introducing LB467, a bill that if successful, would enact much needed and long overdue reform of the state of Nebraska's current unique and destructive annexation policy to bring it in line with the rest of our nation. And thank you, the committee, for the chance to speak in front of your committee and offer my 2 cents worth as you make your decision whether or not to advance LB467. Today I'm going to be brief and to the point because we all know why we're here and we all have read the bill at this point and understand what it's about. All other arguments aside, you know, spiking crime rates; the inability to provide public safety and public services; mismanagement of critical resources while large-scale monuments seem to be springing up everywhere; the inefficiency, ineffectiveness, wastefulness, and corruption involved in large sprawling governments; and, oh yeah, the constitution. This is about the citizens of Nebraska's fundamental right to representation and local control. It's very simple. I would ask that you base your decision on whether or not to advance LB467 on the following two questions: Do we, the citizens of Nebraska, deserve the right to vote before our cities and villages can be forcefully sieged, overpowered, and our elected governments erased, and our voice in our community diminished to the point of obscurity, the same fundamental rights forded to the citizens of every other state in the entire union? And secondly, do you, the members of the Legislature of Nebraska believe that the people whom you represent deserve those rights? I hope that as our representatives your answer to both of those questions is yes, and I hope that as our representatives you will advance Senator McCoy's bill and at the very least allow our fundamental rights as citizens to be discussed and debated on the floor by all members of the Legislature. After all, what is the fear in allowing the people to vote? Who fears in the United States of American the voice of the people? As a citizen, I humbly urge you to advance LB467, but I have to say that if you decide not to as responsible citizens and stewards of our rights that have been passed down to us by those who have fought and continue to fight for them, we believe that it is our duty and obligation to set things right for the good of our fellow citizens, our cities, our counties, and our state. And we will not abandon our cause. So thank you again for allowing me to take the time to speak with you today. [LB467]

SENATOR MCGILL: Thank you, Mr. Fuller. Are there any questions from the

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committee? I don't see any. Thank you. Anymore proponents? [LB467]

REX MOATS: Good afternoon, members of the Urban Affairs Committee. My name is Rex Moats, M-o-a-t-s. I reside at 131 South 202nd Street, and ironically the address is still Elkhorn, Nebraska, because I don't live in the city. I live in an SID attached to the city. I am here today in support of LB467. I want to tell you why. As many of you may be aware, this bill was introduced last year by Senator Pedersen. It did not make it out of committee. It was not designated as one of his priority bills, and died a humble death at the end of the session last year. This is a bill that is in substantially the same form as it was last year presented. As Senator McCoy indicated, it is not a bill that seeks to undo the change of the municipal limits of Elkhorn to Omaha but is on a go-forward basis. I actually have a fairly unique opportunity this last year in campaigning door-to-door, ironically against Mr. McCoy in the district to hopefully shed some insight on what I learned in speaking with over 18,000 voters in the district. One of the things that has not been mentioned today, other than the exhibits that were presented by Mr. Fuller, is the issue of public safety. One of the things that happens in an annexation like this is that the street names are changed to conform with what the Omaha grid system is. That created a lot of confusion in Omaha. It's created a lot of confusion. I had the opportunity to witness it firsthand when I looked at voter registration files versus what the actual address was versus what was actually on their house. And I would submit to you that this is an issue that needs to be addressed on a public safety ground because a lot of the new firemen and police officers that are not familiar with the area. That's one of the things Omaha didn't do in our annexation was leave the same people out there. They shuffled them around because of seniority and their bargaining agreements, but one of the things is they can't find houses, you know, when there is an emergency. And that's a legitimate issue that needs to be addressed. If annexations like this are going to take place, there needs to be something in place that will allow the city that was annexed to hopefully at least keep some of its infrastructure and names rather than just having their streets completely renamed. There were about 2,000 people in Elkhorn that suffered that fate, and a lot of these people that I talked to during the course of the campaign complained about identity theft and they were not getting their mail and it wasn't being forwarded. And certainly, I think, even the people from Omaha would agree that it was probably not handled as well as it could have. But that's within your province and your power to amend this bill and to make changes and to amend current state law so that it would prevent that type of thing from happening again. And one of the other things that was not really brought up a lot, but Elkhorn and that area was served by Aquila gas company. And one of the things I don't think people realize, certainly I don't think Joe Citizen of the public realized is that allowed MUD then to come out and be able to take over all of those pipelines out there and their infrastructure and kind of be held hostage as to what the price was going to be with respect to those issues. So their infrastructure issues, you know, besides just address changes and we want our own identity and we want our own little form of self government that they go beyond that. And I would submit to you that those are things that are all very important. With respect to the comment

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made earlier about what is the current law now regarding annexation over the county lines, I respectfully disagree with the assessment of Senator McCoy. I believe that if you read the 1968 Nebraska Supreme Court case regarding the issue it does not say in that case that you cannot annex over county lines. I think that it might be well for the committee to review that case prior to voting on the advancement of this bill because I think that there is a legal gray area there that may need to be addressed. I appreciate you taking time to listen today. I would just humbly ask that you give this bill an opportunity to be debated on the floor of the Legislature. You don't have to be a rocket scientist to figure out that it primarily would impact Omaha, Gretna, Bennington, Valley, but it reaches as far as Lincoln, too, Senator Coash, with obviously Waverly not that far down Highway 6. And although not a lot of the bigger cities in the western part of the state probably have the same issue, I think that it's something that is worth paying attention to. So thank you for that today, and... [LB467]

SENATOR MCGILL: Thank you, Mr. Moats. Any questions? Nope. Thank you. Any other proponents? Okay. How about any opponents then? [LB467]

ALAN THELEN: Good afternoon, Madam Chair, members of the committee. My name is Alan Thelen, T-h-e-l-e-n. I'm an attorney with the Omaha City Attorneys Office, and I'm here representing the city of Omaha today in opposition to LB467. For many years our annexation statutes have been very flexible. They have enabled cities such as Lincoln and Omaha to grow in an orderly, progressive, and efficient manner. We've had urban planning experts tell us that Omaha's healthy growth can be attributed in large part to these flexible annexation statutes that allow Omaha to grow. And what we're able to do is that we're able to avoid what we see in many other cities such as St. Louis and Kansas City and Minneapolis where the basic intercity gets hemmed in by other municipalities. The basic intercity can't grow, can't be supported by the broader metropolitan area. LB467 would promote that undesirable situation, and it would leave us with a basic intercity that is surrounded by a multitude of competing cities and the resulting inefficiencies. So we, at the city of Omaha, urge you to oppose LB467. Unless there are any further questions, I thank the committee for its time. [LB467]

SENATOR FRIEND: (See also Exhibit 7) Thank you, Mr. Thelen. Are there questions from committee members at all? I didn't see any. Thanks. We're on opposition testimony? Anymore opponents to LB467? Is there anyone wishing to testify in a neutral capacity? Is Senator McCoy still here...Senator McCoy waived closing. And that will actually close the hearing on LB467. The next bill is LB526. Madam Chair. [LB467 LB526]

SENATOR MCGILL: All right. We'll open on LB526 with Senator Friend. [LB526]

SENATOR FRIEND: Thank you, Madam Chair and members of the Urban Affairs Committee. My name is Mike Friend, last name is spelled F-r-i-e-n-d. I represent

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northwest Omaha District 10, here to introduce LB526. Recognizing the special development pressures and the needs of cities and villages located in close proximity to metropolitan class cities, this legislation is introduced to provide an enhanced annexation authority for such municipalities to enable them to more quickly and effectively bring developed areas within municipal boundaries. Section 2 of the legislation, the portion of the bill making the most substantive changes, provides three significant changes in annexation law which would broadly increase the authority for the specified cities and villages to annex property. All of the changes are only permitted in counties that border on a county which contains a city of a metropolitan class, which would be Douglas County. Thus the provisions of the bill only apply to cities and villages wholly within the boundaries of Dodge County, Saunders County, Washington County, and Sarpy County at this point. Subdivision 1 provides the authority for such cities and villages to engage in strip or flagpole annexation. This would be annexation of noncontiguous property. And if the subject property is (a) located within the area over which the city or village exercised extra territorial zoning jurisdiction on January 1, 2009, and (b) would not add more than 25 new residents to the city or village in consequence of the annexation. The section specifically authorizes such an annexation to be accomplished by means of the annexation of a connecting street or right of way. Subdivision 2 authorizes the annexation by such cities or villages of noncontinuous territory with a population in excess of 25 persons only with the approval of a majority of the property owners located in the area proposed for annexation. The approval would be obtained in an election conducted in the same manner as an election for members of the board of trustees of a Sanitary Improvement District. And that's set out in Section 31-735. It specifically provides that an election may be held at any time that the annexing city determines to call such an election. If the property owners approve of the election, the annexation may be accomplished by means of a strip form of annexation. Subdivision 3 extends the authority provided in subdivisions 1 and 2 into the future, recognizing that annexation serves to permit the extension of a city or village's zoning jurisdiction. It permits the noncontiguous annexation to continue into those areas of extended zoning authority following an annexation, but limits the authority to do so for one year beyond the effective date of the ordinance extending the zoning jurisdiction, thus prohibiting the use of strip annexation to leapfrog into new areas too quickly. You are all part of this, or at least to a degree, all of you. This summer, we sat down with some folks from Sarpy County and discussed this issue. The discussions have been going on for quite a while. I got an opportunity before Christmas to sit down with Mr. Stadtwald, the research analyst, along with other affected parties or people who were particularly interested in this subject matter, immediately interested in this subject matter municipalitywise, that is. And thought we might have something here that, you know, deals with the problems that they believe, you know, have occurred for them in regard to annexation. I sound like a broken record, but if we have an answer here to a real problem, great, we might be able to move somewhere with it, we might be able to do something with it. If we don't, I think we'll hear it here. And I think it just falls on our committee to try to analyze that after the fact. I don't think the problem is perceived. I'll

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say that right now. I think it is a real problem. An example is when I first got to this committee and I didn't understand anything about it...and by the way I'm summing up, so Senator Rogert is a little worried that I'm going to go on forever, (laughter) when I first got to this committee some six years ago, there were people strip annexing and, you know, in Sarpy County and in other areas of the state, I should say, to a degree or it could be perceived that they were. What we're looking to do is to try to wrap some, you know, sense around this whole discussion. The first thought that I had and I remembered that they were showing some overhead examples of what that meant, the first thought that I had was, well, why don't we fix this problem. Again, if the fix is here, great. I think we're going to get the chance to discuss it today and at least we'll be on the record. So I'd be happy to answer any questions. Like I said, some of you know the issue, some don't. I think we're going to know a heck of a lot more in about an hour about the subject matter, so. I think that's about all I have. [LB526]

SENATOR MCGILL: Are there any questions for Senator Friend? Doesn't look like it. Thank you. [LB526]

SENATOR FRIEND: Thank you. [LB526]

SENATOR MCGILL: Let's start with proponents. [LB526]

JOHN GREEN: (Exhibit 2) Mr. Chairman, members of the committee, Vice Chair, my name is John Green, J-o-h-n G-r-e-e-n like the color. I'm the city attorney for the city of Gretna and have been for more than 25 years. I represent...and we're passing around a map to you at this time so you can see the Sarpy County, Nebraska. If you want, we can show you where Mr. Stadtwald lives. (Laughter) And I represent the fastest growing city in the fastest growing county in the state of Nebraska, and because of its unique nature adjacent to the city of Omaha and Douglas County, Nebraska, it grows differently than any other municipal area in the state. It doesn't grow from the city out, it grows all over the place. Gretna spent \$6 million building a sewer line from Gretna to attach into the county industrial sewer. And with the cooperation of Sarpy County, Nebraska, because of the fact that it was environmentally correct, it was a good thing to do, it would open up new areas for development, and would also cure an environmental problem which the county had in the golf course community it created around Tiburon, which is about 1,000, 1,200 people now. So even though Nebraska law doesn't allow a new city to be formed within five miles of an existing one, there's nothing to prevent the county board from creating cities of 1,000, 4,000, 5,000, 9,000 in an area of development out here outside of the municipal jurisdictional boundaries and extraterritorial jurisdictions. On the map in front of you, the orange is the municipal boundaries, the red is the extra territorial jurisdiction. After we had the cooperation with the county and Gretna spent its own money to resolve the problem at Tiburon by running another pipe up from our interceptor sewer to Tiburon to resolve their problem, and Gretna had their municipal services not just within the town itself, but all the way

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down to 168th and 370, the city of Gretna after two years of discussion with all of the residents of Gretna, the residents of Tiburon, all of the farmers in between that it made sense for Gretna then to extend its zoning jurisdiction out to include those areas that were within its service area of its municipal pipe, plus areas that were eventually going to be involved in the city of Gretna. After two years of planning, after all of the ordinances went through, through the planning board and then went through the city council, the last meeting of the city council before third reading and passage, Sarpy County showed up and said, would you hold off on this. And our city council said, no, we planned this for more than two years, we're going to go forward. And then on the 364 day after the annexation, Sarpy County filed suit all by itself as no one else within the area was objecting because we had spent the times discussing this with them. Sarpy County...we wound up going to the Supreme Court three times over this annexation. The first time was to determine whether or not Sarpy County had standing in which to challenge the annexation. Since March 1, 1867, no county had ever challenged the municipal annexation within its borders. Sarpy County was the first and so far has been the only. The Supreme Court of Nebraska determined that the county should have standing. Now, once standing among the lawyers, once standing has been determined, you still have to prove that you've been damaged in order to establish that. Sarpy County proved no damages. We won in the district court. We went back up to the Supreme Court again and the Supreme Court determined that even though Sarpy County proved no damages that the county had greater authority to challenge an annexation than an SID, a resident, a person affected, a corporation, any other citizen of the state of Nebraska. The county had greater rights than anyone else to challenge an annexation. We went to the Supreme Court the third time because the county, realizing that they hadn't proved any damages, now all of sudden wanted to have damages, and the Supreme Court said, no. Other municipalities within Sarpy County also attempted to annex down the main highway that divides the county so that some jurisdiction could be had over those developing areas, and the county has said, no. I give you that as a historical perspective on this. And if Senator Coash wants me to explain annexation across state lines later, I'll be happy to. But I did want to take a moment and commend the Chairman on this because the bill that came in last time was what we refer to as a negative. It would prevent the county attorneys of counties from challenging annexations of municipalities, and have changed it into a positive which is to allow greater authority for municipalities in Sarpy County and other counties, Saunders, those that ring the city of Omaha and Douglas County, to be able to have additional authority to annex within their zoning jurisdictions that don't necessarily comply with the Supreme Court strict requirements of annexation, but do allow that within the zoning jurisdictions themselves. We aren't here today to specifically say that we are in favor of this particular bill, but we want you to know how much we appreciate it and how much work we think that the committee has done. And that we will provide to the committee at some point in the future something that the five cities of Sarpy County can agree to and feel comfortable with in presenting to you. We just weren't ready at this point in time since I hadn't seen the legislation before it got introduced to be able to

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come up with a cooperative effort to do that at this time. And I believe that's all I have to testify to at this time, unless you have any questions. And that was all within five minutes. [LB526]

SENATOR MCGILL: Thank you, Mr. Green. Are there any questions? It doesn't look like it. Thank you very much. Next proponent. [LB526]

DAN HOINS: (Exhibit 3) Thank you, Madam Vice Chair and Senator Friend in particular for hearing our concerns today. My name is Dan Hoins, H-o-i-n-s. I'm the city administrator in the city of Papillion. I've been the city administrator since August of 2000, actually. Mr. Green did an excellent job, I think, of providing historical basis of how we got to where we're at today. And just last night I typed up all of Papillion's concerns and I don't want to read those to you, so I've provided those to you in a handout. So if you read through that and you have a specific question...and I won't cover every point, obviously, because of time, but I'd be happy to answer that. But really Papillion's concern and Gretna's concern and many of the United Cities concern, Senators, is one of protecting the future entry into our communities. There's no question...in fact, there's been a lot of debate in Sarpy County about annexation, but there's been very little or no debate that in particular the intersection of I-80 and 370 will be the entryway to either the city of Papillion or the city of Gretna some day. It's just when we get there. So the question and what we've been trying to do in the city of Papillion is to protect that through enhanced design standards and proper planning during my entire tenure with the city of Papillion. Unfortunately we run into challenges from the county in our ability to do that. And we didn't just run to the Legislature for a fix. I want to be very clear about that. In 2001, we did one of our first annexations and the county challenged that annexation. That stayed really tied up in court for about to three years. We then took the intergovernmental cooperation track. We went to the county and sat down and said, folks, this is important to us, will you work with us? And fortunately at that point they said, yes, we'll work with you. And so cooperatively with the city of Papillion and the Sarpy County officials we hired an independent planner to come in and agreed upon a set of design standards that would protect that quarter for the future. That process took about a year and a half. It was very community involved. It was very comprehensive. The city of Papillion adopted them in their total, but then Sarpy County, when they went to adopt them, issued a whole list of exemptions that in our opinion made it useless. Shortly after the exemptions were issued, a building went in and constructed itself right at the corner...or didn't construct itself, they built it, but it was constructed not even close to compliance and it's right at the intersection of I-80 and 370, the very corridor that we're trying to protect either for the city of Papillion or the city of Gretna someday. A private landowner challenged that particular construction and said, you should have enforced your design standards, Sarpy County, and won at the Supreme Court. They said you should have followed your own standards. And so Sarpy County's solution to that was to go exempt the standards, to water them down even further as recently as three weeks ago. Today they've watered those standards down

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again to where they're just virtually useless and will not protect that corridor. We also, during this process, went to the county. Mayor Blinn appeared personally before the Sarpy County Board and he said, will you cede our jurisdiction? I believe it's 13-367 in Nebraska Revised Statutes, will you cede it? The landowner who owns the property or some of the property said, will you cede this jurisdiction? The county board at that point refused to even take a vote on the matter even though they could have by statute. They wouldn't even hear it publicly in the process. So if you see a little frustration, I apologize. It's been kind of a nine-year battle and so we really are very appreciative of Senator Friend and the committee for listening to us. We didn't want to run up here and say, you know, you need to change it and we haven't tried. If you don't get anything out of my discussion today from my presentation the city of Papillion and the United Cities of Sarpy County were formed in part because of this very effort, so. In the uniqueness of Sarpy County, we have six forms of government, five cities, and one county. And they are in the smallest, or I believe the smallest, geographical county in the state of Nebraska. And as you look at those red lines, those are areas that are developing very rapidly. And our passion for enhanced design standards, I think I can speak with some authority on the record, we have developed in the city of Papillion over the last three years not tens of millions of dollars, but hundreds of millions of dollars of economic development because we believe it is no small part because we do proper planning and put design standards in effect. And our great fear is if we don't get something very soon, that really the land values and the aesthetic values and the entryways into either one of our communities are simply going to be damaged beyond repair. And you only have to look at Omaha Steaks and then drive a few miles down the road and look at Shadow Lake Towne Center to see the core philosophical differences in planning between municipal officials in this case and county officials who are trying to exert the control over that particular area. And I think that this bill will actually help all of our cities be able to have self-determination for the future of our cities, so. I went on probably longer than I meant and certainly I apologize if I did. But I'll take any questions. [LB526]

SENATOR MCGILL: Thank you, Mr. Hoins. Any questions? I don't see any. Thank you very much. Next proponent. [LB526]

GARY KRUMLAND: Senator McGill, members of the committee, my name is Gary Krumland, it's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities and appearing in support of LB526. The cities and the counties bordering Douglas County are in a unique position. Developments have grown around the cities, outside of the cities, and we think that this is a beneficial authority for the cities. We generally would support the same kind of authority for all cities across the state, but because the unique situation in these counties, we do support the bill for these cities. [LB526]

SENATOR MCGILL: All right. Thank you. Any questions? Nope. Thank you for your testimony. Anymore proponents? Any proponents? Okay. Any opponents then?

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Opposition? [LB526]

MICHAEL SMITH: (Exhibit 4) Good afternoon. My name is Michael A. Smith, S-m-i-t-h. I'm a deputy county attorney, Sarpy County and here rising in opposition to this bill. In my position with the county attorney's office I have spent a lot of time in the last several years on cases involving annexation by cities, and the critical issue in each of those cases really has been whether or not the annexation have been sufficiently adjacent and contiguous as required by statute. And the county has been successful in those lawsuits. Now, in reviewing this bill I just have a couple of things, and I guess I'd like to refer to maps and talk a little bit about how we approach that on some of the history. The case when you read the cases on annexation, any of them, not just ours, the courts always cite similar language saying they're doing the context of...that cities are...the idea of cities, they are made in unity and compactness and contiguity. And that's the essence of how they review these. However, they also have specifically said that if you're just connected to the city by the width of a highway right of way that that is not sufficient in order to meet that requirement of adjacent contiguous. And a couple of things to outline that, and I'm sorry, I probably should have marked these the number. We've got one that looks like this, it's sort of got pinkish. That's the city of Gretna preannexation that was referred to by Mr. Green before. The next one is a similar map and it shows the highway extensions that is postannexation. And you can see this annexed down highway right of way for a period. And if you compare the two, you can also compare sort of the shaded area which shows the difference in the ETJ, the zoning jurisdiction of the city that was caused by that. And that's what happened in that case, and, again, the court knocked down that annexation. The other one, and actually in the city of Papillion there were two cases. First annexation which was invalidated by the district court, and immediately afterwards within about 30 days of that order, the city of Papillion did another annexation. They didn't appeal that first one, but they did another one and actually it was two separate ordinances, and that's shown by the smaller map. And you can see there's two ordinances. One is labeled 1526, one is labeled 1527. The sort of greenish areas are the city of Papillion prior to the annexation. The yellow areas bordered in red are the two different newly annexed areas. And there's sort of shades of salmon or pink which show the difference in the ETJ pre- and postannexation. And that case was actually just argued in front of the Nebraska Supreme Court last week. And the court in that instance knocks down the entirety of 1527, the one to the south, and that portion of 1526 which extends to the west just along the highway right of way. You can see where the lake is in sort of balloon by itself, and the area west of that was knocked down by the court. And so that's the context of the annexations and what we've been talking about with that. The larger map I gave you, to give you some idea of what this bill and how it affect, shows the various cities, shows the current ETJs they would have on that. And also within there you'll see boxes that are tan, and that shows the various existing SIDs within Sarpy County. So you can see how most of the development in Sarpy County is not in a city it's going to be within an SID, and you can see how that would affect this particular bill. Looking through this bill I really have not

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heard a need that's being addressed by the bill. Mr. Hoins referred to a need to protect it, a need to some unease with the zoning decisions of plans as made by the county. And I guess my response to that is, is that there are different people making those decisions. They have different constituents. They are going to make different decisions and they're going to have different concerns about how those are made. For example, a county really isn't concerned with annexation because we're at least two miles outside the city limits and so we're not going to address that in the same way as a city looking to annex within the near future. Again, those are just not concerns we have, we're not used to doing that, and it's a ways away. It's going to be two years before that occurs. The other thing I'd like to point out is that living within those ETJs and outside of that are a lot of people. Those people are not constituents of anyone on the city. They are, however, our constituents for the county. So they are in essence being ruled to a degree by the city, but don't have any say or any vote in those decisions. They can't do anything about that and can actually be ignored by the cities, in essence, if they wished to do that in order to proceed ahead. And I guess I'd ask you to question carefully, you know, really what is the need that's being addressed would be the occurrence. And if you look at the mechanics of how this would be done and looking at the large map, go out within their ETJ and grab an SID that's there, wait a year, and then with an extended ETJ, again, in another two miles could go out and grab again and again and again. It goes away from the idea we've had of compactness and unity and growing concentric from a city. It doesn't occur in that particular instance and, in fact, would encourage maybe a bit of a land rush among the cities to sort of get there first to beat out the other ones to avoid...to kind of protect their growth against each other rather than anything else. The other thing I think that it absolutely affects is that of water and gas boundaries. Many of those are done based upon city codes. For example, if you're in a certain part of the county, rural county, you might be served by MUD. If you're within a city, you might be served by a different gas company. And the same thing goes for water. And anytime there's an annexation, it affects those districts and affects the ways those happen. In fact, one of the more recent annexation cases not from Sarpy County was Cornhusker Public Power v. City of Schuyler. And that was actually a strip annexation challenged by the public power district because the city of Schuyler had its own electrical provider and it infringed upon the service area of Cornhusker Public Power, so they challenged and were successful in holding back that annexation. And if you look at this bigger map, one of the things I think you need to see is to a degree the concern about sort of cherry-picking and piecemealing annexation is already going on a little bit. If you look at some areas around the city of Bellevue you'll see...and even around Papillion, and you're going to have some of that and SIDs are going to come in at various times and it's going to checkerboard a little bit, but you can see lots of areas which are isolated and surrounded and on three or four sides by existing city limits and have been for awhile with no intent and no need for city to ever provide service for that. Instead a county must cross...you know, for example, a county sheriff would have to cross the city limits in order to go into an area where the city police can't go in order to provide protection and public safety services for that particular area. You know, and,

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again, coming back to the idea of what is the pressing need. They may dispute and not like the decisions, maybe think they can be made better. There is opportunity, there again. They, the cities and their citizens, are also constituents of the county board. They have an opportunity to make input into those decisions. And as we all well know, not everybody is going to like some of those decisions, but the idea is to provide the opportunities allowed by law. And I guess I'd ask you to, again, look at what really is that need and is it something that's adequately addressed by this bill? Is it really a better way to address that need to some degree, if there's one at all? [LB526]

SENATOR MCGILL: All right. Thank you, Mr. Smith. Are there any questions? Doesn't look like it, thank you for your testimony. Any other opposition to the bill? Anyone here in a neutral capacity? Okay. [LB526]

DOUGLAS CLARK: Good afternoon, Senator McGill and members of the committee. My name is Doug Clark. I am vice president of government affairs for the Metropolitan Utilities District. We come in on neutral on this bill in hopes that whatever differences that are attempted to being addressed can be addressed. There are impacts to other individuals inside this bill. We would like to work with those parties to make sure that any unintended consequences are mitigated during this process. Other than that, I would say thank you for allowing me to testify and answer any questions you might have. [LB526]

SENATOR MCGILL: Thank you, Doug. Any questions? Nope. Thank you very much. [LB526]

DOUGLAS CLARK: Thank you very much [LB526]

SENATOR MCGILL: Any other neutral testimony? [LB526]

REX MOATS: Vice Chairman McGill, members of the committee, my name is Rex Moats, 131 South 202nd Street in Elkhorn, Nebraska. Last year as we were attending the hearing on the previous bill, Senator Nelson had a bill that was before this committee and addressed some of the similar issues. I'm testifying in a neutral capacity because any bill that would allow a vote of the citizens that are being impacted is something I think needs to strongly be considered by this committee. We have for years in the past in this body sat on our hands and let the status quo continue versus tackling this very complicated and very complex issue of annexation. We've let the law be. Our solution to it has been raise the cap over the years from 5,750 to 10,000, and they've just been stopgap measures. And as you can see now, the citizens of Sarpy County have some very real issues that are before them. I had the opportunity this summer to spend a little bit of time going door-to-door in Sarpy County, and there are a lot of people that live in SIDs that are not part of Gretna, that are not part of any of the cities in Sarpy County to the east that would like some representation. And they do feel, some

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of them, that their infrastructure needs are not being met. Whether or not it's the Sarpy County sheriff or barking dogs or whatever, they don't have the protection of city ordinances. All they have is the county ordinances which are a lot more limited than some of the things that the cities can do. So with that, I would submit the matter and asked that it be moved onto full floor debate. Thank you. [LB526]

SENATOR MCGILL: Thank you, Mr. Moats. Any questions? No. Thank you very much. Any other neutral testimony? Senator Friend to close. [LB526]

SENATOR FRIEND: Thank you, Madam Chair. I wanted to thank...I'm glad that neutral testimony and Mr. Moats, I believe, offered up an idea that it's been on my mind for an awful long time. I mean, I'm an Omaha senator and I don't...it's fair to say and I wanted to say it on the record, I don't like the way things went down with Elkhorn either. However, as he correctly pointed out, and I can thank Mr. Stadtwald for this and based on some of his discussions with people, you know, we have things in here to try to deal with a touchy subject matter like that. And I'm glad he recognized that and I think it was pretty perceptive. Mr. Smith, I'm glad he testified, too. And he made a good point in the overall need for a bill like this. I think we're going to have to make that policy decision. One thing that he also...another thing that he also pointed out though and I would add, you know, in regard to his discussion related to case law, well, there is precedent out there and it's on the county's side. However, it's important to note that if legislation such as this goes into effect, precedent aside, those decisions could or would be different based on the change in the revised statutes. So, case law is important, but the policymakers, we, make the decisions as to how, you know, we're going to deal with problems like that, real or perceived. Case law changes consistently, so does statutory law. What I'm saying is what directly effects the changes in case law are the decisions that we make. So I guess that's the only thing that I wanted to add. And he knew that, but what I'm saying is that I'm not discounting what he's saying. I'm saying that if we change and allow for a certain type of flagpole annexation, then that's what the courts are going to have adhere to or at least they're going to have to interpret, you know, the way we want them to interpret it, hopefully. That's all I'd add and that's all I have. [LB526]

SENATOR MCGILL: (See also exhibit 7) Thank you, Senator Friend. That closes the hearing on LB526. And we'll move onto LB647. Senator Christensen is here. [LB526 LB647]

SENATOR FRIEND: Well, good. Senator Christensen, you're recognized to open on LB647. [LB647]

SENATOR CHRISTENSEN: (Exhibit 5) Thank you, Chairman Friend and fellow senators. My name is Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB647. LB647 would require cities of the

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first- or second-class or villages to provide written notice of proposed annexation by regular mail to all property owners within the area proposed for annexation. This bill would require notice be sent at least ten working days prior to the planning commission public hearing, and at least ten working days prior to the city council or village board public hearing. The notice would include description of the area proposed for annexation, information about the meeting, and how to obtain more information. No other notice would be necessary beyond these two notices if either meeting is adjourned, continued or postponed to a later date. Except for willful or deliberate failure to cause notice to be given, LB647 would not allow annexation decisions to be affected solely for a irregular defect, error or failure on part of the city to cause notice if a reasonable attempt was made to comply with this bill. No action to challenge the validity of the decision made on this proposed annexation based on the notice requirements could be filed more than one year from the date of the formal acceptance or rejection of the proposed annexation. Similarly, except for willful or deliberate failure to cause notice to be given, the city or its employees would not be liable for any damage to any person if a reasonable attempt was made to comply with LB647. There would also be a one year statute of limitations for filing an action regarding damages. Finally, owner is defined as the owners who were on record with the register of deeds no earlier than the last business day before the 25th day preceding the planning commission's public hearing of the proposed annexation. Thank you. [LB647]

SENATOR FRIEND: Thank you, Senator Christensen. Are there questions from committee members for Senator Christensen? I don't see any. [LB647]

SENATOR CHRISTENSEN: Well, that was easy. (Laugh) [LB647]

SENATOR FRIEND: So far. We'll start with the proponent testimony. Is there anyone wishing to testify in favor of LB647? Any proponents? Are there any opponents to LB647 or LB647? Any opposition? Last call. Okay. Anyone wishing to testify in a neutral capacity? [LB647]

GARY KRUMLAND: Senator Friend, members of the committee, my name is Gary Krumland, it's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. I just wanted to note and I know the committee members are aware of this, but just for the record that this is one of several bills this year that have addressed the procedure for annexation. And I guess I would just ask the committee...and we supported several of those, but we want to ask the committee that if they are going to proceed with several of these bills that the different requirements be coordinated and put together so that people know what they are, that you don't have several different statutes that are passed. For example, LB104 which the committee heard a few weeks ago, this bill, there's maybe some others, LB495 in a few weeks. We'd ask that if the committee does something that they amend existing statutes so somebody who's looking for the city of first-class procedure can go to Chapter 16 and see it there.

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Someone looking for the second-class city or village can go to this Chapter 17 and look at those statutes so that you don't have three or four separate acts, so that somebody looking to see what the procedure is has to go through various places in the statutes to look at this. Also would like the committee to look at these so that...I mean, I don't know that we have a problem with this bill, but the cumulative affects of all of these probably needs to be addressed so that it is a procedure that can be handled and people know what the procedure is. And that's all...the only comment I had on this. [LB647]

SENATOR FRIEND: Okay. Are there questions from committee members for Mr. Krumland? Gary, tell me, in a second-class city, what's happening out there right now? I would have asked Senator Christensen. I thought that there would be a little more interest I guess. I'm not saying people aren't interested, but yeah, I guess that's what I am saying. (Laughter) People don't seem to be interested. Tell me what's happening out there right now when a second-class city goes out and annexes as far as, you know, as far as notice is concerned. [LB647]

GARY KRUMLAND: I'll tell you what the statute requires. [LB647]

SENATOR FRIEND: I mean what's the norm? [LB647]

GARY KRUMLAND: I think the norm probably is to notify the people who are being annexed so that they are aware of it. [LB647]

SENATOR FRIEND: Via certified mail? [LB647]

GARY KRUMLAND: I can't answer that. Either mail, personal service. I don't know if it's...there's nothing in the statutes that prescribe a specific way to do it, so. [LB647]

SENATOR FRIEND: So a second-class city can go out and do that in a contiguous situation, just print it in the newspaper or...I mean, it's a public forum. The city council is going to have to vote on it. [LB647]

GARY KRUMLAND: Yeah. I mean they would...the planning commission and the city council both have to take action and they would be giving public notice. Generally, it would be in the newspaper. [LB647]

SENATOR FRIEND: Okay. So the public notice according to statute right now is a public meeting. [LB647]

GARY KRUMLAND: Yeah. I mean it's... [LB647]

SENATOR FRIEND: And the transcripts from that meeting. [LB647]

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GARY KRUMLAND: Yeah. I think from my discussions with some of the cities, most of them--and I haven't talked to everybody, so I can't say everybody does it--does give some sort of notice to the property owner. But I guess what I'm saying is if something like this is put in that, I would like to put it in the statutes that already are there. [LB647]

SENATOR FRIEND: Okay. Are there any other questions from committee members? Thank you for your testimony. [LB647]

GARY KRUMLAND: Um-hum. [LB647]

SENATOR FRIEND: Any other neutral testimony? [LB647]

KATIE ZULKOSKI: (Exhibit 6) Good afternoon, Chairman Friend, members of the committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying on behalf of the Nebraska Land Title Association. The amendment we are passing around is a very initial attempt to address what we believe is a specific but somewhat significant problem with the language of the bill. Currently, the bill on page 2, line 9 of the green copy refers to notice being sent to the address on file at the register of deeds office. It is my understanding that not all register of deeds office would have an address on file, but instead would have the owners name and a description of the property. And so we would like to address in some fashion that this is not always going to be available at a register of deeds office. Having spoken with the committee clerk, we realize our language may be a bit broad, but we would just like to begin that discussion. [LB647]

SENATOR FRIEND: Okay. Thank you, Ms. Zulkoski. Are there questions from committee members? Seeing none, thank you. Any other neutral testimony? [LB647]

REX MOATS: Senator Friend, members of the committee, my name is Rex Moats, 131 South 202nd Street in Elkhorn, Nebraska. I'm here to testify on behalf of this bill in a neutral capacity. You've got a snapshot today of what the annexation statutes are like in Nebraska right now. And that is, there are different starting lines for different metropolitan class cities, second-class cities, first-class cities. They are not uniform. I don't know that they were meant to be uniform over time, but it's something that hasn't been taken a look at for a long time. And it's an issue that was litigated in the Nebraska Supreme Court when the Elkhorn-Omaha issue was taken up two years ago. And specifically what you have because it hasn't been addressed by this committee and this body is a situation where Elkhorn resorted to putting notice up on a Saturday so that they could have a public meeting on Monday which was then President's Day, and then the city of Omaha because they had a shorter time frame under which they could go forward with their notice as far as their annexation package had a meeting then that Tuesday night at 10:00 at the city county building in Omaha. That is not the type of clandestine behavior by cities and municipalities that I think that this body wants for the citizens of this state. I think that we need to go through this thing. It might not be this

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year or this session, but it needs to be gone through in an orderly manner so that we can make sense of whether or not we're denying due process to any citizens in our city, state or town that we live in. And with that, I would submit the matter. [LB647]

SENATOR FRIEND: Thank you, Mr. Moats. Are there questions from committee? I see none. Anyone else wishing to testify in a neutral capacity? Senator Christensen to close. [LB647]

SENATOR CHRISTENSEN: I'll come up and quickly speak, that way if you have a question you can. Basically, I handed out a sheet on a guy that kind of brought this to my attention is the reason I brought this up. And that was situation where it just a little over a mile out of town which they have jurisdiction that they tiffed his land, and they went to put in an Ethanol plant. And he didn't receive the notice that they told him he would and things this way and it upset him. And I understood that point, so I said I would bring this bill. And that's what has spurred this bill forward. And with that, I guess, I'd address any questions if there is. [LB647]

SENATOR FRIEND: Thank you. Questions from committee members? Senator Christensen, thanks for bringing this bill forward. I didn't mean to demean Mr. Kline's (phonetic) interest in this. I know he'd have to come an awful long way to deal with the subject matter. Do you think...I read through this a little bit last night and do you think that this...I mean, he has seen this bill, do you think this satisfies any concerns he had or concerns that you have about where we stand with notification and how things are done? I mean... [LB647]

SENATOR CHRISTENSEN: It does on his point because he wanted to make sure he was notified because he didn't hit the hearing because he didn't have the notification. And he had asked me if I would ask for registered mail the first time, and I didn't know if I wanted to muddy the waters at this point in time or have certified--sorry--mail on the first notice. And then he actually thought more working days because he has more distance. He had recommended 30 days. And I have that amendment drawn but I decided I didn't want to muddy the water, but something like would be beneficial. [LB647]

SENATOR FRIEND: Okay. Have you had a chance to see the young lady from the Nebraska Land Title Association's amendment? [LB647]

SENATOR CHRISTENSEN: I did. If it...I assume that's the same one that I seen and that is, you know, I guess I didn't have a problem with it, but the technical language if it's too broad, as she said, or not I'm not sure of. That's why I'm okay either direction. And as I've explained, there's not always an address on the way I have it worded in here with...back to the bill. When you go into the office of registered deeds there doesn't always have to be a address there. Where when you go to a public record that there's

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going to be an address and that was the reason she was looking towards that. [LB647]

SENATOR FRIEND: Okay. Are there any other questions for Senator Christensen? I don't see any. [LB647]

SENATOR CHRISTENSEN: Thank you. [LB647]

SENATOR FRIEND: Thanks for the testimony and introducing the bill. That will close the hearing on LB647, and the hearings for the day. Thanks for coming. [LB647]

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Disposition of Bills:

LB467 - Indefinitely postponed.

LB526 - Place on General File.

LB647 - Indefinitely postponed.

Chairperson

Committee Clerk