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COMMITTEE ON JUDICIARY

January 26, 2006

LB 991, 1052, 918, 784, 1063, 1096

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 26, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 991, LB 1052, LB 918, LB 784, LB 1063, and LB 1096. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Ray Aguilar.

SENATOR BOURNE: I apologize for convening a few minutes late. We had a meeting prior to this. Welcome to the Judiciary Committee. This is our fifth day of hearings. We have six bills on the agenda for today. I'm Pat Bourne. I'm from Omaha. To my left is Senator Friend, also from Omaha; the committee clerk is Laurie Vollertsen; the legal counsel is Michaela Kubat from Omaha; to my right is Senator Foley from Lincoln; Senator Combs from Milligan. I'll introduce the other members as they arrive. Please keep in mind that from time to time, members will leave during testimony or during the course of a hearing. If you happen to be testifying at the time they leave, please don't take offense at that. They're simply going elsewhere to conduct other legislative business. If you plan on testifying on a bill today, we're going to ask that you sign in in advance at the on-deck area there. Please print your information so that it's readable and can be entered accurately into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how many people plan to testify. We'll first hear the introducer, then proponents, then opponents, and then we'll have neutral testimony. When you come forward to testify, where Senator Langemeier is, please clearly state and spell your name for the benefit of the transcribers. All of our hearings are recorded. The transcribers would appreciate very much your spelling of your name. Due to the large number of bills that we hear here in the Judiciary Committee, we utilize the "Kermit Brashear memorial timing lights," which you see there on the testifiers table. Senators introducing a bill get five minutes to open and three minutes to close if they choose to do so. All other testifiers get three minutes exclusive of any questions the committee may ask. The blue light goes on at three minutes, the yellow light comes on as a one-minute warning, and then when the red light comes on, we ask that

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you conclude your testimony. The rules of the Legislature state that cell phones are not allowed, so if you have a cell phone, please disable it. Reading someone else's testimony is also not allowed. If you want to submit someone else's testimony, we'd be happy to take that and enter it into the record, but we won't allow you to read it. With that, Senator Langemeier to open on Legislative Bill 991. Welcome.

LB 991

SENATOR LANGEMEIER: (Exhibit 1) Thank you. Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Chris Langemeier. It's L-a-n-g-e-m-e-i-e-r. I represent the 23rd District. I'm here today to introduce LB 991, and if the pages...I'm offering an amendment, which will essentially become the bill, and ask the pages pass that out. The purpose of this bill is quite simple. It requires home inspectors to register with the Secretary of State's Office prior to performing residential real estate inspections. This requirement gives lending institutions, real estate agents, and consumers a measure of confidence that an inspector can, to the best of his ability, perform an inspection of real property. As noted, the bill requires potential inspectors to register with the Secretary of State's Office. That office will develop a registration form that includes the name of the inspector and the name which the inspector poses to register, address of the office of the inspector, the name and address of any agent for service of process the inspector has appointed by the inspector, or a statement that the Secretary of State is appointed the agent of the home inspector for service of process proposed if no agent otherwise has been appointed, or, if another agent's authority has been revoked or that an agent cannot be found after a reasonable amount of time after due diligence in attempt to locate the agent. It also provides for a maximum of \$100 registration fee, which would be established for new registrations, or a renewal at \$100. And the prospective inspector shall show evidence of having a general liability policy not to be less than \$500,000. The fees are due per inspector, and not per firm or association. The registration will be kept on file for 10 years period of the Secretary of State. Failure to comply with the registration

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requirements will result in a Class I misdemeanor charges if the home inspector performs inspections without registering. The bill also allows for a person who is damaged or injured by an unlawful act, negligence, misconduct of a home inspector while performing an inspection to bring a civil action to the above-mentioned insurance policy of the inspector and other action if necessary, not being limited to the policy amount. With that, I'll conclude my testimony. If there's any questions.

SENATOR BOURNE: Thank you. Before we take questions from Senator Langemeier, could I have a show of hands of those folks here to testify in support of this bill? In support? I see none. In opposition? I see none. Oh, in support. Come forward and sign in, please. With that, questions for Senator Langemeier. Seeing no questions, thank you.

SENATOR LANGEMEIER: Thank you.

SENATOR BOURNE: The committee has been joined by Senator Chambers. First testifier in support. Again, are there others in the audience wishing to testify in support of the bill? Welcome.

KORBY GILBERTSON: Good afternoon, Chairman Bourne, members of the committee. For the record, my name is Korby Gilbertson, spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Nebraska REALTORS Association in support of LB 991. The REALTORS think that this is a great first step, and they also hope that the Legislature will continue to consider the licensure of home inspectors. The vast majority of real estate transfers now require a whole home inspection, and for most people, this is the biggest purchase they will ever make. And so it's very important that we have professionals conducting these inspections and make sure that the home owners can rely on these inspections. I'd be happy to answer any questions.

SENATOR BOURNE: All right. Questions for Ms. Gilbertson. Senator Chambers.

SENATOR CHAMBERS: Since I just got in...

KORBY GILBERTSON: Um-hum.

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SENATOR CHAMBERS: ...are there any requirements as to what this home inspector must know or be trained to do? Or just...

KORBY GILBERTSON: Not under this, and I think that there is an amendment that was put in by Senator Langemeier that you might want to look at that substantially changes the green copy, that sets out some fees and other things. But purely, this is just a registration bill at this point, and also does require some liability insurance.

SENATOR CHAMBERS: Okay. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

KORBY GILBERTSON: Thank you.

SENATOR BOURNE: Next testifier in support. First testifier in opposition. No opposition. Are there neutral testifiers? Welcome.

RON MORAVEC: Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Ron Moravec, M-o-r-a-v-e-c. I am the Chief Deputy Secretary of State, and I appear here this afternoon as a neutral representative from the office in regards to LB 991. The office had expressed to Senator Langemeier some concerns about the original bill as it was proposed, and the amendment that he has submitted to you today goes to answer many of those questions and concerns that the Secretary of State's Office had. Understanding that this is a registration and not a licensing process, it certainly limits the amount of work and duties that the Secretary of State as the recipient of the registrations would do. One concern that we wish to express, and it still remains in the amendment, is that in the application form that the home inspector submits to the Secretary of State, he or she is required as the fourth item to state that the Secretary of State is appointed the agent of the home inspector for service of process for the reasons listed thereunder. We would ask that you give serious considerations to removing the Secretary of State as the agent if the named agent by the home inspector cannot be located. We base this upon the fact that, other than limited liability corporations, the other corporate acts

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have eliminated the Secretary of State as the person to serve if the corporation, professional corporation, registered agent cannot be located. It would appear that naming a Secretary of State as the possible registered agent may imply some legal authority on behalf of the state that could be used to assist whoever is trying to serve this home inspector, and may give some false hope that the state will be able to provide that kind of assistance, whatever it might be. So we're concerned that it implies some backing of the state of Nebraska in this process. Section 3 of the amendment talks about the fees, the renewals, and the delinquent fees, but there's no indication that the home inspector has to reapply annually or submit a renewal process, so, possibly, maybe to have some reviewing on that. The fees received by the Secretary of State are credited through the State Treasurer to the Secretary of State administrative cash fund. Senator Langemeier did make that addition, which we are appreciative of. Initially, it did not speak of any cash fund submitted on that.

SENATOR BOURNE: Thank you. Just for clarity, you're suggesting that the Secretary of State be the agent of last resort for purposes of process, but not the primary?

RON MORAVEC: Well, as both the amendment and original bill propose, the applicant home inspector has to list the individual they're going to have as the home registered agent, but they also are required then to state if the Secretary of State is also going to be, if you will, the alias registered agent.

SENATOR BOURNE: Isn't there a precedent in other areas of statute that, like, say for insurance companies, the ultimate agent is the Insurance Commissioner? I mean, that's not unusual to have them.

RON MORAVEC: No, it's certainly is not unusual and it, as I indicated, the corporation laws in the past did provide that the Secretary of State would serve as the registered agent if the party was unable to find the registered agent. But, again, other than limited liability corporations, those requirements of the Secretary of State have been removed. And we would ask that, in this matter, for the basic reason that it tends to imply that there's some authority that the state may have in this matter.

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SENATOR BOURNE: Okay. Further questions? Seeing none, thank you.

RON MORAVEC: Thank you.

SENATOR BOURNE: Other testifiers in a neutral capacity? Senator Langemeier to close.

SENATOR LANGEMEIER: Thank you, Chairman Bourne. I just want to address some of those concerns. And the intent was the Secretary of State to be the last resort, as you had mentioned, chairman finds. Senator Chambers, you had asked about an educational process or maybe minimum standards. The first step, as you heard, LB 660 last year, which licensed these home inspectors, it created a board to review education and require a number of issues. I didn't want to go to that degree. I want to know who they are, and so, right now, we have, after a good hail storm, a guy with a pickup truck and a ladder becomes a roofer. We still have some of that same mentality out in home inspectors. We want to know who they are and have some liability. It's my belief that at this stage, if they can provide an insurance policy for what they're doing, it's a first step in knowing who these people are. I don't want to create another state agency to oversee what the continuing ed is going to be, what the qualifications are going to be. We want to just know who these people are, because everyday it becomes more and more a requirement by lenders to make this part of the real estate transaction, to one's largest ultimate purchase in most people's lives.

SENATOR BOURNE: Questions? Senator Chambers.

SENATOR CHAMBERS: The reason for my question, since I hadn't been here to hear the initial testimony, was to determine the scope of the bill so I would know whether I had any questions to pose about that aspect of it. So that was why I asked that.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR LANGEMEIER: Thank you very much.

SENATOR BOURNE: That will conclude the hearing on

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LB 991, 1052

Legislative Bill 991. The committee has been joined by Senator Flood from Norfolk. With that, we have the Revenue Committee's legal counsel, George Kilpatrick, to open on Legislative Bill 1052. As George makes his way forward, are there, those in the audience that wish to testify in support? I see one. In opposition? I see none. Neutral? I see none. Make your way forward and sign in, please. George, welcome. I don't know how we got a Revenue Committee bill here, but...

GEORGE KILPATRICK: Maybe I'll explain that.

SENATOR BOURNE: ...all right!

LB 1052

GEORGE KILPATRICK: Thank you, Chairman Bourne, members of the Judiciary Committee. My name is George Kilpatrick, K-i-l-p-a-t-r-i-c-k, legal counsel to the Revenue Committee, introducing LB 1052 for the Revenue Committee. As you probably have guessed, this is a bill that was brought to us by the Revenue Department. We have a couple of agencies that bring proposals to the chairman for introduction that would enhance and help their administration of the laws. The Revenue Department is one of those for the Revenue Committee. They brought to us four proposals. The other three were introduced by Senator Landis and are already on the floor in one form or another. This one has a somewhat different history. The proposal originally called for the statute of limitations for tax evasion, which is what this deals with, to be extended to six years. That's the same as what the federal IRS has for their tax evasion. Senator Landis had some doubts as to whether that was appropriate. We convened the committee. We talked a little bit. The committee discussed what it ought to be and what we propose, and what the committee as a whole decided to bring to you was, one, to extend the statute of limitation from three to four years, not three to six years. The argument that, or the information that received from the Revenue Department was that, quite often, some of the times when they detect tax evasion, it is based on federal records that come to them in the form of tapes with huge, massive amounts of return information on individual tax payers. Those come as late as three years after those returns get filed. And so,

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in many cases, three years was either right at or right before or right after what would be the statute of limitations for something that might be considered tax evasion, a criminal offense, and that more time was needed. The Revenue Committee decided that four years was the appropriate time to request, and that is the proposal. I believe it's at this committee because it has to do with a statute of limitations for a criminal offense. That would be my guess. And I guess if I had thought about it more, I probably would have predicted that, but I didn't.

SENATOR BOURNE: Questions for Mr. Kilpatrick? Senator Chambers.

SENATOR CHAMBERS: Mr. Kilpatrick, do you have any idea how many prosecutions there have been for tax evasion, say in the last ten years?

GEORGE KILPATRICK: I do not. I do not.

SENATOR CHAMBERS: Does anybody, I know an ordinary citizen probably wouldn't be a target, does any company in the state of Nebraska have enough tax liability to make it worthwhile to try to evade what they don't have to pay in the first place?

GEORGE KILPATRICK: Tax evasion normally is failure to file and avoidance, and that sort of thing. I am aware, I'm not aware of any criminal prosecutions on tax evasions, although I have, just in reading advance sheets, I see a certain number of cases go through. Generally, it's a dispute or a seizure, that sort of thing, and not a criminal violation. And, to be honest with you, I do not know the answer to that question.

SENATOR CHAMBERS: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

GEORGE KILPATRICK: Thank you.

SENATOR BOURNE: First testifier in support.

MARY JANE EGR EDSON: Good afternoon, Chairman Bourne, members of the committee. For the record, my name is Mary

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LB 1052

Jane Egr Edson. I am the state Tax Commissioner appearing before you today in support of LB 1052. I'd like to thank Senator Landis and the members of the Revenue Committee for introducing this bill on behalf of the department. LB 1052 is actually a very simple bill. As Mr. Kilpatrick pointed out, it would extend the statute of limitations for the department to institute a criminal proceeding in various criminal matters. These include the failure to pay income tax or estimated tax, the failure to make an income tax return, the failure to keep records or supply information, and the filing of a false return. The statute of limitations under this bill would be extended from three years to four years after the commission of the offense. The reason we are requesting this extension is because the department relies very heavily on information received from the Internal Revenue Service, and rarely do we receive the necessary information in time to meet the three-year statute. Once we receive the information from the IRS, we must still compare the federal information to our own records. What we have found is that the delay in receiving information interferes with our ability to timely refer a case for possible criminal prosecution. In one example, we had a case that involved tax years '98, '99, 2000, and 2001. We did not receive the federal information from the IRS until December 9 of 2004, effectively wiping our ability to make a criminal referral. Finally, I would like to note that criminal prosecution for tax evasion is not common. Only the most egregious cases which warrant prosecution are referred by the department to the Attorney General or the local county attorney to determine whether, in fact, charges will be filed. Even with an extended statute of limitations, the department will continue to pursue only those cases that are truly criminal in nature. With that, I would like to thank the committee for its consideration of the bill and answer any questions.

SENATOR BOURNE: Thank you. Questions for Ms. Egr Edson. Senator Chambers.

SENATOR CHAMBERS: At last, I see you. I've heard so much about you, I wondered if you were real because I had never seen you, but now I have. So thank you for coming.

MARY JANE EGR EDSON: Thank you, Senator.

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LB 1052, 918

SENATOR BOURNE: That's it? (Laughter)

SENATOR CHAMBERS: Are you satisfied with what I said, so far?

MARY JANE EGR EDSON: Yes, I am, Senator.

SENATOR CHAMBERS: What more is there for me to say than, thank you, again. (Laughter)

SENATOR BOURNE: Further questions? Seeing none, thank you.

MARY JANE EGR EDSON: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Closing is waived. That will conclude the hearing on Legislative Bill 1052. Senator Mines to open on Legislative Bill 918. As Senator Mines makes his way forward, can I have a show of hands of those here to testify in support of this next bill? I see two. Those in opposition? I see one. Those neutral? I see one. Would the proponents make their way forward to the on-deck area and sign in if you've not already done so? Senator Mines, welcome.

LB 918

SENATOR MINES: Chairman Bourne, thank you very much. It's nice to be back. Members of the committee, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District, and I'm the principal introducer of LB 918. This will be the best bill of the day for the committee, and let me tell you why. LB 918 would define a security data breach as any unauthorized acquisition of or access to computerized data that comprises the security, confidentiality, or integrity of personal information maintained by either a person or a business. The bill would require a business to notify its consumers of security breach in the most expedient time possible without unreasonable delay. However, a delay in notification would be allowed if it would hinder criminal investigation. LB 918 would also enable the Nebraska Attorney General to bring an action in the event of a breach, seek penalties, fees, and costs. Having said that, as some of you may know, there is a very

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similar bill that has been introduced by one of our colleagues, LB 917, and I'm working with the sponsor in an attempt to bring the two bills together so we don't have competing bills in different committees. And I hope that that will be brought out soon, and having said that, I would ask that the committee indefinitely postpone LB 918.

SENATOR BOURNE: Thank you.

SENATOR MINES: I told you it would be good.

SENATOR BOURNE: Questions for Senator Mines. And again, for the record, Senator Mines is asking us to indefinitely postpone Legislative Bill 918.

SENATOR MINES: That's correct.

SENATOR BOURNE: Okay. So, those individuals wanting to testify, you're still welcome to do so, but be advised the bill be indefinitely postponed. Further questions for Senator Mines?

SENATOR MINES: And I will waive closing.

SENATOR BOURNE: Closing is waived. First testifier in support? I see no testifiers in support. Are there any testifiers in opposition? You're welcome to testify.

ROBERT KLOTZ: I don't know if it's in opposition or neutral or what.

SENATOR BOURNE: Well, we're on opposition testimony now, so if you feel you're an opponent...

ROBERT KLOTZ: Well, it's sort of, so...

SENATOR BOURNE: Okay. Well, then let's take that now. And I would ask...

ROBERT KLOTZ: It may be helpful.

SENATOR BOURNE: Sure. I would ask, after your testimony, if you would sign in for us.

ROBERT KLOTZ: Correct. Right.

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LB 918

SENATOR BOURNE: Thank you. Welcome.

ROBERT KLOTZ: My name is Robert Klotz, K-l-o-t-z. LB 918 is a good start, but fails to address some of the major underlying issues. Line 9 brings up the issue of good faith acquisition. I would expand good faith acquisition to mean that it can only be granted by a person and not merely assumed by a business to be granted. It is an assault on my privacy when a company puts in very small print in the middle of a long, boring discourse of comments, your information will be shared unless you tell us that you do not want this to happen. I should not have to ferret out these notices. If people really want businesses to have this information, they can have it if they ask. Line 12 uses the term unauthorized disclosures. Unauthorized by whom? Should not the owner of the identification, and especially the Social Security number, be the one who gives authorization? State of Nebraska, for example, authorizes the health insurance companies to get Social Security numbers of any employee who wants state insurance. Why? According to insurance representatives, they do not need nor want the number. All this does is disseminate sensitive information unnecessarily, placing it on more computers accessed by more people with no type of security clearance. And if this were not bad enough, with an assault on information privacy, it is information blackmail to say, if you want to get health insurance, et cetera, you must provide your Social Security number. The only need for that number is to pay taxes. If you want something more concrete, get a fingerprint or whatever. Section 8 of page 6 gives the Attorney General the ability to collect penalties for violations of this act. If you do not restrict the use of the Social Security number, I'd like also to see the added stipulation that a business or state entity that loses or disseminates any information retained on their computers that has complete enough information so a fraudulent individual could obtain a complete identification of a person and use that information to conduct business and transactions without the person's knowledge, they are subject to civil actions by the person so defrauded, in order to collect enough money to correct and clear their good name, to include attorneys fees and court costs.

SENATOR BOURNE: Thank you. Are there questions for

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LB 918, 784

Mr. Klotz? Seeing none, thank you. Other testifiers in opposition? Testifiers neutral? Senator Mines has waived closing. That will conclude the hearing on Legislative Bill 918. Senator Mines to open on Legislative Bill 784. As Senator Mines makes his way forward, can I have a show of hands of those folks here to testify in support of this next bill? I see one. In opposition? I see two. Senator Mines.

LB 784

SENATOR MINES: (Exhibit 2) Thank you, Chairman Bourne, members of the committee. Again, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District, and I'm here today as the principal introducer of LB 784. This one, I am not going to ask you to dispose of. LB 784 would require a natural resource district, a city, or a village to grant to the public a right to access to its projects for recreational use that meets or exceeds such a right held by private landowners adjacent to the project. This right would ensure that the public would have access to projects which have been created with public funds. The bill would apply to situations in which an NRD, city, or village would work in conjunction with a private developer in order to construct a lake, a park, or any other recreational area. Public-private partnerships are becoming more common throughout the state, and that's a good thing. I think it's an effective way of developing areas and sharing the costs and keeping the cost of these areas down for the public. And in a public-private partnership, with an NRD as example, it has, there has been an instance in Bennington, Lake Bennington was created with a public-private partnership in which the local NRD participated in construction of a dam, used public moneys to help create a dam, which in turn helped with flood control and created a lake. The area prior to construction was purchased by a private developer, and the lake was created, and the access to the lake is restricted to the property owners only. I would contend that if you use public moneys to create a facility like a lake or a park, then the public should have equal and fair access to that facility just like the property owners do. And again, I believe public-private partnerships are good. They benefit the public, and obviously, in that particular case, flood control, which serves the public good was

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enhanced. The problem with the situation is very clear, and again, I think public funds, if they're used, they should be used and public should have access to that facility. The intent of this bill isn't to require that NRDs and cities or villages must build a special access to whatever is created. It's simply that the public should have access to the facility. Now, I've handed out an amendment to the bill, and the amendment changes the language in regards to cities and villages. If you look on page 3, line 12, it changes the language from "ensures that the public has a right to access" to "guarantee to the public a right of access for recreational use." Again, it was never intended that we provide the public access to water treatment facilities or other public agency or public facilities like that; simply recreation. The change makes the terminology, a change in terminology in the section, same that's used in the NRD section of the bill, so the cities and villages only have to ensure access to the public for recreation on that property. That is my introduction. I would welcome questions.

SENATOR BOURNE: Thank you. Questions for Senator Mines.  
Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Senator Mines, thank you for your testimony. I guess, I just want to get my hands around what we're going to accomplish here in the bill. Let's take your Bennington lake concept. And we grant, provided your amendment is in the bill, so we grant access to the public to the lake. Does that mean carving out one lot along the lake, or does that mean like an easement through somebody else's lot to use the lake, and then an easement on part of the beach? Or what are we...if we did the Bennington deal, and I don't know anything about a project, to be honest with you, how do you envision it working in a deal like that? Could they still sell private lots?

SENATOR MINES: Absolutely. And I think that's fair and reasonable and in everyone's benefit. The Bennington lake is done and it's not to be, I don't want it to be misunderstood that I'm trying to get access to that lake for the public. I'm not. In the future, lakes will be created with NRDs, particularly in the metropolitan area, particularly in Washington County, where I live, and public monies will be used along with private monies to create a

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recreational area, like a large lake with private lots around the outside. I think it's in the public interest that they have equal and fair access to that lake for whatever is allowed on the lake, boating, fishing, swimming. I'm not saying they have to create a beach. What I'm saying is, don't create a little area, a lot with a little beach on it, when the lake is open to the private owners for boating and fishing and other recreational activities. Whatever abilities property owners have on that facility, I think the public should have those same and equal rights as the property owner.

SENATOR FLOOD: So if an NRD were to enter into a public-private partnership similar to the one you talked about, if they did, I'm just trying to create a record so that if this passes, the NRDs know they leave one lot, they leave at least one lot for public access, and the public are guaranteed the same rights to the lake as anybody else would, I mean.

SENATOR MINES: There should be equal access and there should be equal usage, public and private, if public monies are used to create that facility.

SENATOR FLOOD: Okay. I understand. Thank you.

SENATOR MINES: Thanks.

SENATOR BOURNE: Further questions for Senator Mines? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Senator Mines, has there been any audits of these lake projects which, I didn't think of until the last few days when I was talking to a constituent, of how the state public tax money is used on these?

SENATOR MINES: Well, the audit, I don't know that the state has audited. I can't tell you yes or no. Certainly, the local NRD would have been audited, I would imagine. I just don't know if the state has oversight when it comes to public-private partnerships. Now, maybe there's a representative from an NRD that can share that with us.

SENATOR Dw. PEDERSEN: Thank you.

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LB 784

SENATOR MINES: Sorry.

SENATOR BOURNE: Further questions? Senator Mines, I have a couple of questions because I need to get my arms around this. Dam site 11, which I realize is a Corps of Engineers project, all right, that might even be in your district, it's...

SENATOR MINES: It is.

SENATOR BOURNE: ...okay. There are homes around that lake, but they're not on the lake, so I assume that there's an area that's public, I mean, because I go there and fish with my son and there I'm not restricted at all. And there's homes around that. I assume that you can build in an area that's outside of the scope of the project.

SENATOR MINES: Um-hum.

SENATOR BOURNE: Okay. Now, this Lake Bennington, are these homes right on the lake?

SENATOR MINES: They are.

SENATOR BOURNE: Okay.

SENATOR MINES: Yeah, they are.

SENATOR BOURNE: And so, you said that the NRD established the lake...

SENATOR MINES: The NRD funded the building, helped fund the building of the dam.

SENATOR BOURNE: Okay. But it was on private property? I mean, how else could they have sold these lots then?

SENATOR MINES: It is private property. The property was purchased by a developer.

SENATOR BOURNE: Okay.

SENATOR MINES: And the developer, in concert with the NRD, great idea, lets, I've got the land, you need flood control.

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Let's build a lake to help control the flood control. So public monies were used to help build the dam, filled up the lake, and the developer now has lakefront property to sell. It's a good idea.

SENATOR BOURNE: So the public benefit is the flood control, and obviously the private benefit is those lots went from being worth X to X-plus...

SENATOR MINES: Exactly.

SENATOR BOURNE: ...because lake property is kind of rare around here. What kind of money was spent on that project? I've never been out to that lake, but what kind of money, I mean, is it significant, that the NRD would spend on that?

SENATOR MINES: I would, as I recall, it was in excess of \$1 million.

SENATOR BOURNE: To build the dam.

SENATOR MINES: That was part of the contribution. The dam cost more than that, I think.

SENATOR BOURNE: And to follow up on Senator Flood's comments, so what you're advocating is not necessarily that there wouldn't be houses on the lake. It's just that if those homeowners can boat, the public should be able to boat.

SENATOR MINES: Exactly right.

SENATOR BOURNE: If they can fish, and I cannot go to Lake Bennington and fish?

SENATOR MINES: You can't drop a bass boat in it, Lake Bennington.

SENATOR BOURNE: Okay. Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Do we not have any laws that would, to help us? Have you researched it enough? Could they help us in this area now? I mean, if you're charging the people in Bennington, for instance, they're part of the, obviously, their tax dollars went into

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that, but they don't gain a thing from it.

SENATOR MINES: That's exactly...

SENATOR Dw. PEDERSEN: I mean, there might be some flood control, people in Omaha are, they're gaining something from it, but they don't gain a thing from it. They don't get to use it. Wouldn't there be something somewhere in the law that, the constitution, that says that's illegal anyway?

SENATOR MINES: We couldn't find anything. Now, the city of Bennington, I can't tell you if Lake Bennington is in the city limits, but certainly it provides, increases their property tax base dramatically. That could be a benefit to the local public. However, you and I don't, we happen to both live in the same NRD district, so our tax dollars were used to help develop that area. And it's my contention that you and I, if we wanted to go to a lake like that should be allowed to do that because our money was used to help...

SENATOR Dw. PEDERSEN: And this has got nothing to do with the people who use eminent domain, took their property away from them, and then everything.

SENATOR MINES: Well, that will be, yeah, that's a whole different matter. You're right.

SENATOR Dw. PEDERSEN: Another issue. Thank you.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. Senator Mines, I guess, I, you make a very good argument on a fairness issue, providing the public access. From a public policy standpoint, if we require that any interlocal agreement or public-private partnership grant access, are we going to discourage the development or future viability of these public-private partnerships? I ask this because, is the fear of flooding the town of Bennington in this case a bigger fear and more important and more of a priority than creating a lake with some homes around it? You know what I'm saying?

SENATOR MINES: I sure do.

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SENATOR FLOOD: Are we going to discourage the future development of these projects by making this a component?

SENATOR MINES: You know, Senator Flood, without being able to predict, I'm probably the worse real estate mind in Nebraska. However, I would imagine that allowing public access to a lake as opposed to having it private and only available to property owners would diminish the attractiveness of that lake. In other words, wouldn't it be nice to be on your own private lake? However, if you use public monies, that flies in the face, I believe of what's fair and reasonable.

SENATOR FLOOD: You make a good argument. Thank you.

SENATOR BOURNE: Further questions? Thank you, Senator Mines. Hopefully, you'll stick around for the closing.

SENATOR MINES: I will.

SENATOR BOURNE: There might be, this is, there has to be a mistake here, I think. First proponent.

CURT BROMM: Good afternoon, Senator Bourne. For the record, my name is Curt Bromm and I am a lobbyist registered on behalf of the Papio Valley Preservation Association. This is a group of 400 and some residents and, in some cases, landowners, primarily in the Washington and Douglas county areas, although there are members outside of that, as well, who have become interested in the very subject matter of Senator Mines bill. And because of the concept that he is bringing to you for discussion, and we feel it's a very important concept for the Legislature to be aware of and possibly take action on, we appear in support of the bill. The heart of the matter, I think, has already been described by Senator Mines and also explored somewhat by some of your questions, and that is, when you have farmers and homeowners involved whose land is acquired in one way or another and who live in the vicinity, and if they feel that there is public or taxpayer money involved, they become quite concerned and surprised when, in some instances, there isn't good public access to the results of the project. And that has exactly been part of the problem here. So we are very appreciative and thank Senator Mines for introducing legislation, although, quite honestly, we didn't, at least

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the group I'm working with, didn't realize this was coming and, but we're happy to see it. The provisions of LB 784 seem to try to ensure some public benefit out of using public dollars. I think that's a great concept. While we support the concept and the intent of LB 784, we suggest that some consideration needs to be given to tightening the language, perhaps, to avoid any conflicts over interpretation of the bill. For example, who determines the proper balance? Is granting one very small access adequate to satisfy the terms of the bill, or do you have to have equal frontage or access measured in some demonstrative way or some objective way? Those are some of the areas that we'd be happy to suggest there might be some work needed. And we'd certainly be pleased to help, the people I represent would be glad to work with Senator Mines or anyone else in developing additional language. So, that's where we're coming from. On the balance, we definitely support the concept of the bill. We do feel that perhaps there is some work yet to be done to refine it.

SENATOR BOURNE: Thank you. Questions for Senator Bromm.  
Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. Thank you for your testimony. I guess my question is the same one I had for Senator Mines. What would you envision, or your clients envision, is a reasonable right of access for the public? Dedicating one lot for the public and making that the access point for all of the boats going in, or a dock for the people to fish? I agree with you. We need to define what will constitute public access. Or is it an easement over everyone's property, which would seem excessive?

CURT BROMM: Senator Flood, it's a great question, and I think the answer as we've discussed it is that you almost have to look at it on a project by project basis. If you've got a large, say, five miles or ten miles of lake front and you have a 30-foot lot that's allowed for public access, that doesn't seem like that's appropriate. If it's a very small lake where there's only, there's no powerboats allowed and simply fishing, a small area for fishing and rowboats might be very adequate. So I don't know if some system of public input and hearings or, by the NRD or whoever the primary sponsor is, in order to establish a balance that the public is satisfied with, but I think, on a given project

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that you couldn't define what it should be and have it apply to every project without some subjectivity and hearings or analysis in each case.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions? Curt, who, the Papio Valley preservation entity that you represent, I mean, who are, give me a sense of what this organization is or does.

CURT BROMM: It's a group that is located primarily in Washington and Douglas counties that have been, to some extent, impacted by the lake projects that you've been discussing and by the future lake projects that they're anticipating in Washington County, perhaps flood control projects, and there may be some of those that will be public-private partnerships. But they're just, a lot of people live out in acreages and farms and homes who will be in the vicinity, and they just feel that they want these projects to be, if they're going to be publicly funded, they want, you know, good public input and access.

SENATOR BOURNE: So it's a group of people in an area where there might be flood control projects that want input. I mean, they're not necessarily advocating building a lake or opposing a lake. They just will be impacted by whatever project may or may not be...

CURT BROMM: That's right.

SENATOR BOURNE: ...okay. Further questions? Seeing none, thank you. Appreciate your testimony.

CURT BROMM: Thank you, Chairman.

SENATOR BOURNE: Other testifiers in support. We'll move on to opponents for, oh, Mr. Hedrick, you're in support?

RICHARD HEDRICK: I'm Richard Hedrick. I'm for LB 784. I believe there should be access to public property other than a helicopter. Thank you.

SENATOR BOURNE: Questions for Mr. Hedrick? Seeing none, thank you. Last call for proponents. Seeing none, we'll

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move on to opponent testimony. Welcome.

STEVE OLTMANS: (Exhibits 3, 4, 5) Chairman Bourne, my name is Steve Oltmans. I'm the general manager of the Papio-Missouri Natural Resource District, the sponsor of the project that brought about the bill by Senator Mines.

SENATOR BOURNE: Could you spell your last name for us, Mr. Oltmans.

STEVE OLTMANS: Thank you. I should have done that. O-l-t-m-a-n-s.

SENATOR BOURNE: Thank you.

STEVE OLTMANS: I'm also appearing on behalf of the Nebraska Water Resource Association and the Nebraska State Irrigation Association in opposition. I'm giving you a lot of handouts because I think it will help. The first you have, you might look inside, and that are the board of directors that employs me as the general manager. These are the same people that made the decision to build this project, and believe me, there was a lot of philosophical debate on this project, which is one of our first public-private partnerships. The second handout is a map of the Papio watershed, which is a quarter-million acres of 400 square miles, 100 square miles of Washington County, 200 square miles in Douglas, and 100 square miles in Sarpy, probably one of the most dangerous watersheds in this part of the Midwest in terms of potential loss of life and property damage. We continue, of course, to develop the urban area, and of course, that enhances the runoff curve issues. The runoff curve, by the way, goes up about 70 percent when that occurs. We have a total of eight that have been built or are under construction of these projects. And I happen to go back a long ways. I was there when this project was originally proposed in the late sixties, and spent 15 years in the Elkhorn basin and came back to the metro area in '86. I have been there since. Of the ones we've managed to get built, they of course provide flood control most of all, but also help tremendously with water quality in helping the metropolitan area meet the water quality requirements interfaced to the federal storm water law, and that's a whole another subject. We, of course, the federal money for these type of projects are very limited today compared to

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30 years ago. State money, every time I've been in front of the Appropriations Committee over the decades, they say, Steve, why don't you find a different way to finance some of these projects rather than just coming down here and asking for state money, which is a fair question. And we've been developing this over the last ten years. The other pretty map that I handed out is a project that was addressed by Senator Mines. I'd like to talk very briefly about that and respond to your questions then. This is the structure. It's Dam Site 6 on this map, if you can find that just west of Bennington. All the land here was acquired by the developer, no condemnation used. The developer also donated the land that's in yellow. That's where the new Bennington High School, so they donated that to the Bennington High School. The white area was donated to the city of Bennington to expand their park system utilizing flood plain lands. That was 80 acres. Another 80 acres, where the brown dam sits, was donated to the NRD because we, you know, if something happens to the development, we wanted to be able to have the right of way to go ahead and build the flood control structure. There's 278 lots here, currently about 102 houses out there on the lake. The lake is private. The area above 180th, which is on the upper end of the lake, is 80 acres. That was also donated to the NRD by the developer. And there is an 80 acre public recreation site there that we built and operate as an NRD. On the private lake, there is a four-mile trail around it built by the developer for about \$400,000 and a half-million dollar fishing pier, both of which are open to the public. The lake is not, and the reason for that is that, in order to make this pencil out for the developer, he had, when you limit it to 278 lots, there's no way to pay for it. In round numbers, this is a \$60 million project. The NRD put in \$4 million. If we were, and this trail system, ultimately will tie into the whole metropolitan trail system up the Big Pappio, ultimately, if we were to build this project like a Zorinsky or a Cunningham, the cost would have been somewhere between \$25 million and \$30 million. We simply didn't have those kind of dollars, and we thought this partnership was a good approach. And I think, again, those local elected officials that the citizens elect and I work for debated this at length. There was numerous public hearings on it. And we, I think the summation that the board members would say that to get five and a half square miles controlled for a 500-year type storm for \$4 million is

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a good return on the money, plus some public recreation.

SENATOR BOURNE: Let's see if we have questions, Mr. Oltmans. Questions for Mr. Oltmans? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Oltmans, on this one here, the lakes we're talking about here. That cost the NRD how many, \$4 million?

STEVE OLTMANS: Four million.

SENATOR Dw. PEDERSEN: Was that \$4 million ever reimbursed by these people who now own this property and have this?

STEVE OLTMANS: No. It was an interagency agreement with the sanitary improvement district. And again, where they would contribute, the breakdown I believe, was about \$34 million by the developer, about \$22 million by the SID, and \$4 million by the NRD. That's around \$60 million.

SENATOR Dw. PEDERSEN: And the \$4 million was paid by the taxpayers in the NRD?

STEVE OLTMANS: The NRD taxpayers throughout the district, from Sioux City...

SENATOR Dw. PEDERSEN: And their benefit is flood control only?

STEVE OLTMANS: Well, and there's certainly some public recreation benefits as well. The trails, the fishing pier, and then the upper end of the lake, West 180th Street is open to the public continually.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Mr. Oltmans, I guess, I'm trying, you know, on one hand, I mean, obviously there's a public benefit by controlling the flood plain, and yet there's just something that smacks me as unfair or restrictive in that we have, you know, public dollars being used in this regard and without a lot of or any real significant, I mean, although I appreciate your efforts, there's not a lot of significant public usage of a facility that, in an area this really, there's a dearth of that type

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of, you know, water. I mean, I guess I'm trying to, when Senator Mines is talking about this, I'm trying to, you know, it just doesn't seem right. And yet, I guess I'm trying to square this in my mind how we can justify a public-private partnership in this regard with kind of, you know, arguably minimal benefits to the public.

STEVE OLTMANS: Well, I think it depends how you define minimal, Senator. I think my bosses raised those same questions and debated it. I think they felt, for \$4 million, controlling five-and-a-half square miles and having some public access for recreational purposes offset that, let alone the 240 acres that were donated by the developer at an average cost at that time of about \$6,500 an acre. So you can multiply that out as well as I can. And then those are the things I think in the minds of my bosses that offset that very question. It's a judgmental decision.

SENATOR BOURNE: Absolutely. Do you have plans, one of the other testifiers represented a group of people that may be impacted by this. Do you have other, I mean, is it, do you have other plans for similar projects that are beyond the wish stage, so to speak, that are going forward?

STEVE OLTMANS: Yeah, you have Dam Site 13 at 192nd and Dodge, and I have a nice pretty map of that if you want take time for me to hand it out. But that's a public-private partnership between Dial Development Corporation...

SENATOR BOURNE: But are there homes on that?

STEVE OLTMANS: There will be homes there, but they do not have private access to the shoreline. That will be a public recreation facility. I think what you see here is a pretty rare thing. You won't see that happen very often.

SENATOR BOURNE: Okay, so further up, and there's concerns up in Washington County, Blair area, I mean, are there any other plans that are beyond the wish stage, you know, that are concrete of a similar...

STEVE OLTMANS: That are like this one?

SENATOR BOURNE: ...yes.

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STEVE OLTMANS: None.

SENATOR BOURNE: Okay. Senator Pedersen.

SENATOR Dw. PEDERSEN: One other question, Steve. With all the legislation and the concerns about water in the state, we've heard on the floor quite a few times in the last few days that the water in the state belongs to the state. Would that be the same for the water in this lake?

STEVE OLTMANS: Um-hum. In terms of the, how the water is permitted through the state statutes. I mean, we have a storage permit from the Department of Natural Resources like we do on all dams, you know. Any dam over, I believe, it's 25 feet high that stores more than 15 acre-feet, you have to get a permit through the Department of Water Resources.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Steve, one last time, then. \$4 million from the NRD; how many million from the SID?

STEVE OLTMANS: I think it was \$32 million or \$34 million.

SENATOR BOURNE: And the remainder...

STEVE OLTMANS: And then the other was the SID, and of course, again, the SID is the houses on the...

SENATOR BOURNE: Right.

STEVE OLTMANS: ...so they'll pay that.

SENATOR BOURNE: Right, \$4 million from the NRD, \$32 million from the sanitary improvement district, and then how much from the developer?

STEVE OLTMANS: Thirty-two million.

SENATOR BOURNE: Another thirty-two?

STEVE OLTMANS: Does that add up to 60?

SENATOR BOURNE: That's a little long, but that's all right.

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STEVE OLTMANS: I hope.

SENATOR BOURNE: Just rough; I was just curious.

STEVE OLTMANS: Yeah. The other, and I can tell you, too, I don't think the local school board is complaining about this because on a typical lake like a Zorinsky, you know, there are certainly some benefits there, but our board is also concerned about these that the, in the private, without, when we were building these strictly on our own with our own money, the landowner that had land left around the lake and then ultimately the developers benefitted tremendously from that. And they didn't pay a dollar-one towards the construction of the flood control reservoir. The tax base here on this lake for the Bennington School District, the county, any taxing entity of that, we estimate in about five years will be around \$400 million. And they'll have about 50 kids in school. So that was part of the dialog and debate, also.

SENATOR BOURNE: You bet. Further questions? Thank you.

STEVE OLTMANS: Thank you.

SENATOR BOURNE: Next testifier in opposition.

BOB HILSKE: (Exhibit 6) My name is Bob Hilske. I'm the general manager of the Nemaha Natural Resources District. Our headquarters is in Tecumseh, Nebraska.

SENATOR BOURNE: Excuse me, sir. Could you spell that last name?

BOB HILSKE: H-i-l-s-k-e.

SENATOR BOURNE: H-i-l-s...

BOB HILSKE: H-i-l-s-k-e. And the reason I'm here today is to try to give you a feel for what the general impact of this legislation could be on NRDs around the state. Now, the, if you read the legislation, it doesn't say anything in there about the Papio NRD. It doesn't say anything about there, in there, about a lake in Bennington. It doesn't even say lake. It says project. And districts around the

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state typically, our projects aren't these big, fancy projects like in Bennington that you see. Most of the projects that we do are small projects with rural landowners, and the reason these landowners will allow us to come in and do a project with them is because they understand what the benefits are to the public. And they also understand that they're going to be able to utilize that land as they have in the past, and they will not be intruded on, and they can maintain and keep their property. Certainly, we pay easements. Often times, they'll take less money than what the property's worth. Sometimes, we even get donated easements. My feeling is, if we were to require public access on all projects, a lot of these landowners are not going to be willing to work with us on projects. What does that mean? Either it means we're not going to get the projects done, or it means we're going to have to go to eminent domain to not only get the right to put the project in, but to get the right to do the public use. The language is fairly general. Again, it doesn't say anything about lakes in there. It doesn't say anything about reservoirs. It says projects. Well, some of the projects we do might be tree planting, or it might be building terraces on agricultural land. Does that mean that those people, on that land we're going to be required to allow people to have hunting access or whatever right that private landowner has to that property? The other concern is, what does this mean about all the projects we've done in the past? We've been working on this kind of stuff for 34 years. Our district alone, we have over 400 flood control and grade stabilization structures that we administer on private land. Does that mean that we're going to have to go in and obtain easements or whatever it takes to get public access to these properties? That could cost us \$10 million to \$20 million alone to do that. And finally, I think one of the greatest things that NRDs have done over the years is we've been able to get conservation projects on the land and keep that land in the private ownership. And I think that's one of our greatest achievements, and I think that's a goal we should all strive for. When we do a project, we're doing a project because there's a benefit to the public. It may be flood control. It may be recreation. But we don't do projects simply because they benefit an individual or a landowner. We're doing them because they're for public benefit. I guess, again, I would encourage you folks to oppose this bill. I'd take any questions that you might have.

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SENATOR BOURNE: Thank you. Questions for Mr. Hilske?  
Senator Chambers.

SENATOR CHAMBERS: Mr. Hilske, I hate cliches, but sometimes I have to use them. Suppose, in order to cut to the chase, I listened to everything that you said to us and responded, so what? What would your response be? In other words, when you talk to me like that, you've probably seen this commercial where the guy is at his desk and he says, we would like more access to this, we'd like more services there, do you get me? And then they let you see that he's talking to a brick wall. I'm the brick wall. And say I'm not responsive to what you said at all. Are you telling me and the committee that projects which you now undertake will no longer be undertaken?

BOB HILSKE: There would be a lot of projects that we're doing now that would probably not be done simply because we could not work with the landowners to do those projects.

SENATOR CHAMBERS: If you could quantify, what percentage of projects would not be done?

BOB HILSKE: I would say it could be anywhere from 70 to 80 percent of the projects that we work on with private landowners.

SENATOR CHAMBERS: On the basis of what do you base that figure?

BOB HILSKE: Well, just simply because I, you know, I work with landowners all the time. I know what their concerns are. You know, one of the first things they will typically ask us when we do a project is, am I going to have to allow public access because if I do, I'm don't want to do the project or I don't want to work with you on the project.

SENATOR CHAMBERS: Okay, so then they're out. You don't do the project with them. And you just tell them that. And do you think that, what is the benefit that would come to them from the project if they can exclude the public? What are they looking for from the project?

BOB HILSKE: You know, honestly, there are people out there

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that they like the pond. They might put fish in it. It might be a small five-, ten-acre farm pond that they can take their kids fishing on. In some cases, we get landowners that say, hey, this pond is no benefit to me. I'd rather farm there, but they go along with it because they know it's going to provide flood control benefits or whatever down stream. It varies a lot. But, you know, some of them see some benefits. Some of them seize an opportunity, they can maybe build a home around that pond and, you know, have an attractive home. So there's a variety of reasons that they may, you know, enjoy or want a pond. But in some cases, like you say, they don't really want it. It's a hassle to them.

SENATOR CHAMBERS: If it's flood control and it was a legitimate need that you were needing, (inaudible) with the project, you could use eminent domain as you mentioned, couldn't you?

BOB HILSKE: We certainly could.

SENATOR CHAMBERS: So then, why wouldn't you use that if it's a flood control project?

BOB HILSKE: Obviously, when you use eminent domain, that it's not a popular option to go with, so our board would have to make that decision. I think there's four bills right now in the Legislature on eminent domain, and the second part of that answer would be that when you start using eminent domain, it probably means that your cost to do those projects is going to go higher, and it may get to the point where it's high enough that it's not even worth doing.

SENATOR CHAMBERS: So, then there would be no flood control, and would happen if there was no...if you were going to, let me start all over. The project is anticipated for doing to provide flood control, which would mean if the project is not done, flooding is likely. Is that true?

BOB HILSKE: Correct. That's correct.

SENATOR CHAMBERS: And this person's property would be flooded. Is that true or not?

BOB HILSKE: A portion of this person's property would be

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flooded and probably landowners downstream who actually aren't involved with the project are also going to be flooded.

SENATOR CHAMBERS: And they'd rather be flooded or have their property taken through eminent domain than to have public access to it once the project is completed? In other words, they'd rather have nothing than something.

BOB HILSKE: The way often times the flood, the general, the flood control is going to be, more flood control is going to be downstream than what's on their property. That's where the greater part of the benefit is going to be, so for their limited portion of the benefit, often times, they're going to say, I'd rather not have the dam put in, or whatever, and live with the flooding than what the public benefit might be, which again, is probably greater as you go downstream and get off of that property.

SENATOR CHAMBERS: And then you tell them like Tennessee Ernie Ford, if the flooding doesn't get you, then eminent domain will. Then what would they say? If you told them that the project, let me get an understanding. Are these frivolous projects where there is no real need for them, but it would just be a convenience?

BOB HILSKE: No, these are projects in which flooding has been typically identified in that area and sites have been identified where we need to put dams in order to control the flooding. It may be, you know, two, three, four, five, ten miles downstream from where the structure is located, but the engineers tell us this is where the structure needs to be. So those are the landowners that we have to talk to to try to get that property.

SENATOR CHAMBERS: The reason I'm questioning you, because you have knowledge. You've been directly involved, so that's why I'm going after you to gain the benefit of your expertise. This says you're general manager of the Nemaha Natural Resources District.

BOB HILSKE: Correct.

SENATOR CHAMBERS: So you work for the resource district?

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BOB HILSKA: Yes, I do.

SENATOR CHAMBERS: And what do you manage?

BOB HILSKA: In addition to staff, I also work with the board and we manage or work with natural resources within our natural resources district.

SENATOR CHAMBERS: Do you have engineers and architects and people like that?

BOB HILSKA: We don't have engineers, but when necessary, we do hire them.

SENATOR CHAMBERS: So if you hire an engineer and his or her conclusion would be, if this project is not done, there is going to be serious flooding. And you, as the manager, trying to be as accommodating and good a neighbor as possible, would talk to some of these landowners and say, this project is essential. We're going to have to do it. Now, if you are unwilling to cooperate because you don't want the public to have access, the project is going to have to be done. And the only thing you leave us as an alternative is eminent domain. Have you had, during your experience as a manager, how long have you been the manager?

BOB HILSKA: Three years at this district.

SENATOR CHAMBERS: Oh, then you've never confronted a situation like that so far, have you?

BOB HILSKA: No.

SENATOR CHAMBERS: Okay. Then I won't pursue it. It would be purely speculative. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Other testifiers in opposition? Testifiers neutral? Is this our last neutral testifier? It appears so.

GARY KRUMLAND: Senator Bourne, 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, appearing in a neutral position, I guess. When we first read the bill, the green copy, we had some discomfort with

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the language in Section 2 that related to cities and villages. And it seemed a little bit broad and might be interpreted to cover electric power plants and water treatment facilities, things like that. I know that's not the intent. And with the amendment that Senator Mines offered, I think that takes care of our concerns. I just wanted to appear to say that we do support the amendment and appreciate Senator Mines offering it. It takes care of the concerns we had about the language.

SENATOR BOURNE: Thank you. Are there questions for Mr. Krumland? Seeing none, thank you. Last call for neutral testifiers? Senator Mines to close.

SENATOR MINES: Chairman, thank you. Great discussion. Let me just suggest and reinforce that I support public-private partnerships, particularly involving the NRDs in Nebraska. It's an efficient way to move forward with projects like dams and water control, and I agree with all that. What I didn't hear from Mr. Oltmans was a reason why public access is a bad thing. I heard that, you know, there's the developer provided 80 acres of recreation area. Actually, it's not a swamp, but it's cattails and it's not necessarily where people are going to hang out. There's a nice walking trail around the facility, but the public doesn't have access to the water, doesn't have access. And, you know, that's, Lake Bennington is gone. In the future, there will be other public, I hope there will be other public-private partnerships. And I hope that other facilities, other lakes are built. What I'm concerned about, I just think the public deserves to receive the same access as a property owner in that situation. I did listen to the debate about access, and I think Mr. Bromm was exactly correct. It's probably different in each case. We seem to be talking about lakes and water, but think about a park. Think about a municipality building, working with a private developer, putting in a subdivision, and putting a park in the middle of that subdivision that's only accessible to the property owners. Same concept. So that cuts to the chase. In my closing, I would appreciate your advancing this bill as amended. Thank you.

SENATOR BOURNE: Questions for Senator Mines? Senator Flood.

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SENATOR FLOOD: Thank you, Senator Bourne. Senator Mines, I think just to clarify and maybe provide a little bit more clarity to Mr. Hilske's testimony, as the introducer of the bill, do you see a big difference between a public-private partnership that sets up terracing to provide for better drainage in agricultural field where a farmer grows corn and Lake Bennington?

SENATOR MINES: They're completely different. And they're completely different because the lake is recreational. Terracing is not recreational.

SENATOR FLOOD: Even if the terracing results in a, you know, a four-acre farm pond?

SENATOR MINES: Again, I think it's different. This public-private partnership that creates a lake with recreation certainly is much different than terracing that happens as a by-product to create a lake.

SENATOR FLOOD: I appreciate you saying that because in my district, obviously, we have a lot of these types of partnerships that, quite honestly, the landowner is against from the start when they begin the project, and only agrees to go along so much as to control drainage and run water the right way as opposed to flooding their land. So that's not your intent, and I'm happy to hear that. Thank you.

SENATOR MINES: And I think that's fair. Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Senator Flood is awfully touchy about his name, and I think when I was talking about all that flood control, he thought I was talking about him, so I'm glad you eased his mind.

SENATOR BOURNE: Further questions? Statements? Senator Mines, I should have asked this of Mr. Oltmans, but it doesn't sound like he necessarily objects to access. But his point was is that it's hard to make the numbers work if there isn't an element of the ability to sell those lots. Is it...

SENATOR MINES: I heard him say that. Yes, I did.

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SENATOR BOURNE: ...so I guess what I'm wondering is if there was a way to, and so to that end, it seems to me that if the NRD was able to contribute more money that there would be an additional public resources would be committed, and in return there'd be additional public access. So maybe there is a way to resolve this.

SENATOR MINES: You're exactly right. That would offset it. And frankly, I think that Lake Bennington is a tremendous project. But it's an exclusive project as well. I mean, you don't put a \$100,000 house at Lake Bennington. And I think that's the key is what's the definition of affordable? What's the definition of the numbers don't work? And that's not something that we're not privy to because that's the private part of that partnership. So, your point is right. You're exactly right.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR MINES: Thank you.

SENATOR BOURNE: That will conclude the hearing on Legislative Bill 784. Senator Synowiecki to open on Legislative Bill 1063. As he makes his way forward, can I have a show of hands of those folks here to testify in support of this next bill? I see two. Those in opposition? I don't see any. If the supporters would make their way forward as the judge is. Senator Synowiecki, welcome.

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SENATOR SYNOWIECKI: (Exhibit 7) Thank you, Senator Bourne, members of the Judiciary Committee. I am John Synowiecki. I represent District 7 here in the Legislature. Today, I bring LB 1063 for your consideration. It's a bill to increase the training fee for filing of court cases. LB 1063 would increase the training fee for the Supreme Court Education Fund from \$1 to \$2. The fee is imposed on cases filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and Supreme Court. The Supreme Court Employee Education Fund aids in supporting the training and education program for judges and

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employees of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and the Nebraska probation system as enacted. Over the interim, while discussing community corrections issues with the probation administration, it came to my attention that the Probation Department was being excluded from the Supreme Court training resource, which is contrary to the original intent of LB 760, passed in 2003. After a follow-up meeting with Justice Gerrard and other court training staff, I was informed that the previous probation administrator had made the administrative decision to not have the Probation Department participate in the training activities conducted with support from the Supreme Court Education Fund. Others testifying today may be able to provide additional historical information as they directly communicated on this issue with the previous administrator. With the inclusion of the probation officer training, it is quite clear that the Supreme Court Education Fund stream is not going to be sufficient to meet the court's training needs in the future. I believe that it is clearly in the best interests of our citizens to have well-trained court system, including judges and court staff. Moreover, as Nebraska transitions to a community corrections-based model, it is essential that we maintain a professionally trained probation staff. LB 1063 will help to provide the Supreme Court with increased resources to maintain a well-trained staff. It is my understanding that Justice Gerrard, the Supreme Court liaison to the judicial branch education committee, is here to testify today. He will provide additional insight into the fund, its current finances, and how the resources are allocated. I want to thank you, Senator Pourné and members of the Judiciary Committee, for giving full consideration to LB 1063, and I'll try to answer any questions you might have.

SENATOR BOURNE: Thank you. Questions for Senator Synowiecki? Senator Chambers.

SENATOR CHAMBERS: Senator Synowiecki, I think you heard me on the floor this morning say that I was going to oppose any fee increases for whatever purpose when it comes to court operations. What I did not, maybe I did point out that my intent is to approach the Appropriations Committee to try to get some money. So I don't want you to think that I'm opposed to the idea behind your bill, mainly the training.

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I'm not. It's just what the source of the money will be.

SENATOR SYNOWIECKI: I could appreciate that, Senator Chambers. You did support this the first time around, for the dollar. And I hope that you can be enlightened with testimony that will follow me as to some, I don't know how you're going to characterize it, as miscommunication, perhaps, between the Probation Department and the Supreme Court. When they were sitting down and organizing the Supreme Court Employee Training Fund, there were some issues at hand that have come to light now, and I just hope that you would listen to what happened. And that would, you know, I understand, relative to the general appropriation, I actually, I agree with you. Kind of shifting gears a little bit, the Community Corrections Fund is fee-based. And I've been insistent that personnel, or salaries, should not come out of that fee money, that that should be a general appropriation for government by the Appropriations Committee of the Legislature and by the full Legislature. So I agree philosophically with you. But we do have a precedent where we have a \$1 fee for training, and that is demonstrably insufficient.

SENATOR CHAMBERS: Well, for consistency's sake, I'm willing to remove that \$1, too, so that we don't have that stumbling block to what I'm attempting to do. Where you here earlier when I gave the example of the television commercial where the guy is talking to a brick wall?

SENATOR SYNOWIECKI: No, I was in a Health and Human Services Committee.

SENATOR CHAMBERS: Okay, well, you're talking to a brick wall (laughter), and so will be those who testify after you.

SENATOR SYNOWIECKI: It's my intent to enlighten you, Senator Chambers, and bring you around.

SENATOR CHAMBERS: Maybe you better come with a sledge hammer and crowbar (laughter) (inaudible).

SENATOR COMBS: That sounds like the gun issue.

SENATOR BOURNE: I've been waiting for enlightenment for a long time. (Laughter) Senator Flood.

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SENATOR FLOOD: Thank you, Senator Bourne, Senator Synowiecki.

SENATOR SYNOWIECKI: Good afternoon, Senator Flood.

SENATOR FLOOD: It's good to be here. A, I want to point out it's nice to see you investing your time in making the Probation Department work better within the judicial branch. That is appreciated. But I guess my question is, there's somewhere else in the funding scheme from, you know, what we take out for fees, we could reduce something else by a dollar and give that dollar to the training fund?

SENATOR SYNOWIECKI: If the committee would want to look at this thing Senator Chambers mentioned, a more global look at the fees to see if we can enhance this training component at the detriment of some other section of the fees that's taken out of court fees, and I'm open to that. I mean, that's how important this training part of it, you know, I was a probation officer for 12 years. And quite frankly, we didn't get any, beyond, Senator Flood, beyond your initial probation training training, we virtually received no training.

SENATOR FLOOD: What about, okay, say the district court clerks received some more training from the Supreme Court at some point. I mean, that would also be, it would be necessary to make sure it's well-funded so that we have training for district court clerks.

SENATOR SYNOWIECKI: Yeah, it's very clear it's underfunded because the premise, when they came to us with a dollar, the premise was that probation would not be included. Now, we have a Probation Department in excess of 400 employees, so that goes to show you where we're at with this fee.

SENATOR FLOOD: Thank you very much.

SENATOR SYNOWIECKI: Yeah.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Barely got back in time to...Senator Synowiecki, has everything

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been looked at as far as the grant money, the federal money that comes down the pike that's used for criminal justice or law enforcement? You know, and I'm with you. As you know, you worked with probation for many, many years, we have a lot of money that comes down from the feds for criminal justice, but it seems all that goes into law enforcement, and you people are actually a part of that, and don't get any of it. Anything been looked at to see if probation can't be part of some of that?

SENATOR SYNOWIECKI: I think that's a question better placed with the probation administrator in terms of what they're doing in looking at these other funds. But to kind of editorialize a little bit, we do have a lot of grants that are law enforcement focused. And as you are very well aware, Senator Pedersen, what happens then, we put money on the front end of our criminal justice system. The back end components are what ends up to be a drag to the taxpayers because if we put a lot of money in the law enforcement end of things, our probation, our parole, our corrections budgets increase significantly.

SENATOR DW. PEDERSEN: I agree. Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Synowiecki, in your opening, what you're trying to do is have additional funding going to training for probation officers. Is that right?

SENATOR SYNOWIECKI: It's an additional court fee for the Supreme Court Employee Education Fund. And the reason why I'm here today is because of an administrative decision that was made when this fee was being proposed...

SENATOR BOURNE: The fee we...

SENATOR SYNOWIECKI: ...that excluded probation.

SENATOR BOURNE: The fee we did a couple of years ago,...

SENATOR SYNOWIECKI: Yes.

SENATOR BOURNE: ...a year ago.

SENATOR SYNOWIECKI: Yes.

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SENATOR BOURNE: And the administrative decision was that probation could not share in this training fund?

SENATOR SYNOWIECKI: Statutorily, they could. Administratively, they chose not to participate.

SENATOR BOURNE: Okay. Appreciate that, but if you read your bill, you've simply increased the fee, but you haven't allocated anything specifically to probation training.

SENATOR SYNOWIECKI: No, I haven't. I've been assured by the court that probation will be a player now, even without this additional \$1. But that just diminishes what's available for the judges and the clerks and so forth.

SENATOR BOURNE: Okay. Further questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thanks, Senator Bourne. I'm sure you aware of this, John, and I don't know if you've been told it or not, but by out there working with these people, we have got some, and I'm taking Senator Chambers' side on this part of it now, we've got people that are actually coming into these programs through, obviously, fault of their own, who are putting more, we're running up such a cost on fees that some of these people are now being eligible for Medicaid or sometimes their kids aren't being taken care of or they aren't being fed. And then we have requirements to say, one of my biggest problems I'm having right now is judges sending people to place that they aren't even qualified to send people to. I mean, if you don't like the counselors' evaluation, you decide yourself what you want the person to go to, and they send them to something they can't afford. And pretty soon, they don't go, then we lock them up, and the expenses keep up, and then the fee are, you have to pay for probation. You have to pay for your urine test. You have to pay, there's a judge up in, is it Wayne County, who requires all of them people up there to have a lie detector test when they're, before they get off probation to make sure they never entered a bar while they were on probation. And a lie detector test is \$250, \$350. And fee, fee, fee, and cost, cost, cost, pretty soon, (inaudible) government, on the other end of government. Are you hearing that at all from the probation officers? I know you...

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SENATOR SYNOWIECKI: I think you've got two different issues there, one relative to the fees. I'm told, pretty consistently by individuals that are in the know, that our fees in comparison to other states are relatively moderate. Relative to the courts' interaction with the clinical recommendations for individuals that are under their purview, under a probation order...

SENATOR DW. PEDERSEN: I got carried away.

SENATOR SYNOWIECKI: ...I would agree with you that a licensed clinician, after conducting a substance abuse or mental health evaluation, that the court ought to follow the licensed clinician's recommendations and not inflict their own personal belief about where that particular client should be in terms of a continuum of care for mental health or substance abuse. I agree with you.

SENATOR DW. PEDERSEN: Or they could ask for a second opinion, too, if they didn't like it. Thank you.

SENATOR BOURNE: Further questions? Just for clarity, Senator Synowiecki, that \$1 currently in statute throws off about \$400,000 a year, is that your...

SENATOR SYNOWIECKI: Yes.

SENATOR BOURNE: All right. Thank you. First testifier in support. Welcome.

JOHN GERRARD: (Exhibit 8) Good afternoon, Senator Bourne, Senator "Brick Wall," (laughter)...

SENATOR CHAMBERS: I thought you were going to call me "Rocky."

JOHN GERRARD: ...and all senators of the committee. Before the clock starts, I want to tell you I agree.

SENATOR BOURNE: Oh, that clock is running right now. (Laughter)

JOHN GERRARD: All right, go ahead. Let it run. I agree philosophically with many of the things that have talked

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about today, and I just ask you to hear me out for a couple of three minutes so this committee knows how the fund got into this situation, and then we can talk about solutions together. My name is Judge John Gerrard of the Nebraska Supreme Court and I'm here on behalf of the court testifying in support of LB 1063, but I'm here primarily to discuss the need for further JB funding regardless of the vehicle in which it might arrive. As you know, LB 760 established the Supreme Court Education Fund in May 2003, and a \$1 filing fee currently finances the education fund, but there appears to be two common misconceptions about the fund: Number one, that the fund was designed as the sole source of monies available for judicial branch education, which is was not; And number two, that the \$1 filing fee provides enough revenue to adequately fund this branch's educational needs, which it does not. As a matter of brief review, in 2001, the Supreme Court saw a need for mandatory education, not only for all judges in the system, but for all employees within the judicial branch, and this body agreed, placing it in the statute. Obviously, judges must be up to date, know the law, and understand how to apply the law. But just as importantly, probation and the entire field of corrections changes all the time. And these officers and staff need ongoing training. And for county court staff and employees, initial uniform training is crucial, and they have never received that type of training. Statutes and court rules change constantly, and clerks need to be taught how to deal with an ever-changing and diverse population, and I can go on and on, but the need is overwhelming. Now, the Legislature recognized the need in creating the education fund in 2003, but the \$1 filing fee raises approximately \$400,000 per year, Senator Bourne. That's accurate. We are charged with educating 721 employees, which include 138 judges and all county court employees, court reporters, administrative staff, et cetera. We're also responsible for training more than 370 probation officers and support staff. And the Supreme Court needs approximately \$750,000 per year to minimally educate this number of employees. And this is a Chevy Malibu. This is not a Cadillac program. A comparable minimal type education program with fewer judges and employees, for example, can be found in New Mexico, and their budget is about \$900,000 per year. Now, to exacerbate the problem, the Supreme Court had been told by a prior probation administrator, and since 2001 had been under the impression that probation had its own education fund within

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its budget. So we were not counting on dealing with probation's needs until approximately 2007. Two months ago, thankfully, we were informed by the new probation administrator that probation does not have a separate education component within its budget, and needless to say, probation has gone to the front of the line as far as 2006 priorities. There are line probation officers that have not received training on an ongoing basis for years. But all of this begs the question, and Senator Chambers has brought it up, from where should the education funds come? I mean, that's really the question for the Legislature and this committee. Ideally, and maybe policy wise, there would be some combination of a filing fee and the remainder coming from the General Fund. And the court is willing to listen and work with that. We always have. But here's the problem: as a practical matter, general funds are not appropriated for education. That's always been a difficult task. Legislators think that the \$1 filing fee covers it all, when it doesn't, and this is particularly true in lean times. And that is why raising the filing fee a minimal amount makes sense, I think, at this point in time. However, at a minimum, an honest discussion need occur about the source of appropriate funding for judicial branch education. So to summarize, there is a true need, a need that is not being met, and it's for people that are on the line, not necessarily the judges in and of themselves. And it needs to be funded. And I'm here to take questions and talk about where that funding might come from.

SENATOR BOURNE: Questions for the judge? Senator Chambers.

SENATOR CHAMBERS: One termite is just a curiosity. A hundred termites might be an annoyance. A million termites constitute a problem, and an exterminator is necessary. So maybe instead of calling me the brick wall, I'm the exterminator of all these fees, or the terminator, and here's what I'm getting to. This \$1 is a minimal amount by itself, but it's being tacked on top of others. And an example I've given one time, I'm not going through it all, but if you had two lines of people and they're facing each other and you had a large basket on your back, and you had to walk between those two lines, and everybody only through in a pebble. Well, if the line is far enough and you walk far enough, pretty soon that basket is full and you'll be crushed under the weight. Each person says, well, I didn't

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crush him; I only threw in one pebble. But collectively, it produced a weight that could no longer be borne. And I've reached that weight, but I'm only one person here. However, I don't want to just say that the court and this program should have no money because I'm against raising it through fees. I think it's my responsibility as a member of the Legislature to at least make an approach to the Appropriations Committee, and I intend to do that. And more than that, I cannot offer at this point.

JOHN GERRARD: And Senator, I understand that. And I heard the discussion on the floor this morning, and I must say I don't particularly disagree with that. But again, it raises the problem, as you've set forth, you know, after fee, after fee, at some point in time, it crushes under its own weight, that there is a necessity and there's certainly need for education, and from the General Fund it should come. And I don't necessarily agree with that, but then I see more than 24 or 25 other senators, when you go to the Appropriations Committee or attempt to get funds for education, and for years and years, the arms have been crossed. There's more than one brick wall. And you know, and so, from the court's perspective, you know, I'm here whether it be general funds or a filing fee, to say that the cobbler's kids need shoes, and the cobbler's kids is the public. Okay?

SENATOR CHAMBERS: Judge, my approach is going to be that whereas those other 25 may have the appearance of bricks, they are papier-mache. I'm the real article. We'll find out, though.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Senator Bourne. What do you think of reducing the judges' retirement by a dollar? I'm just kidding. (Laughter)

JOHN GERRARD: As long as it comes from general appropriations, I have no...

SENATOR FLOOD: I guess my question is, in Minnesota, I was talking to somebody that said, you know, just to file a civil case up there, it's \$250 to file the case, I could be wrong on this, and it's like \$220 to answer in the state of Minnesota. What if we looked at, I ask this question

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because we have a lot of lawsuits, and I'm not talking about divorces, but district court filings for, oh, tort-related claims or somebody doesn't pay their bill, it's a new court's deal, a new course to sue them, or something like that. We're talking about a case that involves an amount of money or damages in excess of \$50,000. What if we instituted, you know, a more aggressive court fee on those types of cases, nondomestic related, in the district court, and look at what other states do, maybe, before the next round. But you know, if corporations in our state use our courts to go after collection or bill paying, you know, of another corporate entity, you know, I don't necessarily see that as a bad thing to have a \$250 court filing fee considering the fact that lawyer drives to the court house and makes about that much money, to and from, his travel alone, and the client is willing to pay that. So I throw that out as an idea, as an option. I think there are cases in the state, and I guess, maybe a hard one to react to. What do you think?

JOHN GERRARD: Well, I suppose in theory, if it was Corporation A versus Corporation B that had beau coup bucks, that would, I mean, at least that would be a possibility. But I mean, the problem is, I don't know how you separate that into a statute. I mean the problem that, if you just did it on civil cases itself, it would really reduce access to the courts. And I'm not talking about the Nucor Steels of the world of the world, but I'm talking about Joe Blow who may live in Omaha or Ainsworth or anywhere else that needs access to the court. And I think that's what the problem is with tacking on fees consistently. At some point in time, access to the court is going to be reduced. And that's a problem for the citizens of Nebraska.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Further questions? So, just for clarity, Senator Synowiecki testified that there was an administrative decision not to give the money to probation. But you indicate that it was an inadvertence, that the previous administrator thought there was a fund dedicated to probation officers, and that turned out not to be the case.

JOHN GERRARD: Yes. The previous probation administrator actually served on the Judicial Branch Education, as does

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the current probation administrator. And it was made clear to us that there was a budgetary amount within the probation budget for education, and we didn't know what that was, whether it was \$150,000 or \$200,000 or what it may be. But there was not a need for probation at that time, and then when Ellen Brokofsky came on in November and advised us that there was no such fund, that creates a real problem right now. But, I mean, probation is going to become a part of judicial branch education post haste. But obviously, everybody is going to be affected by that now.

SENATOR BOURNE: Right. Your rules say that judicial, let's see, each trial judge has to have 10 CLEs or education credits, appellate judges are 20, and probation officers, along with court reporters, get eight. Are any of those eight hours that probation officers are required under your rule to get annually, are any of those covered at all through the education fund? Are you not giving any money to them now, or...

JOHN GERRARD: But we are going to now, yeah, as of January. We were going to anyway, but the funds were not being appropriated for probation because we thought they had their own funding. But as of 2006, they are going to become an immediate part of it.

SENATOR BOURNE: And I know that the answer to this question is no, but all the funds that we raised, all the fees that we increased, have been utilized? There's not been any allocation that perhaps there could be an adjustment that wouldn't cause unnecessary pain?

JOHN GERRARD: No. The answer to that is actually, yes.

SENATOR BOURNE: Oh really?

JOHN GERRARD: There are funds for the first year-and-a-half when the program was just beginning. There are excess funds and we have made a request to the Appropriations Committee for deficit funding to assist us for the Probation Department this year and hopefully next year.

SENATOR BOURNE: No. What I meant was we raised lots of fees in that bill last year, judge's retirement, you know. And what I'm saying is, are there any of those fees that we

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increased that proved or since the increase have shown to be excessive, that all the funds that were specifically allocated under that particular fee increase weren't used?

JOHN GERRARD: No, no, they were allocated in their own funds.

SENATOR BOURNE: All right. Fair enough. Further questions? Thank you.

JOHN GERRARD: Okay, thank you.

SENATOR BOURNE: Next testifier in support. Welcome.

DAVID WEGNER: Senator Bourne and members of the Judiciary Committee, my name is David Wegner, W-e-g-n-e-r, and I'm a deputy probation administrator with the Administrative Office of Courts and Probation, and speaking to you in support of LB 1063. Actually, I was not nervous about doing this until probably, as Judge Gerrard did, I just happened to turn on my monitor this morning, and as I turned it on, I did hear Senator Chambers' comments. And I immediately had butterflies. But I speak to you today from a little bit different perspective, and I think Senator Chambers will understand that, also. I am now aware, too, of LB 760, which was passed in 2003 that added the \$1 court filing fee. As you know, the intent of this legislation was to aid support in training and education programs for judges, employees of the Supreme Court, the Court of Appeals, district courts, separate juvenile courts, county courts, and the Nebraska probation system. I have to tell you that with a red face that I became aware in 2005 of our previous administrator's decision, wherein he decided that probation administration did not need to be a partner in utilizing the Supreme Court education monies, and attempted to support what training probation did have through vacancy savings funds. It was unfortunate that we lost, or maybe fortunate, that we lost that administrator at the beginning of 2005, and a colleague and myself assumed the duties of acting probation administrators for nearly a year, during the latter part of 2004 and 2005. Having been a probation officer since 1972, I have observed the deprivation of training within the probation system. As some of you may know, in 1972, you could equip yourself with a screwdriver, a pair of pliers, a crescent wrench, step into your driveway

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and fix your car. In 2006, you take your automobile to a garage, attach it to a computer, and it will automatically diagnose your car's problems, and in some cases even fix it. Similarly, offender problems were less complex in 1972. Today, we have sophisticated and complex offender problems which encompass methamphetamine addiction, domestic violence, sexual dysfunctions, and numerous violent offenders. We need sophisticated training for our officers as they are dealing with sophisticated problems. It is now 2006, not 1972. Someone once wrote, when the only tool you have is a hammer, then everything else begins to look like a nail. Offender problems are diverse in nature, and therefore our staff needs more than a hammer. And frankly, we have pursued, as Senator Pedersen even mentioned, the investigation of grants. And frankly, any other avenue that we could pursue within the last year to advance training, and unfortunately, we have not been real successful in grants because frankly, as you investigate the National Institute of Corrections and other types of entities such as that, while they provide law enforcement training, but near the probation and parole training that should occur. I solicit your support in the passage of this bill, as at the direction of the Supreme Court, and in partnership with community corrections-based model, we are building an architecture that builds offender competency, interrupts the addiction cycle, and diverts nonviolent offenders from incarceration. Our goal is to accomplish these practices while maintaining community safety. As the availability of vacancy savings funds is minimal, the funding stream from LB 1063 is vital in assisting us in providing quality training for our system. Thank you, Senator Bourne and members of the committee, and I'd be glad to answer any questions.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Mr. Wegner, we've talked in the past. One of my first questions would be is, have you talked to the Crime Commission at all? Have you tried to use the Crime Commission? I'm just telling you, as a resource, they would, a lot of money goes through that office, federal money and things, so I recommend that you talk with them a little bit to see what might be available there.

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DAVID WEGNER: And we have done that, Senator Pedersen, and actually have access of juvenile fund, which are called JV funds, to do some training in regards to officers relating to juvenile matters.

SENATOR Dw. PEDERSEN: There's no doubt in my mind what you need to do and what you want to do is necessary. We need to train them. I do have a little fear, though, being a therapist myself, that we do not in the future do what has happened in a couple of other states, is we end up with our probation officers getting licensed as therapists and starting to give the services of whatever it may be, working with sex offenders, drug and alcohol, whatever it may be. Because it has happened in some states, and the national organizations have got together and are fighting it, and they can't keep it up. It's a little bit like the mental health regions in this state. We have them providing services and the private providers can't make a living. But it's a, I throw that out only as, not necessarily as a question, something that I ask you to please keep watch on, that that doesn't happen. Training, you need. I work with your people every, their need, and they're good people, and they want training, and we need to have that.

DAVID WEGNER: I appreciate that, Senator, and I also affirm what you said. And we are not, and it's not our goal to train our officers to be therapists.

SENATOR BOURNE: Further questions? Seeing none, thank you.

DAVID WEGNER: Thank you.

SENATOR BOURNE: Next testifier in support.

KIM ROBAK: Senator Bourne and members of the committee, my name is Kim Robak, R-o-b-a-k. I'm here today on behalf of the Nebraska State Bar Association in support of IB 1063. The Nebraska State Bar Association believes that there is a need for the education. Our preference, Senator Chambers, would be that the money do come out of the appropriations, but obviously, that that hasn't been the case in the past, but we would support your efforts. In the event that that is not the case, the Bar Association does support and believe that there is a strong need for the education, and supports the increase in fees. I can't say anything more

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than the prior two speakers and Senator Synowiecki have said more eloquently than they have. And I would answer any questions that you might have.

SENATOR BOURNE: Are there questions? Seeing none, thank you. Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Synowiecki to close? Senator Synowiecki waives closing. That will conclude the hearing on Legislative Bill 1063. Senator Synowiecki to open on Legislative Bill 1096.

LB 1096

SENATOR SYNOWIECKI: Good afternoon, Senator Bourne, members of the Judiciary Committee. I'm John Synowiecki. I represent District 7 in the Legislature. Today, I bring LB 1096 for your consideration, a bill to provide for the appointment of the clerk of the district court in containing a city of the metropolitan class. LB 1096 would allow for the clerk of the district court to be appointed by the judges of the district court who are members of the district court bench in the Fourth Judicial District. Currently, the clerk of the district court is elected. This bill would change the term of office for an individual elected at the next general election, November 2006, to a two-year term, and allow for appointment by the district court bench on January 1, 2009. The changes embodied in LB 1096 would apply to Douglas County only. I bring this bill on behalf of the Douglas County Board of Commissioners. The Board passed a resolution on November 15, 2005. County Commissioner Mike Boyle will be testifying after me, and he'll provide you with the county board's reasons for bringing this bill. I do believe that this involves government efficiency and keeping up with the changing technology of the court system, particularly within a county that has the highest court filing workload in the state. I believe that it is critical that we have a district court clerk with a vast array of talents, ability, and experience. LB 1096 will provide an assured level of professionalism to the Douglas County District Court Clerk's Office. These individuals will be supported by the district court judges, with whom they work closely. I want to thank you, Senator Bourne and members of the committee, for your consideration.

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SENATOR BOURNE: Thank you. Are there questions for Senator Synowiecki? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. It sounds like a unique idea. How will this affect this particular bill if we pass it out of committee, how would it affect the current bill that Senator Beutler has on the floor?

SENATOR SYNOWIECKI: Short answer is, I don't know precisely because I'm not fully aware of Senator Beutler's mechanisms for appointments of the district court clerks in the bill. I don't know if that rests with the judicial branch within each locality or not. I know it's local...

SENATOR Dw. PEDERSEN: You don't think it would affect his bill? I was going to try and put the two of them together. I didn't get a chance to do that, but it's...under his current proposal, the state would take over the district courts, I mean the district...

SENATOR SYNOWIECKI: And there's provisions there for local decision making on how that goes. Quite frankly, I'm not entirely familiar with it.

SENATOR Dw. PEDERSEN: Thank you, Senator.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: I think, so don't hold Senator Beutler to what I'm saying, I heard him say that when the clerk is elected, it will be considered an appointment for that term. Then, thereafter, it would be an appointment would take place. So there's something in his similar to yours where there's a transition period, but I'm not sure if I got it quite correct.

SENATOR BOURNE: Further questions? Senator Synowiecki, has anybody filed for election to this spot, yet? I mean, what you're doing is making it an appointed position by judges.

SENATOR SYNOWIECKI: Yeah. The bill allows for the election that's scheduled this November to take place.

SENATOR BOURNE: Oh, okay.

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SENATOR SYNOWIECKI: I don't know for sure, Senator Bourne, but I believe there's two people that have filed.

SENATOR BOURNE: Okay. Thank you. Further questions? Seeing none, first testifier in support.

MIKE BOYLE: Senator Bourne, members of the committee, my name is Mike Boyle, B-o-y-l-e, and I'm a member of the Douglas County Board of Commissioners, and I'm here to testify on behalf of Senator Synowiecki's LB 1096. I think the legislation, at least in my mind, is so straight-forward that it's almost embarrassing to try to build a large strong case for it. We've had a very competent and able clerk of the district court for an awful long in Douglas County in Rudy Tesar for nearly 35 years. The court has evolved over time, the district court has. It has become more involved, at least in my estimation, and the operation of the clerk of the district court's office. Most recently, the jury commissioner, which was formerly in the election commissioner's office, was transferred to the clerk of the district court, pretty much at the request of the district court bench. Also, the district court, within the last 180 days issued an order forbidding original files from leaving the courthouse. Douglas County, much to my surprise, was apparently the only county in the nation that allowed original files and pleadings to be taken from the court house to be brought back in supposedly in three days. But over the years that I've been a lawyer, I've heard of several times that files have been lost. So, the judges have really begun to exert their influence more and more over the operations of the court. And I think that leads to the thinking of the county board, and that is that it really has evolved into much more of an administrative agency under the clear operations and authority of the district court. It is, after all, when people file lawsuits, they come into that office, it's assigned at random to a judge, and then the case begins to proceed. The judges have set orders on how those cases are to proceed. They must be done in a timely manner. So they have left their print in no small way on the operation of the clerk of the district court. I think that, and I believe the county board believes this would lead to, as trite as it sounds, a better clerk of the district court's office. It's been a good one. This one would be even better. So I think that's the thinking behind it, that it's just evolved and it's time to make the change,

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and we ask your permission to do so.

SENATOR BOURNE: Are there questions for Commissioner Boyle?

SENATOR CHAMBERS: I was ready to light into him, but then as I listened and see the impact of the judges already, my mind is a little more open. Seriously.

SENATOR BOURNE: Further questions? Seeing none, thank you.

MIKE BOYLE: Thank you very much.

SENATOR BOURNE: Always nice to see you. Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Synowiecki waives closing. That will conclude the hearing on Legislative Bill 1096 and the hearings for this afternoon.