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Education Committee
February 04, 2008

[LB903 LB976 LB977 LB1089]

The Committee on Education met at 1:30 p.m. on Monday, February 4, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1089, LB903, LB977, and LB976. Senators present: Ron Raikes, Chairperson; Gail Kopplin, Vice Chairperson; Greg Adams; Brad Ashford; Bill Avery; Carroll Burling; and Gwen Howard. Senators absent: Joel Johnson. []

SENATOR RAIKES: (Recorder malfunction)...the Education Committee of the Nebraska Legislature, we're pleased you could be here. We are to hear four bills this afternoon. They are listed at the outside of the hearing room door in the order, and we will hear them in the order listed. For each bill, we will have the introduction by the sponsor, followed by proponent testimony, opponent testimony, neutral testimony, then a close by the introducer, if desired. As you come to testify, please, number one, fill out one of the little forms that tells us who you are and what bill you're testifying on and the like, but also state and spell at least your last name for us if you will. That's for purposes of the transcriber. Our other important preliminary here is for me to introduce to you members of the committee and its staff. To my far right, I think soon will be Tammy Barry, who's the committee's legal counsel; next to her left will be Brad Ashford from Omaha; we have Senator Gwen Howard from Omaha; Senator Carroll Burling from Kenesaw will be here shortly. To my immediate right is Matt Blomstedt, our committee's research analyst; I am Ron Raikes, represent District 25; to my left is our committee's Vice Chair, Senator Gail Kopplin from Gretna, Nebraska; next to him, Senator Greg Adams from York, Nebraska; Senator Joel Johnson is recovering from back surgery, hopefully he'll be with us again soon; Senator Bill Avery is from Lincoln; and Kris Valentin is our committee clerk. So that's our cast. I would remind you that if you cell phones to please disable them. I hear one ringing right now, so please do that so we don't have that disruption. Anything else that I need to...oh, we do have a light system, and we will limit testimony to five minutes. It doesn't apply to the introducers, Senator, but testifiers we will limit it to five minutes and hope that helps everybody to organize their testimony so as to make the best use of everyone's time. So with that, I think we're ready to go forward, and we have Senator "Cap" Dierks here to introduce LB1089. Senator, welcome. []

SENATOR DIERKS: Thank you, Mr. Chairman. Members of the Education Committee, my name is "Cap" Dierks, that's spelled C-a-p D-i-e-r-k-s, and I represent District 40. I'm here today to introduce to you LB1089. This bill may be what I would call the most important bill of the 100th Legislature debates, because our credibility as a governing body is at stake. The people, our second house, voted overwhelmingly in November of 2006 to repeal LB126. The question before the voters was, "shall LB126 be retained or be repealed?" Voters overwhelmingly voted to repeal this legislation by the vote of 290,136 to 224,922. The voters told us what to do on November 7, 2006, and it still has not been done as of February 4, 2008. Last year, several bills had been introduced

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regarding the vote on the issue of Class I schools. Much discussion took place as to whether people knew what they were voting on or exactly what they were trying to tell the Legislature. The vote is very clear to me, our second coequal house told us that the majority of people wanted to repeal LB126. That means one thing. We must honor the vote of the majority. On December 14, 2006, the Governor and secretary of state certified the vote on Initiative 422, and the language that was removed by LB126 was restored in our statute books. Yet the vote of the people has not yet been honored because of rulings made by the State Committee on the Reorganization of School Districts. This committee (inaudible) had the instructions given to them through LB126. I have been told this committee does not have the authority to rescind an order and it is necessary to the Legislature to give them further instructions on this issue. LB1089 is the only bill introduced this year that will order the State Committee on the Reorganization of School Districts to annul all orders made by this committee with regard to LB126. It will finally complete the process of honoring the vote of our constituents. And it restores credibility to the electoral process in our state. State senators in Nebraska are elected by the people to represent their best interest in government. A bill was passed in 2005. The majority of voters told us they wanted this bill to be repealed, not retained. This our last chance to honor that vote. I ask you to advance LB1089 to the floor of the Legislature. Thank you very much. [LB1089]

SENATOR RAIKES: Thank you, Senator Dierks. Questions for Senator Dierks? I don't see any. Are you going to be able to stick around? [LB1089]

SENATOR DIERKS: I think I will, sure. Thank you. [LB1089]

SENATOR RAIKES: Okay, all right. We'll move to proponents of LB1089. Welcome. [LB1089]

JOHN RECKNOR: (Exhibit 1) Good afternoon. My name is John Recknor, and I appear here on behalf of Class I United and on my own behalf as a citizen because to pick up on what Senator Dierks has said, there's something very unwholesome that's occurred in this state, and it is time that it be rectified. As some of you may have heard last year when I was working for Class I's, and I am not saying this out of self pity, I want you to know that I am not being paid because there isn't any money to pay me, which doesn't alter the principles by which I live, and that's to stay with an issue until it's seen to the end, one way or the other. Now, what I'd like to do in the limited time that I have is go over a couple of points that it would seem either are not known by some members of this body or have been forgotten by the members of this body. And I say that with all due respect, because during the debates last year, it came to light when those in the Class I's group and others mentioned a case called the Pony Lake case, there seemed to be a total lack of knowledge that this case even existed. And I think it's important that you know that it exists because it is the Nebraska Supreme Court's rendition of what the election in November of 2006 meant. And it's really not subject to a lot of interpretation

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or nibbling around the edges about how the people are unenlightened and they don't know what they're doing and what they were voting on. And somehow when they repeal something, it just doesn't mean that the status of the law automatically comes back. I would beg to differ and I think you will agree with me once you read the Pony Lake case, and you don't need to read very much of it. As a former teacher, I understand the shortest homework assignments are frequently the ones that get done. So I point your attention to page 19 of the Pony Lake case, on which I think you find a paragraph circled. Now, it became apparent to many in the state that if the timing of LB126 was allowed to carry itself out, the damage to the Class I districts would be done before a vote of the people would be had. And that argument in the case of Pony Lake v. the State Committee for the Reorganization found an attentive ear in Judge Paul Merritt, a district court judge here in Lincoln, who entered a temporary restraining order and subsequently entered an injunction. And the state appealed the injunction and claimed under supersedeas statutes that the order no longer had application because it was the state that had appealed to the Nebraska Supreme Court. Those arguments were made before the Nebraska Supreme Court and on March 3rd of 2006, this decision was entered. And I think it's very important for this body to understand what the court did in that case. The court said there was no injunctive relief necessary because if the people repealed LB126, it would be abrogated. This is very unusual for the Nebraska Supreme Court to say with express words what the effect of an election will be even before its outcome. And then, just so it wouldn't be lost on the recalcitrant or the disinterested, they went on to say, "to repeal is to rescind or abrogate an existing law," and then they say look it up in Black's Dictionary. And the reason I'm harping on this a bit is you don't have to take my word for it. Some of you know me as a partisan, I understand that. However, when the Supreme Court says see Black's Law Dictionary, you'd be well served to look it up. And what it says, it's the difference between repeal when it means to rescind or abrogate is the difference between a divorce and an annulment. It's as if it never existed, and the only basis in fact or law that the state reorganization committee has or had to make these orders was based upon LB126, but it was wiped away to the beginning. Who says so? The Nebraska Supreme Court says so. And the Nebraska Supreme Court had so said even before the last session. So I wanted to point this to your attention so that there can be no misunderstanding about the fact that the judiciary has already addressed this problem. Now, unfortunately with all the dithering hand-wringing, we haven't been able to fix one little fly in the ointment. Statutes are back, they're all back, and somebody's got to step in and take care of this order. LB1089 does that. The slaps in the face of the people of this state has gone on long enough. And I'm sure those that will arise in opposition to LB1089 will not see their testimony as a slap in the face to the people, but I assure you, senators, it is. And LB1089 needs to go forward so the people can have their day with this body and a vote up or down can be made. Thank you. [LB1089]

SENATOR RAIKES: Thank you. Questions for Mr. Recknor? I don't see any. Thank you. Other proponents, LB1089? [LB1089]

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JOHN K. HANSEN: (Exhibit 2) Mr. Chairman, members of the committee, good afternoon. For the record, my name is John K. Hansen, H-a-n-s-e-n, and I am the president of Nebraska Farmers Union, appearing today as the president and also their lobbyist. I do have one brief handout if there is a page or if not, that's cool. And I want to just pass out the election results because in all of the years that I've been involved in public policy, I've either been a public official or involved as a head of a state organization since 1974, so I've been around a while. And in all of the years that I've been involved in public policy, I can only remember three in my lifetime where the voters felt strongly enough about an issue that the Legislature had already passed that they felt compelled to go out and go through the expensive and time-consuming process of gathering signatures to put a repeal of what it is the Legislature had done on the ballot. One of those was in 1986, where the repeal of LB662 was before the voters in 1986. That proposal overwhelmingly was supported by the voters, and LB662, very similar to LB126, was repealed. The other had to do with a motorcycle helmet issue, and the third was very similar to the LB662 that was passed in 1986. My organization voted to be a part of the effort to gather the signatures, put a repeal on the ballot, and to be a part of that process. We did that. We felt strongly enough, and in our view the issue was who ought to make the decision about when it is a local school district ought to be closed. Should it be the folks at the local level or should it be folks in Lincoln? Well, not strangely enough I think to most folks who have been involved in politics for any period of time, local folks thought that they were more qualified to make that judgment than any folks that they had ever met regardless of whether they liked them or not and were public official in Lincoln. Local control is a fairly, widely felt, and it really, I think, is a reasonable view, and it goes to the heart of whether or not citizens have control over their own lives and their own democracy. So, Class I schools were being consolidated, just not at the rate that some would like. LB126 was passed, the repeal was put on the ballot, 56 percent of the voters said yep, we want it repealed. So then how do we respond? Where do we go from here? How do we respond to this, especially given the direction of the Supreme Court and others? Well, we think LB1089 is a perfectly reasonable approach. It's not complicated, it's simple. It just undoes the reorganization order that was issued. I don't know how you can get simpler than that. It just does that, and I would suspect the school districts who want to continue would, those that don't won't, and then hopefully we can go on and talk about other even more exciting issues like school funding, and state aid education formulas, and all those things that consume both the life and the work of this committee, as well as those of us who represent agriculture in rural communities as we look at our tax system and all of those things. But if this issue doesn't get put to bed and we don't actually move forward on this, we're just going to get stuck further and further in the mud. And I have stuck some really good equipment in my day, and there's a certain point where you've gone back and forth long enough that you finally got down to the point where the axle now supports the tractor, and it's time to quit. And I think this approach is good, I think it's straightforward, I think it's honest, I think it's workable, I think it is worthy of consideration of the committee and

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the Legislature. And I would suggest that this and the next bill both be sent out of this committee, whether you agree with them or not, to give the Legislature the opportunity to deal with this issue and put it to bed in a fashion that they find acceptable. And with that, I will end my testimony and be glad to answer any questions if, in fact, I'm able to. [LB1089]

SENATOR RAIKES: Okay, thank you, John. Questions? Senator Avery has one. [LB1089]

SENATOR AVERY: Thank you, Mr. Chair. Mr. Hansen, you said you thought we need to report out both bills so we can have a full discussion of this issue. Does that mean you don't think we had a full discussion of the issue last session? [LB1089]

JOHN K. HANSEN: I think that there was an option on the table last session, and I think that particular option was, certainly there's a strong difference of opinion about whether or not that was a good option or not. We heard back as I was working this issue, we heard back from a lot of folks who were not very happy with the option that came out of the committee last year, and they said well, I don't really like this but I feel like we need to do something, we need to honor the will of voters. I'm not sure this is it, they were kind of conflicted, and I think this approach is a cleaner, simpler approach relative to giving senators who agree or disagree with the underlying public policy issue the opportunity to at least be responsive to voters. So from that standpoint, I think this is a good option. [LB1089]

SENATOR AVERY: So if I understand you correctly, we did have a full discussion of the issue, but the outcome was just not right. [LB1089]

JOHN K. HANSEN: No, I think we had a partial discussion of the issue, and in my honest opinion, and we're getting into opinion here, the will of voters back home on this underlying issue has been well known. It has not been a point of view that was shared by the majority of the committee, and therefore because of that, as policy's gone forward, we have had a disconnect. And we've had a honest difference of opinion between members of the committee and folks back home. And I would just say that issue should have been put to bed when the voters in fact, right or wrong, for better or worse, had their say. [LB1089]

SENATOR AVERY: Thank you. [LB1089]

SENATOR RAIKES: Other questions for John? Thank you. [LB1089]

JOHN K. HANSEN: Thank you, Mr. Chairman and members of the committee. [LB1089]

SENATOR RAIKES: Other proponents, LB1089? Are there opponents, LB1089?

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Neutral, LB1089? Senator Dierks, would you like to close? Senator Dierks waives closing. So that will close the hearing on LB1089, and we'll move to LB903 and Senator Lathrop. Welcome, Senator. [LB1089]

SENATOR LATHROP: Good afternoon, Mr. Chair and members of the Education Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent District 12 in Omaha, and I'm here to introduce LB903. This is my first time before the Education Committee. [LB903]

SENATOR RAIKES: We'll try to make it memorable. [LB903]

SENATOR LATHROP: A pleasant experience is what you were going to say. I think, you know, I'm going to introduce LB903 and maybe do that beginning by suggesting that there is, when it comes to education in rural Nebraska, a significant history, as demonstrated by the introduction of Senator Dierks's bill and the testimony that you have just heard--a lot of controversy. And I don't mean to wade into that, don't need to wade into that, because it all happened before anybody ever elected me to come down here. Last year we had a bill before us, which I think the number was LB658, that dealt with the aftermath of LB126 and the referendum, and that of course passed, was vetoed, and then we failed to sustain the veto. And following that, and after the end of our last session, I was contacted by the Governor to work with a group of senators to try to come up with a solution that may accommodate the folks in greater Nebraska. And I was asked to that with the help of Senator Adams, who has put in a great deal of time on LB903, as has Senator Harms. We had a number of meetings over the course of the interim that included several of what I'll generally characterize as rural senators. Senator Dierks was present for some of the meetings, was certainly invited to participate, as was Senators Dubas, Karpisek, Hudkins, and I'm probably going to leave some people out, but that was the core--oh, and Senator Loudon, who was a very active participant. We approached this problem or approached this task, by asking ourselves, first of all, what we were going to try and accomplish with what would be our bill, and that set the parameters for the approach that we would take and now what you'll find in LB903. And that is we recognized as an initial matter that we need to make sure that kids aren't on the school bus for an hour or an hour and a half going to school in the morning, and then another hour, an hour and a half going home every evening, that there is a need in certain places, sparsely populated places in the state of Nebraska, for remote attendance centers. And this is a bill that addresses remote attendance centers. In fact, we chose as a model the community colleges' satellite schools as sort of an approach to how we would solve the problem. And so what LB903 does is this: It provides for remote attendance centers in sparsely populated areas in two circumstances. One, and these are the criteria, in those instances where--and this would be the very sparsely populated criteria--where there are at least five resident students where the district, we create a district, and the district must be more than 7 miles from the nearest K-12 school. There has to be 100 square miles within that district, and the district would be permitted 3

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council members. So for the very sparsely populated criteria: 5 students, must have 100 square miles worth of property--or worth of land in the attendance region, and then we had a second tier. And the second tier was to account for those instances where we may be closer but have more students, and so that criteria for the second tier of remote attendance centers or, as we call them, Nebraska elementary attendance regions, or NEARS, that criteria is 25 students, still 7 miles from the K-12. But they're only required to have 36 square miles. So we accommodated two different concerns. One is the folks who are longways from the K-12, and the other would be the neighboring community, which has a good population of students, but still, they are a good distance from the K-12. LB903 sets up a procedure which is responsive to the rural concerns that we heard relative to LB658, which is let us vote within the district, and LB903 does that. The residents that live within the NEARS can...they really get three bites at the apple. One is they can simply go to the board and say, will you let us set one of these up? And if the board says, yes, then they can set it up. They can also petition the people who live within the NEAR, or the proposed NEAR, and if they get 55 percent people in that NEAR to agree to it, they present it to the board and they can have their NEAR in a process that I'll explain in a minute. If they are unsuccessful in getting 55 percent, but get more than 50 percent of the people in the NEAR to sign a petition, then they can have a special election of the school board meeting called for the purpose of having an election on whether the NEAR should be established. And if they're successful, then a NEAR can be established, which is this elementary attendance region for folks in sparsely populated areas. We also had to address how are we going to set this up and who's going to pay for it and who's going to govern these NEARS, and we did it in this fashion: First, once the NEAR has been established, once it's authorized, the K-12 can pay for it if they choose to. If they choose not to, then the people in the NEAR essentially allow themselves, and this is right up front, they allow themselves to be specially assessed for the cost of creating, setting up the facility. So the remote attendance center, whatever form that might take, the start up costs become the responsibility of the people that live in the attendance region. So they have a stake in it, they don't just stand in some part of greater Nebraska and call for one of these. They have to have a little skin in the game, so to speak. The governance was also an issue that we worked through in this group of senators that worked on this issue over, and you'll see the results in the bill. We allow for a three or a five person governing board for the NEARS. They are advisory primarily. They can give the K-12s a proposed budget. They can identify needs and work with the K-12 to make sure that the things they need to operate this remote attendance center are available to them. The one thing that's a little bit different about this is we have somebody from the K-12 sit in an ex officio capacity on the NEARS governing board, and someone from the NEAR sits on the K-12 board in an ex officio capacity. And we believe, and it's my judgment that LB903 represents an accommodation. It will not be, and I've had a chance to visit with Senator Dierks and the folks from Class I United, this isn't what they want. They want what LB1089 would provide them. But I think there's something bigger and more important, and that is if they're not going to get that, this is a pretty good approach. I think that on

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balance, the equities, we've taken into account the interest of the folks that live in the K-12 and the folks that would want and go through the process of establishing an elementary attendance region. So with that, I'd be happy to answer questions. [LB903]

SENATOR RAIKES: Okay, thank you, Senator. Senator Burling. [LB903]

SENATOR BURLING: Thank you, Senator Lathrop, and thank you for all your work on this and all the people that worked on it. I think it was probably an exercise that needed to be done and to further talk about this issue. I notice that this bill gives this region council taxing authority. [LB903]

SENATOR LATHROP: It does, in a very a limited circumstance. [LB903]

SENATOR BURLING: Other than that, and you maybe can't answer this now without doing further study, but if you can, is there anything in this bill that could not happen now if this K-12 school board initiated it? For instance, if they said we want to create a region out here and we want to have ex officio members back and forth, and we want to do all this, are they prevented from doing that now by statute? [LB903]

SENATOR LATHROP: Not to my knowledge. I think if a K-12, and certainly the experts are on this side of the table and not on this side, but if a K-12 right now in greater Nebraska wanted to set up a remote attendance center, I think they could do that. I don't know that there's anything in the law that stops them from doing that right now. But this goes a little bit further than that, which is it allows people who live out there to essentially demand one. If they want to go through the process, if they can convince enough neighbors in 100 square miles or 10 miles by 10 miles that we have a need out in this part of greater Nebraska. And I'm getting the same e-mails you are too, probably, and that's from people that are out in the Sandhills and don't want to drive 55 miles. So it helps them. [LB903]

SENATOR BURLING: Okay, thank you. So if I understand you right, this legislation would require the K-12 board to respond to these folks, where now they could ask, but the K-12 board wouldn't have to respond... [LB903]

SENATOR LATHROP: I think that's exactly... [LB903]

SENATOR BURLING: ...and this would require a response. [LB903]

SENATOR LATHROP: ...and that's my understanding. It does if they can get 55 percent of the folks inside the proposed to sign on or if they can a majority vote at the special school board meeting. [LB903]

SENATOR BURLING: If they meet the criteria they could. [LB903]

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SENATOR LATHROP: Exactly. [LB903]

SENATOR BURLING: Yeah, thank you. [LB903]

SENATOR LATHROP: Sure. [LB903]

SENATOR RAIKES: Other questions for...Senator Avery. [LB903]

SENATOR AVERY: Thank you, Mr. Chair. I'm just going to ask a few questions and to clarify things to me that are not yet clear. The NEARS can be financed by residents in the NEAR area, right? [LB903]

SENATOR LATHROP: The people inside that district, Senator Avery, are responsible for the start up costs if they're not assumed by the K-12. The K-12 could say, we hear you, we're going to set it up, and we're going to take advantage of some other provisions in the bill that they may want to use to help pay the start up costs. But if the K-12 does not voluntarily agree to pay the start up costs, then they can specially assess themselves inside the NEAR for the start up cost. Once the start up costs are paid, the cost of running the remote attendance center becomes the responsibility of the K-12. [LB903]

SENATOR AVERY: And you create new political subdivisions with these NEARS? [LB903]

SENATOR LATHROP: I don't know if it's a full-blown political subdivision because all of the assets become the assets of the K-12, but it is a new political subdivision in the sense that it has authority to do a special assessment on residents within the NEAR. [LB903]

SENATOR AVERY: I guess what I'm having trouble with is if you have a new subdivision, and these NEARS are largely self-financed or can be self-financed, how can supervision of employees belong to the K-12 district? And how can ownership of the facilities belong to a K-12 district? [LB903]

SENATOR LATHROP: That's because they are a political subdivision and perhaps some hybrid, I don't have the answer to that. We'd have to talk to somebody who has a better grasp of the elements of the true political subdivision. But understand this: These are satellite offices of the K-12, that's it. The special assessment and the political subdivision piece comes in where it's not unlike a special assessment in Lincoln. If you have your street repaved, they specially assess the people who border that street for some of the expense. It's set up for that purpose. [LB903]

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SENATOR AVERY: So it is really not a recreation of Class I's? [LB903]

SENATOR LATHROP: No. There's a lot of, many differences, and you'll probably hear somebody that steps up here as an opponent to reel off the differences between this and a Class I. But a Class I, as I understood them, they were a self-contained political subdivision. I know they had some affiliation with the K-12s, but...if it were, they would've embraced it more than they have. [LB903]

SENATOR AVERY: Yeah, so what is the largest benefit of your proposal? And it doesn't recreate the Class I's, which Senator Dierks just testified we need to do. What is it that you're doing here? If you had to say this is the single most important contribution this proposal makes, what would it be? [LB903]

SENATOR LATHROP: And that would be trying to provide a system to accommodate the kids who live so far from the K-12 that they have to attend that having a remote site for them go to school will save them hours in the car and in the bus, and the travel time that they could otherwise be studying. [LB903]

SENATOR AVERY: Yeah, I have always been troubled by that one issue more than anything else when it came to LB126. When I heard testimony here last year about people who are driving 50 miles one way to get kids to school, that, I think is an unreasonable burden on families. What is to prevent though K-12s today, since you described it as a satellite for K-12s, what would prevent them from doing it anyway? [LB903]

SENATOR LATHROP: I don't think there's anything that prevents them from doing it right now if they want to. What we're providing is a process where if the K-12 doesn't want to do it, they have a process to say you know what, we have 100 square miles out here in the far reaches of Nebraska a long ways from town, and we want our own school. And our thought was as we looked at this is that they bring nothing grand but something that's basic--one-house schoolroom sort of education to those places so the kids can spend more time learning and less time riding in the car. [LB903]

SENATOR AVERY: So this gives the supporters of Class I schools a tool to force the hand of the K-12 that doesn't want to build a satellite school to help. [LB903]

SENATOR LATHROP: I think it does that effectively. [LB903]

SENATOR AVERY: Okay, thank you. [LB903]

SENATOR RAIKES: Any other questions? Steve, your focus here as I understand it is on creating, from this point on, elementary-only schools that do not now exist. [LB903]

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SENATOR LATHROP: That's true. [LB903]

SENATOR RAIKES: As I understand of the 210 or 220 or something like that were organized at the time LB126 went into effect, that over 100 of those buildings are still operating. Is that... [LB903]

SENATOR LATHROP: That's what I've been told, that there are 100-and-some Class I's still operating as such. [LB903]

SENATOR RAIKES: So...I guess a couple points. One is you could say from that standpoint that the reorganization has worked in the sense that if half of those buildings were really needed, maybe for the purposes you describe--longways from another--they're still operating. But my other question for you is this: Why, and maybe you do in this bill and I just missed it, why isn't there a focus on some sort of assistance for the K-12s that are continuing to operate these remote elementary attendance centers? Your focus is on creating new ones where they don't--recreating or however you want to describe it--rather than we're still operating it, it's there...how do we assure the financial feasibility? And I will tell you that what I heard is a big hurdle for K-12s is when you look at for cost per student--which they have to do--the cost per student in some of these remote attendance centers is much, much higher than what they incur in... [LB903]

SENATOR LATHROP: It'd just about have to be. I mean, if you have a remote attendance center for 7 children, the cost per student is going to be higher than what it would be in town where you have 25 students in every class, or 20--whatever the number's going to be. I don't know how you avoid that, but I think the--and you're right--the focus of this has provided a framework or a tool for people who live in sparsely populated areas to say, we need some help here. We need a remote attendance center. In some cases, the one thing it does do is it allows for movements in the population. You know, one day there may not be anybody in one part of the county or one part of the school district, and five years from now there may be several families there that need some place to have their kids to go to school. [LB903]

SENATOR RAIKES: Okay. Any other questions? [LB903]

SENATOR AVERY: I have one more. [LB903]

SENATOR RAIKES: Senator Avery. [LB903]

SENATOR AVERY: Pardon me for doing this again, Steve, but... [LB903]

SENATOR LATHROP: That's all right. [LB903]

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SENATOR AVERY: ...do you have any knowledge of a single K-12 district that had a request to keep a satellite or small school open and they declined to do that or declined to create one? I mean, what I'm getting at is are we really trying to fix a problem that doesn't exist? I mean if we don't have any examples of K-12s that refuse to do what the people who needed some relief because of distance were asking them to do, if we don't have examples of that, then is this tool really something they have to have? [LB903]

SENATOR LATHROP: Well, to answer your first question, which is, is this really a problem and do I have examples of some K-12s that refuse to set up a remote attendance center, no I don't. I suppose if I was on the Education Committee, people might have brought those kind of issues to me along the way. [LB903]

SENATOR AVERY: They haven't brought any to me. [LB903]

SENATOR LATHROP: Okay, and maybe they have and maybe they just live with the fact that they haven't been able to get it done. I have gotten e-mails--and I suspect it's because I've introduced this bill--from people that have said you know I...somebody that lives out by Hyannis, and I think that's in Senator Louden's district, but it was an e-mail about how far they were from 3 or 4 different towns and it's like 55 miles or something like that. So maybe it's just a philosophical thing, Senator Avery, and that is we ought to have it available. Whether anybody uses it or not, I suspect probably there won't be a lot of people that set up a remote attendance center through this process, but you know I think it's important that we respond to the concerns of the people in sparsely populated areas--even though it'd be easy to say, you know what, it gets expensive setting one of these up, drive into town. So... [LB903]

SENATOR AVERY: Thank you. [LB903]

SENATOR RAIKES: Thank you, Senator. [LB903]

SENATOR LATHROP: Sure. [LB903]

SENATOR RAIKES: We'll move to proponent testimony, LB903. [LB903]

DUANE GANGWISH: Looks like maybe a lonely lot. Good afternoon, Senator Raikes, members of the committee. My name is Duane Gangwish, that's G-a-n-g-w-i-s-h, and I'm here today representing Nebraska Cattlemen. My comments are few because my knowledge is limited, but our board of directors has voted to support this bill. The chairman of our education committee is a rancher, Homer Buell from Rose, Nebraska, and the vice chair is Kristen Eggerling, who is a teacher from Martell. So both have very vested interest and knowledge of what's going on. Where Homer lives, it's 35 to 40 miles into town, into Bassett. It was common for kids to go into town during the week and stay for school and then go home on the weekend. I don't know if that's still the

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case, but it was in his day, and there are some here that maybe participated in that. Basic premise upon our support of this because it does give local control and local input when asked for it. It's always easy to be ignored when we don't want to hear what we don't want to hear. I, as a parent, have often chose to not listen to what I didn't want to hear. In regards to remote education centers, recently I was in Gordon, Nebraska, and traveled south, spent the night with a friend a mine. And I don't recall how far it was, but in between Gordon and Lakeside there is along the highway there is a church and a small, metal building. And the small, metal building is a school and kids come from 30, 40 miles around to attend that small school. So we like the opportunity to choose when it is. We understand the concerns about funding, as it always is, but in those remote areas those people who are in the remote area already have incurring cost and they like the opportunity to choose. That's the limit of mine... [LB903]

SENATOR RAIKES: Okay, thank you, Duane. Questions for Duane? I don't see any. Thanks for being here. Other proponents, LB903? John. [LB903]

JOHN K. HANSEN: Mr. Chairman, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n, and I am the president of the Nebraska Farmers Union and also their lobbyist. We appreciate the effort that was involved in this endeavor. We appreciate, we think, the intent of the folks who tried to come together and hammer something out, and there's some part of this thing that we like. There's some things that we're not so happy with, but we appreciate the effort to at least move the ball forward, and we thank all the folks that invested their time and energy in this effort. There is the old rule of thumb, and I've been involved in local education issues and public policy and as a local public official as well for a very long time, that the heat to light ratio, if you're lucky on education matters, are about 10 to 1. And I would say that in this issue, it's at least 10 to 1, but this, I think, along with the previous bill, at least provides the body two different flavors, two different choices of how to best respond to what I believe is a difference of opinion over educational policy, which now I believe has grown into a more substantial issue, which goes to the business of the sanctity of the vote. And I do believe that the Legislature has to do something to respond to what it is that the voters did in 2006, agree or disagree. I think that that vote tells us that. We like to see a little more local governance in this proposal, and we think that it's always problematic when you have folks who are stuck paying the bill, but don't really have quite as much control as maybe they should to be able to make sure that their dollars are being spent wisely and that things are going as they should. And that is one of the things that makes some sense. And you know, there was an honest difference of opinion, I think, between lots of different folks over what was going to be the outcome of the consolidation of Class I schools. Our view was that there was not going to be any money saved at the end and cost would actually go when you looked at it, and I think we won that argument over whether or not costs were to go down or up. Costs did go up, and unfortunately, in a lot of those districts where those Class I districts have been now replaced, consolidated, it is now more expensive than it was before. And in terms of how have K-12 districts

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responded to Class I districts, are there examples of areas where there were folks who wanted attendance centers kept open and not? You bet there are. I get those calls and I'm not the expert, but I'm sure some of the folks from the Class I's who are not able to attend today would be glad to pass on some information over that. My sense is that the K-12 response has been up and down. Some districts did a very good job, I think, of talking to the Class I's, working with them and taking into account a fairly difficult situation and doing it with some aplomb and appropriateness and civility, and in other cases, not so much. And so there are some hard feelings out there over how things have transgressed and progressed. So with that, that's my sense of what the response has been, and also again I urge the committee in the interest of dealing with this issue and hopefully putting it to bed so we can go on and move forward and deal with other issues, is to put both of these bills before the Legislature for their consideration. And with that, thank you very much, and I'd be glad to answer any questions in the off chance they're not too hard. [LB903]

SENATOR RAIKES: Questions? I don't see any, thank you. [LB903]

JOHN K. HANSEN: Thank you, Mr. Chairman and members of the committee. [LB903]

SENATOR RAIKES: Other proponents, LB903? Are there opponents, LB903? [LB903]

ALAN KATZBERG: (Exhibit 3) Good afternoon, Senator Raikes, and members of the Education Committee. I'm Alan Katzberg, that's K-a-t-z-b-e-r-g, executive director of the Nebraska Rural Community Schools Association. Our association consists of about 180 K-12 school districts, members from Hartington to Chase County and Imperial in southwest Nebraska from Crawford to Falls City in southeast Nebraska. We have school boards across the state. I'm here today to testify in opposition to LB903. I guess I would start by first saying one of our fundamental issues with LB903 is the voting. I have a select group of voters. We believe that any decision in a K-12 district should be made by the school board, or at least all voters should have an opportunity to have a say in that decision that affects the entire district. I would also mention that the provisions in this bill would affect a lot of K-12 districts that really had little if any interest in the Class I issue previously. And I think I can best illustrate what I'm referring to by using a couple of examples, and there are many more. But there is a district in south central Nebraska, depends whether you're from the east or west whether it's south central or southwest Nebraska, but approximately ten years ago there were three school districts there encompassing three smaller communities. These three school districts were experiencing shortages of funds, deteriorating facilities, and declining enrollments. The three school districts got together and through a decision-making process involving all of them, voted to merge the three districts, and to solve the facility issue is to construct a secondary building that is centrally located to the three communities. And they left the three attendance centers open in those three communities because of the cost of building a K-12 facility at once. Ten years later now,

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this school district is still operating with the centrally located secondary building, three elementary sites operating in the smaller communities. They experience, again, continued declining enrollments, continued financial problems, and inefficient staffing in those three elementary schools. Through a process, the board proposed to close the three elementary sites and build onto the secondary building a new elementary school. This was approved by all the voters by approving a bond issue. So they're in a process now of building an elementary school building at that site. These 3 communities are, I believe they are 8, 10, and 11 miles from that central location. Under the provisions in LB903 as I understand them, the 36 square miles encompassing any 1 of those 3 by the vote of a small group of voters, they could force that school district to either open or retain an elementary attendance region, which essentially would siphon off needed resources to offer elementary school at one site. When I talked to the people involved in that district, I said we really don't know how we would staff and afford and stay under our spending lid and our revenue lid and continuing staff. It's very expensive to operate those. There are sufficient number of students in each one of those communities, and as you might suspect, there are people in those communities that would like to see an elementary attendance center in that community. But the vote of the people said let's go move to efficiency, a more comprehensive program, can be offered. And I think that's what we're asking K-12 districts to do. In another example, two communities voted merger, again, to best utilize the facility and the resources. They have a K-6 and a 9-12 program at one site and a 6-8 middle school in the smaller community. These 2 communities are 12 miles apart. Given the 7 mile limitation, 36 square miles it would be feasible, I mean possible--maybe not very feasible, but possible--for the people in the smaller community to force that K-12 school board to change the organization of the district and offer an elementary attendance region in the smaller community. There are many other examples like that. I didn't intend to take long enough to ever see that light, so having said that, I would try to answer any questions. Before I do, I would also like to express our appreciation to Senator Lathrop, Senator Adams, and all of the senators that worked on this. We certainly recognize and understand the hard work that's gone into it. [LB903]

SENATOR RAIKES: Okay, thank you, Alan. Senator Adams. [LB903]

SENATOR ADAMS: Alan, I'm not sure that I agree with your organization on the issue of voting, but that's beside the point, that's really not the crux of my question right now. So if I understand the scenario that you describe--and I'll try to put it in a nutshell and you tell me if I have it incorrect--the fear is that we may have some communities that fall into that second criteria in the bill, that 36 square miles, 25 students, that have nothing to do with Class I's that over time have lost their elementary in their community. And your organization's fear is that under this bill, we may open up some old wounds. Is that, in essence, what you're saying? [LB903]

ALAN KATZBERG: Yes, that's one point, yes. [LB903]

SENATOR ADAMS: Okay. [LB903]

ALAN KATZBERG: That is a fear. We have another situation where there are four smaller communities involved in a school district. The board voted to close a former Class I in that district now. Kind of the irony in that is that according to the school board member who reported this to me, is that community wouldn't have enough students to open, to force the K-12 board to establish an elementary attendance region, but 2 of the other smaller communities would, and they've been part of a Class III for 25 years. [LB903]

SENATOR ADAMS: Thank you. [LB903]

SENATOR RAIKES: Any other questions? Senator Burling. [LB903]

SENATOR BURLING: Thank you, Alan, for your testimony. Building on what Senator Adams asked you, I understand, and tell me if you don't understand it this way, I understand that this region council could levy a tax and build a building in that region and force the K-12 board to staff it and run it and accept all the cost and liability. Am I right? [LB903]

ALAN KATZBERG: That is my understanding that is correct. They could establish a tax levy just on the elementary attendance region not to exceed \$50,000 or 5.2 cents, is my understanding, for 5 years to pay for the establishment of the facility. But the entire operation and maintenance would be the responsibility of the K-12 district. [LB903]

SENATOR BURLING: So that's one of the examples of your opposition? [LB903]

ALAN KATZBERG: Right. When you establish those remote sites, not only the cost of just building the facilities, but staffing them is another issue. Again, my own experience as a school administrator, when you move a teacher from one site to another, you lose instructional time while that teacher could be in the classroom. There are not enough specialists in special education in remote sites--is very costly to offer that, to have trained personnel out there. Whether it's technology, library facilities, physical education, music, all those special courses have to be offered at all the sites, and that can be very expensive to do. [LB903]

SENATOR BURLING: Thank you. [LB903]

ALAN KATZBERG: Having said that, I would also like to make clear that our organization is not opposed to elementary attendance sites in remote areas where they're needed, but we think that decision is best made by local K-12 boards of education in conjunction with those communities' people. [LB903]

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SENATOR RAIKES: Senator Avery. [LB903]

SENATOR AVERY: Thank you, Mr. Chair. It sounds to me like you think we did a pretty good job last year with LB658 and therein might lie some of the reasons why you don't like LB903. I forget where you were on that issue, but one of your first comments here is you believe all the voters in the school district must be provided an opportunity to vote on matters that affect the entire district. That's what we did in LB658, and that was really where we got some of our strongest criticism, is that we weren't carving out a special group of voters to determine what would happen. Am I right? [LB903]

ALAN KATZBERG: We were not opposed to LB658. [LB903]

SENATOR AVERY: Okay. Thank you. [LB903]

SENATOR RAIKES: Any other questions? Other opponents, LB903? [LB903]

JOHN RECKNOR: Good afternoon, my name is John Recknor. I am here in opposition to LB903 and to review my testimony briefly from LB1089, I'd like you to again look at page 19 of the Pony Lake case, because I think it's going to fit into a couple of the comments that I would like to make, which I think are in response to some of the questions that have been asked here this afternoon. Part of the problems of becoming an old geezer like myself and having been around this business for the last 35 years, we tend to think that people understand the legal doctrines that are out there when in fact they don't. And so one of the myths that I think needs to be disabused is per pupil cost and cost per student is irrelevant, not because I say so but because the Nebraska Supreme Court said so in a case called Mann v. Wayne County Board of Equalization. They said it in 1969. Now with all due respect to Senator Lathrop, because I don't like to insult people for any reason, and I'm certainly not insulting you, Senator. I know you went through a lot of work, and I know that your colleagues went through a lot of work, and that should be honored. One of the things that was stated here is that LB903 accommodates all these interests. Well I would respectfully suggest to you there's one interest it doesn't accommodate. It doesn't accommodate the vote of the people, and that's why I want you to look again at page 19 and see what the Nebraska Supreme Court said this vote would mean, and so far this vote hasn't meant anything. We could do the same thing that LB903 is proposing if we wanted to tax ourselves and run and adjunct school facility, we could do it with parochial schools now. And so it makes absolutely no sense to say to these people who have won an election, you're asking us to engage in a Dutch auction. You're asking us to bid against ourselves. We don't like to do that, it doesn't make us unreasonable. We're simply trying to tell you we won an election. The Supreme Court said what it means, and we're here because we expect results consistent with what our constitution, the Federal Voters Rights Act, and other bodies of law call for. Now did the prices go up? Yes. We predicted that if LB126 stayed

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in place, it would cost the state \$40 million. It looks to us like maybe we were optimistic, because I think it costs more than that. You ask well why wasn't LB658 the answer? What do we need a vote of the K-12s for? We've already voted as a people, and if our vote didn't mean anything there, what good is a vote in a K-12 to play "Captain May I?" after we've already won an election? It's insulting, and it's not consistent with either the state or federal constitution. Now, do we appreciate the effort that somebody went to try and figure out how to solve this problem? Yes, we do. There was, however, some disappointment in the process. Our president, Mike Nolles, would be here today except he was iced in in Kearney this morning, and that's why he's not here. He could've answered your questions about how many of these elementary attendance centers have been squashed by K-12s, because he has the numbers, and if you like, we'll get them to you. You know, I guess I think the key thing that we need to say about LB903 is if we had been consulted like we were promised, we were told when LB658 was vetoed, that the process would be one where the people in this fight would sit down with representatives of the Legislature and see if we could find some way that everybody could come together peaceably and live with the outcome of an election that was not unclear, in I don't think any of your districts--was not unclear. And yet we weren't called, Mr. Nolles wasn't called, John Hansen wasn't called, nobody was called. And so I think it was with some, probably anger and frustration, when Senator Lathrop first heard from us that unless you go back to giving boards the same authority they had to spend and tax and hire and run buildings they had before this election, LB903 just doesn't accommodate the election. We apologize for that, we're sorry about that. We could've told you that six months ago and perhaps we could've gotten a better product. But I learned a long time ago just as they say legislation is the result of the art of compromise, so is throwing your principles overboard the result of the art of compromise, and we're not willing to do that. We won an election, we expect it to be honored. And LB903 does not do that. Unless you can fix it so it's consistent with what the people voted on, we simply can't support it. [LB903]

SENATOR RAIKES: Okay, questions? Let me review quickly. You had a petition-gathering effort completed in the fall of 2005. [LB903]

JOHN RECKNOR: It was completed by August 31 of 2005. [LB903]

SENATOR RAIKES: Okay. There were not enough signatures gathered to stop the implementation of the law. [LB903]

JOHN RECKNOR: According to the records of the county clerks at that time, many of which we subsequently found out what were flawed, and based upon 69 days to do it, that's correct. [LB903]

SENATOR RAIKES: Okay, so I'm assuming you're saying that's correct. [LB903]

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JOHN RECKNOR: I'm saying that's correct with qualifiers. [LB903]

SENATOR RAIKES: Okay, so there was a green petition circulated, so-called green petition. Can you tell me what the idea was there? [LB903]

JOHN RECKNOR: I don't recall the exact... [LB903]

SENATOR RAIKES: Wasn't the idea that the LB126 petition didn't do what had been promised and that the green petition was needed in order to assure that the right issue would go on the ballot? [LB903]

JOHN RECKNOR: That was one school of thought, that was not my school of thought. [LB903]

SENATOR RAIKES: Okay, but any rate, there were not sufficient signatures for the green petition to go on the ballot, am I correct there? [LB903]

JOHN RECKNOR: So? Yeah, you're correct. So what? [LB903]

SENATOR RAIKES: So we go on then and we have the election and really... [LB903]

JOHN RECKNOR: Excuse me, before the election, we had an injunction from the district court of Lancaster County and before the election we had the rendition of Pony Lake, March 3, 2006. This case came down, Senator, on March 3 of 2006 explaining what the results of the November 7, 2006... [LB903]

SENATOR RAIKES: No, excuse me, I think it said that the effective date of statute dissolving small school districts did not unconstitutionally strip voters challenging the statute of their right to conduct a referendum. Dissolving small school districts before the referendum did not turn referendum into impermissible advisory vote. [LB903]

JOHN RECKNOR: Because when the people vote to reject at a referendum, the bill, LB126... [LB903]

SENATOR RAIKES: On Section 19, you're reading... [LB903]

JOHN RECKNOR: ...I am reading on... [LB903]

SENATOR RAIKES: ...so if you go back to LB662, when that was repealed, did that mean after that we no longer had a sales tax? [LB903]

JOHN RECKNOR: Depends on what the people voted on. [LB903]

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SENATOR RAIKES: Or did that mean that the change in the sales tax was undone?
[LB903]

JOHN RECKNOR: It depends on what the people voted to repeal. In this case, they voted to repeal thing lock, stock, and barrel. [LB903]

SENATOR RAIKES: Okay. [LB903]

JOHN RECKNOR: And I would also remind you that when the people spoke regarding LB662, in I believe 1986, their vote mattered. What have the people gotten for their vote in this case, Senator? What? [LB903]

SENATOR RAIKES: It mattered in the sense that the increase in the sales tax was not implemented, but the sales tax was not abolished or abrogated. [LB903]

JOHN RECKNOR: No, but the Supreme Court did not explain the outcome of that election as the court did in this case. The court explained what the vote of the people would mean. They explained it, because as you should know, Senator, there are a series of statutes that ordinarily say that if you repeal an act, it does not automatically put the statutes back on the book and it does not automatically return things to the status quo. Were it not for the Pony Lake case, I would say we wouldn't even be here because we wouldn't have anything to argue about. We are here because we do have something to argue about, because the Supreme Court said here's what happens if you win the repeal, here's what happens if your referendum is successful, we're going to tell you right up front so everybody will know this is the result of the election. And that apparently is a fact that's been missed on a number of people, Senator, because we went and talked to your colleagues last Spring, we found nobody that had heard of the Pony Lake case. So the lady sitting right here, along with Mike Nolles' wife, went to every senators' office and handed this out, said you should understand what the election meant. [LB903]

SENATOR RAIKES: Well, I think it also is the case that you brought this up when you testified last year on LB658. [LB903]

JOHN RECKNOR: There were two things we didn't know at that time. One thing we didn't know at that time was the Revisor of Statutes had put back on the books all the statutes that LB126 repealed. We did not know that. We were diligent. We asked the attorney general of this state if he knew what would happen, we asked people in the Governor's office if they knew what would happen, and we found out purely, absolutely purely, by happenstance that these statutes had all been put back on the books. And the only thing that stood between their operation, which is what the people voted on, and them not operating is what Senator Dierks is trying to deal with, it's an order that people are hiding behind saying well, the order caused the reorganization, there's

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nothing we can do. When we repealed the helmet law, did you still get a ticket because the Department of Motor Vehicles had passed some ordinance or rule predicated upon a statute that's now gone? I don't think so. And the second thing, it was too late in the session when we found out about this to introduce any additional bills. Senator Dierks did his best and he was met with road blocks at every opportunity. When we figured out that the statutes were back on the books and the only thing that stood between the vote of the people being required and it not being required were these purported orders of December 1 by the State Reorganization Committee, Senator Dierks said this is how we need to react to it, and that's what he did. [LB903]

SENATOR RAIKES: Okay, any other questions? Okay, thank you. Are there other opponents to LB903? Any neutral testimony? [LB903]

BRIAN HALE: Senator Raikes, members of the committee, my name is Brian Hale, B-r-i-a-n H-a-l-e, from the Nebraska Association of School Boards. I guess this really represents some amount of work from people who are thoughtful about the process and what might need to be responded to. I guess it really comes down to if you feel somehow that you need to pay tool to these folks, this is at least the framework and represents a good amount of work to think about all of the obstacles in the way. School boards are used to accommodating new ways of doing business to respond to legislative policy changes, and I think they've been pretty good at in this case. And they've mostly melded together and provided services in an adequate fashion to students with few ill feelings and few kids who are left wanting who don't have more than they had before. We are concerned a little bit about what impact might happen by giving these regions local levy authority, what impact that might have on addressing the K-12 bond and facility needs. Already it's difficult in some cases because there's a sort of disparity between the people who have the land versus the people in town and there's always some friction about supporting and paying for school facilities using additional tax levies, and I guess we are concerned that this provides perhaps a widening of that feeling. And also I hope that what the impact here is not to take civically minded people who live in these rural areas and expend a lot of their energy at the Class I or the elementary attendance area level, and not necessarily focus their attention on governance at the K-12 level, which is where maybe the real purse strings are held, which might widen the rift in terms of their participation in the overall unit. And so we certainly, if you feel the need for a tool in this case, we would like to continue to be in the discussion. We just have a few concerns about the specific language here. [LB903]

SENATOR RAIKES: Okay, Brian. Questions for Brian? I don't see any. Thank you. Any other neutral testimony, LB903? Senator Lathrop to close. [LB903]

SENATOR LATHROP: Thank you, and I just have a few remarks after listening to the testimony. The group that I worked with, you know after LB658 was vetoed, I was on the

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floor along with other people in this room, arguing that LB658 was a good idea because it provided some protections, it was an opportunity. It might not have been everything that folks in rural, sparsely-populated areas wanted or needed, but I thought it was a good idea. And when it was vetoed, we heard that the Class I United folks will work with you, that we're going to forge a compromise and today we heard that "no one called us." Well, the group that worked on this included Senator Dierks and Senator Dubas and some others. We didn't put the group together, the Governor called us and he was the one that was talking to the Class I United people. I don't know, I'm a little surprised that they feel left out. The reality is that it isn't about what happened in LB126 or that, I think that's kind of behind us in a lot of ways and it's about what are we going to do for the kids that live a long ways from school. I'll leave it to the good judgment of the committee if they think it needs to be modified to improve what we built on. I'll certainly be interested in what your thoughts are, but I think LB903 ought to go to the floor and we can take care of and accommodate the needs of the people who live, as I say, a long ways from the K-12. [LB903]

SENATOR RAIKES: Okay, thank you, Steve. Questions for Steve? I don't see any. [LB903]

SENATOR LATHROP: I don't either. [LB903]

SENATOR RAIKES: Thank you. That will close the hearing on LB903. Mr. Vice Chair. [LB903]

SENATOR KOPPLIN: All right, we'll open the hearing on LB977. Senator Raikes, would you like to open? [LB977]

SENATOR RAIKES: (Exhibit 4) I would. Senator Kopplin, members of the Education Committee, Ron Raikes, District 25, here to open on LB977. I'm going to reminisce a little bit with you as a lead in to this topic. In 1996, the Legislature passed LB1114 to provide property tax relief and to encourage efficiency in government. Through implementing legislation, including LB806 in 1997, the Legislature made it clear that the state would partner with political subdivisions to a certain level of financial support, and it was up to the voters to decide if they were willing to pay more. And that's been an important construct in a lot of other things that we've continued to do. However, the reliance on voters brought up another concern in rural Nebraska. Many farmers saw their voice and their pocketbooks being diminished as they looked toward the future. Two such farmers say the town voters using override elections to save their towns regardless of the cost to production agriculture, and more importantly, to the children. The university had just increased the entrance requirements and the farmers were concerned that the children in their areas might not have access to the educational experiences necessary to continue the Husker tradition. Thus, the current freeholding criteria were adopted by the Legislature trying to balance diverse factors. We are now

faced by new challenges to our efforts to provide reasonable levels of taxation across the state. Exceptions to the levy and budget limits are undermining their very existence, with unfortunate consequences for certain groups of taxpayers. This summer, I heard about several schemes to get around the levy limits that were being viewed as unfair. The bonding for insurance to get around levy limits is, I think, an egregious violation of the spirit of both bonding and levy limits. My proposal to eliminate this comes before the Revenue Committee later this month. Another complaint I heard this summer was the resurgence of a conflict caused by the dissolution of the Lynch and Niobrara unification. The Lynch and Niobrara school districts unified on June 1, 2001. The system received reorg incentives of \$531,000, and the unification moved Niobrara into the sparse cost grouping. I think that's an important item to keep track of. However, everything did not go well, and Niobrara chose to go its separate way. The system dissolved on February 15, 2004. Because Niobrara was the district asking to withdraw, they were held responsible for repaying the incentives. In addition, a judgment was rendered in an amount of \$1.5 million, plus interest, against the unified system in favor of the Lynch school district with the judgment to be paid by the Lynch property taxpayers. And this is the outcome of the dissolution of the Lynch-Niobrara Unification. It's a very curious result until you consider that the high school membership is hovering around 40 students. The high school is less than 15 miles from the next closest high school, and the district would need a levy override to survive without sharing the resources of the Niobrara school district. Interestingly enough, the taxpayers of the districts were not individuals parties to the action, and therefore did not have standing to appeal. Furthermore, because judgments are outside the levy limits, Lynch accessed \$367,000 of the judgment to levy a total of \$1.62 for this school year without going to an override vote and risking freeholding. In other words, with the levy cap of \$1.05, Lynch is now at \$1.62, and that's without a vote of the people to authorize that levy. Nine-hundred and five-thousand would still be available to be outside the levy limit for next year, leaving a potential levy of \$2.38, which you know would only happen if they decided to do it all in one year. LB977 would protect those taxpayers and others, too. The bill would allow freeholding anytime a district uses exceptions to exceed \$1.20 without a levy override in place. This would allow districts to access 15 cents worth of exceptions without going to the voters. At this time, and I think maybe you have it, I'm offering an amendment for the committee's consideration. Much of the amendment provides clarification, but the amendment also would allow those districts that may currently be over \$1.20 to get their levies under control this next year without risking freeholding. So that's the essence of it. There are some folks here, I think, who are going to tell you a little more personally maybe their experience with this situation. But if you have any questions, I'll try to address them. [LB977]

SENATOR KOPPLIN: Questions for Senator Raikes? Senator Adams. [LB977]

SENATOR ADAMS: So Senator Raikes, if I understand right, under our existing freehold language--and help me out here--the criterion is you have to be a relatively

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short distance from an existing school system. Is it fall under 60 students, is that what the number... [LB977]

SENATOR RAIKES: Sixty students for two consecutive years. [LB977]

SENATOR ADAMS: In the total K-12, or is it high school? [LB977]

SENATOR RAIKES: No, high school grades. [LB977]

SENATOR ADAMS: And had at least one override vote, is that correct? [LB977]

SENATOR RAIKES: Yeah. There has to be an override vote. [LB977]

SENATOR ADAMS: All right. So that language doesn't change. [LB977]

SENATOR RAIKES: No. [LB977]

SENATOR ADAMS: What you're doing is adding a second criterion. [LB977]

SENATOR RAIKES: Yes, and that would apply regardless of the other circumstance of the school district, any school district, that met this other criterion could be subjected to freeholding. [LB977]

SENATOR ADAMS: In the process of putting this together, I know you apparently have focused the attention on the Lynch situation. Do you have any background how many other school districts might be impacted by a change in this language? [LB977]

SENATOR RAIKES: Well, it's a good question. Freeholding, as I'll talk a little bit about in next bill...unification as a matter of fact has, I guess, had instances at least where the ground is pretty rocky so that you've had dissolutions. There is, I suppose, a fear that this provides a model for a dissolution in a unification that could lead to other situations. But right at the moment, I don't know of any. [LB977]

SENATOR ADAMS: Okay. Thank you. [LB977]

SENATOR KOPPLIN: Other questions? I don't see any, so thank you, Senator Raikes. We'll now move to proponents for LB977. [LB977]

TIM KALKOWSKI: (Exhibit 5) Good afternoon, members of the Education Committee. I am Tim Kalkowski, K-a-l-k-o-w-s-k-i. I am a landowner up in Boyd County, and I've got a packet here I'd like to give you. I'm going to reemphasize a little bit of what Senator Raikes said. If I didn't know better, I would have said he read my testimony here because I was going to give the history also. But I will give it in a little bit of layman

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terms or how I, as a landowner, viewed what happened. In the years 2001 through 2003, there was a unification with the Lynch school district and the Niobrara school district. This was done to increase the enrollment numbers to get more state aid. That's why it was done. During this time frame, there was a lid law of \$1.05 levy assessed against real estate as set by the state Legislature. During these years, the Lynch school district stayed within these levy limits. On February 15 of '04, the unification was dissolved and terminated. This came about due to the misuse of unification monies. On October 11 of '04, there was a judgment rendered, and on your handout I gave you the case number in Knox County District Court. The plaintiffs were the Boyd County school district and then Nelson Dahl in an individual capacity and Cindy Noland in an individual capacity. The defendants were the Knox County school district and then their school board members in official and individual capacities. The Lynch school district was awarded the judgment. Niobrara paid \$531,034.88 with interest, and that was paid through the reduction of state aid over 5 years. The judgment in favor of the Lynch Public Schools in the amount of \$1.5 million plus interest accrued at 3.764 percent, which basically is \$250,000 over 6 years, which is what Lynch would have lost in state funding. That's how they come up with \$1.5 million. The obligation for payment of this judgment is assigned to the sole responsibility of the Lynch school district and to be assessed to the property owners within the Lynch school district at the total discretion of the Lynch school board. So you know, let me repeat that: Lynch school district won the judgment, but the taxpayers paid for it. Why a judgment? It is my belief the reason there was a judgment, it was to bypass the right of the property owners to freehold. As Senator Raikes had indicated, there are three things in order to freehold: fewer than 60 students in grades 9-12, Lynch had 102 students in '06 in K-12; needed to be within 15 miles of another school, we're within 12 miles of West Boyd; a vote to exceed the \$1.05 lid as set by the state Legislature. That's why, in my opinion, they used a judgment, because there was never a vote of the people. By using the judgment, there was never a vote. Thus, the property owners are kept from freeholding. Property owners in the Lynch school district, and on my belief, are the only people in the state of Nebraska that do not have this right. Today, this is what has happened because of the situation in Lynch. From 1998 to 2006, our real estate and personal property taxes have increased 212 percent, or an average of 23.55 percent per year. In 2006 through 2007, the property tax request was \$840,000 with a tax rate of \$1.27, which was over the \$1.05--again, without a vote of the people. The proposed 2007 and '08 property tax request was \$1,196,000 with a tax rate of \$1.75 with a 42.37 percent increase. Since the budget hearing, they have lowered that to \$1.62. But that was the initial request, and when you have a judgment you can take at your leisure, that's how they can do that. According to a September 16, 2007 article in the Omaha World-Herald, of the state's 254 school districts, just 6, including Lynch, exceeded \$1.25, and only 1 other district was over...or there was 1 other district at \$1.46, otherwise Lynch was in a class of its own. Again, that happened without a vote of the people. In our family operation, our 2007 real estate taxes, which are paid in '08, will be \$8.46 a acre. Now, we are in a ranching community, not farming. We charge pasture rent at \$25 an acre. So with real

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estate taxes, this accounts for 34.4 percent of our gross income. That's before anything else--debt service, payroll, fuel, repairs, spraying of weeds, whatever else. We've got to pay 34.4 percent off the top. That has put us in a situation...we just completed our budget for '08. We're in the red. I have no idea how we can get in the black with the expenses the way they are. [LB977]

SENATOR KOPPLIN: Okay. We'll have to move to questions from the committee. Senator Burling. [LB977]

SENATOR BURLING: Thank you, Tim, for your testimony. [LB977]

TIM KALKOWSKI: Sure. [LB977]

SENATOR BURLING: Even with this bill, as I understand it, the word "contiguous" is still in there. [LB977]

TIM KALKOWSKI: Correct. [LB977]

SENATOR BURLING: Comment on that? Would you like to see that changed or do you think that's good to keep that in the freeholding law? [LB977]

TIM KALKOWSKI: In my situation, contiguous does not bother us because we're contiguous on two different sides to two different school districts. [LB977]

SENATOR BURLING: But if you weren't? Think about the people that aren't and that same situation that you're in. [LB977]

TIM KALKOWSKI: It could be an issue, correct. They might not be able to freehold because they are not contiguous. [LB977]

SENATOR BURLING: So then that would just further the burden on them if the contiguous people left. [LB977]

TIM KALKOWSKI: It could. It could, other than, you know, if the freeholding would...the way I see this proposal is at \$1.20, it gives the school district a chance to get their finances in order and to get within in the \$1.20 and to I guess stop potential freeholding. And that's the part of the bill that I like because it gives the schools the ability to change. In my opinion what has happened at Lynch, they've hidden behind this judgment when they should have been probably dealing with this years ago, and now all of a sudden, you know, they have an issue where they have a school that they can't afford to keep. You know, we got another school 12 miles down the road that has, West Boyd, that has combined here recently with Naper and Spencer and Butte. So you know, that's the part of the bill I like is it gives them a chance to get their finances in order and make some

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decisions, which you know, I think they should have been doing for the last five years. [LB977]

SENATOR BURLING: Understand, thank you. [LB977]

SENATOR KOPPLIN: Other questions? Seeing none, thank you. [LB977]

TIM KALKOWSKI: (Exhibit 6) Chairman, I have another letter I just want to hand it to you. Is that all right or do... [LB977]

SENATOR KOPPLIN: Sure. [LB977]

TIM KALKOWSKI: This comes from a young farmer in the area that is a graduate and he was unable to come because of a medical emergency, and if you'd just take the time to read the letter. His biggest concern is that he's a young farmer and that if young families cannot sustain a living in the area, who's going to be left in the area to continue the next generation. And I would like to, on his behalf, give you that also. [LB977]

SENATOR KOPPLIN: It will be entered. Thank you very much. [LB977]

TIM KALKOWSKI: Thank you. [LB977]

SENATOR KOPPLIN: Next proponent. [LB977]

LES GRAHAM: Good afternoon, senators. I appreciate the opportunity to be here. Let me first assure you that I am well out of my comfort zone here, but I felt this was important enough that I would come. My name is Les Graham, G-r-a-h-a-m, and I live in northeastern Holt County, and my land is in the Lynch school district. I own and operate with my son-in-law the ranch that was established by my ancestors in 1890. My grandchildren who frequent the ranch will be the sixth generation if we can keep the ranch viable and one of them has the desire to become a rancher. Keeping it viable is why I'm here today. In my opinion, property taxes have become the largest financial burden agriculture faces today, and the largest draw on property taxes comes from education. There needs to be a mechanism in place that allows property owners some options when school districts adopt the mentality that a school must remain open regardless of the cost, and then they use unorthodox methods to circumvent allowing the people a chance to vote. I want to make it very clear, I'm not here to advocate closing small schools. My parents, my wife, and I and all our children attended a K-8 grade school, as well as Lynch Public High School. All I want is for all schools, large and small, to provide a good education to the students while being fiscally responsible to the taxpayers in that district. I believe that LB977 is structured in such a way that it allows schools the latitude they need in budgeting. It also provides options for property tax payers to freehold when schools will not or cannot stay within a tax levy that can

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provide quality education and still be comparable in taxation to other schools districts in the area. Again, I thank you for your time, and I urge you as a committee to support LB977 and send it to the floor, and as members of the Legislature, help to get it passed into law. Thank you again. [LB977]

SENATOR KOPPLIN: Thank you, Mr. Graham. Are there questions for Mr. Graham? Seeing none, thank you very much. [LB977]

LES GRAHAM: Thank you. [LB977]

SENATOR KOPPLIN: Next proponent. Are there opponents? There's a proponent, okay. [LB977]

JEFF KALKOWSKI: Good afternoon, senators. For the record, my name is Jeff Kalkowski, K-a-l-k-o-w-s-k-i. I'd like to thank you for the opportunity to offer my views in front of your committee. I am also a landowner in Boyd County, and I also sit on the board of directors of the Nebraska Cattlemen. I come before you as a very concerned landowner within the Lynch school district. I am here to testify in favor of LB977 and will show you the inequities in taxation that have been created by the current situation in Lynch. Our ranching enterprise is made up of my three brothers, their wives and families and my mother. My children are now the third generation on that ranch that was started with my dad's first land purchase in 1950. All my siblings and their wives have professional careers outside the ranch, which has enabled us to keep our passion of the ranch alive. In offering my support to LB977, I am in no way trying to shut down this school. My parents were both school teachers for over 30 years. Education has always and will continue to be a very important part of my life. I believe that when the unification between Lynch and Niobrara was dissolved, the Lynch school board instructed Superintendent Dahl to keep the school open at any expense. Unfortunately, this is all now being done at the expense of our only financial supporter, that is the local property owner. The local school board has decided to keep the \$1.5 million judgment in reserve, only spending a fraction of it, and have opted to go to the county assessors and request whatever monies that they need to be operational. I have seen no progress by the school board or their administration in trying to alleviate this incredulous tax strong-arm. This practice must stop. There are numerous surrounding schools all across the state that are becoming quite resourceful in developing plans to keep their schools within the mandates and still provide a quality education for their children. Just last week, the Springview Boys' basketball team played their last game as the Springview Indians. They will now merge with Rock County Bassett to fill their athletic teams. Two teams that were once rivals and are now cooperating together so that they can continue their athletic programs. We have also heard of school districts sharing superintendents or administrators to cut costs. The current superintendent at Lynch has an \$80,000-a-year salary with less than 40 students in a high school. Nowhere else in Nebraska but in Lynch will you find a school district that can tax at will. This is where the attorney's crafty

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idea came into play by placing the entire burden of the judgment on the property owners. How can Lynch have won the judgment and then be solely responsible for paying for it? A vote of the people was never taken because of the circumstances involving this judgment. The pockets of the property owners in Lynch school district cannot continue to be tapped at the whim of the Lynch school board or its administrator because that well is dry. In conclusion, I believe LB977 is important legislation, not only to the property owners of the Lynch school district, but to the entire state. LB977 would make school boards and administrators think outside of the box and create ideas that promote a strong command of their financial resources. Population continues to decrease in small towns across the state, and thus fewer tax dollars for funding schools. When this happens, property taxes become the main vehicle to fund school districts. When a property owner is unable to no longer pay his property taxes, then the school loses its entire financial support. I believe that this bill is important to the state for three reasons: Number one, it will keep spending in check and force schools to budget appropriately; number two, this bill will keep what has happened in Lynch from happening to other school districts across the state; and number three, if the school district decides they don't want to budget within limits and keep their spending in check, it give us, the property owner, the right to freehold our land and move our property taxes to another district. Senators, this is important legislation, and I also believe that it is good legislation. Please help us pass this bill through your committee, let's get it onto the floor, and let's make this become state statute. Thank you. [LB977]

SENATOR KOPPLIN: Are there questions? Senator Burling. [LB977]

SENATOR BURLING: Thank you for coming today. You stated in here that, I think I heard you say, this bill would prevent other people from becoming victimized in the future if this bill were to pass. What will this bill do for you immediately--anything or is it too late for you? [LB977]

JEFF KALKOWSKI: Well, we've been fighting this, Senator, for about six years now and finally the idea, with the help of Senator Raikes, came that the way to fight this issue is through the Unicameral and create legislation that would prevent this from happening. What it would do, it would bring their spending under a level that would really help us dollars and cents-wise. But secondly, if people look at this bill and say, oh, my gosh, I'm afraid it's going to burden other small schools. It really is not written that way. It's devised to protect any other kind of outside crafty thinking that people could come up with to save their school. Does that answer your question at all? [LB977]

SENATOR BURLING: Well, kind of. I just kind of wondering if the main focus was to prevent future instances like this or would it really help your situation next year, for instance? [LB977]

JEFF KALKOWSKI: Absolutely. [LB977]

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SENATOR BURLING: Okay. [LB977]

JEFF KALKOWSKI: I believe we have an E-clause in this bill and think beyond this, you know, we can't tell what calf prices are going to be or if we're going to dry out. But at the same time, the spending habits of the Lynch school board have just increased by--what did my brother say--20 percent almost every year, every year, every year. This would put a stop to it. Yes, it would help. [LB977]

SENATOR BURLING: Okay. Thank you. [LB977]

SENATOR KOPPLIN: Senator Adams. [LB977]

SENATOR ADAMS: Would you have parcels of land that would be contiguous to other school districts that would allow you to freehold under this bill if it were to pass? [LB977]

JEFF KALKOWSKI: Yes, I would, sir. [LB977]

SENATOR ADAMS: Just as an example, what kind of a tax levy would you look at if you did freehold? What other school district would you freehold into and what would their tax levy be relative to \$1.62, is that right? [LB977]

JEFF KALKOWSKI: That's correct. For exact numbers, I have heard those that would be West Boyd or the O'Neill school district and they are both, I believe, sub \$1.05. [LB977]

SENATOR ADAMS: Thank you. [LB977]

SENATOR KOPPLIN: Are there other questions? Senator Avery. [LB977]

SENATOR AVERY: Isn't it true that agricultural land is only assessed at 75 percent of market value? [LB977]

JEFF KALKOWSKI: I can't answer that, sir. I don't know. [LB977]

SENATOR AVERY: I think it is, that you actually get a 25 percent cut. [LB977]

JEFF KALKOWSKI: I'm sure...I have a brother that is behind me that will speak that will know the answer to that. [LB977]

SENATOR AVERY: Okay. [LB977]

SENATOR KOPPLIN: Okay. I have one question. You mentioned you've been working

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on this for six years. Has the makeup of the local board changed in that time? [LB977]

JEFF KALKOWSKI: I think the board president has been consistent because she was one that was named when Niobrara and Lynch broke apart. There might be one or two new people, but I think for the most part, it's most of the same people. I believe there's six or seven of them on the board. [LB977]

SENATOR KOPPLIN: Okay. Thank you. Any other questions? All right. Thank you, sir. [LB977]

JEFF KALKOWSKI: Thank you. [LB977]

SENATOR KOPPLIN: Another proponent. [LB977]

DELIGHT HULL: Good afternoon, senators. Thank you for this opportunity to address the committee today. My name is Delight Hull, D-e-l-i-g-h-t H-u-l-l, and I am here also to testify in support of LB977. My husband and I have a ranching operation. I also work full time as a secretary in a school district and my husband does small construction remodeling-type jobs on the side to support our family. And we are the patrons of three Nebraska school district and they are: O'Neill, which has a school levy of 96 cents; West Boyd Unified, which has a school levy of 99 cents; and Lynch with a school levy of, as we've heard, \$1.62. I'm not here because I oppose or support any school district, but rather because I'm concerned about offering a quality education to all children at a fair and equitable cost to taxpayers. We've already thoroughly discussed the freeholding laws here and the three provisions that must be met, one of which has been bypassed, I think, by certain school districts, which is the vote of the people. It would appear that currently there's a loophole in the law that allows school districts to exceed the \$1.05 lid by any amount of a school board at their discretion. This scenario does not allow patrons to freehold their land to neighboring school districts, even when the levy reaches as high as \$1.62, or possibly even higher. This loophole, I believe, could be used by any school district in the state under certain circumstances that they may come up with. I don't think right now we have the same voice that other school districts do in the freeholding process. At this point, they're able to set the levy wherever they like and we just have to swallow it. We're asking that we have an opportunity, as the other patrons in the state, to freehold out of a school district that imposes excessive taxation. I think it's important for all school patrons to have protection in place in state law. One of the points I'd like to make is that if the finances of school districts are handled in a reasonable, fair, and equitably manner, I wouldn't even be here before you today testifying about this. We would have dealt with this on a local level, in a reasonable manner, and come to a conclusion that was acceptable and dealt with in an honorable manner between all of the parties. That's what we're talking about is reasonable, fair, and equitable in educating out kids. I would be happy to answer any questions you may have of me. [LB977]

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SENATOR KOPPLIN: Questions from the committee? Senator Adams. [LB977]

SENATOR ADAMS: So just to make sure that I'm clear on this, I could ask Senator Raikes the same question. But the comment that you made about being treated the same as other school districts in terms of freeholding, so the issue in this case is the judgments are outside of the lid and obviously other schools that have a judgment against them would have the same option, but yours seemingly is extraordinary. [LB977]

DELIGHT HULL: Well, I think any school in the state could find circumstances that they could use this to override that \$1.05 lid. I don't think that was the intent of that law. [LB977]

SENATOR ADAMS: But they'd have to have a judgment against them... [LB977]

DELIGHT HULL: Right. [LB977]

SENATOR ADAMS: ...to do that... [LB977]

DELIGHT HULL: That's absolutely right. [LB977]

SENATOR ADAMS: And not very many would. [LB977]

DELIGHT HULL: That's right. All is well. [LB977]

SENATOR ADAMS: But I can see where you're going. Okay. Thank you. [LB977]

SENATOR KOPPLIN: Other questions? I see none, so thank you, Ms. Hull. [LB977]

DELIGHT HULL: Very good. Thank you, committee, for your time. [LB977]

SENATOR KOPPLIN: Another proponent? [LB977]

CHRIS KALKOWSKI: (Exhibits 7-9) I have three handouts that I'd like to pass around. Good afternoon. My name is Chris Kalkowski, K-a-l-k-o-w-s-k-i. I represent three entities that own land in the Lynch school district. I am an agribusiness lender, a rancher, and a father of two sons. My mother and father were high school educators, as is my wife. I believe that a good education is one of the most important things that we, as a society, have an obligation to provide for our children, and I believe in local control of schools. With that understanding, I come to you today asking for your help. We heard testimony this afternoon about the history about the Lynch school district and what has occurred there. And without a vote, our taxes today are \$1.62 cents, exceeding the \$1.05 levy

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limit by 57 cents. The existing law provides a check and a balance to ensure that our school boards are making sound fiscal decisions. It provides that under the realm of three items. But the landowners in the Lynch school district meet all items, with the exception of a vote of the people. Lynch taxpayers have not had the opportunity to vote on this issue because of the lawsuit that we've heard about. The judgment gave sole responsibility of that payment to the landowners of the Lynch school district, the district that won the lawsuit. In my terms, that means that the Lynch school district is both the winner and the loser. In some rights, it sued itself and won. This judgment has given the Lynch school board the right and obligation to tax its landowners via an exception to our existing levy limit language without a vote of the citizens. The existing law provides for a vote of the citizens to override that limit, not a vote of a school board. The effect of this taxation is significant to one of our operations, K Land and Cattle, who charges \$150 per cow/calf pair rent for a summer. If you extrapolate that out that, it takes six acres to run a cow, that equates to \$25.32 an acre gross cash in. On that same pasture acre, we are paying \$9.11. In percentages, that is 35.97 percent of our gross going directly for real estate tax. I took the time and looked up a quarter in Holt County a few miles south of the Lynch school district that charges \$145 cash rent. Their percentage of gross income going to real estate tax, 13.9. Then I took that and said, let's see what a homeowner in Omaha, Nebraska, does. And just in a one instance, homeowners in Omaha are paying less than 5.5 percent of their gross income for real estate tax. An agricultural family cannot be expected to live and make a living under this kind of taxation. LB977 limits the legal loophole found by the Lynch school district. It continues to allow for exceptions to the \$1.05 limit, but caps those exceptions to a total dollar of \$1.20. It provides Lynch the ability to bring its budget back under the \$1.20 lid by signing a binding resolution and filing it with county officials. It forces some fiscal responsibility on the school boards across the state or provides the people with the tax burden, the check and balance originally intended in freeholding law. It is important for our state to have young people coming home to the farm and ranch. We have an aging agricultural population and many hurdles prohibiting our sons and daughters from making a living in agriculture, an industry that provides jobs for almost a third of our population. My father and mother worked very hard to make sure they built a beautiful ranch to share with their sons. We would now like to do the same for our children, the next generation. By voting in favor of LB977 and passing it to the floor of the Legislature, you will reinstate the check and a balance that will ensure that our school boards manage with fiscal responsibility. I believe that this is good and fair legislation and ask you for your support and thank you for your consideration. [LB977]

SENATOR KOPPLIN: Thank you. Any questions? Senator Adams. [LB977]

SENATOR ADAMS: You know, I can't help but ask and I don't want you to give me any names. Is there no one on the Lynch school board who is also a rancher and a farmer and has to pay these taxes? [LB977]

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CHRIS KALKOWSKI: There are, and I don't want to sound coy when I say this, Lynch is a very small school district. And if you start to look in the population of Lynch and the makeup of the school board, you find that those people, many, a high percentage of them have a connection to that school via a wife, son-in-law, somebody that teaches, somehow they may get their insurance through the school board. I would contend that we don't always make the right decisions when our well-being depends on those people...or our well-being depends on that organization. They... [LB977]

SENATOR ADAMS: Do you not have many people run for the school board? [LB977]

CHRIS KALKOWSKI: There has been a little bit of changeover and actually recently, a change at the executive level. I think the school board has asked their superintendent to save their school at all cost, whatever it takes, and he has come in and said, this is how we do it when this lawsuit came about, and they voted to say, this is how you save your school, you need to vote. Now I will go back to the laws that exist today states that we can override a levy limit by a vote of the people, not a vote of the school board. [LB977]

SENATOR ADAMS: Right. Thank you. [LB977]

SENATOR KOPPLIN: Other questions? Senator Burling. [LB977]

SENATOR BURLING: Thank you. This was a result of a court-issued judgment? [LB977]

CHRIS KALKOWSKI: Yes, sir. [LB977]

SENATOR BURLING: But then the school board said, yeah, okay, we're going to...what you just said kind of sparked that question. You said the school board voted to raise the levy to \$1.62. [LB977]

CHRIS KALKOWSKI: Right. [LB977]

SENATOR BURLING: But the court ordered them to do that or can you... [LB977]

CHRIS KALKOWSKI: The court granted a judgment, and in our law you can fund a judgment, you can pay off a judgment by taxing the vote. In fact, the court case actually says explicitly that this is exempt from state levy limit laws. So what that judgment has given them is in essence a reserve out there that they can tap when they need to meet it to meet their operating obligations. So each year when they set budget, they come down and say our budget is going to have to be \$1.62 to fund our operating dollars. That's over our \$1.05. We can go to \$1.05 without a vote of the people, we'll take the rest from the judgment, and we'll pay on the judgment. [LB977]

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SENATOR BURLING: But did you say that the school board did have a choice, or did they not have choice? [LB977]

CHRIS KALKOWSKI: The school board each year has a choice how much to tax to pay on that judgment. [LB977]

SENATOR BURLING: Okay. Thank you. [LB977]

SENATOR KOPPLIN: Any other questions? Okay. Thank you, Mr. Kalkowski. Are there other proponents? Are there opponents? Neutral testimony? [LB977]

VIRGIL HORNE: Mr. Chairman, members of the committee, my name is Virgil Horne, H-o-r-n-e, representing the Lincoln Public Schools. Our conversation is not meant in any way to diminish the conversation you're having with Lynch. But we find ourselves in the situation where we have had voter approved bonds, and we just want to make your attention to the amendment on this bill, which is very important to us because without the amendment, this bill does impact the Lincoln Public Schools on a voter-approved type of situation. So while we have no position on the other part of the bill, we would certainly ask you to consider the amendment that has a direct impact on the Lincoln Public Schools. Thank you. [LB977]

SENATOR KOPPLIN: Questions for Mr. Horne? Thank you, Virgil. Other neutral testimony? Senators Raikes, would you like to close? [LB977]

SENATOR RAIKES: (See also Exhibit 11) Thank you, Senator Kopplin. Senator Burling, I'll just mention quickly that you talked about the contiguous nature, and I think as you understand, the reason for that is you don't want holes in islands and all this kind of thing. But with freeholding, you know, I'm contiguous to the district next door and your contiguous to me, so as soon as I go, you're instantly contiguous. So it could be a limit, but it's not the limitation you might think that you'd have to wait a long time to become contiguous or something like that. So with that, I don't think I can add to the story that's been offered by the people on the ground, so to speak. [LB977]

SENATOR KOPPLIN: Okay. Senator Adams. [LB977]

SENATOR ADAMS: Senator Raikes, following along that same line of thinking that you just had with contiguous, so if property owner A that is contiguous with a different school district meets the guidelines, they make application--I think last year in statute we set the time and all of that business--and so they freehold into the next school district. The land then adjacent to them that now becomes contiguous, do they have to wait a year before they can file to freehold? [LB977]

SENATOR RAIKES: I don't think so. No, I don't think so. [LB977]

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SENATOR ADAMS: So within that application period...so you literally could draw a corridor through a district. [LB977]

SENATOR RAIKES: Right, right. They have to wait until the ink is dry on the one before, no longer. [LB977]

SENATOR ADAMS: You literally could have a corridor right through the heart of a district. [LB977]

SENATOR RAIKES: Yeah. It's a very rapid domino. [LB977]

SENATOR ADAMS: Thank you. [LB977]

SENATOR KOPPLIN: Senator Avery. [LB977]

SENATOR AVERY: Thank you, Senator Kopplin. What is your opinion of the concept of freeholding? I'm beginning to think I don't like it because you can have...as more and more properties freehold, you extend infinitely beyond the area because each property becomes contiguous. To follow up on what Senator Adams was saying, it's a little bit like a country saying I need a buffer zone to protect me from my neighbors. Well, then I need a buffer zone for that buffer zone, and then I need another buffer, and pretty soon, you've consumed your neighbors. [LB977]

SENATOR RAIKES: Well, it's a very good point because I think the real value of freeholding is that it's there and possible, but not used. And actually I think our history in the state have been it's been in statute for some time, and until, gosh, I think last year, had never been used. You know, the idea was to make the message clear that, look, if you incur these conditions: you've got fewer than 60 students, you're within 15 miles, then you should think seriously about passing an override because if you do, you'll unleash freeholding. And freeholding is going to have very negative consequences for you as a school district, and up until last year, that worked. I mean, whatever had to be done...and, you know, it imposes a, I don't know if discipline is the right word, but it imposes a thought process, I should say, on the school districts involved that look, if we're in that situation where we're going to have to do that, maybe we need to think carefully about what our other options are and how we might better accommodate what we need to accommodate and stay within the expense of the taxpayers. So it's very much something, at least I view, as a threat, that if properly considered, will never become viable. And in fact, that's the way it's used in this bill because in this particular case, the Lynch school district, for example, could say that we are going to this next year get our school district down to \$1.20, and if in fact we do that, then we have prevented freeholding from occurring. Now if we don't, then it's going to happen. So I think you're right. If you're talking about the continued existence and viable operation of

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political subdivisions, particularly school districts, in an environment where you're got rapid and rampant freeholding, that's not really going to be likely. It's not intended to be an option that's exercised often. But it should impose a discipline. [LB977]

SENATOR AVERY: But even at \$1.20, you may not have happy property owners because that's still pretty high. [LB977]

SENATOR RAIKES: Yeah, happier than \$1.62. [LB977]

SENATOR AVERY: Yeah, I see what you're trying to fix, and I think that's... [LB977]

SENATOR RAIKES: Um-hum. And the reason for 15 cents over is to allow, as you know and we'll get into this beginning tomorrow, we do have bonding and so on outside the levy lid and a number school districts have taken advantage of that. So rather than clamp it right down to \$1.05, if you're a 10th of a cent over \$1.05, all this comes unleashed. That's really not consistent with the options we now have in statute. [LB977]

SENATOR KOPPLIN: Thank you, Senator Raikes. That will close the hearing on LB977, and we'll move to LB976. Did I say that right? [LB977]

SENATOR RAIKES: Okay, 976? [LB976]

SENATOR KOPPLIN: Get my numbers right. [LB976]

SENATOR RAIKES: Yes, you handled that well. I mean we deliberately tried to trick you by reversing the numbers there. [LB976]

SENATOR KOPPLIN: Yeah, you did for a while. [LB976]

SENATOR RAIKES: Yeah. Senator Kopplin, members of the Education Committee, Ron Raikes, District 25, here to introduce LB976. LB976 deals not with freeholding, but nonetheless with one of the organizational structures that turned out to be a part of the history at least in the Lynch system, and that is unification. LB976 would amend the provisions for unified systems by providing a method for the withdrawal of a district or the dissolution of a system and by limiting the creation of new unifications. Unifications are interlocal agreements approved by the Committee for the Reorganization of School Districts which join two or more school districts into a unified system to be treated as a single district for most purposes, including state aid. The withdrawal of a participating district or dissolution of a unified system would require each participating district to merge with another district unless the district will be continuing participation in the unified system with at least one other district. We don't want districts coming out of a unification and going back on their own as single districts, although that is what happened in the Lynch-Niobrara situation. In the event of a withdrawal or dissolution,

the rights and liabilities of the participating district would be determined through an action for declaratory judgment. The court would have jurisdiction to determine all matters relating to the rights and liabilities of participating districts, including the allocation of: certificated staff; real and personal property in the name the unified system; local, state, and federal revenue; and liability for the repayment of incentive aid. New unifications could not be created after the effective date of the act, nor could school districts be added to an existing unified system, except through merger with a participating district. So this is restrictive. It does include some options, but it is restrictive. The continuation of an existing unified system of at least two school districts could be approved, even if one or more other districts withdraw from the system. So we've got three, we drop down to two, we can still continue as a unified system. You may be wondering why a school district would want to participate in a unification. As originally envisioned by the founders of the first unification, this structure provided an opportunity for districts with declining enrollments, a key feature, to work together to share resources, increase efficiency, and maintain educational opportunities for their students. However, others have approached unifications for very different reasons, without as much success. If a unification causes one or more of the districts to move into the sparse or very sparse cost grouping, there is a substantial financial benefit that can be shared. And I think you heard that this is what happened in Lynch-Niobrara. Currently, the difference between standard and sparse cost groupings is \$2,086 per student, or over \$500,000 for a district as small as 250 students, and the difference between sparse and very sparse is \$1,767 per student. If a district of 250 students move from standard to very sparse, the system would gain just under \$1 million. Where the original vision of cooperation was the focus in creating a unified system, there has been success. However, unifications that have been founded in financial motives unrelated to cooperative efforts have struggled and even failed, as we saw in Lynch-Niobrara. So that's the proposal here dealing with this organizational structure and basically phasing it out. [LB976]

SENATOR KOPPLIN: Are there questions for Senator Raikes? Senator Adams. [LB976]

SENATOR ADAMS: Senator, I have two questions for you. Mr. Chair, you don't mind? One of them would be very obvious, I guess, but I just want to make sure in my mind. This bill does not intend to do away with the concept of unification, just say that if you have a unified system, you break up, you got to find somebody else to hook up with. Is that correct? [LB976]

SENATOR RAIKES: Well, it prohibits the formation of new unified systems. [LB976]

SENATOR ADAMS: It does. [LB976]

SENATOR RAIKES: In other words, you can't start from scratch and form a new unified system. [LB976]

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SENATOR ADAMS: Okay, which leads me to my next question. How do unified systems differ from the learning community model that we created last year? [LB976]

SENATOR RAIKES: It's a good question. It's certainly...some of the concepts in unified systems were key in what we came up with to use in the learning community model. One of the differences, interestingly, is that the common levy in the unified system is a much more rigid and stringent one than it is in the learning community. In the learning community, there's a 95 cent common levy and then a discretionary levy or up to 95 cents. In a unified system, there is simply a common levy; it's the same levy throughout. There is a governance structure in a learning community. I think if I remember correctly, you maintain the individual school boards, but then there is a super board that's over the entire unified system. So those concepts are there. [LB976]

SENATOR ADAMS: So the unified system, they don't retain their individual school boards... [LB976]

SENATOR RAIKES: They do, they do. [LB976]

SENATOR ADAMS: ...in a unified system. [LB976]

SENATOR RAIKES: And each individual school board has, depending on the...again, this is an interlocal agreement, so it's not really spelled out...they have members that sit on the super board, if you will. [LB976]

SENATOR ADAMS: Okay. But those members come directly from the participating schools within the unified... [LB976]

SENATOR RAIKES: I think so in every case, as far as I know. [LB976]

SENATOR ADAMS: And because they are interlocal agreements, they also get the additional spending authority? [LB976]

SENATOR RAIKES: I would assume so. I don't know that that has been and maybe that's been a factor in some of them. But I think you're right. I think the additional budget authority would go with that. [LB976]

SENATOR ADAMS: Okay. Thank you. [LB976]

SENATOR RAIKES: Now, you know, another I think important difference to keep in mind say with the learning community as it was in LB641 is at least the focus of that issue was on school districts dealing with a certain set of problems: at-risk kids, sharing resources, so on. Whereas in unified systems, typically, as I mentioned here, the focus

has been on school districts with declining enrollments were simply getting down to a point in terms of number of students that it's no longer feasible to operate. If I can characterize, and maybe inaccurately, how I think some of these have developed. We form a unification--and this is certainly not all of them, I don't want to say that--but we form a unification. By doing so, one of us is standard and we can go together in a way that the entire system is sparse, or maybe even very sparse if we really do it right. So all of a sudden, we have additional money available to deal with the issues that we're dealing with, particularly declining enrollments. Okay? As we go through time with the new system, well, if the declining enrollment problem continues, we finally get to a point where, gosh, even with this additional money, we really can't make this work, we're down to a point where we simply don't have the students to support it. So then you get to the stage where, well, you know we hoped we wouldn't have to do this, but we're trying to operate too many school buildings. And we had a high school and a grade school in your town, we had a high school and a grade school in my town. You know, we just can't afford that anymore. So, the obvious solution is to get rid of your high school and keep mine. And what that typically does is offends you, because that's the kind of guy are, and so you break off and bolt the unification or something like that. So it's been, after a certain amount of time it seems, very hard for these unification to hang together because really what the organizational structure did was kind of paper over the problem a little bit with more money, but it didn't stop the underlying forces, and once those underlying forces gained more momentum... [LB976]

SENATOR ADAMS: They break up. [LB976]

SENATOR RAIKES: ...then we're back to the... [LB976]

SENATOR KOPPLIN: Other questions? Senator Avery. [LB976]

SENATOR AVERY: Yes. Thank you, Mr. Chair. I probably could figure this out if given enough time, but I think you can do it faster than I can, so I'm going to ask you. [LB976]

SENATOR RAIKES: I would hate to deprive you of that pleasure. [LB976]

SENATOR AVERY: How does this affect Lynch-Niobrara? [LB976]

SENATOR RAIKES: Actually I don't know that it would affect Lynch-Niobrara. Really one of the aspects that had it been in place at the time of that dissolution, it would have said that neither district could go back as a separate district. It would have said that if they weren't going to remain in a unification, they would have had to exit the unification and merge with another district. So that would have been effect, but it wasn't in place at the time that dissolution occurred so that effect isn't there. [LB976]

SENATOR AVERY: And I see that this committee and the Legislature has been working

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on this since about 2004, and just in 2006 decided to IPP something similar to what you're doing now. It was Legislative Bill 357, that was in '05. [LB976]

SENATOR RAIKES: Yeah, I don't remember exactly, but I'm guessing what happened that that was something the committee worked on, it was left in the committee, and at the end of a short session it was IPPed via the mass motion upstairs where... [LB976]

SENATOR AVERY: It was February of '06. [LB976]

SENATOR RAIKES: Pardon? [LB976]

SENATOR AVERY: February of '06. That was the short session. [LB976]

SENATOR RAIKES: Okay. Yeah. [LB976]

SENATOR KOPPLIN: Other questions? Okay. Thank you, Senator Raikes. Are there proponents for LB976? Are there opponents for LB976? Neutral testimony? Senator Raikes, you may close. [LB976]

SENATOR RAIKES: I'm going to consider that a victory. I mean, (laughter) there weren't any opponents so I'll waive. [LB976]

SENATOR KOPPLIN: (See also Exhibit 10) Senator Raikes waives closing, and that will end the hearing on LB976. [LB976]

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Disposition of Bills:

LB903 - Indefinitely Postponed.
LB976 - Indefinitely Postponed.
LB977 - Advanced to General File, as amended.
LB1089 - Indefinitely Postponed.

Chairperson

Committee Clerk