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Urban Affairs Committee
February 15, 2011

[LB42 LB55 LB190 LB329]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 15, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB42, LB55, LB329, and LB190. Senators present: Amanda McGill, Chairperson; Colby Coash, Vice Chairperson; Brad Ashford; Tanya Cook; Bob Krist; and Paul Schumacher. Senators absent: Jim Smith.

SENATOR MCGILL: (Recorder malfunction) ...get things rolling here and get in and out as quickly as we can because I'm not feeling well. (Laugh) Welcome, everyone, to the Urban Affairs Committee. I'm Amanda McGill. I'm the Chair of the committee. I represent northeast Lincoln. Serving on the committee as well, we have: Senator Bob Krist here on my right; and Senator Tanya Cook directly to my left; and Senator Paul Schumacher a little farther down there. Laurie Holman here is our research analyst and Katie Chatters is our committee clerk; if you'd all remember to turn off your cell phones or put them on vibrate or quiet that would be helpful so that no one is disrupted while testifying. Go ahead, if you're going to testify, we have forms right next to the doors that you can fill out with your name or even if you don't want to testify but want to list your support or opposition to a bill, you can do that on those forms. When you come up here, make sure that you say your name and spell it for the record. We may have lights sitting up there on the table, but we're not going to use them today. I don't anticipate anything going super long today, so. But please try to still be concise and nonrepetitive. We really appreciate that. And with that, we will go ahead and open with LB55. Senator Mello.

SENATOR MELLO: (Exhibit 1) Good afternoon, Chairwoman McGill and members of the Urban Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District, which includes south Omaha and Bellevue. Currently, the state of Nebraska has adopted a 2003 International Energy Conservation Code as the Nebraska Energy Code. As a condition of receiving our share of nearly \$31 million for the state energy program under the American Recovery and Reinvestment Act of 2009, ARRA, the state of Nebraska was required to provide assurances that we would update our building codes to the standards required under ARRA. Unfortunately, no attempt to update the code was made by the Governor, the Nebraska Energy Office or the Legislature during the 2010 legislative session. The potential adoption of the 2009 IECC was the topic of the LR468 interim study I brought before this committee, and LB55 is a direct result of that interim study which the Nebraska Energy Office chose not to participate in. Section 410 of ARRA requires the state of Nebraska to implement a building energy code or codes for residential buildings that meets or exceeds the most recent published IECC or achieves equivalent or greater energy savings. At the time of ARRA's passage, the most recent IECC was the 2009 version. And while Section 410 does not specifically require that the code be updated by a certain date, it does require that we demonstrate compliance to the 2009 IECC within eight years of ARRA's enactment in at least 90 percent of new and renovated residential buildings. LB55,

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which would adopt the 2009 IECC as the Nebraska Energy Code, is designed to bring our state in compliance with the requirements of ARRA. Based on information provided to my office by the U.S. Department of Energy, it appears that failure to adopt the 2009 IECC could potentially spur efforts by the Department of Energy to recoup the \$30.91 million in state energy program funds received by the Nebraska Energy Office. Again, while ARRA did not set a specific deadline for updating the code, it is left to the discretion of the Secretary of Energy to seek recovery of federal funds that were granted to a state if the conditions those funds were contingent upon are not met. Under existing federal law that predated ARRA, each time a new edition of the IECC is adopted, the Department of Energy is required to review that code to determine whether the new code is more energy efficient than the previous codes and to publish their findings in the federal register. States then have two years from the date of publication to certify to the Department of Energy that they have reviewed their energy code at that time. Findings with regard to the 2009 IECC were published in September 2010, which means that if Nebraska has not updated their energy code by September 2012, we will have to justify that decision to the U.S. Department of Energy and potentially trigger an effort by the Secretary to recoup the \$30.91 million in previously spent federal funding. Aside from the requirements of ARRA, there are many beneficial reasons to update our current energy code to the 2009 IECC. An analysis by the Vandemusser Design that was commissioned by the Nebraska Energy Office found that a new home in Omaha with a 15 percent window-to-wall ratio would cost just \$476 more to construct under the 2009 IECC. That same home, however, would experience \$164 in annual energy savings, providing the homeowner with a less than three-year payback window. Furthermore, the Vandemusser study found that an Omaha home with an 18 percent window-to-wall ratio as well as most homes in most Nebraska cities would actually cost less to construct under the 2009 IECC while still providing significant energy savings to the homeowner. My office has put together a few materials that should help the committee understand the ARRA requirements as well as information about the benefits of adopting the 2009 IECC. Also included is the information about the grant the Nebraska Energy Office received in December, which has the potential to help fund code official and builder trainings as well as ARRA code compliance activities. Thank you for your time and I'd be happy to answer any questions you may have. [LB55]

SENATOR MCGILL: Do we have any questions from the committee for Senator Mello? No. Seeing none, thank you. And do you plan on...okay. [LB55]

SENATOR MELLO: And I waive my closing too. Off to another committee. Thank you. [LB55]

SENATOR MCGILL: All right. Thank you, Senator. Do we have any proponents here today on LB55? Welcome. [LB55]

RICK CUNNINGHAM: (Exhibits 2-3) I'm Rick Cunningham. I am the planning director

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for the city of Omaha, and I'm actually here as a proponent for both LB55 and LB329 and realize the bills are similar and, therefore, if I can I'll just... [LB55 LB329]

SENATOR MCGILL: That's fine. [LB55]

RICK CUNNINGHAM: ...have comments that can be used for both. One, in our estimation, is simpler, more direct. Just adopt a code. And others have got some language in it that we believe would be a little confusing, maybe a little tough, but we still think the concept of adopting the energy code is good and for the following reasons. December 14, 2010, the city council, following the lead of the planning board of the city of Omaha, adopted 7 to 0 our environmental element of the city of Omaha's master plan. That master plan took two years to put together. Four thousand volunteer hours by over 200 volunteers working to put together that environmental element of our master plan, the first environmental element of the city of Omaha's master plan. There are five elements in that master plan, over 600 strategies to implement its various strategies, action items, dedicated to improving, protecting the environment of the city of Omaha. Key to a lot of those is energy efficiency and how we build and react to our natural environment, the use of alternative energy, and so forth. So during that effort, a number of other things have occurred in the city of Omaha, including a \$4.6 million grant from the Energy Efficiency Conservation Block Grant Program that helped to establish the city of Omaha's first sustainability office, staffed first with our sustainability coordinator and now four new employees who are implementing that grant program. A number of different things that have occurred...that are occurring under that grant program will be our comprehensive energy management plan which is being planned at this moment, which one of the important elements is to look at the energy efficiency of the city of Omaha's buildings, doing energy audits, and then we will be doing energy updates of those buildings. In that case, we're walking the talk (sic) as well as walking the walk as far as energy efficiency of the buildings, as well as then looking at other initiatives under the Energy Efficiency...under that grant. Another aspect of that program, that office, is that we, in December of 2010, were identified by the Department of Energy to bench test the Home Energy Score program, which is exciting. We're one of few communities that will help compare that against the HES evaluation methodology. And another exciting aspect under that office is that we jointly, with the city of Lincoln, pursued a grant that in November of 2009 from...again, under the Energy Efficiency and Conservation Block Grant Program from the Department of Energy originally called the "retrofit ramp up." I don't know if you've heard about that. In April of 2010, we were awarded a \$10 million grant in concert with Lincoln--only half of what we asked for, you never get all you want. (Laugh) But, anyway, the goal there is to work on existing structures--3,200 residential energy upgrades and 260 commercial and nonprofit energy evaluations by May of 2013. An awesome, awesome program. The city of Omaha is leading that effort and we're splitting those numbers two-third/one-third: two-third to Omaha; one-third to Lincoln. Okay. So I present that information really to point out that the city of Omaha is serious about energy, energy conservation, energy efficiency, how

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we deal with our environment as is evidenced by our environmental element of our master plan, the fact that we've really jumped ahead since the master plan was just adopted in December of last year and we've actually started a lot of these initiatives while that process was going on. So we're here today and the energy code. You may or may not be aware that the city of Omaha is currently enforcing the 2006 IECCs, and we did that by requesting special permission from the state to do so because we felt that that was a code that was more easily enforced and used. We did receive permission to do so and are currently enforcing the 2006. Senator Mello indicated a number of different studies that have been done that show by implementing the 2009 on new construction that we will achieve significant increases in energy efficiency in our building stock, and that is what our environmental element is all about. The bottom line: This saves our citizens money, puts more money in their pockets instead of in energy costs. It helps the United States if everyone gets on board with this as far as our energy independence. And so strongly a proponent and suggest that you carry forth the good work that you're doing, clarify, simplify, make it easy. I like to say "kiss it." (Laughter) Keep it simple. Okay? Certainly we would be open and available for all questions today and any time. The information that I have just talked about I've tried to provide more information on it. I've been down here two or three times this year and this is the first time I actually put together a folder for you, so my card is stapled to the inside cover. Please do not hesitate to call me or Kristi Wamstad-Evans who is our sustainability coordinator. We will be more than happy to answer any questions to help in any way. [LB55 LB329]

SENATOR MCGILL: Well, thank you, Mr. Cunningham. [LB55]

RICK CUNNINGHAM: Are there any questions for me? [LB55]

SENATOR MCGILL: Are there any questions? Senator Krist. [LB55]

SENATOR KRIST: Thank you for coming. This is more of a generic question in terms of a decision-making process, but we've talked about codes at great length here in this committee over the last couple of years. One of your colleagues at the city told us that they were actually planning and working towards implementing the 2012 code even though that code...in certain areas, even though that code was actually not in print yet. It seems that the city of Omaha does an incredible amount of work trying to get to the next level, the next code, and monitoring through that. Would that information and that process be available to all the communities around Nebraska who would look at your decision process and how you look at the codes and how you adopt them? [LB55]

RICK CUNNINGHAM: Absolutely. Without a doubt. [LB55]

SENATOR KRIST: Okay. [LB55]

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RICK CUNNINGHAM: Now (laugh) we are on a...basically a three-year cycle on adopting codes. We don't adopt them quickly. They are evaluated and then looked at with our citizens, with the industry that they will be basically regulated to, to make sure that, one, that they are in a buy-in mode and not a fight mode when we adopt these codes because we will enforce them thereafter. But I'd certainly be open to anyone who wants to talk to us. And we...at least around our neighborhood and the region around Omaha, we cooperate when we look at codes now, so we would continue to do that. [LB55]

SENATOR KRIST: Well, we appreciate the buy-in mode rather than the fighting mode, so thank you (inaudible). [LB55]

RICK CUNNINGHAM: It's a lot easier to do it that way. [LB55]

SENATOR KRIST: Yes, sir. Thanks for your time. [LB55]

SENATOR MCGILL: Any other questions? Well, thank you very much for coming down. [LB55]

RICK CUNNINGHAM: Thank you. [LB55]

SENATOR MCGILL: Are there any other proponents? I know we have a similar bill next, so some people may be waiting for that one. [LB55]

DAVE JOHNSON: Good afternoon, Senators, Chairwoman McGill. I'm Dave Johnson with Studio951 architects. I'm here representing AIA Nebraska. My address is 800 P Street, Suite 203, Lincoln, Nebraska. AIA Nebraska is in support of both LB55 and LB329, if you don't mind me throwing that in. [LB55 LB329]

SENATOR MCGILL: That's fine. [LB55]

DAVE JOHNSON: Architects are confronting the fact that buildings are the largest single contributor to greenhouse gases. We're committed to the importance of good design that responds to human needs while incorporating principles involved in making a more sustainable environment. The American Institute of Architects is committed to developing and promoting the means towards carbon-neutral buildings by 2030. AIA Nebraska feels LB55 and LB329 continue to move our state in a positive direction towards the reduction of carbon emissions to eventual carbon neutrality. Open for any questions. [LB55 LB329]

SENATOR MCGILL: Any questions? [LB55]

DAVE JOHNSON: (Exhibit 4) I've got a copy of the letter that I'll leave with you. [LB55]

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SENATOR MCGILL: All right, Mr. Johnson. Thank you. [LB55]

DAVE JOHNSON: Thank you. [LB55]

SENATOR MCGILL: (See also Exhibits 12-13) Any other proponents? All right. Anyone here in opposition? Anyone neutral? All right then. With Senator Mello gone, we'll close the hearing on LB55 and move on to LB329. Senator Cook. [LB55]

SENATOR COOK: (Exhibit 5) Thank you, Madam Chair. Thank you, fellow members of the Urban Affairs Committee. I am Senator Tanya Cook, that's spelled T-a-n-y-a C-o-o-k. I represent the 13th Legislative District in Omaha, and I appear before you today to introduce LB329, which adopts the 2009 International Energy Conservation Code, which we'll call the IECC. I introduce LB329 on behalf of the Nebraska Energy Department. Here is why. Reasonable efforts to update the Nebraska Energy Code are required as a condition for Nebraska to receive nearly \$31 million of funding for the state energy program under the American Recovery and Reinvestment Act. If the 2009 International Energy Conservation Code is not updated, the state of Nebraska will risk future funding of the state energy program and will not be able to remain competitive when seeking federal funds. An assurance letter from Governor Heineman was sent to the U.S. Secretary, Steven Chu, that a good-faith effort will be made to update the Nebraska Energy Code. I hope you join me in supporting this legislation to make certain that we make good on Governor Heineman's assurances by advancing LB329 to the floor. The nearly 115 million residential households and 5 million commercial buildings consume about 40 percent of all energy in the United States. Building codes play a critical role in reducing energy consumption, lowering energy bills, and reducing the nation's carbon footprint. According to the Building Codes Assistance Project, if Nebraska began the implementation of the 2009 IECC statewide in 2011, businesses and homeowners will save an estimated \$29 million annually by the year 2020 and \$58 million annually by 2030 in energy costs, assuming 2006 prices. A limited analysis by the U.S. Department of Energy shows that the adoption of the 2009 IECC in Nebraska resulted in estimated energy savings of 13 percent, about \$236 per year for an average new house with a gas furnace and energy star rated equipment. The adoption of the 2009 IECC will lower the energy use in the state and promote the health and safety of Nebraska families. Nebraskans purchasing a new home will be able to afford to stay warm in the winter and cool in the summer. Indoor and outdoor air quality will be improved because of a lower demand on power generators. Additionally, greenhouse gas emissions will be reduced. If the energy code in Nebraska is not updated to the 2009 IECC, our state may lose the opportunity to apply for future grant funding. As part of President Obama's proposed Better Buildings Initiatives, states will be able to apply for competitive grant to streamline standards for codes. In an effort to train the next generation of commercial building technology workers, there will be a launch of a building construction technology extension partnership to provide training and tools for a

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variety of jobs and opportunities in this area. In addition to updating the Nebraska Energy Code from 2003 to 2009, LB329 also makes necessary definition changes of existing structures and historic buildings. The changes in definitions come directly from the 2009 code book and will allow Nebraska statutes to be consistent with the 2009 IECC. LB329 also strikes language exempting buildings in certain local code jurisdictions from being subject to an energy code audit by the Energy Office if requested by the building owner. Current rules and regulations allow the Energy Office to audit such buildings. No enforcement or penalties are associated with the statutes or codes. Finally, LB329 includes language allowing for continued training when the Energy Office training funds are depleted. These trainings would be at the expense of those requesting the training and would not cost the state money after grant funds have been depleted. The agency scheduled four free training sessions on the new code as well as two free sessions on energy efficient construction for local code officials, builders, engineers, architects, and contractors. Currently more than 400 people are registered for these workshops. The Nebraska Energy Office will continue to offer free training until the grant and ARRA funds are depleted. After discussion with local code officials, I'm asking the committee to strike the section on page 9 that says written approval must be granted by the Energy Office if a local code jurisdiction wants to make a change to the code or adopt another code. I would like the statutes to retain their current language in that section. The Energy Office and I felt it best to remove this section, allowing for more local control, and you'll see that amendment coming, being passed around. Representatives from the Nebraska Energy Office are here to discuss the legislation and the savings that can be achieved by adopting the new code. Building energy codes play a key role in reducing our energy costs, our nation's reliance on fossil fuels, carbon emissions, and increase the comfort in our homes. The benefits of higher building efficiency clearly show energy savings in each home which outweighs barriers of building to these higher standards. This concludes my testimony, and I ask the committee to look favorably upon advancing LB329 to the floor for debate. Thank you. [LB329]

SENATOR MCGILL: Thank you, Senator Cook. Are there any questions? No. Thank you for your opening. [LB329]

SENATOR COOK: I'll hang around. [LB329]

SENATOR MCGILL: Sounds good. [LB329]

SENATOR COOK: All right. [LB329]

SENATOR MCGILL: First proponent. Are there any other proponents who didn't testify on the first bill that plan on...okay, several. All right. Oh, wonderful, thanks. [LB329]

GINGER WILLSON: (Exhibit 6) Good afternoon, Chairwoman McGill, members of the

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Urban Affairs Committee. My name is Ginger Willson, that's G-i-n-g-e-r W-i-l-l-s-o-n, and I am the director of the Nebraska Energy Office. I appear before you today to testify in support of LB329, and I would like to thank Senator Cook for introducing LB329 on behalf of the Nebraska Energy Office. On April 14, 2009, Governor Heineman sent an assurance letter to U.S. Department of Energy Secretary Steven Chu and Speaker of the Nebraska Legislature Mike Flood in a good-faith effort that would be made to upgrade Nebraska's building energy codes. This assurance letter was required as a condition for Nebraska to receive \$30.9 million in funding for the state energy program. The American Recovery and Reinvestment Act specifically allocates funding to support state building energy efficiency projects. Implementing the 2009 IECC allows the agency to remain competitive in seeking federal funds for state energy programs. These competitive federal grants help finance future energy efficiency programs administered by the Nebraska Energy Office. Failure to implement the 2009 International Energy Conservation Code may place the federal funding that the agency receives in jeopardy. The Nebraska Energy Office secured grants and utilized our ARRA funding to study the cost effectiveness of the 2009 IECC. Dr. Amy Musser was under contract by the Energy Office to conduct a study regarding the cost impacts of upgrading the Nebraska State Energy Code from the current 2003 IECC to the 2009 IECC for single-family residential dwellings. The findings of Dr. Musser's study indicate that homes constructed according to the requirements of the 2009 IECC would consume less energy annually in homes in all areas of the state. The reduction in whole house energy consumption ranged from 3 to 12 percent. And in an 1,852 square foot home with 15 percent window-to-wall ratio and a conditioned basement constructed in Omaha would see an estimated increase in construction cost of \$476. This same home could expect to experience \$164 in annual energy savings, providing a less than three year simple payback. Homes with a window-to-wall ratio greater than 18 percent, the construction cost for building to the 2009 IECC is actually lower than if building to the 2003 IECC, showing an instant payback for the homebuyer. Leo A Daly, an engineering firm in Omaha, compared the energy savings from the 2003 IECC to the 2009 IECC in two models of buildings in the Omaha area--a retail strip mall and a small retail building. The retail strip mall showed an energy savings of 5.27 percent and the small retail building showed an energy savings of 6.18 percent. These ratios may go down slightly depending on the window-to-wall ratio. The 2003 code divides the state into three different climate zones with different insulation requirements in each zone. The 2009 code provides uniformity by placing the state in one climate zone and has the same insulation requirement for varying window percentages. There are three key differences between the 2003 and 2009 codes. The first difference is the R20 insulation/framing requirement. The prescriptive table in the code calls for R20 insulation in two-by-six wall framing or R13 cavity plus R5 continuous insulation in two-by-four wall framing. The R13 plus R5 option still allows builders to use a two-by-four exterior wall framing. The code also allows for RESCheck, which means a builder can do building envelope trade-offs to reduce wall system R values. These options are outlined further in the code. The second difference is the requirement of a duct blaster test. This test measures the amount of air leakage

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through cracks in holes in ductwork. This test is not required if the air handler and all ductwork is located inside the building thermal envelope, also known as the conditioned space. Only a minimal percentage of homes constructed in Nebraska have ductwork not located inside the thermal building envelope. If a duct blaster test is needed, the code allows considerable flexibility. It can be conducted by anyone, including the installer or a third party. It can be done either after rough-in of the ducts or after the completion of construction. The Energy Office is committed to working with the homebuilders during our rules and regulations process to address their specific current concerns in this area. The third difference is the requirement of completing a building tightness or blower door test for air infiltration. This test is not required if inspectors verify air sealing implementation by using the air barrier to insulation component criteria checklist found in the code. Inspectors who currently visit construction sites to check code compliance will conduct this visual test. This visual checklist can be done by the homebuilder where there is no local code jurisdiction and enforcement falls on to the state. The last difference we would like to address is in Senator Cook's amendment, AM324. After discussion with code officials and representatives of the municipalities, the agency felt that this requirement restricted local code authority. And the Energy Office is supportive of Senator Cook's amendment. The Energy Office formed an advisory group back in October comprised of homebuilders, general contractors, code inspectors, engineers, architects, public utilities, and natural gas companies to discuss future training, compliance, and key changes in the adoption of the 2009 IECC. I appreciate the efforts of this group to come together and work on energy efficiencies contained in the 2009 IECC. Energy codes reduce the amount of energy consumed each year. These codes benefit homeowners by ensuring the newly constructed home utilize modern building technologies and products that make the home more energy efficient. The Nebraska Energy Office supports the passage of LB329. This concludes my testimony, and I will be happy to take questions. [LB329]

SENATOR MCGILL: Are there questions? I don't have a question but I do just, I guess, have a comment I guess. I appreciate all the work you've done and the working group you put together. I was a hair frustrated at the beginning of session where two bills were introduced on this subject matter, especially since Senator Mello had...we did an interim study on this through him and, you know, he's put a lot of work in. And I know whenever I get e-mails asking about this updated code I go to his office because I knew they were so up on these issues. And so I really wish that there would have been more cooperation so that we could have avoided the necessity of two bills since...I mean he's kind of our nonofficial member of this committee when it comes to energy issues. And so I hope that in the future there can be more cooperation so that we can avoid like a duplicate hearing like this. [LB329]

GINGER WILLSON: Absolutely. And I think, you know, the Energy Office has had a long history of working with codes way back to the 1980s. And the history with our office has always been, way prior to me even being there, working with members of this

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committee and actually utilizing a member of this committee to carry the codes. And so that was the guidance that we just continue on just to keep some uniformity within the office and the history just kind of I guess precedence. [LB329]

SENATOR MCGILL: And I appreciate that. [LB329]

GINGER WILLSON: So that's kind of... [LB329]

SENATOR MCGILL: Since we did an interim study, maybe coming through my office to see where we were with that study may have prevented this perhaps. I don't know, but I'm just throwing it out there so hopefully we don't have a duplication again in the future. [LB329]

GINGER WILLSON: Sure. [LB329]

SENATOR MCGILL: All right. Senator Schumacher. [LB329]

SENATOR SCHUMACHER: Thank you, Senator McGill. Is because the Governor made this commitment in order to get the money from the feds, is the Governor requesting that we make these amendments? [LB329]

GINGER WILLSON: The Governor is supportive of this legislation and he has asked our office to work with Senator Cook's office and that is why that particular bill carries some additional changes than LB55 does. And I haven't spoken to the Governor's Office specifically about the amendment, but certainly we worked very closely with them on the amendment. And the fact that we have the support of the code officials and municipalities on taking that out, it does allow for more local control and that certainly has been a longstanding level of support the Governor has had. [LB329]

SENATOR SCHUMACHER: Thank you. I have nothing else. [LB329]

SENATOR MCGILL: All right. Thank you, Ginger. [LB329]

GINGER WILLSON: Thank you. [LB329]

SENATOR MCGILL: Next proponent and feel free if you plan on speaking on this maybe to come up to the front so there's that quicker flow in-between testifiers. I'd appreciate that. All right. [LB329]

NATHAN PEPPER: (Exhibit 7) Good afternoon. My name is Nathan Pepper, N-a-t-h-a-n P-e-p-p-e-r. I'm with Midwest Energy Efficiency Alliance or MEEA. I'd like to thank the committee for giving me this opportunity. MEEA is a collaborative network advancing energy efficiency in the Midwest to support sustainable economic development and

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environmental preservation. MEEA's building energy code program works to promote the adoption and implementation of building energy codes throughout the Midwest. MEEA encourages the state to adopt the 2009 IECC without amendments as this will result in significant energy savings over the 2003 IECC, Nebraska's current state energy code. There are many distinctions between the 2009 and 2003. The current state code requires ducts to be sealed but not to a specific leakage rate. The 2009 sets specific leakage rates and states ducts must be verified by testing if ducts are outside of the envelope. Fifty percent of the lighting in a building has to be high efficacy lighting in the 2009 IECC. The 2003 has no lighting requirements. Trade-off credit can no longer be obtained for high-efficiency HVAC equipment in the 2009 while the use of high-efficiency equipment promotes savings, making the envelope less effective in exchange for using high-efficiency equipment is not a cost-effective approach to energy efficiency. Whole home infiltration levels have been set at seven air changes per hour for the 2009 IECC. This can be met by either testing envelope tightness with the blower door or verified through a visual inspection. There is no building envelope air tightness requirement for the 2003 IECC. The 2009 IECC simplifies code implementation and enforcement. Major revisions to the energy code have resulted in a more succinct, energy efficient, and simpler code. One major change since the 2003 IECC is the removal and unification of climate zones. Under the 2009 IECC, the state of Nebraska is covered by one climate zone instead of the current three. This change will result in more uniformity across the state as construction professionals will only need to know one set of requirements instead of three. This update in itself will help with statewide implementation efforts. Placing the state in one climate zone will also make training and enforcement efforts straightforward. Builders and state code officials from across the state will no longer need to concern themselves with building to different requirements of the code in various climate zones around the state. 2009 provides increased energy savings. This savings is a direct result of the tightening of the ducts and building envelope tightness. Additionally, savings from increasing the lighting requirements from 0 percent to 50 percent inside the home will reduce energy use by 9 percent in all cases, providing an immediate payback. Bordering states, such as Iowa, have adopted the 2009 IECC as a statewide code for both commercial and residential buildings. Iowa has been selected by the Pacific Northwest National Laboratory to participate in the 90 percent compliance study. Managed by MEEA, this study will seek to measure the state's baseline code compliance and increase knowledge on how to properly implement and enforce the code. Additionally, the states of Montana and Illinois have adopted the 2009 IECC as their statewide energy code. Resources are available from the U. S. Department of Energy. Numerous training and educational materials on the 2009 IECC can be found on their Web site. The Building Technologies Program Building Energy Codes Resource Guide provides code officials with checklists, support material, and resources for both residential and commercial compliance. MEEA appreciates the work being done to help update the residential building energy code. MEEA strongly urges the committee to adopt the 2009 IECC without amendments as the code will considerably reduce energy use and increase savings. Being more uniform

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and concise, the code will result in greater energy savings across the state, the state will see higher compliance rates, and will meet all requirements within the American Recovery and Reinvestment Act. Thank you. [LB329]

SENATOR MCGILL: Thank you, Nathan. Any questions? No. Thank you very much for your testimony. Next proponent. [LB329]

CHAD PODOLAK: Good afternoon, Chairman McGill and members of the Urban Affairs Committee. My name is Chad Podolak, C-h-a-d P-o-d-o-l-a-k. I'm the energy efficiency manager for Nebraska Public Power District. I manage NPPD's energy efficiency programs to help our public power consumers use energy in the most efficient and cost-effective manner possible. I'm here today testifying for NPPD and the Nebraska Power Association in support of both bills, LB329 and LB55. The Nebraska Power Association represents all segments of the electric power industry, including municipalities, public power districts, power districts and irrigation districts, and cooperatives. When consumers are in the process of building a new home, they sometimes get conflicting direction on energy-efficiency features and standards. The 2009 International Energy Conservation Code provides cost-effective requirements to help consumers who are investing and making the proper investments in equipment, technology, and practices that exceed energy efficiency standards required today. LB329 requires training and enforcement for builders and inspectors to help ensure consistency in construction and compliance across the state. In addition, the bill updates definitions regarding structures and historical buildings to align with the 2009 International Energy Conservation Code. As public power utilities in Nebraska, we do go to great lengths to help consumers manage their energy costs and identify areas of potential wasted energy. For homeowners building new homes, the best opportunity to take advantage of energy efficiency and conservation opportunities is during the planning and building process. The 2009 International Energy Conservation Code provides a level of efficiency standards that allow for cost-effective measures to be part of the construction process when it is the easiest and most practical. I encourage the committee to advance both LB329 and LB55. Thank you and I would be glad to answer any questions you may have. [LB329 LB55]

SENATOR MCGILL: Sounds good. Thanks, Chad. No? No questions. Thank you very much. [LB329]

CHAD PODOLAK: Thank you. [LB329]

SENATOR MCGILL: Welcome. [LB329]

TODD HALL: (Exhibit 8) Good afternoon. Chair McGill and members of the committee, good afternoon. My name is Todd Hall. I'm vice president of consumer services at Lincoln Electric System here in Lincoln. We are here to speak, LES is here to speak on

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behalf and in favor of LB329. We certainly support the efforts of all communities, certainly our own community, but all communities across the state of Nebraska and the state of Nebraska to increase the efficient use of energy. Quite honestly with that you become more comfortable, you save money, you add more disposable income to your bottom line. Lincoln Electric System has long promoted energy conservation and efficiency, today even more so than ever. As LES plans for our future needs in supplying energy to Lincoln and Lancaster County, we recognize that one component of that is efficient use of that energy in the home and in the business. Uncertainties in the national economic, environmental, and technological developments call for greater efficiency in our energy needs today and well into the future. At risk for our customers/owners is increasing costs. Oddly enough, that's rarely palatable to anyone. For over a decade, LES has promoted Energy Star home construction certification. Energy Star construction in the residential and commercial sector enables owners to realize substantial energy savings with greater comfort. Within the LES service territory alone, we have over 730 homes that were certified as Energy Star. Interestingly, the current Energy Star certification is equivalent to that which is proposed in the 2009 International Energy Conservation Code, or hereto called IECC, standards referenced in LB329. We have seen firsthand a growing appetite here in Lincoln for energy efficiency in new home construction. In 1999, just five homes applied and were granted a certification as Energy Star. In this last year in 2010, 123 new homes were certified. Interestingly enough, 50 percent of all of these homes have been granted additional federal tax incentives and tax payments because they have far exceeded the minimum requirements of Energy Star homes. I thank you for your time and attention and be happy to answer any questions the committee may have. [LB329]

SENATOR MCGILL: People are exceeding because they want to save some money in the long run. Sounds good to me. Any questions? No. [LB329]

TODD HALL: That's right. [LB329]

TODD HALL: Thank you for your time. [LB329]

SENATOR MCGILL: Thank you. Any other proponents? Are you the last one? [LB329]

STEVE NORDHUES: Good afternoon, Senator McGill and Urban Affairs Committee. My name is Steve Nordhues, S-t-e-v-e N-o-r-d-h-u-e-s. I am here today representing the Nebraska Code Officials Association and we would like to conditionally support LB329. After the initial introduction of LB329, the Code Officials Association consulted with Nebraska Energy Office in regards to changes made to the statute that was being amended. After brief discussion, the Nebraska Energy Office agreed to reestablish the original language that was being changed on page 9, lines 24 through 25 and page 10, line 1. With this change, the Nebraska Code Officials Association can fully support the updating to the 2009 International Energy Conservation Code. While adopting the most

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recent published codes is important to the construction of safe and efficient homes, it is equally important to allow jurisdictions the ability to amend building codes so that local philosophies and techniques may be utilized. And I think it is important to note that it was the Nebraska Code Officials Association that was the most vocal in trying to get that amendment changed. Nebraska Code Officials Association is appreciative of the Nebraska Energy Office's willingness to take corrective action on LB329. And as always our association of code professionals is anxious to work with state agencies and state senators to develop building codes that make sense for the citizens throughout the state of Nebraska. Any questions? [LB329]

SENATOR MCGILL: All right. [LB329]

STEVE NORDHUES: Yes. [LB329]

SENATOR MCGILL: Senator Krist. [LB329]

SENATOR KRIST: Thank you, Chair. Could you give me the reference for the change you conditionally supported with again, please? [LB329]

STEVE NORDHUES: Page 9, lines 24 through 25, and page 10, line 1. [LB329]

SENATOR MCGILL: It's the amendment. [LB329]

STEVE NORDHUES: That's the amendment that was offered, yes. [LB329]

SENATOR KRIST: Just checking, thank you. [LB329]

SENATOR MCGILL: All right. Thank you very much. Oh, one more proponent. Is there anyone else who plans to testify on this bill either way? Okay. We've got a neutral one back there. [LB329]

PAUL KARRER: (Exhibit 9) Good afternoon, everyone. Thank you for the opportunity to come here and discuss this issue. My name is Paul Karrer. I'm with...that's P-a-u-l K-a-r-r-e-r. I represent the Building Codes Assistance Project or BCAP. We are a nonprofit organization that acts as U.S. Department of Energy's advocacy arm on the issue of building energy codes. We provide custom-tailored assistance to states and municipalities to help them improve code adoption and implementation. And I will be very brief because I don't want to take up more of your time since everyone else has hit most of the main issues of why I think that the state's adoption of the 2009 International Energy Conservation Code or IECC will benefit the state. We believe it will be a major advancement toward a more secure energy future for Nebraska. Model energy efficiency standards will benefit the state for years to come by reducing building energy consumption, increasing utility system reliability, creating a more comfortable living and

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working environment for the state's citizens, and, as you mentioned earlier, most importantly saving households and businesses money through lower utility bills. I have given you guys materials on more than you ever want to know about energy codes, special technical information, and we are here to offer the state our assistance in planning and putting on training and code compliance activities if you desire. And any more information, please give us a call and any questions you may have I'd be happy to answer. [LB329]

SENATOR MCGILL: Questions? No, but thank you for coming out. [LB329]

PAUL KARRER: Okay, thank you. [LB329]

SENATOR MCGILL: Anyone here opposed? And neutral. [LB329]

GARY KRUMLAND: Senator McGill, members of the committee, my name is Gary Krumland, that's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. I'm appearing neutral just kind of talk a little bit about the amendment that Senator Cook offered. In 2004 the Urban Affairs Committee, under the direction of Senator Friend, got all the interested parties together to update the code. And this was one of the provisions that was worked out then. We think it works and we do think it should continue to work. And so we support the amendment and appreciate Senator Cook's offering it and the Energy Office willing to work with us for that. [LB329]

SENATOR MCGILL: Sounds good. Thanks. No questions. [LB329]

JUSTIN BRADY: Chairwoman McGill and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as a registered lobbyist for the Nebraska State Home Builders Association in a neutral capacity, and I'll be short. Some of you may recall when you did the interim study I appeared before and said we had concerns with the energy code and updating that. Working with the Energy Office and having them further explain some of the techniques and different things that were going to be available and also talking about what some of the rules and regs would look like or they envision them looking like, it addressed our concerns to be able to move to a neutral capacity on updating the energy code. And with that, I'd try to answer any questions. [LB329]

SENATOR MCGILL: Great. Senator Krist. [LB329]

SENATOR KRIST: Understanding who you're representing, how does the philosophy of the energy code differ from the philosophy of the building code? [LB329]

JUSTIN BRADY: I would say for the most part they start with the premise that we should be updating codes. I would say so long as those codes had the costs that were

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added, as will be in this bill, there will be costs added to building homes. They've also...they can recoup those costs, homebuilders and homeowners, over time so it's actually saves them money over time. There are some things, as I know this committee has addressed, with building codes that adds costs to homes that doesn't or may not provide that return on investment. And I'd say they want to look at it step by step. [LB329]

SENATOR KRIST: But you're not arguing with the fact that we take an entire section out and we leave the individual municipalities local control in terms of adopting the code. So my question again is, how does the philosophy here differ from the IBC? [LB329]

JUSTIN BRADY: By allowing the locals to adopt a different code? [LB329]

SENATOR KRIST: Opt out. [LB329]

JUSTIN BRADY: Opt out of the code... [LB329]

SENATOR KRIST: Right. [LB329]

JUSTIN BRADY: ...to something less. [LB329]

SENATOR KRIST: Aren't we doing that here with this amendment? [LB329]

JUSTIN BRADY: If that's what you're doing, yeah. [LB329]

SENATOR KRIST: Okay, thank you. [LB329]

JUSTIN BRADY: And I'd say I think their position on the fire sprinklers is they can opt out if they go to something less. [LB329]

SENATOR KRIST: Oh, you said the word. (Laughter) [LB329]

JUSTIN BRADY: So, yes, I think it's a consistent standard that they have. [LB329]

SENATOR KRIST: Okay. Thank you very much. [LB329]

JUSTIN BRADY: Thank you. [LB329]

SENATOR MCGILL: All right, thank you. Senator Cook, would you like to close? [LB329]

SENATOR COOK: Briefly. Thank you all for... [LB329]

SENATOR MCGILL: Come on, we're in a hurry (laugh). [LB329]

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SENATOR COOK: ...for listening. Once again, I'd appreciate your support in advancing LB329 to the floor. I should highlight my primary interest in introducing it. Certainly less of a reliance on fossil fuels and more energy independent as a nation, something that really speaks to my district and to my service, my heart for service and why I'm doing this thing is the energy code's opportunity for the creation of green jobs. Particularly within Legislative District 13 there have been many, many people displaced from the manufacturing economy. And these are people with pride who want to work. The world just kind of changed on them and they don't want a handout. They want to be able to earn a good living. And I just think that proposals such as this one can be a piece or a cog in that wheel to help people provide for themselves and have the pride of work, a day's work for a day's pay. So thank you very much for your consideration. [LB329]

SENATOR MCGILL: Well, thank you, Senator Cook. And that closes the hearing on LB329. And we will move on to Senator Hadley, who has been waiting patiently, and LB42. Hello there. [LB329]

SENATOR HADLEY: Senator McGill, members of the committee, Senator Krist, Senator Coash. [LB42]

SENATOR MCGILL: Well, we're clearing out the room now. [LB42]

SENATOR HADLEY: I have cleared the room, haven't I? [LB42]

SENATOR MCGILL: (Laugh) You really need to do something special. [LB42]

SENATOR HADLEY: That happens a lot, I've cleared the committee and the room. (Laughter) My name is Galen Hadley, that's G-a-l-e-n H-a-d-l-e-y, I represent the 37th District, that is the city of Kearney and Kearney County. It is really a pleasure to bring this bill, LB42, before you for a couple of reasons. One is that my father actually was a sales manager for Capitol Supply, Plumbing and Heating, here in Lincoln, until he passed away at age 46. And so I think he would have appreciated that I got involved in updating the plumbing code (laughter). And secondly, the original, the one we're going to talk about, the 1993 code, was brought by Senator Doug Kristensen who was also a senator from the 37th District and is now the Chancellor at UNK. So we've kind of kept it in the 37th District. [LB42]

SENATOR MCGILL: So you and this bill were meant to be, eh? (Laugh) [LB42]

SENATOR HADLEY: That's it, that's it, that's it. It is important that we update the code. LB42 is needed to update Nebraska statute to refer to the Uniform Plumbing Code, UPC 2009. And I know we're not the brains of it, but there it is, okay. The ANSI A40 safety requirements for plumbing 1993, which is currently referred to in statute, is

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outdated and does not contain many currently accepted requirements, specifications with regard to installation procedures and other useful information. In fact, we had a difficult time finding it, let alone talking about updating it. The UPC 2009 and appendices contains additional information not included in the 1993 code referencing modernized technology, useful materials information and installation techniques. The proposed statutory changes should not apply to entities such as Lincoln or Omaha that have currently adopted a plumbing code. Again, we're looking at local control; if they adopt their local code, we're not superimposing the state's code. The requirements and standards outlined by UPC 2009 could be adopted at any point in time. With that, I will close. And there will be people behind me that would answer any detailed questions you might have. [LB42]

SENATOR MCGILL: Okay. Thank you, Senator Hadley. [LB42]

SENATOR HADLEY: Thank you. [LB42]

SENATOR MCGILL: I don't see any questions. [LB42]

SENATOR HADLEY: I forgot to say it's such an august committee, I appreciate being here. [LB42]

SENATOR MCGILL: Flatterer. (Laugh) Proponents. Sorry. [LB42]

DAVID TINIUS: My name is David Tinius, T-i-n-i-u-s, and I'm representing the Nebraska Plumbing, Heating and Cooling Contractors Association. And I would just want to go on record and tell you that we're in favor of this. And I wanted to remind you that in no way does this change the law, again, single-family dwellings and farm and ranch are exempt and cities, villages and codes have the option to adopt a more stricter code, if they want. Omaha, Lincoln, all those do have their own codes. It's just that in the last 18 years, we've had five code updates and we're kind of a little bit behind. (Laugh) So embarrassingly enough, we should have come to you earlier. And we will be back within five years. So I think this addresses the issues of back in 1993 we didn't have the low-flush toilets, the instantaneous water heaters, in-floor heat. So this kind of is a little bit of a safety issue, too, because we are dealing about buildings that are for public use. You know, we're exempting the farm and single-family dwelling. So we'd just like to go on record and tell you that we are in favor of this code change. Thank you. [LB42]

SENATOR MCGILL: Okay. I don't see any questions, so thank you very much, Dave. Next proponent. [LB42]

REX CRAWFORD: Good afternoon, Chairman McGill and Urban Affairs Committee. You'll have to excuse me if I'm a little rough here because I'm a plumber, I'm not a speaker. I am current chapter chair... [LB42]

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SENATOR MCGILL: Yeah, you can start by giving us your name and spelling it for us. [LB42]

REX CRAWFORD: Oh, I'm sorry. [LB42]

SENATOR MCGILL: That's okay. [LB42]

REX CRAWFORD: It's Rex Crawford, C-r-a-w-f-o-r-d. See, I goofed up already. [LB42]

SENATOR MCGILL: Oh, you're fine. [LB42]

REX CRAWFORD: I'm the current chapter chair of the Nebraska Chapter of IAPMO, International Association of Plumbing and Mechanical Officials, which is the sponsor, our organization is the sponsor of the Uniform Plumbing Code. In our organization, our Nebraska chapter of over 130 members supports the updating of the current code to the 2009. Since the code that we have now, there have been many materials and methods that have changed and we do need to bring that up to the present standards. The one thing that the Uniform Plumbing Code is an ANSI consensus code, it goes through the ANSI process. And we do update, like the other codes, every three years. And the one thing that I like about the Uniform Plumbing Code, I've worked under it, I've taught code classes in this area for over 21 years and it is a good book, it's easy to understand and it only requires one book. You don't have to have three or four or five books in order to put it together, only one book is required. And my predecessors that I'm following, they pretty much covered the other things that I had that I wanted to talk about. But I do encourage this committee to advance LB42. Thank you. Any questions? [LB42]

SENATOR MCGILL: You did a good job. Question from Senator Krist. [LB42]

SENATOR KRIST: Where are you from? [LB42]

REX CRAWFORD: From Lincoln. [LB42]

SENATOR KRIST: From Lincoln. [LB42]

REX CRAWFORD: Yeah. [LB42]

SENATOR KRIST: You don't know my neighbor, but he told me I need to support this bill so. Bob Cappy (phonetic) is his name. I need to mention it for the record. Thank you, sir, for coming. [LB42]

REX CRAWFORD: Okay. [LB42]

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SENATOR MCGILL: Thank you, Rex. Any other proponents? Anyone here opposed? Hello again. [LB42]

STEVE NORDHUES: Hello. My name is Steve Nordhues, S-t-e-v-e N-o-r-d-h-u-e-s, and I am here representing the Nebraska Code Officials Association. After reviewing LB42, we are opposed to LB42 as introduced. LB42 states that if there is no ordinance adopting a plumbing code in effect in a city or village that the 2009 Uniform Plumbing Code, accredited by the American National Standards Institute, shall serve as the plumbing code for all the area within the jurisdiction of the city or village. Throughout the state of Nebraska, many jurisdictions have adopted the International Plumbing Code which is a model code recognized across the United States. Plumbing systems installed using the International Plumbing Code meet and exceed standards that ensure the health, safety, and welfare of the end user are maintained. As introduced, LB42 would not permit plumbing contractors who have tested and certified on the International Plumbing Code to make installations in jurisdictions that have not adopted a plumbing code, unless they revert to a code that they are unfamiliar with. It is the position of the Nebraska Code Officials Association that LB42 needs to also reference the 2009 International Plumbing Code so that an undue burden or bias is not perpetuated across the state of Nebraska. Any questions? [LB42]

SENATOR MCGILL: Do we have any questions from anybody? Senator Coash. [LB42]

SENATOR COASH: Thank you. Have you talked with the plumbers about adding that particular code as well? [LB42]

STEVE NORDHUES: You know, I had contacted the code official in Kearney and he was going to contact Senator Hadley. And I got out of town early this morning, so I did not have a chance to follow up on that, if he considered that or not. [LB42]

SENATOR COASH: Okay, all right, thank you. [LB42]

SENATOR MCGILL: All right. Well, it gives us something to look into. Thank you, Steve. [LB42]

STEVE NORDHUES: Okay, thank you. [LB42]

SENATOR MCGILL: Any other opponents? Anyone here neutral? Senator Hadley, would you like to close? [LB42]

SENATOR HADLEY: I certainly was not aware of the opposition and the problem. So my office will look in to it and report back to the committee what the concern is, because we do need...we certainly do need to update if we're using a 1993 code. Thank you. [LB42]

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SENATOR MCGILL: Certainly. Hopefully, we can work it out quickly. [LB42]

SENATOR HADLEY: Yeah. Thank you. [LB42]

SENATOR MCGILL: All right. Thank you. [LB42]

SENATOR COASH: Take it out in the hall. [LB42]

SENATOR MCGILL: (Laugh) Maybe that quickly. That ends the hearing on LB42. And we're on to LB190. We'll wait for Senator Council. Senator Council has arrived. Senator Council. [LB42]

SENATOR COUNCIL: Chairman McGill, members of the Urban Affairs Committee, for the record, I'm Brenda Council, last name is spelled C-o-u-n-c-i-l. I represent the 11th Legislative District and I appear before the committee this afternoon for the purpose of introducing LB190. In a representative democracy, governing bodies should be a portraiture and a miniature of the populace that it is to be representing and governing. And as a result of the efforts of my predecessor, most political subdivisions in Omaha have been reflective of this representative government principle, that is most of the political subdivision governing bodies in Omaha are elected by district. One of the political subdivisions that has not been reflective of the diversity of the area and has not been reflective of this principle of representative democracy is the Metropolitan Utilities District. And in its nearly 100-year existence, the governing body of the Metropolitan Utilities District has been elected at large. And as a consequence, the board has essentially been representative of a certain geographical, sociological, economical or political perspective. By way of example, there has only been one African-American member of the MUD board and that person held that seat by appointment, not election. The overwhelming majority of the members of the board of the Metropolitan Utilities District live west of 72nd Street. So the eastern part of the city has not been reflective in the governing body of MUD. And at a time when MUD is going to be faced with some tremendous challenges in terms of service and the cost of those services, working through the coordination of the combined sewer overflow project, upgrading their service delivery systems, this is probably the best time for this board to be representative of the area that it serves. It's also an appropriate time, since I was approached about introducing LB190 a year and a half ago, and I thought, well, it would probably be better to wait until 2011 since this body has to undertake redistricting and county election commissioners will be drawing new representative lines at that time. Now my original intent was to introduce a bill to provide for district elections of just MUD. During the course of consideration of this matter, constituents suggested that, well, you also ought to look at the Omaha Public Power District. So while LB190 does address the Omaha Public Power District, I will tell this body that as a result of my conversations with both MUD and OPPD and gaining a much better understanding of

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OPPD's operations in comparison to MUD's, for example, Omaha Public Power District's service area encompasses 13 counties. And so in terms of their representative breakdown, OPPD has the opportunity, by existing statute, to go to the Nebraska Power Review Board and simply amend their petition, their operating petition and change their districts. And representatives of OPPD have assured me that they are going through that process and are cognizant of the concerns that have been raised about being geographical, sociological and economically representative. So it is my intent to offer an amendment to LB190 that will do two things. Number one, in further discussions with MUD representatives, there is no need to continue to single out the outside member of the MUD board and that instead LB190 would be amended to just provide for seven board members, seven districts to be drawn, and in drawing the seven districts that outside board member representative would probably comprise a district. So that amendment will be offered so there won't be an outside member. All seven members of the MUD board would be elected by district, districts that would be drawn by the election commissioner pursuant to the guidelines that this body will be following as it redistricts. It will also be amended to continue OPPD's board governance system the way it currently is with the Nebraska Power Review Board having the authority to approve a request from OPPD to amend its petition to address these representational issues. And in discussing this again with the representatives of both OPPD and MUD, it was my understanding, coming away from those conversations, that there was no objection. And I trust that nothing has changed. I've appreciated the cooperation and assistance that I have received from the executive leadership of both OPPD and MUD in trying to address this very serious issue. Both of those bodies understood and appreciated the concern that, and the issue that's being addressed by LB190. And it is my hope that you will not receive any opposition testimony from either of those entities. So with that, I'll open it up to any questions that... [LB190]

SENATOR MCGILL: All right. Any questions for Senator Council? No? Thank you very much. Any proponents of LB190? Anyone here in support? Anyone here opposed to LB190? [LB190]

DAN CROUCHLEY: Senator McGill and members of the committee, my name is Dan Crouchley, D-a-n C-r-o-u-c-h-l-e-y. MUD is the water and natural gas utility for Omaha and the various communities in the surrounding counties: Douglas County, Sarpy, Washington and Saunders. MUD has got 210,000 customers. The current MUD board, as described by Senator Council, is elected at large. One of them is an outside member. I want to thank Senator Council for sitting down with us a while back and discussing the bill and recognizing appropriately that the outside member is...doesn't quite make any sense if you're going to have district election. And that was one of the amendments that she referred to. The MUD board, on February 2, had an opportunity to directly discuss this bill and they did take a position in opposition. It was after a fairly thorough discussion. They seemed to understand both sides of it and it was not some knee-jerk opposing of a change, but ultimately they did vote to oppose the bill. Some of the

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reasons that were expressed was that MUD is a public utility, how it certainly is a governmental entity but it views itself as a business providing the product of water and natural gas, that it provides that product throughout the district and to all its customers equally. And they basically don't see the need for district elections. They also expressed strongly their availability to anyone who came forward and has an issue about service. And myself, I can attest that if anyone goes to any of the directors that we hear about it, that it is suddenly an obligation on our part and the other managers to address any issue that comes up. They felt that they wanted to be available, all of them, to any ratepayer, to any customer and felt a little bit like they didn't want to be held back by directing this customer to their, quote, elected official. They also were a little bit concerned about what was identified as parochialism, that is that one district might advance their interest to the detriment of the other districts and so on. Their strongest vocalization was that they wanted to be available...their e-mails and their phone numbers are available on a Web site, and they want it to be available to anybody who wished to call them. And that concludes my testimony. And I'd certainly take questions. [LB190]

SENATOR MCGILL: Senator Ashford. [LB190]

SENATOR ASHFORD: You do a great job, but I absolutely disagree with you. I wholeheartedly support Senator Council's bill. We had this...you do, do a good job and your managers are available. And quite frankly, that's the reason why I think this change would work. You know, I think that it's because of the positive nature of the work you do already that if you had a district representative, an elected representative that it would even enhance that sort of ability to deal directly with the population that you're serving. So I disagree with your conclusion. I agree that you're doing a good job serving the public. But I do wholeheartedly, vehemently support Senator Council. I think she's right on. I know we...I think the county board election by district has been a positive thing. I know when I was in the Legislature before, the same arguments were given by the county why not to do it that you're giving. The difference is, I think, you really do serve (laugh) your public very well, not that the county doesn't, but I think you really have experience and good experience in that regard. But aside from all that, I think Senator Council is spot on here. But I appreciate your comments. (Laugh) [LB190]

DAN CROUCHLEY: Well, thank you for the compliment, Senator. [LB190]

SENATOR MCGILL: Are there any other questions? Senator Krist. [LB190]

SENATOR KRIST: Ditto, except that I want to say that, you know, part of what we're seeing in the city of Omaha, and I'll speak to it personally, is that every part of Omaha has a little bit different problem. Some of us had our infrastructure and sewer system separated, some of us are looking at a huge problem within some of those areas. And I believe, honestly, that if you represented a constituency and you went to your district

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representation at the city council and then you took it to the mayor's office, you'd have a stronger, more robust representation for the individual that you represent. It's akin to me saying, call me from Kearney because I can take care of your problem. So I really appreciate that you are the messenger and I want to compliment MUD on what they do. But I think the message that I'd like to send back to them is I think this would be just an added feather in a quiver, if you will. And again, I compliment you for what you do. But I think this is a good thing. [LB190]

DAN CROUCHLEY: And I'll bring that message back. [LB190]

SENATOR ASHFORD: Mixed message, as they say. (Laughter) [LB190]

SENATOR MCGILL: Already beginning to get a feel for how the committee is going to act. (Laugh) [LB190]

DAN CROUCHLEY: Yes, I certainly am. [LB190]

SENATOR ASHFORD: Well, just this side of it. [LB190]

SENATOR MCGILL: Do you have a question? Yes, Senator Cook. [LB190]

SENATOR COOK: May I, Madam Chair? [LB190]

SENATOR MCGILL: Yes. [LB190]

SENATOR COOK: Thank you, sir, for coming today. [LB190]

DAN CROUCHLEY: Sure. [LB190]

SENATOR COOK: But, as the Speaker so often reminds us, we bring our personal experience to our roles as representatives. In my job for money, not that I don't get compensated in money for this job, thank you very much taxpayers, in my community work and in my public relations business I find it just maybe a tiny bit interesting, building on something that Senator Krist just said, that there is a public involvement piece mandated for, I'm going to speak to the sewer overflow project. And that is targeted to neighborhoods and it's everybody from the little lady who's lived on that corner for 50 years, to the church pastor, to people who fitness walk in the area, schools. So to me it would kind of go to follow along the lines of what Senator Krist was saying, that if somebody from Kearney called me and said, oh please, Tanya, would you...I would say, would you help me a little bit by identifying your block, your concerns. I'm not saying I wouldn't be willing to. And I'm certain that the current members are willing to do that too. So just a thought out loud. [LB190]

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DAN CROUCHLEY: Yes, I understand. Thank you, Senator. [LB190]

SENATOR MCGILL: Senator Ashford has another thought. [LB190]

SENATOR ASHFORD: I do have one other point. And having been through many of these issues, when the Riverfront Project started with the Qwest Center and something that we were involved here in the Legislature and I was involved with many, many years ago, the argument was, well, this will never happen because we have district elective city council members and they'll never come together. Well, the riverfront was a smelting plant for 90 years, I guess. And it...the city council certainly came together on the riverfront. I don't see the correlation between district elections and effective policy, you know, whether it's districtwide or citywide policy. There may be more district type issues in the debate. But the end result, I think, seems to be good. And the other thing is I see nothing wrong with having board meetings that are a little bit more interesting. (Laughter) Having...I mean, you know, we come from a body where interesting debate is what keeps us down here every morning. But I just see in this time when we're of civic engagement and getting the population more involved in civil discourse and all of that, I just...this is one of these bills that I think is just so incredibly important. But that's all that I have, Madam Chair. [LB190]

DAN CROUCHLEY: Thank you, Senator. [LB190]

SENATOR MCGILL: All right. Are there any other thoughts, comments, concerns from the committee? No, but thank you very much. [LB190]

DAN CROUCHLEY: Thank you. [LB190]

SENATOR MCGILL: Any other opponents? Anyone here neutral? [LB190]

JOHN LINDSAY: (Exhibit 10) Senator McGill, members of the Urban Affairs Committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of Omaha Public Power District. And I can already tell that 20-point type wasn't enough. (Laughter) I will go to 24 next time. [LB190]

SENATOR ASHFORD: You're not even 50, are you, John? (Laughter) [LB190]

JOHN LINDSAY: As a matter of fact, I am. Yes, 20-point worked when I was below 50, but...Omaha Public Power District appears in a neutral position on LB190. We are sensitive to Senator Council's concern about all areas of the district being represented and have, as Senator Council mentioned, we've had discussions with her about the bill. OPPD serves 13 counties and over 5,000 square miles and includes rural, suburban and urban customers. The board has long recognized these differences and OPPD's charter reflects that understanding. Our board is currently elected from four different

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districts: one member from each of a suburban district, a north district and a south district, and five members from an urban district. The north district includes Washington, Burt, Saunders, Colfax, Dodge and a western portion of Douglas County. The south district includes Cass, Otoe, Nemaha, Johnson, Pawnee, Richardson and southern and western Sarpy County. The suburban district includes the more densely populated areas of Sarpy County, including Bellevue, Papillion and La Vista. The urban district basically is comprised of the city of Omaha. The district structure we have recognizes the varying demographics within OPPD and provides an opportunity for representation. Within Omaha, within the city of Omaha where there are five members, three board members reside west of 72nd Street, two board members reside east of 72nd Street. Again, this provides representation for the entire Omaha community. Our fear is that mandating districts could actually dilute what is currently broad representation of our diverse customer base. We have had conversations with Senator Council to be certain that the needs of the various areas of the district are being met and that concerns of customers are in fact being heard. We have committed, as Senator Council mentioned, we've committed to continue to work with Senator Council to ensure that those concerns continue to be met. And as Senator Council mentioned, we will be, when census data comes in, as we do, we will be redistricting again. And to do that, as Senator Council mentioned, we amend...our charter has to be approved by the Power Review Board. And we are...having had very recent discussions with Senator Council, her concerns are...will be very much at the forefront as we go through our redistricting process. [LB190]

SENATOR MCGILL: All right. Any questions? Senator Ashford. [LB190]

SENATOR ASHFORD: That's not really neutral, John, but it's very thoughtful. (Laughter) I just don't think you have any middle ground here. I think you really need to address the...it's not so much...I don't have any doubt that you address the needs of your customers. But I think we could come up with a fairer way of drawing those districts so we could have representation across the board to meet the demographics of the city. I just...I think that's what we should work on, not so much meeting the needs of each individual constituent but drawing a fairer, not that it's not fair, but a fairer system of voting. But I'd rather work on that than the other part but that's up to the introducer of the bill. Thank you. [LB190]

SENATOR MCGILL: Any others? No? Thank you, Mr. Lindsay. Any other neutral? Senator Council, would you like to close? [LB190]

SENATOR COUNCIL: Thank you, Chairman McGill. Just a couple of points to follow up on Senator Ashford's point. My discussions with OPPD have been very direct and straightforward. I want to see what they are able to accomplish through their own redistricting process. And if that does not address the concerns that I have expressed to them, there will be other bills (laugh) introduced. But I think at this point, recognizing the

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distinctions between MUD's governance structure and OPPD's governance structure, and there is a legitimate concern about dilution of representation when you're talking about 13 counties as opposed to the MUD service area. At this point in time, I believe it's appropriate that we just move forward with MUD which is...all of its membership is elected at large as compared to at least in OPPD context we do have some district representation. And I respect and I want to tell the committee I'm not surprised at the vote taken by the MUD board. My discussions with MUD representatives occurred before the board voted. They made no representations or commitments as to how the board would come out. I was just hopeful that the board would take a neutral position. And I'm not here to challenge or dispute their decision. But I will respectfully disagree with some of their conclusions. Having been a direct beneficiary of the district election process that was achieved by my predecessor, I can say as a member of the Omaha Board of Education, as the Omaha City Council, we acted as a body representing the entire constituency. And, I guess, the only thing I would take a little exception to, because it's one of the concerns that has been expressed by particularly residents of my district, is kind of the belief that because MUD is, quote, more like a business, that it has to be elected in the manner in which it's elected. Well, that's one of the problems is the sense that only people of a certain economic standing or a specific geographical area possess the abilities to make these business decisions that affect everyone. But what representatives of my districts feel is being neglected is that, yes, sound business decisions need to be made. But, as Mr. Crouchley so aptly stated, this is a customer-owned utility. And the rates that these customers pay is of critical concern. And when you have no one reflected on that body who is in a position to ever be concerned about what rates are being charged, you know, it's hard to give the sense to the total community that there is a true representation of, you know, where the proletariat (laugh) happened to be. So and the other issue is in terms of representation, I'm one that has always been concerned about individuals who want to serve having an opportunity to serve. And when we have citywide elections for governing bodies such as MUD, I mean, if you can't generate hundreds of thousands of dollars, I mean, your chances of running a campaign that would position you for one of these at-large seats is minimal. And a couple of the concerns that were brought to me were from people who would have loved to have pursued a seat on the MUD board, felt they had a contribution to make, but financially didn't see themselves being in a position to accomplish that. So through district elections it does provide opportunity. I do think it adds to the political discourse. I want to believe that my four years on the city council was markedly different from (laugh) the city councils before I was elected and before my predecessor then, who was the first African-American member of the Omaha City Council, that it does provide a different perspective. It does add to the political discourse. And I think it would be healthy for both MUD and metropolitan Omaha to elect its governing body by district. And with that, I would urge you to advance LB190 after I provide you with the amendments that make all seven board members elected by district and removes OPPD, for the time being, from that redistricting process. [LB190]

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SENATOR MCGILL: Senator Ashford. [LB190]

SENATOR ASHFORD: Yes, Senator Council, and I'm not going to belabor this point and you said it well. I don't think there's anything in our Omaha history that has held us back more than not having district elections and that you are absolutely right. We had, of course, district elections for the Legislature and we had African-American representatives in the Legislature. But what always has struck me about the history of our city is that with the minority population what it is compared to the overall city population, it is very difficult historically to win citywide or countywide races. And I think that I will tell you, in my view, that our city has progressed so much more since district or even though one could say, well, there are more fights or more disputes or whatever. That's what democracy is, it isn't a board of directors, it's an elected board. And I cannot agree with you more. Your representation on the city council and the school board was superior. And other of...others of your colleagues from north Omaha that served on these various district boards and your predecessor, obviously, here in the Legislature have been true leaders, and it made our city a better place. I see no reason not to do...obviously, OPPD is a different situation. I see no reason on earth not to address MUD. And it's going to make MUD a stronger organization. And the other thing is, as we think about bringing jobs to north Omaha through the development of north Omaha job creation tracks or whatever we want to call them, I mean, the need for power and water is going to be immense. And having a representative from that area as part of that process is central. I think it's one of the most important pieces of legislation that we have seen this year. So thank you for bringing it. [LB190]

SENATOR COUNCIL: Thank you, Senator Ashford. [LB190]

SENATOR MCGILL: Anyone else? Senator Schumacher. [LB190]

SENATOR SCHUMACHER: Thank you, Senator McGill. Senator Council, I seem to think that in at least rural areas, like Loup Power in Columbus, we elect by district there. Is there any reason that...and I apologize for not being at the entire hearing here, that the metropolitan area is treated or was set up differently? [LB190]

SENATOR COUNCIL: Well, and I don't know if Loup Power is electric or... [LB190]

SENATOR SCHUMACHER: It's electric. [LB190]

SENATOR COUNCIL: And that's different and that's why I'm amending LB190 to remove the changes that were proposed about how they elect. The public power districts have a charter and they set forth how they're going to elect their governing body. That has to be approved by the Nebraska Power Review Board. And that's how they're...so they have opportunities administratively to provide for district elections. MUD, on the other hand, their board is...and their board composition and the manner in

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which they're elected is set forth in statute. [LB190]

SENATOR SCHUMACHER: Thank you, Senator. [LB190]

SENATOR MCGILL: (Exhibits 11-13) All right, thank you, Senator Council. And that closes the hearing on LB190 and our hearing for the day. [LB190]