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Urban Affairs Committee
February 05, 2013

[LB377 LB591 LB633 LB643]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 5, 2013, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB633, LB377, LB591, and LB643. Senators present: Amanda McGill, Chairperson; John Murante, Vice Chairperson; Russ Karpisek; Bob Krist; and Scott Lautenbaugh. Senators absent: Brad Ashford and Colby Coash.

SENATOR MCGILL: Well, while we're waiting, welcome to the Urban Affairs Committee. I'm state Senator Amanda McGill from northeast Lincoln. To my right is Senator Bob Krist from the northern Omaha, northern, northwest Omaha, Douglas County. Senator John Murante, yes.

SENATOR MURANTE: You got it.

SENATOR MCGILL: I'm getting it.

SENATOR MURANTE: Nailed it.

SENATOR MCGILL: John Murante from Gretna; my research analyst Laurie Holman, and to my very far left, Katie Chatters, our committee clerk and then our page over there. As you come in and are planning to testify, make sure you fill out the forms by the doors so that we have your name for the record. And as well, when you come up to speak, if you'll share your name with us and spell it for us for that record. Or if you just want to show your support or opposition to a bill, you can fill out those forms, check the box, and not testify if you don't want to. Go ahead and put your cell phones on vibrate for me so that any sound that they may cause is not disruptive to testifiers or to the record. Senator Scott Lautenbaugh has joined us, welcome. And with that, we have enough to get started. Senator Nordquist, we can open on LB633.

SENATOR NORDQUIST: Thank you, Madam Chair and members of the Urban Affairs Committee. I believe this is my first time ever before the Urban Affairs Committee.
[LB633]

SENATOR MCGILL: Oh, wow. (Laugh) [LB633]

SENATOR NORDQUIST: So this is quite an honor. I bring today LB633. LB633 deals with the duties of the civil service commission under the Civil Service Act. Currently, the Civil Service Act only applies to full-time police officers and full-time firefighters in municipalities of...in first-class cities in our state. The scope of the commission is limited to cases of suspension, demotion, removals, discharges, and other disciplinary actions. This bill, LB633, would broaden the authority of the civil service commission similar to the merit commission in our larger cities to include disputes over contract violations. For

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contractual disputes, the current process is too burdensome for sworn officers and firefighters, I believe, because management is given the final say as to the interpretation of contractual disputes. Therefore, sworn officers and firefighters have no recourse except for the district court having jurisdiction over this. Sworn officers and firefighters in urban areas of our state already have this opportunity for review of contractual disputes by a neutral party. This bill would extend the same standards for contractual disputes in smaller Nebraska communities as is allowed to other full-time law enforcement officers and firefighters. You may hear concerns of costs to smaller communities to hire attorneys in front of the civil service commission. I would...I would, I believe, and I would submit to this committee it has a more affordable method to review the dispute before the commission rather than through the court system. I do, you know, I don't see this process being abused as it isn't, I don't believe, in our larger cities under the merit commission and I believe that this would create some equality among...give law enforcement and firefighters equality among the review of these contractual disputes. [LB633]

SENATOR MCGILL: All right, thank you, Senator Nordquist. Any questions? I don't see any. [LB633]

SENATOR NORDQUIST: I am up second in Education, so I'll hang out for a little bit, but if this goes a little long, I'll probably have to head over there. [LB633]

SENATOR MCGILL: We understand. [LB633]

SENATOR NORDQUIST: Thank you. [LB633]

SENATOR MCGILL: Thank you. Is there anyone here to testify in support of this bill? Welcome. [LB633]

STEVEN YOUNG: (Exhibit 1) Thank you. Chairperson McGill, Senators, thank you very much for hearing us today. My name is Steven Young, S-t-e-v-e-n Y-o-u-n-g. I've been a police officer for 30 years and I'm currently here representing the Fraternal Order of Police for the State of Nebraska as a 2nd Vice President. It's an order that represents over 2,900 corrections officers, deputies, wildlife officials and police officers as we'll be addressing today. I'd like to begin by thanking Senator Nordquist for his introduction of this bill, appreciate it very much. LB633 is not a new concept by any means. A lot of testimony from opponents shouldn't be necessary for this proposed change because it's already in place and effective for one organization and that's the county merit commission and the way it operates. There's a little argument as to why it shouldn't be in place for the municipal civil service commission. For that reason my testimony today will be brief. Currently, the civil service commission for first-class cities only hears incidents that result in suspension, demotion, discharge resulting from a written accusation from the chief, appointing authority, citizens or taxpayers. It is our hope that

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through this bill we may allow the civil service, like the merit commission does now, also hear grievance appeals on contractual language. Is it perfect? No. Is it fair? Absolutely. It is more impartial than the current process of grieving first to the chief of police, second to the city administrator or city manager, and then in some cases to district court. The problem we have with district court is they usually just hear on whether or not the first two steps were followed accurately. We affectionately call this stepmom, stepdad, the grievance process. If it doesn't get resolved, the next step is to district court or the court having jurisdiction. Bottom line, in the absence of arbitration, this is a fair, very inexpensive, very streamlined way of handling appeals and grievances. And like LB591, that we'll hear later on, this is an opportunity to make two government commissions, the civil service and the merit commission, whose goals and objectives have the same structure to begin to operate...have the same goals and objectives begin to be structured the same. With that I thank you for your consideration in this matter. And if you have any questions, I'll stand for those now. [LB633]

SENATOR MCGILL: Thank you, Mr. Young. Any questions? No? I don't see any. Thank you very much. [LB633]

STEVEN YOUNG: Thank you. [LB633]

SENATOR MCGILL: Next supporter. Hi, Dave. [LB633]

DAVE ENGLER: Hi, how are you? [LB633]

SENATOR MCGILL: Good. [LB633]

DAVE ENGLER: Good afternoon, my name is Dave Engler, E-n-g-l-e-r, I'm the president of the Nebraska Professional Firefighters Association that represents career firefighters across the state of Nebraska. We rise in support of LB633. As a soon-to-be graduate with a master's degree at Creighton University in negotiation and dispute resolution, I feel that there's a lot of merits to having a process outside of the courts to resolve some of these disputes. It doesn't seem to me like a good process is to have the people that you're actually grieving be the final deciders in a grievance procedure. There should be some outside person that allows you to hear the case and make a determination. And that shouldn't, necessarily, be the district court. When you have a dispute like this and you enter into the court system, it can take a long time and that leads to lower morale and possibly other grievances. So I see this as probably not the perfect method of resolving these issues, but a good method and a good start to getting some of these issues resolved quickly, more efficiently, and certainly with less cost. So we as firefighters are in support of this. And I'll answer any questions if you have any. [LB633]

SENATOR MCGILL: Thank you. Senator Krist. [LB633]

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SENATOR KRIST: Hi, Dave. The question comes to mind is there applicability here for both volunteer and paid positions as we talk about these grievances and how they would be mitigated? [LB633]

DAVE ENGLER: The volunteer firefighters, I'm not sure about how their structure is set up, but there is typically not a lot of suspensions, demotions, those sort of things that would be handled by it. So I don't see that...they're not handled by civil service so I don't see that as really an option in this case. [LB633]

SENATOR KRIST: Okay. [LB633]

DAVE ENGLER: I would assume a lot of them are set up with bylaws that they have ways of resolving their disputes based upon their bylaws. [LB633]

SENATOR KRIST: Okay, thank you. [LB633]

DAVE ENGLER: Um-hum. [LB633]

SENATOR KRIST: Thank you, Chair. [LB633]

SENATOR MCGILL: All right. Other questions? No? Thank you, Mr. Engler. [LB633]

DAVE ENGLER: Okay, thank you. [LB633]

SENATOR MCGILL: Other supporters? Proponents? All right. Anyone here in opposition? Oh, opposition? I almost moved on. (Laugh) You snooze, you lose. [LB633]

LOWELL D. JOHNSON: Thank you for waiting. I'm Lowell Johnson, I'm the city administrator at Wayne. Lowell is L-o-w-e-l-l. I don't have a printed copy, but just a comment. The civil service commissions are appointed citizens of the community. I don't see them as being prepared to handle contract-type disagreements. And there...disagreements are litigated all the time and either litigated or settled. I just think that...we (inaudible)...there's a risk of having dual outcomes that have to get settled in court anyway. So that's my only comment is I think that would be less...it would be complicated. So, thank you. Any questions? [LB633]

SENATOR MCGILL: All right. Any questions? Senator Lautenbaugh. [LB633]

SENATOR LAUTENBAUGH: Thank you, Senator McGill. Thank you for coming today, sir. I just want to make sure I understand when you say dual outcomes, what do you mean? [LB633]

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LOWELL D. JOHNSON: I think if you have a group of nontrained citizens, even though they have legal counsel, I think you have room for them, I mean, I just think you have potential for a conflict between what the law actually is and what they may want to do. So, if it's not a real credible outcome they're going to end up in litigation anyway and so...it's just my comment that I think we litigate things all the time and it's the way we are. [LB633]

SENATOR LAUTENBAUGH: So I took your comment to mean there might be two different groups looking at it the same time and they might have different results, that's not what you're saying. [LB633]

LOWELL D. JOHNSON: I meant the judicial system versus the civil service commission. That's what I'm saying. [LB633]

SENATOR LAUTENBAUGH: Okay. I just wanted to make sure I understood what you were saying. [LB633]

LOWELL D. JOHNSON: Yeah, okay, thank you. [LB633]

SENATOR MCGILL: All right. Other questions? No? Thank you very much. Anyone else here opposed? [LB633]

LEONARD A. HOULOOSE: (Exhibit 13) Senator McGill, committee members, my name is Leonard Houloose, L-e-o-n-a-r-d, last name is H-o-u-l-o-o-s-e, currently the chief of police in the city of Papillion. And I'm here representing the United Cities of Sarpy County. If I may, I'd just like to read a short letter: Dear Senator McGill and committee members; on behalf of the United Cities of Sarpy County, please accept this letter as respectful opposition to LB633 as currently drafted, which would essentially modify the purview of municipal civil service commission duties to include oversight of labor disputes. The Nebraska Civil Service Commission establishes the roles and responsibilities of the civil service commissions. These include the assurance of impartial and apolitical oversight of public safety employee hiring, promotional and termination processes. These commissions were never intended to act as arbiters between parties to collective bargaining agreements when contractual disputes arise, and the majority of citizens appointed to the commissions are not trained as arbitration specialists. We accurately understand the intent, this bill will require the civil service commissions to investigate and convene formal hearings any time a request is made by an aggrieved sworn employee or employer to serve in the capacity of an official contract interpretation entity. The particular grievances to be heard could conceivably run the gamut from a dispute over vacation benefit accrual to a disagreement over the request to have a uniform item replaced. Existing federal and Nebraska statutes provide employees and employers with ample redress for employment disputes and unfair labor practices. Labor courts were established for this purpose. Further, virtually all cities of

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the first class already have adequate employee and employer grievance procedures in place. Finally, disagreements regarding the interpretation and intent of collective bargaining agreements can also be resolved through the collective bargaining process which was not envisioned as a civil service commission role when the Nebraska Civil Service Act was created. In closing, we would respectfully request that you not move this bill forward for full legislative review. Our analysis concludes that this bill appears to be a solution that's really in search of a problem. Thank you and I invite any questions you might have. [LB633]

SENATOR MCGILL: Thank you, Chief. Questions? No? Thank you. You laid out your arguments pretty well. [LB633]

LEONARD A. HOULOUSE: Thank you. [LB633]

SENATOR MCGILL: Thanks. Next person opposed. Hello. [LB633]

RONALD D. MURTAUGH: (Exhibit 2) Good afternoon. Senator McGill, other committee members, my name is Chief Ronald D. Murtaugh, M-u-r-t-a-u-g-h. And I'm here as Chief of Police of the city of Ralston, as well as an executive committee member of the Police Chiefs Association of Nebraska, representing police chiefs across the state. And I just have a brief letter that I will share with you and I've also submitted additional copies for the...each member. Dear Senators: The Police Chiefs Association of Nebraska, PCAN, is opposed to LB633 as presented. The state civil service statutes were created to provide law enforcement and fire service a level of protection from special interests and political interference. The civil service statutes were not created to serve as a system of enforcement for collective bargaining agreements or union contracts. The civil service laws are inclusive of all ranks within law enforcement including the police chief. Any law enforcement officer who is under civil service is afforded civil service review and protection in disciplinary actions that affect their wages, benefits, and working conditions regardless of the origin of the disciplinary action. The laws should not be amended to provide disparate protection based upon rank and collective bargaining status. Civil service commissions were not created to be an arbitrator or judicial authority in the enforcement of collective bargaining agreements. There are adequate remedies in place in Nebraska to address violations of collective bargaining agreements. The civil service laws of Nebraska, as written, have effectively served our communities, our citizens and those serving in law enforcement. PCAN opposes the changes proposed in LB633 to our civil service laws and requests that you reject LB633. Thank you for your consideration of our request. [LB633]

SENATOR MCGILL: All right. Thank you, Chief. Are there questions? No? Thank you very much. [LB633]

RONALD D. MURTAUGH: Thank you. [LB633]

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SENATOR MCGILL: Continuing with opposition. Hello. [LB633]

LYNN REX: (Exhibits 3 and 4) Hello. Senator McGill, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're distributing for your review a copy of letters, if you would be kind enough to come forward, both from Nebraska City, as well as from Bill Harding who is outside labor counsel for the League of Nebraska Municipalities. And, essentially, we are here today in strong opposition to this bill. This bill would fundamentally change the role of civil service commissions in the state of Nebraska for first-class cities under Chapter 19, Article 18. I was personally involved in negotiations which was the last reform of the civil service statutes back in 1985 and then with many of the organizations that are represented here today, proponents of this legislation, I can tell you that it was very clear from all parties involved that this was supposed to be a process by which individuals would have an opportunity to have, number one, go before a commission that did not have political influence; secondly, as already stated to you, with citizens, these are not citizens, again, trained in labor contracts and negotiations. That's intended to go to a judicial process. In essence, you'll note when you take time to read the letter from Bill Harding this also will be in conflict with the CIR laws, Commission of Industrial Relations laws, that govern municipalities under Chapter 48, Article 8. And we do have a concern about that because many of you were involved in CIR reform with passage of LB397 in 2011. So we do have concerns here. We think the courts are the appropriate place and this, again, undercuts the whole process that you have in Chapter 48, Article 8, why you have a separate forum to deal with these specific kinds of issues. With that, I'd be happy to respond to any questions that you might have. [LB633]

SENATOR MCGILL: Thank you, Lynn. Questions? Thank you very much. [LB633]

LYNN REX: Thank you very much. [LB633]

SENATOR MCGILL: Any final opposition? Anyone here neutral? All right, that wraps up the hearing on LB633 since Senator Nordquist left for his other hearing. (See also Exhibit 15) And we can open on LB377. I see Senator Johnson in the audience. [LB633]

SENATOR JOHNSON: Thank you, Senator McGill and members of the committee. My name is Jerry Johnson, J-e-r-r-y J-o-h-n-s-o-n, and I represent District 23, Butler, Colfax, and Saunders County here to introduce LB377. I'll read my introduction and it will be shorter than if I spoke it, I ramble. LB377 would clarify the status of county roads when annexed into or by a village or a city. LB377 provides that the authority held by the county board over a county road, including any easements, is transferred to the governing body of the city or village when the city or village annexes the road. Under current law, cities own the real estate under the streets within the city limits; county roads are generally built on easements where the property owner owns the property to

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the middle of the county road. Very often when a city annexes a parcel of property, the property is subdivided and the streets and the roads are dedicated by the city. The law is not clear about what happens when a city annexes a county road without a dedication. Most cities assume that any easement held by the county is transferred to the city. This is supported under current law, Section 18-1716.01, which provides that any city or village annexing property contiguous or abutting upon any property...any part of the county road shall be deemed have annexed. All of the contiguous and abutting road at the time of such annexation, except that this section does not apply to county roads that separate counties. Under this statute, the city takes over the county road when annexed...when they annex the property up to the county road. But it is does not clearly state what the city's interest is. LB377 makes it clear that the interest of the county over the county road is transferred to the city when the city annexes the property. The bill does not change the ownership of interest of the property owner. If an easement is involved, it would be transferred from the county to the city. This is clearly a clarification of the property transfer. Basically, the language exchanged in the bill was found on page 4 of your green sheet. So, concludes my introduction; be open to any questions. [LB377]

SENATOR MCGILL: Thank you. Senator Krist. [LB377]

SENATOR KRIST: To be clear, we are at the edge of your town and the town has decided to annex on the other side of the county road so the political subdivision, SID, and/or property becomes the property of the town that is annexing. As I read this, that description of annexation, right now, does not include the land that the county road sits on, nor is it clear whether or not they're taking over the responsibility of the county road, correct? [LB377]

SENATOR JOHNSON: This would, yes, help define that. [LB377]

SENATOR KRIST: Okay. So if they do that, then does the city become responsible for maintaining that portion of the county road that goes through the annexed property? And if that's the case, does that mean road repair, snow removal, etcetera, etcetera, etcetera? [LB377]

SENATOR JOHNSON: The city would...or the village would assume all the responsibilities, obligations of that road. They would assume the same easement with...that was part of the county. If the city wanted to enlarge or widen that road, they would have to go after additional permits, but the city does take over responsibility of maintenance whether it's continued to be a gravel road or whether it's a paved road. The only way it would probably be paved would be if it was by petition. But they also have responsibility for all the snow removal also. [LB377]

SENATOR KRIST: Okay. I don't know if we're going to hear any opposition, but what

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comes to mind there is that the county has been responsible for maintaining that road at the edge of the city; the city now takes that over so if there is a...not a bad actor, but if there's not consistent behavior on both the county and the city to maintain that road, that four-lane road could be made into a two-lane road should the city or town decide not to maintain the four lanes. Would you interpret it that way? [LB377]

SENATOR JOHNSON: I would interpret that way. I doubt whether there would be any four-lane road in county's possession other than a...I mean a highway. [LB377]

SENATOR KRIST: Okay. [LB377]

SENATOR JOHNSON: I mean if it's a...we're primarily talking about gravel roads or low-maintenance roads. [LB377]

SENATOR KRIST: But there's no restriction on whether this is... [LB377]

SENATOR JOHNSON: No, no. [LB377]

SENATOR KRIST: Okay. All right. [LB377]

SENATOR JOHNSON: Right. [LB377]

SENATOR KRIST: Good. Thank you, Senator. Thank you, Chairman. [LB377]

SENATOR MCGILL: Thanks for bringing this to us and helping to clear it up. Is there a particular situation that brought us here today with this bill? [LB377]

SENATOR JOHNSON: Well, as the former mayor of Wahoo, I know we've had to go through some different procedures in order to accomplish some things when we've annexed in. And I didn't think anything...too much about it, okay, that's the process. But then when I started thinking about it and visiting with people, we have had a couple of instances where...I think in our case our city administrator will testify on...be able to talk a little bit more directly on that. But, yeah, I've lived that. [LB377]

SENATOR MCGILL: Okay. All right, thank you. Other questions? Senator Lautenbaugh. [LB377]

SENATOR LAUTENBAUGH: Thank you. Thank you for coming today, Senator. I understand what you're saying. Senator Krist's concern is sort of an unlikely scenario based upon the kind of roads that we're talking about. Would there be a problem with some sort of a simple amendment to clarify and address the concern, would you be open to talking to the committee about that if necessary? [LB377]

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SENATOR JOHNSON: Well, I think so. I'm sure there could be some...there are some other things that aren't in here because sometimes it might not go a full mile and you might have to do some different things with deeds and things like that. So I think there could be some friendly amendments that would probably help it. [LB377]

SENATOR MCGILL: All right, well, thank you very much. [LB377]

SENATOR JOHNSON: Thank you. [LB377]

SENATOR MCGILL: We'll open up the floor to proponents. [LB377]

TOBIAS J. TEMPELMEYER: (Exhibit 5) Senator McGill, Urban Affairs Committee, my name is Tobias Tempelmeyer, T-o-b-i-a-s T-e-m-p-e-l-m-e-y-e-r. I am the city administrator in Beatrice. And we are one of those cities that faces this problem and when the city annexes a county road...and in the letter that's being handed to you, I outlined a little example and there's also a map attached to the back which maybe kind of helps explain the issue. But in Nebraska, out in the county the farmer or the landowner owns to the center line of the road. And the county road is put over by an easement most of the time. And the example that I've put in your letter is between Owner A and Owner B. And in the example Owner A decides, they're adjacent to the city limits, and they decide it's time to develop their property. So they go and have it divided into lots and blocks and subdivided. When they do that, they'll file a plat. And on that plat they'll take what is the county road, they own that half of it, and they'll transfer that to the city for public use. So that's how the city will acquire half of the road. And in my example, I believe it's the west half of the road. When the city annexes Owner A's property because now it's being developed, the city will annex and state statute says we get the entire road. The entire road becomes the city and we have to maintain it, to answer your question, Senator Krist. However, Owner B still owns to the center line of the road. And the issue that we have is, the city now has a road that we have to maintain over property that we don't have a legal right for it to be there. The county did; the county had an easement, but we don't have that easement. And the only thing we're asking is LB377 would say, if the county had an easement the city gets the easement. That's essentially what we're asking for. This does come up quite a bit. I've looked around Beatrice the day before I left and we have at least ten examples of where this exists currently where we have annexed out to a county road. For Lincoln or Omaha which is growing fast enough, Owner A develops today, Owner B is probably going to develop in a year or two, it's not a big deal, they just keep moving forward. For Beatrice, Owner A may develop and it may be 10, 20, 30 years before Owner B develops and so you have this issue of...we have a right to have the road halfway there, but not all the way there. Can Owner B barricade the road? Can they not? Who has control over that half of the road? And that's the spot that we're kind of just trying to work through. Senator Krist, your question earlier about four-lane roads, those...again, those are, generally, highway; those are state Department of Roads' right-of-ways and that's

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another issue as far as I'm concerned. You know, this has to deal with more where roads exist only on an easement. And so that's what we're looking to clarify. [LB377]

SENATOR MCGILL: Very helpful testimony. Any questions? No? Thank you very much. [LB377]

TOBIAS J. TEMPELMEYER: Thank you. [LB377]

SENATOR MCGILL: Next proponent. [LB377]

MELISSA HARRELL: (Exhibit 6) Senator McGill, members of the Urban Affairs Committee, my name is Melissa Harrell, H-a-r-r-e-l-l. I am the city administrator/clerk/treasurer for the city of Wahoo. I've been in that position with the city since 2006 and I'm here today to speak in favor of LB377. And I'm really not going to say much more than what the other two have presented, but. The purpose of this bill as I understand it is to eliminate the gray area that currently exists when a municipality annexes a county road. As per the laws regarding municipalities, if a new street is platted, a deed is established with the filing of a subdivision plat that clearly establishes the public right-of-way, is owned by the municipality. In Wahoo we have plats on file for all subdivisions within our city limits and those plats clearly spell out dedication of streets to the public. This public right-of-way is not included within any deed of the adjoining property owner. On the county level, it is my understanding that various county roads and records of these roads are kept in a "Book of Roads." Particularly when the county roads are located on section lines, there is not a deed indicating the county has ownership of that road. In fact, it is well known that abutting landowners own to the center of the road. They do not pay taxes on the county road, but their deed clearly states they own the road. There are some instances where deeds are held by the county for the public right-of-way but this is more the exception than the rule. The authority for a road to exist in this location is the "Book of Roads" which I would consider a mapped record of prescriptive easements. Statutes require that when a municipality annexes a parcel of property and there is an adjoining county road, the municipality must annex the county road as well. The county road exists as described in the county's "Book of Roads." Many times dedication of this public right-or-way is not an issue as concurrent with the annexation of the property is approval of the subdivision dedication plat that clearly establishes the municipality's interest in the public right-of-way. In essence, the road is rededicated to the public on the plat. However, when a subdivision is not being considered during the annexation, the dedication of the public right-of-way to the municipality becomes the issue. The purpose of LB377 is to address this. It is not intended to ask for more right-of-way or to take from owners without due process, it is simply to establish that the public road is still a public road and recorded as such. LB377 would make it clear the municipality has the authority to view this road as public right-of-way and treat it as such. Thank you for your time and if I can answer any questions. [LB377]

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SENATOR MCGILL: Any questions? Senator Krist. [LB377]

SENATOR KRIST: You may not know this, and I...probably should have asked before, but you defined a difference between...both of you defined a difference between a county road and a state highway. I can envision a couple of towns that I've been in in the state of Nebraska where growth goes to a certain point that happens to be a state highway and they're going to annex on the other side of the highway and the easement is on...or the development is on both sides and that is a public road. I infer by what you said that that "Book of Roads," which is the bible, would identify a different legal definition of what a state highway would be and what a county road would be in an annexation process. Can you answer that? [LB377]

MELISSA HARRELL: I can't answer definitely, but I would guess, yes, that state roads are held by deed. [LB377]

SENATOR KRIST: Okay. And state highways are held by deed. [LB377]

MELISSA HARRELL: State highways, by deed. [LB377]

SENATOR KRIST: And so annexation... [LB377]

MELISSA HARRELL: But I'm not the expert on that. [LB377]

SENATOR KRIST: If you're going to annex legally in the state of Nebraska, it has to be congruently. So somehow they're going to have to get on the other side of that state highway. [LB377]

MELISSA HARRELL: Right, and you would have to annex that state highway. [LB377]

SENATOR KRIST: You would have to annex a state highway to do that. [LB377]

MELISSA HARRELL: Yes. [LB377]

SENATOR KRIST: So the definition I'm looking for, I guess, to our legal counsel is, is there a difference between a county road and a state highway because that brings me back to my question, Senator, which was--how do I know that that's going to be maintained as it has been improved or it would be improved...is there a condition that it would be improved or maintained in its present condition? So just for the record, I don't...you don't need to go into a lot of detail. But that's really what it comes down to in terms of concern. And again, it's probably just a friendly amendment that defines that, if it's necessary. Thank you for coming. [LB377]

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MELISSA HARRELL: Sure, thank you. [LB377]

SENATOR MCGILL: All right. I don't see any other questions. Thank you very much. [LB377]

MELISSA HARRELL: Thanks. [LB377]

SENATOR MCGILL: Next proponent. [LB377]

GARY KRUMLAND: Senator McGill, members of the committee, my name is Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB377. And just let me address your questions. Generally, a state highway is the property within the right-of-way is owned by the state. And when a city annexes property across it, it is still a state highway. When it's a city street, the city generally owns the property within the right-of-way. A county, though, can either own it or just has an easement where the property owner retains ownership. So, in a situation where you have a state highway going through a city or you have an area like along the edge of a city where they've annexed crossed a county road and you have a portion that is in the city now or...and then a portion is owned by the county, the city is responsible by law right now for any streets within their corporate limits. So what usually happens though is the city enters in agreement with the county or with the state over who is going to take care of things. For example, if you have a highway going through the middle of a city, very often it's easier for the city when they're doing snow removal for them just to remove the snow there rather than have the state bring their equipment in. So they'll enter an agreement to do that. And the same way with the counties is that if you have a section of land and a part of it is in the city and part of it is owned by the county, the county and city generally will enter into an agreement to determine who will take care of it. But the ultimate responsibility, at least for the roads that are...that were county roads and now are annexed within the city, they become the city roads and the city responsibility for maintenance and improvement and all that. I don't know if that answers your question. [LB377]

SENATOR KRIST: Part of it. [LB377]

GARY KRUMLAND: Okay, well, we can talk some more. The other thing I wanted to mention is we did work with NACO, the county officials association on this and they're fine with the bill. They think it would be helpful to clarify that. The law does provide right now that if a city annexes up to a county road, it is presumed that the road then becomes part of the city so the city then obtains or becomes responsible for the maintenance and the improvement of that road. So I'd be happy to answer any questions. [LB377]

SENATOR MCGILL: Any other questions? I don't see any. Thank you very much, Gary.

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Other proponents? All right, anyone here opposed? Anyone here neutral? All right, Senator Johnson, would you like to close? [LB377]

SENATOR JOHNSON: I'll waive closing unless there is a question. [LB377]

SENATOR MCGILL: Nope, I think you are good to go. [LB377]

SENATOR JOHNSON: I have another hearing. [LB377]

SENATOR MCGILL: Enjoy your day. That brings us to Senator Lautenbaugh and LB591. Go for it. [LB377]

SENATOR LAUTENBAUGH: Madam Chair and members of the committee, this bill deals with civil service commission, as we've already heard a little bit about today. As some of you may know, I can't profess to be an expert on this, but the civil service commission was set up to provide oversight in first-class cities for law enforcement officers and firefighters. The current statute reads: no person in the civil service who shall have been permanently appointed or inducted into civil service under the Civil Service Act shall be removed, suspended, demoted, or discharged except for cause and then only upon the written accusation of the police or fire chief, the appointing authority, a sworn officer or firefighter or any citizen or taxpayer. LB591 would change the makeup of the civil service commission to include nonmanagement law enforcement officers and firefighters. The legislation varies the makeup of the commission depending on if there is a full-time fire department and whether the municipality has a three-person or a five-person civil service commission. If there is a full-time fire department and three members, there would be appointed by the appointing authority one by law enforcement and one by the fire department. If there is no fire department, there should be one law enforcement appointee and two appointed by the appointing authority. If the municipality has a five-member board with a full-time fire department, there would be one law enforcement, one fire department, and three from the appointing authority. If no fire department, then there would be three from the appointing authority and two from law enforcement. I believe law enforcement and the fire department bring the appropriate experience to the civil service commission and will give the commission the appropriate balance. In Nebraska counties, law enforcement officers have the merit commission which is...which does currently include members from the rank and file in the counties that have merit commission. The merit commission has sheriff representation, excuse me, skipping ahead of my own notes here, and LB591 would ensure the same for police officers throughout the state. I'd be happy to answer any of your questions. I know there are some who have...this is feint praise, a greater understanding of this than I do (laughter) who are coming behind me. And, you know, I'll try to answer any questions, but I'm sure they will as well and more ably. [LB591]

SENATOR MCGILL: Well, generally speaking, who is serving on these now? [LB591]

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SENATOR LAUTENBAUGH: Well, generally as I understand it, the appointments are not made by the rank and file in either...we're talking police or firefighter, there's an appointing authority that appoints all the members. And while there's nothing prohibiting someone from coming from the rank and file, there's nothing saying that the rank and file gets to appoint someone. [LB591]

SENATOR MCGILL: Okay. Other questions? No? Thank you very much. We will move on to proponents. Hi there. [LB591]

STEVEN YOUNG: Senator McGill, thank you again for hearing me. [LB591]

SENATOR MCGILL: Welcome back up. [LB591]

STEVEN YOUNG: (Exhibit 7) Again, I'll try to keep it brief. Again, my name is Steven Young, S-t-e-v-e-n Y-o-u-n-g. I'm here representing the Fraternal Order of Police as the second vice president of the state of Nebraska. I'd like to begin by thanking Senator Lautenbaugh for his introduction to this bill and I think he did a good job. LB591 introduces two very simple noneconomical procedural changes. The first is, amend the service length of civil service members down to four years from its current five years. This would coincide with other four-year terms throughout the municipality. Those terms would still be staggered as they are statutorily right now. The other change, and the one that we're most interested in, the other change would require one police officer, and in some cases a firefighter, to serve on civil service commission for the cities of the first class. By state statute, and Senator Lautenbaugh addressed this, there is nothing that prohibits a police officer or firefighter from serving now. The issue is, no municipalities, that I'm aware of, currently appoint firefighters...police officers to the civil service board and this would require this. Again, this is a time-tested procedure that is used by the county merit commissions and has been since 1982. The civil service commission, like it's county counterpart, the merit commission, are designed to be vehicles that ensure that all police and fire "appointments and promotions are based solely on merit and efficiency and fitness and shall be ascertained by open competitive examination and impartial investigations." This is a quote from the state statute. Sometimes the advancements in the social order and political incentive make it easier for municipalities to drive civil service commissions more like a city department than a neutral commission. It is our desire to balance the political societal modifications of the commission with deliberate direction while maintaining neutral and openness. You've heard testimony from Sarpy cities and the League that the ability of citizens serving on the civil service and allowing...we've heard testimony about their abilities having a firefighter and a police officer serve on that civil service could only enhance the commission. This is an opportunity to take again two government entities, the merit commission and the civil service, and begin to structure them the same. I have nothing else. I'll stand for any questions. [LB591]

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SENATOR MCGILL: All right. Any questions? Nope. Thank you very much, Mr. Young. [LB591]

STEVEN YOUNG: Thank you. [LB591]

SENATOR MCGILL: Is there anyone else here as a proponent? [LB591]

DAVE ENGLER: Again, Dave Engler, E-n-g-l-e-r, President of the Nebraska Professional Firefighters Association. The firefighters are in support of this. I think Mr. Young pretty much outlined why and we see all those as benefits and positive changes to the civil service. So with that I'll answer any questions. [LB591]

SENATOR MCGILL: Questions? No? Thank you for your conciseness. (Laughter) [LB591]

DAVE ENGLER: Thank you. [LB591]

SENATOR MCGILL: Any other proponents? All right. Anyone here opposed? [LB591]

LOWELL D. JOHNSON: Thank you, Senator McGill and Senator Lautenbaugh. I'm Lowell Johnson. I'm sorry. [LB591]

SENATOR MCGILL: Go ahead, sorry. [LB591]

LOWELL D. JOHNSON: (Exhibit 8) I'm Lowell Johnson, I'm the city administrator at Wayne. I have a prepared statement. We have a police department with seven full-time certified officers and five full-time dispatchers. We're a city of 5,600 people, a first-class city. As a first-class city, we oppose requiring the appointment of a police officer to be a member of the civil service commission. The primary duties of the commission are to prepare a pool of eligible officers for the city to hire from and upon appeal, serve as an independent review of discipline of an officer by the chief or city administrator. The Legislature has wisely provided the civil service law for cities as an alternative shortcut...as alternative that is short of district court to provide an outside independent review of the commission...by the commission of the actions of the police chief and city administrator before a disciplinary action of an officer is contested in court. Wayne has recently been involved in two appeals of officer discipline before the Wayne Civil Service Commission. Our commission consists of three independent citizens appointed by the mayor and the council. Wayne terminated two certified officers. Both terminations were upheld after public hearings by the civil service commission and further upheld through the district court. One is being appealed to the Nebraska Court of Appeals. The civil service appeal process is and should be thorough and expensive so that neither the disciplinary action nor the appeal are initiated or undertaken lightly by either party. At

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the end of our process in Wayne today, two officers were terminated, three officers resigned, two dispatchers resigned, and the cost to the city of Wayne to conduct a third-party private investigation and the legal fees, not including those of our insurance carrier, was over \$600,000. Some officers were uncooperative during the outside investigation that we hired. I see a problem under this bill if one of those officers could have been the same one as appointed to the civil service commission. For the civil service commission to perform its function as intended, the citizen members appointed to that commission must be appointed by the elected officials of the community and not be selected by the city administrator, the chief, or nonmanagement police officers. Department disciplinary actions are the management duty of the chief. The civil service law provides a review of the chief actions by the city administrator upon appeal by the disciplined officer. The law also provides review and disciplinary actions by the chief and the city administrator upon appeal by a discipline officer. That independent civil service commission review does not involve the elected officials and should not be done by citizens...and should be done by citizens independent of the city staff. This is a review of city staff; it shouldn't...we should not be involved in that...we shouldn't have participation on the committee. To quote a December graduation speaker at the Grand Island Law Enforcement Academy, police officers are those with the courage to stand in the position between the sheep and the wolves in our society. In that daily and nightly line of duty, police officers are responsible for the safety of the public and for each other's personal safety. With their jobs at risk and their lives at risk, lines of communication and commitment run deep and strong within a department. Every department has a designated chain of command to manage and control the department. It would be very difficult, in my opinion, for a nonmanagement officer deciding a civil service commission appeal to rule against a fellow officer or a supervisor and go back to the work the next day and maintain that same critical fabric of commitment and communications within the department. If the appointed nonmanagement officer and the commission should rule against a supervisor and the case is reversed by district court, that officer would be concerned about his career and relationships within the department. On behalf of the mayor of Wayne, we believe the current civil service law works as intended to provide an outside, unbiased appeal review and we ask that you keep the system as is and not advance the bill. Do you have any questions? [LB591]

SENATOR MCGILL: Thank you. Senator Krist. [LB591]

SENATOR KRIST: You know, I tend not to try to sit on a...in judgment and, obviously, you have years of experience, as does the mayor of Wayne and you have your opinion, but I take a bit of exception to the sentence in the third paragraph; I'm not convinced that justice should be expensive. So if you want to make an appeal process, if your argument is that the appeal process should be so cumbersome and/or so expensive that neither the person who seeks justice nor the authority that has administered justice wants to go further to see if either one is in error, that's the part of it that I...I guess I'm taking... [LB591]

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LOWELL D. JOHNSON: I see your point and I agree with that. We think it needs to have some difficult...enough difficulty that it's not done casually and lightly, that was my point. But I agree that it is too expensive. [LB591]

SENATOR KRIST: Thank you. [LB591]

LOWELL D. JOHNSON: Any other questions? [LB591]

SENATOR MCGILL: Other comments? I don't see any. Thank you very much. Any other folks here in opposition? How many people do we have left to testify on this bill? Okay, a couple more. All right. Hi. [LB591]

RONALD D. MURTAUGH: (Exhibit 9) Senator McGill, committee members, again, my name is Ronald D. Murtaugh, M-u-r-t-a-u-g-h, representing the Police Chiefs Association of Nebraska, as well as Chief of Police for Ralston. Dear Senators: The Police Chiefs Association of Nebraska, PCAN, is opposed to LB591 as presented. The state civil service statutes were created to provide law enforcement and fire service a level of protection from special interests and political interference. Statutes have been created to provide for the appointment of a civil service commission from the citizens of the community who serve with the best interest of the community as their primary goal. LB591 proposed to inject partisanship and politics into civil service. One position on every civil service commission will be the appointment of a nonmanagement law enforcement or fire service officer selected by nonmanagement officers. In many police and fire departments, it will be the police union making the selection. This proposal is in stark contrast to the original foundations upon which the civil service laws were created. LB591 also creates disparate treatment of employees who serve under civil Service. The civil service laws are inclusive of all ranks within law enforcement including the police chief. LB591 proposes to provide representation to only one class of employee covered under civil service while excluding others. The civil service laws of Nebraska as written have effectively served our communities, our citizens, and those serving in law enforcement. PCAN opposes the changes proposed in LB591 to our civil service laws and request that you reject LB591. Thank you for your consideration of our request. [LB591]

SENATOR MCGILL: Thank you, Chief. Any questions from the committee? Nope. Thank you very much. [LB591]

RONALD D. MURTAUGH: Thank you. [LB591]

SENATOR MCGILL: Next opponent. Hello. [LB591]

BILL BOWES: (Exhibit 10) Good afternoon, Senator McGill, members of the committee;

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it's a pleasure to be here with you and get a chance to visit with you about this bill. My name is Bill Bowes, B-o-w-e-s. I'm the fire chief in Papillion. I'm also the president of the Nebraska Municipal Fire Chiefs Association. You're receiving a letter from the mayors of the United Cities. I'll briefly summarize the contents of that letter and tie in some of the testimony that you've heard so far. As Sergeant Young stated in his testimony, state law requires that civil service commissions be neutral. That word is used in the state law. Chief Houloose in his testimony on LB633, he used the word "apolitical." Those two combined give a good idea of what civil service is about. It's designed to be a group of people separate from city government that operate in the best interests of the community in the police and fire world. So neutrality and apoliticalness is very important. In fact, in Papillion our rules states that no more than three of our five members can be of the same political party. So there's a split even of political parties at the local level to avoid the dominance there. The idea of inserting a firefighter or a police officer as a member of the civil service commission, I believe, flies in the face of the intent of the law as it's written where you're introducing just naturally the view of a firefighter, the view of a police officer. You're going to be introducing politicalness to use a term, a special interest. And it will defeat the purpose of civil service. In our commission in Papillion we have a nice variety of citizens who are interested in the process, have no expertise, necessarily, in civil service law, but they want what's best for the community and they do an excellent job of maintaining that neutrality that is so important in that. The practicality of having a police officer and/or a firefighter on the panel would mean that in current state law where the civil service commission will hear cases related to suspension, demotions, terminations, that firefighter or police officer will be hearing the case of a fellow worker. In some cases that could be a subordinate or it could be a superior of that officer and they're expected to make a judgment call on that. So you're...we're introducing some sort of conflict of interest in that also. And then finally, the cycle of the nominations of the terms of the board, right now in our case with the five members, one member serves for one year, two years, three years, four years, five years, and the cycle helps reduce the politicalness of the committee. Whereas if we went on four-year terms only, then we've got groups of people moving in and out every four years on staggered basis. I think the current system is fine the way it is, we don't need to change the terms of those at all. So for those reasons we are opposed to this bill. [LB591]

SENATOR MCGILL: All right. Any questions? Nope. Thank you, Chief. [LB591]

BILL BOWES: Thank you. [LB591]

SENATOR MCGILL: And final opponent. [LB591]

LYNN REX: (Exhibit 11) Chairman McGill, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We, respectfully, oppose this measure as well. And if the page would come forward, please, for a handout. This is a letter from Nebraska City. And I would like to point out just a

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couple things in this bill that we find extremely troublesome. First of all, if you turn to page 2 of the bill, you'll note that on line 17 to 19, this is on page 2 of LB591, that it's striking language that makes it clear that this...it says that the civil service commission...this is when you have a city that drops in population from 5,000...5,000 is the threshold to be a city of the first class and the 5,000 language is up in line 10. But, basically, if you drop below that, then the civil service commission shall be continued for at least four years and thereafter continued at the option of the local governing body of such city. The members of such commission shall be appointed by the appointing authority. And just to underscore this, during the negotiations in 1985, what was extremely important is to make sure that for those cities at that time is was Fairbury that dropped below 5,000 in population. Ogallala, this committee was kind enough a couple of years ago to pass a bill to give them kind of a little bit of leeway of being able to retain their status as a city of the first class. But this is intended to address those situations when you do have cities that drop in population. Fairbury no longer has a civil service commission. In smaller communities and communities that are getting lower and lower in population, sometimes it's very hard to find individuals to go through this process. And there's another bill that passed several years ago to provide protections for police officers in cities of the second class and villages. With that we are, obviously, opposed to that provision. In fact, we are opposed to the bill as well in adding nonmanagement police officers for reasons that have already been stated. But I'd just like to underscore some things that are not actually in the bill itself because these are in other sections of Chapter 19, Article 18 which are the civil service laws. If you take time to look at 19-1827(4), and this is not in the bill, this talks about the fact that at the time of any appointment to the civil service commission not more than two commissioners of a three-member commission, or three commissioners of a five-member commission including the one or ones to be appointed shall be registered electors of the same political party. And throughout this act it has provisions to make sure that this is a fair and impartial body. It's not supposed to have representatives of management on it; it's not supposed to have representatives of employees and nonmanagement on it. This certainly would shift that balance tremendously. As already indicated, you would actually have...you'd be having a peer, a colleague if you will, making and rendering decisions on whether or not you would get demoted or not, whether or not you should have a disciplinary action or not. I think that's fundamentally unfair and I think that in addition you do want a fair and impartial body. The appointing authority and the mayor/council form of government is the mayor/council in a city manager plan of which we have, I believe, ten of them. It is a city manager in a city that is a commission form of government like Nebraska City is actually the commission itself and Nebraska City is the only commission form of government in the state of Nebraska. That being said, these are individuals that are appointed by elected officials; they're intended to be citizens that can render decisions that are fair and impartial. And to show you how fair and impartial it can be, when you look at 19-1833(5), which again you don't have, but this is also in the civil service statutes and this is in the same act that this is coming from: if such judgment or order be incurred in or by the commission, or a majority

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thereof, the accused; obviously the individual police officer, firefighter and also police chief or fire chief; or governing body, the city, may appeal to the district court. And it has a whole procedure there. And then what is the standard of review? The district court at the hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension made by the commission was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. No appeal to such court shall be taken except upon such ground or grounds. The reason why I bring that to your attention is there are several cases where the municipality itself goes on appeal. So you've got the elected officials that appointed this fair and impartial body, and that's what they're supposed to be, but that doesn't mean that they're going to go with whatever the city wants to have happen. And many times they do not and the city itself is the one that appeals. Of course the officer or the firefighter also have that right of appeal. So we respectfully oppose this measure for two reasons: one, because it would apply civil service commissions to cities of the second class. And, secondly...and they also have another form of protection. And then, secondly, because we think it is extremely important to keep the civil service commission to be the body that it was intended to be, and that is a fair and impartial body from which the appointing authority can also, basically, appeal the decisions, as well as the nonmanagement and management employees. Because, again, the civil service commission has authority over the chief too. It's not a representative of the chief; it's not a representative of the city and it should not be representative of nonmanagement employees either. With that I'm happy to respond to any question you might have. [LB591]

SENATOR MCGILL: All right. Any questions? No? Thank you, Lynn. [LB591]

LYNN REX: Thanks so much, appreciate your time. [LB591]

SENATOR MCGILL: Any more opponents? Okay, how about folks here...who are here neutral? Senator Lautenbaugh, would you like to speak or close? Of course you would. (Laugh) [LB591]

SENATOR LAUTENBAUGH: I'll be brief. This is just a policy choice over whether or not the representation on these commissions is adequately diverse as far as the interests involved or not. The bill is simple. I think it was explained ably by both the proponents and the opponents and you are where you are. [LB591]

SENATOR MCGILL: All right. Any final questions for Mr. Lautenbaugh? (Laugh) Well, thank you, Senator. [LB591]

SENATOR LAUTENBAUGH: Thank you. [LB591]

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SENATOR MCGILL: (See also Exhibits 14 and 15) And we will then go on and open on LB643. I see Senator Davis in the audience. Welcome to our committee. [LB591]

SENATOR DAVIS: Thank you. Good afternoon, Chairman McGill and members of the Urban Affairs Committee, I am Al Davis, D-a-v-i-s and I represent the 43rd Legislative District. I am here today to introduce LB643. The bill would give cities of the first and second class and villages more local control over the regulation of nuisances created by the excessive growth of weeds, grass, and worthless vegetation, one of the most common complaints that city officials receive as complaints about a property where the grass and weeds have not been mowed. Under current law, cities and villages, other than Omaha and Lincoln, must wait until the grass and weeds reach a height of 12 inches before the city can declare it a nuisance and ask that the yard be mowed. If the property owner does not mow the yard within five days after receiving notice, the city can mow the yard and charge the property owner. The notice often takes days and even a week or more so that by the time the mowing occurs the grass and weeds are very high. LB643 would simply remove the 12-inch standard from the law and allow these cities and villages to determine at what height the weeds and grasses become a nuisance and also allow the city to determine the process to notify the property owner. The bill also clarifies the procedure for a property owner can use to appeal a nuisance citation. Current law makes reference to an appeal procedure, but does not specify how it will take place. I'd be happy answer any questions if I can, however the individuals who brought this issue to my attention are here today and will explain more fully the need for the changes in LB643. [LB643]

SENATOR MCGILL: Well, thank you for bring this. My first year here we dealt with this particular bill. I don't think anybody else was around on the committee when we dealt with weeds before, but I think there was a bill to change it to six inches because of that lag time and how long...how long that grass can grow. So thank you for bringing us this alternative suggestion to just putting a number in statute. Does the committee have any questions? No? Thank you very much. [LB643]

SENATOR DAVIS: Thank you. [LB643]

SENATOR MCGILL: We'll move on to proponents. Welcome. [LB643]

J. D. COX: (Exhibit 12) Good afternoon. My name is J.D. Cox, that's J-D-C-o-x. Good afternoon. I appreciate being here this afternoon and I come with the full support and endorsement of our city council. For the past two years I have served as the city manager for the city of Alliance. And I came to Nebraska to Alliance about two years ago. And I also have the distinct pleasure of serving as the secretary of the Nebraska City Managers Association as well. You know, we've loved our two years that we've been here and I think that a lot of really good things are going on in Nebraska. We've come to love it here; we love Alliance. And with so many good things going on, I thought

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that I would first preface my comments today that I...the sky is not falling, that I'm bringing some ideas to you today that just maybe a little bit of tweaking might be a good thing for us to consider. The one thing that I have observed that does not seem consistent with what I've observed in Nebraska, in Alliance anyway, is the fact what's known as Dillon's Law and the somewhat lack of local control over local issues. And as I understand, cities in Nebraska have only a limited authority and that being which is specifically delegated to cities by the Legislature on those specific issues. And as such, the state Legislature has passed laws that was referenced by Senator Al Davis just a moment ago regarding the height of grass and weeds in our local municipalities. And I'm here to ask the question, does that really make the most sense? Is it a true-good best practice that a one-size-fits-all be applied universally to all cities, especially one with the...in a state like ours where there is so much diversity amongst the various cities in our state. Much the same as at the state level where it's not appreciated when there's...there are federal, unfunded mandates that are pushed down on states, we have a similar type of thing at the local level as well. And I don't believe for a moment that the culture of Nebraska is one of micromanagement. I would be surprised to find anybody champion the cause of micromanagement at state or at local level. But instead I think we've just kind of defaulted into this position and until now, other than what was discussed a couple of years ago, we haven't really come back and fixed that. And I think soon, perhaps next year we should come back and discuss local control, maybe even in more depth than this year and what makes sense. But in that context for today, for this year, we're here to talk about weeds and grass. And one of the greatest irritants, again, as Senator Davis made a comment about a moment ago is that in...for our neighbors and our community anyway, grass and weeds when they're allowed to become too tall, it does provide that irritant for our neighbors. We are very fortunate in our community that we really have no, per se, bad parts of town; but instead we just have the occasional unkept and sometimes abandoned properties throughout our community in different areas. It is important in our community to...that we address these issues as soon as we possible can. And because a neighbor is not able to truly enjoy their property if they have an uncut property next door or down the street. Further, one of the unwritten, or sometimes written, understandings when one moves into the communities that they will live by the norms of that particular community. And those norms vary from one community to the next, even neighborhood to neighborhood sometimes. I'd like to reference the handout that I gave you a moment ago. I've included some pictures in the back of some properties. These properties, as I mentioned a moment ago, in our community they tend to be the ones that are abandoned or someone has moved out temporarily and so those are the ones we fight the most, I would say. However, sometimes folks are living in them too. But that gives you an example of waiting until a lawn becomes 12 inches high before we even start the process of addressing it. And they really become unsightful. I think it's our job and our obligation in Alliance to enforce the community norms. And quite frankly, waiting until grass get to be 12 inches is not consistent with our community norms. As it currently stands, once grass reaches 12 inches and we then begin the process of enforcement, and by the time compliance or

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city enforced action is taken, that 12 inches might be 14 or 16 or even worse. And so we recognize that other cities may have different norms than what we do, and that's okay. We don't wish to impose our norms on other communities; but at the same time the converse would be the case as well. And so again my question is, what really makes sense? Does it make sense for the state to establish a one-size-fits-all for all communities, or does it make more sense for the local communities to decide what that norm should be and they establish it and then they enforce it? And we do so by local ordinance. Does it make sense for the state to arbitrarily pick a number, 12 inches, whatever it is, 10 inches? Or do we establish that at the local level? I think that...I would ask the question, too, that...does it make more sense to look at LB643 and does it maybe provide that answer to that question and place the responsibility at the local level to decide what those are? My little attempt at humor today is that I'm here to propose the Legislature not be in the weeds, (laugh) but instead be at the 10,000-foot level and allow a local issue such as grass and weeds to be a matter for local governments. I'm not aware of any impact this legislation would have on farmers and ranchers or in the rural residence. With that said, I would like to, again, on the very positive side like to comment that I think the state does so many things very, very well, remarkably well. I've never seen a unicameral in action before, and I think it's tremendous. I've never seen a state strive for nonpartisan politics at a state level, and I think it's doing a great job. I wish more of our states did so. I think this state is very supportive of even the most far-flung communities like us. We're 400 miles away and we continually have state displays and exhibits in our communities, in our museums. We have state meetings in our community and we appreciate. And we have state departments that support our various initiatives and I will tell you that that means a lot to us. It means a lot to have the state folks come to Alliance. And we have three other state capitols closer to us than is Lincoln. And so when we have state things that occur in Alliance it means a lot, so I wanted to pass that along. Finally, I think this state has provided its cities with incredibly valuable economic development tools like LB840, tax increment financing, are tremendous. And also this last year with the advent of the additional half-cent local option sales tax, that's a tremendous tool. And I'm here to pass along to you, thank you for those; those are tremendous and they mean a lot and they're helpful to us in being able to continue to move our communities forward. If we're not moving forward, we're falling behind; especially those cities that are on the border...in borderline situation with other states. So again, I ask what makes sense? And I would suggest that it's precisely these types of tools and local control that do make sense. And no community is forced to do anything that it doesn't wish to do. It can establish...stay with the state standard if they'd like to, or they could have their own local norm or their local...own local established limit. I think it follows LB643 would provide that local community with the authority to establish and enforce local issues of acceptable height of grass and weeds. And I'd like to ask you to join with me and Senator Davis and the good folks of Alliance in supporting LB643 and place the control of local issues of grass and weeds where I think it makes the most sense and that's at the local level. Thank you. [LB643]

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SENATOR MCGILL: Well, thank you, Mr. Cox. And maybe the state can be even better by doing some teleconferencing so you don't have to drive all the way here... [LB643]

J. D. COX: That would be great. [LB643]

SENATOR MCGILL: ...to testify and then you could testify more often. [LB643]

J. D. COX: That would be great, appreciate that. [LB643]

SENATOR MCGILL: But, you know, hopefully, someday we see that happen. Any questions? Senator Lautenbaugh. [LB643]

SENATOR LAUTENBAUGH: Well, sir, if you're going to come all this way, we're going to ask you questions. [LB643]

J. D. COX: Sure. [LB643]

SENATOR LAUTENBAUGH: Don't want you to feel you didn't get your money's worth. [LB643]

J. D. COX: Appreciate that. [LB643]

SENATOR LAUTENBAUGH: So, I think I heard you say at the outset that you may not be from Alliance originally. [LB643]

J. D. COX: Correct. [LB643]

SENATOR LAUTENBAUGH: Do you have any reason...or any idea why the 12 inches was chosen in the first place? [LB643]

J. D. COX: By the state? [LB643]

SENATOR LAUTENBAUGH: Yes. [LB643]

J. D. COX: No, I don't. [LB643]

SENATOR LAUTENBAUGH: I'll ask others who might come behind you and see if they have the legislative history on that. Not that you would have, I was just curious if you knew. [LB643]

J. D. COX: Okay. Sure, sure. [LB643]

SENATOR MCGILL: I was wondering the same thing, because I remember having this

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debate over how long the grass should be and thinking this is silly. But what...you know, and what is that threshold where people are allowed to let their grass grow a little bit and not mow every three days. [LB643]

J. D. COX: Sure. [LB643]

SENATOR MCGILL: And it seems like it's a local control thing to me. [LB643]

J. D. COX: Appreciate it. Well, I know that...answering a question, but, you know, we get phone calls from neighbors saying what are you going to do, when are you going to act on it? Well, we can't, we can't, we can't, okay, we finally can. And then you always have situations where, unfortunately, folks try to game the scenario and, you know, try to get around it; so I think the more that we can control and front load those situations where we can keep that control, I think the better it will be for all neighbors in the community. [LB643]

SENATOR MCGILL: All right. Any other questions? Nope. Thank you very much. [LB643]

J. D. COX: Thank you very much. [LB643]

SENATOR MCGILL: Next proponent. [LB643]

SILAS CLARKE: Good afternoon, my name is Silas Clarke. I'm the city administrator at Hickman, Nebraska, here speaking in support of LB643. I'd like to thank Madam Chair and the rest of the committee for having us today. First off, I wish we didn't need this type of legislation because it's only a few property owners that it is necessary for. You know, most property owners care about the looks of their property and keep them free of excessive growth of weeds and grasses. Most property owners also respond very well to a courtesy phone call, which is not really what this is getting at. These are not the property owners that municipalities want or need this state law that mandates the length of weeds and grasses for. It is the frequent offenders and the foreclosed properties that are currently...that municipalities are...need greater assistance with addressing and that's why I'm here is to stress that the language currently in Section 17-563 is not sufficient to meet these needs and change is definitely necessary. Currently, when the city of Hickman receives a complaint concerning the length of grasses and/or weeds we, of course, follow the state law. This process consists of the following steps, which I'll go through very briefly just to kind of stress the need for change. So as you are aware, the current law requires the length to be 12 inches before any action can take place. Once the grass and weeds are 12 inches or longer, a letter is sent by certified mail, since personal service, which is also an allowed notification process underneath the state law, we interpret it as we would have to send the sheriff out which would cost \$50 for them to hand that out. So that's just not a feasible option

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for us or something that we're interested in doing. So again, this nuisance of property usually only takes place for foreclosed houses whose owners do not respond to really anything, or frequent problem property owners which you know they will not sign for that certified letter. They just will not, they know that it's coming. So really the municipality can't do anything about it in that meantime. So with that said, a certified letter, once it reaches the destination, remains at the post office for 15 days. So it takes a couple days to get there, notice goes out to their houses. If they do not sign for it, notifications, I believe, it's three go to their house, sits there at the post office for 15 days and then it is sent back to the sender. So you're looking at another couple days there. This means that over 20 days have now passed since the grass was 12 inches in length. In the meantime, complaints have continued. I can think of one off the top of my head from last year that really was a problem, and the city appears to be unresponsive, completely across the board, what are you doing about this? We're doing what we can and we're doing what we can, we can only say that so many times. Then after this process has been completed, so they didn't sign for the certified letter, according to the current state law if the certified letter was unsuccessful, notice shall be given by publication in the newspaper or by posting notice on the lot. So, after this process I've just said, our newspaper is published once a week for the city of Hickman, this means we're waiting more days. So we choose to post a sign in their yard after this process has been done and then the neighbors applaud because they see that something is done, but we set that in their yard for five days, then the city goes in and mows it. So this entire process that I've just outlined per the state law takes 25 to 30 days at the earliest if they do not sign for that certified letter which does happen because it is the frequent fliers on this. You know, this is unacceptable to our citizens and, again, makes the city staff look very unresponsive. The change is outlined in LB643, and thank you, Senator Davis, for putting this in, which allows the municipalities to set an acceptable length of weeds and grasses on their own. And I believe most importantly, amends the notification process so the municipality can react to the nuisance in an acceptable amount of time is very important and I urge passage of this legislation. I'd be willing as you're talking this bill through to sit around, I'm very close in Hickman, and try to think up of exactly how this can be done, but here in support of that. I'd take any questions that you may have. [LB643]

SENATOR MCGILL: Thank you, Mr. Clarke. Any questions? Senator Krist. [LB643]

SENATOR KRIST: No questions, but I just...to your point, I think Senator Davis is on the right track, you handle it. [LB643]

SENATOR MCGILL: Um-hum. [LB643]

SENATOR KRIST: So we sit around and we can talk about this stuff until the cows come home, but it's not going to help you do what you need to do, so. [LB643]

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SILAS CLARKE: It's not. And I fully support...and Mr. Cox did a great job of talking about local control, absolutely. [LB643]

SENATOR KRIST: He's done exactly what needs to be done in Section 2, 3 and then, of course, just eliminating...I mean, if you identified at 12 inches during that calendar year, then I can come back and tell you when it's 8. Come on, seriously. [LB643]

SILAS CLARKE: And we actually just passed an ordinance to get to that eight just this last year and it was...you know, it's like, okay. And before the city council actually turned down...I don't know what year it was, it was before I was in Hickman, that eight. But it's just because it's so confusing to add that on to it at the end where this bill does take care of that issue. [LB643]

SENATOR KRIST: Well, I'm with you. We'll just tell you to handle it. [LB643]

SILAS CLARKE: Thank you. [LB643]

SENATOR KRIST: Thanks for coming. [LB643]

SILAS CLARKE: Thank you. [LB643]

SENATOR MCGILL: Thank you very much. Another proponent. [LB643]

SENATOR LAUTENBAUGH: Bet he has the answer too. [LB643]

SENATOR MCGILL: A full and detailed legislative history. [LB643]

SENATOR KRIST: He's got that smile like he does. [LB643]

GARY KRUMLAND: Senator McGill and members of the committee, my name is Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB643. As you heard, this is an emphasis on local control regarding height and notice. I did want to mention though, there is some added language regarding an appeal. Under the current law it just simply says the property owner can ask for a hearing, but it doesn't say anything more than that and that causes confusion. So there in the bill itself there is some additional clarification on what an appeal means. The 12 inches, to answer your question, Senator, and I can't remember which year it was, but there was a court case in southeast Nebraska, I think it was Falls City, a district court case, where they questioned whether the city had authority to take care of this, whether this was nuisance. So legislation was put in to clarify it and for some reason I think...because some language or something that the district court judge had said 12 inches was chosen. I will mention though that since that time, Nebraska Supreme Court has ruled on a Lincoln ordinance...Lincoln has authority to take care of

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grass and weeds and there's no height in the statute regarding Lincoln...Lincoln passed an ordinance though that says six inches is a nuisance and the Nebraska Supreme Court upheld that ordinance and said that their definition of six inches plus their procedure for notice and hearing is appropriate. So there seems to be...the court seems to say that there is some leeway there for a city to make those decisions. And just kind of to talk a second about the statute, there are two sections mainly in here, the first section is for cities of the first class, those are between 5,000 and 100,000, they have a different set of statutes. The cities of the second class and villages are handled by Section 2 and they're covered in a different chapter. And they're virtually the same language, but the reason there is two different sections is simply because they're handled under different chapters in the statute. I'd be happy to answer any questions. [LB643]

SENATOR MCGILL: Do you think there is any benefit to having a minimum and a maximum in terms of what a city finds reasonable? I don't know, I'm just throwing it out there. [LB643]

GARY KRUMLAND: Well, if...I mean, if the...the problem has been, as you've heard, a combination of the height, 12 inches, is already a nuisance and by the... [LB643]

SENATOR MCGILL: Oh, for sure, yeah. [LB643]

SENATOR KRUMLAND: ...and with the notice in there, 12 inches is actually 18 or 20 or 24 inches. [LB643]

SENATOR MCGILL: Yeah. I'm thinking more on the minimum side. [LB643]

GARY KRUMLAND: Yeah. So if the committee thinks that, yeah, there should be a minimum... [LB643]

SENATOR MCGILL: And I don't...I don't know, I'm just throwing it out there. [LB643]

GARY KRUMLAND: I mean I...I don't know that we would object to that, but the combination of the notice and the height needs to be clarified and shortened. [LB643]

SENATOR MCGILL: Um-hum. Senator Krist. [LB643]

SENATOR KRIST: Can't help it. If it's June and I own a goat then it's...no, I'm kidding. (Laughter.) The point is, from what you're describing, would it be a benefit to us, I'm asking your opinion, and the League's opinion, would it be a benefit to us to just say, you know, it doesn't make a difference how big a town is, municipal, primary, first, second, village, it's up to you. But we're going to give you the authority to decide what is a nuisance and copy this. And I understand we would have to go into some different

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statutes, but can we fix this that way one time and be done with it? [LB643]

GARY KRUMLAND: That would be our preference. I mean, that would, I think, be the best way to handle it and then we won't be back here in another three years to try and correct something. [LB643]

SENATOR KRIST: This committee and several others that I've been...and General and several others that I have witnessed have taken that approach in this legislative environment. If it's good for the goose, it's good for the gander, why are we making separate laws for different sizes, so I'm glad we got that on the record and maybe we can come up with a friendly amendment that makes you a hero all the way through. [LB643]

SENATOR MCGILL: Well, it sounds like Lincoln currently has local control, essentially, so the primary class. [LB643]

GARY KRUMLAND: Yeah, well, both Lincoln and Omaha, and they're a little different because, as you know, they're home-rule cities, they've got their own charter. But they also have statutes that govern what they do. And both Lincoln and Omaha's statutes that authorize them to address grass and weeds give them authority to do that. They do have some notice provisions in there, but it leaves it up to the city to determine what the height is. [LB643]

SENATOR MCGILL: But maybe some of the appeal process, or something that would be good to put into there? Or, I guess, is that just covered by their ordinances? [LB643]

GARY KRUMLAND: I mean, that...they do that themselves. There is a...for example, there is...Omaha's notice provision is in the state statute for Omaha. [LB643]

SENATOR MCGILL: Okay. [LB643]

GARY KRUMLAND: But their notice is simply that in April, if they put a notice in the newspaper to say if anybody during this growing season lets their weeds grow longer...and they use 12 inches, grow longer than 12 inches, we're going to come in and cut it. [LB643]

SENATOR MCGILL: All right. [LB643]

GARY KRUMLAND: So they don't give individual... [LB643]

SENATOR MCGILL: They do 12 inches up in Omaha? [LB643]

GARY KRUMLAND: But they don't do individual notice. So when 12 inches means 12

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inches. [LB643]

SENATOR MCGILL: Interesting. Huh. [LB643]

SENATOR KRIST: And they cut it and charge you. [LB643]

SENATOR MCGILL: Huh. All right, Senator Lautenbaugh. [LB643]

GARY KRUMLAND: Or they give notice and say you better cut it or we will. [LB643]

SENATOR LAUTENBAUGH: So did I hear you right, somebody took Lincoln's six-inch weed ordinance all the way to the Supreme Court already? [LB643]

GARY KRUMLAND: Yes. (Laughter) [LB643]

SENATOR MCGILL: I'm telling you, when we debated this before, it was like around and around on what that length should be. [LB643]

SENATOR LAUTENBAUGH: So if we support this, will you guys support my civil service commission? (Laughter) [LB643]

GARY KRUMLAND: Probably can't give you that gig. And just for reference, and I'd get you this cite, but it's Howard v. The City of Lincoln from 1993 is the... [LB643]

SENATOR MCGILL: Goodness gracious. [LB643]

SENATOR LAUTENBAUGH: Howard must be a busy man. [LB643]

SENATOR MCGILL: All right. Well, thank you very much. Any other proponents? Any opponents? Anyone here neutral? Senator Davis, would you like to close? [LB643]

SENATOR DAVIS: Thank you, Senator McGill. I think you've heard pretty good testimony as to why this is needed and why it's important. And to me, as Senator Krist said earlier, it just doesn't make much sense to have several different sets of rules. Let the people in their own communities decide what works for them. And let the notice be what works best for that community. So with that said, if you want to make some changes, we're certainly willing to look at them. But if not, I'd appreciate your support on moving forward with LB643. Thank you. [LB643]

SENATOR MCGILL: Well, thank you very much. Any last questions? Nope? All right, that ends our hearings for the day. (See also Exhibit 15) [LB643]