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Natural Resources Committee
February 06, 2009

[LB577]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 6, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB577. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; and Beau McCoy. Senators absent: Ken Schilz.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. Like to welcome everyone that's in the crowd, those that are watching on closed caption and those that are watching on our new Internet feed. We appreciate having the opportunity to make sure everybody gets an opportunity to watch. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to introduce those sitting around the table for the audience's and testifiers' benefit. We have Barb Koehlmoos, who is the committee clerk. You will give her your testifying sheet as you prepare to testify. We have Senator Cook from the 13th District. We have Senator Tom Carlson from the 38th District. We have Senator Deb Fischer from the 43rd District. Clear to my left we have Senator Beau McCoy from the 39th District. We have Senator Ken Haar from the 21st. We will have Senator Ken Schilz from the 47th. And then the Vice Chair of the committee is Senator Annette Dubas, who will be joining us in a little while. Laurie Lage is the legal counsel for the committee. We have, for those of you that care to hand things out, we have two pages that are happy to help you with that, if you just hold it up when you get up there. We have Justin Escamilla from Scottsbluff, Nebraska, and Malinda Frevert from Omaha, Nebraska, right here that will be helping you. If you do have handouts today, we like to have ten copies of them. If you know you want to hand something out right away and you know you don't have ten copies, just hold your hand up and a page will help you with that, although this crowd has all been here before, I can tell. I'm starting to recognize faces. I do tell you that if you do hand something to the committee to look at, whether it be pictures or something on that order, we will keep it for the record. So if it is something you want to keep, don't let us touch it; just show it to us as you testify. We ask that when you come up to testify that you pick up one of these green sheets located in the corners of the room and fill it out in its entirety so we can keep a clean record today. We also will allow you, if you would like to be on record as being here but yet you're not going to testify, we have this sign-up sheet in the back corners. You can put your name and address and the bill...well, today we only have one bill but put today's bill of LB577 on there and then tell us whether you're in support or opposition. Those are your two options. When you come up to testify, we'll ask you to state your name and spell it. We need you to spell it to keep the record clean, so no matter how simple you think it is, I'm not a good speller so please spell it. With that, we would ask you at this time to please turn off your cell phones so we don't interrupt any testifier and we respect their time and their testimony. With that, I am done talking and Senator Rogert, who is the introducer of LB577, will open the hearing on that. And, Senator Rogert, welcome, and you are recognized to

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give your opening. []

SENATOR ROBERT: Thank you, Senator Langemeier. Good afternoon, members of the Natural Resources Committee. My name is Senator Kent Rogert. I represent the 16th Legislative District and I'm in my network debut with the Natural Resources Committee. I'm glad to be here for the first time. Today I'm introducing LB577, a bill that would clarify the current law that allows natural resource districts throughout the state to establish improvement project areas, or IPAs, for the purpose of addressing local needs, such as public water systems and flood control. LB577 is offered as a solution to the Sarpy County floodplain problems that the Papio-Missouri River Natural Resources District has been attempting to solve through obtaining general obligation bonding authority from the Legislature. Unfortunately, the Legislature has rejected each of these efforts heretofore. It is our belief that it would be appropriate for the natural resource districts to consider establishing an improvement project area for the purposes of addressing the Sarpy County floodplain problem. The IPA would allow the NRD to undertake flood control measures to be financed by the people benefiting from those measures, including developers who have advocated for past legislation on general obligation bonding authority. The improvement project area would relieve taxpayers through the district...throughout the district from paying the cost...paying for a cost of a local problem. For example, a farmer in Thurston County is not responsible for a flood risk in Sarpy County and who will by no means benefit from measures to reduce that risk. LB577 clarifies our existing law with specific definitions that were not previously included in statute, and reorganizes the language for clarity and structure as it currently permits the NRDs to bond for improvement project areas. Just a little background: Much of the language in the bill isn't new but it's moved. What I attempted to do was kind of cleanup the NRD statutes because it's been piecemealed together over many, many years. LB577 gives us protection to the people who do not benefit from an IPA, whose land may lie outside the area but may only be affected by certain points of the project. This piece of legislation gives people a voice in the process and protection against the improper exercise of eminent domain by natural resource districts. With that, I hope the hearing on LB577 provides us with a good discussion on the issue, but I'll defer most of the technical questions to the experts that will be testifying behind me. And just for some of the new members to the committee, the Papio-Missouri River District extends from Omaha all the way up to Sioux City along the Missouri River. I represent one of the largest land masses of that district but not that many people in it. And that's all I have for the time. Any questions? [LB577]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Are there any questions? I have one. [LB577]

SENATOR ROBERT: Yes. [LB577]

SENATOR LANGEMEIER: I have on my notes here that you have an amendment.

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[LB577]

SENATOR ROBERT: It will be coming from behind me. [LB577]

SENATOR LANGEMEIER: Okay. [LB577]

SENATOR ROBERT: Yeah. [LB577]

SENATOR LANGEMEIER: And you are aware of the amendment that you're offering. [LB577]

SENATOR ROBERT: Yes. [LB577]

SENATOR LANGEMEIER: Okay. Any other questions? Seeing none, thank you. [LB577]

SENATOR ROBERT: Thank you. [LB577]

SENATOR LANGEMEIER: Very good. [LB577]

SENATOR ROBERT: I'll most likely waive closing. I'll be around for a little bit but... [LB577]

SENATOR LANGEMEIER: Okay. Okay. Now we'll start to take supporter testimony, proponents of LB577. Come on up. There's chairs up front if you want to come up and get ready to testify. Have some handouts. Welcome back to the Natural Resources Committee. [LB577]

ANDY POLLOCK: (Exhibits 1, 2) Thank you, Mr. Chairman. It's good to be back here, I think a week to the day later after last time I was here. Mr. Chairman and members of the Natural Resources Committee, my name is Andy Pollock, that is A-n-d-y P-o-l-l-o-c-k, and I am here as a registered lobbyist appearing on behalf of the Papio Valley Preservation Association. It's a group that consists of about 600 members, mainly rural landowners in the rural Douglas-Washington County area with also a few members in the Burt County as well. I have handed out to you a couple documents. One is a binder of materials that I believe I've shared with each of you before and there's a summary of the bill. There is basically a copy of the green copy of the bill that I've highlighted the significant changes on, and then there's an explanation of all the changes in the bill. I've also handed out amendment...the amendment that the Chairman recognized earlier, which is a significant amendment. It was not included due to a bill drafting error that we did not catch, and I apologize for that. Senator, the materials I gave you earlier in this week did include that change so you've seen that change and we've talked about it a little bit, and I'll talk about it a little bit more in my

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testimony. My testimony, I'll apologize right off the bat, it may run a little bit long but we have very few people here speaking on behalf of this. Most of these are legal changes. Myself and another attorney from our office who I think you are all familiar with, David Barga, will go through the changes and we'll keep our testimony as brief as possible but it will...mine will be a little bit longer. And I'll also be happy to answer any questions that you have. Let me give you, to begin with, a little history of how this came about that should give you an idea of what we're trying to achieve with LB577, and Senator Rogert did an excellent job of giving you a bird's eye view of that. I went to Senator Rogert and I talked to a few senators this fall, including some members of the committee about this notion, and I went to him with the idea of utilizing...recommending the utilization of an improvement project area, and I'll explain what that is more, as a possible solution to an issue that's been before this body for four years now. As you know, the Papio NRD has sought general obligation bonding authority three times in the past. They're seeking it again this session--you already heard LB160 which they introduced and in the three times that they've tried in the past they failed, and so this is our offer at basically a local solution to a local problem. I brought it up to Senator Rogert and he thought it was a good idea. And I said to him, we'd also like to build in some protections for people outside of the area, the IPA area, whose land would be affected by it. And he said, good, I agree, some of those people might be in my district. And finally I made the mistake of saying to Senator Rogert, I've worked on this issue in another NRD in the Lower Platte North and we put together actually an IPA for a water project there and I can tell you that this law is really a confusing mess, like he said, because it's probably been cobbled together over the years. And when I diagram it to people, I say if you started at ABC, you jump down to Z, come back up to G, and go to R and it really was not...didn't flow in a step-by-step order. And he said, well, why don't you go ahead and clean it up while you're at it. That's why you're looking at a 30-page bill. That's why it's as big and as cumbersome as it appears. But like I said, I have highlighted the changes in the green copy of the bill that I gave you that are significant and I tried to be unbiased in doing that. I would also like you to know that I shared that with the lobbyists for the Papio NRD and for the Association of NRDs as well. I shared that with them earlier this week. First, let me tell you a little bit about what an improvement project area is. I've talked to you all a little bit about this so I won't go into depth, but basically an IPA, improvement project area, is something that the NRD can establish either on its own motion or a petition, to handle a special project basically in a local area of the district, a limited area of the district. It may be established for any purpose for which the NRD is authorized. That includes flood control. It's clear in the law. It includes rural water systems. The big difference between an improvement project area and a general project would be that the improvement project area, the IPA, is funded by those who benefit from the project. In other words, in the rural water system that we helped with in Saunders County, the people who will be getting water from that project will end up at the end of the day ultimately paying the entire cost of that project, so that another person, landowner constituent of that NRD who might be clear up in David City who sees no benefit, does not pay one cent ultimately for that project. I think it's important to

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point out to this committee that bonding is allowed under current law for improvement projects areas and, in fact, to some degree we expand that bonding authority in the bill that we have...that Senator Rogert has introduced. All of what I have told you is currently the law. The bonding authority, the funding by the beneficiaries, the authorization for any purpose for which the NRD is created, the application to a limited area. That's all currently the law. I mentioned a little bit how the idea occurred to us about applying the IPA to this particular situation in trying to address Sarpy County flood control. We acknowledge that's an issue. We acknowledge that it needs to be addressed. We just have differed in the means of funding how it's to be addressed in the past. The use of an IPA for a flood control project is, I admit, not a typical use of an IPA. But like I said, it is certainly allowed by the law and I just want to read a brief section of law, it's one sentence, to you that says that each district, each NRD, may establish an improvement project area within the district for the purpose of carrying out projects authorized by law which result in special benefits to lands and property within such special improvement project areas. Any purpose is allowed, including flood control. We looked at the legislative history on this. We found nothing to suggest that it's not appropriate for this type of use. Mr. Borgen will get into that history just a little bit more for you. We thought it should be applied to this situation. We thought that would be a good idea. Like I said, the NRD has tried and failed for three times now to get bonding authority and much of the reason for that is that it simply would not be fair for people in Burt, Thurston, Dakota, Washington County to foot the bill for a project that is not of their own making. There's nothing that's changed in the last 50 years in those areas that's increased the runoff into Sarpy County. Most of that has happened in Douglas County. It's not of their own making and it's something that they will not benefit from, and that's really the beauty of the IPA, is the people who benefit from the project at the end of the day foot the bill for the project. We just believed that a local solution would be a better solution to this issue. Like Senator Rogert said, most of the changes are just the reordering of sections of law so that they flow in a logical, step-by-step order. Let me point out some significant changes. We've added a definition section. I'd be happy to answer any questions about that. The definition...the amendment that I offered, that Senator Rogert offered would require that an IPA be used for a special project which would be under the new definition defined as a project that affects less than 20 percent of the geographic area of the NRD. It would be required for those projects currently that it's under the NRD's discretion now. That's what that amendment does. Another major change would be to limit the use of an IPA to exclude recreational uses and development of fish and wildlife habitat uses. And also there's another significant change that allows only temporary use of General Funds for an improvement project area. Current law allows for use of General Funds and, in our view, that really allows for circumvention of the purpose of the IPA, which has a local project funded by the people who benefit. If General Funds are used, that totally guts that notion. What we do, what Senator Rogert does in LB577 is we acknowledge that you may need General Funds for cash flow purposes, fair enough, but those funds, as you'll see in many areas of law, have to be repaid within a year. Is that the right period of time? I don't know. We're

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willing to talk about that and I would point out that we're willing to talk about almost any of the provisions that are in this particular piece of legislation. But we thought at some point the General Fund should be paid back to make it truly a locally financed project. As Senator Rogert said, we also have built in some protections for land outside of the IPA that might be affected by the IPA. A couple of examples, with a rural water system, if there's a pipeline flowing to the project through areas that aren't within the IPA, people would have some notice of that pipeline being constructed across their line in addition to the eminent domain protections that they have. In the instance probably more applicable here, if someone is outside of the IPA but there would be a dam constructed on their land, they would get notice of that particular effect on their land as well. They'd get notice. They'd be identified in the petition. And for the Papio NRD only, they would have a right to vote on that portion of the project, not the entire project. That would not give them veto power over the entire project but they would have a right to vote on that portion of the project which affects their land. And again, I have to be clear, that would not be a veto power over the entire improvement project, just the portion that affects their land. Eminent domain, currently under Nebraska law you cannot take land by eminent domain for private development purposes. In 2006 this Legislature, in a bill that Senator Fischer introduced, LB924, I believe in response to the Kelo case by the United States Supreme Court, passed that law to prohibit the use of eminent domain to take property, and I quote, primarily for economic development purposes, primarily for economic development purposes. But I would say that there is a loophole to that law and we pointed this out last year in Senator Pedersen's LB945. Land could be taken for a legitimate purpose, like flood control, like water quality improvement, and then transferred for another purpose like private development. It allows an end run around the current law. The NRD itself has recognized this issue. They tried to address it in LB160. Unfortunately, and I doubt that this was their intent, but unfortunately they did nothing but restate current law, currently on the books. We've recommended...and then that current law allows an end run around the real purpose of Senator Fischer's bill. Our language regardless...says regardless of what the purpose is, the land cannot be transferred for private development or economic development purposes. And what I would say is that eliminates this dispute. Another way of looking at it would be to say it looks backwards at what happened. If it's taken by eminent domain, the land cannot be transferred for private development purposes. It looks backwards at it rather than trying to look forward at a subjective purpose, which might lead to a dispute of what that purpose was. The NRD might say it was taken for flood control purposes and then we transferred it and we would say perhaps, no it wasn't, it was really taken for private development purposes, and we have a big fight and potential litigation. We believe our language eliminates that dispute, that fight. I would concede that LB577 does represent a policy shift and it's a policy shift that we believe that this Legislature really should grapple with. NRDs today, like I said, typically do not use IPAs for this type of matter. That's a matter of practice. That's a matter of choice by the NRDs. Should that be the case? I think that's a policy decision that this body should address, needs to address, and I think can address through LB577. Mr. Bargaen will give you some examples of

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other similar situations where local solutions are used. We believe that more local problems should be addressed through local solutions. We believe that will lead to more accountability, better accountability. We believe that it will lead to more prudent measures being taken to address problems, like what you see in Sarpy County with flood control, perhaps less grandiose projects to take on issues. And the reason it would, because it would limit the pool of people paying for the project to a smaller pool and that would make the people perhaps more realistic about the types of projects that they are willing to undertake to handle the problem. We understand that an IPA may not always be an appropriate solutions and I think there's some ways and we'd be glad to work with you to fine-tune the law to rule out IPA use for certain purposes. I would submit to you that it's abundantly clear today that it is not limited at all for any purposes. The current law allows IPAs for any purpose whatsoever. Perhaps there are some purposes that should be excluded and we'd be happy to talk more about that. This is Senator Rogert's, this is our solution to a local matter, a local solution to a local matter. We understand the bill may not be perfect. Senator Rogert has the final say in what changes are made to the bill, as do you, as does the entire body. I would simply say that our group is open to trying to make the bill as workable as possible. Before I conclude, I'll just address a couple concerns that I've heard come up in conversations with you. One would be a concern about what this might do to existing projects. It's not our intent, and I know it's not Senator Rogert's intent, to disrupt any existing projects and we'd be fine adding a grandfather provision to the bill if that's needed to calm any concerns about that. There was a concern raised about the 12 percent limit on the amount of the bond and it was said that that limit applies to 12 percent of the assessable value in the improvement project area itself. That's not the way the bill reads. The bill reads very clearly that it's 12 percent of the assessable property value in the district, and the district already in law is a defined term and it's defined to mean the natural resource district. So we're talking 12 percent of the entire natural resource district, not 12 percent of the IPA. I don't think that needs to be clarified, but if somebody needs to add a word or two we'd be glad to do that to address that concern. There was a concern expressed, actually not by one of you, but by one of the cities that I spoke with, that this might interfere with interlocal relationships between cities and the NRDs, counties, I assume other public bodies. I don't see it. We certainly didn't intend to interfere with any of those and if there's something in here that does that somebody can point out to you, that does interfere with those relationships, we will be glad to make sure that that is removed. That's the last thing that we would intend. Finally, I heard a concern about changing the law for all NRDs because of a Papio NRD issue, and I know some of you have opinions about this. We are trying...we believe that it's probably better policy to have this apply to all NRDs, but the issue that my group is concerned about is the Papio NRD. In our view, it could be applied simply to the Papio NRD, but that's your decision and I understand that there are members of this committee who think that all NRDs should be treated equally, and I really don't want to get into that debate other than to say the issue in our minds is the Papio NRD issue. In closing, I would say that we believe that LB577 is a better solution than general obligation

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bonding authority. Current IPA law allows bonding. This is a better solution to an issue that the Legislature has been attempting to grapple with for more than four years. I truly believe that this bill would allow the NRDs to go to those people who have been pushing for it to take action, action in the form of getting general obligation bonding authority to tackle a very real and a very legitimate issue. It allows the NRD to go to them and say, if you need it, you must pay for it. We have tried, we the NRD have tried and failed three times to get general obligation bonding authority to address your needs. The Legislature has said no three times. It's not fair to other people in our district so now it's your turn--this is the NRD talking to these people--now it's your turn. If you think that it's needed, and we don't disagree that it's needed, if you think that it's needed, you must pay for it. It's a local issue. We're looking at a local solution with local funding. With that, I would be glad to answer any questions but I would encourage you to advance Senator Rogert's bill, LB577. [LB577]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Senator Haar. [LB577]

SENATOR HAAR: Sure. Thank you. Do you have a map for us that would show us what...if the things we heard about the other day, the Papio Valley flood mitigation and so on, how this would change and in what area? What kind of seems to be really open to me is words like "local," you know, local solution to a local project. And though I may not even disagree with you on that, but how do you define local? Because nobody wants to pay taxes and so, you know, could I just come forward and say, well, you know, I'm not affected? How does that process work? [LB577]

ANDY POLLOCK: I would be happy to give you a map. I'm sure the NRD would be happy to give you a map, too, and we can certainly do that. Under current law, the initial action to establish the IPA, whether it's by a petition of the landowners or by action on the NRD, on the NRD's initiative itself, must identify the area affected, and we attempted to clarify that by adding language that it has to specifically delineate the geographic boundaries of that area. So hopefully, we would give everyone, whether they are in the IPA or outside of the IPA, a sense of where those boundaries are for the improvement project area. So it would require that that local area, if you will, be specifically identified in the document that initiates the proceeding. And I assume the NRD would have the ability to alter that particular area as it proceeds with the process. [LB577]

SENATOR HAAR: And who would have the final say then over the drawing those boundaries around a local area for a local problem? [LB577]

ANDY POLLOCK: Probably a two-part answer to that question. [LB577]

SENATOR HAAR: Okay. [LB577]

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ANDY POLLOCK: The NRD certainly would have final authority over it, but it also allows, when...part of the reason the law is confusing is because it blends the establishment of the IPA with financing the IPA and it really, it really was, in all honesty, a mess. And I think there's members of NRDs who would probably concur with that. In fact, I know, in working with the Lower Platte North, they don't disagree with that position at all. But what would happen is during the...first the NRD or first the area is established and then the financing for it is to be determined, which could include bonding. At that point, the landowners within that IPA, and only right now within that IPA, have a say over whether to proceed with the financing and the bonding. So basically, they can put an end to the project if 50 percent or more of the people oppose the financing of the project, and that's under current law and we do not change that, that provision in law. [LB577]

SENATOR HAAR: So is a special election held then or...? [LB577]

ANDY POLLOCK: You know, I would have to get back to you on the means for that to happen. I think what happens is that up to 50 percent of the people can petition and object to that process, but if I'm wrong on that I'll get back to you. I think it's through a petition and an objection process, as opposed to some kind of special election. [LB577]

SENATOR HAAR: Instead of a positive thing it's an objection, a negative vote. [LB577]

ANDY POLLOCK: That's correct, so it would put the burden on people who have a concern to come forward and rally enough support to oppose the project. [LB577]

SENATOR HAAR: Now when we had testimony on LB160, some of the people who testified were really questioning the methods to be used, was it to be dams or was it to be used...low-impact kinds of tools. And who gets to decide that in this case, the people, the local people in the local area or...? [LB577]

ANDY POLLOCK: It would be...that's where the protections for owners of land that happens to lie outside of the IPA but would be affected by the IPA come into play. If there would be a dam that would be included within the geographic boundaries of the IPA, those people of course, as members of the improvement project area--and it truly is a geographic area--would certainly have some say in the matter. If on the other hand their land...the owner's land was outside of the improvement project area but it was still part of the project, which absolutely could happen and we're not trying to put the kibosh on that, what the law under LB577 would require is three things: one, that they be identified, that their land be identified in the petition to start the IPA; that they receive notice of the proceeding; and only in the Papio NRD they would have a right to veto, if you will, that portion of the project, not the entire IPA but that portion of the project that affects their land. But it would have to be a majority vote of those landowners affected. We put that in there as to the Papio only because of the...honestly, and I've talked with I

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think all of you about that, because of the representation and makeup of that particular NRD. I'm not expert on all the NRDs, but I know with that one there are four counties north of Douglas County that are served as a district by one representative, and to add some additional protection to them, which we think is only fair, we added that provision as to the Papio NRD. If that needs to apply to other NRDs, I really don't have an opinion on that. [LB577]

SENATOR HAAR: Right. So...and then I'm just trying to get a handle on this whole thing of how you get local control over something that, you know, that affects other people. So if there was a dam built on the Papio upstream and that was an IPA and the people in there agreed to it and they have to pay for it and everything, and I live downstream and I feel that probably damming isn't the best solution, do I have a say in that at all or...? I mean, because it's sort of like, you know, the NRD is the whole area but now we're talking about these specific areas and who has veto power and who can make decisions. [LB577]

ANDY POLLOCK: That's a good question that I had not wrestled with. So much of this has to do with impact on people upstream rather than people downstream and I might need to just chew on that question and respond later, if I could. I think that's a very good question and, while I said that there would be...let's say...let's use your example and say that there would be a lake built upstream. Let's say that the people of Washington County want a lake, or Dakota County, they want a lake for whatever purpose, flood control say. [LB577]

SENATOR HAAR: Uh-huh. [LB577]

ANDY POLLOCK: And...or water quality or recreation... [LB577]

SENATOR HAAR: Uh-huh. [LB577]

ANDY POLLOCK: ...which is allowed now and which would not be allowed under LB577. But they want a lake. They ask the NRD to build it as a special improvement project. The NRD is not obligated to do that. It can choose to not. So I would say that if people downstream say, we don't want that big dam above us, they could certainly have their political voice heard by the NRD and oppose that project. I hope I don't get myself into trouble with the members of the group that I represent, but I would think, if that's the case, they would expect the NRD to take action to do the right thing. And certainly the NRD could put the kibosh on a project and nothing that we're doing in LB577 would limit the NRD's authority in that regard. [LB577]

SENATOR HAAR: Uh-huh. So you think there's a way that...I mean, I could foresee this kind of procedure--and I'm just trying to understand it--could result in kind of a patchwork solution to a problem where one group of people have one way to solve it

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and other people have another group. Do you see that as a possibility or...? [LB577]

ANDY POLLOCK: I certainly see this as the possibility of handling more local issues. And Senator Langemeier asked me this question when we met. Certainly it might lead to more IPAs being used more often and more local issues being handled on a local basis, and I would encourage any of you to ask one of the landowners who will testify behind me about his position on that issue, and I really think it's a policy issue. I think it's an excellent policy issue that, I understand, I understand, we're putting before you that needs to be addressed. Should you handle more local matters on a local basis? And we would submit to you that the answer is yes. It's more...and I believe it's also more consistent, as Mr. Borgen will testify, with the history of how these all came about in the first place. It started way back when there were still drainage districts which were ultimately folded into NRDs. And the language that you see today with the improvement projects is very similar to the language that you see utilized in those old drainage district statutes. At some point, the NRDs moved away from that. I don't know the reason for that. But certainly I don't know that it would create a patchwork, but more local issues might be taken on on a local basis, although you could restrict that with the law that you're dealing with. [LB577]

SENATOR HAAR: Thank you. [LB577]

ANDY POLLOCK: Yes. [LB577]

SENATOR LANGEMEIER: Any other questions? Senator Fischer. [LB577]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Pollock, for being here. I just don't know where to begin. You spoke about...that the NRDs now can do an end run around the eminent domain law? [LB577]

ANDY POLLOCK: I believe any political subdivision probably could. [LB577]

SENATOR FISCHER: I've been told by the NRDs that they cannot take land through eminent domain and then sell or transfer it to a private developer. You spoke about my bill I introduced a few years ago that we got passed,... [LB577]

ANDY POLLOCK: Right. [LB577]

SENATOR FISCHER: ...and I was told by them at that time, and I believe I was shown the statute, I cannot tell you what it was at this time, that prohibits them from doing that. Are you saying that's not true? [LB577]

ANDY POLLOCK: I'm not saying that I disagree with you but I am saying that there is an opportunity to get around that statute. And this is the same thing that was addressed in

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Senator Pedersen's bill, LB945, last year. And I understand that the NRDs are saying that's the law now, but I think that begs the question, why do they address eminent domain in LB160? I don't understand that. And with LB160, they're basically restating what you had in LB924 from three years ago. The section of law is 76-701 and it reads that you can't take...you can't take land by eminent domain primarily, and this is a quote, primarily for an economic development purpose. And to just break this down a little bit more, I probably rushed through it before, that would... [LB577]

SENATOR FISCHER: Not too long an explanation. [LB577]

ANDY POLLOCK: I promise I won't. [LB577]

SENATOR FISCHER: Okay. [LB577]

ANDY POLLOCK: Any political body could take it for a legitimate purpose, whatever that purpose might be, let's say it's flood control, and then the next day, the next week, the next month say, we have the land now, we did not take it for private development but while we have it we might as well put it to some good use and these private developers want it. So it would allow that. That's the end run that I mean. And I don't mean anything ill will, but it would allow that way to circumvent the purpose of your law. [LB577]

SENATOR FISCHER: I guess I would take that as ill will and hopefully I'm...well, I'm sure we're going to hear from the NRDs on this and I'll ask them the same question. [LB577]

ANDY POLLOCK: May I add one other thing on that? [LB577]

SENATOR FISCHER: Certainly. [LB577]

ANDY POLLOCK: If they have no ill will then they should have no objection to the language that we're throwing out there. It just says you can't take land and then turn around and sell it to a private developer, and that's all we're doing. It's a slight change but I think it's an important change to avoid that possibility of ill will, to avoid that possibility of an end run and, importantly, to avoid disputes over it. [LB577]

SENATOR FISCHER: I don't disagree with you. That was the purpose of my bill from the very beginning, is that eminent domain cannot be used by any political subdivision to take private land and then turn around and give it or sell it to a developer for economic purposes, economic development purposes. So I'm not arguing with you on that. But did you...I received this packet when I sat down. It's from the Papio NRD, the president of...or the chairman of the district. I believe he's just representing himself because they haven't had a meeting, is the way I read this on it, but I also have an

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opinion from their attorney. Have you had a chance to see this packet of material?
[LB577]

ANDY POLLOCK: No, I've not. [LB577]

SENATOR FISCHER: In that they say that the opponents continue to try and tie the hands of the Papio NRD so that flood control works in Washington County that would protect Douglas and Sarpy County, that that construction would be prevented. Is that a correct statement on their part? Are you doing this to prevent...are you having this bill introduced to prevent the Papio, specifically, from doing any construction of flood control works in Washington County that would protect Douglas and Sarpy Counties? [LB577]

ANDY POLLOCK: This bill would give the people in Washington County some say in those portions of the project which would affect their land but only those portions of the project. [LB577]

SENATOR FISCHER: Okay. I haven't had a chance to read all of this, in fact, I've just looked at the first three pages of it, but it's putting forth that your bill, LB577, enables objectors to easily prevent developer cooperation in every NRD project. Is that true? They say since no NRD public project can be achieved when the use of eminent domain is publicly known to be prohibited from the inception. [LB577]

ANDY POLLOCK: Could you read that last part again to me one more time, please?
[LB577]

SENATOR FISCHER: I should...I'm visual too. [LB577]

ANDY POLLOCK: Yeah, I'm sorry. [LB577]

SENATOR FISCHER: I will get you...I will get you a copy as I did on LB160, some testimony that was brought forth. I will give you a copy of this. Since it was given to me, I think I can do with it what I want. I will give you a copy and have you make comments on it. That will save...that will save time,... [LB577]

ANDY POLLOCK: Sure. [LB577]

SENATOR FISCHER: ...I think, for us. A couple of the things you said, though, did concern me. You said that the people who benefit from a project should foot the bill. I don't have kids in school anymore. I don't have kids in K-12 schools anymore so I don't have to pay property taxes to school districts? [LB577]

ANDY POLLOCK: There is a provision in current law that... [LB577]

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SENATOR FISCHER: Because that wouldn't be bad, you know, (laughter) although I'm in strong support of education and I don't encourage anyone to do that. [LB577]

ANDY POLLOCK: I would have to disagree with you on that front. But, yeah, I think it's...I think it's a good... [LB577]

SENATOR FISCHER: But really, isn't there an analogy there? [LB577]

ANDY POLLOCK: I think there's...absolutely there's analogy there. Under current law, however, I would point out that local issues are allowed to be taken care of using local means. That's the law right now, and there doesn't exist a similar law with respect to the schools. This... [LB577]

SENATOR FISCHER: If that...if that law exists right now why can't you use it now? Why are you looking at these changes? [LB577]

ANDY POLLOCK: We are looking at these changes because we...when I first went to the group that I represent with this idea they said, you're crazy, you're putting an idea in the NRD's head--and they're probably listening right now--you're putting an idea in the NRD's head that they might utilize this area of law right now for this purpose. And I agreed that they could and I agreed with my clients. And so our position was there need to be some protections built into the law for people who are affected by the IPA but have no voting right otherwise who are outside of the IPA. So, yes, it could be used right now. Why has the NRD not gone to the people who have been pushing for it in the past and asked them about this? I don't have an answer for that. Because it would be easier to spread the cost across the district and that's what we think is unfair. [LB577]

SENATOR FISCHER: Do you think that...here's another quote, not from that document I quoted earlier but from a letter I received. It says this bill would severely harm the improvement project area statutes to the point that it would be impossible for landowners and the NRD to use an IMP to address other local needs. You're harming the statutes to the point that basically NRDs won't be able to address other local needs using it, if you get changes. [LB577]

ANDY POLLOCK: That is absolutely not our intent. I don't know of any language that we put into this bill that would do that. In fact, we represent...it's a single individual, a family actually, that's moving forward with an IPA in the Lower Platte North NRD. And the last thing that we would want to do would be to jeopardize that project or any similar project in the future. I would say, if anything, this law, LB577, would make those local solutions more likely to be used. And if there's something in there that would prevent that in the future, that was the last thing on our minds, absolutely, and we'll take it out if it's in there. [LB577]

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SENATOR FISCHER: Okay. As you know, I represent seven NRDs that have land in my legislative district. [LB577]

ANDY POLLOCK: Right. [LB577]

SENATOR FISCHER: I've heard from two of them. I assume the NRD association, they're circling the wagons on this one? Do you have any comments on that? [LB577]

ANDY POLLOCK: I have shared, like I said, I've shared, with the exception of that summary that I gave you today, I've shared everything with them that I've shared with you. I've heard no feedback from them whatsoever. [LB577]

SENATOR FISCHER: Let me clarify that. You've given them everything you've given us, including this packet of material here? [LB577]

ANDY POLLOCK: With the exception of the front page summary. [LB577]

SENATOR FISCHER: And you have heard nothing back from them? [LB577]

ANDY POLLOCK: Not a word. [LB577]

SENATOR FISCHER: How long have they had the material? [LB577]

ANDY POLLOCK: I gave them a heads-up about the bill when it was introduced. I gave them that material Wednesday and on a number of occasions before Wednesday told them that I am willing to sit down and talk about what we're trying to do with LB577. [LB577]

SENATOR FISCHER: Interesting. Thank you, Mr. Pollock. [LB577]

ANDY POLLOCK: Thank you. [LB577]

SENATOR LANGEMEIER: Senator Dubas. [LB577]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Pollock. You mentioned at one point in your testimony that this vote would not give veto power for an entire project, but if that certain segment of the population did vote no, what would it...how would it impact a project? [LB577]

ANDY POLLOCK: It would impact the project on not allowing that portion of the project that affects their land to go forward. So if it's a...in the Wahoo example that I've given, there's a pipeline that will be constructed from the city of Wahoo to the development. And again, we're not here on behalf of that developer and we're not here, of course, on

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behalf of that NRD. But with that project, for example, there's a pipeline that will be built from the city of Wahoo to the private development that we represent. If it crossed private land, which it does not, it's all over a public right of way, if it crossed private land, the person whose land would be affected would have to have notice of it. Because they're not in the Papio NRD they wouldn't have the right to veto it, but if that provision was applied to all NRDs they would, so basically you'd have to go around their land. That's basically what that would mean. Could that be fine-tuned? I assume it could be fine-tuned, but that's what the effect of that would be. If in this instance they wanted to build a dam on the land owned by 30 people and 17 of those people said, no, we don't want that dam or that lake on our land, they could effectively veto that lake. But the rest of the improvement project area could be undertaken. They build a lake somewhere else, they build some other project, a measure to take care of the flood control someplace else. It wouldn't shut down the IPA itself, just that part of the project. [LB577]

SENATOR DUBAS: Okay. Obvious this issue has a lot of history behind it and it appears we're at an impasse more often than not, so just your perspective, how does this address this impasse? [LB577]

ANDY POLLOCK: The group that I represent wants to get past this impasse. I know there may be people who would try to scoff at that, but we truly want to try to reach some resolution. They've been opposed to general obligation bonding authority. They've been opposed to the bigger lakes, as you know. The NRDs made some steps in the right direction. They've limited the size of the pool. We still think some of those pools are too big. But what this does is offers a different solution for the funding of the project, one that takes the monkey off the backs of people who will have no benefit from the project, who did not cause the project. So I think it allows the NRDs to go to the people who have been pushing for this project, again, with no ill will, and say to them, if you really need this, you have to foot the bill. You can't expect a landowner in Dakota County to foot the bill for that. I have heard from members of the body and I've heard within the lobby that there's some thought that LB160 could be used to address the Omaha sewer/storm water separation issue. I don't know whether that's in fact the case or not. I've not heard it from the NRD and I'm not trying to speak for them. But I can tell you that the members of the group that I represent say, if that's true, that's a travesty. To have a rural farmer in Dakota County pay for a project that Omaha has not been able to address for however many years, a multi, you know, perhaps a billion-dollar project, that just would be patently unfair. With this, with an IPA, you could utilize that. If the NRD wants to take on that project they could, perhaps on their own, perhaps in partnership with the city of Omaha. They could, but they could establish an improvement project area so only those people in Douglas...metropolitan Douglas County who are benefiting from that fix of a system that needs repair, again, a legitimate issue, this sewer/storm water separation issue, the NRD could handle that utilizing an improvement project area and have the people who benefit from that foot the bill for that project. [LB577]

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SENATOR DUBAS: Thank you. [LB577]

ANDY POLLOCK: Thank you. [LB577]

SENATOR LANGEMEIER: Senator Haar. [LB577]

SENATOR HAAR: So could the NRD take on Omaha's problem right now and use the existing laws for an IPA? [LB577]

ANDY POLLOCK: You know, I'm sure there's opinions about that, that you'd hear from the city of Omaha. I don't want to pretend to speak for the city of Omaha or the NRD. But if it is true, what I'm hearing about LB60 (sic), and I can't profess to have heard from the horse's mouth, but if it's true, my read of the law is that it would allow the NRD to undertake that type of project utilizing a special improvement project area, which allows for bonding. The only difference would be that, instead of the bonding being paid for by that farmer in Dakota County, it would be paid for by residents, taxpayers in metropolitan Omaha. [LB577]

SENATOR HAAR: So it almost sounds to me like the feature you're adding into IPAs is this veto power. Is that correct? [LB577]

ANDY POLLOCK: That's for the Papio NRD. That's a protection for upstream people. [LB577]

SENATOR HAAR: Yeah, the protection... [LB577]

ANDY POLLOCK: Yeah. [LB577]

SENATOR HAAR: ...and whatever. But that's really the one feature that's being added to the IPAs. [LB577]

ANDY POLLOCK: That's certainly one of the additions. I tried to emphasize the other significant changes that we've put in there. One to address a point that Senator Fischer may have been referring to, and I don't know, in the letter that you shared with me, there is a provision that would prohibit developers from initiating an improvement project area. And our thinking, our rationale behind that would be these IPAs, I don't think anyone with any common sense would argue that they're intended to benefit private developers or private people at all. They're intended to accomplish a public good. And so we did build a provision in there that says if you're a private developer you cannot petition for an IPA. There is a provision in there that says unless you've owned the land for ten years, and I would tell you that that's a provision that we are probably open to sitting down and discussing. That ten-year period is arbitrary. I confess to that. The 25 percent special benefit area is arbitrary. We had to start with some numbers. I hope that

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answered your question, Senator Haar. [LB577]

SENATOR HAAR: Okay. [LB577]

SENATOR LANGEMEIER: Senator Cook. [LB577]

SENATOR COOK: I have a question. Thank you, Senator Langemeier. How many times has the IPA been used and can you give me one example of a project so I can get...we have members of the committee who are visual. [LB577]

ANDY POLLOCK: Yeah. [LB577]

SENATOR COOK: I prefer a narrative. [LB577]

ANDY POLLOCK: Okay. [LB577]

SENATOR COOK: Tell me a story of an IPA... [LB577]

ANDY POLLOCK: Okay. [LB577]

SENATOR COOK: ...that's been used. [LB577]

ANDY POLLOCK: I will do that. And I've made reference to it here today, Senator Cook. I think that's a good question and I'm the same way. I like to visualize things. The example is the development in Wahoo. And I think they're used fairly frequently, especially for rural water systems. The people that we represent are putting in a very small residential development about four miles south of the city of Wahoo. They don't have sufficient potable water in that area so they...I don't know the full history but they at one point approached the NRD and said, could we work with you to develop and set up an improvement project area so that we could get sufficient water to meet the needs, just local household needs--watering their lawn, showers, you know, general household use--to get enough water to our area to supply those needs. What happened was our law firm drafted up a petition to initiate the improvement project area and the Lower Platte North NRD approved that petition and established an improvement project area and the area is the residential development, right? The project is a pipe that will run from the city of Wahoo I believe about four miles north to that residential area and supply them water, nothing fancy. There's a couple boosters on the pipe as I understand it because part of that pipe will be running uphill, but basically they build a pipe and they supply water to the people in that area. And so the people in that area, at the end of the day, will pay the bill for the water that they receive. So if you are a resident of David City, you also live in that NRD, you don't end up paying for that rural water project that benefits those 40-some residents in that development and that's what it does. Brings up one little distinction in the law. That's a revenue-producing project,

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meaning you're going to pay every month for the water that you get, and that's allowed. But it also allows for nonrevenue-producing projects, which I would assume a flood control project would be. Right now, under current law, bonding is allowed for nonrevenue-producing projects but not for revenue-producing projects. And I know that's an area of confusion among the NRDs and we actually extend that bonding authority to include revenue-producing projects within LB577. That may be a little bit more than what you asked for, but that's kind of what a project has been used for in the past. [LB577]

SENATOR COOK: Uh-huh. [LB577]

ANDY POLLOCK: I hope that helps. [LB577]

SENATOR COOK: It does. [LB577]

ANDY POLLOCK: Thanks. [LB577]

SENATOR HAAR: One more question. [LB577]

SENATOR LANGEMEIER: We'll just keep coming around. [LB577]

SENATOR HAAR: Oh, sure. [LB577]

SENATOR LANGEMEIER: Senator Carlson. [LB577]

SENATOR CARLSON: Senator Langemeier. Mr. Pollock, I'm going to make a statement here and then ask you to help me understand a statement that you made early. [LB577]

ANDY POLLOCK: Okay. [LB577]

SENATOR CARLSON: And I'll preface this by saying that I'm against socialism. I'm against the concept of spreading the wealth indiscriminately. I'm against the concept of limiting one's opportunity to earn a good income and unfair taxation on those that are rather high earners versus those that are not. But there's some things that happen in our society where I think we go the other direction and so this is to go to your statement about those who don't benefit shouldn't pay. I'm trying to think of an example even your area that I could use. And I know that the people you represent are against...they're against dams. They don't want dams built. So you take the position, they not only don't want them, they don't want them built and they don't want to pay for them. But if a dam was built, could you say that nobody in the area of the people you represent would benefit from that? And if that's the case and we go through with everything in our state and everything in what we do, that those who benefit pay and those who don't benefit don't pay or maybe even those who don't like it don't pay, we can't be that way. So if a

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dam is built and people in Washington County are against it, can we say that it is of no benefit to them? And then how do we keep them from using it if it's of no benefit?
[LB577]

ANDY POLLOCK: How can we keep them from using it if they say it's of no benefit.
[LB577]

SENATOR CARLSON: Well, they have no right to use it if they don't pay for it and it's of no benefit to them and they've said, we don't want it, we don't want to pay for it. But I have to believe if there's a dam built and there's some recreational opportunities, there will be some people from Washington County that use it. I'm just using that... [LB577]

ANDY POLLOCK: Sure. [LB577]

SENATOR CARLSON: as an example... [LB577]

ANDY POLLOCK: Sure. [LB577]

SENATOR CARLSON: ...but the concept of I don't want to pay if I don't want to use it.
[LB577]

ANDY POLLOCK: Yeah, I would...I think that's slightly different from what we're trying to say. [LB577]

SENATOR CARLSON: Okay. Set me straight then. [LB577]

ANDY POLLOCK: Well, and I don't mean it that way, Senator. I think that the benefit here is the people who are...whose position, their land's position, is being benefited by construction of flood control measures. That's the benefit. And what we're saying is because they will receive that benefit they should be responsible for the payment of that. And I think it goes to Senator Fischer's question. I think these are both legitimate questions. We can't allow in all situations people to prevent the public good, public education, for example, because they don't like it. There's not opt-out provisions for that in many situations. The difference here is the way the law is currently constructed, it allows for use of this type of project. And I didn't write the law in the first place. Perhaps it needs to be taken off the books completely. I would certainly not advocate that...for that, but there is a mechanism under current law that can be utilized to solve local issues, like a water project, like the rural water project south of Wahoo that we're working on, like this flood control issue in Sarpy County. All I'm saying to you is that this body, for three years, for three sessions running now, has rejected the idea of general obligation bonding authority, at least giving it to this particular NRD. And I know there's a history there and I'm not trying to dredge that up. I don't see that as my job. But this body has rejected that notion for three years running. What we're trying to do is offer

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you another solution and perhaps make the NRD think of another solution. Maybe they've thought about this before. Maybe they've rejected it before. Maybe they have absolutely good reasons for doing that but I have yet to hear them and I have yet to be engaged on this particular issue. We were not engaged in the legislation that they introduced. They did not come to us and they did not sit down with us. I am more than happy to sit down with them and talk through this. I would submit to you that this is at least a portion of the solution for a problem that this body has rightfully refused to handle the way the NRD has asked you to handle it three times in a row now. Last year, when it was on the floor, there were only eight votes to advance that bill, eight votes, and we just don't see the tea leaves changing so much. The bill that was before you in LB160, and I don't want to get into detail about that, but the bill that you saw in LB160 was only slightly different than the bill that this body rejected on a vote of however many to eight to try to advance the bill. And the difference is that 2-cent lid which can be overridden by a vote of the people. We're just trying to offer a different way of looking at this. Is it the only way to look at this? No, I don't think that it is, but what we're trying to do is just say, hey, this problem has not been handled in the past. We're not trying to be obstructionists here. Why don't we think about another way of handling this particular situation? That's really what we're trying to do. [LB577]

SENATOR CARLSON: Okay. Thank you. [LB577]

ANDY POLLOCK: Thank you. [LB577]

SENATOR LANGEMEIER: I'm going to ask one question. We're going to work our way around. [LB577]

SENATOR HAAR: Sure. Okay. [LB577]

SENATOR LANGEMEIER: Andy, I have one question. [LB577]

ANDY POLLOCK: Yes, sir. [LB577]

SENATOR LANGEMEIER: You talk about not trying to be obstructionists. When was the PVPA started? [LB577]

ANDY POLLOCK: Oh, gosh, I think back in the 1970s when the Army Corps of Engineers was taking on a project like this. [LB577]

SENATOR LANGEMEIER: So this group has been after these type of projects since the seventies. [LB577]

ANDY POLLOCK: That's correct. [LB577]

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SENATOR LANGEMEIER: Okay. [LB577]

ANDY POLLOCK: And certainly the concern, Senator Langemeier, has been the dams and certainly I would concede that the NRD has taken positive steps in that direction. Bonding wasn't an issue back in the 1970s. It has been now and these people not only would potentially have land affected by the dams or would have been affected by lands...and some of them still would have land affected by the dams, but the property tax issue is a concern as well. [LB577]

SENATOR LANGEMEIER: Then my other question is a follow-up on those that benefit. You build a dam and southern Washington or northern Douglas County and a guy that's got recreation, he pulls his boat into Arlington, Nebraska, and gets gas going through. Is there a benefit there? Should not that gas station or that gas station owner or that property be included in the benefits? [LB577]

ANDY POLLOCK: I think that's... [LB577]

SENATOR LANGEMEIER: If somebody eat dinner there or stop in Blair on their way home to go back to South Sioux City or to Iowa or... [LB577]

ANDY POLLOCK: We've... [LB577]

SENATOR LANGEMEIER: Where does this benefit start and stop? [LB577]

ANDY POLLOCK: Yeah. Well, where does it start and stop now? I'm not trying to argue with you but the law is incredibly unclear right now in terms of what is a benefit and we actually took some steps to try to clarify it. You'll see in the definitional section we tried to clarify those benefits. If they need to be tightened up, we could certainly do that further. [LB577]

SENATOR LANGEMEIER: Okay. Senator Haar. [LB577]

SENATOR HAAR: Thank you. Senator Carlson, I think, addressed kind of the financial things that were going through my head, but we're dealing with another issue and that's, in my mind, it kind of boils down to can you really build a trail between two points without the right of eminent domain, and this almost sounds a little bit like that. Could you really do a comprehensive project like the Papio Valley when you sort of built in this veto power of sorts of somebody to step in the way and say, no, I don't want that or it doesn't affect me or...? You could certainly delay that, wouldn't it? [LB577]

ANDY POLLOCK: It could make that process more challenging. That would certainly be perhaps a P.R. campaign that would need to be launched by the NRD and I don't think that would be harmful to anybody. It would make that process more cumbersome but if

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people's land is affected shouldn't there be some degree of incumbrance before it goes through? We just don't want to see it happen too easily. I also have to stress a point that we do believe that because there would be a smaller group of people taking on the projects, the projects that they would take on would be of a smaller scale than what we're looking at right now and less expensive and probably less apt to offend people whose land was affected by the IPA but outside of the IPA. I think that would be a natural consequence. [LB577]

SENATOR HAAR: Okay. Okay. [LB577]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much. Very good. [LB577]

ANDY POLLOCK: I thank you very much for your time and I thank you for your very good questions. [LB577]

SENATOR LANGEMEIER: Good description. Further testimony in support? We're ready when you are. [LB577]

DAVID BARGEN: Good afternoon, Mr. Chairman, members of the... [LB577]

SENATOR LANGEMEIER: Oop, I'm going to stop. I need that lifted back up. [LB577]

DAVID BARGEN: Sorry. [LB577]

SENATOR LANGEMEIER: There you go. It picks it up better that way. [LB577]

DAVID BARGEN: Great. [LB577]

SENATOR LANGEMEIER: Even though you can't see my pretty face very well with that in your face but... [LB577]

DAVID BARGEN: (Laugh) It's why I knew that. [LB577]

SENATOR LANGEMEIER: ...it does work better if you leave it up. Thanks. [LB577]

DAVID BARGEN: Members of the Natural Resources Committee, my name is David Bargaen, D-a-v-i-d B-a-r-g-e-n. I'm a registered lobbyist for the Papio Valley Preservation Association, along with Mr. Pollock. The purpose of my testimony is to add some context to what we're talking about as what we see as an alternative solution to the flooding issues in southern Douglas County and Sarpy County. And as Mr. Pollock testified, we do not deny that there are flooding issues in those areas. We just believe there's a better way to address it. What we are proposing is...already exists in current

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law, as you've heard. It's called an improvement project area. We believe it's a local solution to what is a local problem. And the idea, the basic idea, is to form an area made up of the properties that are...that are going to benefit from a project and then assess the costs of that project to those same properties. This is nothing new in Nebraska. In fact, it's a very common method that's been used for many decades in the state to address all kinds of projects that do primarily benefit properties in particular areas. Some examples, and I take these all mostly from the municipal realm but this is used very heavily by all classes of municipalities in Nebraska for a number of different projects. There are, for example, currently in state statute provisions to create street improvement districts for street paving, widening, resurfacing, for sidewalk construction, for construction of malls and plazas in cities. There are also water and sewer districts. That's for the construction, extension or enlargement of water mains and sewer systems. There's things called storm sewer districts. Those are to construct sanitary sewers and mains and also sanitary sewer and water main connection districts. These all cross the spectrum of classes of municipalities in Nebraska. The statutes allow for cities to use these mechanisms to construct and then pay for those projects and, in all those cases, what happens is the improvements are decided what needs to be made, the improvement district is formed, and the costs then are assessed to the properties that are generally abutting those projects because the idea is that those properties benefit primarily more from those projects than anyone else, a street, a sewer main or a storm sewer. Now specifically as it relates to flood control, you heard Mr. Pollock mention the drainage district statutes and what used to occur with drainage districts. Current statute does not allow for new drainage districts after the formation of the natural resource districts. Those provisions were rolled into the duties of the natural resource districts but the statutes are still there and there are still some drainage districts in Nebraska that do exist. Those that were in existence as of 1972 were allowed to continue. The purpose of drainage districts was to build structures to drain property and to control flooding. And if you look at the statutes that are still on the books, and as I say, these cannot be created any longer, but what used to occur in those districts can occur now with an IPA in the NRDs. The purpose was to build drainage and flood control structures. They are created by petition of landowners or by county boards. There is a hearing process. There is an apportionment of benefits and there's an assessment of the costs of the improvements to lands in the district based on the benefits received by each parcel of land. That is the same process that an IPA follows in natural resource districts today. And we argue that that is a superior solution to what is being proposed for flooding concerns today in Douglas County and Sarpy County. The IPAs, as you heard, can be formed for any purpose that the NRDs are created for, one of which is flood control. We do concede that for the most part they've been used in the past and currently for rural water districts that natural resource districts put together, but there's nothing that limits that to rural water districts. It can be used for flood control as well. In closing, LB577, again, is our alternative solution to the flooding issues that are being faced by Douglas and Sarpy Counties. Again, this is a concept that's currently used across Nebraska to address various issues through improvement

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districts of all kinds of constructions, and as it relates to flood control it's a concept that lives on in the IPA process currently in statute that is a holdover from the former drainage districts. And with that, I'd be happy to take any questions. [LB577]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB577]

SENATOR HAAR: Thank you. The reason I'm asking so many questions, this is really quite a policy shift, I think. Would the NRD be required to first consider a project to be an IPA or could they just...who decides whether something is an IPA or not? [LB577]

DAVID BARGEN: That's a good question. The LB577, as Mr. Pollock testified, sets out some definitions for some key terms that were not defined before. The statute was very confusing to read, it is in its current form, and there are some key terms that are not defined. The definitions that we have added include definitions for benefit and include definitions for special benefit. So benefit would need to have some kind of an economic impact on a specific group of persons or improve some property. Special benefit takes it further and says if you can identify a subset of persons or property that that benefits, that is a special benefit. And then the third piece of that is the change that the amendment that was offered earlier makes to the bill from "may" to "shall." The current law allows the NRDs to, in their discretion, form an IPA,... [LB577]

SENATOR HAAR: Shall, okay. [LB577]

DAVID BARGEN: ...but that would be the third key piece, the "shall." If in the judgment of the board, of the NRD board, they have a benefit and it's a special benefit, then they must use an IPA to attack that issue. [LB577]

SENATOR HAAR: Uh-huh. But you said, if in the opinion of the board. So if the board now, which I sort of get the feeling doesn't get along too well with everybody, makes a decision that this is...benefits everybody, what's my recourse then if I live in Washington County? [LB577]

DAVID BARGEN: The recourse, again, would be the political process to address it through the NRD board and to have them revisit the issue. The decision would be made by the board but, as with any political subdivision and decision that they make, their decisions can of course be appealed to the court system, if it went that far. The hope is that it would be taken care of at the political level, but that would be the process, to challenge that. [LB577]

SENATOR HAAR: But in this case it would probably, just let me guess, the board would probably say it's not an IPA and then it would go to court. [LB577]

DAVID BARGEN: Again, I think that would be several steps down the road but the

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board would be...and understanding that they would in their good faith I'm sure try and define and follow those definitions, but they would need to have a good faith basis for their decision, using those definitions. But if it went that far, that would be the appeal process. [LB577]

SENATOR HAAR: Uh-huh. Okay. Thanks. [LB577]

SENATOR LANGEMEIER: Senator Dubas. [LB577]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Barga. Just to make sure that I'm getting this clear in my mind, you said the IPAs kind of evolved out of something that dealt with drainage? [LB577]

DAVID BARGA: Well, the natural resource districts, when they were formed in 1972, and I'm not an expert on the history but I have reviewed some of it, it took several years to get that formed, to get the natural resource districts formed. The impetus for part of that was to look at the number of special districts that were across the state, such as drainage districts, mosquito districts, soil conservation districts, and to somehow have one entity in charge of them. These districts that used to be formed could have their own board and so there could have been a multiplicity of boards elected for these special projects. I think part of the impetus for the natural resource districts was to put all those functions under one board. Nonetheless, the IPA statutes, in fact there are two provisions, I can't cite them for you right now, but they are almost word for word taken from the drainage district statutes that are now in the IPA statutes that describe the process to form them and to address special concerns. So though those specialized districts were stopped from being formed, the IPA process is allowed under the natural resource district statutes and essentially does the same thing and provides for the same mechanisms. [LB577]

SENATOR DUBAS: So the IPAs have been around as long as the NRDs have been around then, for the most part. [LB577]

DAVID BARGA: That I'm not sure about... [LB577]

SENATOR DUBAS: Okay. [LB577]

DAVID BARGA: ...but I could get back to you on that. [LB577]

SENATOR DUBAS: Okay. I can probably ask that of an NRD. So, let's see, you answered a couple of questions I was going to ask. I guess I would just...you've mentioned a few projects but you think these are most frequently used in more of the like city type issues? [LB577]

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DAVID BARGEN: What I looked at was cities I'm more familiar with, municipalities. That's my...part of my practice area. But there's a multiplicity of these districts, are used by all kinds of cities. I don't know for sure if counties may use them as well. I know that during the old drainage districts there were counties involved with those so I wouldn't be surprised if there are some. But for the most part, what I was looking at was municipalities and, like I say, there are a number of different districts. We talked about benefits and who benefits and who does not. Arguably, a street in front of someone's house is used by more than just you, but the idea is that the primary benefit accrues to that property that lies on that street because of property values and I suppose usage to some extent. [LB577]

SENATOR DUBAS: So the definitions that you came up with for the special benefit, benefits, those have a basis from past history from...? [LB577]

DAVID BARGEN: We looked at what we thought was the intent of the IPA statutes and then based the definitions on that. We didn't take them from anywhere else but we looked at the intent of the statutes and used that to work those definitions out. [LB577]

SENATOR DUBAS: All right. Thank you. [LB577]

SENATOR LANGEMEIER: Other questions? Seeing none, thank you very much for your testimony. [LB577]

DAVID BARGEN: Thank you. [LB577]

SENATOR LANGEMEIER: Further testimony in support of LB577? Welcome. No, just leave it. Just leave it up. It picks you up better that way. Yeah. [LB577]

TYLER MOHR: Okay. Just like that? [LB577]

SENATOR LANGEMEIER: There you go. [LB577]

TYLER MOHR: Okay. Senator Langemeier and members of the Natural Resources Committee, thank you for the opportunity to testify today. My name is Tyler Mohr, T-y-l-e-r M-o-h-r. I'm a Douglas County farmer. The Papio-Missouri River NRD has had great success in agricultural conservation. Over the last few decades, area farmers have succeeded in reaching a substantial reduction in soil loss by voluntarily using conservation practices to slow runoff. Our family has cooperated with the Papio NRD on several conservation projects and we would be willing to pay for an IPA-type project that benefited us. We are currently involved in a cost-share project with the Nebraska livestock producers environmental assistance project, which is funded by the Nebraska Environmental Trust and the Nebraska DEQ. In this project we are retrofitting our farmstead with vegetative treatment areas, allowing us to stop and filter storm water

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runoff. Even though the hydrology changes in an urban setting, the basic principle for low-impact development is the same--stop runoff where it falls. The Papio NRD needs to apply the success they have had in ag to urban conservation. Retrofitting is beneficial, but the fastest and best approach is to require all new development to have no net increase in storm water runoff. Conservation and flood control measures need to be implemented into the permit process to prevent new development from increasing the risk for others in the community. I believe that the use of IPAs are a common sense approach to addressing the issue of storm water runoff. They can be used on a case-by-case basis as new development projects unfold. I believe that this bill simplifies and clarifies existing statute. It includes needed safeguards, and brings to light an existing funding mechanism that the NRD can use to assist cooperators to meet necessary storm water runoff requirements. And I would ask this committee to support LB577. Thank you. [LB577]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Mohr? Senator Haar. [LB577]

SENATOR HAAR: Yes, thank you. I don't mean to pin you on this question but if an IPA was used to solve the Papio Creek problem, then you wouldn't have a financial burden but you'd also have nothing to say about how they do it. Is that correct and are you satisfied with that? [LB577]

TYLER MOHR: Not necessarily. I mean you want to keep in mind that...and you keep referring to Washington County. I'm a Douglas County farmer. [LB577]

SENATOR HAAR: Okay. Okay. Yeah, sorry. [LB577]

TYLER MOHR: But there's two dams proposed in Washington County and there's about 40 total, so I mean it just kind of depends, you know, where the project was and what it was, you know, whether we'd benefit or pay. [LB577]

SENATOR HAAR: But part of this says if you don't benefit and don't pay, then you don't have any say either as to whether they use low impact or dams or whatever. [LB577]

TYLER MOHR: I'm not sure I understand what you're saying, Senator Haar. You said... [LB577]

SENATOR HAAR: Well, my understanding is if an IPA were used for this process to solve the Papio Creek problem... [LB577]

TYLER MOHR: Yes. [LB577]

SENATOR HAAR: ...and if you were not in that area where you have to pay then really

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you wouldn't have any say either about how they...whether they use low impact or dams or whatever. [LB577]

TYLER MOHR: Well, I think the NRD should take the lead in seeing that, you know, they put some of these things in a permit process to, you know, control it where it falls. I think, you know, that's...one of the keys here is to make sure it's required because, you know, in the ag community we've voluntarily done it, but it's not happening, you know, in the urban setting. [LB577]

SENATOR HAAR: Uh-huh. Uh-huh. And I'm not sure I disagree with you. I like the concept of low impact. But basically under this concept, the IPA concept, if you're not in an area where you pay, where you have to benefit or have to pay, you really don't have any...you personally really don't have any say anymore. [LB577]

TYLER MOHR: Well,... [LB577]

SENATOR HAAR: Yeah. [LB577]

TYLER MOHR: ...I think that's true. I mean I'm not an attorney but... [LB577]

SENATOR HAAR: Okay. Yeah. Right. Okay. [LB577]

TYLER MOHR: I'm just an ordinary Nebraskan, I guess. [LB577]

SENATOR HAAR: Okay. Thanks. I appreciate that. [LB577]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB577]

TYLER MOHR: Thank you. [LB577]

SENATOR LANGEMEIER: Did a good job. Further testimony in support of LB577? Welcome. [LB577]

JEFF QUIST: Welcome. Oh, thank you. (Laugh) Mr. Chairman, members of the committee, I'm Jeff Quist, currently a member of the Washington County Board of Supervisors. I'm here testifying as an individual. [LB577]

SENATOR LANGEMEIER: Okay. I need to stop you. Would you please spell your name. [LB577]

JEFF QUIST: Sure. Jeff, J-e-f-f, Quist, Q-u-i-s-t. [LB577]

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SENATOR LANGEMEIER: Okay. [LB577]

JEFF QUIST: Got on a roll here. [LB577]

SENATOR LANGEMEIER: I noticed that. [LB577]

JEFF QUIST: Anyway, I'm a county board member. I'm here testifying as an individual, not as a county board member. This issue came up in between board meetings and so we don't have a stance officially as the county board. We will meet Tuesday and I'm sure there will be some correspondence coming from our board next week. To start things off, I think a broad increase in the tax asking dollars is a bad idea with our questionable economy, you know, and I think that's kind of some of the things that we're looking at with other bills that are out there, the general bonding authorities. I believe LB577 is probably a better solution, pinpoints the costs and the benefits to a specific area. I think it very well could be a better way of handling local issues. Currently, some of the methods that we have available out there I don't know that are truly being used to their full extent. You know, we have zoning restrictions, we have floodplain restrictions, you have a bio to the floodplain, you have flood insurance for the folks that might be affected. There's a lot of tools that can be used out here and I don't know that dams is truly the sole answer to this. I believe Washington County has taken a proactive stance. In regards to the floodplain building and runoff restrictions, we've had some changes in our regulations to address these things. I notice there were some questions about drainage districts and how they operated in the past and I don't have...I'm not a person that is paying into a drainage district, but I have a little bit of experience with them. Burt-Washington County has a drainage district project that has been around for years and years and years, and they levy the property owners to make the improvements, maintain the ditches. Recently they had an increase in their levy to install some pumps to help drain fields quicker. So there is some experience out there doing those kind of things. Like I say, I don't have...I'm not a member of their board and I don't know that I can go into great detail, but I know there are mechanisms out there. On another note here, I know that there's the thought out there that building dams is going to save everyone from any kind of flooding. On a side note, I was coming back from Milwaukee about a month ago on a business trip, stopped in Coralville, Iowa overnight. Heard about all the flooding in eastern Iowa last year. It was late at night, checked into a motel. Next morning I wake up, look across the street, there's a national chain restaurant there and I thought, well, I'll have breakfast, drove across the highway and noticed that there was a new office, maybe a multiuse type complex that was down along the river and I thought it was strange that everybody else had built up on high ground and then this new complex was down. And I noticed the river was right there close and it was nice. It looked like it was a lot of walking type businesses, you know, park your car and walk to here and there. So I thought that was interesting with all the high water so when I went to the restaurant, why, I asked my waitress. I says, you know, I'm kind of curious here. You know, I'm a curious kind of a guy. I'm a real estate broker and a real property

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appraiser and so I had to ask the question. I said, those are nice buildings down there. I says, were they affected by the high water? And the lady says, oh yeah, they had water up in the second story of this. The Coralville Dam was only five or ten miles above them. It's a large reservoir, it shows on the maps, but it didn't protect you when you build down next to the river. So, you know, keep in mind that you might think you're safe but not all the time, and that was an example of that. That's all I have. [LB577]

SENATOR LANGEMEIER: Very good. [LB577]

JEFF QUIST: Ready for questions. [LB577]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you very much... [LB577]

JEFF QUIST: Thank you. [LB577]

SENATOR LANGEMEIER: ...for your testimony. Further testimony in support of LB577? Welcome. [LB577]

DUANE GANGWISH: Chairman Langemeier, members of the committee, my name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h. I'm a registered lobbyist for Nebraska Cattlemen. Our board has reviewed the green copy of the bill and we've also been briefed on the amendment before you. We strongly support the principle upon which the proposed changes are brought. We also support the concept of beneficiaries paying for the improvements of an IPA is fair to those landowners having no direct involvement or benefit. We believe this concept does have merit across the state and we ask you to move the bill forward. [LB577]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Gangwish? Senator Haar. [LB577]

SENATOR HAAR: Thanks. We've been ask...I've been asking questions about how this could actually sort of block development that needs to have a broader brush stroke to get it covered. Do you see any possibility of that? Or maybe I'm not being clear on my question. [LB577]

DUANE GANGWISH: I think you're clear on your question and I listened to Mr. Pollock's testimony. I believe that their intent is fully to have local solutions to local problems... [LB577]

SENATOR HAAR: Uh-huh. [LB577]

DUANE GANGWISH: ...and that involves those people directly affected. And could it be

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blocked? That's a privilege of each citizen to voice their opinion and concerns and to be involved in the process, be it here today or be it involved in...on a local basis, so.
[LB577]

SENATOR HAAR: Uh-huh. But there's a difference between expressing your opinion on something and actually having the ability to block something or intend to create this patchwork. Because I mean, for example, your group might come up with a solution sometime that might face the same thing--people saying this doesn't benefit me at all. And I mean it's kind of a double-edged sword really. [LB577]

DUANE GANGWISH: I believe it's fair to say that we've tacitly been involved in some of those across the state and to the point of the merits being heard out for what they are...
[LB577]

SENATOR HAAR: Uh-huh. [LB577]

DUANE GANGWISH: ...and the merits of both sides being heard out for what they are, it does come down to that, that local discussion. On a note relative to our association, have there been objections to livestock facilities in certain places, yes, of course, and some of those objections prevail, some of them don't prevail. But that is again that local context of how they work through and we encourage that. [LB577]

SENATOR HAAR: Okay. Good. Thank you. [LB577]

SENATOR LANGEMEIER: Seeing no other questions,... [LB577]

DUANE GANGWISH: Thank you. [LB577]

SENATOR LANGEMEIER: ...further testimony in support. Welcome. [LB577]

CYNTHIA TIMMERMIER: Good afternoon, Senator Langemeier, members of the committee. Is this all right for me, Senator? [LB577]

SENATOR LANGEMEIER: Yep, we pick it up. I can see it's picking up real well. [LB577]

CYNTHIA TIMMERMIER: My name is Cynthia, C-y-n-t-h-i-a, Timmermier, T-i-m-m-e-r-m-i-e-r. Thank you very much. I'm a landowner in Washington County. In the past I've hailed from Senator Fischer's district from a ranch in Custer County and I've also lived in Senator Schilz's district. Senator Haar asked some very good questions and I'm not sure that you feel, Senator, that you received the answer in enough depth that you wanted and I'd like to go back and try to work through that, so.
[LB577]

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SENATOR HAAR: Okay. Thank you. [LB577]

CYNTHIA TIMMERMIER: And especially, if it's all right if I start with you, your question about, you said this seems like a patchwork. [LB577]

SENATOR HAAR: Yeah. [LB577]

CYNTHIA TIMMERMIER: And that was certainly a germane comment because a watershed is a patchwork. The Papio Watershed has several branches of the Papio, of course, that all come together ultimately and come down into the Missouri River. But the reason that I believe the NRD administration would tell you that they would like to have a number of dams, some little, some big, is because the watershed is a patchwork and you patch the patchwork with approaches that are appropriate for whatever that microsection of the watershed is. In some places, LID may be most appropriate. In some places, buyout of people that are right in the waterway may be most appropriate. In some places either dry dams or wet dams may be deemed most appropriate. And so the...like anything in modern times, it's not a simple solution. It's a complex watershed, a complex urban environment and, fortunately, a problem for which there are varied, multiple solutions that can be funded in different ways. LB577 does not take from the NRD its ability to do general purpose projects, which it does all the time and has ongoing now. It enhances an existing tool which has been there all the time and asks you to, as many of you have noted, to make a true examination of policy and how we're going to pay for things. And getting to Senator Carlson's comment and Senator Fischer also, you know, you're right, Senator Fischer, I don't have any children in school and I am so happy to pay for education because it's so important. That is a universal concern and something I think we would all agree is universal. However, some of our problems are made, in part, by some of us. Building in the watershed, if I build my house not up on a rock but two feet from the beautiful stream, I can reasonably expect that I'll have a problem, and I think we all agree with that. And unfortunately, in that situation we have to address it, but it is not inherently unfair or undemocratic to say that if you paid a share in creating a problem that you may also pay for that problem. The IPAs are an excellent tool for bringing the populace into the whole issue of what's going on in the Papio Watershed because by defining a specific area in the beginning, let's say you have 25 acres...and I have been on the periphery of a water district so I know a little bit about how it works. The NRD came in the Fort Calhoun water district and first they sent out a notice, are you interested in this, and then they had a big meeting and if you were interested I think you paid \$100 and you signed up for the meeting. That gave them the gauge of how many interested persons they had and, based on that, they found there was sufficient interest. And unfortunately, the line was a mile from my property so I didn't get in it even though I wanted in it. But by informing citizens so specifically of how they may be benefited and what it may cost them approximately, it gives them the incentive, the motivation, and the choice to think about cost. Rather than seeing pictures on the TV of a big dam and a motorboat and a beach, if you come to me and say, you

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know, we know that you live in Sarpy County and you have some problems of potential flooding. If there's a big rain in Omaha and all the surface runoff from Douglas County and Sarpy County comes into your backyard. Now there are two ways we can deal with this. We could form an IPA and we could put a dam and it's not a big dam, it's maybe two miles upstream and that will cost this much. Or we can implement LID and that will cost this much. Which would you like? And when you're having that kind of choice and receiving that type of information, you make a wiser and more informed decision. Your decision isn't based on public relations announcements or knowledge of the NRD process, which we must admit is limited for most people, unless they've been involved in it. It really brings those affected into the process and makes them be acutely aware of how they'll be involved and how they'll be affected. And the way that we can differentiate in response to the question about...I think it was you, Senator Langemeier, well, what happens if there's a big lake and I'm from Arlington and I take my boat on it? Well, in the law we have special benefit, which is now clearly defined in the bill, and you have what's called an incidental benefit. If there was a paving district and I was assessed and a nice new street went by my house but you drove on it, Senator Haar, you are receiving incidental benefit and you're happy to have it, but you don't have to pay for it and that's fine with everybody. The protections that were built into LB577, particularly about recreation, indicating that it would not be used for recreational purposes, those are twofold. Number one, if you're paying, you really don't have probably a huge interest in paying for a recreational facility for others if you'd like to protect your property from flooding. And number two, it ensures that the NRD will take a good, close look at the most efficient, cost-effective, and publicly acceptable ways to address the microcosm of problems throughout its watershed. I wanted to answer one other person's question, but, while I'm looking at my notes, does anyone else have other questions of me? [LB577]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB577]

SENATOR HAAR: Sure. Thank you. I appreciate that and I certainly support as much transparency and feedback and all those kinds of things that public bodies need to get from constituents before they make decisions. But then finally, public bodies have to make a decision and I haven't made a decision on how I judge this yet but what still bothers me somewhat is it seems...LB577 seems to build in a mechanism that could block something that a public body must do. [LB577]

CYNTHIA TIMMERMIER: Thank you for reminding me of what I couldn't read in my notes. (Laugh) [LB577]

SENATOR HAAR: Yeah, okay. (Laugh) Okay. [LB577]

CYNTHIA TIMMERMIER: LB577 contemplates that there could be a situation where, remember, an IPA has defined boundaries... [LB577]

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SENATOR HAAR: Right. Right. [LB577]

CYNTHIA TIMMERMIER: ...so it's 40 square miles down in Sarpy County. [LB577]

SENATOR HAAR: Okay. [LB577]

CYNTHIA TIMMERMIER: It's possible that one of the feasible solutions which may be part of an overall thing involving LID and other things, includes a dam which is in Douglas or Washington County... [LB577]

SENATOR HAAR: Uh-huh. [LB577]

CYNTHIA TIMMERMIER: ...outside the physical boundaries of the IPA. The landowners and only the landowners of the affected land... [LB577]

SENATOR HAAR: Uh-huh. [LB577]

CYNTHIA TIMMERMIER: ...would then have right of protest and recourse. That certainly doesn't mean that the NRD couldn't approach other landowners until they found somebody who was willing, but it does offer protection to people who would be bearing an enormous brunt of loss of property for a problem which...to which they did not contribute... [LB577]

SENATOR HAAR: Uh-huh. [LB577]

CYNTHIA TIMMERMIER: ...substantially... [LB577]

SENATOR HAAR: Uh-huh. [LB577]

CYNTHIA TIMMERMIER: ...or possibly at all and for which they are not paying. I'm not sure I'd call it a veto power, but it gives involvement. And that leads me to one of your other questions, which was, well, who finally decides? Who decides whether it's a dam or LID? [LB577]

SENATOR HAAR: Uh-huh. [LB577]

CYNTHIA TIMMERMIER: The NRD has enormous authority. It has unfettered authority to make those decisions as long as it can get the permits. [LB577]

SENATOR HAAR: Okay. [LB577]

CYNTHIA TIMMERMIER: We can go to as many meetings as we want and say please

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use LID, but that's within their discretion. [LB577]

SENATOR HAAR: Uh-huh. Uh-huh. [LB577]

CYNTHIA TIMMERMIER: They have the right to decide that. But with the fact that they'll be looking face to face with the people who will be paying, they may lean more toward LID when people find out the cost. I personally have installed permeable pavers and a rain garden on my property. It wasn't subsidized. I did it because that's what we should do. It has substantially controlled runoff on my farm property and I'm very pleased with it. Yes, it cost me money, but it was the right thing to do. This bill offers a fabulous tool for the NRD to use, but I think it needs a little help from you to realize that a shift in policy is due and the time is now, and we ask that you give it that impetus. And I'll close in reminding you of what I thought was a very interesting comment a couple of weeks ago in the hearing on LB134, Senator Pankonin's bill. Speaking in favor of the bill was a man from down there, I think in Cass County, who identified himself as a former NRD board member and he said to you, as long as the NRD has that tool--of eminent domain, he was talking about--they will never stop using it. But if you take it from them, they will find alternatives that work. And we're asking you to ask the NRD to use alternative measures of financing and that's why we support this bill. [LB577]

SENATOR HAAR: Okay. [LB577]

SENATOR LANGEMEIER: Have one more question. Senator Fischer. [LB577]

SENATOR FISCHER: Thank you, Senator Langemeier. Welcome, Ms. Timmermier. Where...this is just a personal question. Where were you from in my district? [LB577]

CYNTHIA TIMMERMIER: I'm from Arnold, Nebraska, north of Arnold,... [LB577]

SENATOR FISCHER: Yes. [LB577]

CYNTHIA TIMMERMIER: ...in Mills Valley. [LB577]

SENATOR FISCHER: Oh, great. Great. Well, welcome today. [LB577]

CYNTHIA TIMMERMIER: Thank you. [LB577]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB577]

CYNTHIA TIMMERMIER: Thank you, ladies and gentlemen. [LB577]

SENATOR LANGEMEIER: Further testimony in support? Come on up. Welcome.

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[LB577]

KEVIN PROPST: (Exhibit 3) Good afternoon, Senators. My name is Kevin Propst, K-e-v-i-n P-r-o-p-s-t. I'd just like to read you a letter that we put together as a village board. The village board of Washington and all constituents give full support to LB577. We believe this bill to be an effective way to finance projects not only in the Papillion Creek Watershed, but also in the entire state. LB577 utilizes existing law to allow natural resources districts across the state to address a myriad of issues. These issues could include such things as rural water systems, drainage problems, levees, and flooding issues, just to name a few. This bill provides local solutions for local problems, while letting those who benefit pay for the project. We feel that LB577 is an equitable way to service the debt of any project. At the present time, our board is researching avenues to bring rural water to our village. We feel that using an improvement project area would be a great way to fund this project without burdening taxpayers outside of our jurisdiction. In conclusion, the village board of Washington would respectfully encourage the members of the Natural Resources Committee to advance LB577. And there's a couple things that I would like to address and I heard the word "obstructionist" come up and I really hated to hear that. Being a representative of a small town of 50-plus homes, several businesses, and over 140 residents, as an elected official, my job is to protect those residents, those businesses, and those homes, just as each of you are protecting the interests of your constituents, and I doubt that any one of you would consider yourself an obstructionist. The other thing we heard was the patchwork and that keeps coming up. There are over 90 counties. There's multiple municipalities. There's school districts within those counties. You know, you can go on and on and on. Why do we have these? Because we're trying to keep it local. The people who live in those areas know how to solve their own problems and that's the reason we've always tried to keep our government local and keep the problem...the decisions being made in the local area. And I think LB577 does that and it empowers the people and that's what this is about. That's what our government is about. I'd entertain any questions. [LB577]

SENATOR LANGEMEIER: Are there any questions? I don't see any. Thank you very much for your testimony. [LB577]

KEVIN PROPST: Thank you. [LB577]

SENATOR LANGEMEIER: Further testimony in support? Welcome, Mr. George. [LB577]

ED GEORGE: My name is Ed, E-d, George, G-e-o-r-g-e. I endorse LB577 for these reasons. I will share with you some of my background in my 40-some years' career in agriculture. I grew up on a York County farm, realizing that irrigation was very important to the profitability of our farms. We had 320 acres of land of which we farmed, a very small part of it was irrigated. The first well that was introduced onto our farm, was the

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River Bottom Farm, owned now by the fifth generation of the family that we farm. We are very fortunate to have a landlord that has been very supportive of our farming practices. This River Bottom Farm, the well was drilled in 1954. It's been there a long time. We had to go in and level that field so that we could irrigate it and also put in a diversion channel to keep the water from flooding the 80-acre tract of land. In addition to that, in my career I put up over 400 irrigation center pivots. Most of those required a well permit for irrigation to happen in the York County area in which I serve and live. Because of that, I saw irrigation expansion growing and growing and growing. In York County, we have 370,000 acres of land, currently of which 74 percent of it is irrigated, primarily now by center pivot irrigation, primarily Hastings silt loam soil, which is the official legislative designation of the soil for the state of Nebraska. In addition to that, on this 80-acre tract of land I saw irrigation center pivots, seven sections upstream with 14 center pivots, 14 center pivots placed on that land, on very highly erodible land. In the course of these last almost 60 years we've seen soil silting from those highly erodible fields and we've had to go in several times to clean out that canal to remove the silt so it wouldn't float upon our farms. Because of the irrigation development with the wells permitted to irrigate that land, I've seen tremendous changes. Because of that, I feel like that we on our family farm, we have incorporated best management practices and integrated management plans to conserve our soil and our water resources. For that reason, I feel like that this bill is very important to allow us to offset the cost of cleaning out that canal. In addition to that, I think about the ramifications in my career as to what's happened in irrigation development. Senator Dubas is in an area I worked as a seed corn production supervisor in the Central City area. At that time I saw some tremendous opportunities in utilizing irrigation water on sandy loam soil that was very high in nitrates, very high, to the point that we realized we could take that irrigation water and utilize that as a nutrient source for production of high-quality seed corn. In addition to that, in the boom and bust years of center pivot irrigation development, Senator Fischer, in your area, we...I and several of us went up into your legislative district and removed center pivots that had been developed for irrigation on sand pasture land and brought them back to the York County area to develop our irrigation. As a result of that, I see some real concerns happening in irrigation development again. We are into an industry of corn production for multiple users, whether that be for ethanol, for the livestock industry, for local development, for the world market. But because of this I look at this whole thing and I realize that there are some real benefits, offering this as an improvement project for us as individual producers out there. We have to entail the costs of cleaning that ditch, which has entailed thousands and thousands of dollars. In addition to that, in our area we've had thousands of acres of land that has been developed from wetlands into center pivot development. As a result of that, we have found that much of that land now through the Natural Resource Conservation Service has recognized at the national level the importance of wetlands and restoring those wetlands back to wetland entities. As I look at this whole thing, thinking about as we develop some of these areas in the Sandhills, thinking about what's happened when we develop that into row crop production and the blowing of

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sand, in area synthesis, we've had to go back in and restore those lands back to the use that they were meant to be for, and that is very costly and time-consuming. And the natural resources we have in this state are very valuable. I like to think about conservation as the most important role of the natural resources that we have in this state. I feel like that for these reasons this (inaudible) improvement projects is important. We focused much of our discussion today on one little geographic area, but I think it has implications clear across the whole state. For that reason, I support LB577. Are there any questions? [LB577]

SENATOR LANGEMEIER: Are there any questions for Mr. George? Seeing none, thank you very much for your testimony. Further testimony in support of LB577. Seeing none, no one else, okay, now we'll move on to opposition of LB577. Come on up. [LB577]

JOHN THORBURN: Good afternoon, Mr. Chairman, Senators. [LB577]

SENATOR LANGEMEIER: Welcome. [LB577]

JOHN THORBURN: (Exhibit 4) I'm John Thorburn, J-o-h-n T-h-o-r-b-u-r-n. I'm the manager of Tri-Basin Natural Resources District in Holdrege. I would like to testify in opposition to LB577 on behalf of the Nebraska Association of Resources Districts. I am also submitting written testimony on behalf of 11 other NRDs in opposition to LB577. Nebraska's improvement project area statutes are an important tool that NRDs regularly utilize to achieve a variety of public benefits ranging from flood control to public water systems to, in my district's case, drainage improvement and groundwater stabilization. Tri-Basin NRD operates six improvement project areas, or IPAs. All of our IPAs were created as a result of petitions by landowners who desired to improve the productivity of their farmland by working together to remove silt and obstructions from creeks and sloughs, pooling their resources to do work together which none of them could accomplish on their own. When we remove silt from streams, we rehabilitate them and establish grass buffer strips that improve water quality and wildlife habitat. The effect of enacting this bill would be to require my district and those landowners who support and benefit from our IPAs significant unnecessary expense, because we would apparently have to reestablish each of our six existing IPAs to conform with the revised processes that this bill would add to state statutes. This bill's provisions would also make it more difficult for our district and our landowners to make use of the IPA process in the future, a process that has worked for us in the past and which continues to serve us well today. For these reasons, I urge you not to advance LB577. Tri-Basin NRD and our landowners already have enough challenges, both natural and man-made, to the beneficial management of our natural resources. The cause of conservation would be set back significantly if the Legislature destroys one of the tools that we use to cooperatively improve and protect our soil and water resources. Thank you. I'd be willing to attempt to answer any questions you may have. [LB577]

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SENATOR LANGEMEIER: Thank you, Mr. Thorburn. Senator Haar. [LB577]

SENATOR HAAR: Thank you. Let's just say that we could grandfather all your IPAs right now so you don't have to go back and change it. How do you see this changing your...the way you operate in the future? [LB577]

JOHN THORBURN: Well, Senator, it's a difficult bill to understand and to fit into the existing statutes but you could make some kind of sweeping generalizations to look at a whole variety of things would almost have to be considered special improvement projects. I could take this bill to mean that our district couldn't plant a windbreak in a cemetery, because it would be a special improvement project, without establishing an IPA. We couldn't do projects that would benefit a particular town or a particular area, even though those projects would be available for other areas in the district, without forming IPAs. It would be very cumbersome to do that. And the IPA process is an involved one as it is now. The changes that are proposed in this law would make it much more cumbersome, as I see it; make the standards for forming an IPA much more difficult. And then to the extent someone believes they don't benefit from an IPA, they apparently would be able to either opt out or, if their land is affected, be able to prevent their land from being used. The way we operate IPAs for drainage improvement, we will establish the boundaries around a watershed--been a lot of talk about watersheds today--and the intent of that is to improve the flow of water through that watershed. Well, a landowner in the upper end of the project, his land drains into a stream but he's not harmed by flooding so he'd say, well, I have no benefit from improving the flow of water, even though I've been flooding out my neighbor all these years with the runoff from my land, the IPA produces no benefit for me so I should not be involved in it. That's not the way that we operate IPAs. We do try to provide for the benefit of a collective group and we base that on a watershed structure or watershed boundary. [LB577]

SENATOR HAAR: Thank you. [LB577]

SENATOR LANGEMEIER: Senator Dubas. [LB577]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Thorburn. So just based on your testimony, you do not feel that the current statute is confusing or needs some clarification. [LB577]

JOHN THORBURN: Oh, I would imagine it's not perfect but it is certainly workable. The fact that we've established six IPAs over the course of the last 25 years I think is testament enough. If I can figure it out, I think others could as well. [LB577]

SENATOR DUBAS: Okay. I'll ask you the same question that I asked Mr. Pollock. This issue has a lot of history behind it and they've put something out there, right, wrong or

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otherwise, to try to address the impasse. Do you see this as something that has merit, that has some discussion possibility to address the impasse? [LB577]

JOHN THORBURN: Well, I suppose any law could be improved to some extent. I certainly don't see, at least to the extent I can understand this bill, that it makes any significant improvements to the IPA process and certainly in the net there is not a gain to the public in terms of making the IPA process better. [LB577]

SENATOR DUBAS: Thank you. [LB577]

SENATOR LANGEMEIER: Senator Carlson. [LB577]

SENATOR CARLSON: Senator Langemeier. Mr. Thorburn, you've included in here letters from 11 other NRDs. Do you...you do know anything about the perhaps degree to which IPAs are used in these other NRDs? [LB577]

JOHN THORBURN: To give you a number, Senator, I'm not sure that I could. But I know that other NRDs have used IPAs for rural water projects to build levees and other flood control types of projects. They are a vehicle that can be used, as was stated earlier, for any purpose that an NRD is authorized to conduct business for. [LB577]

SENATOR CARLSON: Is the main difference between Tri-Basin's experience completing an IPA and what you see in LB577 that it's the addition of the concept of those who don't benefit don't pay? [LB577]

JOHN THORBURN: Well, I think that certainly is one aspect of it. I think it, if I recall correctly, says that for any project that's determined to be of special benefit, the NRD shall create an IPA rather than "may," as it was in the past. I think that takes a lot of discretion away from the board of directors of a district that would have the knowledge of a local area and really makes that job of theirs much more difficult. [LB577]

SENATOR CARLSON: Okay. Thank you. [LB577]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB577]

JOHN THORBURN: Thank you, Senator. [LB577]

SENATOR LANGEMEIER: Further testimony in opposition of LB577. Welcome. [LB577]

STAN STAAB: Thank you. [LB577]

SENATOR LANGEMEIER: Oh, no, don't touch. [LB577]

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STAN STAAB: Don't touch. (Laugh) That's my penalty for being short. [LB577]

SENATOR LANGEMEIER: It will pick...we'll still pick you up. You just can't see me as well. [LB577]

STAN STAAB: (Exhibits 5 and 6) Thank you, Senator. Testimony in opposition to LB577 on behalf of the Lower Elkhorn Natural Resources District. Good afternoon, Senator Langemeier and members of the Natural Resources Committee. My name is Stan Staab, spelled S-t-a-n S-t-a-a-b, general manager of the Lower Elkhorn NRD with headquarters in Norfolk. Our district covers all or parts of 15 counties in northeast Nebraska and I have included a map that will show our district. Might help you out, see where we are. We actively manage a highly significant portion of the soil and water resources in our area. On behalf of my locally elected board of directors, we oppose LB577 and support LB160 as a much better solution. We support the concept and purpose to issue bonds by all NRDs as an option to finance expensive and appropriate flood control and water quality projects. Our major concerns with this bill, as proposed, in our opinion, that it would limit the authority of the NRDs to enter into agreements with landowners or any participating entity for improvement projects. These agreements, as we talked this afternoon, are called improvement project areas, IPAs, are critical to construction of cost-share projects that actually benefit several willing landowners by adding certain soil conservation practices to their property. IPAs are commonly utilized to help construct rural water systems which, by statute, grant authority to NRDs to provide domestic water supplies to willing rural customers. All of the systems generate revenue that eventually repays the cost of the system. They are operated as utilities and generally funded by USDA rural development funds, with small contributions over the years by NRDs. The districts may also cooperate with small cities and towns to establish high-quality water to customers. Many of these systems are in operation around the state and the Lower Elkhorn NRD currently has two major systems in place with a third in the final planning stages. Our oldest rural water system is located in Thurston County and provides high-quality water to rural customers and the city of Pender. Interestingly enough, this system is operated by Papio-Missouri NRD that is for citizens in our district. Our newest system is called Wacole, so named after Wausa and Coleridge, small communities that will provide high-quality water to the small towns of Magnet, McLean and Belden, as well as several rural customers in the area. Fortunately, we have already established legal IPA boundaries after public hearings and discussions with the citizens of the area. We are now busy securing right of way and pipelines for the pipelines and water supply tank. As a result of this project and as a side benefit, Wausa will finally possess adequate fire protection with a new storage tank that they've never had. Without the IPA process, we could not construct any aspect of this project. Our major problem with this bill, LB577, is we believe it may hamper and hinder the future expansion and growth of a Logan East rural water system, and I've provided a brochure for you. It's a bit dated. This system is located in Burt, Dodge, and

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Washington Counties. It's a very large system. Our NRD began construction of this system in 1991 with an initial goal of serving 100 customers. The groundwater in the area turned white shirts brown with stains of iron, primarily because of iron and manganese. Nitrate is also becoming a problem in the area. Today we serve over 1,200 rural customers and two small communities as we pump water from three supply wells into three supply tanks through over 730 miles of pipeline. The system continues to grow and prosper as we plan phase five which will involve purchase of water from the city of Fremont while connecting back to the main line in our system. A large community and two smaller towns are very interested in hooking onto the system, our system, not to mention many new customers, especially new and existing acreages. I would say that a very large portion of this system now serves Papio-Missouri NRD citizens. We have no problem with boundaries. We go across the boundaries; we work well with interlocal agreements. We've done that for many, many years. We cannot grow, we cannot prosper if the present IPA, in our opinion, process is not made available to us. We believe LB577 in its present language will be very detrimental if not completely restrictive. We respectfully request the bill be opposed by the Legislature. And I would add that this is a \$2.5 million proposal for this phase five addition that we are seriously in planning stages for and very concerned about the future of that. Thank you for the opportunity to testify today and I would try to answer any questions. [LB577]

SENATOR LANGEMEIER: Thanks, Stan. Senator Haar. [LB577]

SENATOR HAAR: Thank you. I'd like to ask you the same question I asked of Mr. Thorburn. Let's assume that you could just grandfather in everything that you have and everything you have in the planning stage right now. How would this, how would LB577, change the way you do business in the future? [LB577]

STAN STAAB: Well, that would be fine for things that we have existing and things that we have currently in planning stages, for example, the Logan East I described, but what about the future? [LB577]

SENATOR HAAR: Right, what about the future? How would that change? [LB577]

STAN STAAB: What about the future? I think it would become very difficult for us. We've had at least two other areas in our district alone that have talked about rural water systems, regional water systems now, as the USDA is calling these. We initially had in the Wacole system eight communities. Now we have five. Three of these communities have chosen at this time to opt out, at least for the present. Now I'm hearing that there may be some second thoughts about that even from some of the communities. So we're concerned about the future, not just in the northeast part of the state but across the state for just this one thing alone, which is rural water systems, not to mention the other potential projects that we've had. We do not have any...have never used IPAs for flood control projects in our district historically. [LB577]

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SENATOR HAAR: Thank you. [LB577]

STAN STAAB: You're welcome. [LB577]

SENATOR LANGEMEIER: Are there any...oh, Senator Fischer. [LB577]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Staab, for being here. I was trying to page through this packet that we received from Mr. Thorburn. Did you submit a letter? [LB577]

STAN STAAB: I did not. No. [LB577]

SENATOR FISCHER: Okay. So you're here testifying... [LB577]

STAN STAAB: Yes. [LB577]

SENATOR FISCHER: ...in opposition for it. You mentioned that you felt all NRDs should be able to issue bonds... [LB577]

STAN STAAB: As an option. [LB577]

SENATOR FISCHER: ...as an option. Do you have that power right now? [LB577]

STAN STAAB: I don't believe we do, to my knowledge. [LB577]

SENATOR FISCHER: Do you support LB160? [LB577]

STAN STAAB: I believe it's a good...potentially a good bill that could be used and I have not looked at that. I must admit I am not an authority of LB160. [LB577]

SENATOR FISCHER: Oh, okay. [LB577]

STAN STAAB: But I know our association has supported it. Our managers group generally supported it, ma'am. Thank you. [LB577]

SENATOR FISCHER: Do you realize under LB160 only the Papio gets to issue bonds? [LB577]

STAN STAAB: So I've heard. [LB577]

SENATOR FISCHER: Thank you. [LB577]

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SENATOR LANGEMEIER: Senator Dubas. [LB577]

SENATOR DUBAS: I just lost my thought. (Laugh) You said something that sparked a question and now...oh, you said that you don't normally or you haven't used IPAs for flood projects. [LB577]

STAN STAAB: That's correct. [LB577]

SENATOR DUBAS: Is there a reason why you haven't or...? [LB577]

STAN STAAB: We've been successful in building projects without that mechanism. We've been able to secure funds from the state through the resource development funds and our own funds to build projects over the years. We do have a couple large structures in our district, the Willow Creek Project near Pierce is a 700-acre lake with a 1,600 recreation area. That was built with NRD and state funds in the early eighties,... [LB577]

SENATOR DUBAS: Do you feel that... [LB577]

STAN STAAB: ...as an example. [LB577]

SENATOR DUBAS: Excuse me. Do you feel the IPAs, you could use that for flood...for building flood control? [LB577]

STAN STAAB: Absolutely. I think the IPA is a good mechanism that's there for...potentially for use. [LB577]

SENATOR DUBAS: Okay. Thank you. [LB577]

STAN STAAB: My concern is this would hamstring our fellow districts around the state in the types of things they want to do, and I just gave you an example here of our concern for the Logan East. [LB577]

SENATOR DUBAS: Thank you. [LB577]

SENATOR LANGEMEIER: Seeing no other questions, thank you, Mr. Staab, for your testimony. [LB577]

STAN STAAB: Okay. Thank you, Senator. [LB577]

SENATOR LANGEMEIER: Further testimony in opposition. Welcome. [LB577]

JASPER FANNING: Senator Langemeier, my name is Jasper Fanning, J-a-s-p-e-r

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F-a-n-n-i-n-g. I'm the general manager of the Upper Republican Natural Resources District. While we do not have any IPAs currently in our district, I can foresee us in the Republican Basin, pretty much up and down the Republican Basin, all the towns along the main stem Republican River facing water quality issues that they will likely not be able to deal with in meeting the newer, more stringent water quality standards without a pretty large regional rural water supply put in place to serve a lot of the small communities and residents along the Republican River Basin. So I certainly don't want to see anything passed by the Legislature that would hinder putting an IPA in place. I'm also very glad that my district does not encompass a city of the first class. Apparently representing citizens of the second class you're better off because you don't then create the ability to stop a project from happening. I think that's one of the biggest things that I see with this legislation that's been offered today before this committee, if you will, as a way of working together when really what it is, is it's trying to create a solution to this problem and completely block the one avenue that a natural resources district may have had, outside of general bonding authority, to build a flood control structure from doing so. In the Republican Basin the NRDs were not yet around when some of the big flood events in the 19...believe 1935 hit the Republican Basin and wiped out most of the towns in the valley over a course of about 150 miles and had large numbers of people left homeless from that event as well as killed in that event. We've had numerous rains in the past two years in our basin. Had they happened in the Washington County area or upstream of Papio, we wouldn't be here talking today about building dams. We'd be here talking today about how do we clean up the mess. And certainly, you know, this is one of those issues that needs to be solved. We have major water problems in terms of water shortages in some areas, but this is a major issue facing natural resources districts mostly in the eastern part of the state, but across the state altogether. And it's one of the things that maybe we can't wait for a consensus between the two sides that disagree to figure out how to solve the problem. Maybe we just need to find the best solution for the problem and move forward. [LB577]

SENATOR LANGEMEIER: Thank you, Dr. Fanning. Are there questions? Senator Fischer. [LB577]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Dr. Fanning, for being here. How many...well, first I should ask, do you feel that you're competent to answer some questions about the Papio area? [LB577]

JASPER FANNING: Some things about the Papio area. [LB577]

SENATOR FISCHER: Okay. How many inches of rain do you think it will take before, I guess in your opinion, the people of the Legislature wake up and are facing a disaster on this? [LB577]

JASPER FANNING: I don't know the exact number. I'm sure there are engineering

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studies and some of their flood mapping would give us an idea of what it would take. I know that we've had numerous events in my area or close to my area the last few years of ten inches-plus in a 24- to 30-hour period. [LB577]

SENATOR FISCHER: How many inches did you have in a short time period this year in the Republican Basin where you had the river go over, overflow the banks? Did that...that happened this summer, correct? [LB577]

JASPER FANNING: There were places where the river was out of its banks from as low as three- or four-inch rainfalls in a short duration period. We had had some major events last year that were 10 and 12 inches. There were about three of those events, if not four, in the last two years where even areas that aren't prone to flooding, if you will, areas that aren't in the river valley itself, places that I saw water 8- and 12-feet deep that I've never seen water before. [LB577]

SENATOR FISCHER: In the Papio, do you know if there's been any flooding situations recently? Maybe I should wait and ask this question if Mr. Winkler comes forward. [LB577]

JASPER FANNING: I think that's a question more appropriate to the Papio folks. [LB577]

SENATOR FISCHER: Okay. Thank you. [LB577]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much for your testimony. [LB577]

JASPER FANNING: Thank you. [LB577]

SENATOR LANGEMEIER: Further testimony in opposition. Welcome. [LB577]

MARLIN PETERMANN: (Exhibit 7) Thank you. Good afternoon. Chairman Langemeier and members of the Natural Resources Committee, I'm Marlin Petermann, that's M-a-r-l-i-n P-e-t-e-r-m-a-n-n. I'm the assistant general manager of the Papio-Missouri Natural Resources District in Omaha and I speak in opposition to LB577. This bill, which is a rewriting of the natural resources districts' improvement project area authority, is baffling to me. The bill, as drafted, is hard to make sense of. Rather than...but rather than dispute the various sections of the bill and its provisions, I'd like to talk about the concepts I see in the bill and the effects of the bill if it were made into law. To best explain this, let me give you an example of how the provisions in the bill would play out in a possible real-life situation. Let's say that you have two neighbors. One neighbor is generating some type of pollution and he allows that pollution to run off onto his neighbor's property. The way this bill, LB577, is drafted, it would say that the way to

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solve the problem is to charge the downstream neighbor to clean it up because he's receiving the benefit of having the pollution problem on his property solved. It even gets better. It says that the proposed bill goes on to provide that not only is the upstream neighbor absolved from any responsibility to pay for the cleanup, that if the solution to the problem in any way impacts his property, he has the right to veto it. In other words, he could refuse to stop generating the pollution or refuse to do anything to keep the pollution on his property. I've run across people who think like this from time to time over the years, people that only want to blame others, not accept any responsibility of the problem, and always wanting someone besides themselves to pay. But I must say I really never thought, even in my wildest dreams, that anyone would try to take that type of thinking and put it into law. This is not the type of thought process or spirit of noncooperation that is found in the current NRD improvement project area authority as found in today's statutes. The concept and procedure behind the current IPA law is one in which a group of neighbors who are experiencing a common problem try to work together on an agreeable solution to that problem and determine an equitable way to jointly fund the solution. Allow me to demonstrate a couple examples of how this has worked in the Papio NRD. In one case, we had a number of neighbors in an area of the district that had a problem getting adequate or good water quality from their wells for their homes and livestock. So working together, they decided to form a rural water project, or an IPA, that distributed adequate quantities and quality water from a dependable water supply, in this case a community, and everyone pays for their fair share of the project that solved the problem. You've heard about these already today, but this improvement project area authority that we have provided them the structure to put the project together, to build it and then to fund it. The district, by the way, has four of these rural water improvement project areas. Another heavily utilized example where improvement project areas have been instrumental in helping address localized problems is where poor drainage is being experienced in rural areas which flood crops and reduce production. Neighboring farmers have gathered together to put together a project of cleaning out and creating better drainage ditches for their fields and developed an equitable way to share, both those who contribute to the problem and those who benefit from the project, in the cost of those improvements and their continued maintenance so these problems don't reoccur. The improvement project area authority provided them a way to finance the high up-front project costs over time and the ongoing maintenance as was needed. The district has four of these such drainage IPAs. Another case where the IPA authority was used in our district is along the Elkhorn River in Douglas County, where neighboring property owners were experiencing the common problem of the Elkhorn River meandering and eroding their property. An agreed upon project to stabilize the river banks in local areas was financed by the property owners through the improvement project authority. But in this project the board also determined that a portion of the project was of general public benefit and general NRD funds were used to fund that portion. One thing that we haven't used the IPA for and don't plan to in the future is to build reservoirs. It just is not practical or manageable, and flood control reservoirs are considered to be of general public benefit, not special

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benefit that this IPA authority is meant for. As previously explained, what is envisioned in the modifications to the IPA authority in LB577 appears to be an attempt to separate the property owners that create/contribute to the problem. This is not a viable approach to solving watershed-wide problems. As you can see, the improvement project area authority has served Nebraskans very well in addressing small localized problems. It has been a reliable tool for natural resources districts to help address resource problems where other funding is not available and projects may not be considered of general benefit to the public. It basically has been a way to help people help themselves. We ask that you please not change this valuable tool for the people of Nebraska into something that isn't workable and not defensible. We, therefore, ask that you kill LB577. Limitations on...I'll point why the IPA authority envisioned in LB577 does not provide a viable funding mechanism for addressing the flooding problems in the Papillion Creek Watershed in the metropolitan Omaha area. The underlying concepts are or problem are that no responsibility in the upstream area for generating the water that floods downstream; secondly, the damaged downstream property owners are left to bear the expense to clean up the flood; thirdly, upstream property owners can veto projects to solve the problem; number four, the property where project improvements are located and the property benefited do not all contribute to the solution. So you may ask, well, how can we equitably finance watershed flood control projects where those contributing to the problem and those benefiting from the projects both pay their fair share? There's no perfect solution. But in Nebraska, flood control projects have been considered to be of general public benefit because they not only benefit property owners but taxpayers who pay for things like impacted roads, bridges, utilities that are washed out, etcetera, and even taxpayers who drive on those roads that might happen to be there at the wrong time and be washed away in the flood. And what about those that benefit from the lake that might be created therein? How do you identify those? In an IPA it's very difficult and very time-consuming and very expensive, even in the small ones that we've formed, to figure out who benefits and how much and who should pay what. The local jurisdictions normally fund general projects through property taxes. It's an accepted way to distribute the costs. We don't use IPAs because they don't make sense for this type of flood control project. The NRD board has determined that flood control is of general benefit to the constituents of the district. Public health and safety are a universal concern. As for what was mentioned earlier about a landowner maybe in Thurston County paying for a project in Douglas County, how is that fair? Well, that sort of things goes on in everything any government entity does, but in our specific case let me say that we do many projects in Dakota County and Thurston County and Burt County and Washington County--our rural, mostly rural counties--that benefit those landowners and it's well-documented that the funds used to do that are primarily coming from the Omaha metropolitan area, that the benefits they receive in the projects that are built in their area are many times greater than the taxes that they pay as a whole. And so you have to...a governing board has to look at these things and try to be fair to all, and that's where property taxes come in. But by no means try to think that there isn't urban dollars funding rural projects in our district. And the issue about CSOs, the

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Omaha area, the combined sewer overflow issue, that's being handled by a utility, kind of like our rural water districts. Those that are hooked on to the sewer are going to pay. There has been no consideration and there will be no consideration to using a NRD or other local taxes. It is a utility. Those that use the utility, flush the toilets, are the ones that are going to pay for that sewer. There may be some federal funds that come available, I don't know, that's a possibility, or maybe some state grants, but as far as I know there's never been any discussion of using local funds other than what the assessments are to those that are hooked to the sewer. I might just mention that another way that over 400 communities in this country have decided to fund storm water projects is actually totally opposite from what is being proposed here. It's called funding it through a storm water utility. And the basis, this widely accepted method, actually charges the contributor to fund the project and no contribution from those that benefit--widely accepted. That's the trend of the way you solve and deal with storm water flooding problems is to...you fund the contributor, the one who...the more you contribute to the water coming down the more you pay, not who benefits at the lower end. That's the trend of this country and where we're going. That's logical. That is sound reasoning. This bill is not an answer to the financing of flood control in the Omaha area. It's not equitable, fair or any way a traditional way of funding reservoirs. Also, the existing IPA legislation needs to remain intact for use by the NRDs where it's really needed. LB577 is poor logic, bad legislation, and we encourage the committee to kill it and advance LB160 to the floor of the Legislature. I thank you for this opportunity. Be glad to answer any questions. [LB577]

SENATOR LANGEMEIER: Senator Dubas. [LB577]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Petermann. I really enjoyed hearing about how effective of a tool the IPAs are. I've learned a lot this afternoon and obviously you and other testifiers feel very strongly about the tool...the effective tool that it is. I guess my question would be, previous testifiers have said this information was presented to you, you were invited to the table to discuss it while it was still in the works and that didn't happen, so I would just be interested in hearing what your answer is to that. [LB577]

MARLIN PETERMANN: Thank you, Senator. We were not brought to the table while it was in the works. We were brought to the table after it was done and said, okay, here's some logic in a last-minute shot. We really haven't had a chance to totally review...well, we've looked at what they've presented and we've made our own independent evaluation and the...it just...the bill is so cobbled it's hard to make any sense of it and really is dangerous to even try to fix it, in our opinion. [LB577]

SENATOR DUBAS: So the perspective that was brought out through the proponents was that the original, the statute the way it currently exists is rather cobbled and hard to navigate through and this was an attempt to try to organize that statute, and you would

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agree or disagree with that? [LB577]

MARLIN PETERMANN: I'd agree it maybe was an attempt; I'd say it was a failure to try to help it. We've used it very effectively and we haven't found it confusing and problematic in any way. As I mentioned, we have a number of IPAs and it's worked very well and is very clear. It's a detailed piece of legislation but it's, in our opinion, well done and serves the purpose. [LB577]

SENATOR DUBAS: And as I asked several of the other testifiers, this is an issue that has a longstanding history, both sides feeling very strongly about their positions and obviously entrenched for a variety of different reasons. So you see this, this bill as having no merit to try to address the impasse? [LB577]

MARLIN PETERMANN: That's correct. Yes. [LB577]

SENATOR DUBAS: Thank you. [LB577]

MARLIN PETERMANN: Thank you. [LB577]

SENATOR LANGEMEIER: Senator Carlson. [LB577]

SENATOR CARLSON: Senator Langemeier. Mr. Petermann, I'll say this as a compliment because I appreciate it when somebody states how they really feel and there's not much doubt. [LB577]

MARLIN PETERMANN: Thank you, Senator. [LB577]

SENATOR CARLSON: But I'd ask you about one part of this. LB577 appears to be an attempt to separate the property owners that contribute to the problem. And I think I heard in a case or two of the proponents of LB577 something to the effect, well, when people build a few feet from the stream they have to know eventually they're going to have problems. So how would you respond to that, separating the property owners that contribute to the problem? I know what you're saying there, but there's some merit in a person that builds the house on the sand three feet from the water. Who's going to have problems? [LB577]

MARLIN PETERMANN: Yes, Senator, certainly agree. And I think there's a little typo there in my written part, and that last part was supposed to be in there and what it's really saying is trying to separate those who contribute from those that are benefited. And we're saying they all need to be in the mix, not just the benefited, is what I'm trying to say. So certainly I don't disagree with you that those that are benefited need to be part of the solution and that's the approach that the NRD has taken here. They need to help pay the cost. As I mentioned, though, I did lay out it seems to be the trend across

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the country that those who contribute should be the only constituents paying rather than those benefiting, but we haven't gotten there yet. [LB577]

SENATOR CARLSON: Okay. Thank you. [LB577]

SENATOR LANGEMEIER: Senator Fischer. [LB577]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Petermann. Following up on that and we do...I guess on this committee we've seen some bills introduced dealing with storm water runoff issues, and in most cases it's a large city that would like to charge people who have large parking lots or large roof...expanse of a roof that they would have to pay more for storm water runoff. So far we haven't advanced any of those bills. That kind of goes against I guess what the people who are upstream of Douglas and Sarpy County...your stand goes against what the people upstream of Douglas and Sarpy County have said, because they say, my understanding is, that, you know, the people who are downstream of them, they have put all this concrete in, they've built in flood plains, and why should they solve...why should the people upstream solve that problem. I guess I'd ask you, how do you address that? Because, first of all, do you support that some of these other proposals that the committee has seen in the past couple years, well, longer than that, but saying that the more concrete you have down then a city gets to charge you more to take care of the storm water? That's funded by a contributor, isn't it? [LB577]

MARLIN PETERMANN: Yes. Yes, that's basically the concept that is the trend... [LB577]

SENATOR FISCHER: But that goes...but that goes... [LB577]

MARLIN PETERMANN: ...is the trend around the country. [LB577]

SENATOR FISCHER: ...but that goes against what your...your argument in this case, doesn't it? [LB577]

MARLIN PETERMANN: No, because it's saying that whoever contributes runoff pays, whether it's somebody... [LB577]

SENATOR FISCHER: But in your...but in your... [LB577]

MARLIN PETERMANN: ...whether it's a farm or whether it's a business with commercial...with more pavement. You got more pavement, you pay more. [LB577]

SENATOR FISCHER: But you're saying, excuse me, you're saying every taxpayer in the Papio NRD should be contributing funding in order to solve the problems that you're

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facing. Am I correct in saying that? [LB577]

MARLIN PETERMANN: That's correct. And again, my point there being is that is the funding mechanism that we have available, it's the...and it makes sense from the fact that it's of general public benefit, these projects are, and so everybody needs to join in and pay for them. And a project, this project may be in this area, but another project is in another area and those are decisions that I'm glad our board members have to make and not me as to where those projects are. But they've done a pretty good job of spreading them across the district so that there's benefits everywhere. [LB577]

SENATOR FISCHER: And I'm not arguing with you on that. I think when you're in a political subdivision that's a responsibility that you have, is to be taxed for projects. But I was just, I guess, arguing with your proposition that you put forward that it should be funded by contributors because that can be looked at in a number of different ways on who's contributing. [LB577]

MARLIN PETERMANN: I...yes, it can be and I'm just saying that's an example out there that the rest of the country is doing and that in improvement project areas that we have that contributors pay as well as the ones that are the problem and just trying to point out that not only the ones as proposed in LB577, that it shouldn't just be the benefactors that pay. We all are in this together. [LB577]

SENATOR FISCHER: Thank you. [LB577]

SENATOR LANGEMEIER: Senator Haar. [LB577]

SENATOR HAAR: Thank you. I guess, in your opinion, would you agree that really the discussion before us has nothing to do with bonding or not bonding, whether to use low impact or not low impact, use dams or not using dams. It seems to me a broader policy issue. Would you, in your opinion, would you... [LB577]

MARLIN PETERMANN: I'd agree with that, yes. There's parts of it that seem to try to address, in particular, reservoirs and so on and with the wording and specific types of projects. But it is a broader issue. It just is...it isn't just about low impact development and dams and whatever. [LB577]

SENATOR HAAR: Or not. Yeah. Okay. Thank you. Appreciate that. [LB577]

SENATOR LANGEMEIER: Senator Dubas. [LB577]

SENATOR DUBAS: Thank you, Senator Langemeier. A follow-up on a question. Have you ever used IPAs for flood control? [LB577]

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MARLIN PETERMANN: Well, the drainage, you know, the small drainage projects are of flood control nature, in a way. You know, they're small watersheds, very small, and that's kind of the point. The IPAs are used in smaller areas to kind of deal with small problems. One area that we did use an IPA for, for flood control is a levy project in western Douglas County. In there, all the landowners along the levee, as well as downstream benefited landowners, all paid for that project. It was a project that was split again. The board determined that a part of it was general public benefit and part of it was special benefit to these landowners that then helped pay for the project. So we did use it in that case of...would be considered a flood control project. [LB577]

SENATOR DUBAS: Any of these projects that are being discussed as far as flood control, do you see any of them having the potential to benefit from an IPA rather than bonding or something like other alternative? [LB577]

MARLIN PETERMANN: Well, it's a mechanism that could be used. The concern I think is, is you'd have to have the whole area, the whole watershed in it, I think, for it to be equitable, and so it really turns out to be similar to a taxation of property tax. But the big problem is trying to figure out who benefits. And then, how much should each pay. Talk about a humongous job, I don't really know how you attack that and I think that's why there's probably a lot of cases. Most anything anybody does as a governmental subdivisions probably benefits somebody right close or farther away more than it benefits somebody else. How do you put that to numbers? How do you then figure that out in a half a million people? Tremendous. Tremendous. And that's why I think this idea of general public benefit is where flood control has fallen in Nebraska. [LB577]

SENATOR DUBAS: Thank you. [LB577]

SENATOR LANGEMEIER: Any other questions? Seeing none, Mr. Petermann,... [LB577]

MARLIN PETERMANN: Thank you. [LB577]

SENATOR LANGEMEIER: ...thank you very much for your testimony. Further testimony in opposition. Welcome. [LB577]

PAUL PETERS: Thank you, Mr. Chairman. Sorry, I'm disorganized. [LB577]

SENATOR LANGEMEIER: It's late in the day. [LB577]

PAUL PETERS: (Exhibit 8) Mr. Chairman and members of the Natural Resources Committee, my name is Paul Peters. I am an attorney for the natural resource district, the Papio-Missouri River Natural Resource District. My name is spelled P-a-u-l P-e-t-e-r-s. My mission here today is to give you some technical information, some

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nuts-and-bolts kind of information to help you in your decision. I first, I think, like to put in perspective some of the previous testimony and I want to depart from what I prepared as written text in just a little bit of a degree. With the experience that I've had with the natural resource district, I'm the person that the engineers at the district come to, comes to when they have questions about administering the law. And of course, the natural resource district does everything it can to correctly administer the law as you've given it. When you get to projects of large nature like the ones that are faced by the district at the moment in the range of \$15 million to \$50 million for a structure, we're dealing with land in Douglas County that are the suitable places to put flood control structures, and these are limited places, and we're talking about lands that buy and sell for \$40,000 or \$50,000 an acre. We're in a situation where those lands are evaporating because they're being covered by rooftops and swimming pools. So those sites, when they go away, aren't going to come back. And when those sites go away, so goes the opportunity for flood control for the Papio Creek, Papio Watershed. So we're in the critical period for the district and the district realizes that they don't want to create another Cedar Rapids or Iowa City here in Omaha or in Sarpy County. The district realizes that 25 percent of the watershed is in Washington County and has to be dealt with. That contributory flow has to be dealt with. It goes down to Sarpy County. So when they come looking for advice on what to do about a project, we're talking large sums of money. And I'm probably the only person at the district who is legally responsible for the accuracy of my opinions and I don't want to be contacting my malpractice carrier and giving them back information about what they should do, so I try to be as careful as I can too, and give them good, practical information. And that's what they have to deal with, is good, practical information. Now under the circumstances that we have at the moment, if this body passes legislation of the nature that you have before it, we'll have to deal with that, of course. But let's talk about where we are now and how we do things now. At the present time, with a \$20 million or \$30 million project facing the district, and let's say the opportunity came up because the developer of a very large piece of land in west Omaha decided that he was going to develop and this was one of our sites and we have to move on it now or we lose it, so what do we do? And what of course...that of course means where do we get the money. Let's say the developer, and as many cases have been, the developer has offered to give us, for example, maybe all of the flood pool that's necessary for free as long as we kick in the \$15 million bucks to build the structure. Say it's a package of \$20 million total, \$15 million for the structure, \$5 million for the reservoir pool. We can't pass that by. We can't walk away from \$5 million so we have to figure out a way to fund the \$15 million. Well, we can't fund that from our current budget because there are other things the district has to do. What does the district do? Does the district go to the state and ask for a state grant? Sometimes we've done that. Does the district go to the Corps of Engineers and ask for federal help? Oh, sorry, that program has been abolished. The federal help for building dams is no longer available. Does the district use special improvement project legislation, try to specially benefit, assess it to downstream or upstream owners? Well, that's a problem. The problem, as Mr. Petermann pointed out to you, is that under current law the way special benefit

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projects are carried out is that you have to figure out a way to assess the benefit. Now Nebraska law says that the benefit cannot exceed the actual benefit. You can't assess more than a property is benefited, and this is an interesting notion because really the only way a special assessment works is if it actually increases the value of the property assessed. And you cannot count general benefits. You can't count the fact that general prosperity of the area has been improved. So you really, in a case of a special benefit, have to focus on the people who physically actually are benefited. Now how do you do that? And that's the problem. And that's the reason it is not used to fund dams and reservoirs. And Mr. Petermann pointed out to you the one case where it has been used to fund an improvement project for flood control, and that was the Union dike, and the town of Valley pleaded with the natural resource district to set up an improvement project. The natural resource district did not want to pay for it with general benefit funds because it protected a lot of farmland. It was not something that they felt was a priority. But it worked, because when the rubber came to the road, where the rubber met the road is in the election where you have to submit to the persons who would be benefited the proposed assessments. And current law says that if 50 percent or more of the people having the value of the current assessment object, you can't do the project. So when you start out, you're faced with the problem of should we spend the money to try to engineer, hire an engineering company to try to come in and engineer the benefit schedule? And in order to do that, they've first got to design the structure. And then before they can actually do anything, they have to have that vote. So you're talking about a lapse of time but more importantly, you never know until you get to the vote whether or not the thing will fly. And that's the problem with improvement project legislation funding things like dams and levees. We don't know what the people of Omaha are willing to pay by way of special assessments. We don't really know how much of the cost can actually be assessed to them because in order to do that we have to run this benefit engineering study, and those are very expensive. It cost, I think, my recollection is \$100,000 bucks just to engineer the benefit schedule for the Union dike. In any event, it was a large amount of money. So once we start down one of those roads we better be sure, because in this case the typical...the hypothetical I've given you, that developer isn't going to wait for us while we dither around. And we don't always build where there's a developer. We don't always build where there's a developer who's willing to come up with the money. Some of our structures straddle boundary lines between one owner and another, and maybe they can't come to agreement on what should be done. Most of the time our projects straddle lots of properties and those people aren't really all willing to get together to decide how much to pay us. So really what we're stuck with is the general funds. That is really the only funding source that we can consider reliable and usable. But our problem, of course, is we can't generate enough in any one year to pay off one, so we have to have, as we've asked for, the bonding authority that we've asked you to give us so we can accumulate enough money so that when the opportunities arise we can jump on them and build these structures and hopefully have the developers agree to contribute some funds and assist us with the cost. And incidentally, since we've started doing this, we have not had

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an eminent domain case. We have not had to acquire any lands by eminent domain because these developers obviously are very happy to have these lakes on their property. But the fact is, we get them so much cheaper by using the developer as the person who acquires the land and pays part of our costs, so it is a symbiotic relationship. And I don't think it's one to be condemned because we're saying lots of money for the taxpayer in a time period when we don't have the luxury of purity of paying for all of it ourselves out of our general funds. So that is where the natural resource district is right now. The natural resource district right now is attempting to accumulate money and poke it away until that time comes when we have the opportunity to use it. But when the opportunity comes, we will need the bonding authority to provide the additional money. There's far more than can be funded out of the general fund of the district on an annual basis. So with that in mind then we have before us, you have before you LB577, which suggests that improvement project legislation is the way to go. Well, it is not the way to go, not the way to go to solve the kind of problems that the natural resource district is facing to prevent another Cedar Rapids and Iowa City. We don't have the time. We don't have the money to invest in a possible scheme for engineering special benefit units that could cost us \$1 million bucks or maybe \$10 million if we're to try to cover the entire city of Omaha in one unit. And basically, the concept of using improvement projects is just totally infeasible because we don't have the time to wait when the opportunity is now. Therefore, when faced with this bill, when I looked at it first I said to myself, the bill ruins improvement projects for everybody else and it certainly seems to have a very bad effect on our general benefit scheme, on our using general tax funds scheme, because it puts so many things in front of us that create difficulties in constructing a project using general tax funds. I'm not sure whether the drafter intended to put all these land mines in the bill that would hurt us from doing our general benefit, our general benefit, general tax fund projects or not, but it appears so. It appears that the bill has two purposes. It appears that the bill purports to improve the improvement project area legislation when in real fact, what it does is it puts land mines and roadblocks in front of us for things that we have to fund with general tax funds. And so then I would go back to my text that I prepared and highlight for you some of those things that I found in the bill that really disturb me. First of all, with respect to the bill, the bill appears to be designed for the purpose of preventing us from combining with developers to do these kind of projects. And the reason...the way it does that, and it's almost apparently intended but it could be not intended, it could be just careless drafting, but if you look at Section 3 of LB557 (sic), Section 3 of LB557 (sic) says that we would be prohibited from entering into agreements with any person who is in the business of buying/selling real estate or offering to lease or advertising for sale or lease residential or commercial property. If that's intended to prevent an end run, as counsel was...as was your first speaker, that would be a new one on me. The natural resource district, the Papio Natural Resources District has never, to my knowledge, ever condemned any property and turned it over to a private person. There was one instance where property was condemned for dam site 21 but the dam site was later conveyed to the city of Papillion for maintenance. To my

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knowledge, that's the only time the district has ever conveyed out to any party, private or governmental, a property that was acquired by eminent domain. So LB557 (sic) in Section 3 seems to indicate that, if we are required to use eminent domain, that fact means we can't combine with anybody by agreement. Now I don't think it just means what counsel said that it meant. I don't think it means anything other than it's a land mine for us to prevent the natural resource district from actually building dams in Washington County. If you look at Section 3 of LB557 (sic), it also shares many of the characteristics that are shared by other elements of the bill in that, the way it is written, it could effectively...well, it calls for a vaguely defined class that could...almost anyone connected with real estate. Now it's difficult for us to imagine that the Legislature has the right to say that real estate people can't enter into agreements with natural resource districts. So my opinion is, under the current...the way the bill is currently drafted, it means that if there's eminent domain used, that triggers the prohibition against the natural resource district entering into agreements with a real estate developer. The proponents have not discussed the fact the legislation could prevent the NRD from contracting with a particular class of landowners; however, that's exactly what they're asking you to do in enacting Section 3. Section 5 of LB557 (sic) would layer on another constitutionally suspect companion to the antideveloper language in Section 3. It would prevent the NRD from entering into agreements with anyone in the real estate business who did not already own land in the project area. I can't understand the logic for that. There are good reasons why felons should not carry guns. There are good reasons why only medical school graduates should operate on people who practice medicine. But how could you possibly rationalize a reason for preventing people in the real estate business from entering into agreements with a natural resource district? The way these provisions are drafted, I think we're looking at ten years of litigation before the full effect of the bill and its constitutionality would become known. Because there's clearly no rational reason why persons in the real estate business who are new landowners in the area should be so restricted, in my opinion, it would be unconstitutional for the legislators to say that citizens who are in the real estate business who have not owned land in the project area for ten years cannot enter into agreements with a natural resource district. As the Nebraska Supreme Court indicated in a case that was litigated between the Papio and the PVPA, developers are simply landowners like other developers...like other landowners. I think the proponents of LB557 (sic) may be adverse to developers because they cannot...because they sometimes help the NRD construct dams and reservoirs, but that's not a legitimate or constitutional reason for discriminating against persons in the real estate business who have not owned land in the project area for ten years. It would be hard to imagine a more bizarre and unconstitutional set of prohibitions and classifications than the ones appearing in Sections 3 and 5 of LB557 (sic). Turning to Section 4 of LB557 (sic), in this case, and this has been much discussed today, the bill would reword definitions of many of the terms used in the special improvement project legislation. What this essentially does, though, is create a series of traps, pitfalls, and impediments to implementation of the statute, because the proposed redefinitions don't fit the mold that is required for an

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improvement project area. The term "special benefit" has a very particular meaning and it is strictly limited to the amount of value increase that real estate in the development sustains by virtue of the project. Anything that departs from that definition really departs from the question of improvement project areas, the concepts upon which they are formed. Therefore, I think you could assume that what this statute would do would be to paralyze implementation of this set of statutes for as long as it takes to figure out what it meant. Actually, also this committee should consider, I believe, the fact that the term "special benefit" is used in other statutes. Cities, counties and NRDs also have statutes that are premised on the thought of special benefit as the basis for special assessments. Turning to Section 7 of LB557 (sic), LB557 (sic) sets up a vote of persons not in the improvement project area who are affected and it isn't really clear what happens if that vote is negative but however, what it does is classify persons based upon where they are located and besides paralyzing the implementation of the statute with uncertainty, it would give an electoral veto to a class of affected landowners, without describing what "affected" means, outside an improvement project area and deny that to...that same electoral vote to those inside the improvement project areas. And in my opinion, this would create an incomprehensible, irrational, and likely unconstitutional subclassification. With respect to Sections 8, 9, 10, and 11 of LB557 (sic), this is not new legislation. If you were to pick up the bill from the beginning and look at it, you would have thought that several sections were totally repealed. However, in 8, 9, 10, and 11, which are not new legislation, they're merely reinserted. So what the drafter of the bill has proposed here is what is called...what he called a rearrangement of statutes without really anything that...really anything being said today that evidences any present problem with the way the bill is arranged. There are some sections that are longer than others, there are some sections that require concentrated reading, however, no one has said that any of those sections has actually created an impediment to implementation of the NRD improvement project legislation. So what the drafter essentially is doing is asking that you exercise his whimsy to modify the statutes in a way that look good to him. Section 12, Section 13, and Section 14 also would create new limitations on the natural resource district and could also interfere with the use of general funds to create the dams and levees that are needed for the natural resource district for the Pappas Watershed, as I previously mentioned. I think basically the other parts of my presentation are contained in the bill that...contained in the document that was handed to you and I won't take the time to go over those. I think basically that I've given you the flavor of what I was intending to say and that is that based upon the vagueness in the bill, the individual phrases in the bill that would be difficult to understand for even a court, basically I think that the bill is intended to create a nuisance, intended to create an impediment. It's intended to conceal numerous statutory changes that are made that have not yet fully been detected. It was not until I received the green sheet the other day that I was fully able to understand what all the...all of the amendments that would be made by the bill. So I would suggest that in the end many of the modifications that are proposed are inconsequential and, if they're not dangerous, they are a true waste of time by the Legislature. I think basically another point that I

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would like to make, that to me it was obvious that the proponents' purpose was to see how far they could go with hamstringing the NRDs wherever possible by multiple and irrational restrictions. I appreciate the time that I've been given to make this presentation and I'd be happy to answer any questions that you may have. [LB577]

SENATOR LANGEMEIER: Thank you. Senator Carlson, question. [LB577]

SENATOR CARLSON: Senator Langemeier. Mr. Peters, I'm going to make a statement here and don't be too alarmed by it, and then I'll come back to something else. What caught my eye immediately as you started your report was the statement in the second paragraph, "You should kill this bill and return your attention to real problems." I find that wording rather offensive and would remind you that part of the law that we are instructed to uphold is the fact that when somebody submits a bill, regardless of what anyone else thinks about it, that bill receives a scheduled hearing and testimony, and it's our responsibility to listen to that testimony and then respond accordingly to the testimony. And it could well be that the people who are endorsing LB577 would make that same statement about LB160. But having said that, I agree with you on the difficulty of assessing benefit. I agree that the...it could be a costly assessment for that benefit, and then you might even question the accuracy of that assessment after it had been determined. My question to you would be, what's the legal definition of "goofy"? [LB577]

PAUL PETERS: Well, Senator, basically looking at all of those definitions, they don't form a logical progression. What they do is try to achieve a goal without actually having a road map, without actually having a legal framework, the legal framework being that special assessments, special benefit assessments are always premised on that one factor, and that is the amount by which the project increases the value of the property that is assessed. So we have situations like in places where sanitary districts are used, it's easy in some cases to determine the benefits. Per front foot is used as a measure for things like sewers and water. It's an accepted way of doing it because there's no doubt that what that improvement does is provide a utility to the house where it furnishes that. In the case of the water projects where...and as been discussed, bonds are widely used, the improvement project area legislation is widely used in a case where we supply potable water. And we can measure that by the amount of water that's consumed. It's very difficult in some cases to measure special benefit as opposed to general benefit, and you cannot levy an assessment for general benefit. So what do you do in the case of flooding? Do you assume that people downstream are the ones that are benefited? If so, where downstream are they benefited? Are they benefited only in the floodplain? In the case of a flooding situation, if you have the city bisected by flooding you have done terrible things to fire and police response, you've put people in jeopardy and danger. You have rescuers that have to go out. You have soup kitchens that have to be set up. Where does special benefit start and stop in the case of flooding? It's very difficult. And you wouldn't want to get into a situation where you've got \$5 million bucks invested in a project and find that the courts have said, no, you can't

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use special benefit assessments, your assessments are void. So it's just terribly complicated to try to come to any kind of a schedule of benefits that everyone can agree upon in the case of flood control improvements. My position is that I would not advise that anyone try to use special benefits to fund a flood control dam or levee, flood control dam or reservoir or levee, because of the difficulty and the entanglements, the litigation that would just naturally accompany it with the end result being that I would think that it would fail. [LB577]

SENATOR CARLSON: Thank you. [LB577]

SENATOR LANGEMEIER: Mr. Peters, I have a question. [LB577]

PAUL PETERS: Yes. Yes, sir. [LB577]

SENATOR LANGEMEIER: In this whole process, as we've talked about LB160 and now LB577, I've had this hang-up with this is taking one step prior to those dams being built. And you confirm the one reason I don't like LB160, is in your statement you said that if we don't do this now we fill these areas with rooftops. And my argument has been for the last two years, is what has the city of Omaha, what has Douglas County, what has Sarpy County, what have the communities done to prevent these areas from being filled with rooftops? So it goes back to my statement of cooperation between the NRDs, the cities, and the counties--there is none. As the cities allow these rooftops to go in what I want to call areas where they shouldn't be, you help confirm that in my mind that they aren't doing anything. [LB577]

PAUL PETERS: Well, your honor...or, Senator, I don't think that you can fiddle while Rome burns. The natural resource district is standing there with his finger in the dike. The city of Omaha has a responsibility, the county of Douglas has a responsibility. The natural resource district is the only agency of government that has picked up the gauntlet and tried to do something to provide flood control and it faces obstacles from every position. [LB577]

SENATOR LANGEMEIER: But does not the city have the opportunity to zone these areas to prevent building from being done there in the first place? [LB577]

PAUL PETERS: You know what happens there, in a situation like that, is that people that are refused zoning for that kind of reason file inverse condemnation suits against the city. You can't deny zoning if it's within the comprehensive plan, and you can't deny it for the purposes of holding it in reserve for future development of a flood improvement. You just can't because that's confiscation of property. [LB577]

SENATOR LANGEMEIER: Other questions? Seeing none, thank you very much for your testimony. [LB577]

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PAUL PETERS: Thank you very much, sir. [LB577]

SENATOR LANGEMEIER: Is there any other testimony in opposition? Seeing none, I have a letter that I buried. Maybe...there it is. I have a letter from the chairman of the Papio-Missouri River NRD in opposition. I have a letter from Marty Grate with the city of Omaha in opposition. (Exhibits 9, 10) That concludes my opposition testimony. Is there any testimony in a neutral capacity? Seeing none, Senator Rogert is gone so there will be no closing, so thank you all. (See also Exhibit 11) That concludes our hearing today on LB577. I thank everybody for taking the time to testify and have a safe trip home. [LB577]

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Disposition of Bills:

LB577 - Indefinitely postponed.

Chairperson

Committee Clerk