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Urban Affairs Committee
February 03, 2009

[LB128 LB412 LB441 LB522 LB523]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 3, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB128, LB412, LB441, LB522, and LB523. Senators present: Mike Friend, Chairperson; Amanda McGill, Vice Chairperson; Colby Coash; Tanya Cook; Steve Lathrop; Kent Rogert; and Tom White. Senators absent: None.

SENATOR FRIEND: (Recorder malfunction)...so we will go ahead and get started. This is the Urban Affairs Committee and my name is Mike Friend. I'm from northwest Omaha. I represent District 10. And a couple of housekeeping things. First of all, if you would allow me, you can go ahead and turn your cell phones and pagers, at least turn them off or turn them to vibrate. Everything is being transcribed in these hearings and it makes it a little difficult, if the cell phones are going off, for the testifiers to hear the testimony or the transcribers to hear the testimony. If you are wishing to testify on a bill, first of all, let me step back. You'd think I'd know this by now. Let me introduce everybody else on the committee before we get to the rest of that stuff. To my left, I'll start this time, is Beth Dinneen, she's the committee clerk for the Urban Affairs Committee. Senator Tanya Cook is from Omaha; and Senator Steve Lathrop, to my left, he's from the Omaha area anyway, if he doesn't like Omaha in general he can pick and choose, I suppose. (Laughter) Bill Stadtwald is the research analyst, he's to my right; and Senator Amanda McGill is the Vice Chair of the Urban Affairs Committee; she's from Lincoln. Senator Tom White has joined us, he's from Omaha; and Senator Colby Coash, he's from Lincoln. And I believe Senator Rogert will join us in a little bit. He was introducing a bill in another room. If senators get up and move around or if they have to leave don't take offense to it. A lot of them are introducing bills in other committees. Again, if you wish to testify, we have some green sheets that you should fill out, drop them in the box over by Beth. If you do not wish to testify and you'd like your name entered in the record, there are some white sheets that you can fill out, enter your names as a proponent or an opponent. Testifiers, we're going to give you right about five minutes. We have these lights. We have five bills today. I don't think we're going to use the lights, but I would hope that we could keep our testimony pretty concise and we can get through these bills in an organized manner. Testifiers also, when you come up here if you could please spell your name, state and spell your name for the record, for the transcribers also. That helps a lot. I will stop you if you don't do that because they chastise us later on if that doesn't happen. And, of course, no vocal displays of support or opposition. I really don't think we're going to have trouble with that today, but we have had trouble in the Urban Affairs Committee before with vocal displays. So I always kind of say that now. The pages today...by the way, Kathleen Dolezal dropped us off some more cookies. I don't know why she keeps doing this. I don't think we're doing her any favors. We appreciate it, thank you. And the page is Courtney Ruwe. She's here every week and she's from Herman, Nebraska, and political science and philosophy are her majors. So I've already wished her luck. You all wish her luck too. That's about it as far

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as the housekeeping goes. Senator Giese is here to open on LB128 (sic). [LB412]

SENATOR GIESE: Thank you, Senator Friend and members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. LB412 is intended to eliminate confusion between deadlines for sanitary improvement elections and other type of mail-in special elections. Under Section 32-954, ballots for elections conducted entirely by mail must be returned by 5:00 p.m. on the day of the election. Due to an oversight in drafting the original bill would have set the deadline for the return SID ballots to track the deadline for the return of ballots in primary and general elections. The committee should have received a copy of AM134 which would harmonize SID election deadlines with other special mail-in elections. The current deadline for SID elections is 10:00 a.m. on the first Thursday following the election, which could inadvertently place voters at the mercy of the postal service. Most voters probably don't know where their county clerk or election commissioner receives their mail or in a case of a post office box what time the mail comes. A voter could assume that their ballot would arrive prior to the 10:00 a.m. deadline, but if the mail happens to be delivered later in the day the voter's ballot would not be counted. Setting the deadline at 5:00 p.m. should ensure that ballots would not be affected by mail delivery. More important than the issue of mail delivery, uniformity of SID elections with other mail-in special elections make sense. Our county officials are already burdened with keeping track of a wide variety of election deadlines and other election-related provisions. Setting the deadline for receipt of ballots in SID elections to mirror other mail-in elections should, hopefully, make things easier for our county officials. Thank you for your time. And I would be happy to answer any questions. [LB412]

SENATOR FRIEND: Thank you, Senator Giese. I believe that I said that this was LB128, it's actually LB421. Sorry about that. [LB412]

SENATOR GIESE: LB412. [LB412]

SENATOR FRIEND: LB412. [LB412]

SENATOR GIESE: LB412. [LB412]

SENATOR FRIEND: LB412 is the bill that Senator Giese just introduced. We will deal with LB128 later if we have to. Are there questions from committee members for Senator Giese? Senator, I don't see any right now. [LB412]

SENATOR GIESE: All right. [LB412]

SENATOR FRIEND: Thanks for the opening. We'll start with proponents of LB412. [LB412]

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LARRY DIX: Senator Friend, members of the committee, for the record, my name is Larry Dix, spelled D-i-x. I'm executive director of Nebraska Association of County Officials appearing today in support of LB412. We appreciate Senator Giese introducing this bill. I think initially we thought this bill being an election bill might be in front of a different committee. So it's sort of a different context. But Senator Giese did a great job in introducing it. What it really, really, really does is right now in statute for SID elections we sort of have this little pigeonhole of when ballots need to come back. And so we as county officials thought it would make sense so that all of the electorate would know that if you're running any other mail election the ballots are due in the same time. We certainly didn't want the confusion out there for the voting public. That's really the reason for the bill. We think it's just good to have all mail-in elections have that same deadline. And other than that, there isn't much to say about this bill. That is it in a nutshell. Be happy to answer any questions anybody would have. [LB412]

SENATOR FRIEND: Thank you, Mr. Dix. Are there questions for...from the committee for Mr. Dix? I don't see any. [LB412]

LARRY DIX: Thanks. [LB412]

SENATOR FRIEND: Thanks for the testimony. Next proponent. We can start with opposition testimony. Is there any opposition? Anyone wishing to testify neutral? Senator Giese to close. Senator Giese waives closing. That will close the hearing on LB412. And we will move to LB441. I thought I saw Senator Council here. Okay. Instead of standing at ease and waiting for Senator Council, we can probably go to LB128. And, I believe, Senator Avery's legislative aide is here to introduce that. [LB412 LB128]

NICOLE KANNE: Good afternoon, Chairman, committee members. My name is Nicole Kanne, that's N-i-c-o-l-e K-a-n-n-e. I'm the legislative assistant for Senator Avery who could not be here today. During the 2007 session, the Legislature overwhelmingly approved LR6, a constitutional amendment to allow for diversified investment of public endowment funds. The language appeared as Amendment 1 on the May 13, 2008 primary election ballot and passed 58 percent to 42 percent. Senator Avery has introduced LB128, a technical bill which will incorporate into the Nebraska Constitution the exact language as it appeared and was approved on the ballot. It is the final step in advancing this widely endorsed language forward and therefore we have attached an emergency clause to the bill. Amendment 1 removed outdated restrictions that had been placed on Nebraska's investment options for public endowments. Historically, communities have been very restricted in the range of investment they can make with public endowments, and are currently limited to bonds and other fixed income securities. These decades old restrictions have placed those funds at a potential risk from the ups and downs of the financial market. Amendment 1 allows for mixed fund stock investments of endowments which promote a higher return by minimizing

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downturns and maximizing growth opportunities in both the bond market and the stockmarket. In crafting Amendment 1 great precaution was taken in safeguarding public endowments by requiring that diversified investments be made under the Prudent Investor standard. Endowment trustees have a fiduciary duty to act in good faith when investing publicly held funds and must protect the funds from poor investments. Furthermore, communities acting with care, skill, and diligence will be responsible to act exclusively to protect endowment investments. Endowments offer a unique opportunity for Nebraskans to improve the quality of life in their communities without raising taxes. The interest collected from these endowment funds is used as financial supplements for the improvement of parks, libraries and the arts, senior centers, healthcare accessibility for the poor. At a time when our state must make tough economic decisions, increasing the possible return on our endowment funds is fiscally responsible and is a smart investment in Nebraska's future. Again, this language in the bill has been approved by the One Hundredth Legislature, the voters, and has been publicly endorsed by local and state officials including five members of this committee. On behalf of Senator Avery, I urge you to advance LB128. You're briefly going to hear from representatives of the financial sector, municipal endowment, and our local government. I hope they can answer your questions and thank you for your time today. [LB128]

SENATOR FRIEND: Thank you. Are there questions from committee members? I don't see any. Thanks. First proponent. [LB128]

DAN ANDERSON: Good afternoon, Senator Friend and members of the Urban Affairs Committee. My name is Dan Anderson, D-a-n A-n-d-e-r-s-o-n. I am executive vice president of Pittenger and Anderson, a local investment firm. I am the past chairman of the board of trustees of the Community Health Endowment of Lincoln, having just completed two terms as chairman. As you might expect, the Community Health Endowment was a very interested observer of the Amendment 1 ballot issue. We believe when this legislation was introduced and we continue to believe that having access to a full array of asset classes, including equity investments, will reduce our risk and maximize the opportunity for real growth of our assets. This legislation will over time result in real growth in the amount of annual grant funding we have available to create a healthier community. Some of you may be wondering how the current economic picture has impacted our view of this legislation. Simply put our position has not changed. In fact, we believe this legislation may provide us with extraordinary opportunity. For those concerned about the current economic conditions, please keep in mind that equities have still returned more than bonds or cash by ten times over the past 80 years. In addition, the best and cheapest time to invest in equities is after a market correction. Currently, equities are trading at very cheap levels. Since 1957, when stocks traded this cheaply, the average return for the ensuing ten-years was 17.1 percent. Historically, stocks have averaged more than 20 percent for the 12 months following low consumer sentiment, indicators such as are being exhibited now. Buying power relative to the stockmarket is at a 40 year high. Conversely, bond yields are at all-time lows making

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them very expensive. LB128 offers municipal endowments a very special opportunity, the ability to invest in stocks after a 40 percent reduction in price. The bottom line is we continue to believe that having the ability to diversify our investments in a full array of assets under the umbrella of the Prudent Investor rule will allow us to position our assets so as to achieve the highest reasonably possible total return over time. As you know, the voters of Nebraska support this legislation. We are here today to ask you to move the Legislature forward with the blessing of the Nebraska voters. I would be happy to try to answer any questions. [LB128]

SENATOR FRIEND: Thank you, Mr. Anderson. Are there questions from committee members? Senator White. [LB128]

SENATOR WHITE: Mr. Anderson, if we had had the endowment funds placed in a market index fund, what would be the value of that today versus one year ago today, roughly? Seventy percent? [LB128]

DAN ANDERSON: If we would have had the entire...the equity portion of it would have probably, yeah, decreased by 40 percent if it would have been all equities, so the equity of it, U.S. equities. [LB128]

SENATOR WHITE: So we may, by being slow, have really stumbled into an opportunity. [LB128]

DAN ANDERSON: We...without a doubt, yes. [LB128]

SENATOR WHITE: Thank you. [LB128]

SENATOR FRIEND: Thank you. Other questions from committee members? I don't see any, Mr. Anderson. Thank you. [LB128]

DAN ANDERSON: Thank you. [LB128]

SENATOR FRIEND: Next proponent. [LB128]

LORI SEIBEL: (Exhibit 2) Good afternoon, Chairman Friend and committee members. My name is Lori Seibel and I am the president of the Community Health Endowment of Lincoln. And I'm here today representing our board of trustees and in strong support of LB128. Briefly, the Community Health Endowment is a municipal endowment of the city of Lincoln that resulted from the sale of Lincoln General Hospital, back in 1998. And since that time, our endowment has grown in assets while working toward our vision to make Lincoln a healthier community. Specifically, we've provided about 120 grants back to this community totalling about \$12 million. We have some guiding principles to our organization. They are collaboration, community expertise, innovation, and perhaps

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most importantly today's hearing, the idea of stewardship. And this value calls us to grow our assets and preserve them for future generations and for the benefit of the community. With the restrictions that were on equity investments, according to the Constitution in Article XII-1, Section 1, we were not able to practice stewardship at the level which we desired nor at the level which I think the community expected us to. And the passage of Amendment 1 by Nebraska voters in last year's primary election, along with the passage of the bill before you today LB128 will provide public endowments with the opportunity to diversify and will give us opportunities to practice that stewardship at the level that the community expects us to. You know, Lincoln has a broad array of health and human service agencies. We serve many refugees and immigrants and high-risk children, victims of domestic violence, people who are in treatment, homeless individuals, people with chronic illness, many, many vulnerable populations. And these services are not only available to individuals who reside in our community but also to individuals who come from out...throughout the southeast corner of the state and really throughout Nebraska. And I have to tell you that the Community Health Endowment has helped supplement other available funding to be able to serve these vulnerable populations. We can serve a broader spectrum of people that would not have been possible without this money. These folks would have gone unserved. And I think probably more importantly and perhaps most importantly these funds have allowed our community to leverage other funding that would have not been possible otherwise. One real brief example is that Lincoln now has a Medication Assistance Program. And you'll read a little bit about it in the annual report that I distributed to you. But what it does is leverage charity care from national pharmaceutical companies. As a result of this program and our nominal investment as an endowment, Lincoln has been able to access more than \$12 million in prescription medications for individuals who live in this community or who seek services in this community. And that's just over the course of the last three years. And that would not have been possible if these funds had not been made available and individuals would have been left without needed healthcare and medical care. I have almost a decade now of experience in working with the public endowment. And I believe that the investment opportunities that are provided for in Amendment 1 and LB128 will create not only a wonderful opportunity for our community but for other Nebraska communities who seek to provide the same kind of service and to expand the ability to serve people in their areas. So we are pleased that individuals and voters chose to go to the ballot boxes and approve Amendment 1 last May and certainly by such a wide margin. And we would just urge you to consider passing this forward; and so we can begin to work on creating added opportunity for our communities and others. I'd be happy to answer any questions. [LB128]

SENATOR FRIEND: Thank you, Ms. Seibel. Are there questions from committee members? I don't see any. [LB128]

LORI SEIBEL: Seibel is S-e-i-b-e-l, forgot to do that. I don't want to get Senator Friend in trouble for that. [LB128]

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SENATOR FRIEND: You know, you would have got away with it because I didn't hear. (Laugh) I'm just not with it today, folks. I don't know what the deal is. I'll try to gear it up. [LB128]

DON HERZ: Good afternoon, Senator Friend and members of the Urban Affairs Committee. My name is Don Herz. And the last name is spelled H-e-r-z. I'm the finance director for the city of Lincoln. I'm here today in support of LB128. This is one of Lincoln's priority bills. One of my responsibilities as finance director is the overall management and investment of the assets of the city, which includes our permanent endowment funds. The city currently manages two permanent endowments with assets in excess of \$50 million, most of which is in the Community Health Endowment. There are two reasons why I believe that implementing Article XII, Section 1 of the constitution through LB128 is a prudent policy. And the first and foremost is safety. A permanent endowment can own a fully diversified portfolio investments that provides more safety than for those investments than if they can only be invested in a narrow class of assets. As you know, stocks and bonds have historically moved in opposite directions. For example, if stocks are performing well bonds generally have trended downward. Stocks moving down, bonds have generally performed well. By using a prudent mix of investment types you can reduce the volatility of your total investment pool and create the safety that we as managers of public funds strive for. The second reason is a higher level of income. A prudently managed fund that includes equity securities as part of its investment option will see a return through dividends and capital gains that is approximately 2 to 4 percent higher than a fund that only invests in bonds. For the Community Health Endowment this could mean an additional \$1 million to \$2 million more in benefits to our citizens each year. While the past year has proven to be a very difficult period for the stockmarket, you need to remember that a permanent endowment has an infinitely long investment horizon. A recent study of the S&P 500, which as you know is a broad index of the stockmarket, calculated the average return for rolling 25-year periods beginning with 1927, the worst 25-year period averaged 5.88 percent annually ending in 1953. And that included the Great Depression and World War II. The best 25-year period averaged 17.25 percent and that ended in 1999. The average return for any 25-year rolling period in the study was 11.53, and the median return was 11.74. So with that, if there are any questions, I will be happy to attempt to answer them. [LB128]

SENATOR FRIEND: Thank you, Mr. Herz. Questions from the committee? I don't see any. Thanks. Next proponent. [LB128]

GARY KRUMLAND: Senator Friend, members of the committee, my name is Gary Krumland, that's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB128. You've heard a lot about Lincoln. I just wanted to point out that the bill and the constitutional amendment applies to all cities who are allowed to

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have a charter under the constitution. And that's defined by Article XI, Section 2 as those cities with a population of 5,000 or more. That would include about 32 of the 530 cities in Nebraska. From our discussions with those cities most of them do not have an endowment fund right now, but it's something that they would look at. The city of North Platte did want me to mention that they do have a \$2 million bequest that was given to them for parks, and this would really help them to diversify their investments and hopefully increase the payments that they can use for the parks. With that, I'd be happy to answer any questions. [LB128]

SENATOR FRIEND: Thank you, Mr. Krumland. Questions from committee members? I see none. [LB128]

GARY KRUMLAND: Um-hum. [LB128]

SENATOR FRIEND: Thank you. Next proponent. [LB128]

JACK CHELOHA: Good afternoon, Mr. Chairman, members of the committee. My name is Jack Cheloha, the last name is spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. We want to testify in support of LB128. We've supported this all the way through the process. And while Omaha does not have an endowment, hopefully, some day we'll talk to some estate planning lawyers and get some of our residents to maybe leave something to the city of Omaha and we'll enjoy the benefits of this some day. But for now that's all I have to say. And we support it. [LB128]

SENATOR FRIEND: Thank you, Mr. Cheloha. Questions from committee members? [LB128]

JACK CHELOHA: Thank you. [LB128]

SENATOR FRIEND: (Exhibit 1) Thank you. Any other proponents? I do have a letter from Robert Hallstrom. This is a letter of support from the Nebraska Bankers Association, a letter in support of LB128. We can start with opposition. Is there any opposition? Any neutral testimony? And, Nicole, do you wish to close? Okay. Then that will close the hearing on LB128. Thank you all. And I believe Senator Council is here, thank you, to open on LB441. I'm sorry, we called you a little early because I had total lack of control over this committee. (Laughter) [LB128 LB441]

SENATOR COUNCIL: Not a problem. Chairman Friend, members of the committee, I am Brenda Council, the senator from the 11th Legislative District. And I am here this afternoon appearing before you to introduce LB441. The intent and effect of LB441 is merely to allow the Omaha City Council to charge the same amount for the preparation of a transcript for an appeal from an assessment or a decision by the city council as you or I would pay for the preparation of a bill of exceptions if we were appealing a judicial

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decision. The fee that is currently in effect in the statute has not been increased in more than 50 years and does not allow the city of Omaha to recover the costs of preparing a transcript. With respect to the ability of a citizen to pay for the transcript, I am pleased that LB441 provides the same exception for indigents to obtain a transcript as our courts provide on judicial appeals. I would respectfully request the committee to advance LB441 to General File. Since the city clerk of the city of Omaha is here to testify and could answer any specific questions you might have, I will waive closing. [LB441]

SENATOR FRIEND: Thank you. Any questions for Senator Council? I see none. [LB441]

SENATOR COUNCIL: Thank you. [LB441]

SENATOR FRIEND: Thank you. First proponent. [LB441]

BUSTER BROWN: Mr. Chairman and senators, my name is Buster, B-u-s-t-e-r, Brown B-r-o-w-n. I'm city clerk for the city of Omaha. I thank Senator Council for introducing the bill. Our main interest in this is to make it uniform so that we charge everyone the same amount. There are different sections of our code and of state law that allow different charges and this would make it uniform if we changed these. I'm here to answer any of your questions. [LB441]

SENATOR FRIEND: Thank you, Mr. Brown. Questions from committee members? Thanks for coming down. [LB441]

BUSTER BROWN: Thanks. [LB441]

SENATOR FRIEND: First...second proponent. [LB441]

LYNN REX: Senator Friend, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. And we, too, would like to thank Senator Council for introducing this bill. We support it because it not only helps Omaha but it helps other cities and villages in the state. If you look at Section 2 of this measure on page 3, lines 21 to 22, and also even on page 2, line 15, the 10 cents per 100 words has not been changed since 1975. And so we think it's time to do this. And it should have the standards that are outlined in this measure. I'd be happy to respond to any questions you might have. [LB441]

SENATOR FRIEND: Thank you, Ms. Rex. Questions? [LB441]

LYNN REX: Thank you. [LB441]

SENATOR FRIEND: I don't see any. Any other proponents? Any opposition? Any

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neutral testimony? And Senator Council did waive closing. And that will close the hearing on LB441. And LB522, Mr. Stadtwald will open. [LB441 LB522]

BILL STADTWALD: For the record, my name is Bill Stadtwald, S-t-a-d-t-w-a-l-d, research analyst to the Urban Affairs Committee, here to introduce LB522 which was introduced by the Urban Affairs Committee. This legislation is a clarification of a bill that was heard and was adopted last year, LB1096. It dealt with a section of statute, Section 35-901, which was originally adopted in 1993, LB516. That legislation created a special trust fund for volunteer fire departments into which they would deposit funds that they had...that were raised by the department from various functions. At that time the principle sponsor was Senator Bob Wickersham. He explained that this dealt...he, himself, was a volunteer firefighter. Explained that the purpose of it was to protect funds of the volunteer department from the use by the city or the sponsoring authority, whether it be the county fire protection district, that they would not use those funds as an excuse not to fully fund the fire department or whatever. And that it created disincentive for the volunteers to derive funds for themselves. And they were thinking in terms of items like dances, bake sales, raffles, those kinds of activities that might be conducted by the volunteer department. Now, over the course of years these funds were specifically declared by LB516 in 35-901 as not being public funds. That therefore they were private funds, they were not to be audited by any outside authority. They were as private as any other funds of a nonprofit organization and specifically protected by the statutes from being used by anybody else or being tapped by any other authority. In the development of LB1096 last year it came to the attention of the committee that there were volunteer departments that were using billing to create funds for their individual private trust accounts, that they were literally sending out bills to individuals who had received services from the volunteer department when they had come out to pick them up in a rescue squad. Typically, these bills were being sent to insurance companies and they were deriving whatever income they could from that and placing that into these trust funds, under 35-901, which were then not subject to public scrutiny or to audit or to any transparency at all with regard to the use of the funds. It was developed in the original bill, in LB1096, also in subsequent committee amendments and amendments that were made on the floor, the intent of the committee was to establish that funds which were raised by billings for fees for particular services that were provided by the volunteer department were to be kept...were to be retained as public funds. They were not private funds. They were to be turned over to the sponsoring agency, the city or the fire protection district, and that there was an audit to occur. For the purposes of LB522, that bill and LB1096 established that from the effective date of this bill, of LB1096 on, in other words July 18, 2008, those funds were to be retained by the city. They could have the volunteer department do the billing for them or whatever. But one item that was left out of the equation that was raised by other individuals was the fact that it wasn't declared that those funds were not to be a general source of revenue for the city or the fire protection district, that they should actually be, if they were collected, be used to finance the activities of the volunteer department for the

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services that gave rise to the funds themselves. So the principle function of LB522 was to establish the legal and appropriate uses of those funds. It was not intended, LB522 is not intended to be a change so much as a clarification of what the intent of the committee was. But there are three purposes for those fees which are billed for services that the city can use the money for or the fire protection district. For the support of the emergency response activities of the volunteer department it gave rise to the funds, fees, or charges collected for costs directly related to the collection of those funds, fees, or charges, or for the support of a service award benefit program adopted and conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act. Those would be the three appropriate uses of those funds. As I say, it was never the intent of the committee that this should be a change, but rather that it should be a clarification. And largely it arose out of the fact that after the legislative session and after the bill went into effect it was determined that there were not just one or two departments statewide but a number of departments that were doing the billing and that there was some ambiguity with regard to how the funds could be used resulting. Any questions? [LB522]

SENATOR FRIEND: Any questions from the committee? Senator White. [LB522]

SENATOR WHITE: Thank you, Bill. Is it clear in this bill then that the funds collected going forward can be used to fund retirement for people who put their time in, in the volunteer fire department activity? [LB522]

BILL STADTWARD: Yes. It clearly states, and this was also part of the bill last year that those funds can be used for programs that are adopted under the Volunteer Emergency Responders Recruitment and Retention Act, which was the sole authority under Nebraska law for funding and financing a recruitment and retention program. It's referred to as a retirement program, but it's under...it's typically a LOSAP, a length of service award program. It is not specifically retirement programming in the strictest legal sense of the word. [LB522]

SENATOR WHITE: Thank you. [LB522]

SENATOR FRIEND: Any other questions? I don't see any. Do we have any proponents of LB522? Welcome. [LB522]

BOB ROSE: Welcome. Thank you, Senator Friend and other members of the Urban Committee. My name is Bob Rose, B-o-b R-o-s-e, from Edgar, Nebraska. I've been a member of their fire department for 35 years, and their ambulance squad for 34. On July 10 last year, which was before the date the bill went into effect, the mayor of Edgar stopped the ambulance secretary/treasurer on the street. He yelled across the street, accountants had come to the bank, we're moving your funds into the city's account earmarked for fire and rescue. A very strange way to do business with people that are

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volunteering and doing their job. This money is not earmarked at the time for anything. In fact, when I went to fire school there was a question about one person staying in a room with \$140,000 or \$150,000, probably that would be cheap. We constantly hear that equipment is purchased by rural boards and cities. In most of the towns in our area most rural boards they have a budget of \$30,000 a year. That's not going to buy much equipment. The pumper in Edgar was a gift from a man who gave money to the city. Our tanker was bought on a FEMA grant, and only 10 percent was picked up by the city and rural. Our pickup came from forestry. Our ambulance came from thirds with the rural paying a third, the city paying a third, and the ambulance paying a third. Bunker gear came from FEMA. In fact, one bay from our fire hall came from pickle card money from our department. This money, as I said before, I believe was not earmarked for any specific thing, it was just earmarked in an account. I strongly urge the passage of this. I know that when discussion went on with this two different churches contacted me. One of them said, we'll do whatever you want, we don't want our money going to the city to run their things. A second one gave a donation to the fire department ambulance every year. And, in the future they earmarked that only to go to people that actually go to extra things like fire school, EMS conferences and so forth, to be paid for their extra expenses. I don't know if it had checked on our election in Edgar or not but two of the members on the city council, one ran, one didn't. The one that did happened to be a captain of the ambulance and also part of this thing were replaced and they'll be replaced with two firefighters with a different point of view. I really believe that the problems we have in Nebraska for recruitment and retention of firefighters are bad enough without people thinking that they're going to take their money and use it for anything else. Thank you. [LB522]

SENATOR FRIEND: Thank you, Mr. Rose. Are there questions from the committee? I don't see any. [LB522]

BOB ROSE: Thank you. [LB522]

SENATOR FRIEND: Thanks for coming down. Thanks for the testimony. Next proponent. [LB522]

WILLIAM LUNDY: Good afternoon, Senator Friend and committee. My name is William Lundy, L-u-n-d-y, and I'm secretary/treasurer of the Nebraska State Volunteer Firemen's Association where I represent over 7,500 professional volunteer fire and rescue personnel throughout the state of Nebraska. The board of directors of the Nebraska State Volunteer Firemen's Association has voted to support this bill and the amendment for cleanup language from LB1096 last year. We truly feel that it is important, if at all possible, that these funds that are generated by fire departments go back to funding fire department operations, whether it be purchasing ambulances, fire trucks, training, or length of service award programs. It seems kind of unique that in some certain instances cities or more like cities than rural fire districts, because rural fire districts fund

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the whole operations and understand those dollars, whereas cities see this as another revenue stream for them to take money and not fund the fire department and expect the fire department's to have bake sales, pancake feeds, pickle cards, you name it. Now I don't know about you, but when was the last time you seen your police department have a bake sale to buy a police car? Gentlemen, we really think this language is important and we support LB522. I'd be more than happy to answer any questions from anybody on the committee. [LB522]

SENATOR FRIEND: Thank you, Mr. Lundy. Are there questions from the committee? Senator White. [LB522]

SENATOR WHITE: Are you satisfied with the language of the bill, how it restricts the use of the funds? [LB522]

WILLIAM LUNDY: Yes, I am [LB522]

SENATOR WHITE: Thank you. [LB522]

WILLIAM LUNDY: I think that's prudent and responsible language for public trust monies that are being collected for services being provided by the fire district. [LB522]

SENATOR WHITE: Thank you. [LB522]

SENATOR FRIEND: Any other questions from committee members? I don't see any. Thank you, Mr. Lundy. Next proponent. [LB522]

JERRY STILMOCK: Good afternoon, senators. My name is Jerry, J-e-r-r-y, Stilmock S-t-i-l-m-o-c-k, registered lobbyist testifying in support of LB522 on behalf of my client, the Nebraska State Volunteer Firefighters Association. I want to thank the committee for going ahead and introducing this measure. It was this past summer when LB1096 was hitting the fan and there were concerns. And the concerns were that funds collected from the charges as met within the definition of LB1096 perhaps would, once they made it to the taxing authority, whether it be a municipality in the form of a city or village or a fire protection district, that maybe to no fault of the taxing authority that the taxing authority was absolutely strapped for cash. And as a result of being strapped for cash, maybe that money was going to have to be...I'll say diverted, but used for a truck to help out the street department or some other department within the taxing authority within the municipality. So this, LB522, would put in place, put in law the three categories that were described by...during the introduction to ensure that the funds raised through the activities from the charges would be only or restricted to be spent in these three categories. What we do not want to have happen is, without having this language, where the volunteer department is then forced to go out and do additional fundraising or some other type of activities to purchase the necessity equipment necessary for funding

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the operations. Just a word, even though...a couple of words, if I may. The title of our association, that of the Nebraska State Volunteer Firefighters Association, it represents actually two contingents. So the speakers that came, the testifiers that came before me used the terms interchangeably. Some spoke of firefighters, some spoke of emergency medical personnel, and that's because our group represents both groups. Some are out there as strictly only volunteer firefighters. Some groups are out there strictly only as volunteer rescue squad personnel. And a third category are those that actually perform both services as volunteer fire and rescue. Again, thanks to the committee for introducing this measure. And we'd encourage the committee to advance LB522. Thank you. [LB522]

SENATOR FRIEND: Thank you, Mr. Stilmock. Questions from committee members?
Senator White. [LB522]

SENATOR WHITE: Mr. Stilmock, are you also satisfied with the language how it restricts the use of these funds? [LB522]

JERRY STILMOCK: Yes. I hesitated and then Ed...only to say that we...that we are discussing the measure, Senator, recognize that any length of service award program that may have been in place that did not recognize the state law, the VERRA, the Volunteer Emergency Recruitment and Retention Act passed about 1999, 1998, because the law is specific to the title, that those other programs that were in place before 1999, those funds would not...the funds that we're speaking of would not be able to be used to go back and fund previous programs. So with that extended answer, yes, Senator. [LB522]

SENATOR WHITE: Thank you. [LB522]

SENATOR FRIEND: Any further questions from the committee? I don't see any. [LB522]

JERRY STILMOCK: Thank you, thank you. [LB522]

SENATOR FRIEND: Thank you, Mr. Stilmock. Are there any other proponents? Anyone in opposition of LB522? Any neutral testimony? [LB522]

LYNN REX: Senator Friend, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. And we understand why the committee wants to move forward with the new language underscored on page 5. A couple of considerations for you. First, there are municipalities across the state that from year to year may make a tremendous contribution to buy a fire truck or something else and they budgeted for that accordingly. And they've used funds not just that are raised by the firefighters, by their fees and others, but also using property tax dollars to do that as well, not just monies from them. What we would respectfully suggest is that

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perhaps inserting the language on line 2, something to the effect that beginning October 1, 2010. And the reason for that is it gives everybody about a year and a half, if they have been doing something like that, to get their budgets in line. October 1 has to be there respectfully because that's their fiscal year. And that way you're not starting something midyear. So we would just like to encourage you to at least give municipalities a little bit of time. I think that what we learned last year was that not all volunteer fire departments were inappropriately using funds. In fact, I would hope that most of them were using it appropriately. These are volunteers who work hard on behalf of many Nebraskans across this state because most of our departments are, obviously, volunteer and we thank them for their service. By the same token, we have a number of cities and villages too, I know we've had villages in the past that actually issued bonds to buy fire trucks. So it's property tax dollars also going for this. We're just asking for, we're not asking that you change how these funds are used after the year 2010, but at least give folks some time to get their budgets aligned. And in any event, the October 1 date for implementation would need to be there. We really would appreciate that very much. I'd be happy to respond to any questions that you have. [LB522]

SENATOR FRIEND: Thank you, Ms. Rex. Are there questions from committee members? Senator White. [LB522]

SENATOR WHITE: Ms. Rex, are you indicating that the municipalities have been using this money for purposes other than for fire suppression and therefore we must accommodate their desires to continue to do so? [LB522]

LYNN REX: No. What I'm suggesting, Senator, is that in fact what has happened in the past is that in the same way that there may have been some volunteer fire departments, and this came out at the hearing last year, that were using those funds perhaps inappropriately, a few of them. What we're talking about here is that we have a majority of cities in this state that are also putting other kinds of funds, property tax dollars, to buy equipment and do other sorts of things. I think your language that you have here is very appropriate. I'm just telling you that we would appreciate having a year and a half for people to actually get their budgets aligned. October 1 is the fiscal date for cities and villages, cities of the second class, cities of the first class, and villages. After October 1, 2010 then everything you have here would take effect. Certainly, those cities that are already and have been doing this, it's not...for them they're going to continue doing that. But I would submit to you that in addition to the funds that have been raised by rescue squad personnel and others, there are other property tax dollar funds that go in to buy these...to buy this equipment, to pay for the insurance for the fire hall, in some instances to actually do renovations and significant renovations of fire halls. So what we're suggesting is what you have on page 5 is very appropriate. Just give people a year and a half for those cities that have already done it, because as you can imagine perhaps in one year if you've lost a fire truck at one particular time you're going to put a lot of money in to make sure that you have that fire truck. Or either next year you don't put

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any money in for any of that kind of thing, but you're putting it in for the library service or for another service. And that certainly is true for villages. In fact, in 1996, when the lid and levy law went into effect there were a number of villages and second class cities that were really strapped because they had previously been planning to buy a fire truck in a future year. Well, then when that lid and levy law took effect they didn't have the funds to do that, and they couldn't do it under the lid and the levy. So in any event, I'm just suggesting to you that not every city and not every village operates the same way. In the same way that we learned last year, not every volunteer fire department operates the same way. And we're just asking for a little bit of time so that that transition can be made. [LB522]

SENATOR FRIEND: Are there any other questions from committee members? Ms. Rex, so when....I just really have one because I want to make sure that we're clear. You would prefer, I mean your testimony is neutral on that, and I agree that it seems neutral to me because of the way you described or the way that you discuss the language. You said that it was totally appropriate and everything. But where...you want October 10, 2010 to be an effective date and... [LB522]

LYNN REX: October 1. [LB522]

SENATOR FRIEND: October 1, okay, sorry. [LB522]

LYNN REX: October 1, 2010. [LB522]

SENATOR FRIEND: October 1, 2010 to be an effective date, start of the fiscal year. You said something else though in your testimony. You were...you wanted to inject some different language or did I mishear? [LB522]

LYNN REX: No. I'm just suggesting that if you look on, for example, Senator, and this is not magic, I defer to Bill Stadtwald on this. But on page 5, line 2, before the word "funds," right after the "(9)" even inserting something saying "beginning October 1, 2010," and that way... [LB522]

SENATOR FRIEND: Okay and it begs the question, Ms. Rex,... [LB522]

LYNN REX: Okay. [LB522]

SENATOR FRIEND: ...then why...I mean is 2010, I mean a year and a half. What...what...I mean, October 1, 2009 is not enough time you don't think? [LB522]

LYNN REX: Well, I mean obviously that's better than... [LB522]

SENATOR FRIEND: Or, I mean, maybe that's a little...over simplifying it. [LB522]

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LYNN REX: I mean it's better than nothing. But the reason for this is because there...I believe that there is another side to this coin, and that is that there are cities that perhaps this year spent significant amount of dollars on fire related issues, above and beyond what they maybe have generated from revenue from the rescue squad, or fire calls, whatever else there may be there. And all we're suggesting is that from a budgetary standpoint and their planning purposes it may be, Senator, that what they're looking at doing was they put in a significant amount of money before. They're going to use those funds for something else in the upcoming year. And that was the way that they planned it. There are cities across this state that have spent significant property tax dollars in addition to the tremendous dollars that have been used by volunteer fire departments and raised by volunteer fire departments. So we're suggesting the language you have here is very appropriate. But in the same way that not every volunteer fire department is the same, not every city and village is the same. And at least this would provide some transition time. If you don't feel you can put in 2010, at least put in October 1, 2009 then so that it starts on their fiscal year. [LB522]

SENATOR FRIEND: Okay, I understand. Senator White, you have a question? [LB522]

SENATOR WHITE: Ms. Rex, if I think I've deciphered what you're trying to say, are you indicating that there have been cities that have been receiving the income from these ambulance runs and have been using it for purposes other than ambulances prior to today? [LB522]

LYNN REX: You know, it may be, Senator, that there... [LB522]

SENATOR WHITE: Do you have any evidence or do you know of any specific city that, in fact, has done that and whose budgets will be disrupted by this? [LB522]

LYNN REX: Well, we've talked to several of our members who have just expressed a concern. And so we thought at a minimum the October 1, 2009 has to be there because, obviously, their fiscal year ends and begins...actually begins on October 1, 2009. But we can get some information for you. We can put a survey in our bulletin and get the specific information for you. But I can tell you last year when LB1096 was being discussed there were concerns raised by some cities that indeed there were cities that put in significant amounts of property tax dollars to buy the fire trucks, to do those sorts of things. [LB522]

SENATOR WHITE: I understand they put money in, but they also got a fire service back for that. [LB522]

LYNN REX: Absolutely, absolutely. [LB522]

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SENATOR WHITE: So, I mean, that's a song that doesn't move me much. But on the other hand what I'm asking you is much more blunt. [LB522]

LYNN REX: Okay. [LB522]

SENATOR WHITE: You're asking us to delay moving the stream of income that had been, as far as I know, devoted to fire suppression services throughout the state. And you want to delay that for about two years so it can be used for any purposes. And you say, well, it may disrupt budgets. And I'm asking you, I understand they buy trucks. [LB522]

LYNN REX: Um-hum. [LB522]

SENATOR WHITE: But have they in some way, you have concrete examples of them using this money for purposes other and it's really going to disrupt their budgets? In which case I'd like you to kind of give me an example of where, why, and how much. [LB522]

LYNN REX: Okay, okay. And what we can... [LB522]

SENATOR WHITE: And I would tell... [LB522]

LYNN REX: Okay. [LB522]

SENATOR WHITE: ...you that generally speaking they shouldn't be using this money, because the bill only became effective in July. So they actually only could count on it as being in existence now six months. And so we're supposed to delay it a year and a half because the bill has been in existence six months? Personally, I thought it was pretty clear in the bill that it was always to be used for fire suppression activities anyway. But... [LB522]

LYNN REX: It was clear, I thought, in LB1096. I thought it was clear in LB1096 and I think that the additional language that you have on page 5 is important. What I am suggesting to you though is that prior to passage of LB1096 there were municipalities at that time, volunteer fire departments at that time that operated differently. And that in... [LB522]

SENATOR WHITE: They were turning the money over to the city and they were using it for other purposes? [LB522]

LYNN REX: They were using it, what I'm suggesting to you is that cities are on, for the most part, on an all-purpose levy, not a line-item levy. So as a consequence you will have municipalities that take all the revenue that's there. They deem to be what the

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priorities are. Some years the fire department may have higher priorities than the library or police department or somebody else. [LB522]

SENATOR WHITE: Ms. Rex, you're talking past the question. [LB522]

LYNN REX: Oh, I'm sorry. [LB522]

SENATOR WHITE: Were the municipalities...do you know of many municipalities that have been including the stream of revenue from ambulance calls into their budget? [LB522]

LYNN REX: Into their all-purpose levy, yes. [LB522]

SENATOR WHITE: Okay, thank you. [LB522]

LYNN REX: Yes. And almost all cities operate on an all-purpose levy not a line-item. But I don't want to in anyway imply that they are not paying more than what is necessary in terms of dealing with fire service. And I do understand what you're trying to accomplish here. And by the same token, I think it would be important, and I don't know the exact language, but we could work with committee counsel on this, that those cities, I mean most of the cities in the state, I mean we're not talking about that many cities. But most of the cities in this state have been using those funds because those funds are not sufficient enough to take care of all the fire related costs. So that's basically where it is. But if...if... [LB522]

SENATOR FRIEND: Yeah, no, I mean, no, no offense, Ms. Rex. I think we all...over the last two years I think we've clearly established that. I mean, I'm...I don't know that I'm struggling with the same things that Senator White is struggling with. But I have...we do...we create all the time, I'm not making a stump speech here, I'm having trouble with your testimony only from this standpoint. [LB522]

LYNN REX: Okay. [LB522]

SENATOR FRIEND: All the time we create situations for cities that force earmarks. They're not always fair, it's not always the best way to go. These seem to be fairly fair to me. I mean, I have difficulty understanding why we should...you like the language, everybody in this room so far, and I don't know if we have any other opposition, really thinks that this is appropriate. But it's like give the city time to adjust. Adjust to what? What were they...his question is pretty pertinent. And I'm not sure we got an answer yet. Adjust to what? [LB522]

LYNN REX: Well, let me suggest this... [LB522]

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SENATOR FRIEND: I still don't follow after your explanation. [LB522]

LYNN REX: Okay, I apologize on not being clear enough. [LB522]

SENATOR FRIEND: No, no, no. I don't think that's it. I think it's what did they do before this bill came into law? [LB522]

LYNN REX: Well,... [LB522]

SENATOR FRIEND: Were they grabbing a bunch of volunteer firefighter equipment because they just assumed it was theirs or... [LB522]

LYNN REX: No. What we learned last year is that some volunteer fire departments kept all that money, some did not, some went into the city. The city used that to pay for insurance on the fire hall, to pay for trucks, to pay for other things. [LB522]

SENATOR FRIEND: That...that...okay, I think I see where you're going. Hence, LB1096 and hence LB522 to try to establish some guidelines, some parameters. But now we're saying, you're not...I mean now with all due respect, Ms. Rex, you're saying well, we're not ready for those parameters yet. [LB522]

LYNN REX: No. Let me suggest this, if you, for example, if you put in 20...if you put in October 1, if you don't...let me rephrase that. If you don't put in at least October 1, 2009, then I don't know how some of these municipalities will be operating other than perhaps changing and filing amended budget statements. Because what you're really asking for here is a line-item. And that is different for the way that...and they can do it. But I'm just saying their fiscal year...they're already in a budget year. [LB522]

SENATOR FRIEND: Okay, I think I see your point. [LB522]

LYNN REX: They're in a budget year. [LB522]

SENATOR FRIEND: That helps. [LB522]

LYNN REX: So if you put in October 1 that way they've got this time frame. So when they're working through their budget, the first class cities typically start in March, the other cities start some time probably in June, the smaller ones start in June. So as they're preparing their budget for the upcoming year then they will, in fact, incorporate this language into how they do their budget process specifically. [LB522]

SENATOR FRIEND: Okay. Are there any other questions from committee members? Thank you. [LB522]

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LYNN REX: Um-hum, and we'll get information for Senator White. Thank you very much. [LB522]

SENATOR FRIEND: Thank you. Any other neutral testimony? I see none. And closing is waived. That will close the hearing on LB522. And Mr. Stadtwald to open on LB523. [LB522 LB523]

BILL STADTWARD: For the record, I am Bill Stadtwald, research analyst to the Urban Affairs Committee, S-t-a-d-t-w-a-l-d, here to introduce LB523 on behalf of the Urban Affairs Committee since this bill is an Urban Affairs Committee bill. This is one of the more unusual pieces of legislation that we've dealt with over a long period of time. It also relates back to LB1096. The function of this bill is not so much to change the law but to reaffirm the precise meaning and intent of LB1096 when it was adopted last year. As was indicated in the introduction to the prior bill, LB1096 was aimed at two items, one which we have not dealt with today. But the second one which has been at the forefront of the issue, that being the funds that were raised by the charging of fees by a volunteer department and placed into the private trust fund authorized by 35-901. The committee did two things in the Legislature ultimately with LB1096. First of all, it established that funds which were collected by a volunteer department that resulted from fees charged for particular services for runs by a volunteer...by a rescue squad in a volunteer service were not, in fact, properly funds which were not public funds, they were actually public funds. Part of the reasoning came from an Attorney General's Opinion which was referenced in last year's testimony. It was from October 4, 2005, Opinion Number 05013, which dealt with the retention of passport execution fees by clerks of the district court. Under federal law when services were provided by clerks of the district court with regard to passport, the execution of passports, they were...the clerks were allowed to retain those funds. And the question was, can they retain those personally or were those properly funds of the county, which would go to the county. The Attorney General specifically stated that because it would require the use of public facilities, facilities which were being made available with public funds, those were properly fees of the county and not of the individual clerk. That they were therefore public funds which would be treated in that fashion. Analogously, the committee determined, in LB1096 specifically in the committee amendment, that fees which were charged by the volunteer department and were retained by the volunteer department were made possible by the use of equipment and facilities which were paid for by property taxes and that were properly items that the public had made available to enable them to receive those funds in the first place. So the bill stated that on the effective date of the bill any of those funds from fees which were specifically raised by the fees that were charged to individuals for services provided, those were to be deemed to be public funds that had been raised on behalf of the city or the fire protection district and were to be turned over to the fire protection district or to the city at that time. It also indicated that if those funds were present on that effective date that there was to be an audit going back five years, to review those funds, the manner in

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which they were collected, all of the various elements regarding them to determine whether they had been handled appropriately. It didn't require a refund of any fees that had already been expended for one purpose or another. It merely said that funds that had been collected by fees that were in the hands of the volunteer department on the effective date of the bill were to be turned over to the city or fire protection district. At the end, after the bill had been signed the Attorney General issued another opinion, that opinion being Number 08005 which indicated that there were some questions as to the actual intent of the Legislature regarding LB1096, specifically with regard to what was stated to be the retroactivity issue, the issue as to whether funds collected by the volunteer department prior to the effective date of the bill were indeed to be turned over to the taxing authority, whether it be the city or the fire protection district. The opinion was issued in response to a question by the Auditor of Public Accounts that had some questions about the conduct of the audits which they were required to do by LB1096 if requested by the taxing authority. In part, and I'm not going to read the entire opinion, but the opinion of the Attorney General said there is no indication in the legislative history that the Legislature intended the provisions of LB1096 to be retroactive. Without a clear expression that LB1096 is to be retroactively applied, we cannot conclude that LB1096 applies to all qualifying funds which may have been collected by the volunteer departments in the past. It is our conclusion that LB1096 applies only to those qualifying funds collected after the effective date of the bill. As this bill contained no emergency clause and the legislative session ended on April 17, the effective date of the bill is on or about July 18, 2008. The committee discussed the matter and determined to issue...to introduce LB523 to specifically address those issues and to create an alternative record that since five of the existing members of the committee were present during the discussions on LB1096 as to the exact intent of the committee...the intent of the Legislature which makes this unusual. It is not the intent of the bill to change the law but to provide an alternative interpretation to that provided by the Attorney General. To that purpose there were two things that are done in LB523 to address directly some of the issues that were raised by the Attorney General. First, the bill makes it clear that funds collected as fees for services performed by a volunteer department prior to the effective date of LB1096, that being July 18, 2008, were indeed to be considered funds of the sponsoring taxing authority--the city or the fire protection district, and were to have been transferred to that authority upon the effective date of the bill. By the terms of LB523, if any of those funds still remain in the hands of a volunteer department upon the effective date of LB523, they are to be transferred to the control of that taxing authority not later than ten days after that date. In addition, the bill makes it clear that if any such funds were in the hands of the volunteer department on the effective date of LB1096 it was the responsibility of the taxing authority to see that all books, accounts, records, vouchers, expenditures, and statements regarding such funds were to be examined and independently audited at the expense of the taxing authority by a qualified professional auditor or the Auditor of Public Accounts for a period of not less than the immediately preceding five years. As is occasionally the case, this bill is specifically introduced to create a record and to provide an alternative source and an alternative opinion since

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there is little that can be done outside of a legislative session to respond to the opinion of the Attorney General. And that's the function of this bill. I would repeat, it is not the intent of this bill to change the law. LB1096 remains on the books and there has been no definitive interpretation of its meaning by a court of competent jurisdiction. But this bill, this hearing provides the opportunity to provide any future court that does have the option of looking at LB1096 with an alternative view as to precisely what its meaning was. [LB523]

SENATOR FRIEND: Thank you, Mr. Stadtwald. Questions from committee members? Senator White. [LB523]

SENATOR WHITE: Thank you, Bill. Bill, would it in anyway interfere with the purpose and intent of this bill as you understand it if we put language in that states clearly that any sums collected before the effective date of the old bill that are then put in the custody of the city, for example, shall be used exclusively to discharge any obligations under retirement programs that may have preexisted up to that date. Then if and when all of those matters have been honored the excess funds can be returned to other fire suppression activities. [LB523]

BILL STADTWALD: It probably is nothing more than a restatement of the existing law to the effect that any funds that a city or a fire protection district took into its custody after the effective date of the bill last year would still be subject to any preceding legal obligations of third parties. The Legislature, obviously, could not pass a law which would interfere with the obligations of contracts in existence prior to that date. [LB523]

SENATOR WHITE: I think I agree with you. But if it would give folks comfort... [LB523]

BILL STADTWALD: I would say I don't see why a precise statement of that would in anyway change what was the original intent of the Legislature. [LB523]

SENATOR WHITE: So in other words, we could restrict the funds collected before July 2009 to the first obligation and call on those funds or to honor any pensions as they had been vested or earned up to that date. [LB523]

BILL STADTWALD: Yeah, I would say that probably the appropriate date would be July 18 of last year. [LB523]

SENATOR WHITE: That would be fine. [LB523]

BILL STADTWALD: Since as of that date the funds were to be collected by the city. It changed the revenue stream but not any obligations with regard to any funds that had been created prior to that date. [LB523]

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SENATOR WHITE: And so the city would hold them functionally in trust for the people that had earned benefits in the instance. [LB523]

BILL STADTWALD: Any funds that it took control over prior to that effective date. [LB523]

SENATOR FRIEND: Thank you. Anymore questions from committee members? I don't see any. Thanks, Bill. Do we have any proponents? We'll start with opposition. [LB523]

JOHN WESTCOTT: Thank you, Senator Friend. And I appreciate the opportunity to be able to be here. My name is John Westcott, J-o-h-n W-e-s-t-c-o-t-t. I'm the current president of the Bellevue Volunteer Fire Department, Incorporated. Just to give you a brief overview here, we've got 142 members that we're representing. Just an idea what they do, we've got 300...you know just...our members go through 320 hours of training in EMT and fire fighter forum before they can even ride a piece of apparatus in our town. I think those standards are going to be...they'll look wonderful anywhere. Right now at this time what we've got...we've got a length...well obviously, we've got a length of service program. We've got 25 members that are ex-members now that are drawing on our length of service program. And we've got 29 members who are ex-members that are entitled to receive this money as it was setup. Our length of service program was set up, basically, in 1985. And we've operated it in the city of Bellevue for 20 years, roughly 20 years running without any problems, everybody has been happy. We have attempted to get the city to take over billing as early as like 2001, and we've got, you know, they didn't think at that time that it was, I assume, worthwhile. We've got some correspondence from them. Due to the passage of LB1096, there is no funding for our current program. Also, Bellevue City Ordinance 3460 directs any fees collected as a result of emergency medical services to the city. These two pieces of legislation eliminated the source of funding for the trucks. Consequently, the department's board of trustees petitioned the county court of Sarpy County, Nebraska for permission to amend the trust. The court issued an order on August 28, '08, thereby amending the trust in accordance with the amended LOSAP to provide retirement benefits to all members with at least five years of service with the department upon reaching 60 years of age. The distribution plan was based on our actuarial calculations from the trustee based on the balance available January 1, 2008. So I'm just trying to give you a little background on that. So really what we're concerned with is the way the language is in this bill would take away the funding that we've had for this program that we set up, you know, through our city council. And we've had no problem. We're a little bit baffled as to what kind of brought this about because, obviously, it would appear that it wants to go back and take those funds away which, of course, would leave our members high and dry. Our mayor has stated that he doesn't want the money. He said it should belong to the volunteers, that's what it was for. Our city administrator said the same in any meetings we've had and they've said it at the city council meetings. So we're just a little bit baffled as to, you know, why it would go away. So we're just...actually, we're just trying to protect our

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members. That's basically what I've got. If I could answer any questions I'll be more than happy to attempt to. [LB523]

SENATOR FRIEND: Okay, thank you, Mr. Westcott. Senator White has a question. [LB523]

SENATOR WHITE: Well, I think I can explain why the bill. I don't think there's ever been an intent, as it was clearly stated during the debate on the original bill, to take the funds already earned away from volunteer firefighters or to deprive anybody of any pension they'd earned. However, there was always a deep concern that any money collected from the public, using public equipment through the form of a bill be subject to audit. And as you know, we had requested an audit. And you also know that the Bellevue Volunteer Fire Department resisted having an audit and went to the Attorney General to request an exemption from the audit. So I want the record perfectly clear, nobody ever wanted or even now wants to take this money, that I'm aware of, and to deprive the members of whatever retirement benefits they've been entitled to, At least for myself, however, it will be a cold day that I allow public money made by use of public equipment through billing under a public entity's name not to be audited. And that, I think, was the intent. [LB523]

JOHN WESTCOTT: And that is completely understandable. I...you'll have to...I was not president last year. I was president proceeding that, roughly for 17 years, and now I'm back to the position of president now. We were under the assumption, and like I stated I visited with Senator Friend the other day. And I say I'm a body man not a lawyer, I would have assumed that the Attorney General's audit was like the Cadillac of audits. I mean, I would...you know, and it was explained to me that there are different types. And we certainly don't have a problem with an audit. [LB523]

SENATOR WHITE: Well, the history of this is a little different again than you've explained to the committee. The history was we passed this, we indicated that we wanted to audit going back five years. The Bellevue Volunteer Fire Department then resisted having any audit, saying, we don't have to have any audit. And the Attorney General said, yeah, you're right because this money is not public funds. Okay? Then someone else said to the Attorney General, you need to have an audit because if it's not public funds, it's a private charity. And they are auditing you under a different provision of the law. An odd thing is the reason the public fund language was put in there is to keep people out of trouble because it's a crime to use public property for private profit. And so if they're public funds, there's no question it was perfectly okay what you did, although irregular. [LB523]

JOHN WESTCOTT: And that's understandable. And like I say, we've got no problem with another type of an audit to the best of my knowledge, you know. I mean, you know... [LB523]

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SENATOR WHITE: For us the purpose was to...we need an audit, but it be designated as public funds, because they're earned through the use of public equipment and they're billed to people under the guise of a public entity. [LB523]

SENATOR FRIEND: Thank you. Are there any other questions from committee members for Mr. Westcott? I don't see any. Thank you for coming down and thanks for your time. [LB523]

JOHN WESTCOTT: Okay, thank you very much. [LB523]

SENATOR FRIEND: Next opponent. [LB523]

JERRY STILMOCK: Senators, Jerry, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k testifying in opposition to LB523 on behalf of my client, the Nebraska State Volunteer Firefighters Association. I'm going to try to address three points. I hope I can make them clear. If I haven't, then that's my loss and I'll try and clarify it, if I may. I'm going to start with the statement that LB1096 or excuse me, LB523 is intended to solidify or make sure that those outside of the Legislature know that LB1096 was intended just the way it read. I think all of us in this room would agree as we walked away from last year's LB1096 that there was a clear understanding that LB1096 stood for looking back...number one, defining public funds; number two, looking back for a period of five years in which the taxing authority could request and, in fact, demand an audit. I just submit to you, what's changed? There's one extraneous item, nongovernmental, that the Senator has referred to. The one item that I'm referring to is the Attorney General's Opinion that made the statement that it's not retroactive, LB1096 is not retroactive, it wasn't clearly the intent of the Legislature. But as the two senators on the committee know and the senators that are not attorneys that have been involved in this process, before you got to be an attorney, the Attorney General's letter is an opinion, it's not the law. You all last year made the law. LB1096 is the law, it's still the law today no matter what opinion has been given by our Attorney General, LB1096 is the law. So if the city of Bellevue, apologize to the two newest senators on the committee because we're kind of on chapter 15 of a 16-chapter book. I hope it's a 16-chapter book. (Laugh) The city of Bellevue has the mechanism today as we sit here to demand that an audit be done if that's what the city of Bellevue in fact wants, because it's going to point to LB1096 and say, LB1096 is the law; we want an audit. So is it necessary to have LB523 to put a couple more nails in or to, you know, to really beef up LB1096. LB1096 is the law. That's my first point. Now I gestured, not "unrespectfully" or disrespectfully over to Senator White. Apparently, Bellevue has, some part of Bellevue has thrown up the Attorney General's Opinion and said, ah-ha, see that opinion over there, we don't have to oblige. So we go onto the next piece of my second point. To bring the other committee members up to speed, the Bellevue Volunteer Fire Department has responded to an audit by the Attorney General's Office. There's confidentiality involved in terms of what the audit was for...who

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requested the audit, what the audit was for, and what the audit is going to show. And if the audit does show or whatever the audit shows, which at this point I'm told that...I can't. It's looking pretty good, I guess, I'll say that. Is...in that audit, as I understand there's...in talking to the Bellevue Volunteer Fire Department, there is two more witnesses to be interviewed. But the documents have all been reviewed for...to complete the audit. I realize, senators, that the serious nature of why LB1096 came into being. And LB1096 specifically said two entities--the State Auditor for the state of Nebraska or a qualified professional accountant, a CPA. It didn't allow the third tangent, the Attorney General to do an audit. I would ask respectfully of the committee, let's, number one, let's see what...if you would indulge the request. Let's see what the AG's audit says, number one. But, number two, if LB1096 is still the law then how many more bullets does the city of Bellevue need, I guess, to put it in a very negative sense, the connotation of bullets. My third point is through this process you all as senators have allowed the citizenry, the body man, and it is a compliment to the way the process works is what I'm saying. The fear, the sheer fear of the introduction of LB523 from Mr. Westcott testifying on behalf of the volunteers at Bellevue, does this mean that those funds that were invested in a retirement program back from 1985, and Dick Hudson who is behind me, a volunteer member since 1966, age 75, Mr. Hudson, I hope I have it correct, does that mean all that money has got to go back? And through the open doors of the Legislature these gentlemen haven't been able to come down and speak with you. And they understand it's not, my third point, it's not us against them, it's the protection of public funds. In conclusion, I just want to mention, I'll take the city of Syracuse, where I live now. Grew up in south Omaha, moved to Syracuse in 1992. The city of Syracuse, their charges, we'll rehash a little bit of LB1096. Their charges from rescue calls are collected by the city of Syracuse. And the city of Syracuse wisely pushed those back...pushes those back to use by the Rescue Squad Department. Why? Well, we had volunteers down there. They want to support...the city wants to be able to support, I think just as a lot of other cities, most other cities, all other cities want to support. But the city of Syracuse also has men and ladies out raising money to go out and actually raising money through fundraising, raising money through donations to go out and purchase apparatus. The last two ambulances have not been purchased with public funds. The last two purchases for ambulance have been purchased through fundraising and through donations. And so I...it's almost like a plea that shouldn't be. But I...the...solidifying what is public funds is going to help into the future, clearly it's going to help. But it's not as cut and dried as saying the ambulance, the fire truck, those items were purchased using tax levy dollars or they were purchased using charges from services that were paid for. Then there's that other category out there. And the term, you know, with public funds oftentimes there are items that are bought through donations. And that entire ambulance is bought through donations. So do I say that to churn up a whole other issue? No. I only say it because I believe and I think the volunteers behind me and throughout the state believe that until LB1096 was passed there was no clear definition that the way the Legislature divined last year that public funds were going to be included as defined in LB1096. For those reasons, my

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association is opposed to LB523. [LB523]

SENATOR FRIEND: Thank you, Mr. Stilmock. Questions from committee members?
Senator White. [LB523]

SENATOR WHITE: Yeah, I have a series. And thank you, Mr. Stilmock. First of all, if the funds that were collected prior to the effective date of LB1093 are held and we instruct cities that to the extent that you take possession of such funds they must be held and used exclusively to honor any kind of retirement obligation that you have to the volunteers who earned them, until such obligations are exhausted or the funds are gone, and once if the retirement, whatever you got paid, they pass away, there's funds left, then they can go back to fire suppression activities, generally. Does your membership really care? Haven't you completely protected your members? [LB523]

JERRY STILMOCK: You know, does it, the association really care? I don't believe it would. [LB523]

SENATOR WHITE: Okay. The other thing then that is important is, as you should know, hundreds of thousands of Americans are losing their retirement money right now. I mean they're in crisis across the way because it's been invested poorly, because they made bad investment decisions, because they were defrauded by Wall Street. Do your members really not want the assurance that their money is going to be treated as public funds with complete transparency, with the requirement of regular audits, with controls, reasonable controls on how it's invested so they can count on the promises that are made to them? [LB523]

JERRY STILMOCK: Oh, I think so, yeah. [LB523]

SENATOR WHITE: Okay. And if we do that, if what we're really trying to do is tell these folks their services are incredibly important, that we value them deeply, but we're not going to let some kind of ad hoc system go on that may leave them, when they most need their retirement money, grasping at nothing because we didn't seize control and say, we're going to treat this like public money, seriously with serious commitments, dedicated solely to taking care of the people who earned it. And that means professional audits, professional investment, all of the things that go along with public money. You think they really oppose that? [LB523]

JERRY STILMOCK: The way...no, I don't think so, Senator. [LB523]

SENATOR WHITE: That's what we're trying to do here. And if we put in here the language that makes it absolutely certain and clear that nobody touches any money collected before the effective date of the bill for any purpose other than that. And that money be held in the highest level of trust and care and invested most carefully that we

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can, I would think they'd appreciate that. [LB523]

JERRY STILMOCK: On...and the only thing, and it wasn't a question, Senator. May I respond? [LB523]

SENATOR WHITE: Sure. [LB523]

JERRY STILMOCK: Thank you. On day nine when the bill was introduced, Senator, or day ten, there had been a lot of good discussion since then. And I think it was important to the membership to come in today. Just as your... [LB523]

SENATOR WHITE: Oh sure. [LB523]

JERRY STILMOCK: ...open door allowed those folks...welcomed those folks, not allowed, welcomed them to come in and state their concerns. But to put a cloak over everything, it's almost a rhetorical question back to me, Senator, pardon me, how could somebody object? Because now we have...if we have the backstop of LB522... [LB523]

SENATOR WHITE: Yeah. [LB523]

JERRY STILMOCK: ...and we have the proposed idea, concept in LB523, who's going to complain? Well, I don't know. Conceptually, from a public policy point of view, I don't know who could. [LB523]

SENATOR WHITE: The other issues you raise about the Attorney General,... [LB523]

JERRY STILMOCK: Sir. [LB523]

SENATOR WHITE: The problem is when the Attorney General issues an opinion letter like that, we may be right and it may be the law. But both the Attorney General and the county attorneys, who are charged with enforcing it, probably won't enforce it unless we correct it. That's the problem and that's why we have to act when the Attorney General misreads a law, and in this case I state absolutely categorically he did misread it, then we have to do something or accept his interpretation because it won't be enforced otherwise. So there's also a substantial difference between the nature and who conducts a public audit versus a private charitable audit and who gets the information. A public audit means everyone of the guys who earned the money has full access to what the audit says, so they know what's happening to their money. Private charities, they may not because they're under completely different rules. So one of the reasons it's important is to make sure it's transparent and aboveboard. Anybody's playing funny with their futures, they're going to have the ability to find out right away. [LB523]

JERRY STILMOCK: I heard and appreciate what you said, Senator. If it was in a

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different situation I might ask you to, if I may be allowed to respond. But I've already said... [LB523]

SENATOR WHITE: No, that's all right...I...as far as I'm concerned. [LB523]

JERRY STILMOCK: No, I think Bellevue, the city of Bellevue has it in its power to do now with LB1096. I agree with what you said in terms of the criminal and the county attorney. And, you know, don't, for me, Jerry, don't point at the Attorney General's audit and say, oooo, that's it. But I don't believe it is, if I'm on the same page with you. The city of Bellevue today has the legal ability to go in and use LB1096 in order to get their five year audit. [LB523]

SENATOR WHITE: But what I've heard is they also have made the claim that if they take over that money they don't feel they're bound to honor the promises made to the volunteer firefighters. Some firefighters have indicated to me that's the sentiment expressed by some in Bellevue government. [LB523]

JERRY STILMOCK: I see. [LB523]

SENATOR WHITE: I mean, I don't want them putting their hands on that money unless they take it, which we made clear on the floor,... [LB523]

JERRY STILMOCK: Absolutely,... [LB523]

SENATOR WHITE: ...they take it absolutely committed to honor... [LB523]

JERRY STILMOCK: ...without a doubt. [LB523]

SENATOR WHITE: ...the promises made already. So, I guess, I'm looking for a reason how this doesn't really advance the best interests of the members of your association? I mean if it doesn't, we'll work on it. But if it does,... [LB523]

JERRY STILMOCK: Um-hum. [LB523]

SENATOR WHITE: ...why would they object? [LB523]

JERRY STILMOCK: I...I don't have a response to your last question, Senator. I would just ask you to consider the extension of my last thought, the extension of LB523, the language actually goes beyond what was expressed in LB1096, because it states in LB523 that the audit would be for at least five years back. Last year's it was five years, the audit could go back five years. You know and I don't want to pick at this point. But LB523 is an expansion of what LB1096 said, that's my belief. [LB523]

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SENATOR WHITE: So if we limit it back to five years, then you're okay with that?
[LB523]

JERRY STILMOCK: Ah... [LB523]

SENATOR WHITE: And you do understand the reason we went back five years is to make certain if there were sums out there that should go in this fund, to make sure the people who had earned benefits and they hadn't been transferred to the fund, we would go back five years, track that money down. Hopefully, the Auditor would say, that money belongs to this fund and it will be there to honor the commitments made to the volunteer firefighters. We want to make sure all available funds are captured to keep that promise. [LB523]

JERRY STILMOCK: The item that prefaces, I guess, your question to me, Senator, is that with additional language to make sure that those...just as you've stated in the record last year on LB1096, that it's not the intent of LB1096 at that point, nor LB523 at this point to go in and divest money that's already been invested. [LB523]

SENATOR WHITE: Just the opposite. [LB523]

JERRY STILMOCK: And I can't answer your last question because, you know, I take direction from a board and, you know, am I good with that or is my association good with that, that's a very good question, especially in the legislative process. Senator, I'm not prepared to answer that. I could sure go back to them and make that request though. [LB523]

SENATOR WHITE: I cannot speak for the Chairman, but I doubt that he would object. I think he would probably invite your organization to see the proposed language to make sure we carry out what I think had been the intention of the committee. [LB523]

JERRY STILMOCK: Yes, sir. Thank you. [LB523]

SENATOR FRIEND: Are there any other questions? Mr. Stilmock, I just wanted to go on record and I've talked to you on various occasions, a lot this summer in regard to LB522. But I've said before and I'll say it again, I mean, there is testimony here that almost acts like people are hurt that LB523 occurred. I mean, if I wanted to poke Bellevue or anybody else in the eye, I'd poke them in the eye and you'd know it. Right now there is this, you know, kind of up in the air type of feeling, boy, we wonder, you know, what...we feel a little bit hurt. Why are we still dealing with this issue? If I really wanted to jam a stick in Bellevue or any other volunteer firefighter, you've known me for six years, Mr. Stilmock, I mean, I think you know that if I really wanted to jam something down your throat, I'd be jamming it down your throat and you'd know it was coming. But one of the points you made and the reason, I think, this is important that I point this out

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on the record is that LB523 did evolve from an Attorney General's Opinion. And the Attorney General's Opinion wouldn't have occurred were it not for Auditor Foley being in Bellevue and them turning around and saying, Auditor Foley now is gone. And Auditor Foley saying, I need an opinion. That strikes a committee, or at the very least it strikes one senator who happens to have access to a research analyst into action, right? And that's what he's referring to earlier, he being Senator White. It's like...and you were referring to earlier with your testimony, what's changed? Things change in an interim when somebody tells a particular entity in this state that they're following the law a certain way, and then they use it either to their advantage or to the Legislature's disadvantage, depending...you see what I'm getting at? [LB523]

JERRY STILMOCK: I do, yes. [LB523]

SENATOR FRIEND: I mean things did change, Mr. Stilmock, because we perceived that they changed. And evidently, Auditor Foley perceived that they changed because this...it's my guess that this opinion never would have occurred if Auditor Foley didn't ask for it. And I don't even know why Auditor Foley asked for it. So all I'm telling you is, and I'm telling anybody in this room or anybody else that's willing to listen that I think I understand exactly where he's going. This was not a poke in the eye and this was not a, boy, let's see how long we can drag this out and make, you know, one particular volunteer fire department squirm. This was in response, as Mr. Stadtwald said, to a decision. And that's actually what changed, Jerry. So I've said it to you on other occasions. I wanted to say it on the record. [LB523]

JERRY STILMOCK: Yes, sir. [LB523]

SENATOR FRIEND: So I didn't mean to go off, you know, half cocked, but... [LB523]

JERRY STILMOCK: Understood. [LB523]

SENATOR FRIEND: So we have that. Are there any other questions from committee members? I don't see any. Thanks for the testimony. [LB523]

JERRY STILMOCK: Okay, thank you. [LB523]

SENATOR FRIEND: Is there anymore opposition? Anyone neutral? Can anyone be neutral on this? I don't see any. And, I think, closing is waived. And that will close the hearing on LB523 and the hearings for the day. [LB523]

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Disposition of Bills:

LB128 - Placed on General File with amendments.
LB412 - Placed on General File with amendments.
LB441 - Placed on General File with amendments.
LB522 - Placed on General File.
LB523 - Held in committee.

Chairperson

Committee Clerk