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Education Committee  
February 21, 2012

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[LB1045 LB1068 LB1084 LB1168]

The Committee on Education met at 1:30 p.m. on Wednesday, February 21, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purposes of conducting a public hearing on LB1084, LB1168, LB1045, and LB1068. Senators present: Greg Adams, Chairperson; Gwen Howard, Vice Chairperson; Bill Avery; Abbie Cornett; Brenda Council; Ken Haar; Kate Sullivan; and Les Seiler. Senators absent: None.

SENATOR ADAMS: All right, I want to welcome everyone who's here today for the...actually the last hearings this legislative session of the Education Committee. Let me begin by introducing members of the committee who are here. First of all, to the far right--no political implication--is Becki Collins, and she is the committee clerk. And if you wish to testify today, the procedure is very simple. You need to go to the back of the room. By each of the doors there is a testifier's sheet. And you need to fill it out, and you need to fill it out for each bill that you wish to testify on. So if there's more than one, yeah, you've got to fill out two of them and let us know. When you bring the...when you come up to testify, hand that to Becki. And then when you get ready to testify, be sure that you state your name and spell it for the record so Becki can hear it and the transcribers can get that clearly into the record. Next to her will be Senator Seiler when he gets here. Senator Council will be here in a moment. Senator Cornett will as well, I'm confident. Next to me is Kris Valentin; he is the research analyst for the committee. I'm Greg Adams, representing the 24th Legislative District. Next to me is the Vice Chair of the Committee, Senator Howard from Omaha. Next to her is Senator Sullivan from Cedar Rapids. Next to her, Senator Avery from here in Lincoln and Senator Haar from the Malcolm area. We have four bills that we're going to hear today: LB1084, LB1168, LB1045, and LB1068. This committee historically--and we're not going to deviate from it today--uses the lights system and, Becki, we'll go three minutes per testifier; and if the committee has questions for you after testimony, that's a different story. I would ask everyone to turn off their cell phones, and if you want to do texting or play tennis on your iPad that you go out in the hallway to do that, not during this committee hearing today. So with that, we will begin the hearings for today. Senator Christensen, you can open on LB1084. [LB1084]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman, members of the Education Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District, and I'm here today to introduce LB1084. LB1084 was brought to address a real problem in many of our state river basins: the problem of too many deer causing damage--crop damage, vehicle damage--and not enough lands open for hunting for public. Nebraska Game and Parks has been doing a great job creating new programs and more deer permits, but not all the permits were sold this last year. It is argued that one of the reasons for this is a lack of access to hunting land, thus LB1084. I introduced LB1084 for constituents in my district who felt that since school lands are public lands in a trust, it should be open for the public to hunt on. This really comes

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down to a public policy question. Should we open public school lands for public hunting? If we do want to open up school lands, how would we do it? If LB1084...LB1084 provides an idea for discussion. The bill would only change leases as they expire and are renewed while allowing rules to be promulgated by the Board of School Lands. One idea would be to narrow the bill to the land categorized as recreational land only. I believe there are ways that we could address this situation, but I am very aware of the opposition to the bill and will not ask the committee to move the bill out of committee. But I do want to have a discussion on some of the issues surrounding the idea. One reason for opposing this bill is an argument that LB1084 would reduce the amount of money for schools because of lower bids from the rental price and that would not be living up to the requirement of the trust to raise as many funds for schools as possible. That could be true, but I believe that a possibility of farming right now is driving a large portion of the bidding right now. This argument is also being used by Board of Educational Lands and Funds for why they have not sold all the school lands as they were directed by the Legislature. This to me is wrong and problematic, when we allow a state agency and commission to ignore the Legislature without changing laws to align with the change or with what they think is better. If the committee accepts this argument that school lands can make more money leasing it if they...than if they are sold--all the land and invest it--then I believe the committee has a responsibility and needs to officially address this change in policy. In addition, I believe that if the Board of Educational Lands and Funds is seeking to raise the most funds for our schools, then they are missing an opportunity by not having dual auctions for farming rights and hunting rights on the same land. For example, I personally have entered into two lease agreements where it is specifically written in the agreement that I am only leasing the land for farming and did not have any hunting rights. The hunting rights were specified, specifically separate, and not part of the lease agreement. In my area, this is happening more and more. I have a copy of those, I thought, that was laying in my office. I didn't grab it. If anybody would like to see it, I'd be more than glad to get a copy of that and bring it to you. As I said earlier, I'm not asking the committee to move LB1084 forward but would hope that the committee would make whatever needed to make clear public policy for the Board of Educational Lands and Funds and make sure that we're doing what is best for the trust. You know, I encourage you to look at the fiscal note. You know, \$2.3 million is proposed. I think about that. And if they think that \$2.3 million is going to be lost by taking out the public hunting, then what would be added if you had dual auctions? You had people bidding to farm the land and bidding for the hunting rights. I guarantee you under recreational lands it's going to make a difference. Most people look at it as, well, I can go this far because I know I safely can get this back from hunting rights. Or the hunting people are saying, no, I can give up to this much but the rest has got to come off the farming, and no one is going to push it beyond what they're reasonably confident they can get. So if you had dual auctions on recreational land, what would you generate? They broke it out very nicely here. Recreational lands: 129 tracts, \$125,000. Bonuses: \$62,000 on recreational lands. This is a revenue. Sorry, I misread that when I first read it, but--because I took that as what

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they were going to lose off of my bill--but at the same time I just bring the question forward. If there was dual auction on the recreational lands, what would it bring? You may not know until you try it. But if this bill...as I've been told education lands and funds is to generate the most money for our kids. That is our focus. The reason they sold earlier, I was told, was because stock market was hot, they could make more money that way, so they moved toward selling lands. Now ag prices are great, bonuses are great, but we don't know what the value would be if we separated the two. So I just bring this point up. If this is a discussion of maximum money, I think we're doing it wrong. If this is a public policy question, then should this be open for hunting? Thank you. [LB1084]

SENATOR ADAMS: Thank you, Senator Christensen. Are there questions for the senator? Yes, Senator Sullivan. [LB1084]

SENATOR SULLIVAN: Thank you, Senator Adams. Thank you, Senator Christensen. Can you shed a little light on the leases that you do have that have dual rights? Is this first of all pasture or crop ground? [LB1084]

SENATOR CHRISTENSEN: It's crop ground and it's...I just have the rights to farm any time I want, but any of the hunting is reserved by the landowner which allows their friends to go on in one instance; another one, they lease it to somebody and take the revenue. [LB1084]

SENATOR SULLIVAN: Oh, so the...so you...so the landowner is actually...then he leases it out to someone else for hunting. [LB1084]

SENATOR CHRISTENSEN: Correct. It's done both ways. And I'm told also on the school lands that--and I'm aware of it in my district--where one guy comes in and leases the property from school lands and funds, then he turns around and leases the hunting out. Actually, there's one individual I can say he leases the farming out and he leases the hunting out. He's become the middle man. Why is he the middle man? There's money to be made. [LB1084]

SENATOR SULLIVAN: Thank you. [LB1084]

SENATOR ADAMS: Senator Avery? [LB1084]

SENATOR AVERY: Let me see if I understand this. You can actually have the dual purpose on the land. [LB1084]

SENATOR CHRISTENSEN: Sure. [LB1084]

SENATOR AVERY: You can actually crop it, and you can have hunting and trapping

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and whatever at the same time. [LB1084]

SENATOR CHRISTENSEN: You bet. [LB1084]

SENATOR AVERY: And right now the Land and Trust Board does not permit this to take place? [LB1084]

SENATOR CHRISTENSEN: They allow...whoever leases the lands has a right to the hunting whether they let nobody hunt, everybody hunt, or they sublease it out. [LB1084]

SENATOR AVERY: So what you would do is you would require--this bill would require--the board to actually allow for dual purpose? [LB1084]

SENATOR CHRISTENSEN: Well, as the bill was written, it allows free public access. [LB1084]

SENATOR AVERY: Free public access. [LB1084]

SENATOR CHRISTENSEN: And when I got to looking at and discussing with them...because we've had three meetings between Educational Lands and Funds and they've been excellent to work with. We sit down and discuss what it would cost, and that was what I looked at the...well, it does say estimated revenue loss, so they must believe the hunting is \$2.3 million because I know the result is way higher than that on the actual leases themselves. So if they're saying we could lose \$2.3 million from the bids, I'd turn around and ask the question: What could we gain if we was having dual leases? And that's why I meant to bring a copy of it. I think it's in my car back window must be where I stuck that. But I'd be glad to get that to you and show you how it says the hunting rights are reserved to the landowner. And then in one of the cases, they turned and leased it to somebody, and the other one, they kept it for their friends to hunt. [LB1084]

SENATOR AVERY: Well, I don't understand why allowing hunting on these lands that are already leased for crops would lead to a revenue loss. [LB1084]

SENATOR CHRISTENSEN: Well, they're saying that certain people are bidding on these properties because they want to hunt on them and I can verify. There is an individual in my district that he's not a farmer, he leases it for hunting, and he runs a hunting outfit, and then he turns and subleases the farming out. He's wanting it for the trees and the deer and things this way. [LB1084]

SENATOR AVERY: Um-hum. [LB1084]

SENATOR CHRISTENSEN: You know, there is...what I'm trying to bring light to, once I

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decided that this bill wasn't going...probably going anywhere and in discussion with Educational Lands and Funds that were very great to work with, I just told them, I said, I'm going to finish this with discussion. And are we doing what's best? Because if we could lose \$2.3 million if we went to giving free public access...and that's why I say if this is a fiduciary responsibility to raise the most money for kids, then should we be having dual auctions on lands that are recreational? They classify them--if I'm correct; they can correct me if I'm wrong--farming, ranching--in other words, crop land--pasture land, and recreational land. Now recreational land they're either going to rent also as for livestock, or you're going to rent as farming depending upon...because like some of them might have a quarter of ground there and be 80 of it is tilled to farm, 80 of it is trees for hunting--dual purpose. [LB1084]

SENATOR AVERY: Um-hum. [LB1084]

SENATOR CHRISTENSEN: And if you can separate those...one classic case I can think of at Edison, you've got the farm ground on the south edge, you've got the trees on the north edge. You can separate that into two separate leases. [LB1084]

SENATOR AVERY: So you're suggesting that they actually might be able to make more money. [LB1084]

SENATOR CHRISTENSEN: Correct. [LB1084]

SENATOR AVERY: Yeah. [LB1084]

SENATOR CHRISTENSEN: When I decided not to bring the bill forward just as total open hunting--fiscal bills quite often kill a lot of ideas--I reversed the idea and said, what could we make the other way? And that's why I bring the point: Are we generating the most money we can, if this is for the kids, that we could be doing? [LB1084]

SENATOR ADAMS: Other questions? Oh, yes, Senator Council. [LB1084]

SENATOR COUNCIL: Thank you. And I apologize for being late, Mr. Chairman, but I was talking to NRCSA members, so I think that's an excused absence. You know, I appreciate your explanation, Senator Christensen, because when I...when the bill was first introduced in the newspaper article, the issue of generating revenue for the schools was not at the forefront of your motivation for the bill, if I'm correct in my... [LB1084]

SENATOR CHRISTENSEN: Correct. [LB1084]

SENATOR COUNCIL: And your motivation was that because it's state lands that anybody should be free to hunt and fish and trap on them, am I correct? [LB1084]

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SENATOR CHRISTENSEN: Correct. [LB1084]

SENATOR COUNCIL: And in light of some of the opposition that has come forward, now to look to see whether there's an opportunity for the Board of Educational Lands and Funds to generate some money. But in terms of...and I'll ask the Board of Educational Lands and Funds representatives when they come up. When I was on the Board of Educational Lands and funds, the leases that were entered into provided the lessee with the exclusive use and enjoyment of that land. [LB1084]

SENATOR CHRISTENSEN: Uh-huh. [LB1084]

SENATOR COUNCIL: And as such, they're paying a premium for the exclusive use and enjoyment. So if they're not going to have exclusive use and enjoyment, that I'm sure is the reason for what the Fiscal Office noted as a reduction in income because if they don't have exclusive use and enjoyment of it, the value to them is viewed as going down. But in terms of any dual leases, in terms of projecting, I mean, I don't know. I don't hunt. I do fish, but...and hunting seasons, I mean, I don't know what kind of revenue generation or what kind of figures you would suggest that would indicate that the loss in the rental associated with losing exclusive use and enjoyment would be offset by I would think a minimal amount of income to be allowed to hunt during designated hunting seasons. I mean, it's not...this is not year-round type of activity, am I correct? And like I said, I'm not a hunter. [LB1084]

SENATOR CHRISTENSEN: Yeah, it's correct. We have limited seasons, like I referred to Game and Parks bringing in the new season to control the does, and that starts like October 1, goes through January 15. Very long season, but yet in the Republican district where I'm at, it's 100-and-some permits were left open there. In the Frenchman to the west, is out where I live, there was over 300 permits left open. And when I talk to people that used to hunt why they don't hunt no more and buy permits, they said, I can't find a place to hunt. I can tell you it's getting tough on the Republican River anyway to find areas that's open to hunt. [LB1084]

SENATOR COUNCIL: Okay, and I guess that's my next question, is: Why are they having difficulty finding areas open to hunt? Is that because the landowners don't want them on their land hunting? [LB1084]

SENATOR CHRISTENSEN: Most of it is they're leasing it out. There's good money made...I get offers. My dad has left his land open for hunting forever. He's 88 now and we have what I call the war zone. I leave when hunting season starts because there's too many people come there because that's the only open land. Because it's such a money generator, people are leasing it. I know people that get their taxes paid by leasing their land. I know people that make more than that. I've got some ground up in the hills that is just farm ground with a draw in it that I've been offered \$5/\$6 an acre for.

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[LB1084]

SENATOR COUNCIL: So when they lease is it to one set of hunters, or do they grant multiple leases to multiple hunters? [LB1084]

SENATOR CHRISTENSEN: Okay, like in my area there's several hunting reserves where they lease it as Firm A. Firm A then charges people to come in--\$1,000 a gun or \$2,000 a gun--to come in and hunt for a three-day weekend or whatever. They set up the different terms. That all varies, but they charge them to come in and hunt. And so if you want to hunt, you've not only got to buy the permits, but you've got to now lease a spot to go. [LB1084]

SENATOR COUNCIL: Okay, but if there are 300 permits being left not being taken,... [LB1084]

SENATOR CHRISTENSEN: Um-hum. [LB1084]

SENATOR COUNCIL: ...doesn't that suggest that there aren't...that people aren't leasing or that people aren't willing to pay to least to hunt? [LB1084]

SENATOR CHRISTENSEN: Correct, they won't pay. [LB1084]

SENATOR COUNCIL: So, I mean, I guess they won't pay to lease to hunt, so why would we think that the Board of Educational Lands and Funds would generate more income by leasing to hunt if people now can't...aren't paying to lease to hunt? [LB1084]

SENATOR CHRISTENSEN: Then how can it cost \$2.3 million to open it up to the public to hunt? [LB1084]

SENATOR COUNCIL: Because they're...you're dilating the exclusive use and enjoyment. I'm giving up my right to exclusively use and enjoy property, so that diminishes the value of the property to me as lessee. If I have to let others on the property, then I'm not going to pay a premium for that land. I'm going to pay less because I don't have exclusive use and enjoyment of it and that's...I'm sure that that's what represents the revenue loss is if I don't have exclusive use and enjoyment of it. And you're saying you want \$100 an acre and I don't have the exclusive use and enjoyment of that acre, then I'm not going to be willing to pay you \$100 for it. If somebody else gets to come on it whenever they want to come on it, I'm not going to pay you \$100 an acre for it. [LB1084]

SENATOR CHRISTENSEN: Well, I can tell you on the lease I signed, it would...it brought equal amount not having the hunting rights on it as it did having hunting rights with it. I can guarantee you both my properties are prime hunting areas, but it brought

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just as much. I guarantee you we could go to a lease auction. And they do some of these out there on private lands where they do lease auctions for to farm them. And whether the hunting rights go with them or not, they bring the same amount of money. Right now, agriculture's strong prices are good, profits are good, and the land price rents go as high with the hunting rights or without. [LB1084]

SENATOR ADAMS: Senator Seiler? [LB1084]

SENATOR SEILER: Mr. Chairman, thank you. I'd like to...if I go to an area that was covered when I was not here, just stop me. Senator, I'd like to go to the liability side of it. [LB1084]

SENATOR CHRISTENSEN: Okay. [LB1084]

SENATOR SEILER: If I trespass on your ground now, you owe me no duty whatsoever. If you give me permission to go on your farm to hunt, you owe me a duty to tell me of any hazards out there that you're aware of. But if you pay per lease and I'm paying for a lease, it almost becomes absolute law that you're liable for anything that happens out there. Is that a fair explanation? [LB1084]

SENATOR CHRISTENSEN: Yes. [LB1084]

SENATOR SEILER: And the same way that I'm worried about the hunters, I'm also worried about your bill here that says anybody can be on there. If you rent that out for cattle, either stocks or grass, and a trespasser knocks down a fence and your cattle gets out on the road, right now the Nebraska Supreme Court has come awfully close to saying if the cattle get out you're absolutely liable. Wouldn't the state also be as an owner liable? [LB1084]

SENATOR CHRISTENSEN: Well, I understand your concern on that. [LB1084]

SENATOR SEILER: Because of the betterment law. [LB1084]

SENATOR CHRISTENSEN: Yeah. I understand your concern there; they're getting close to doing that. But at the same time I'll tell you from owning so much river bottom ground it is seldom somebody leaves the gate open. It is almost always the deer that tear it down. We...on the Republican, I'm sorry, it's got so bad anymore because there's so many deer, we don't turn cattle out anywhere until hunting season is over. We go to our uplands. [LB1084]

SENATOR SEILER: Yeah, but now the hunting season goes so far out that you're probably not using the stocks hardly at all then. [LB1084]



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SENATOR CHRISTENSEN: Well, hunting is done pretty much most of it in December. That extended season I gave you until January 15 is a new one they just started. Then you have January, February, March to use the stocks for the cattle, or you can use them before the hunting starts in October if you wanted to go in early. [LB1084]

SENATOR SEILER: Okay. [LB1084]

SENATOR CHRISTENSEN: What we do is we go use our hill grounds during hunting season, then we come in and calf on the bottom ground, where we want to be after hunting season because we can't keep the fences up. [LB1084]

SENATOR SEILER: Well, one of the liabilities in our area is coyote hunters. Neighbors chasing coyotes in pickups, cutting fences, breaking fences, and the cattle are getting out, getting hit, and then we've got all kinds of lawsuits. And we represent some of the insurance companies that are defending those, so it's been a real problem. Have you anticipated that, and is it covered? [LB1084]

SENATOR CHRISTENSEN: And that's why I put in on the back page that Section 3--Section three in sub 3: The board may adopt and promulgate rules and regulations to administer this section with respect to public safety and land use. Because if somebody's going to put cattle out there, they could exempt that if they were going to...you know, or you could say put it right into the lease that stocks can't be used during prime...main season, which is only 10 days long--two weekends and the week in between. You could say that's the only time that could be hunted there is that time. The farmers would work around it. [LB1084]

SENATOR SEILER: Well, I read your bill with interest of why there wasn't a requirement for insurance on the tenant. [LB1084]

SENATOR CHRISTENSEN: Um-hum. [LB1084]

SENATOR SEILER: And you're saying they'd cover that under the rules and regs. [LB1084]

SENATOR CHRISTENSEN: Well, they can... [LB1084]

SENATOR SEILER: Is that what you anticipate? [LB1084]

SENATOR CHRISTENSEN: Well, yeah, the...right now, the law protects you. If you're open hunting, you're at your own risk going on to hunt, even with permission. If you...I...if you come to my place to hunt... [LB1084]

SENATOR SEILER: Except when it's got...right. [LB1084]

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SENATOR CHRISTENSEN: ...and I give you permission... [LB1084]

SENATOR SEILER: And that changes once you put consideration. [LB1084]

SENATOR CHRISTENSEN: Once you lease it, it changes. [LB1084]

SENATOR SEILER: Right; that's right. [LB1084]

SENATOR CHRISTENSEN: That's correct. We've dealt with that several times. Then you have to have the insurance cover the liability. [LB1084]

SENATOR SEILER: But...my...or your answer then is it would be covered under Section 3, under bullet...? [LB1084]

SENATOR CHRISTENSEN: Correct, correct. [LB1084]

SENATOR SEILER: Okay. [LB1084]

SENATOR ADAMS: Any other questions? Thank you, Senator. Are you going to stay around and close? [LB1084]

SENATOR CHRISTENSEN: Yes. [LB1084]

SENATOR ADAMS: All right. We'll move to proponent testimony and, Becki, we'll move to the lights system and three minutes. We'll take the first proponent. Good afternoon. [LB1084]

DUANE HOVORKA: (Exhibit 1) Good afternoon. My name is Duane Hovorka, H-o-v-o-r-k-a. I'm executive director of the Nebraska Wildlife Federation and pleased to be here to support the bill. We certainly support the concept and appreciate the senator for bringing the bill to you and bringing the issue to the public. And let me step back and look at sort of the big picture of why this issue is so important and why these lands are so important. If you look at the state of Nebraska and the amount of public land we have in our state, especially public land that's publicly accessible, it's something less than 1 million acres of land in the state; and that's about less than 2 percent of the land base of Nebraska is actually open, public land that's open to people who want to hunt and fish on it. That puts us down at the bottom with Kansas and Iowa, at the bottom of the 50 states in terms of the percentage of public land that's out there. If you look nationwide, about 30 percent of the land in America is publicly owned. But in Nebraska, that percentage is so small that that makes it very difficult for people to find public land to hunt on. So if you think about 1 million-some acres of state school lands that are public lands, that's...there's some huge potential there for expanding that base of publicly

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owned land. The privately owned land in the state that has public access is also declining, and that in part is because of cuts at the federal level to conservation programs like the Conservation Reserve Program which has provided a lot of good habitat in this state. But just in the last...since 2008 Farm Bill, we've lost over 500 square miles of habitat that were in the Conservation Reserve Program that have been lost to congressional funding cuts, and so we're losing that habitat. We've also...Congress cut out the funds for a public access program that had helped provide access to some 200,000 acres of private land in Nebraska and many stream miles. So the big picture here is we've got a state with very little public land, with private land with accesses declining, and where...if you talk to hunters, the hunters who are looking for a place to hunt or the folks from out of state who have given up hunting, one of the biggest problems, the thing at the top of their list is we don't have a place to hunt, and so that is why this bill is so important, why this issue is so important. We do support the concept. We recognize there are some objections to the bill. Frankly, we think as you look around at other states there are alternatives that may end up with a net increase in funding for the Board of Ed Lands and Funds, but that would also open up these acres to public access recreation on them. So I appreciate your time, and I will just leave you with a copy of Conservation on the Chopping Block, which is a report that we issued last October which detailed some of the federal cuts that are...some of them have actually come true, so I'll leave that--copies of that--with the committee as well. [LB1084]

SENATOR ADAMS: All right. Are there questions for this testifier? Thank you for your testimony then. [LB1084]

DUANE HOVORKA: Thank you. [LB1084]

SENATOR ADAMS: Next proponent? Next proponent? Seeing none, then we will move to opposition testimony. First opponent to the bill? [LB1084]

JOHN WURDEMAN: (Exhibit 2) Good afternoon. I'm John Wurdeman, that's W-u-r-d-e-m-a-n. I'm a field representative for the Board of Educational Lands and Funds, currently located in Columbus. I administer approximately 30 counties in the eastern part of Nebraska. I'd like to present a perspective from an on-the-ground field representative, (inaudible) farm manager who works directly with our lessees. Senator Council, well, you might remember. I actually...I've been on the board or working with the board for 30 years, so I was on the...as an employee when you were there. I guess I want to address some of the points that were made earlier. We would have serious concern as a farm manager and our lessees have serious concerns as well. I've talked to several of them. I think it's very clear that this bill if it was passed would discourage bidding on school lands, which obviously reduces the income to public education through our school lands. Senator Council, you're exactly right. It's very difficult to estimate what the value of exclusive use and enjoyment would amount to, but certainly it would be reduced in the amount of bidding that we would see on school lands.

Serious concerns as far as also our...the option of having separate leases for agriculture as opposed to recreational for hunting. I could see...the example that Senator Christensen gave isn't exactly the same as what we would see on school lands because what he...what I heard him suggesting was to have separate lease for agricultural use, lease auction, and another separate lease for lease auction for recreational use. The concerns there would be as landowners--or our board representing the land owner, the state of Nebraska--we would be giving up our control over that. I believe in Senator Christensen's example, his privately owned land, they still maintain some level of control by addressing who...or being able to control who would be hunting on the property, and so that would be lost because whoever the high bidder was on school land would have the total control of who gets to hunt there. And then you would have the conflict of interest, I could see, with the farmer or rancher who obviously is bidding on our school land for a totally different purpose. So obviously the other...we also would be concerned about the idea of reduction of a time allowed for certain uses of the property. I believe it was mentioned, restricting the amount of time you could graze stocks. Again, that's going to reduce the demand for the property; it's going to reduce the amount that some farmer or rancher is willing to bid on our school lands as far as for an agricultural use. So with that, I guess I envision maybe you have some questions. My boss, Mr. Endacott, will be following up with some other testimony from the perspective of our Lincoln office, so. [LB1084]

SENATOR ADAMS: All right. We'll open it up to questions. Senators, do you have questions of this testifier? Senator Sullivan does. [LB1084]

SENATOR SULLIVAN: Thank you, Senator Adams. Hi, John. [LB1084]

JOHN WURDEMAN: Hi. How are you doing? [LB1084]

SENATOR SULLIVAN: Fine, thank you. What's going on with leases right now? I mean, we're seeing in private lands the lease payments are really going up. Is that true for school land as well? [LB1084]

JOHN WURDEMAN: Absolutely. We had record interest this year as far as our bonus bidding with...all across the state. [LB1084]

SENATOR SULLIVAN: Um-hum. [LB1084]

JOHN WURDEMAN: I mean, as everyone here knows, the demand for farmland and ranchland is at an all-time high both in land value and also in rental value. [LB1084]

SENATOR SULLIVAN: How do some of these...how do these lease arrangements work in terms of improvements that the lessee handles? Like fencing and water lines and all of that, I mean, that becomes first of all the responsibility of the lessee, right? [LB1084]

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JOHN WURDEMAN: Yes, that's correct. In most cases, the lessee owns the fencing, the water plant, whether it's a tower and mill or a submersible pump. [LB1084]

SENATOR SULLIVAN: But when they...if for then whatever reason down the road if they lose that lease, the improvements stay with the property, is that right? [LB1084]

JOHN WURDEMAN: The improvements are appraised whenever the lease expires... [LB1084]

SENATOR SULLIVAN: Okay. [LB1084]

JOHN WURDEMAN: ...for those types of improvements--fences, wells--and whoever...whatever the appraised value is...for example, if you had a lease and Senator Avery outbid you at the next auction, Senator Avery would have to pay you for the appraised value of those improvements at that time. [LB1084]

SENATOR SULLIVAN: Okay. When you mentioned some of the issues of the problems with dual leases, is it fair to say that the...you would almost have to be the middle man or not? [LB1084]

JOHN WURDEMAN: Well, I could envision it putting us in a very difficult situation as farm managers, field representatives... [LB1084]

SENATOR SULLIVAN: Um-hum. [LB1084]

JOHN WURDEMAN: ...and also our administration in the Lincoln office as well because again I could see very different interests because you're giving those up to the high bidder, and those people could be totally unrelated, from total different parts of the country. Who knows? Somebody from outside of the state might be bidding on the recreational rights... [LB1084]

SENATOR SULLIVAN: Um-hum. [LB1084]

JOHN WURDEMAN: ...and if you...if we...again, the example that Senator Christensen used on, I believe there...his own property was where he had least could control. He had a separate lease for the recreational use and I understand that, but you still would have some control that you would maintain over who has the rights to say, okay, this is the time of year you can hunt. Because otherwise you auction that off, you give that up, you give that total right up to whoever gets the high bid. That would be my concern. [LB1084]

SENATOR SULLIVAN: Now is all the school land currently either being used for pasture

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or crop? [LB1084]

JOHN WURDEMAN: Yes. [LB1084]

SENATOR SULLIVAN: Is there...so there's no other use being...that it's being used for now. [LB1084]

JOHN WURDEMAN: Well, we do identify certain properties, as Senator Christensen mentioned. We do add additional rent... [LB1084]

SENATOR SULLIVAN: Okay. [LB1084]

JOHN WURDEMAN: ...for properties that we feel have a recreational value, and so we are bringing in extra income because we assign certain dollar values and that's...but it is included under one lease in virtually all cases. [LB1084]

SENATOR SULLIVAN: And so those additional uses would be hunting? [LB1084]

JOHN WURDEMAN: Yes. [LB1084]

SENATOR SULLIVAN: Okay. [LB1084]

JOHN WURDEMAN: Absolutely, absolutely. [LB1084]

SENATOR SULLIVAN: All right, thank you. [LB1084]

SENATOR ADAMS: Other questions? Thank you, sir. [LB1084]

JOHN WURDEMAN: Okay, thank you. [LB1084]

SENATOR ADAMS: Next opponent? [LB1084]

RICHARD ENDACOTT: Senator Adams and members of the committee, my name is Richard Endacott, and it's spelled E-n-d-a-c-o-t-t. I'm the executive secretary of the Board of Educational Lands and Funds. I'm here opposing this bill. When this bill was first introduced, there were some newspaper articles you may have seen across the state. Some of them were a little bit misleading, and shortly after those newspaper articles appeared I received a flood of phone calls from people asking me about that bill, and I would say that most of those phone calls were rather irate. And I learned quite quickly that when those people would call, I would say and probably the first sentence that I ushered, we're opposed to this bill, because they were very much opposed to it, 100 percent opposed to it. In fact, I had a gentleman from Deuel County that called me and--after I had adopted that new policy--and he said, is this Mr. Endacott? Yes, I said,

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I'm opposed to it. And he said, I'm calling about LB1084. I said, I'm opposed to LB1084. There was a pause, and he kind of laughed and he said, well, you're pretty lucky because I was going to chew on you quite a bit about that bill. So those voluntary reactions from our lessees were unanimously against this bill. We then decided we would do a random sample of our lessees across the state. And we picked like number 5 in Butler County and number 5 in Custer County, and we called these people and asked them several questions. First of all, we asked them if they knew about the bill. Some of them did, some didn't. We asked them how they felt about the bill, and the quote was: I am adamantly opposed to this bill. One-hundred percent of the people that we talked to said that. We also asked them if they are now hunting that land. One hundred percent of the people said, yes, either we are hunting it, we're renting it out, our friends, relatives, neighbors, or someone is using that land whether as cropland, for pheasants, or windrows--I mean tree rows--or trees, for deer and pheasant, or turkey. So they're using this land for hunting. And the other thing that John touched on is we asked them, if this bill was passed, how would you react to bidding on this property in the future? And they said, unanimously again, we would be very discouraged as far as bidding on this; it would be a substantial deterrent. And from that flows the natural consequence that that would substantially reduce the income that would flow to the school lands and substantially reduce the income that would flow to our sole beneficiary, which is the public schools of Nebraska. This is a very well-intentioned bill, and I assume the purpose of it is--from the testimony and from talking to Senator Christensen--is to open up more school lands for hunting. Many people assume that we simply own vacant, unused land. That is not true. All of our leases are leased. They're either leased for agriculture, recreation, or a combination of that, and all of the land in those leases which is suitable for hunting is now being used for hunting. So it is not correct to say that this bill is going to open up new lands for hunting; it just is not the case. All of our land is being hunted. One of the big concerns that we talked to our lessees about that they talked to us about is damage to livestock and improvements and the question that Senator Seiler raised, the question of liability or damage. Renters have expensive livestock on our property. They have windmills, they have tanks. Farmers have also expensive property, for example irrigation wells, pivots that can cost \$60,000 apiece. We have wind turbines on our property; three of them are going up as we speak in Custer County. Those wind turbines are worth \$1 million apiece. We have oil and gas facilities on our land. We even have uranium on our land. And these are big investments and our lessees, whether they're wind people or whether they're ag people, are very concerned about damage from hunting. Now most hunters are very respectful of the land. I like to hunt myself. [LB1084]

SENATOR ADAMS: Richard, I'm sorry to interrupt you, but that red light's been on for a little while, and in due fairness to other testifiers... [LB1084]

RICHARD ENDACOTT: Okay, I'm trying to go as fast as I can, but... [LB1084]

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SENATOR ADAMS: Would you, please? [LB1084]

RICHARD ENDACOTT: There is a fringe group of hunters who are not careful about land who litter, who decide to mix alcohol with hunting, and our people are very concerned about that type of damage. Vandalism is another issue, cattle being shot, cattle caught in traps--this is a fur trading/trapping bill--bullet holes in windmills, tanks, pivots, fences being driven through, ruts across farmland and grassland, and the most terrible fear of all, gates being left open. And this raises the looming question of liability that the senator raised. His question: Who pays when the culprit that does the damage disappears? What...we had a situation in Cedar County when we called this person who has a cattle operation right near a golf course. And he said, what happens if somebody comes in on my property without my permission, hunts on that property, leaves the gates open, and the cattle get on the golf course? And finally I would say that this bill would result in a substantial loss of income. We're going to have many people who will not rent our land. There's a gentleman in Hooker County who said I make \$10-15,000 renting school land and renting it out to other people. I would never rent another property of school land in the future if this bill is passed. The fiscal note I think is accurate and it's conservative. We would lose an estimate of \$2.5-3 million per year if this bill passes simply because people are not going to want to pay the rent that they pay, they're not going to want to pay the bonuses, and many of our properties are going to go unleased, which is an unheard-of situation at the present time. And I would close, Senator Adams, by saying we're in an environment of limited resources and unlimited needs, and in these situations it seems to me we need to prioritize. And if you prioritize education--which is up here--against recreation, there's no comparison. It seems to me that the federal government in 1867, when they gave the land to Nebraska, determined what the priority was. They gave this land specifically and solely for the benefit of public education, and it seems to me that what was true in 1867 is just as true today. Thank you for letting me go a little further. [LB1084]

SENATOR ADAMS: All right. Are there questions for Dick? You're off the hook. [LB1084]

RICHARD ENDACOTT: Thank you. [LB1084]

SENATOR ADAMS: Thank you, Dick. Next opponent? [LB1084]

DALE WAHLGREN: (Exhibit 3) My name is Dale Wahlgren, W-a-h-l-g-r-e-n. Senator Adams and distinguished members of the Education Committee, I'm testifying today in opposition of LB1084. My farm...I'm a farmer. I lease two leases from the school land board. They have...on the maps that you're being presented with shows the land. My farm has two leases with the Board of Educational Lands and Funds, and then that...those leases are identified with the yellow marks on the lease. This is in the Platte River just east of North Platte. There is a treed accretion area which is one lease. There



is a farming area which is another lease, so this falls into some of the concerns that we're talking about today. The current lease on the farmland is \$13,076 a year. The lease on the accretion land, which is mostly cottonwoods and cedars, is \$3,550 a year. The only indications of borders are a fence on the southwest part of the property. I also have a well and \$80,000 worth of irrigation equipment on the school land property. I have two pivots that cross back and forth between my owned property and the school land property. There is no public road access to the school land without crossing private property. Some of the problems that I see in this bill is first of all there's no border indicators. That's the situation on a lot of school land, not all of it and so, therefore, opening that up to the public would decrease the value of the land that you owned adjacent to the school land. And the only value to me of the accretion lease is the ability to lease it for hunting as a part of a much larger acreage that I own on both sides of the accretion, and I can lease that out as one package, so the land that I lease from the school land is subleased for hunting purposes. Safety would be a big concern. I have a farmstead within 300 yards of the school land; my daughter's family lives within one-half mile of the school land, both easily in range of high-powered rifles used for hunting. AT&T has a building within 100 yards of the school land which services all of the underground transcontinental fiber optics cable. They said never cut one of those; it will cost you \$1 million a minute. We grow corn for Frito-Lay under contract, food-grade corn, and there could possibly be a food security issue if the public has access very close or through the fields. Local law enforcement is 26 miles away from us; that's the closest to this property. If people were out there on the land, they could come on at any time and do whatever they wanted to. You know, we're dealing with not only hunting, but if they have public access they're going to be running their dogs, they've got ATVs, pickup four-wheelers. We deal with that on some other property that we have close to North Platte. The land is presently hunted under a lease to an outfitter that is required to check for licenses, assess the value of sportsmanship, make sure alcohol is not being used, and manage the number of game animals taken as to not take too many or to take more if needed and permitted, as to provide for year-after-year sustainable hunting. How do you filter out the good sportsmen from the irresponsible ones if it's open to the public? It's a constant battle for us on private land to deal with hunters, especially in an area that we're talking about here where hunting is prevalent and a lot of people want to hunt. I spent 11 years on the Mid-Plains Community College board of governors and have dealt with budgets and setting of mill levies on the property tax to fund education. Reduced rental rates and reduced property valuations would result from the passage of LB1084 and would have an adverse effect on school budgets across the state. Liability is another issue. I'll tell you a story if you want to ask me a question, but I don't have time right now, so I thank you for your time and consideration. I will try to answer any questions you have. [LB1084]

SENATOR ADAMS: All right. Thank you, sir. Are there questions for this testifier?  
Senator Avery. [LB1084]

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SENATOR AVERY: Thank you, Senator Adams. I note here near the end of your testimony you talked about the land is presently hunted under a lease to an outfitter that is required to check for licenses, assess the level of sportsmanship, make sure alcohol is not being used, manage the number of game animals taken. What...where did these rules come from, the...? [LB1084]

DALE WAHLGREN: The person that I lease to is from Kansas City, and he leases it to different people, some in state, some out of state. [LB1084]

SENATOR AVERY: It's my understanding that we don't license our outfitters in this state, and we don't have any regulations whatsoever over the outfitters. [LB1084]

DALE WAHLGREN: The Game Commission does have some authority over that; I'm not sure how far it goes. I assume that...because I had an outfitter early...a couple years ago that said he had to get a license from the Game Commission. [LB1084]

SENATOR AVERY: I've been struggling with the Natural Resources Committee for two years on that issue, and they were uninterested in it. [LB1084]

DALE WAHLGREN: Yeah, yeah. [LB1084]

SENATOR AVERY: And we don't have any real regulation at all, not even a central registry... [LB1084]

DALE WAHLGREN: Okay, well, I think... [LB1084]

SENATOR AVERY: ...because we don't even know how many outfitters are operating in the state. [LB1084]

DALE WAHLGREN: Yeah. I would not be opposed to that. [LB1084]

SENATOR ADAMS: Senator Sullivan, did you have your question? [LB1084]

SENATOR SULLIVAN: Thank you, Senator Adams, and thank you, Mr. Wahlgren. I thought when you were talking about the lease...does the Board of Educational Lands and Funds give you any direction in terms of what you might include in the lease that...for hunting? [LB1084]

DALE WAHLGREN: No. [LB1084]

SENATOR AVERY: Thank you. [LB1084]

SENATOR SULLIVAN: Okay, all right. [LB1084]

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DALE WAHLGREN: No, the only issues I think that has been explained to me dealing with the cost of those leases--especially on areas that we can't farm, we have no other source of income for except to hunt,... [LB1084]

SENATOR SULLIVAN: Um-hum. [LB1084]

DALE WAHLGREN: ...the trees are too thick to pasture, we can't keep fences up in the river because of storms and this and that--is that the taxes...if the taxes went up, which they were talking about appraisals from the county would go up on accretion ground, then we would be passed on that in our leases because those taxes will be paid by the school land office. And we pay the school land office for the use of that ground, so. [LB1084]

SENATOR SULLIVAN: Um-hum, um-hum. And your issue of liability? [LB1084]

DALE WAHLGREN: The issue of liability, I had some Game Commission property close to me that a bunch of cattle got out. The cattle got onto my cornfield, did damage, several thousand dollars worth of damage. I called the Game Commission and they said, we're not liable, the state of Nebraska is not liable. We put that liability onto the owner of the cattle. So I go to the owner of the cattle. Well, I don't have insurance, and I'm not going to pay you for the damages, and so I'm left holding the bag. I had absolutely nothing to do with it. The Game Commission leased the ground out, they did not require the cattle owner to have liability insurance so, therefore,...I mean, yeah, I can go to small claims court or spend more than the value of the loss on lawyer's fees to take him to court, but neither one is very palatable to me. [LB1084]

SENATOR SULLIVAN: Thank you. [LB1084]

SENATOR ADAMS: Other questions? Thank you, sir. [LB1084]

DALE WAHLGREN: Thank you. [LB1084]

SENATOR ADAMS: Next opponent? How many more opponents are there? One? Okay. [LB1084]

PETE McCLYMONT: Senator Adams, members of the committee, for the record my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm vice president of legislative affairs for Nebraska Cattlemen. Our membership and board of directors voted to oppose this bill. I won't be redundant; Mr. Endacott raised the issues I was going to share. I would only add one point. I have a member from the Sandhills, and he rents a parcel of ground--I believe it's a section of ground--and that ground is inside his ranch. There is no road access to it, it's completely held within his ground, so his concern is that you

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have somebody that's got to go on his private ground to reach that public school ground to hunt if that was...if LB1084 were to be passed. So with that, I'll conclude my testimony. [LB1084]

SENATOR ADAMS: All right. Thank you, Pete. Are there questions for Pete? Thank you. [LB1084]

PETE McCLYMONT: Thanks. [LB1084]

SENATOR ADAMS: Next opponent? [LB1084]

ERNIE FELLOWS: (Exhibit 4) My name is Ernie Fellows. Hi, everybody. I'm glad to be here today; the weather's nice. I haven't got much to say because most of it's been... [LB1084]

SENATOR ADAMS: Could you spell your last name for the record, sir? [LB1084]

ERNIE FELLOWS: Oh. Fellows, F-e-l-l-o-w-s. [LB1084]

SENATOR ADAMS: Thank you. [LB1084]

ERNIE FELLOWS: Sorry, I forgot. [LB1084]

SENATOR ADAMS: That's all right. Go ahead. [LB1084]

ERNIE FELLOWS: I represent a bunch of landowners and ranchers in the Sandhills, primarily Keya Paha, Brown, Rock, Holt Counties, and a lot of this land is landlocked just like the last testifier said. And you would have to give somebody permission to cross your own land to get to that to hunt, and a lot of guys don't take their cows out until after hunting season starts in the fall. The cows don't come out of the school land in the grassy areas until November sometimes because you graze so many cattle animal units and you have to leave so many animal units, and the grass in the Sandhills does not start as fast in the spring. It's hard ground, so that's why the cattle come out later and the hunting is a concern, the liability. And when the grass is this tall, then there's a fire hazard with people with catalytic converters on their vehicles. And that's one of our main concerns, that and the fact that the lessor is the total control, and we don't know how somebody else could come in and then take over additional control, like for hunting. We have problems with that, and that's all been addressed. Any questions? [LB1084]

SENATOR ADAMS: All right. Are there questions for this testifier? Thank you, sir, for being here. [LB1084]

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ERNIE FELLOWS: Thanks. [LB1084]

CRAIG HEAD: Good afternoon, Senator Adams and members of the Education Committee. My name is Craig Head. That's spelled C-r-a-i-g, and the last name is H-e-a-d. I'm with the Nebraska Farm Bureau Federation, and I'm here today on behalf of the organization in opposition to LB1084. I just would simply point out that I appreciate Senator Christensen's comments in his opening about his desire to not move forward with this bill to give a little bit more opportunity to look at the issue. I know his concerns that he raised about deer populations, those are concerns that our membership also has expressed, and we supported a bill that he actually brought in front of Natural Resources to deal with that issue earlier this session. Just to echo some of Mr. Endacott's comments, we received more letters, phone calls, and e-mails on this issue than we did on any other this session to this point, all of them in opposition from our members who have concerns about this open access for public hunting on school lands, and so I won't get into any more details. I think those have been expressed, but I just wanted to take the opportunity to be on record. [LB1084]

SENATOR ADAMS: Thank you, sir. Are there questions? Thank you then. [LB1084]

CRAIG HEAD: No, thank you. [LB1084]

SENATOR ADAMS: Next opponent? Good afternoon. [LB1084]

JON HOLZFASTER: (Exhibit 5) Senator Adams, committee, thank you for the time today. My name is Jon Holzvester, J-o-n H-o-l-z-f-a-s-t-e-r. I'm the third generation to operate our family farm and feedyard in southwest Nebraska, located near Paxton, and I currently do hold a school land lease. I would like to start by saying that I support the concept of public-access hunting. However, I am one of those leaseholders that contacted Mr. Endacott and used the term "adamantly opposed" to LB1084. I think I'm going to pass some of this testimony; it would just be redundant from what has already been said. But one thing that I would like to point out is that every unit of school land is unique, unique in the way that it is operated and managed for productivity and profitability and unique in how it is operated and managed for wildlife habitat. Some units may very well lend themselves to public hunting. Lessees currently have options to voluntarily enroll in public hunting programs if they so choose. Other units would be devastated by the effect of uncontrolled public access and hunting. Productivity and profitability would be severely reduced; a fragile and highly managed wildlife habitat would be destroyed. Each school land unit is currently being operated and managed to its highest and best use as dictated by a free market environment, and to cast a broad blanket of government over this free market process as proposed by LB1084 would without doubt have a negative effect on the value of many school land properties, not to mention the unintended consequence of habitat destruction due to the inability to effectively manage. In closing, I'd like to restate my support for public hunting programs.

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However, LB1084 is not an effective option to expand these programs. This testimony is very specific to me, and I appreciate the opportunity to share that with you. And again, in the interest of time I think I will close and thank you for your time and would be happy to answer any questions as this relates specifically to me, and thank you. [LB1084]

SENATOR ADAMS: Yeah, thank you. Are there questions for this testifier? Well, thanks for coming all the way from Paxton. Next opponent? [LB1084]

KATIE ZULKOSKI: (Exhibit 6) Good afternoon, Senator Adams and members of the Education Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the Lower Republican Natural Resource District. I won't be able to add anything to the previous testifiers and especially the testifier right before me in his eloquent testimony on this issue. We have talked to Senator Christensen and appreciate his comments that he wanted to just start the conversation. I have passed out for the committee's information a letter from Mike Clements, the general manager of the Lower Republican, in opposition to this bill. [LB1084]

SENATOR ADAMS: All right. Thank you, Katie. Are there questions for this testifier? Thank you then. Next opponent? Neutral testimony? Good afternoon. [LB1084]

RICHARD HEDRICK: Good afternoon. I am Richard Hedrick, H-e-d-r-i-c-k. I am neutral on LB1084. I have a...questions LB1084 as a taxpayer. Is the landowner or the lessor liable for any lawsuit? Would there be any damage to the land from people coming on the land? I could not see any objections to hunting or fishing. These are individuals coming on the land individually and leaving. Fur trapping is something different. Fur trapping is leaving a trap on the property and coming back to find what animal is in the trap. Fur trapping is commercial activity, trapping and selling the fur. Should travelers pay to travel on the...by the trap? When there is more than one person wanting to set traps, who gets to place their trap on the property? Would it be a bid or the highest bidder? The bill, LB1084, states in Section 3(3): The board may adopt and promulgate rules and regulations to administer this section with respect to public safety and land use. The word "may" is too...this section is too important to be left to may. This should be mandatory by saying "shall," and I would not object to the bill other than that section. [LB1084]

SENATOR ADAMS: All right. Any other testimony? All right, then are there questions for this testifier? Any other neutral testimony? [LB1084]

ALICIA HARDIN: Senator Adams, members of the Education Committee, my name is Alicia Hardin, A-l-i-c-i-a H-a-r-d-i-n, and I'm testifying today on behalf of the Nebraska Game and Parks Commission in a neutral position. The Game and Parks is pleased to see the Legislature has recognized the importance of access in Nebraska. Hunting provides an economic benefit of \$417 million a year to Nebraska and supports 5,000

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jobs. Access is also important to our hunters and anglers, as our state is primarily privately owned as was stated before. Our agency has developed a program called Open Fields and Waters, which we have opened 272,000 acres of land and water to public walk-in hunting and fishing on private lands. We have consulted with the Education Land Funds on several occasions, and they have been very reasonable in allowing their lessees to sign up in our Open Fields and Waters program. We currently have approximately 6,000 acres of education lands in our program, and we would encourage more types of those contracts. Although we do pay for access to land in our program, it is still a voluntary offer on the part of the landowner. In some states like Montana and South Dakota, school lands are open to access with some special limitations. That being said, not every piece of land with the Educational Lands and Funds in Nebraska would necessarily be appropriate for public hunting access, as was stated before. Some properties are landlocked, and in other places there could be that conflict of interest with cattle. While we do appreciate this bill's support for providing more public access, we are neutral on it because we think that the Educational Lands and Funds needs more flexibility to be sensitive to the needs of the agricultural operators leasing the school lands. Thank you for your time. [LB1084]

SENATOR ADAMS: Thank you for your testimony. Are there questions? Thank you then. Any other neutral testimony? Senator Christensen to close. [LB1084]

SENATOR CHRISTENSEN: Thank you, committee. I appreciate your time in here. I realize it went rather long. I'll hit eight quick points; I had 20, but I'm going to hit 8 of them. Talked about reduced land bidding, I don't think that's very easily defined because even...you've heard several people talk about the agriculture driving up the bids but you haven't heard anybody talk about hunting driving up the bids. And I thought that very interesting, how people talked about the leases and what is driving it up because it is agriculture. Conflicts of interest in hunting? And I don't think that's valid because someone used my words against me here in saying I had control of the hunting. On that lease, I had no control of who went in and hunted, when, how. You know, I could ask for that in my lease, same as it could be done here; very easy to be dealt with. But anyway, I've grouped several of these together. I think if you think about changing the bill as I had mentioned it...there was the argument unlimited need, limited resources. That's just an argument for my opponents for the reason should we look at dual leases. The other one was talked about once, about the homesteads and businesses close by. That's all governed on all the licenses now by Game and Parks; not a valid argument here. Rules set up, that's why that section 3(3) is in there. Talking about seasons, ATVs, access, if there's no public access to the school lands, that's why the rules section is set up there. And the grass area that was talked about by one concerned about running cattle late and things is probably not a very good hunting area anyway, at least not on big game. So that's why the rules section was put there. Again, I'm not asking for the bill to go forward. I appreciate all the discussion. If there was any last questions, I'd gladly deal with them. [LB1084]

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SENATOR ADAMS: All right, fair enough. Are there any final questions for the senator? Senator? [LB1084]

SENATOR SEILER: Senator Chairman, I have just one. And the gentleman raised it that he has a landlocked section, and I'm almost afraid to ask this. Do you have eminent domain where you can require an easement for ingress and egress? Does the school lands? You may not know (inaudible). [LB1084]

SENATOR CHRISTENSEN: I don't know for sure if they do or not,... [LB1084]

SENATOR SEILER: Okay. [LB1084]

SENATOR CHRISTENSEN: ...but that's why that rules section is there. I've had several people get a hold of me saying, you know what, I'm totally landlocked, and that's with private lands. That's why that rules section was put there. If somebody's got a land lock, they don't have to give them access to it, and you can't force it. [LB1084]

SENATOR SEILER: Okay, thank you. Thank you, Mr. Chairman. [LB1084]

SENATOR ADAMS: Are there other final questions? Thank you, Senator. [LB1084]

SENATOR CHRISTENSEN: Thank you. (See also Exhibit 7) [LB1084]

SENATOR ADAMS: We'll move right to the next hearing, which is LB1168, Senator Lautenbaugh. You're welcome to open whenever you're ready. [LB1168]

SENATOR LAUTENBAUGH: Well, thank you, Mr. Chairman and members of the committee. I apologize I don't have a tie on today, but I also don't have Mardi Gras beads on either, so I think I've met you halfway, but... (Laugh) This is going to start much like the last bill started, I think. I don't believe this bill can or should go forward this year as it is introduced. And I'm not saying that means we're bringing an amendment; I'm saying that this is probably more of a fit topic for an interim study. And the reason for this bill is very simple. The school district budgets, especially in the larger districts, are huge. The OPS budget is larger than the city of Omaha's budget. The LPS budget is larger than Lancaster County's budget. We have a County Purchasing Act. We have...the cities have strictures on how they handle purchasing. I'm not convinced we have something as vigorous for the school districts, and we're talking about a lot more money involved. So the whole point of this basically--and there will be a gentleman coming to testify as a proponent of this--is just to look at whether or not we are making sure that there are strictures, proper strictures of a kind that we apply to other political subdivisions, for schools. And if there aren't, I think there should be; or if there are...I believe there are some regarding construction, but we may want to look at whether or



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not it should apply to more than just construction because construction is not necessarily the lion's share of a district's budget year in/year out. So with that said, I'd be happy to try to answer any questions you might have, but I don't believe I have any real answers today. But I think this is something I'm just bringing before the body to say, look, this is a huge amount of money we're talking about. We have seen over the years the Legislature has taken pains to say, counties, you have to go about it in this particular way. Have we done enough in the realm of schools? That's the question I raise for you. [LB1168]

SENATOR ADAMS: All right, fair enough. Are there questions? Senator? [LB1168]

SENATOR COUNCIL: Yes, thank you, Chairman Adams. Senator Lautenbaugh, do you know whether any or most of the districts have self-imposed policies that are comparable to purchasing policies of cities and counties? [LB1168]

SENATOR LAUTENBAUGH: No. [LB1168]

SENATOR COUNCIL: You're not aware of any school districts that have? [LB1168]

SENATOR LAUTENBAUGH: I don't know if most do, and I don't know the specifics of any one, so. I would say that it would be just as we do with the counties. There might be a value in uniformity, but instead of having to go through the various districts and see is this on a par and sufficient enough for the use of public funds. But I have not tried to compare them all and find out what exists currently. I know it is much less rigorous in most cases, I believe, than the County Purchasing Act, but that's the extent of my knowledge. [LB1168]

SENATOR ADAMS: Other questions? Senator Haar? [LB1168]

SENATOR HAAR: I'm just curious whether this was based on any specific incident of spending or just kind of a general concern. [LB1168]

SENATOR LAUTENBAUGH: No. I would say more of a general concern. I can't think of any--as I sit here--any specific incident at all that moved me to do...to bring this bill. [LB1168]

SENATOR ADAMS: Senator Avery? [LB1168]

SENATOR AVERY: Thank you, Mr. Chairman. Do you expect to hear opposition based upon local control? [LB1168]

SENATOR LAUTENBAUGH: Well, we always do--on various issues, I should say. There may very well be that; and again, my response would be if...just as the counties

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are governed to a certain extent by the laws we pass here, I believe school districts are in the same boat. And if we've seen fit to be concerned about the county budgets and how that money is handled and how those expenditures are made, I don't know why we would not share the same concerns regarding the larger pool of money that's represented by the larger school districts. The bill as drafted, by the way, does distinguish between large and small in that the larger ones would be the ones that would be required to have a standalone purchase agent because that could be a sizeable cost perhaps for the smaller districts. But again, I even hesitate to get into the specifics of the bill because it is not my intent that we actually act on the specifics of this bill as introduced. [LB1168]

SENATOR ADAMS: Other questions? Thank you then, Senator. Are you going to close? [LB1168]

SENATOR LAUTENBAUGH: I'll get back to you on that, Mr. Chairman. [LB1168]

SENATOR ADAMS: All right, all right. Fair enough. First proponent? [LB1168]

LEE POLIKOV: Mr. Chairman, Lee Polikov, Sarpy County Attorney; that's P-o-l-i-k-o-v. Just for those of you who don't know me, I spent 26 years with the sheriff as chief deputy and counsel in Sarpy County. And now I've just completed my twelfth year as the elected county attorney in Sarpy County, and that may raise the question of why I'm here. Senator, I think it's fair to say that maybe this bill was introduced because of a discussion Senator Lautenbaugh and I had about some of the issues and my perspective on an investigation that the State Patrol is doing presently, and has been since spring, on the Bellevue school system. Through that amount of time and scrutiny that we've put through the various issues that were brought forth, I've developed some philosophical, I suppose professional, opinions on what could and should be done. And this is not just the Bellevue school system; we're fortunate in Sarpy County to have five school districts. And of course we're tied to Omaha as having some schools in Sarpy County but also through the Learning Community. So it's a current issue, as you might see, and I feel I have some standing to talk about the school districts and how they operate having looked at issues that we...where we might apply illegality or the allegations of illegality from a lot of constituents and taxpayers. Without getting into the issues specifically--the investigation or any particular problems--one of the areas was contracting, and it became apparent to us that without a purchasing act it was very difficult to meet our burden of applying solutions to problems through the criminal justice system. As you know, we have to apply a standard of beyond a reasonable doubt and we need to enforce state laws, not necessarily county policies or--I'm sorry--school district policies, and that might be the answer to Senator Council's question. I'm sure there are school districts that have many guidelines on how they're going to do their purchasing, but it would be very difficult when those are violated for the county attorney to prosecute those violations based on a violation of an internal policy; it would be much

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better to have a state statute to follow. We see these--we operate in the county and have for a long time--as maybe even a little more than guidelines, but a structured framework within which to work. It's not restrictions, it's not an invasion of the public control. The public thinks there is control. The public elects a school board, the school board doesn't have the tools to assure that the operations within the purchasing in particular are done on a fair and equitable basis, there's not a lot of transparency, and I think we see and can believe that there are problems that develop with the way a purchaser handled maybe sweetheart deals because of comfort and habit that goes on within a smaller area. And that's not fair to competition; it's not fair to the taxpayer. I see the red light is on. I'd love to engage in a dialogue or answer any questions that you might have. [LB1168]

SENATOR ADAMS: All right, let's start with some questions. Are there any? Senator Council. [LB1168]

SENATOR COUNCIL: Yes, thank you; and thank you, Mr. Polikov. And, you know, just trying to get a handle. I guess I'm reflecting back on my personal school board experience, and my recollection is we had a policy similar to what the city of Omaha's policy is on purchasing and contracting. But when you're talking about prosecution and when I looked at...maybe I missed it, but I didn't see any criminal penalties in LB1168. And, quite frankly, if there had been criminal penalties I think it would have gone to the Judiciary Committee. So I guess I was...in the form that it is now, how would LB1168 have assisted you in whatever your investigation is at Bellevue since there's nothing in LB1168 that there is any penalty for--or criminal penalty--for violation? And in fact there's no penalty in there for violation. [LB1168]

LEE POLIKOV: I guess my quick response would be with...you know, we kind of put this together quickly and used the County Purchasing Act as a model, but I needed that structured framework to show maybe wrongdoing or maybe something as simple as official misconduct and not have it end up at the mid or lower levels of the structure. You know, I think one of the first things that I looked for was where all prosecutors--I guess all are skeptics a little bit--and you look for where accountability lies, who's responsible, so you may have the name of...somebody's name on a contract, but is that really where the responsibility lies? And, quite frankly, I looked. How can I draw it back to the elected body? How can I draw it back to people who were charged with the responsibility of protecting the taxpayer dollar? And of...may not be, but what I...I think I've come to the conclusion is them not having the tools, we end up with school boards that I think are typical that are accused of being rubber stamps and often are because they don't have the structure, the staff, or the ability to question what the superintendent and the superintendent's staff and personnel present before the board. So it becomes a here's the world you live in, here's the world we live in, and that's not the best, I think, for the taxpayer, what it's...or for the students, quite frankly. What it becomes is almost an environment where no questions can be asked and no new ideas can come in. It's just

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almost an impervious group that's of school officials and that promotes this environment of no oversight. You know, when there's no oversight, those questions can't be asked. I don't know if that answers your question well. [LB1168]

SENATOR COUNCIL: All right, and I guess that probably it further justifies some type of...and I've said again, I'm just reflecting back on... [LB1168]

LEE POLIKOV: Sure. [LB1168]

SENATOR COUNCIL: ...my school board experience. And they did then, and I'm fairly confident they do now, all purchases made at the biweekly board meeting are run through the finance committee and the building services committee and approved. So I'm, I mean, I guess it...I mean, the point is that it varies from... [LB1168]

LEE POLIKOV: Not everybody does that. Yeah, not everybody does that. I'm used to the board signing off on all expenditures. We didn't see that in the Bellevue's environment. [LB1168]

SENATOR COUNCIL: Okay, yeah. But I...and it... [LB1168]

LEE POLIKOV: And so it...there's a lot of trust. The board feels that their trust is well placed in a strong staff and sometimes that not the case, and so the taxpayer/the constituent doesn't really have that oversight that they think is in place by an elected board. And the elected board says, we don't have those tools, we don't have that personnel, we didn't know that was happening, so I don't think that's the best environment to be in. Or you have a board who...and I, you know, as a sort of an outside observer that has standing, we recently had the situation in Omaha where a board member asked for something as simple as an organizational chart, and he was told by the administration, we don't have one, you can't have one, it costs us too much to make one, and everybody seems to think that's a proper answer. I personally don't think so, but that's me. [LB1168]

SENATOR COUNCIL: Well, there's always a little more to the story than what is reported and... [LB1168]

LEE POLIKOV: But we have a lot of citizens out there that are getting that perception. [LB1168]

SENATOR COUNCIL: Unfortunately. [LB1168]

LEE POLIKOV: And I get the calls, and you get the calls I'm sure, too,... [LB1168]

SENATOR COUNCIL: Yeah. [LB1168]

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LEE POLIKOV: ...about your property tax dollar. The school takes 67 percent of that, so that's why the budgets are bigger and that may be at least...I see an urgency in this. And I understand the process and that this came in late, but I think the urgency and the reason for this is that there isn't an existing program now. There is a huge void there, and the Legislature, they came to me and said, fix these problems. And I don't think I can fix them in the criminal justice system. I think the answers are legislative, and the Legislature needs to take them up and address the problems. [LB1168]

SENATOR COUNCIL: Thank you. [LB1168]

SENATOR ADAMS: Other questions? Yes, Senator Avery. [LB1168]

SENATOR AVERY: Thank you, Senator Adams. Just a clarification to begin with. On page 10... [LB1168]

SENATOR COUNCIL: I mean...okay, I see it. [LB1168]

SENATOR AVERY: It's a Class IV felony if any agent--purchasing agent--violates any provision of this act. But my...I have a question though, that... [LB1168]

LEE POLIKOV: I should have known that. I'm sorry. [LB1168]

SENATOR AVERY: ...that goes beyond that. [LB1168]

LEE POLIKOV: Um-hum. [LB1168]

SENATOR AVERY: And that is: If this is a good idea--and I'm inclined to think it is--why not take it all the way through the process? Unless perhaps we do an interim study this summer and bring it back next year, then you've got two years to get it done. This would seem to me to be something that we would want to work on and not drop it so easily. [LB1168]

LEE POLIKOV: Well, and I'm sure that wasn't Senator Lautenbaugh's intention, to...I've...I...he'd have to speak for himself. I agree. It's that important, it seems to work for counties, and was kind of massaged a couple of years ago to help. And I know we shouldn't put legislation on the books and then work it out; that's not what we do. But there's a void there and it's, I think, a serious void. [LB1168]

SENATOR AVERY: Yeah, I think I agree with you. [LB1168]

SENATOR ADAMS: Another question, Senator Council? Sure. [LB1168]

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SENATOR COUNCIL: Yeah, just a comment. And I've overlooked that, but the fact that it does provide for a criminal penalty would be a matter to go before the Judiciary Committee and not the Education Committee. [LB1168]

SENATOR ADAMS: Other questions though? Thank you, sir, for your testimony. [LB1168]

LEE POLIKOV: Well, thank you very much for your attention. [LB1168]

SENATOR ADAMS: Next proponent? Any other proponents? Opposition testimony then? We'll move to opposition testimony. Neutral? Going to have to move quicker, Brian. [LB1168]

BRIAN HALE: Can I be neutral? [LB1168]

SENATOR COUNCIL: You can do whatever you want. [LB1168]

SENATOR ADAMS: I'll let you be opposition if you truly are opposition. [LB1168]

BRIAN HALE: Well, I'm walking in Bonaiuto's shadow. I should be neutral. [LB1168]

SENATOR ADAMS: I was going to say something, but you said it, so. (Laughter) [LB1168]

BRIAN HALE: He's not my boss anymore, so I can say those sorts of things. My name is Brian Hale, I represent the Nebraska Association of School Boards, and I would like to echo a little bit of what Senator Avery was saying. This seems to be very focused on a specific few school districts. I think that it's worthy of looking at to see if there are some state policy decisions that on the larger level might apply to all school districts and then potentially giving direction to local school districts to come up with control measures that are suitable to the communities involved. Omaha's control measures are going to look a little different than Hyannis' or Cambridge's or other places, and so certainly this is one approach. There are certainly questions within the bill, but in general it attempts to be not even a one size fits all but one size fits a few. And even at that I think there are some questions when it comes to cooperative sorts of arrangements and ESUs that are embedded in school districts. And so it's a good discussion, but we certainly would like to see more discussion on the front end before we pass legislation and then try to fix it along the way. [LB1168]

SENATOR ADAMS: All right. Thank you, Brian. Are there questions for this testifier? And let me clarify one more time, Brian, for the record. This was opposition testimony, okay? [LB1168]

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BRIAN HALE: This is opposition, yes. [LB1168]

SENATOR ADAMS: Okay. Thank you then. Is there any other opposition testimony? [LB1168]

MARY CAMPBELL: Senator Adams, members of the committee, my name is Mary Campbell; the last name is spelled C-a-m-p-b-e-l-l, assistant superintendent for government relations, Lincoln Public Schools. I was going to rely on the school board's testimony to speak for all boards, but the more I thought about the fact that we are specifically named in the bill that maybe I should best come forward. My big disclaimer is I'm obviously not the purchasing agent; I'm not in the purchasing department to be very familiar with their exhaustive procedures which are also embedded in policies adopted by the board. So for starters I don't think we go about this in a willy-nilly way; it is a very prescribed procedure. We'd be very open to sharing those should the committee feel that a study is warranted, and we'd be very happy to cooperate with you in that. The last speaker spoke of control measures, and I assure you we have considerable control measure in the elected board. They take extremely seriously the fact that twice a month they meet and they must pass a judgment on all purchases made by the district. And I assure you that in that week leading up to each board meeting the phones ring off the hook, and they come in and they go over the purchases to make sure that their stewardship of the budget is being handled properly. In offering help on the bill, just in passing I would say that just a brief reading of it, we feel that there is some outdated usage. We rely a lot more on e-bids on...things like public bulletin board are really replaced with the Web site notice, so there are things like that that I think could be helpful to be looked at and updated to what is currently being done, particularly in the big districts that have considerable purchasing to take care of. But the bill as drafted we think adds cost, time, delay, would probably require on our part the hiring of another full-time person just to do the crediting back to each specific school for the surplussing of property over time. So I think a flawed bill that raises an important question, and one that I think we're dealing with very seriously at least at LPS. [LB1168]

SENATOR ADAMS: All right. Thank you, Mary. Are there questions for Mary? Thank you. [LB1168]

MARY CAMPBELL: Thank you. [LB1168]

SENATOR ADAMS: Any other opposition testimony? I'm going to switch over to neutral. All right, neutral testimony? Senator Lautenbaugh, I think you can close. [LB1168]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. That wasn't much opposition for one of my bills, so maybe we should roll forward some. (Laughter) I do bring this in all seriousness though. And I always say...someone just quoted me to myself on the floor this morning saying, we're all in favor of local control

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unless we're not because we're flexible on that, all of us are. And I would note that I...as I understand it, the County Purchasing Act applies to Douglas County just as surely as it applies to Arthur County, I think, and there's quite a population disparity there. It was not my intent to put undue burden on the smaller districts because we all know that, you know, different levels of resources and you can do fewer things I guess is the best way to put it. And the more administration you put on, the less you're putting on in the classroom, so to speak. But I do think if we have seen fit to have a statewide policy for counties so we can make sure there's a clear set of criteria that we can reference back to, there's no reason that we aren't going where the money is and doing the same thing; and I don't mean to be crass about it, but that's just how plain it is. The school districts handle an unusually...well, a very large amount of money compared to the other political subdivisions. And again, if we've seen fit to burden the counties with this--and I don't choose that word lightly; I'm sure it's a burden--there's no reason that we wouldn't look at this greater level of expenditures and try to make sure that we have adequate controls in place. [LB1168]

SENATOR ADAMS: Hmm. Are there any final questions for Senator Lautenbaugh? If not, thank you, Senator. [LB1168]

SENATOR LAUTENBAUGH: Thank you. [LB1168]

SENATOR ADAMS: We will move on now to LB1045, Senator Haar. [LB1045]

SENATOR HAAR: (Exhibit 8) Chairman Adams, members of the committee, LB1045 is the School Emergency Management Act, clarifies current law and practice regarding school districts and what happens in the case of some catastrophe. It allows school districts and ESUs to do emergency spending if there is a disaster approved by the Nebraska emergency manager. For example, if a district's building is destroyed by a tornado, then they could spend money to replace what was lost. This is current law but unclear because it allows local government to do so, and this bill simply clarifies that school districts and ESUs could use the same rule. So we believe it'd be an element for the consent calendar, and it's just a clarification of current law. [LB1045]

SENATOR ADAMS: Thank you, Senator Haar. Are there questions? Senator Avery? [LB1045]

SENATOR AVERY: Thank you, Senator Adams. Why are classified school districts exempted? [LB1045]

SENATOR HAAR: I don't know that, and you can ask the next testifier on that one. [LB1045]

SENATOR AVERY: Pass the buck. I am glad. This is the second time I've seen this bill.



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[LB1045]

SENATOR HAAR: Um-hum. [LB1045]

SENATOR AVERY: The first time, it was in the emergency management statute where it did not belong, and my office recommended that it go into Section 79, so it's in the right place. [LB1045]

SENATOR HAAR: Well, we try to put things in the right place. [LB1045]

SENATOR ADAMS: Senator, I have to...I apologize if there's someone else that had a question before me. You made reference to consent calendar. I mean we are in this bill giving to schools additional levy authority and spending authority, are we not? [LB1045]

SENATOR HAAR: Um-hum, yes. Well, it's clarifying what we think already happens. [LB1045]

SENATOR ADAMS: Explain that to me. [LB1045]

SENATOR HAAR: And again, I'm going to ask the next person who testifies to clarify that. [LB1045]

SENATOR ADAMS: Okay, fair enough. [LB1045]

SENATOR HAAR: This was sort of a bill we introduced for the school boards. [LB1045]

SENATOR ADAMS: Fair enough. Thank you then. [LB1045]

SENATOR HAAR: Yeah. [LB1045]

SENATOR ADAMS: Any other questions for Senator Haar? All right, we'll take proponent testimony. [LB1045]

JOHN BONAIUTO: Senator Adams, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, a registered lobbyist on behalf of the Nebraska Association of School Boards. And we appreciate Senator Haar introducing this bill and our discussions with Senator Avery and his staff. Looking at the Emergency Management Act and trying to have a clearer path for school districts to follow led us to look at Chapter 79 and...because every time we tried to make or broaden the Emergency Management Act, it tended to open it farther and do some things that we had not intended when we tried to use words like "political subdivisions" rather than "local government." And so we thought, why don't we just do something in Chapter 79, where K-12 public education basically lives, and have a clearer path that would apply statewide so that if something

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happens in a school district the board understands and has a statute that they could work with the emergency manager and director in their area so there is a more uniform understanding. And we...there will be other testifiers. A school board member who has gone through a disaster and that...the emergency management plan does not say anything about school districts; talks about local government, but...so there was some interpretation that had to be made to apply the act. We also have an attorney that worked with the Lincoln schools in the disaster where their administrative office...when it burned down, so. And so hopefully some of your questions will be answered. On the bill itself, our intent was not to expand the authorities that are allowed under the Emergency Management Act but to have that clearer understanding and path for a school board to follow. And so we would work with the committee, if this doesn't do exactly what we were hoping it did, to clarify it even further. But we really just wanted a uniform interpretation across the state in case there is...are further or other disasters. There is an amendment to the bill that instead of naming school districts by class...and we inadvertently did not have Class V's, and sometimes legislation is different for Class IV's and Class V's. The amendment talks about districts of all classes. It would be all classed districts, so it would...just districts in general would include everyone. And that same amendment also talks about educational service units which we should have included in the original bill. With that, I will conclude my testimony. [LB1045]

SENATOR ADAMS: Okay. Thank you, John. Senator Avery? [LB1045]

SENATOR AVERY: Thank you, Chairman Adams. Didn't this come about because of the fire with the Lincoln Public Schools District Office? [LB1045]

JOHN BONAIUTO: Yes, that was part of our discussions with the LPS disaster and their administrative office burning down. And then we looked at what was happening with flooding across the state, and we were seriously thinking that there would be other disasters that would happen due to the amount of flooding. And we were very fortunate; we did not have that occur. So we're hoping that we don't have any more of these types of disasters, but if something does happen--and you'll probably hear this from our board member that is here that was president of the board that went through the Norris tornado--the last thing the board wants to hear when they have a natural disaster or a large loss of this nature is we're not sure what the authority is or we're not sure how something might apply, and so that is what we're hoping is to have the situation be clearer and basically that what would happen here in this area would be the same thing that would happen in some other part of the state. [LB1045]

SENATOR AVERY: Well, isn't it true that in both the Norris case and the LPS case ways were found to make the expenditures they needed to make despite statutory limitations? [LB1045]

JOHN BONAIUTO: There was a...there were interpretations and the hope that there

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was no challenge of those interpretations, and I believe that legal counsel may be able to speak more directly to that. [LB1045]

SENATOR AVERY: But isn't it true that they were able to do it? [LB1045]

JOHN BONAIUTO: Yes, Senator, that is true. [LB1045]

SENATOR AVERY: Yes, thank you. [LB1045]

SENATOR ADAMS: Other questions? Yes, Senator Howard. [LB1045]

SENATOR HOWARD: Thank you, Chairman Adams. Just a quick question. It says here the new provisions would allow the board of all but Class V school districts. So you're clarifying that to say that it would include all? [LB1045]

JOHN BONAIUTO: All classes. [LB1045]

SENATOR HOWARD: Okay. [LB1045]

JOHN BONAIUTO: Yes. [LB1045]

SENATOR HOWARD: All right. [LB1045]

JOHN BONAIUTO: Yeah, and there is an amendment. And when you match the amendment to the sections of the bill, it lines... [LB1045]

SENATOR HOWARD: Well, I looked at the amendment but... [LB1045]

JOHN BONAIUTO: Nineteen and 20. You scratch class and you scratch all of the Roman numerals and it just says districts... [LB1045]

SENATOR HOWARD: All right. [LB1045]

JOHN BONAIUTO: ...and educational service... [LB1045]

SENATOR HOWARD: It's the Roman numerals at fault. [LB1045]

JOHN BONAIUTO: Yeah...but yes. [LB1045]

SENATOR ADAMS: Are there other questions? John, one of the things that I'm struggling with here--and maybe you can give it a shot and others that come up and testify can too--the Emergency Management Act, it is your interpretation, now does not include school districts. [LB1045]

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JOHN BONAIUTO: Not by name, and that's where the stretch is. That's... [LB1045]

SENATOR ADAMS: Not by name, therefore, it's not included. [LB1045]

JOHN BONAIUTO: They talk about local government. [LB1045]

SENATOR ADAMS: And it really deals with then counties and cities? [LB1045]

JOHN BONAIUTO: Yes. [LB1045]

SENATOR ADAMS: Okay. Then speculate for me, if you're willing. Why doesn't the language under the Emergency Management Act identify school districts? That would have been an easy one, it would seem to me, that when they're...when that statute was being drafted. Was there a reason for not including schools? [LB1045]

JOHN BONAIUTO: We've had some discussions about that, and we're thinking the intent was that local government would include schools, and that was the belief when it was used for Norris and LPS. Our thought is also that many times that this is...the Emergency Management Act and how it works is what triggers the interaction between the state and federal agencies that deal with disasters. And so it's broad, and one of the things that we found out when we approached Senator Avery and his staff is every time we wanted to change--not major but minor--wording in the act, it could help and bring schools in, but it also might broaden it in other areas. And so bringing it to the Education Committee narrows it; it makes it clearer for schools. We believe what we're doing is allowed now, but it is a little bit of a leap and you...you know, and you'll hear from experience that by not having the clear path at the time of the disaster, the board relies on its legal counsel to then make the right connections and that you hope that those connections feel that they have the authority to do what needs to be done. [LB1045]

SENATOR ADAMS: What I'm wondering personally--and maybe this will be resolved by the end of the hearing today--is if schools were excluded from that intentionally because of what cities and counties have to do in terms of disaster might be different than what a school has to do in terms of disaster. And I'm not even clear in my own mind on this yet. I'm still thinking through it. [LB1045]

JOHN BONAIUTO: Okay. [LB1045]

SENATOR ADAMS: But any other questions for John? Thank you then. [LB1045]

JOHN BONAIUTO: Thank you. [LB1045]

SENATOR ADAMS: Next proponent? Good afternoon. [LB1045]

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PATTY BENTZINGER: Good afternoon. My name is Patty, P-a-t-t-y; Bentzinger, B-e-n-t-z-i-n-g-e-r, and I serve on Norris District 160 board of education. In May of 2004 I was president of the board when a huge, F4 tornado hit our campus, virtually damaging every building including our bus barn. It was a very overwhelming sight, and to walk around those buildings and wonder if we would ever be able to have school on that site again, frankly the thought was: Where do we begin? And where we began is with board meetings that were held in our superintendent's living room with our attorney present the day after the tornado. Managing the people around the destruction and crafting a plan to begin our recovery were among our very first objectives and also our first challenges. Through the work and coordination of many people and many, many board meetings, Norris Public Schools opened our schools for students the following September, so from May to September was our recovery period. What LB1045 does for the next district to face a disaster is to add clarity in the process of getting an emergency declared, which allows them to access resources to put the pieces back together. The conflict Nebraska schools now face with 79-526 is that they must apply for an emergency designation as part of the Nebraska Emergency Management Act. This act is primarily designed to provide access to the resources of the Federal Emergency Management Act. In most instances where schools are faced with a building disaster such as the one faced in 2004 by Norris and also the one in Lincoln Public Schools, the loss is not so great as to qualify for FEMA support on its own. We did qualify because of the Hallam tornado, and we were kind of put together with that because it was one tornado that affected both the school and the city. The allowance originally written into 79-526 was conceived for the purpose of allowing school leaders access to local financial resources to clean up the aftermath of disaster and get the schools back into the business of teaching and learning. In most cases, property and casualty insurance were ultimately absorbed much of the cost of rebuilding, but there are many expenses involved in cleanup after a disaster, and the final insurance settlements often do not come for many months after the work that's done. LB1045 allows a school board to approve expenditures, contracts, or obligation in excess of existing statutory limits for emergency management purposes in the event of a disaster or emergency. A majority vote of the school board would still be required and only then after a certificate of a local emergency management director is obtained. This statute still involves the emergency manager/director and gives no additional unilateral authority to a school board. Instead, it clarifies what needs to be done to get the school onto the path of recovery. The Norris school board joined a unanimous vote, the delegate assembly of the Nebraska Association of School Boards this past November, in supporting clarification of this language. We believe LB1045 will streamline the work of school boards and administrators whenever a disaster strikes. I would like to urge your support for this bill, and I'd be happy to try to answer any questions you might have. [LB1045]

SENATOR ADAMS: All right. Are there questions? Ma'am, did Norris raise their levy and increase their spending lid? [LB1045]

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PATTY BENTZINGER: We used some QCPUF bonds to do that, but we did not raise our spending lid, no. [LB1045]

SENATOR ADAMS: You did not? [LB1045]

PATTY BENTZINGER: Uh-uh. [LB1045]

SENATOR ADAMS: Okay, so I guess...so what you're saying, if this bill was enacted, what does that really...? In retrospect, what would that really have done for Norris? [LB1045]

PATTY BENTZINGER: I guess what I'm saying is that we were very fortunate to have a very experienced superintendent administrator; we had a very experienced school lawyer, Rex Schultze; and if we would not have had access to that kind of expertise...and I don't know frankly that every place in the state would have immediate access to people who knew exactly what to do. We did have to go through the process of becoming of an emergency designation and it wasn't 100 sure true that that would happen, so there was a little bit of we want this to happen, we know what we have to do now, we're hoping that the clarification comes. [LB1045]

SENATOR ADAMS: Okay. Are there other questions? Thank you then. [LB1045]

PATTY BENTZINGER: Thank you. [LB1045]

SENATOR ADAMS: Next proponent? [LB1045]

JAMES GESSFORD: Senator Adams and members of the committee, my name is James B. Gessford, G-e-s-s-f-o-r-d, and I appear here today in support of LB1045. Specifically in regard to the questions that have been asked, the Emergency Management Act consists of various sections. It's actually an act, and it has many sections in it. There are two definitions in the act. One definition is local government. If you look at that definition at the very beginning of the definitional phase it says, I believe, cities and counties. If you move down in the definitional phase, it says political subdivisions. In that definition, it includes a double coverage of cities and counties, and then it also includes school districts, educational services units, and a few others. If you read the act, it appears--at least it appears to the Lancaster County emergency management director--that those two terms got used interchangeably; they are used interchangeably in the act. If you read the act and you try to make sense of it, you would think, well, which one did they really mean local government and which one did they mean political subdivision, which would then include school districts? In both the Lincoln and the Norris circumstances, the boards, prior to contacting legal counsel or anything else, contacted the county officials and said, you know, what do we do? We've got to

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get a building up, we've got to get a school built. The position of the county officials involved was the Emergency Management Act applies to you. They interpreted the term "local government" to be interchangeable. Emergency orders were entered. Now what does it do them? To my knowledge, in neither case did either Lincoln Public Schools or the Norris School District have to use the levy lid exemption that is contained in there for everybody else. However, Norris did and I believe Lincoln won't need to. There is provisions on entering into contracts and streamlining the bid process for facility construction. If you had to follow that process in the Norris case, you wouldn't have been able to have the school up and running and ready to go. You had to follow those normal bidding time frames; you wouldn't have been able to do that. I'm in support of the bill. We represented over the past numerous years probably well over 100 of the some 200-odd school districts. We hope we never have to use this bill. Fortunately, in Lincoln and Norris' case they were able to work through it. I'm not sure out in Deuel County or Chase County; without having it specific and clear it might be interpreted different, and they may not have the power. I'd be happy to answer questions. [LB1045]

SENATOR ADAMS: All right. Questions? Anyone? Senator? [LB1045]

SENATOR SEILER: Thank you, Senator. Jim, if...are you satisfied this bill covers all the holes that were in the Emergency Management Act? For this bill's... [LB1045]

JAMES GESSFORD: I think with the amendment making sure all schools and educational service units are there, I think it does; and it still uses the Emergency Management Act as the check. Those emergency management directors in each county are trained. The definitions of disaster and emergency that we're using here we've borrowed from the Emergency Management Act, so those directors will know is this an emergency or not in all cases. We had the order in both the Lincoln Public Schools case. First thing, we had trouble finding the emergency management director because he was in a helicopter going along the Platte River, worried about the flood. And so we hope we never have to use this, but as long as we have a process to cover emergencies and disasters for other municipal entities, it seems to me that it would be decent public policy for our children to make sure that if one of these things happen that we're able to have a facility there to educate them. Thank you. [LB1045]

SENATOR ADAMS: Um-hum. [LB1045]

SENATOR SEILER: Thank you very much. [LB1045]

SENATOR ADAMS: Other questions? Jim, just for the sake of... [LB1045]

JAMES GESSFORD: Yes, sir. [LB1045]

SENATOR ADAMS: ...of curiosity on my part, would you draw a distinction? So I'm the

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emergency management person in Lancaster County or whatever county it may be,...  
[LB1045]

JAMES GESSFORD: Correct. [LB1045]

SENATOR ADAMS: ...and I've made the decision that looking at clause 8 here--political subdivisions means city, village, county, school district--and I'm looking at...I've got Norris out here where the school building is gone, or I've got administrative building over here. Is it my job then under the statute to draw a distinction of what's a disaster and which one of those is and is not a disaster? [LB1045]

JAMES GESSFORD: Yes sir, and I believe that's what they do under the act. I mean, they have to make a decision and...you know, I had a little fire and it just, you know, burned a little bit of a part of the building. That's what they're trained for under the Emergency Management Act, and that's why we used the definitions from that act, so they're clear on it has to be a definitional emergency and a real problem. And so that would be my position is yeah, that's part of their job; that's what they do every day in any kind of a disaster emergency, is determine whether it fits under the definitions in the act. [LB1045]

SENATOR ADAMS: All right. Other questions? Thank you then. [LB1045]

JAMES GESSFORD: Thank you. [LB1045]

SENATOR ADAMS: Other proponents? Are there any opponents to the bill? Neutral testimony? Senator Haar, if you'd like to close. [LB1045]

SENATOR HAAR: Thank you very much. And I was just told that if the emergency manager disagrees that it's not an emergency then it stops, so that's the process. [LB1045]

SENATOR ADAMS: So if the emergency manager for Lancaster County said a school building blowing down in Norris and we've got no place to educate kids is an emergency... [LB1045]

SENATOR HAAR: Right. [LB1045]

SENATOR ADAMS: ...but LPS losing their administrative building, yeah, it's a problem but it doesn't rise to the level of losing a school building where kids have to be educated, that would be that call, correct? [LB1045]

SENATOR HAAR: Yes, that's correct; that's what I've been told. [LB1045]



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SENATOR ADAMS: Okay, fair enough. Thank you. Any other questions for the senator? Seeing none, that will close the hearing on that,... [LB1045]

SENATOR HAAR: Thank you. [LB1045]

SENATOR ADAMS: ...and we will take up LB1068 now. [LB1068]

SENATOR HOWARD: You ready? [LB1068]

SENATOR ADAMS: I am more than ready. [LB1068]

SENATOR HOWARD: Okay. Senator Adams, you're presenting the last bill. [LB1068]

SENATOR ADAMS: Not only the last bill for the day but the last bill of our hearing session. [LB1068]

SENATOR HOWARD: That's right. [LB1068]

SENATOR ADAMS: All right. And I'd like to say that I'm saving the best for last, but if you ever have to weed through MIPS and MACs, you're going to say no. Let me begin in this way. School districts provide certain services or see to it that services are provided for their students that are Medicaid...are eligible for Medicaid reimbursement, the most obvious being occupational therapy, speech therapy, and physical therapy, okay? For years, several years in Nebraska--how many, I don't know--school districts have been getting reimbursement for those expenses for OT, physical therapy, speech therapy. It was brought to my attention during the interim that quite possibly Nebraska schools are missing out on other services that potentially would be Medicaid eligible--and there's quite a long list--and I was asked to bring legislation that would facilitate schools being able to make those requests for those other services and get that ball rolling. Well, I hesitated and that brings us to today. Now part of my hesitation was my own ignorance. I'll be first to admit that; I do on a lot of things. This business of Medicaid reimbursement is not as easy as well, here, we're doing it, send me a check. I see nodding heads; you get it. And it also became not real clear to me, but it also became a bit of a caution flag when I saw us potentially moving away from the obvious services of OT, physical therapy, occupational therapy, speech therapy, and into others on the list that, oh, might be interpreted a little bit differently and wondering why we were going on into the list and why we had been reimbursing for these very obvious things, why we hadn't gone on. And it just...it very simply is I believe that it gets cloudier and cloudier as to what is reimbursable and what isn't. The other questions that I had was--and you all will understand this--how much is the state on the hook? Is it 40/60? Is it 90/10? And there's still a question in my mind as to how much the state may be obligated on these kinds of things. The bill was brought to me originally by the...or the concept was brought to me by the State School Boards Association on behalf of their

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membership. I understand that and I do believe they're looking out for the schools that they represent and, quite frankly, if there are services that can be reimbursed and clearly can be reimbursed, then we probably ought to be taking a look at that. The bill that I bring you doesn't do that. Instead, quite frankly, what it does is put the brakes on the whole deal and say, wait a minute, let's leave what we're doing alone for right now, but let's not launch into the next level of services until all the questions are answered about clarity of whether this truly is a reimbursable service and what's the state's obligation going to be. And to me there were just...maybe for you folks, if you would have sat there you wouldn't have had the same questions, but I did and I was concerned. And I think the school boards association understood my deer-in-the-headlights look, and they were willing to concede that what we ought to do is to study this. Now what I did in this bill was to simply create a task force that is pretty big in size, but primarily it includes this committee, the Appropriations, and HHS. So if we're going to expand these services let's do it right, and let's make sure that all the players are at the table. We put it in the form of a mandate sometimes to make sure everybody is at the table. Could it be done as an interim study? I think probably so, and there again we just want to make sure everybody is at the table. So the essence of the bill, frankly, is nothing more than that. It says if we're going to do this next year, if we're going to put in legislation to expand the services that schools can get Medicaid reimbursement for, let's get the major players at the table, and let's walk through all of this. Let's make sure that we're doing it right. Thank you, Senator. [LB1068]

SENATOR HOWARD: Senator Council? [LB1068]

SENATOR COUNCIL: Yes, thank you, Vice Chairman Howard. Senator Adams, the services that schools are being reimbursed for now,... [LB1068]

SENATOR ADAMS: Um-hum. [LB1068]

SENATOR COUNCIL: ...what process if any was followed to obtain those reimbursements? Is it simply realization that Medicaid did provide reimbursement? I guess I'm trying to see, you know, what little is to be gained by...through the task force. And if the schools are providing these services and it's not really an, you know, an expansion in the sense that okay, now we're going to go down the Medicaid list and okay, we can start...we're going to start providing this, we're going to start providing this, we...but they're currently providing services that are Medicaid reimbursement eligible, I guess my question is: Why do we need a task force? [LB1068]

SENATOR ADAMS: You know what? My thought on this is...and there are those here that can better answer your question, I hope, than I can. When I looked at the list and we got beyond the obvious--the OT, etcetera--you start getting into other services that, oh, boy, that could be broadly interpreted, narrowly interpreted as to where that fits and is it truly reimbursable. And it caused me to say, whoa, wait a minute, let's do this right.

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Now that may not be very definitive, but I think possibly if there are representatives from the State School Board Association here, they may be able to better clarify what I'm...what we were thinking. [LB1068]

SENATOR COUNCIL: Okay, because maybe I'm missing something. If there's something in statute that I'm not aware of that says that a school district cannot seek the federal reimbursement for services rendered without going through some process, I can understand that, but... [LB1068]

SENATOR ADAMS: I think there may be. [LB1068]

SENATOR COUNCIL: Okay, well, then that's what maybe... [LB1068]

SENATOR ADAMS: Hopefully. [LB1068]

SENATOR COUNCIL: I need...yeah, need to be directed to because I'm not...I just wasn't aware of that and it... [LB1068]

SENATOR ADAMS: Frankly, Senator, I wish I could be more articulate on this matter,... [LB1068]

SENATOR COUNCIL: Okay. [LB1068]

SENATOR ADAMS: ...but it came late and a little bit late in the game, and it is a more complicated subject than I ever imagined. [LB1068]

SENATOR COUNCIL: Okay. Then let's proceed. [LB1068]

SENATOR HOWARD: Senator Sullivan? [LB1068]

SENATOR SULLIVAN: Thank you, Senator Howard. Thank you, Senator Adams. As you had indicated, this task force as proposed would be quite large, and there's also some overlapping between the executive branch and the legislative branch. Do you see that as a problem or a stumbling block in the formation of it? [LB1068]

SENATOR ADAMS: We just sat down at the table and started putting people together that we thought would be productive parts of this. I think we can amend it and do whatever we want with it. [LB1068]

SENATOR SULLIVAN: And right along with that, why did you finally decide that a legislation should trump just simply an interim study? [LB1068]

SENATOR ADAMS: Well, I mean, and as far as just doing the interim study? [LB1068]

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SENATOR SULLIVAN: Um-hum. [LB1068]

SENATOR ADAMS: Well, I'll be very candid with you. I wanted to make sure. I wasn't so concerned about the legislative branch and the players within the legislative branch being involved; I just wanted to make sure that state agencies understand that if we're doing this, they too need to be contributors, not just voluntary contributors. [LB1068]

SENATOR SULLIVAN: Thank you. [LB1068]

SENATOR HOWARD: Senator Avery? [LB1068]

SENATOR AVERY: You may have already answered this,... [LB1068]

SENATOR ADAMS: Probably not. [LB1068]

SENATOR AVERY: ...but the Speaker has expressed concern about creating committees/task force commissions. [LB1068]

SENATOR ADAMS: I've read multitudes of those letters. [LB1068]

SENATOR AVERY: Yeah, and that included people outside the legislative branch and particularly when they may chair one of these committees or commissions and having appointees from the executive branch and mixing up the authority of the branches of government. Do you have any concerns about that with this bill? [LB1068]

SENATOR ADAMS: Well, I do. I always take into consideration what folks like the Speaker have to say. And frankly I also look at this and say, given where we're at with bills right now and prioritization, I think we're going to have to deal with an interim study anyway. [LB1068]

SENATOR HOWARD: I actually have a question for you. As somebody that's familiar with--somewhat familiar--with Medicaid program... [LB1068]

SENATOR ADAMS: They should have brought this to you then. [LB1068]

SENATOR HOWARD: I'm not claiming I know all the ins and outs. [LB1068]

SENATOR ADAMS: More than I do. [LB1068]

SENATOR HOWARD: But the question that comes to my mind is: Why haven't the school system individuals just gone to the designated individuals with...over at Health and Human Services and discussed these? [LB1068]

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SENATOR ADAMS: I'm going to let them answer that question. [LB1068]

SENATOR HOWARD: I think that's a...probably valid. Thank you. Welcome to the Education Committee. [LB1068]

JOHN SPATZ: Thank you. Yeah, my name is John Spatz. It's spelled S-p-a-t-z, but believe it or not, it's pronounced Spatz. And it's a pleasure for me to be here, and it's my first time in front of this committee this year, and it's on your last bill, so I'm very pleased to be here and get in right before it's over. I really appreciate Senator Adams. I wish you could have seen the look on his face when we knocked on his door and said we didn't want to talk about state aid, we wanted to talk about Medicaid. And I appreciate you not throwing us out of your office at the time. But I really appreciate his judgment here because I think this is a good approach is to look at this. And really what we're trying to do is bring some people to the table who can offer some input in how to do this properly. What we're talking about here is what they call the MIPS program--Medicaid in Public Schools. Right now there's another program called the MAC program--the Medicaid Administrative Claiming--which we're currently doing. It was established several years ago with some reluctance from Health and Human Services. But the way it works right now is the school districts and the state represent an interlocal agreement. They've come together to form an interlocal agreement. There's seven board members from the schools that serve on that board--five board members and two superintendents--and what they do is they have one contract with the state. And in the last school year they were able to reimburse schools over \$13 million, and it represents about 214 school districts in the state of Nebraska. There is another consortium that does the exact same work that is represented by the OPS and LPS--some of the bigger school districts. The Nebraska Association of School Boards works with the other consortium that represents about 214. This was done several years ago, and what it is, is it's a program where schools are already doing this work, but we've created a mechanism where we're asking for reimbursement from the federal government. It's a very complex program, we go through very intensive audits every year, and in fact we're doing one right now to finish this year. We submit that to the Federal Auditing Clearinghouse. But the good thing about this program is that the schools are able to come together and do this work. The state has one contract with this interlocal agreement. We hire a third-party vendor to come in and train the school system to do this, and as a result we've been able to return over \$13 million to 214 school districts in the state of Nebraska, so I think it's very successful. So what we want to do with the MIPS program is right now there are three services that are reimbursable, but the majority of that money stays with the state. So what we're looking to do is expand the number of services; but to do that, we're looking at creating a funding mechanism, and really what we're going to have to do is work with HHS to amend the state Medicaid plan. And that's why I think it's very important that we have HHS working with us to try to do something like this because while I think it's very important that we move in this direction to get more reimbursement for the schools, it's

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even more important that we do this right. So I really appreciate Senator Adams' judgment on this because I think bringing the people together and say, this is a good concept, but if we're going to do it we need to do it right, so I really appreciate that. [LB1068]

SENATOR HOWARD: Senator Council? [LB1068]

SENATOR COUNCIL: Thank you. Mr. Spatz, did I understand you to say that under speech therapy, occupational therapy, physical therapy, if those are provided by a school district that under the MIPS program the reimbursement goes to DHHS? [LB1068]

JOHN SPATZ: No, it goes to an early childhood program. The schools are responsible for filling out the forms and getting the reimbursement, but there is a...needless to say, it's an extremely complicated mechanism whereby the schools have to fill that out, and the money comes back to the state. And that was one of the things that we discussed; we couldn't figure out how that reimbursement mechanism worked in the MIPS program right now. And one of the things that we're concerned about is if you're a teacher in Ogallala, Nebraska, and you're asked to fill out some of these forms, we're concerned that they're not doing it right or even not doing it at all. So what we're proposing is that if we can, under this umbrella of this Medicaid consortium that currently exists, train the teachers to say, this is how you do it and this is how you do it properly, and then have a mechanism to verify some of those numbers, we could bring more reimbursement back to the state of Nebraska and to school districts in the state of Nebraska. [LB1068]

SENATOR COUNCIL: Okay, so when you...and that's what I'm trying to track. When it comes back to the state... [LB1068]

JOHN SPATZ: Um-hum, yeah. [LB1068]

SENATOR COUNCIL: ...what happens to that money? [LB1068]

JOHN SPATZ: It says with the state, the vast majority of it. There's a small amount, I think, that ends up getting back to the school district, but the vast majority of it stays with the state. So really, the legislation that we were looking at to begin with was to say something like okay, if last year the state generated \$3 million reimbursement from those three areas, the state would continue to get \$3 million. But if we expanded the number of reimbursable programs and we train the teachers and the administrators how to do this properly, any amount over that \$3 million we would send back to the school districts in a mechanism very similar to what we're doing with our MAC program right now. [LB1068]

SENATOR COUNCIL: Okay, but like I said, I'm still scratching my head. If the school

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districts are performing the service, why is the reimbursement going to the state? But that's...maybe you... [LB1068]

JOHN SPATZ: That's a great discussion to have for either an interim study or for a task force like this because it is very complex. And Tammy and I, we've had some discussions about this. It's a complex system, but really what we're trying to do is say there's money on the table that we've left, we think. If we can get in and train schools to do this, we think we can generate more revenue. And I don't know how much this could generate, but when we look at the MAC program that generates \$13 million, I've got to think that we could generate pretty close to that. It's hard to say. It could be way more, it could be way less, but I think that's a decent benchmark. [LB1068]

SENATOR HOWARD: Senator Sullivan. [LB1068]

SENATOR SULLIVAN: Thank you, Senator Howard. Thank you, John. So the \$13 million that goes into the General Fund? [LB1068]

JOHN SPATZ: That goes right back to school districts; that doesn't go to the state. [LB1068]

SENATOR COUNCIL: But... [LB1068]

JOHN SPATZ: It's directly reimbursable to the school districts. [LB1068]

SENATOR CORNETT: But he just said... [LB1068]

SENATOR COUNCIL: No, that's right. [LB1068]

JOHN SPATZ: And that's under our current program. [LB1068]

SENATOR COUNCIL: That's under MAC. [LB1068]

SENATOR CORNETT: Okay. [LB1068]

JOHN SPATZ: There's two different programs. I'm sorry. [LB1068]

SENATOR CORNETT: Misunderstood you, I'm sorry. [LB1068]

JOHN SPATZ: Yes, yeah. [LB1068]

SENATOR SULLIVAN: Okay, all right. [LB1068]

JOHN SPATZ: That's under the program that we're doing right now. [LB1068]

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SENATOR SULLIVAN: Okay. [LB1068]

JOHN SPATZ: That was met with a little resistance, but one thing I failed to mention. If we collect all the data from the schools and we submit it to the state and the state submits it to the feds, the money comes back to the state from the federal...from the feds. The state keeps 3 percent of that, and that goes I think into the General Fund or the...say I'm not sure where that goes. The 97 percent comes back to the consortium that then gets directed right back to the school district. So the state, for their efforts in working the state plan and having a contract with the consortium, gets to keep 3 percent of over \$13 million. [LB1068]

SENATOR SULLIVAN: And then you mentioned that you work with Lincoln and OPS and then 214 school districts. [LB1068]

JOHN SPATZ: Yeah. [LB1068]

SENATOR SULLIVAN: So obviously your not working with all of them is because they... [LB1068]

JOHN SPATZ: No, we're not. [LB1068]

SENATOR SULLIVAN: And why is that? [LB1068]

JOHN SPATZ: Just because they're two...Omaha at the time was working with an accounting firm, and they created their own consortium at the time; there were two consortiums created. That's something we'd like to work on. But for just the 214 districts, we've generated over \$13 million. I can't speak to what the Omaha consortium, how much they've generated, but if that was another 13, we'd be looking at over \$20 million total to the state that wouldn't be here had not the Legislature many years ago created the funding mechanism to enable this. [LB1068]

SENATOR SULLIVAN: Okay, but the remaining schools, you know, 214 and 2 more doesn't add up to what the total number of districts. [LB1068]

JOHN SPATZ: No, no, no, I'm sorry. I'm sorry. No, there's...the remainder of part of the... [LB1068]

SENATOR SULLIVAN: Oh. [LB1068]

JOHN SPATZ: There's probably three or four school districts that are not a part of either consortium. [LB1068]



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SENATOR SULLIVAN: Oh, I'm sorry. Okay, gotcha, all right. [LB1068]

JOHN SPATZ: We represent 214. [LB1068]

SENATOR SULLIVAN: Oh. [LB1068]

JOHN SPATZ: Omaha, Lincoln, Millard, and a handful--I don't know what the number is, so. [LB1068]

SENATOR SULLIVAN: Oh, all right. Okay, very good. Thank you. [LB1068]

JOHN SPATZ: Thank you. Any other questions? [LB1068]

SENATOR HOWARD: Other questions? I have some. When you talk about expansion, are you talking about expansion of the program or expansion of the area that you serve? [LB1068]

JOHN SPATZ: Thank you, good question. Right now under our state plan, which isn't governed necessarily by legislation but was one of the things we'd look at amending, they enable the state to be reimbursed or the schools to be reimbursed for OT, PT, and speech pathology. There are eight other services that the federal government will provide reimbursement for, but currently under our state plan we're not asking for reimbursement. Now the schools are already providing a variety of services such as audiology services and some transportation services. What we're saying is since we're currently providing these services and since the federal government will provide reimbursement to the schools for these services, we want the state and the state plan to be reworked to enable us to access that reimbursement. [LB1068]

SENATOR HOWARD: Okay. What's the match? [LB1068]

JOHN SPATZ: There is no match. [LB1068]

SENATOR HOWARD: This is all federal money? [LB1068]

JOHN SPATZ: Yes. [LB1068]

SENATOR HOWARD: There's no state money? [LB1068]

JOHN SPATZ: Well, under the current program, the MAC program, the way it's seen is that the state provides state aid to schools, so that is seen as the match under the current program. So the \$13 million is the federal government's match, so there would be... [LB1068]

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SENATOR HOWARD: Is the state aid to schools purely state money? Is that IV-B? [LB1068]

JOHN SPATZ: IV-B? [LB1068]

SENATOR HOWARD: State dollars. [LB1068]

JOHN SPATZ: I... [LB1068]

SENATOR HOWARD: Okay. Yeah, you need an interim study. [LB1068]

JOHN SPATZ: Yes. Yeah, exactly. Well, and that's exactly right. It's a complicated issue. [LB1068]

SENATOR HOWARD: Well, there would be...I mean, it's not a simple...the federal match, it could be an expansion of the money that the state is putting... [LB1068]

JOHN SPATZ: Um-hum. [LB1068]

SENATOR HOWARD: That might be where you meet some resistance... [LB1068]

JOHN SPATZ: Right. [LB1068]

SENATOR HOWARD: ...because the state has been eliminating some of the programs that it currently pays for. [LB1068]

JOHN SPATZ: Right. [LB1068]

SENATOR HOWARD: You're probably familiar with that. [LB1068]

JOHN SPATZ: Um-hum. [LB1068]

SENATOR HOWARD: But the programs that you have now that I'm familiar with in the Omaha area, some of them come out of the ESUs... [LB1068]

JOHN SPATZ: Um-hum. [LB1068]

SENATOR HOWARD: ...and it would be the early...what's called the early intervention for preschoolers who have particular needs. Is that the expansion you're looking at? [LB1068]

JOHN SPATZ: Um-hum. Well, not necessarily. All...to get money, what we need is an eligible person, an eligible provider, and a service that's under our state plan. So if an

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ESU and whomever is providing that service is an eligible provider providing to an eligible recipient, what we're saying is that under the state plan we should try to access reimbursement that the federal government says it will reimburse us for, which there's a variety of things that we simply aren't asking for reimbursement for right now. [LB1068]

SENATOR HOWARD: Okay. And what does the department tell you when you talk with them about this? [LB1068]

JOHN SPATZ: Well, there is some reluctance because a part of it is that we have to rework the state plan; that would be somewhat challenging. But there was reluctance many years ago when the MAC program was implemented, and at the time Don Pederson with the Appropriations Committee really said, this is something we need to do, and I wish I would have looked over the several years and the tens of millions of dollars that had been returned to the state. You know, had it not been for that legislation, that's money that wouldn't be here. [LB1068]

SENATOR HOWARD: Okay. [LB1068]

JOHN SPATZ: So just from our 214 from last year, that's over \$13 million that we're using in our school general funds. [LB1068]

SENATOR HOWARD: Okay, thank you. Anything else? All right, thank you. [LB1068]

JOHN SPATZ: Thank you very much; appreciate it. [LB1068]

SENATOR HOWARD: Welcome to the Education Committee. [LB1068]

JOHN WURDEMAN: Again. [LB1068]

SENATOR HOWARD: Yes. [LB1068]

JOHN WURDEMAN: Thank you, Senator Howard and members of the Education Committee. Again, my name is John Wurdeman, W-u-r-d-e-m-a-n. I appear before you again this afternoon, only this time I'm wearing a different hat. Unfortunately, for me it's a volunteer hat this time. I am a board member of the ESU Number 7 in Columbus and currently chairman of the Nebraska Association of School Boards Medicaid Consortium. As chairman and through my own personal experiences at my ESU, I know the consortium operates smoothly and effectively for school districts and ESUs across Nebraska. The administrative outreach program in Nebraska, as John Spatz already has mentioned, reimburses Nebraska school districts and ESUs for providing information about Medicaid to families and for helping locate, identify, and refer qualifying children for Medicaid services. At my local ESU Number 7, we received \$97,585.52 from the consortium in the year 2010/2011 alone. Over the past eight years,

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we have received \$537,239.30. As chairman of the Medicaid Consortium in 2011, we have distributed amounts ranging from as little as \$8,418.96 in Giltner to as much as \$421,169.34 in Hastings. If this committee creates a task force, that task force could potentially help all Nebraska school districts and ESUs in Nebraska. In a time where education costs are rising, this potential expansion of the law could bring in much-needed dollars to Nebraska districts and ESUs. If created by the task force, this new law would require very little state employee work time and would provide a huge benefit to education in Nebraska. I support this task force to explore the opportunity to help districts at no cost to the state of Nebraska. I urge you to support this bill. Are there any questions? [LB1068]

SENATOR HOWARD: Questions from the committee? [LB1068]

JOHN WURDEMAN: Thank you. [LB1068]

SENATOR HOWARD: I have a question for you; don't go away. [LB1068]

JOHN WURDEMAN: Oh, sure, okay. Not off the hook yet. [LB1068]

SENATOR HOWARD: Right now there was some mention of transportation costs. Right now are the transportation costs paid by the school district or the department through these funds when the educator goes to the home of the preschool child to do the therapy, whatever the form of the therapy might be? [LB1068]

JOHN WURDEMAN: Your question again: Who pays for that? [LB1068]

SENATOR HOWARD: Yes. Where does the transportation cost...who reimburses on that? [LB1068]

JOHN WURDEMAN: My understanding is there is no reimbursement at this point because it's not eligible through the current program, and that's what we're asking. That's one of the items that we'd like to be able to... [LB1068]

SENATOR HOWARD: So the school pays for it then? [LB1068]

JOHN WURDEMAN: The school pays for it, yes. [LB1068]

SENATOR HOWARD: All right, thank you. [LB1068]

JOHN WURDEMAN: There's no reimbursement from the federal side that I am aware of. [LB1068]

SENATOR HOWARD: Okay, thank you. [LB1068]

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JOHN WURDEMAN: Okay, anything else? [LB1068]

SENATOR HOWARD: Thank you. [LB1068]

JOHN WURDEMAN: Thank you. [LB1068]

SENATOR HOWARD: Come again. Are there any more proponents? Are there any opponents? Are there any neutral? Your turn. All right, that concludes our hearings for today. Thank you for coming. (See also Exhibit 9) [LB1068]