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Urban Affairs Committee
February 10, 2015

[LB197 LB300 LB324 LB420]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 10, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB197, LB420, LB300, and LB324. Senators present: Sue Crawford, Chairperson; John McCollister, Vice Chairperson; Colby Coash; Laura Ebke; Matt Hansen; Dan Hughes; and Bob Krist. Senators absent: None.

SENATOR CRAWFORD: Good afternoon and welcome to the Urban Affairs Committee. My name is Senator Sue Crawford and I represent the 45th Legislative District in Bellevue in eastern Sarpy County, and I serve as Chair of the Urban Affairs Committee. We'll start off having members of the committee and committee staff do self-introductions, starting on my right with Senator Hughes.

SENATOR HUGHES: Dan Hughes, District 44, southwest Nebraska, the counties of Chase, Perkins, Dundy, Hayes, Hitchcock, Frontier, Red Willow, Furnas, Harlan and Gosper.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

SENATOR HANSEN: Matt Hansen, District 26, northeast Lincoln.

SENATOR EBKE: Laura Ebke, District 32, Saline, Jefferson, Thayer, Fillmore, and a little bit of Lancaster County.

COURTNEY BREITKREUTZ: I'm Courtney Breitreutz, I'm the committee clerk.

SENATOR CRAWFORD: Thank you. Also assisting the committee are committee pages, Donnie Earl from Lincoln, who is a political science major at UNL, and Colin Loberg of Wayne, who is economics major at UNL. This afternoon we'll be hearing four bills and we'll be taking them in the order listed outside of the room. On each of the tables in the back of the room you'll find green testifier sheets. If you're planning on testifying today, please fill one out and hand it to Courtney. When you come up, this will help keep an accurate record of the hearing. If you do not wish to testify but would like to record your position on the bill, please fill out the white sheets in the back of the room. We'd ask if you have any handouts that you please bring at least ten copies and give them to one of the pages. If you need additional copies, our pages could help make more. The testimony for each bill will begin with the introducer's opening statement. After

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the opening statement, we will hear from supporters of the bill, and then from those in opposition, followed by those speaking in a neutral capacity. The introducer will then be given the opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first name and last name and please spell them for the record. We typically do not use the light system if we have fewer than 15 expected testifiers in the Urban Affairs Committee, but we'd ask that you still try to keep your testimony under five minutes and avoid repetitious testimony if possible. I'd remind everyone, including senators, to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB197. Welcome, Senator Scheer.

SENATOR SCHEER: Thank you, Chairwoman Crawford and the rest of the committee. I appreciate the opportunity to introduce a bill. My name is Jim Scheer, S-c-h-e-e-r, representing the 19th District in the Legislature. I come before you today to introduce LB197. It has to do with sanitary improvement districts. There are a number of SIDs throughout the state, but this deals with certain circumstances that aren't necessarily inclusive of the more metropolitan areas. It was brought to me by two SIDs within my district. They both fall outside of the city jurisdiction; they both fall actually outside the county of which Norfolk is located. They are in Stanton County, not Madison County. They're both old enough that they don't have covenants or rules to actually run themselves with. It would be nice if they did, but they don't and so when we looked, say, well, gosh, they should have that and we don't want to help them, they have nothing to fall back on. So what this is...what this bill is basically asking you to do is to allow SIDs in certain circumstances that want to have their specific powers, for example, making sure that the citizens in those SIDs that scoop their walks, or that they keep their animals on leashes or in a fenced area, or that the cars are parked appropriately. We're not looking for police powers but just some, what we would call, regular maintenance powers. These powers would only be in effect if they were approved both by the city that it would be in its jurisdictional area, so in this case, these two, they're within the jurisdictional area from the zoning standpoint of these SIDs, they're within the four mile. And it was also, it has to be, as well, approved by the county commissioners or supervisors of the county that it may reside in. So in the case of the two that I'm speaking of directly, you would have to have both the city council approve whatever powers may be provided to them, and those would also have to be approved by the county that it resided in. It's not trying to make cities out of SIDs, but these SIDs are not getting as much service as they want, as they need, mostly because of budget constraints. I'll be real honest. We've reduced funding to most counties and municipalities. It's too large and it doesn't produce...it's not the right base that the city of Norfolk has any intent or interest in absorbing them as part of the community. And so they're sort of left out in the never-never land and they don't want to incorporate. They don't want to go to the expense of having to have all of the things that a city would have. They just would like some, what I would call, maintenance type provisions that would allow them to at least keep it in orderly and productive part of the community. And with that, I would try to answer any questions. [LB197]

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SENATOR CRAWFORD: Any questions? All right. Yes, Senator McCollister. [LB197]

SENATOR McCOLLISTER: Thank you, Chairwoman and welcome, Senator Scheer. I'm trying to harmonize what we're doing in this bill with LB324, which is the fourth bill that we'll hear today. And over the years, as many as 65 years, SIDs have gained specific powers and the bill, LB324, this afternoon will give SIDs the right to collect garbage if they want to. It would be permissive legislation. Do you see any conflict here between the bill that we're proposing...you're proposing versus what the LB324, and you may not be able to answer this question. [LB197]

SENATOR SCHEER: Well, I'm not familiar with LB324, but taking at what you've told me, I see a big significant difference is that LB324 is saying as long as they agree that's what they want to do, they can do that in reference to collecting garbage. My bill doesn't give them that ability at all. Not only does it have to get their approval of the community or a city that's within its jurisdictional area, and if it's not, then it still has to get permission from the county that it resides in. So, there is an overlap of jurisdiction that is there now and it continues to be by granting any additional powers that they may request. Bear in mind, just because under this legislation if you're the county commissioners, or in the case of the two that I'm speaking of, if you're on the city council, I can say, gee, we would like to have...hire a part-time animal control specialist just to make sure that we can keep dogs or cats or whatever else might be around there. The city of Norfolk, or Stanton County, either one could say, nope, I don't think we really want to do that. One or the other, they both have the same amount of veto power. So it is to me not real similar at all to what you're speaking to in LB324 because I'm not trying to circumvent the authority that is already over...that's covering these entities. They have to work with those but at least it's permissive and allows the county and the cities to allow...to provide those SIDs with some additional abilities to have a better community because they have a lack of jurisdiction within their own specifics. They don't have any covenants or anything to govern themselves by. I mean, it would be different if they can say, well, covenants says everybody has got to have a fence and the dog has got to be in the fence. They don't have that. So even if they have no recourse, so if somebody is letting their pitbulls run all over the place...probably that's a bad...dog running all over the place. They have no way to either try to have the resident put a fence up to control it or even tell them that it has to be controlled. They don't have that authority within an SID and so they could go then to the city and say, would you mind if we had this type of enforcement. The city says, yes, then they could go to the county and say, okay, the city has said that they wouldn't mind letting us have this, would you as well? And if they say yes, then that SID would be able to have that specific power, but only if both of those entities were to approve it. [LB197]

SENATOR McCOLLISTER: I think I understand. We'll work to try to reconcile or at least aid in my understanding of that... [LB197]

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SENATOR SCHEER: There you go. [LB197]

SENATOR McCOLLISTER: ...I think, problem. Thank you, Senator. [LB197]

SENATOR SCHEER: All right. Thank you. [LB197]

SENATOR CRAWFORD: Thank you. Other questions? Yes, Senator Hughes. [LB197]

SENATOR HUGHES: Thank you, Senator Crawford. Senator Scheer, looking at the map that is provided in our book here, it looks like the extraterritorial jurisdiction of Norfolk kind of cuts through a portion of an SID. Would it be your intent that if half the SID is within that, they would have to talk to a portion? [LB197]

SENATOR SCHEER: Absolutely. Absolutely. [LB197]

SENATOR HUGHES: After more or any portion of...? [LB197]

SENATOR SCHEER: Any portion, they would still have to get, you know, the permission. [LB197]

SENATOR HUGHES: Okay. I just wanted to know what your intent was. [LB197]

SENATOR SCHEER: Well, the intent would be if any portion and regardless of just these two, and in the other instances if any portion, the intent of the introducer is that any part of an SID that falls within the jurisdiction of a city or village, whatever, that jurisdiction might be because they had different miles of jurisdiction, any part of that SID then would have...required the approval of that village or community as well as the county. [LB197]

SENATOR HUGHES: Yes. Thank you. [LB197]

SENATOR CRAWFORD: Other questions? So you've stressed the restrictions in terms of municipal approval, county approval... [LB197]

SENATOR SCHEER: Uh-huh. [LB197]

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SENATOR CRAWFORD: ...but another key restriction that you have in the bill is that it happens to be an SID that's in an area that just cannot be incorporated because of its location compared to county and city lines, it happens to be in a no-person land or something. [LB197]

SENATOR SCHEER: Right. These are sort of different beasts than you are probably familiar with around the Omaha metropolitan and the Lincoln area. Those are usually developed so that at some point in time they will be absorbed. That's not the case of either of these. [LB197]

SENATOR CRAWFORD: So I wondered if you had known...if you had been involved in any discussions with the closest municipality or, you know, in the county in terms of other agreements or ideas that had been thrown around of ways to address animal control, for example. [LB197]

SENATOR SCHEER: Well, their idea of a solution is exactly what I'm presenting. The city of Norfolk, the county of Stanton, and the SIDs jointly have brought this to my attention and that was specific so that everyone still maintained the ability of control. The city is not giving up any ability of control. The county is not. The SID just has a formal way to request those type of services. [LB197]

SENATOR CRAWFORD: Okay. And all three of those entities were involved in this discussion? [LB197]

SENATOR SCHEER: Uh-huh. Yes, ma'am. [LB197]

SENATOR CRAWFORD: Thank you. Other questions? Will you be staying to close? [LB197]

SENATOR SCHEER: No, hopefully. I don't expect a large influx of people. [LB197]

SENATOR CRAWFORD: All right. Thank you. Thank you. We'll now move to proponents of LB197. Welcome. [LB197]

MICHAEL NOLAN: (Exhibit 1) Thank you, Senator Crawford, other senators in the committee. My name is Michael Nolan, spelled N-o-l-a-n. I'm the executive director of the League Association of Risk Management, which is associated with the League of Nebraska Municipalities with an interlocal agreement and provides public risk management and insurance services for over 106 Nebraska municipalities or local subdivisions of government, including Woodland Park SID and some of the other communities that I'm going to mention in my testimony. I've given you a fact sheet. What I'd like to do is to focus really on the components

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that I've put in the fact sheet because I think that those are important for you to understand the context of this. This is something that this community, which is really as much a part of Norfolk as anybody who lives within the incorporated limits of Norfolk, has been trying to deal with on at least two or three occasions, including the last couple of legislative sessions. And you can see from the fact sheet really why it's pretty much part of Norfolk. It's got a school that is affiliated with the Norfolk Public School District. Senator Scheer would know that because he was on the school board then. And I didn't disclose this to you, but in a prior life I was the city administrator of Norfolk for 28 years, and Senator Scheer was the second mayor I worked with. So I know as much about Norfolk as he does and not nearly as much about the Norfolk Public Schools, but it's the community that really is part of Norfolk and has a whole lot of people who work for Nucor Steel there. And, of course, Senator Krist gave me an epiphany the last time we had this discussion about the fact that villages were the only ones that he could find historically that had the authority to annex across county lines, although I will tell you that the city of Tilden is located in two counties. There may be some others that are out there that are like that. Having said that, even if Norfolk could annex across county lines, Stanton County is not contiguous to Norfolk in a way that annexation statutes read. It's supposed to be contiguous before you can annex it. The other situation that's not...that's a real problem for this is that it's too close to Norfolk to really be incorporated as a city of the second class. That was a requisite population for that. You have to be at about 800 population to get up to the city of second class but it's too close. And if that was rectified in statute, I'm sure you would see that Norfolk would object to that and probably the League would too because what you'd be having then is kind of retail border bleeding happening between the two locations insofar as sales tax is concerned. The long-term solution, just me speaking here because all of these people are my clients and sometimes they don't like each other, would be some solution where the Legislature would see, you know, they are a part of Norfolk and if we could at least create the mechanism where they could come to the table with each other and decide for themselves if they really wanted to have that annexation occur, where it was mutually agreeable on both sides, that's what would make sense. But I don't see that happening very soon. And here's what you have that it's just...you can't make this stuff up because these kind of little anomalies happen all the time in our public life. But here you have a community that's got almost 2,000 residents in it, and it has to rely on the Hoskins Rural Fire District, which is one of my clients, which is run by the Village of Hoskins that has 285 people in it because of the way these statutes are written. It just doesn't make any sense that that is the case. Now, there have been some, what I would call, sibling quarrels that have happened over time and one of the most recent ones between SID 1 and the city of Norfolk has had to do with the fact that the city of Norfolk provides the SID with its interceptor sewer so that their waste can go down to the city's wastewater plant. And that quarrel has been going on for a couple of years and I think that probably would have some impact on whether or not the two entities would want to really talk about annexation if that was lawfully possible. Having said all of that, and if you look at this, I mean, it's just absurd that we haven't been able to get this thing solved up to this point in time. But if we don't solve it, there they are left, they're 12 miles...15

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miles from Stanton, so they can't get fire service from Stanton. They can't get any of these little police services that really make sense from Stanton. Stanton County has got enough problems just managing its own roads budget and its law enforcement budget. But the city and Stanton have had...excuse me, the city and Woodland Park SID have had historically, a couple of interlocal agreements where they tried to work these things out and I think some of these other issues may have created a problem. But the reality of it is, the SID wants to do this stuff on its own and I just can't, for the life of me, see that it really creates a big conflict for Nebraska public purpose to allow them to do that. So I hope we can solve that problem. And I'll disclose what my interest is on the last bulletin on what I gave you as I ensured most of these little entities, including the big entity, the city of Norfolk. So I obviously have a strong interest in seeing that they get along because sometimes when they don't get along, I may end up having to defend one of them against the other and I would prefer not to be in that position to do that. So I would answer any questions if you have any. [LB197]

SENATOR CRAWFORD: Thank you, Mr. Nolan. Questions? Thank you. I appreciate your testimony. Thank you. [LB197]

MICHAEL NOLAN: Thank you. [LB197]

SENATOR CRAWFORD: Other proponents of LB197? Welcome. [LB197]

LYNN REX: Thank you. Senator Crawford and members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First of all, I'd like to thank Senator Scheer for introducing LB197. This is the second time that this measure has been before this committee and I'm pleased to report to you that the parties involved agree with this. This was a negotiated agreement thanks to the leadership of Senator Scheer and also with the encouragement of this committee to come up with a resolution. And LB197 reflects that resolution. If you look on page 6 of the bill, this is page 6 of LB197, you will see that there are four condition precedents to which this would apply. This is not a closed class. There may be other SIDs along the way that may also fit into this category, but these four elements are as follows: On line 28, page 6, line 28, it's located in the county with a population greater than 5,000, less than 8,000. Number two, on line 30, located in a county different from the county the municipality within whose zoning jurisdiction is located. Three, and this is on page 7, line 1, page 7, line 1, unable to incorporate due to the proximity of municipality, and then four, on line 2, unable to be annexed because of the location as well. And then you'll note, as Senator Scheer noted, that in the next paragraph, lines 5 through 15, that new language underscores four very limited powers, additional powers that the SID would have. And we think that this is...I mean, obviously, the city of Norfolk is in agreement, the SID is in agreement. They worked hard to try to come up with a consensus on how to resolve this. And we really appreciate Senator Scheer

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moving this forward and hope that the committee will advance it so that this is one of those bills that could be a consent calendar bill in the event that we have consent calendar this year. Senator McCollister, in answer to your question, because it amends the same section, Section 31-727, is your bill of LB324. So if you would look at page...this would be page 3 of LB197, this is Senator Scheer's bill, page 3 of LB197, the language, and it's in a little bit different lineup than what is already in LB324, Senator McCollister, but basically that would be inserted somewhere probably on line 20, 21. And assuming both bills would pass, then they just simply they...with the Revisor's Office incorporate them both together when the statute is being...there's no conflict. The Legislature...or pardon me, the Revisor of Statutes just simply when the new statutes are printed puts them both together, indicates at the very bottom that they're two different bills that amend this section, and I do know on your bill that there's an amendment pending. There's some concerns that I've expressed, with that amendment I think covers that. [LB197]

SENATOR MCCOLLISTER: Thank you very much. [LB197]

LYNN REX: So in any event there would be no conflict in the event that both bills comes forward. I'd be happy to respond to any questions that you might have but again, underscore the fact that this is a compromise that's been in the making for a long time and we appreciate Senator Scheer's leadership in making this happen, and also the committee's urging as well. [LB197]

SENATOR CRAWFORD: Thank you, Ms. Rex. Questions? Senator Krist. [LB197]

SENATOR KRIST: I think it's an inventive way to solve the problem. I think that we had a hearing, Mike will talk about it, from last year and Senator Scheer's aware there were some reasons why it probably couldn't happen the way it was presented last year for many reasons. Last year, right, not the year before? [LB197]

LYNN REX: It was, yeah, the year before, yes. [LB197]

SENATOR KRIST: And I don't...you know, you belayed my concern about closed class any special legislation. We obviously have others that would need to be there. I guess just an editorial comment. As I remember the hearing, one of the reasons that people wanted this to happen was regulating parking and barking dogs in the streets and all those kinds of things. So maybe they need police authority as well because when this SID starts to tell people they can't park where they want to park, and your dog can't bark, then where do you see the teeth in this process. Are we going to be now asking Norfolk or Stanton or somebody to respond in terms of the county officials, or do you see any danger in that? [LB197]

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LYNN REX: Well, I think in terms of...I mean, I think it would be inappropriate to give SIDs full police powers. [LB197]

SENATOR KRIST: Oh, I'm being facetious, don't...I don't want anybody carrying a gun. But how do we resolve those kinds of things? [LB197]

LYNN REX: Well, for example, I know the reason why...as it was explained to me, the reason why they want to regulate, this is on line 11, page 7 of the bill, regulate and provide for streets and sidewalks, including the removal of constructions and encroachments. That's for snow removal and things of that nature. If they've got contracts for that they can address it. This just gives them the power to do that. And I do think that that would be...that's very appropriate. [LB197]

SENATOR KRIST: Okay. Well, good luck, SID #1. [LB197]

SENATOR CRAWFORD: Other questions? But in terms of what the dogs and other animals, there would have to be some kind of administrative ability to do that. [LB197]

LYNN REX: On the complaint basis, I'm sure that they would be calling the Humane Society if they have a dog running loose or something of that nature. And a...and by the way, all of this would be coordinated with the city of Norfolk in this particular case, because Norfolk is the city and the county that's different from the location of where the SID is. So, basically before any of this happens, the city of Norfolk has to agree, the SID has to agree. They will agree based on everything that we know. So as a consequence, Norfolk would then agree to basically help them assist on the enforcement side. [LB197]

SENATOR CRAWFORD: Thank you. Other questions? Thank you, Ms. Rex. [LB197]

LYNN REX: Thank you very much and we hope that this can get advanced right away so we can get...hoping for a consent calendar. So, thank you. [LB197]

SENATOR CRAWFORD: Thank you. Other proponents of LB197. Is there anyone wishing to speak in opposition to LB197? Anyone wishing to speak in a neutral capacity on LB197? [LB197]

BRIAN DOYLE: Good afternoon, Brian Doyle, B-r-i-a-n D-o-y-l-e. I'm here on behalf of the Eastern Nebraska Development Council. It's a group of developers, home builders, engineers, and attorneys involved in the development industry. My law firm also represents approximately

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150 different SIDs. The vast majority of them wouldn't be affected by this as they're located in Douglas and Sarpy County. I think it's...I think Senator Krist pointed to one of the concerns that we have with this bill. First of all, we're testifying in a neutral capacity, neither in favor nor against. I think it's important to recall that SIDs were created as a very limited purpose entity. The historic purpose of an SID was to install infrastructure and to maintain it. Very specifically the right to have police powers and enforcement powers has always been left out of the SID statute. This would be the first time ever that any SID was granted the authority to use police powers. We're certainly sympathetic to these...I believe you said two SIDs that are affected by these problems, but when you get down to it, it really does appear that this is a case of special legislation. It's a bill targeted for two specific SIDs. Of all the SIDs that we represent, I'm not aware of a single one that would qualify for these standards. It says if these qualifications were written specifically for one, to me that sounds as special legislation. I wish I could come here and tell you a better or an alternative solution and I've thought about this quite a bit and unfortunately, I don't have any great groundbreaking idea today. But I do want to caution the committee on advancing a bill that would expand SID powers outside of the traditional realm that they've landed in. I'd be happy to answer any questions if you have any. [LB197]

SENATOR CRAWFORD: Thank you, Mr. Doyle. You just took one of my questions. (Laughter) Other questions? Thank you. [LB197]

BRIAN DOYLE: Thank you. [LB197]

SENATOR CRAWFORD: Anyone else wishing to speak in a neutral capacity on LB197? Would you like to close, Senator Scheer? [LB197]

SENATOR SCHEER: Not to burn a lot of your time up, I would just simply say that it's not special legislation. I mean, I've got two within four miles of Norfolk. Now there may be others and maybe it's only two, but as far as I know, two is not special legislation, one is special legislation. And from the vantage point of, you know, not allowing this, it's permissive. You're giving the city and the county the ability to allow SIDs to provide this. So, from the vantage point problems that may become encountered, you know, you've got three separate entities that are all agreeing upon something and hopefully they agree upon it, it's a workable situation just as Senator Krist has about enforcement. If they're going to allow, for example, the animal portion of it, animal control, before they do that, I'm assuming both the county and the city is going to say, okay, how are we going to do that? So they very well may contract with the city to do that or the Humane Society, but that would be part of the agreement of allowing that to happen. So, I think that from the vantage point of those items that may be given to the SIDs certainly would be worked out before it actually was instituted. And with that, I would close and ask you, urge you to move the bill forward. [LB197]

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SENATOR CRAWFORD: Do you have time for a couple questions? Couple of them? All right. Thank you. [LB197]

SENATOR KRIST: Sure. [LB197]

SENATOR CRAWFORD: Questions? Yes, Senator Hansen. [LB197]

SENATOR HANSEN: Thank you, Chair. Senator, my question is just over the five to eight thousand population window for the county. I just wanted to get your thoughts of why you arrived at that number, or how you arrived at that number. [LB197]

SENATOR SCHEER: Pulled out of the air. [LB197]

SENATOR HANSEN: Sorry. Thank you. [LB197]

SENATOR SCHEER: Nothing special about them. You want to make it 1,500 to 8,500, feel free. That just...that's a scenario that we came up with. [LB197]

SENATOR CRAWFORD: Thank you. [LB197]

SENATOR SCHEER: Try not to be too broad, not to be too narrow. [LB197]

SENATOR CRAWFORD: Thank you. Other questions? I have just a couple for the record. [LB197]

SENATOR SCHEER: Sure. [LB197]

SENATOR CRAWFORD: So, you mentioned there are two SIDs that you know of that fit. Can you tell us what the other SIDs are? [LB197]

SENATOR SCHEER: I'm not sure of the number. It's known as Eastern Heights. It's an SID to the south of what we've...SID 1 is Woodland Park for people in there. The other one, again, not knowing the number, but it would be Suburban Acres which is to the south of it and again in Stanton County. [LB197]

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SENATOR CRAWFORD: Okay. And in your discussion, I mean, discussions about this is a solution, has the question of enforcement, what that enforcement looks like come up in that discussion? Do you have any sense of what that would be? [LB197]

SENATOR SCHEER: Yeah, exactly as I had said earlier in relationship to Senator Krist's concern, the enforcement will be worked out before the powers are given. So they have talked, for example, about the animal control and just how that would look if the city was going to do that because Norfolk does have a full-time person. But we also have a Humane Society that works with really more of about a 30-mile radius of Norfolk and they may do it on a fee basis as well. So it really...those type of things would be worked out upon the request for that service. [LB197]

SENATOR CRAWFORD: Thanks. And one other question. So you are talking about the city and the county. I'm only seeing the city specifically and maybe I'm missing it in the statutes. [LB197]

SENATOR SCHEER: And I might have missed...that might have been last years. [LB197]

SENATOR CRAWFORD: Okay. So I think it's the city specifically. Okay. I just wanted to make sure it was clear on the record. [LB197]

SENATOR SCHEER: I appreciate the clarification. Thank you. [LB197]

SENATOR CRAWFORD: Thank you. Thank you. Senator Krist. [LB197]

SENATOR KRIST: Yeah, just for the record. Completely different classes of population base, but there's a lot of memorandums agreement between Council Bluffs and Omaha for a number of things, in ambulance services and special services with Humane Society. There's just things you work out with the border and then you're talking about two different states there, so it's a creative way to approach it. I don't consider it to be special legislation. So, you know, I think you did great work based upon where we were a couple of years ago. [LB197]

SENATOR SCHEER: I appreciate that. Thank you. Thank you very much. Any others? [LB197]

SENATOR CRAWFORD: Thank you so much. Appreciate that. [LB197]

SENATOR SCHEER: Thank you very much. Have a good afternoon. [LB197]

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SENATOR CRAWFORD: Thank you. Any letters? No letters. Okay. So that will close our hearing on LB197 and we will open the hearing on LB420. [LB197]

SENATOR McCOLLISTER: Welcome, Senator Crawford.

SENATOR CRAWFORD: Thank you. Good afternoon, Vice Chairman McCollister and members of the Urban Affairs Committee. I appreciate your patience. My name is Senator Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District which includes Bellevue, Offutt, and eastern Sarpy County. As the committee knows, sanitary and improvement districts, or SIDs are a type of political subdivision that's unique to Nebraska. For many Nebraskans the practical effects of living within the boundaries of an SID may not be immediately obvious. People who are new to the state of Nebraska, like many military families that reside in my legislative district, might easily confuse an SID with some other type of special sewer district that's common in other states. Many SID residents are often unaware that while their street address may say Bellevue or Omaha, they can't access other city services such as the public library on the same terms as other residents. Similarly, the election offices in Douglas and Sarpy County regularly field phone calls from angry SID residents who don't understand that since they are outside of the city limits they cannot vote in municipal elections. LB420 is designed to try to address this information gap by requiring that prior to the sale of property located within an SID, the seller must obtain an acknowledgment from the purchaser that they understand the following: One, the property is located within an SID; two, SIDs are located outside of the corporate limits of any municipality; three, residents of SIDs are not eligible to vote in municipal elections; and four, owners of property within SIDs have limited access to services provided by nearby municipalities until or unless the property is annexed by the municipality. Current law requires that sellers of real estate located within an SID distribute the most recent SID annual statement to the purchaser. And there's an example of that, what that statement looks like, the one page statement on the SID in your packet, in your folders. And many standard home buyer forms include an acknowledgement that the purchaser understands that the property is located within an SID. And a copy of the Omaha Board of Realtors purchase agreement is also included in your packet so you can see what that one-line statement looks like on that document. So while these documents are generally helpful to homeowners...home buyers, neither the statement nor the one line in the disclosure really explain the practical effects of living in an SID to someone who is purchasing a home. Prior to introducing LB420, my office did contact the Nebraska Realtors Association to try to ensure that any new requirements in the bill would not add a significant burden to the real estate process. At the suggestion of the realtors, the bill explicitly states that SID acknowledgement may be obtained separately from the standard disclosures required by the Nebraska Real Estate Commission. And also in your folder, you have an example of the standard Nebraska Real Estate Commission disclosures. Since SIDs are heavily concentrated in Douglas and Sarpy County, including the SID acknowledgement in the standard disclosure forms could potentially cause buyer confusion when they're buying

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homes outside of the SIDs because the realtor would have to tell them, ignore those parts, that's not relevant. So the idea is to allow it to be a separate sheet so the realtor can use it when it's relevant and not use it when it's not relevant. And so we allow that in statute that they can do that, a separate form if they would choose to do so. And, again, a copy of what the current disclosure forms look like is in your folder, and the language of what would need to be required in that acknowledgement is in the statute as well as in the comments that I have just included in my opening statement. So I thank you for your time and would be happy to answer any questions that you would have at this time. [LB420]

SENATOR McCOLLISTER: Thank you, Senator. Any questions? Oh, I didn't see you. Go ahead, Senator. [LB420]

SENATOR KRIST: Me? [LB420]

SENATOR McCOLLISTER: Oh, I'm sorry. Senator Krist. [LB420]

SENATOR KRIST: Okay. Thanks, Senator Crawford. Just to add to the bank of knowledge that we have gained here this year and those of us who have been around a few years, what's missing from this is the HOA information. In an SID you can have multiple HOAs. Now if you're building in an SID, the covenants follow the HOA inside the SID, and you're made well-aware of that by the builder who has different parameters and there are some SID inputs into those building. And then the codes in Douglas and Sarpy go back to Omaha or Bellevue or whatever. But a separate problem then we found out the other day was the lack of management in the HOAs by Lincoln. So covenants being projected in terms of sale of property or building property in an HOA. So I would invite you...us...to take a look at the inclusion of some language that warns buyer, buyer beware, as I said several times in the committee meeting the other day, about your HOA covenants and your HOA responsibilities inside the SID and those outside the SID as we found in the Lincoln area. [LB420]

SENATOR CRAWFORD: Interesting. I appreciate that comment. Happy to have those discussions. Thank you. [LB420]

SENATOR McCOLLISTER: Any other questions? Thank you, Senator Crawford. [LB420]

SENATOR CRAWFORD: Thank you. [LB420]

SENATOR McCOLLISTER: Those wishing to speak as proponents. Welcome. [LB420]

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LYNN REX: Thank you. Senator McCollister and members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We are here today in strong support of this measure. I have attended numerous meetings over the years where we've heard complaints from homeowners that are located in an SID who had no idea when they bought into that home area that they were in an SID. And we've had municipal officials who have expressed frustration for decades about being contacted by SID homeowners believing that the city ought to be there to take care of business for them. And the city tries to explain to them, well, you're not part of the city, and where they're located and so forth. So we think that this is just kind of a no-brainer. I think it's a very important piece of legislation and we appreciate Senator Crawford bringing it forward. And we also have no problem, Senator Krist, in adding anything to also make the homeowner more informed about any HOA arrangements that may be there. I'd be happy to respond to any questions that you might have. [LB420]

SENATOR MCCOLLISTER: Thank you, Ms. Rex. [LB420]

LYNN REX: Thank you very much. [LB420]

SENATOR MCCOLLISTER: Welcome back. [LB420]

BRIAN DOYLE: Good afternoon, again. Brian Doyle, B-r-i-a-n D-o-y-l-e, here on behalf of the Eastern Nebraska Development Council. Again that's a group of developers, home builders, attorneys and engineers involved in the development process. We're here in support of this bill. If it goes through, it will make my life much easier as I am a frequent recipient of angry phone calls regarding SID issues and what an SID can and can't do. And oftentimes I have to be bearer of bad news. I think having an informed consumer is certainly a good step forward. This, like Ms. Rex said, this really is a commonsense bill and I'd ask you to advance it today. Thank you. [LB420]

SENATOR MCCOLLISTER: Thank you. We're from the government and we're here to help. (Laughter) [LB420]

BRIAN DOYLE: Thank you. [LB420]

SENATOR MCCOLLISTER: Thank you very much. Next. Any other proponents? Those people wishing to speak as opponents. Seeing none. Those people wishing to speak on a neutral basis. Any letters? No letters. [LB420]

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SENATOR CRAWFORD: So I thank you, and thank the folks who have come to testify and also for the record, Senator Krist raised the question about Homeowners Association covenants. And actually those should already be included in the real estate commission disclosures. So that's already covered. That discussion should already be taking place. This will make sure that the sanitary improvement discussion takes place in that purchase. So, thank you for raising that question. [LB420]

SENATOR McCOLLISTER: Thank you very much and this closes the hearing on LB420. [LB420]

SENATOR CRAWFORD: Thank you, Senator McCollister. We will now open the hearing on LB300. Welcome, Senator. [LB420]

SENATOR SCHUMACHER: (Exhibits 1, 2 and 3.) Senator Crawford and members of the Urban Affairs Committee, my name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature. And I'm here today to introduce LB300. LB300 is a rather simple-looking piece of legislation and it deals with sanitary and improvement districts. For a long time, it looks like back as far as the mid-1970s, the law provided that the board of a sanitary and improvement district had the power to pass all necessary ordinances, orders, rules, and regulations for the necessary conduct of its businesses and to carry into effect the objects for which the sanitary and improvement district was for. And that sounds simple enough, but then comes the "so what." So it passes an ordinance saying, whatever, you can't run your air conditioner cooler down the sewer system, or you've got a area in the SID where you can't speed, or you can't park your backhoe in the middle of the street. Well, all that's part of what would seem to be your powers. Well, you pass it, now what? There is no enforcement language and folks that have been working with SIDs in my area and presently across the state get the big "so what," do something about it. And this particular piece of legislation says, you know what, we need just a little bind of enforcement or it's not going to work. And so it proposes to add that you can pass the ordinances and you can enforce those ordinances by imposing some form of penalty or fine for the violation of the ordinance not to exceed \$500 recoverable with cost. And the amendment that I think is being circulated adds on there, through an action brought in the county court by the district's attorney. So it gives you a mechanism for imposing a fine if somebody says I want to pack...park my backhoe in the middle of the street, or I want to run my air conditioner cooler converter thing down the city...or the SID sewer, or I want to speed through your little neighborhood. And it's a simple enough piece of legislation. It's intended only to affect those areas within the control of the SID and the projects that the SID is authorized to engage in, a copy of which you have in Mr. Baker's letter there where the statute specifically outlines what they can engage in. So it's a simple enough thing. It simply adds enforcement authority to authority that's already there, but is reasonably meaningless without some teeth in it. I'd be happy to answer any questions. [LB300]

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SENATOR CRAWFORD: Thank you, Senator Schumacher. Questions? Senator Krist. [LB300]

SENATOR KRIST: Thanks, Senator Schumacher for bringing it. Explain to me the legal ramifications of...I mean, you're going to...the SID is going to enforce the ordinance by fining them. The fines are limited to below \$500, recoverable with costs. How does that...recoverable with costs, what...by definition what does that mean? [LB300]

SENATOR SCHUMACHER: The...when you get a speeding ticket, you get a ticket for...you pay it off for whatever, \$75 plus costs. [LB300]

SENATOR KRIST: Costs. [LB300]

SENATOR SCHUMACHER: Costs are, I think, in the neighborhood of 40-some dollars now for court costs, a little bit of which goes to the judges' retirement fee. But basically, it's a court cost because once the district attorney walks into the courthouse and says, here is an action against SID resident Jones for parking his truck in the middle of the street, and judge, please have a hearing on him and give him notice to come on in and appear. The court costs lock in at that point. So when the fine is assessed by the court and the judge says, okay, you owe two hundred and fifty bucks because that's what the fine is, the court costs are also assessed against the defendant, much as the case with any criminal case right now, or any traffic case. [LB300]

SENATOR KRIST: So this political subdivision, this SID would be relying then on the county court, or if you're within the ETJ of a district or Omaha court, you would file that action within that court process. [LB300]

SENATOR SCHUMACHER: The amendment that's been circulated specifies county court, not some municipal court. The county court is a court of jurisdiction for those type of offenses. [LB300]

SENATOR KRIST: Okay. Thank you. [LB300]

SENATOR CRAWFORD: Senator McCollister. [LB300]

SENATOR MCCOLLISTER: Thank you, Chairwoman Crawford. Who has the authority, who initiates the process? Let's assume you park your backhoe in the middle of the street. Does any citizen inside the SID have that, or do we have to go to some law enforcement officer to do that...to initiate the process? [LB300]

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SENATOR SCHUMACHER: This is paralleled pretty close to what our criminal system is now. If a law enforcement officer, for example, gives you a ticket, that law enforcement officer doesn't initiate the action. That ticket is turned over to the city attorney or the county attorney who reviews it, presumably looks to make sure that it's a good ticket and initials it and files it. So the county attorney or the city attorney brings the action. In this particular case with the amendment that's been circulated, I believe, it says, it will be in the county court brought by the district's attorney. So the SID typically have their own attorneys or attorney that takes care of conducting their meetings and has a comparable position to a city attorney. [LB300]

SENATOR McCOLLISTER: So as a citizen of the SID, I would initiate the process with the county attorney? [LB300]

SENATOR SCHUMACHER: You would go to the district's attorney... [LB300]

SENATOR McCOLLISTER: Okay. [LB300]

SENATOR SCHUMACHER: ...and say, hey, my neighbor is parking his backhoe in the middle of my driveway and I can't get out and that's...you've got an ordinance saying, no backhoes in the middle of driveways, please do something about it. And at that point, just as though a policemen had gone to the county attorney with a complaint because somebody trespassed or whatever, the district's attorney would initiate the action and presumably the board of the SID would have told the district's attorney, look, go ahead and do this because we passed an ordinance, we want it enforced. [LB300]

SENATOR McCOLLISTER: I understand. Thank you. [LB300]

SENATOR CRAWFORD: Yes, Senator Krist. [LB300]

SENATOR KRIST: One follow-up. Would you be in favor of potentially amending it even further to lay out that process because I think, Senator Schumacher, my experience is, the individual citizen would make a complaint to the SID board during a regular meeting. The SID board would then spend the money with their attorney for every SID member to be making complaints to the individual attorney that may be encumbering the SID's budget in terms of their attorney. And some of them are on retainer so it's no big deal, but can we look at the process to define more clearly what that might look like. [LB300]

SENATOR SCHUMACHER: Well, I think we certainly could, but really if a citizen goes to the SID board attorney and says, look, I've got this particular complaint, at that point the attorney is

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not compelled to file it, just as the county attorney is not compelled to file every complaint the police officer brings in. There's prosecutorial discretion that's inherent in the prosecuting officer's position. If we...if you say, okay, then it's...the prosecuting attorney has got to go back to the SID board for permission on a case-by-case basis and see how that become rather cumbersome because as a practical matter, these SID boards don't have regular meetings. They may meet just a couple of times a year, maybe just one time a year. And so, you basically put that discretion in the district's attorney, but if you feel that needs to be fleshed out some, you know, that's mechanics that can be fleshed out, but I actually don't see any particular need to make this prosecuting attorney's role any different from any other prosecuting attorney's role. [LB300]

SENATOR KRIST: I agree with you. I just think that the way the politics work within the SID, one way or another, that attorney is going to go back to the board or the board is going to have to vote to go to the attorney. So, but we can...let us flesh it out and we'll work with you. [LB300]

SENATOR SCHUMACHER: As a practical matter, you're right. The SID board isn't going to give the SID attorney a blank check to pursue every cat running across somebody's lawn. [LB300]

SENATOR KRIST: Yeah, that's called a cat fight. (Laughter) [LB300]

SENATOR CRAWFORD: Other questions? Senator Hansen. [LB300]

SENATOR HANSEN: So would this be considered a civil or a criminal matter? [LB300]

SENATOR SCHUMACHER: This would be probably considered an infraction, same thing as a traffic ticket. I guess it's a criminal matter because there's a fine being imposed. It's not where somebody is being awarded damages or being enjoined from taking action which would be a civil matter. [LB300]

SENATOR HANSEN: Okay. So this is effectively...this is why I would like to work to clarify the process so we're giving SIDs the power to impose criminal fines and you have their board attorney work as de facto prosecuting attorney? [LB300]

SENATOR SCHUMACHER: Much the same as every little village of 30 people has. [LB300]

SENATOR HANSEN: Okay. [LB300]

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SENATOR CRAWFORD: Other questions? So to clarify in terms of any ordinance authority as the memo that we have from the law office lays out that you distributed, that would be those ordinances that would be related to these conditions A through O. So it's mostly about installing things and contracting and acquiring so it would need to be related very tightly only to those things that SID does. [LB300]

SENATOR SCHUMACHER: Right, because... [LB300]

SENATOR CRAWFORD: So I was just trying to think, though, whether or not even a backhoe in the street would even be the kind of ordinance we'd be talking about. It seems like it would need to be very tightly restricted. [LB300]

SENATOR SCHUMACHER: Right. The power that is referred to already in existing statute, page 2, line 9, and that talks in terms of the objects for which the sanitary improvement district was formed and that letter you have lists out rather meticulously the objects for which they can be formed. So perhaps the side comment about the cat running across the lawn does not work because I don't think there's a cat regulatory purpose for an SID. (Laughter) [LB300]

SENATOR KRIST: We're the Legislature, we can give them one. [LB300]

SENATOR SCHUMACHER: Well, if you want to do that, I'm sure there's some cat hater that would really appreciate it. [LB300]

SENATOR KRIST: Not going there. [LB300]

SENATOR CRAWFORD: All right. Thank you. Other questions? We've had the discussion...several bills, you know, about police authority. You know, what is the power we want the sanitary improvement districts to have, so I appreciate you being a part of that discussion. [LB300]

SENATOR SCHUMACHER: Thank you. [LB300]

SENATOR CRAWFORD: Other questions? Will you be staying to close? [LB300]

SENATOR SCHUMACHER: I think so. I'd like to hear any opposition on it. [LB300]

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SENATOR CRAWFORD: Thank you. So we'll now move to proponents of LB300, please.
[LB300]

RAYMOND BAKER: My name is Raymond Baker, that's R-a-y-m-o-n-d B-a-k-e-r. I'm an attorney in Columbus, Nebraska. I represent several SIDs and probably the guilty person when it comes to your having to consider this matter. Mr. Schumacher has explained it very well. I do want to make one thing really clear and that is, this bill is not intended nor does it give SIDs general police powers. It does limit it to necessary orders...ordinances, orders, rules and regulations for the necessary conduct of this business and appear at the objects for what the sanitary improvement district was formed. And that's the reason you have this list of powers that was distributed to you that are given by statute and any ordinances which the SID pass would have to be necessary for the conduct of its business and to carry out its purposes. So it's rather limiting. The question may be, what's broke? SID 7 in Platte County lies in the south side of the Loup River across the river from Columbus, Nebraska. There's only about 2,000 feet when the Loup River separates the SID in the city. Because of this proximity to the river, it's in a flood plain and it has a levee which it was required to enhance and build, what, several years ago by FEMA, and at a high cost. And it's required to maintain that levee. And it's not appropriate for people to park their cars on the levee. It's not appropriate for SUVs, or whatever drive, on the levee and so on, but there is no way whatsoever to enforce any prohibitions from doing that without this bill. The city of Columbus doesn't have any authority to pass any ordinances relating to the area. It's not within the purview of a county to pass those kind of ordinances. There's no way to enforce those prohibitions. Another matter. The SID has reason to believe that there may be persons in the SID who are dumping their heat pump water taken out of the ground, back into the sanitary sewer system, which, of course, increases the flow and it's not a good thing at all. There is no way to prohibit people from doing that. Program forces prohibitions. Those are the purposes for this bill. At this point in time, the SID really can't do much regarding any of these purposes in terms of enforcing rules and regulations. That's what we're asking for. It doesn't give general police powers. In terms of enforcement, Mr. Schumacher is an ex-county attorney, and I was the county attorney before him. You don't have to have a police officer bring in a complaint. A citizen can bring in the complaint and the way the county attorney works is that the county attorney can go ahead and file it. He makes the decision. I understand the issue regarding going to the board and the influence the board might have on the attorney as a prosecutor. On the other hand, I don't think that would be a big problem in this particular situation. I don't see lots of ordinances being passed. I don't see any tenancy to want to regulate the lives of people and the SID. It requires something to tie it to the property of the SID and abuse of the property SID, in order for the ordinance to be passed in the first place for it to be enforceable. Questions?
[LB300]

SENATOR CRAWFORD: Okay. Thank you. Questions? Senator Krist. [LB300]

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SENATOR KRIST: I don't want to belabor this, but I want to get it on the record. SID #1 in Cass County has within it a homeowners association and it's a Lake Waconda and people were dumping their pool water at the end of the season into the lake. The homeowners association fined them for doing that as part of the covenant within the homeowners association as was granted by a board vote of SID #1. I was involved with that as a member of the homeowners association at the time and it seems to me that it was written in the covenants that the SID owned the lake, the homeowners association owned the...or had basically jurisdiction of the road and the levee and the dike. And I wonder if that...I mean, it sounds remarkably like the situation that you're talking to. [LB300]

RAYMOND BAKER: It's exactly like what I'm talking to except that it's reversed in SID 7. SID 7 owns the levee and the association owns the lake. And if someone were dumping water into the lake, the SID couldn't do anything about it because it's the association's lake, their jurisdiction, and their problem. [LB300]

SENATOR KRIST: Okay. Thank you. [LB300]

SENATOR CRAWFORD: Other questions? Senator McCollister. [LB300]

SENATOR McCOLLISTER: Thank you, Chairwoman Crawford. I'm just making certain we have due process for this...for this when we issue a complaint. So the...let's go through that again just to make sure I understand. So, somebody initiates a process and takes it to the attorney for the SID, is that correct? [LB300]

RAYMOND BAKER: That's correct. [LB300]

SENATOR McCOLLISTER: Then he goes to the county court and then they have the authority to issue a complaint. [LB300]

RAYMOND BAKER: No, he issues...he files a complaint with the county court as the prosecuting attorney for the SID. It's now in the court and the individual that the complaint is filed against is required to appear in court at a date set by the court. [LB300]

SENATOR McCOLLISTER: Is the county court obligated to proceed with...if they don't see any merit in the... [LB300]

RAYMOND BAKER: They can dismiss it. [LB300]

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SENATOR McCOLLISTER: Okay. [LB300]

RAYMOND BAKER: They have jurisdiction and they can dismiss it and very likely, sooner or later, some will be dismissed. [LB300]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB300]

RAYMOND BAKER: Now the county court will provide full due process to the individual charged but it's the attorney for the district who will file the charges. [LB300]

SENATOR McCOLLISTER: Okay. I understand. I'm grateful. [LB300]

SENATOR CRAWFORD: Thank you. Other questions? So, I'd like to just pursue that as the example, so I think you mentioned that one of the problems is people parking on the levee. Is that what I heard you say? [LB300]

RAYMOND BAKER: Yes. [LB300]

SENATOR CRAWFORD: So, so I live in the SID, and I see someone's truck parked on the levee, what happens next? That's against our rules. [LB300]

RAYMOND BAKER: As a citizen you can ignore it if you want to or you can...if this bill passes, you can go to the SID attorney and say, so and so has been parking on the levee. [LB300]

SENATOR CRAWFORD: So I call you, if you're my attorney I call you... [LB300]

RAYMOND BAKER: That's right. [LB300]

SENATOR CRAWFORD: ...and then what happens? [LB300]

RAYMOND BAKER: And so if I'm astute as the prosecuting attorney, I'm going to make sure who did it and it really occurred and I can win it without incident in court. And if I'm confident of that, I can then file a complaint with the county court and the individual is required to appear and defend that complaint. [LB300]

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SENATOR CRAWFORD: Okay. All right. So, there's not a ticket or something, it's just...it's a...you be...a summons... [LB300]

RAYMOND BAKER: Doesn't have to be a ticket. A prosecuting attorney can file a complaint without having an officer bring anything. [LB300]

SENATOR CRAWFORD: Okay. Thank you. Other questions? Thank you. Other people who want to speak as proponents of LB300? Anyone wishing to speak in opposition to LB300? Welcome. [LB300]

BRIAN DOYLE: Good afternoon, again. Brian Doyle, B-r-i-a-n D-o-y-l-e. Again, I'm here on behalf of the Eastern Nebraska Development Council. It's a group of home builders, developers, engineers and attorneys involved in the residential real estate development business. Again, my office represents a large number of SIDs within the Omaha metro area. We do represent a handful of rural SIDs. I want to go back again to the point that historically SIDs haven't had police powers. There is this provision in the state law that allows for ordinances for their corporate purposes and we've always interpreted that to be very narrow within the SID statute. The SID statute authorizes an SID to install and maintain infrastructure. The SID statute does not give SIDs police powers. This bill starts to step into that realm of police powers. I think with some of the issues that have been identified, I actually found the levee discussion quite interesting because I have about a dozen e-mails in my in-box right now from an SID board that I represent that has a levee that has an issue with four-wheelers driving on it. There are solutions available now to that SID. Number one, that SID could post no-trespassing signs. In that case, the county sheriff could enforce if there was trespassers on it. Another option that we're discussing is actually putting in removable bollards, poles basically set in the ground to prevent people from accessing that but having the removable type so that for our own maintenance that we would be able to get in there. I think there's a couple of really big issues here that this bill presents a problem. Number one, it appears that you're trying...the bill is trying to create a quasi-criminal infraction. It's really unclear as written whether it's an infraction, whether it's criminal, whether it's civil. I would know, first of all, criminal infractions can only be created by the Legislature. Local governing jurisdiction can't pass an ordinance creating a new criminal offense. So you instantly have a problem there with it. The second issue that I see here is, number one, it puts an enormous burden on the attorney for the SID to now become a prosecutor. My background is in real estate and development law and civil law and not criminal infractions. I think it would create a tremendous burden on the SID. A third issue, as we were discussing in back, this bill, it arguably imposes a fine. All fines under state constitution, it's my understanding, go to the school district fund, so the SID really isn't going to recover any costs, and frankly, they're going to incur a great deal of cost if they have to hire me or someone else in order to prosecute this. So, while I think the intent here is good, there are so many problems with the SID statute and with the expansion of powers, that we just simply can't support the bill as it

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is. In terms of wanting to find ways to improve SID's ability to have some degree of regulatory authority, I think that's something that we certainly could work with the committee on in the future, but to simply impose fines and create this new prosecutorial scheme, I think is entirely unworkable at this time. So, with that note, I'd be happy to answer any questions. [LB300]

SENATOR CRAWFORD: Thank you. Questions? I just have one. So, in your experience, have you used the no-trespassing county enforcement mechanism before on some piece of your properties? [LB300]

BRIAN DOYLE: Yes. We have put up, for example, warning signs around permanent water detention basins that during heavy rainstorm would retain water to prevent it from going into the sewer system. We put up no-trespassing signs around those. Probably the best example I can give you of a regulatory sign that an SID can use is park closing hours. For example, we have a number of parks that have problems, particularly with teenagers late at night hanging out and causing problems, so we'll post signs, park closed, 11 p.m. until 6 a.m. Once we've posted that, that gives the...either county sheriff, or the local municipality with jurisdiction over the area, the right to enforce that. And that's been effective in the past. [LB300]

SENATOR CRAWFORD: Thank you. Other questions? Senator Krist. [LB300]

SENATOR KRIST: And that has to be a legal sign, you have to...we have to make for the record. I mean, you just can't stick up a sign that says, no-trespassing. It has to be...for example, if I put a sign in an SID that says the speed limit is 22.5 miles an hour, that's unenforceable, therefore it's not a legal sign, therefore, they can't enforce the speed limit. And it's a reminder for residents. They need to slow down, but it doesn't give the county sheriff any jurisdiction to come in and give tickets on a road around an SID. So, that's just the point. That has to be a legally posted sign and there's rights and wrong ways to do that, so. [LB300]

BRIAN DOYLE: Yeah. I entirely agree with that. For example on roads, an SID is responsible for installing and maintaining a road. The enforcement of speeding, for example, is left to the county sheriff, not to the SID. In most residential subdivisions, they actually don't install speed limit signs. It's just presumed that you know because you're in a residential area that it's 25. I frequently have SID board members say, why don't we have these signs? They go and they pay for and install regulatory signs, but those signs are in compliance with county or the local jurisdiction statutes. So they have to meet those requirements. [LB300]

SENATOR KRIST: Right. Thank you. [LB300]

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SENATOR CRAWFORD: Thank you. Senator McCollister. [LB300]

SENATOR McCOLLISTER: Thank you very much, Senator. Now, if you change...let's change the situation and say if you put trespassing sign on there, that would be enforceable wouldn't it? Because there are established laws with regard to trespassing and the fact that the levee is owned by somebody, that would be enforceable, correct? [LB300]

BRIAN DOYLE: It would be enforceable, but to Senator Krist's point, it would be enforceable only to the extent that the no-trespassing sign meets with current regulatory standards. [LB300]

SENATOR McCOLLISTER: Okay. Thank you. [LB300]

SENATOR CRAWFORD: Thank you. Other questions? Thank you, Mr. Doyle. [LB300]

BRIAN DOYLE: Thank you. [LB300]

SENATOR CRAWFORD: Anyone else wishing to speak in opposition to LB300? Thank you. [LB300]

LYNN REX: Senator Crawford, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x representing the League of Nebraska Municipalities. And we just wanted to underscore Brian Doyle's points that he has brought to your attention. Clearly, municipalities don't even have authority to establish criminal acts. That's only in the purview of the Legislature itself. That being said, I think that there's some legitimate issues that are brought forward to you today in this bill. We're more than willing to work with the introducer, Mr. Baker, and this committee to resolve those and I think some of those options may have already been discussed just in the testimony already. But, we do think that there are some issues with the way that the bill is drafted in its current form. [LB300]

SENATOR CRAWFORD: Thank you, Ms. Rex. Questions? Thank you. [LB300]

LYNN REX: Thank you. [LB300]

SENATOR CRAWFORD: Welcome. [LB300]

JACK CHELOHA: Good afternoon, Chairwoman Crawford and members of the Urban Affairs Committee. My name is Jack Cheloha. First name is spelled J-a-c-k, the last name is spelled C-h-

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e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I want to testify in opposition to LB300 today. First of all, I appreciate hearing first from the Senator Schumacher and the proponent on the bill. It helps give me a little clearer understanding of what the purpose of it was. However, at this point, I only have the benefit of seeing the green copy and as I read the bill and as our city attorney's office read the bill, it led to a number of questions. A lot of them started with the letter "W," everything from who, what, when, why, where, etcetera. And, of course, we look at this, if you will, in a whole. You know, this morning, LB266 advanced to clarify, if you will, the nuisance authority of cities. It advanced, I'm sorry, just from General File to Select File. Is that correct, this morning? And so that clarified that, but when we looked at LB300 we didn't know if it was only those authorities granted to SIDs that they would enact ordinances on, or were we going to enact special ordinances relative to nuisance, or as other people have talked about it, was it police powers and criminal type activities. And so that's what led to a number of those questions. And ultimately, as I testified earlier this session on some other bills, in terms of Omaha's extraterritorial jurisdiction, I think the number I gave you was roughly there's 181 SIDs. And so we had a concern if it was going to be extended to certain types of ordinances, and we, the city of Omaha, was going to be asked to enforce them, we were concerned. So it was good to hear, at least the thought process relative to the SID attorney but, of course, you heard problems with that too from attorneys who work in this business. And just because of the number of questions we had, we just felt that we should probably come in and oppose the bill. And if there's a way to work it out, I guess we'd be happy to see it, but if we think it really needs to be defined very narrowly and the language needs to reflect that, to which their intent is, so. I'll try to answer any questions you might have. [LB300]

SENATOR CRAWFORD: Thank you, Mr. Cheloha. Questions? Thank you. [LB300]

JACK CHELOHA: Thank you. [LB300]

SENATOR CRAWFORD: Anyone else wishing to speak in opposition to LB300? Anyone wishing to speak in a neutral capacity? Free to close, Senator Schumacher. [LB300]

SENATOR SCHUMACHER: Thank you, Senator Crawford and members of the committee. As a point of clarification, I think we're in a little bit of semantics of what's criminal and what is a civil situation. Technically, I think some of the comments were correct. Criminal implies that you can go to jail for it. Civil is the fines. Certainly villages and cities have got the ability to say, under their specific authority, you can have a disturbing the peace statute under city law created by the city. Any number of different ordinances that are enforceable by a city. That's not what's asked here. There's no grant of authority from the state to an SID to get into those kind of ordinances, but there is to the ordinances that affect the operation that an SID is perfectly authorized to do. And I think probably the best example today was the heat pump situation. They

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have to maintain a sewer system. People's toilets have got to flush. Somebody is flooding the system where a number of neighbors are running their heat pumps and they're...somebody has got to be able to determine where that's coming from and impose some type of a fine once they figure out which pipe is flooding the system and backing up the sewer system. Highly legitimate. Life assured, you could put no-trespassing signs up on the dike or on some other area. You can do that just as a farmer can put no-trespassing signs up around his farm to try to keep people from hunting on it. Or you can put no-trespassing signs on your lawn to try to keep people from walking on it. The question is, get the city or get the county sheriff to go enforce many of those because the county sheriffs have got better things to do. This is very analogous to a situation that we have in many, many small towns. Used to be there was always a town marshal. It didn't take much to be a town marshal. There also was a town judge. It didn't take much to be one of those either and so there was instant justice when you violated a town ordinance. But as life got more complicated, you had to have a law enforcement officer to enforce those. You had to take it to the county court because you no longer had the local justice of the peace, and life got very difficult. And now we have lots and lots of towns out there with these cute little black books filled with ordinances, everything under the sun, including Cass. And they don't get the sheriff to come in. They can't afford a local policeman anymore. And basically, there's two mechanisms for them to enforce those ordinances. One is the sheriff and the sheriff won't do it. And the second thing is to tell their city attorney, okay, bring your complaint against Joe for having his cat run at large, which is rarely done because it cost money for the city attorney to bring that complaint. So you're not looking at a situation that is nearly as complicated as it looks. You will have ordinances and if the language needs to be put in there, I'm told that the League of Municipalities is willing to work with us on it, just say, okay. What we mean by the ordinances, it's ordinance pursuant directly to what your powers that you've been given. It's not...and since you don't deal with cats, it's not to regulate cats. But legitimately, I think an issue has been brought before your committee, it says, look, we've got a problem. You've got to have a way for this local board who is charged with maintaining a street, or maintaining some street lights, or a levee or a sewer system, to have teeth in its regulations. And this is one mechanism to do it with this infraction type fine of up to \$500. And that's the issue before the committee. I'd be happy to work with the committee. I know Mr. Baker would be happy to work with the League and to ally any of the concerns of the city of Omaha with regard to this, but this is a legitimate thing. It's a real world problem and it would be solved without spending any state money. [LB300]

SENATOR CRAWFORD: Thank you, Senator Schumacher. Other questions? So is it your understanding that right now an attorney for an SID could not necessarily lay a complaint against someone who lives in the SID who is violating the agreement by, perhaps, emptying their heat pump water even...I mean, that's not an action that could be taken now? [LB300]

SENATOR SCHUMACHER: Well, right now, the SID board, I think perfectly well could say, and thou shalt not run thy heat pump water into the sewer system. Okay. They can pass that

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ordinance, and, well, that the city attorney or the SID attorney could bring a complaint to the county judge saying, Joe, is running his heat pump in. Well, there is no penalty. Only thing you've accomplished is running up \$40 in court costs. [LB300]

SENATOR CRAWFORD: But not damages. You don't think there is a case of that? [LB300]

SENATOR SCHUMACHER: No. And I'm not sure, I suppose a neighbor if he got really involved in it, if it got really bad and it backed up into his basement, you might have some type of civil action. But this is just a simple, hey, these guys are doing it, you cut it out or you're going to get a fine. We don't have the ability to impose a fine at this point. The judge, we...the judge has got to be told the range of fine that the local government wants to impose and they don't have authority to do that now, so. [LB300]

SENATOR CRAWFORD: Thank you. [LB300]

SENATOR SCHUMACHER: And if we need to narrow this down to say, and we really mean just in line with your authority, we can do that. [LB300]

SENATOR CRAWFORD: Okay. Thank you. Thank you, Senator Schumacher. [LB300]

SENATOR SCHUMACHER: Thank you. [LB300]

SENATOR CRAWFORD: Do we have any letters? Okay, no letters. Thank you. So this closes the hearing on LB300. All right. And we will now open the hearing on LB324. Welcome, Senator McCollister. [LB300]

SENATOR MCCOLLISTER: Thank you, Chairwoman Crawford and members of the committee. My name is John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r. I'm here to continue our exciting discussion on the authority of SIDs and I'm also offering LB324. In addition to that, we're offering AM280 to LB324. You will find a copy of AM280 in your committee notebook. LB324 would expend the powers of the sanitary improvement districts, or SIDs, who had the authority to make contract for solid waste removal services. There are currently 325 SIDs in Nebraska. More than 80 percent of them are in either Douglas County or Sarpy County. As you may know, SIDs are a form of quasi governmental entity authorized by legislation dating back to 1949. Apparently these entities are unique to Nebraska. SIDs have only the specific powers granted them in the statute by the Legislature. Since 1949 the statutes that pertain to SIDs have been amended at least 15 times. Many of these changes have added to the list of the enumerated powers for SIDs. At first these entities were only intended to facilitate development of suburban

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property by creating a mechanism to finance the cost of building infrastructure such as roads, street lighting, and water and sewer services. Over time, powers granted SIDs have been expanded by adding to their authority the ability to establish an emergency management warning system, to contract for police and security services, and to contract for access to libraries in neighborhood in cities or villages. SIDs now have a list of approximately 14 enumerated powers as outlined in Section 31-727 of our state laws. An SID pays for services and improvements by assessing a tax on property within the district. LB324 would include payment for solid waste removal services, among those items of expense that the tax assessment could include. Conversations with the city of Omaha prompted the decision to offer AM280 to LB324 with the committee's consideration. AM280 would specify that a contract with the company performing solid waste removal services entered into enactment of the provisions...entered into after enactment of the provisions in LB324, would automatically terminate in case of annexation of the SID by city of the metropolitan class. Thus, should the city of Omaha consider annexation of an SID in the future, LB324, as amended by AM280, would give the city of metropolitan class the ability to easily incorporate the SID into the city solid waste collection system without the obligation to continue the SIDs solid waste collection contract. Summarized, current law does not clearly authorize an SID to enter contract for solid waste removal services. LB324 and AM280 would add that authority to the list of existing enumerated powers. This authority would make it possible for an SID to offer a neighborhood-wide solid waste removal service and improve the quality of life for its residents. Would be happy to answer any questions. [LB324]

SENATOR CRAWFORD: Thank you, Senator McCollister. Questions? Senator Krist. [LB324]

SENATOR KRIST: Thank you, Chair. So the city...the impetus behind, just behind the bill is the city of Omaha. [LB324]

SENATOR McCOLLISTER: The amendment. [LB324]

SENATOR KRIST: The amendment. What's the genesis for the actual green copy that you're offering? [LB324]

SENATOR McCOLLISTER: It came from an SID, I understand, in Bellevue. [LB324]

SENATOR KRIST: Okay. And they're complaining about having many vendors. Did they tell you why they thought the SID should be able to do...to blanket the SID as opposed to the many vendors that can come in and do that? [LB324]

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SENATOR McCOLLISTER: Well, apparently there's been some confusion. They wanted to make certain that they had the authority to contract for garbage and it wasn't specifically stated, so they wanted the statute amended. [LB324]

SENATOR KRIST: Okay. So for the record, I would also add that there are complaints in SIDs of having a number of vendors available. It means that you have constant garbage pickup on Monday, Tuesday, Wednesday, Thursday, Friday, which means you have garbage pickup every day in your neighborhood, which is an inconvenience. So I wanted to throw that in there because there really is a legitimate...of legitimate concern. And I understand the city's concern about freezing all the assets and making sure that all of this is in place and I do agree that if we allow an SID to contract for services in their enumerated powers, that upon annexation those contracts would be null and void, so. [LB324]

SENATOR McCOLLISTER: Well, an SID would have the authority to have service every day or weekly, you know, whatever they chose to do. And, you know, what we're saying here is that at which time the city would annex, that all of those contracts would terminate. [LB324]

SENATOR KRIST: I'm adding to the strength of it by saying that I know from my own experience, my constituents are saying, why do we have garbage pickup on...why can't we arrange with those five different vendors to pick up on the same day in our neighborhood and then we don't have constant garbage pickup. So, just for the record. Thank you. [LB324]

SENATOR McCOLLISTER: Should be some accountability in that kind of approach. [LB324]

SENATOR CRAWFORD: Thank you. Other questions? So I would just add to the record, too, we had the interim hearing on sanitary improvement districts over the interim, and this was one of the issues where there was question of confusion and so that was part of the emphasis behind the bill as well is really that discussion about whether...about this contracting authority and making it clear if we choose to do so, that it is a clear authority that they would have. So I appreciate it. [LB324]

SENATOR McCOLLISTER: Well, you know, we've been working with the statute for 65 years and we're now adding to the architectural...the history of this, this interesting statute. [LB324]

SENATOR CRAWFORD: Thank you. Thank you. Now, we'll hear from proponents of LB324. Anyone wishing to speak in opposition to LB324? [LB324]

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JACK CHELOHA: Good afternoon, Madam Chairwoman and members of the Urban Affairs Committee. My name is Jack Cheloha, that's J-a-c-k, last name is C-h-e-l-o-h-a, registered lobbyist for the city of Omaha and I wanted to just testify in opposition to LB324 as written in the green copy. And first and foremost, let me thank Senator McCollister and his staff for letting us know that the bill was introduced and working with us to come forward with an amendment that we were able to offer, give, and take on. And we would be...stand in firm agreement that AM...I want to make sure I have the right number now. I apologize. AM280, is that correct...would solve our opposition to the bill and if AM280 is adopted, the city of Omaha goes away. If I can, let me explain a little bit why we were concerned, or I think Senator McCollister did a good job of saying why. But, in the city of Omaha, we provide through taxpayer funds garbage service to our residents. And because there's 181 SIDs that have been authorized and are located in our three-mile ETJ, and some day they will become part of the city of Omaha as we grow and annex, we didn't want to be, if you will, saddled with existing contracts in those SIDs that could be for a substantial period of years even, where not only would we be paying for garbage service through our taxpayer funds, through our contract we now have with Deffenbaugh, but we would have to honor the existing contract of the SID. And so because of that, we were concerned. We think the amendment takes care of that concern and therefore, once they're annexed we'll be happy to continue to provide garbage service like we do to our other residents. Thank you. Try to answer any questions. [LB324]

SENATOR CRAWFORD: Thank you. Questions? Thank you. [LB324]

JACK CHELOHA: Thank you. [LB324]

SENATOR CRAWFORD: Welcome. [LB324]

LYNN REX: Senator Crawford, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And we're only opposed to this measure as currently drafted as originally introduced and the only thing Senator McCollister, with respect to AM280, is that if you would add other municipalities as well. So upon annexation by any municipality because we do have other municipalities that also have...provide garbage service. Not all do, some do, but that way just does not limit it to a metropolitan-class city, and with that we would actually be in support of the measure. Be able to respond to any questions you might have. [LB324]

SENATOR CRAWFORD: Thank you. Yes, would you like to? [LB324]

SENATOR McCOLLISTER: No, ma'am. [LB324]

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SENATOR CRAWFORD: All right. Other questions? All right. I think there have been discussions about that as well already, so he's been very attentive to talk with other municipalities. [LB324]

LYNN REX: We really appreciate that if they include all municipalities. [LB324]

SENATOR CRAWFORD: Thank you. [LB324]

LYNN REX: Thank you very much. [LB324]

SENATOR CRAWFORD: Anyone else wishing to speak in opposition to LB324? Anyone wishing to speak in a neutral capacity on LB324? [LB324]

BRIAN DOYLE: I think this makes all four of them for me. (Laughter) This is a first for me. Good afternoon, Brian Doyle, B-r-i-a-n D-o-y-l-e, here on behalf of Eastern Nebraska Development Council. Again, it's a group of home builders, developers, attorneys and engineers interested in the development industry. I'm testifying on a neutral capacity here but wanted to point out a couple of issues that we see. I would tell you the multiple trash trucks on multiple days is among the most common complaints that I hear from SID board members. The primary issue that I see here is, most SIDs even if we were to get the highly competitive rate that the city of Omaha pays Deffenbaugh for trash service per house, most SIDs would be unable to afford it under their budgetary authority. I certainly have a large number of SIDs that I represent who very much would like to have trash service, just providing trash service through the SID doesn't prohibit, you know, me as a consumer from going out and hiring a separate trash company. I currently live in the city of Omaha. If I want to hire one of the other trash companies to pick up my trash, I can do that. I, of course, choose not to because the city provides it and I pay taxes for it. But the expansion into services obviously is something that concerns us. It also concerns me that you're going to create a situation with some haves and have-nots where you'll have a number of SIDs that will provide trash service and others that would desperately love to provide it but don't have the statutory authority. So, for that reason, we're staying neutral on the bill. I don't have any major heartburn if it goes forward. It's certainly something that a lot of people really want, but I think you are going to create a situation where you're going to have a number of SIDs angry because they're going to be unable to do it even though they'd like to, so. And also with that, I represent a large number of SIDs. I'm happy to answer any SID-related questions about the current statute, opinions about what it does and doesn't say, so. Thank you. [LB324]

SENATOR CRAWFORD: Thank you. Questions? I have a couple of questions. So one just to clarify what you were just saying, creating haves and have-nots, and you said that some would have statutory authority and some would not. Did you mean some would have budgetary ability

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and not...or do you see something in the statute that provides some SIDs with authority that others do not have? [LB324]

BRIAN DOYLE: No, let me clarify that. Budgetary authority. An SID has an absolute limit of...once it's fully developed, forty cents in its general fund tax levy to pay for ongoing maintenance. Unfortunately, with all the costs of maintenance involved in a number of SIDs, many of them don't have the capacity to pay for it. There are certainly a lot of districts that do have the capacity to pay for it and are absolutely jumping at the opportunity to do it. Unfortunately, I'm going to have to go back and if this does advance and tell a number of residents who will be very excited to know that they can provide one day a week trash service that unfortunately, you don't have the budgetary authority to do it. I'm not sure that's a reason not to advance the bill necessarily, but you're certainly going to stir up a lot of people that will be unhappy about it. [LB324]

SENATOR CRAWFORD: Thank you. So as the attorney who works in this area, I understood that there was a split in terms of some attorneys understanding of whether SIDs think they already have this authority. What is your sense of what you hear in terms of what SID attorneys were...consider in terms of whether or not SIDs could do this. [LB324]

BRIAN DOYLE: I'm aware of some attorneys who believe that the current statute provides for waste removal being an authorized power of an SID. I think if you read the SID statute and you see where it talks about waste, the context of waste is only brought up in terms of sanitary sewage, not solid waste. So I think the amendment clearly clarifies that distinction. You know, my firm, we get this question a lot and over the years we have always advised that the SID statute, that the waste provision applies to sanitary sewage and that's...I believe is very clear. I think that it's been stretched. Unfortunately, when you have clients who want to provide trash service, you'd like to find a solution for them. Unfortunately, we don't believe that the state statute currently allows for that. [LB324]

SENATOR CRAWFORD: Thank you. Any other questions? Thank you, Mr. Doyle. [LB324]

BRIAN DOYLE: Thank you. [LB324]

SENATOR CRAWFORD: Anyone else wishing to speak in a neutral capacity on LB324? Any letters? No letters. So that will close...Senator McCollister, would you like to close? He waives closing. So that would close our hearing on LB324. [LB324]