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Urban Affairs Committee
January 17, 2012

[LB729 LB786 LB864 LB868]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, January 17, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB729, LB786, LB864, and LB868. Senators present: Amanda McGill, Chairperson; Colby Coash, Vice Chairperson; Brad Ashford; Tanya Cook; Bob Krist; R. Paul Lambert; and Jim Smith. Senators absent: None.

SENATOR MCGILL: Welcome to the Urban Affairs Committee the beginning of this legislative session. Go ahead and take this opportunity to silence your cell phones or put them on vibrate so they're not going off while anyone is talking and being a disruption to the official record and the recording. If you're here to testify, there are forms that you can fill out by either door. You bring those up while testifying and hand them over here to our page, Brian, who is with us for the year; he's a student here at UNL. I am Senator Amanda McGill from northeast Lincoln. To my right is Senator Bob Krist from Omaha, and Douglas County I guess is a lot of what you represent now. Senator Coash from Lincoln. Directly to my right is Laurie Holman, our research analyst. To my left, we would like to welcome Senator Paul Lambert; he's new with us this year since Senator Pankonin left. And well, and then Senator Schumacher opted to get off the committee. Hmm. (Laugh) And we're now just being joined by Senator Smith from the Papillion area. Thank you again for all being here, and we will get started with LB729 and Senator Mello. It's appropriate that he launches our committee for the year. [LB729]

SENATOR MELLO: Good afternoon, Chairwoman McGill and members of the Urban Affairs Committee. My name is Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB729 is the first of several bills that I have introduced this session as a result of our LR203 interim study before this committee dealing with the problems municipalities face from vacant and abandoned properties. Vacant properties, both commercial and residential, have long been a problem for Nebraska municipalities. From the south Omaha neighborhoods that I represent to the small villages in rural Nebraska, communities of all sizes face many of the same challenges with regards to vacant properties. In fact, just this past weekend, a vacant property in south Omaha unfortunately caught fire and damaged the neighboring home, leaving one Omaha family homeless. In addition to the effect that vacant properties have on overall property value in communities, these abandoned buildings present serious health and safety risks, including increased risk of flooding or fire. Vacant properties can also contribute to increased crime rates, as abandoned buildings are often used as home base for illegal activities, including drug use, drug manufacturing, graffiti, trespassing--in general, criminal mischief. The current foreclosure crisis has only further worsened the problem, adding the increasing number of homes and businesses to the vacant property rolls. LB729 seeks to provide Nebraska municipalities with additional tools that they could use to address vacant properties. In addition to

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containing the tax increment financing, TIF, provisions in the Nebraska statutes, the Community Development Law currently allows municipalities to designate a portion of their existing property tax levy for community redevelopment purposes. While these statutes appear to allow the demolition of buildings in areas that have been designated substandard or blighted for TIF purposes, LB729 would clearly state that municipalities have the ability to use their community development funds to demolish any buildings deemed to be unsafe or unfit for human occupancy regardless of whether these buildings are in an area that has received a substandard or blighted designation. In addition, LB729 would expand the ability of municipalities to utilize special assessments for vacant properties. In Section 18-1722, municipalities have the existing authority to levy the costs of building demolition on the real estate upon which an unsafe building or structure was located. LB729 simply allows these special assessments to be used to repay bonds issued under the Community Development Law. With that, I thank you for your time and would be happy to answer any questions you may have. [LB729]

SENATOR MCGILL: Any questions for Senator Mello? Senator Coash. [LB729]

SENATOR COASH: Thank you. Thank you, Senator Mello. With the demolition of these buildings, who makes the decision that a building is to the point where demolishing it makes more sense than rehabbing it? At what level is the decision made that demolition is in the best interest of community? [LB729]

SENATOR MELLO: Senator Coash, that's a great question, and that might be best answered by the League of Municipalities. Ultimately, it's determined by the municipal form of government who determines their own codes and ordinances in regards to whether or not certain properties meet certain code standards to determine demolition or rehab. [LB729]

SENATOR COASH: Okay. [LB729]

SENATOR MCGILL: Any other questions? Thank you, Senator Mello. [LB729]

SENATOR MELLO: Thank you. [LB729]

SENATOR MCGILL: First person here in favor of this bill. Ah. Oh, and we've also been joined by Senator Tanya Cook from Omaha. Welcome. [LB729]

SENATOR COOK: Thank you. [LB729]

SENATOR MCGILL: Welcome back. [LB729]

R.E. CUNNINGHAM: Good afternoon. I had to check and make sure what time it was. Rick Cunningham; I'm the planning director of the city of Omaha. That's R-i-c-k. I guess

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my legal name is Ricky, so you can put a y on the end of that. The last name Cunningham, C-u-n-n-i-n-g-h-a-m. Bluntly put, we support this proposed legislation. We see it as being helpful in our continued endeavors in redeveloping and reinvesting the eastern part of the city of Omaha, because that is where we have most of our unfit, unsafe structures, both in northeast and southeast Omaha. And actually some interesting numbers, which I didn't bring those numbers, but they are in the thousands of structures that are unfit, unsafe, and that have, in fact, demo orders on them. And we do tear down some of those, not as many as we should because we don't have the funds in our general fund to do that because of budget constraints. In fact, we had a recent structure that literally was falling down around our shoulders in our downtown area at 18th and Leavenworth. I mean, literally bricks were falling in the street. We had to close the street down and we had to scramble to find the \$140,000 in emergency funds to demolish it. This is a structure that we had a demo order on and that we were trying to work with the owner through code enforcement to get it torn down; and that's generally what happens. The process is we issue notices of--I'm kind of getting to your question--we issue a notice of violation which is based upon the International Property Maintenance Code which we have adopted in the city of Omaha as it relates to housing and buildings and the condition and the way it's maintained. Those code violations can range from just paint, to being structural, to sewage on the floors and improper electrical wires hanging out from ceilings. I mean, these are photos that I've actually seen in structures that we have deemed unfit and unsafe. We generally will issue a notice of violation giving that property owner six weeks to repair, and then we go through a process of trying to enforce that. That can take months; years. We have about 4,000 open cases of violations in the city of Omaha. We have recently in the last two or three years been redoubling our efforts to close those cases. In fact, last year was the first year that we closed more cases than we opened in the city of Omaha. Just to give you some sense, we respond to about 15,000 complaints a year, and that is how we operate in our code enforcement: just by complaints. We don't have the resources to go out and be proactive. We just get the complaints and then go out. And that runs about, through the course, every year that can be either building issues or zoning issues. And then as I said, in 2011, it was the first year that we actually closed more cases than we opened. And we have been focusing, in fact, on cases that we have on the books back to 2003. We closed about two-thirds of those. We have one-third left to close in 2012 as we move to close the older cases. Some of those are demo orders. And when we issue a demo order, it gives the owner the option to repair it, fix it, put it back into good use, or tear it down. And again, we give them time to accommodate that. We go through a process of appeals and so forth with our building board of review, and then it can obviously go to the courts. And usually that takes time before it actually happens, unless the structure is deemed to be so unfit and unsafe; especially, for an example, if a structure has been fire-damaged and the walls are crumbling. Then we will use our very small pot of money to go in and demolish that structure, basically because it is so unfit and unsafe that it needs to be torn down. We tear down about 25 in that program. Now we have partnered with Habitat for Humanity, who is here to talk with you today, on a

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public-private partnership where we have partnered with them with some of our community block grant money, Neighborhood Stabilization Program money, to sort of accelerate that demolition and reconstruction process. And I'm sure that Amanda will fill you in on that. If she hadn't planned on it, she can now since I just set her up for it. (Laughter) Okay. So the lights are not on but basically we do support this as we...as I've mentioned before, we are for, 100 percent, any refinement, additional tools that we can use in economic development, redevelopment, especially as it relates to our eastern part of Omaha which we now kind of consider to be 680 east. It used to be 72nd and east. But from 680, east to the river, we have well over 15,000 vacant, unfit, unsafe, and demolition-ordered properties--15,000 plus. We have the capacity, in other words, to grow within the city to help create a sustainable city, and that's our target. And we can do that within the 680 loop, at least for a larger number than heretofore has been our goal. So another tool, another refinement that we'll be able to use, particularly in the case of being able to earmark these funds for bonds which we might then use on a districtwide basis as we move forward with the south Omaha development plan or the north Omaha village redevelopment plan or revitalization plan as we look in districts that we might then bond to help accelerate, be catalytic in the project. So I'm available for any questions. [LB729]

SENATOR MCGILL: Okay. Thank you, Ricky. Any questions? Senator Cook. [LB729]

SENATOR COOK: I have a quick one. [LB729]

R.E. CUNNINGHAM: Did I answer your question, sir? [LB729]

SENATOR COASH: Yes. [LB729]

SENATOR COOK: Yes. Just a quick one. [LB729]

SENATOR MCGILL: Yes. Go ahead, Senator Cook. [LB729]

SENATOR COOK: Thank you, Madam Chair. What did you do before you had this tool? Was there...did you use CDBG funds to tear down structures? [LB729]

R.E. CUNNINGHAM: Well, we don't have this tool yet. [LB729]

SENATOR COOK: Okay. [LB729]

R.E. CUNNINGHAM: But, yes, we use block grant funds; we use... [LB729]

SENATOR COOK: Okay. Well, not to be presuming on the committee or the Governor or anybody. [LB729]

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R.E. CUNNINGHAM: We use block grants funds. [LB729]

SENATOR COOK: Okay. [LB729]

R.E. CUNNINGHAM: As with any funds, especially federal funds, there are strings. So if we use federal funds to tear down a structure, then we can only put certain things back. [LB729]

SENATOR COOK: Okay. [LB729]

R.E. CUNNINGHAM: That is if we acquire the property too. We also use a program that probably we're not going to see a lot of money on, but we did in the last two or three years: Neighborhood Stabilization Program. That's, again, a federal and state program. We got a pretty good amount of money in there to demolish. When I said we tore down 25 or so structures, that was only general funds. We actually tore down probably upwards of 200 last year; but that was with these other funds, that we were able to basically leverage that. And as you may or may not know, community block grant funds are dwindling. So the availability of those funds for demolition are going to dwindle also. Neighborhood Stabilization Program we do not foresee continuing, so we won't have that fund available either, which was in one year it was about \$3 million--not all for demolition. We also demolished and then built back, so. And then we have a small amount that has dwindled over the year from general funds. It used to be about \$200,000 a year in general funds that we were able to earmark for demolition. Right now, it's \$40,000 for...basically for demolition; and that's truly emergency, emergency demolition. [LB729]

SENATOR COOK: Thank you. [LB729]

SENATOR MCGILL: All right. Any other questions? Seeing none, thank you very much, Rick, for coming down. [LB729]

R.E. CUNNINGHAM: Thank you for this opportunity. [LB729]

SENATOR MCGILL: Anyone else here to testify in favor? He put the pressure on you to give good testimony. (Laugh) [LB729]

AMANDA BREWER: Hi. I'm Amanda Brewer. Do I need to spell my name? [LB729]

SENATOR MCGILL: Yes, or spell it please. [LB729]

AMANDA BREWER: A-m-a-n-d-a B-r-e-w-e-r. And I'm representing Habitat for Humanity of Omaha, and I serve as the executive director. I've been serving in this role for six years and been working with the organization since 1999. I'm here as a

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proponent of the bill. I think it's something. Any tool that presents itself as an opportunity in order to remove blighted structures in our community is a good thing, and this is one more tool that will help us meet that goal. Rick gave you some great numbers; and as you can see, it's pretty shocking to hear the number of vacant and dilapidated properties in the community. Everyone has read in the paper the crime problems that exist. And properties that are blighted and vacant lead to crime and many other problems: gang activity and other things. Removing of blighted property increases the likelihood of investment in the community. And it's my personal opinion, from the work that I've been doing in community development for the past 12 years, until we get the blighted properties out of east Omaha, east Omaha will not redevelop in the way that it needs to. So this bill will help support that. Habitat for Humanity does have a partnership with the city of Omaha. We started, in this past year, 2011, and we are working to tear down blighted properties, acquiring the properties first through donation to circumvent the tax-sale process, which means if it's stuck in the tax-sale process, could last up to ten years with inactivity. We call those dead properties where nothing is going to happen to them for a long time. And so that partnership helps circumvent that process. So we've been able to tear down 40 houses in the first year and secure a clean title of those properties. So that was the partnership that Rick mentioned. [LB729]

SENATOR MCGILL: That's great. I didn't know Habitat tore down houses as well as build them. That's great. [LB729]

AMANDA BREWER: Yes, it's trying to meet the need in the community. And as I said, I really feel that until the demolition/blighted properties problem is solved, we're not going to have the redevelopment that we need in some of our cities, especially east Omaha. [LB729]

SENATOR MCGILL: Any questions for Amanda? No. Thank you very much for coming down. [LB729]

AMANDA BREWER: Okay. Thank you. [LB729]

SENATOR MCGILL: Next testifier. [LB729]

LYNN REX: Senator McGill, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We appreciate Senator Mello introducing this bill. And I think he and other testifiers have done a great job explaining, but I just would like to highlight a couple of things. If you look on page 6 of the bill, on page 6, line 7, they're inserting the word "demolition." And as he explained, this is really more than anything a clarification. Because if you then go to page 12 of the bill, line 12--and this would be an amendment to 18-2107--so page 12, line 21. Page 12, line 21, you'll notice that it already has the words "demolishing unsafe or unsanitary structures." So basically this is a clarification to make everything I think work well within

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the statute to take care of these types of properties. And then of course on page 14 is an express provision which we think is very important. Page 14, lines 23 through 25, "To demolish any structure determined by the governing body of the city to be unsafe or unfit for human occupancy in accordance with Section 18-1722.01." And when you read that in conjunction with Section 3 of this bill, which is Section 18-2124, I think it's very important to note that the special assessment authority that's given here would be very important for us on lines 18 to 19 on page 15. Because what that does is it basically just expands another way in which cities are going to be able to take care of these types of properties. And as has already been stated, if you are living next to one of these properties, it's in your interest in terms of your own property value or safety, if you have other family members and especially kids that are out there, because these become attractive nuisances. So it's very important to give cities the opportunity to do this, and we appreciate Senator Mello introducing the bill and we'd certainly appreciate the committee advancing the measure. Thank you very much. I'd be happy to respond to any questions. [LB729]

SENATOR MCGILL: Any questions? I don't see any. Thank you, Lynn. [LB729]

LYNN REX: Thank you very much. [LB729]

SENATOR MCGILL: Is there anyone else here to testify in favor of the bill? How about in opposition? Neutral? Senator Mello. Senator Mello waives closing. That ends the hearing on our first bill, and we'll move on to LB786. Do we see Senator Christensen in the room yet? Welcome. Whenever you're ready, Senator. [LB729]

SENATOR CHRISTENSEN: (Exhibit 1) Thank you, Madam Chair and members of the Urban Affairs Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB786. LB786 would clarify the law regarding the forfeiture of office for a conviction of a crime in cities that have adopted a city manager form of government and apply the same standard for the committee members that applies to all other elected officials in the state. What brought the need of this bill to my attention were two situations with city officials in the city of McCook, which is in my legislative district, 44. They have a city manager form of city government that currently has its own separate statutes regarding forfeiture of office for conviction of a crime compared to all other elected officials. Two officials had violated minor city ordinances separate from their duties as city officials. But according to what seems the plain reading of Section 19-613, it would require their forfeiture of office, which is a different standard held for all other officials in Nebraska. Section 19-613 currently provides that a member of a city council...member of a council in a city with a city manager form of government who has been convicted of a crime while in office shall forfeit the office. The term "crime" is not defined. LB786 would amend Section 19-613 to clarify that a councilmember forfeits the office if convicted of a felony or of any public offense involving the oath of the office of the incumbent. The new language in LB786 is

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taken from Section 32-560 that applies to every elected office. Section 32-560 provides that "Every elected office shall be vacant...upon the happenings of any one of the following events at any time before the expiration of the term of such office:...(9) Conviction of a felony or of a public offense involving the violation of oath of office of the incumbent." Therefore, LB786 clarifies the standard by which a city councilmember in a city manager city forfeits the office because of the conviction of a crime and adopts the standard that applies to all other elected officials in the state. I have worked with the city of McCook and the League of Nebraska Municipalities on this legislation in which we are in agreement that this is a good first step in addressing the issue. Although this bill addresses an immediate concern about the statutes regarding cities with a city manager form of government, it also raises the issue regarding which crimes lower than a felony should cause an elected official to forfeit elected office. This is an issue that the League and I and other constituents believe deserves further examination through an interim study and a potential bill following this legislative session. But this bill is very necessary to get passed now. The League and the people from the city of McCook will follow me with their testimony and try to answer any specific questions you may have for them. I will end with this, and will be glad to try and address any questions or concerns which the committee may have. Thank you for your consideration of LB786, and I'd urge you to advance it to General File. [LB786]

SENATOR MCGILL: Any questions for Senator Christensen? I'm assuming we'll be hearing more for the record in terms of what happened in McCook coming up next. [LB786]

SENATOR CHRISTENSEN: Yes. And I might say, you know, it only hits ten communities, the current language we've got. [LB786]

SENATOR MCGILL: Yeah, it's very few. [LB786]

SENATOR CHRISTENSEN: Alliance, Chadron, Kearney, Lexington, McCook, Ogallala, Scottsbluff, Sidney, Gordon, and Valentine. [LB786]

SENATOR MCGILL: All right. Thank you, Senator. First proponent. [LB786]

GARY KRUMLAND: (Exhibits 2-3) Senator McGill, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, here in support of LB786. As mentioned, there's a unique circumstance with cities with a city manager form of government, and it's caused some real problems in McCook and has a potential to cause problems in other cities. The law says, as Senator Christensen said, a city councilmember can lose his or her office or forfeit the office for a conviction of a crime. And the question is, what is a crime? What is being handed out is a an opinion issued by a law firm in Scottsbluff who's actually the city attorney for the city of Scottsbluff. When McCook was faced with this, they went

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outside the city to get an opinion; and the opinion basically states, absent a definition of crime by the Legislature, their research shows that crime could be any violation of a law, even a traffic infraction. So you have a situation where you have a group of city councilmembers who could get a ticket for running a stoplight or whatever and could lose their office. So we do think that this needs to be clarified. And, as Senator Christensen said, the language in the bill basically reflects a current law that says it applies to every elected official. So it at least would be the standard that other city officials would have to follow. One of the handouts is just a list of the cities that have a city manager form of government, and I can just briefly kind of explain what that is if you don't mind. City manager forms of government are a separate form of government. The law allowing it was adopted in 1917; and by the way, this language about crime was included in the original law in 1917 when it was adopted, but for some reason it's just now becoming a real problem. What this form of government is, is that the...and it has to be approved by a vote of the people in order to implement a city manager form of government. A five-member city council is elected. The city council then elects the council president who becomes mayor. The mayor is not elected separately. It's elected from within the city council. The city council then appoints a city manager who is by statute the chief executive officer of the city and makes appointments of other officials and is in charge of that and carries out the direction of the city council. It's different than a city administrator which is more common in Nebraska where a city administrator is an official who had administrative duties, but it's in a city where the mayor is the chief executive officer of the city. So it's a little different situation. I know in the 1910s and 1920s there was a push across the country to get more cities to adopt this. The legislation was adopted; and at least ten cities in Nebraska, mostly in the western part of the state, adopted it. But this is a real problem for those city councilmembers in those cities who could forfeit their office just simply for a minor crime. So we would ask the committee to pass this out. And I guess I'd make another suggestion, possibly as a committee amendment, to add the emergency clause so that we can get this taken care of as quickly as possible. And I'd be happy to answer any questions. [LB786]

SENATOR MCGILL: Just to be clear since we haven't brought it up yet, we have two city councilmembers in McCook who have been caught under this. [LB786]

GARY KRUMLAND: Oh, yeah. And there's a couple of representatives from the city of McCook who will be here to talk to you. But yeah, there are two members who were members of the city council who forfeited their office for relatively minor, little offenses that... [LB786]

SENATOR MCGILL: But we'll hearing about those examples? [LB786]

GARY KRUMLAND: Yeah. [LB786]

SENATOR MCGILL: Okay. [LB786]

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GARY KRUMLAND: And then both a current city councilmember from McCook and the city manager from McCook will be here to give you the details about their situation. [LB786]

SENATOR MCGILL: Okay. Sounds good. Any other questions? No. Thank you, Gary. Next proponent. [LB786]

J. JEFF HANCOCK: Thank you, Madam Chair. My name is J. Jeff Hancock, spelled H-a-n-c-o-c-k, and I am presently the city manager of the city of McCook, having obtained that office two-and-a-half months ago. I have a background in city management. I have a certification from the International City Management Association. I have over 36 years in city management in the state of Missouri. Please don't hold that against me. (Laughter) [LB786]

SENATOR MCGILL: We'll try. [LB786]

J. JEFF HANCOCK: I'm here in support of this bill, LB786. And it seems like there's a great deal of interest in what happened in the city of McCook, and I can just briefly communicate that to you, because it all happened when I came. I will not go into the details as far as how it came about and the knowledge that it came about, but let us say that we were in great angst. And so the city council, on their own, sought its own legal opinion. And if you have reviewed that legal opinion, it's a very thorough, inaccurate legal opinion. But as a result of what's occurred, we have two councilmembers, representative really of the young people in McCook: one was 26 and I believe one is 29. One was convicted of a dog running at large. The second was convicted of disturbing the peace. It was brought to the attention, and as a result of that legal opinion, it was communicated that they, at the time of the offense, they were...forfeited their office. So as a result, last night, the city council sought six...sought people to serve, and we now have two new councilmembers that were appointed by the city council. Let us say the other thing is, you can imagine from a standpoint of looking back, from a legal standpoint, the concern of what bills were in effect, what laws were adopted with these councilmembers. So the point is, is that we need to move forward and solve this, because the city of McCook and those ten communities in the western part of the state cannot do business with this law. Our concern is, how can you find people to serve the city council positions? As you well know, that's difficult; and let alone, with this hanging over their heads, that a speeding ticket or something and they have to forfeit their office. I'd be happy to answer any questions that the committee might have. [LB786]

SENATOR MCGILL: Any questions? I don't see any. Thank you very much for coming down to Lincoln. [LB786]

J. JEFF HANCOCK: Thank you. [LB786]

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SENATOR MCGILL: Next proponent. [LB786]

MICHAEL GONZALES: (Exhibit 4) Good afternoon. I'm Michael Gonzales, it's G-o-n-z-a-l-e-s. I'm the vice president of the city council in McCook, Nebraska, and I'm representing the city council. On November 9, about 5:30 p.m., I was getting ready to leave work and I received an e-mail from a county attorney; and the e-mail said: We might have a problem. And the problem was he had been made aware of Statute 19-613. And, as you have heard, it states in that for any crime you forfeit your seat. We have had two incidents. One happened early on in the summer. We had one of our young councilmen had his dog being watched by somebody else. The dog got away. It rushed a couple that was walking. The couple happened to be...one happened to be a police officer. He reported it. They charged him for harboring a potential hazardous dog, a dangerous dog. He was ticketed. He, on his own accord, went to the city attorney; pleaded guilty; paid the fine; thought it was over. Then later on, just this fall, we had one of our councilmembers had gone out for the evening; got home; had some company; had a neighbor report him for disturbing the peace. It wasn't the first time, but after this time the police did charge him. He took it to court. He fought it; he was found guilty and was convicted. And it was right after that that we received this notice that we now have a problem. And so we have been dealing with this for the past two months on what do we do about this. From the very beginning, I am proud to say that the council did not hide this. We took it right out to the public; said we have this problem; we're going to deal with it. Our city attorney at the time thought it would be best if we seek outside council, which we did. We went to the firm from Scottsbluff and they rendered their opinion. We got the opinion back. We gave it to both councilmen and let them read it. One immediately, at the next meeting in December, it was the first meeting in December, he didn't resign but he accepted the fact that his office had been forfeited because it says you forfeit forthwith, which is immediately. He acknowledged that. He said his good-byes and left the council. The other councilman, we allowed him to stay until the next meeting; and then he had made up his mind that he, too, would forfeit his seat. At that time, we advertised for...we had two vacancies that we advertised for. Last night we did select two other members. So it's been quite a turmoil. During this whole time, you can imagine the discussion in the community: what's right and what's wrong; is this fair, is this not fair. I mean, you can imagine if you went and let your dog out the back and it got away, and all of a sudden you had to give up your elected seat. I mean, to me that is a drastic penalty. I can't imagine what went through these young men's minds. And age really didn't have anything to do with this, other than the rest of the council probably wouldn't have been out at night or had anybody over because we're probably in bed at 9:00, but. (Laughter) You know, it's really one of those deals where we would like to see that this be amended and corrected as soon as possible, if the emergency procedure is proper; then get this off the books. And I do feel that as an elected official I should be held at a higher standard than some, but I don't think we should be held higher than a standard of a senator, a congressman, or even the

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president. [LB786]

SENATOR MCGILL: Thank you very much. Are there any questions for the Councilman? No. Thank you for coming all the way to Lincoln. [LB786]

MICHAEL GONZALES: Thank you for having us, and I appreciate Senator Christensen introducing the bill. [LB786]

SENATOR MCGILL: Is there anyone here as a proponent? Anyone else? Anyone here against this bill? Anyone neutral? Senator Christensen waives closing. That ends the hearing on LB786, and we go on to LB868...or did I skip one? LB864. I apologize. Senator Coash, if you would please take the chair while I introduce this. [LB786]

SENATOR COASH: Sure. Okay, we're going to move onto LB864 by Senator McGill. [LB864]

SENATOR MCGILL: Good afternoon, committee. I'm, of course, Amanda McGill here to introduce LB864. This bill transfers certain duties that are currently the responsibility of the city clerk to the city treasurer. These duties relate to keeping records and reporting on the outstanding bonds of the city or village. The information that is needed by the city clerks is kept and generated by the city treasurer, and it will be much more efficient for the treasurer that keeps the records to create the reports. LB864 also expands the duties of the treasurer to require that the treasurer prepare lists of and collect all special assessments. Currently our statutes only require the treasurer to prepare lists of paving and curbing tax. This was brought to us by the League of Municipalities, and they will be here to follow up on my opening to answer any of your questions. [LB864]

SENATOR COASH: Okay. Thank you, Senator McGill. Any questions? Seeing none, we'll start with the proponents. Welcome. [LB864]

KAY DAMMAST: Thank you. My name is Kay Dammast, that's spelled D-a-m-m-a-s-t, and I am the city clerk of the city of Bellevue. The purpose of this bill is to transfer the bond recording duties assigned by statute to the city clerk to the duties assigned to the city treasurer. The bill also clarifies but does not change the requirements of the Records Management Act and the preservation of the minute records of the city. Prior to my appointment as Bellevue city clerk 10 years ago, I served as the city clerk/treasurer for the city of Nebraska City for 19 years. I knew the provisions of Section 16-317 requiring the city clerks of first-class cities to keep records of all outstanding bonds and to include the bonds issued and sold throughout the year on the annual report, which I did. I also met the requirement of making a monthly report showing the amount appropriated to each fund and the amount of warrants drawn on each fund. I never gave it a second thought for performing those duties as described. That was my job. When I became the city clerk of Bellevue, the city clerk as opposed to the clerk/treasurer which

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I held in Nebraska City, it became apparent that I did not readily have access to the bond records that I'm being required to make a report of. The financial records of the city, and including payment of bonds, is handled by the city treasurer who is a part of the finance department rather than by the city clerk. It isn't that these two offices don't work together; we do. We are located side by side in city hall and we interact on a daily basis if not an hourly basis. We work closely together. But all of the information on the payment of the bonds is done by the finance director...excuse me, the finance department of which the city treasurer is a part. It only makes sense that the city treasurer is the most qualified to give account for the bond payments and for the monthly appropriation report of the funds of the city. This bill then, therefore, transfers those duties from the city clerk to those of the city treasurer, which are provided for in Section 16-318. This is most important for cities that do not combine their clerk and treasurer positions. It's probably not even thought about in those cities where it is combined. The bill also provides for the transfer of duties between the clerk and the treasurer listed in Section 17-606 for the clerks and treasurers of second-class cities and villages, simply so that we all operate under the same set of rules. Section 19-1101 contains the provisions for the treasurer of a city or a village having a population of not more than 100,000 inhabitants, which is every city except Lincoln and Omaha, to prepare a statement of the receipts and expenditures of the funds of the city or village for the preceding fiscal year. This section is being amended to include this annual statement of bonds issued and paid that is required currently in Section 16-318 and 17-606. We believe the bill is noncontroversial. It only clarifies and reassigns the duties which are already being performed to the appropriate city official. The committee may want to consider amending the bill by dropping four words. At the bottom of page 2, there is a provision that the city's treasurer be bonded in the amount of \$25,000 or, if the council sees fit, they may require the treasurer to be bonded in the amount of double the sum of money to be in his or her hands belonging to the city. And these are the four words: and the school district. Those four words are actually archaic. The city treasurers do not keep the school district funds anymore; years ago they did, but they no longer do. So that could easily be stricken just to bring the law into modern-day language. I honestly think it is not controversial. We're not asking for anything different. We're not asking you to take any duties away; just switch them to the person that actually has the records to do them. [LB864]

SENATOR COASH: Thank you, Kay. Are there any questions? Seeing none, thank you again. [LB864]

KAY DAMMAST: Thank you. [LB864]

GARY KRUMLAND: Senator Coash, members of the committee, my name is Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. Senator McGill and Kay Dammast did a good job of explaining the bill, so I won't go into detail. But it is from the outside probably not a major bill, but it is important for those city

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officials who are affected by it. And it just makes things more efficient and it works better to give the duties to the people who have the information who are already doing the reports just to include this in their reports. We think it will make things easier for city officials, and we do urge the committee to advance the bill. [LB864]

SENATOR COASH: Thank you, Gary. Any questions for Gary? Senator Krist. [LB864]

SENATOR KRIST: Thanks, Gary. Very simple, this bill doesn't have what I'm used to seeing as the cities of the metropolitan class, the first, the second, the villages, the cities. Am I missing something? [LB864]

GARY KRUMLAND: No, it... [LB864]

SENATOR KRIST: Does this only apply to... [LB864]

GARY KRUMLAND: Well, it applies to cities of the first class, that's in Sections 1 and 2; and it applies to cities of the second class and villages in Sections 3 and 4. And the reason that is, is because this language was in those sections. The cities of the metropolitan class or primary class didn't have similar language like this that we're transferring over. [LB864]

SENATOR KRIST: Is there any reason to include provisions for the cities of the metropolitan class? [LB864]

GARY KRUMLAND: I don't think it applies to them because their statutes are different. This was brought by Kay because it applied to cities of the first class and it had this language giving the duties to the clerk. And so we were wanting to transfer it to the treasurer. And so we did check the other classes of cities and found a similar language in the second class and village statutes. But it really doesn't make any difference to the city of metro and primary class because they don't have similar language in their statute. [LB864]

SENATOR KRIST: Great. Thank you very much. [LB864]

SENATOR COASH: Thank you, Senator Krist. Any other questions? Seeing none, thanks Gary. Any other proponents for this bill? Is there anyone here in opposition? Seeing none, Senator McGill, would you like to close? Senator McGill is going to waive closing. That will close the hearing on LB864. [LB864]

SENATOR MCGILL: We're just buzzing through things today. We'll wind up here with LB868, and Laurie is going to open on this committee bill for us. [LB868]

LAURIE HOLMAN: Good afternoon, Senators. For the record, my name is Laurie

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Holman, H-o-l-m-a-n, and I'm introducing LB868. This bill amends the State Budget Act to authorize cities of the first class to file biennial budgets with the State Auditor's Office and the county clerks. The change from an annual budget to a biennial budget must be approved by voters of the city seeking to make the change. In 2000, the Legislature enacted LB1116 which authorized metropolitan and primary-class cities to adopt biennial budgeting. Extending this to the 30 cities of the first class we have in Nebraska would give them the opportunity to do more long-range fiscal planning and to help stabilize their expenditures and taxes. And this was also brought to us from the League of Municipalities. So they will be able to answer any questions you may have about the bill. [LB868]

SENATOR MCGILL: Just to note as well, since we drafted the bill we've had a request to include second-class cities as well. So we plan on drafting that amendment. [LB868]

LAURIE HOLMAN: Thank you. [LB868]

SENATOR ASHFORD: What does this apply...this applies to...oh, I'm sorry. [LB868]

LAURIE HOLMAN: Oh, no, I'm sorry. [LB868]

SENATOR MCGILL: Oh. Go ahead. [LB868]

SENATOR ASHFORD: Oh, I can just... [LB868]

SENATOR MCGILL: Yeah, I'm sorry. Any questions from senators? [LB868]

SENATOR ASHFORD: Well, I usually deign to ask anything. (Laugh) [LB868]

SENATOR MCGILL: Well, welcome, Senator. First of all, welcome, Senator Ashford. He joined us late. [LB868]

SENATOR ASHFORD: Well, I was going to go into the history of two-year budgeting, but instead of that what I'll do is ask a question. Where we are now is we don't require a two-year budget for primary-class or metropolitan-class cities. Is that correct? [LB868]

LAURIE HOLMAN: It's authorized in statute that they can have biennial budgeting for primary and metro class, yes. [LB868]

SENATOR ASHFORD: Okay. This would authorize... [LB868]

LAURIE HOLMAN: Cities of the first class. And then the amendment would also authorize cities of the second class. [LB868]

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SENATOR ASHFORD: All right. And this is just an authorization. There's no mandate. [LB868]

LAURIE HOLMAN: Um-hum. It would require a vote of the people to change to a biennial budget. [LB868]

SENATOR ASHFORD: Okay. So this would take care of most all the cities in the state then. [LB868]

LAURIE HOLMAN: If they choose, yes. [LB868]

SENATOR ASHFORD: If they choose so to do it. [LB868]

LAURIE HOLMAN: Um-hum. [LB868]

SENATOR ASHFORD: That's all I have. [LB868]

SENATOR MCGILL: That's great. Well, Senator Krist has a question now too. [LB868]

SENATOR KRIST: Well, I was going to save it for whoever was coming up from the League, but why not take it for everybody? I mean, we only have to add villages in this, and we're done, right? [LB868]

LAURIE HOLMAN: That I can't answer. I know the League could give you more information on what the cities have requested, but I don't have that information. I'm sorry. [LB868]

SENATOR KRIST: Thanks, Laurie. [LB868]

SENATOR MCGILL: All right. Laurie jumps out of the seat. (Laughter) We'll go ahead and take proponents, starting with the League to come and answer that question. [LB868]

LYNN REX: Senator McGill, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And, first of all, we appreciate the introduction of this measure and thank the senators for introducing this. I would like to just point out a couple of things referencing the amendment. This amendment we got this morning, and so let me just walk you through what it is and a little bit of background on this. The League has two legislative committees internally. We have one legislative committee that represents all cities of the first class: Lincoln and Omaha; and then we have another legislative committee that represents all cities of the second class and villages. And the first-class cities, this original request came to us from the city of Crete, and the mayor of Crete is here today to talk to you about why

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they want this. And so the original request came from the first-class cities, and specifically Crete; and it was overwhelmingly unanimous that, in fact, that first-class cities have the authority to do this. In our smaller cities' legislative committee, which is again representing about 40 of the members of the second-class cities and villages, when they discussed it, they initially discussed who should be in it, who shouldn't be in it. And the motion that was made is that it would be for first-class cities, that they would support it for first-class cities. They did not include themselves, second-class cities or villages. After that was done, then Gretna contacted our office and indicated that they would like to have the authority to do that. So we're not opposed to Gretna having the authority to do that and we're not opposed to having villages have the authority to do that. But we just brought...we're only authorized to bring forward what our board adopts. So let me just walk you through what we have here. If you'd be so kind as to look on page 4 of the bill, page 4, line 17. This is a definition of biennial budget. So on page 4, line 17, this would amend 13-503. And the amendment now, which has been...which we have a copy of here, basically on line 20 would add the following language, "or a budget by a city of the first or second class"...and you could put "or village" if you want, "second class or a village, that"...and then it inserts other language, "provides for a biennial period to determine and carry on the city's financial...and taxing affairs." And apparently this was drafted by Krista. We didn't ask for this but this is what was drafted I understand. So that's how this language would mean. So it would operate...if you adopt the amendment, it would apply to first- and second-class cities only. If you want to include villages, we're not opposed to that. We've had no request from them to do that, but that doesn't mean maybe you can avoid the introduction of a bill in another year by doing it now. If you'd be kind enough to...almost all the other provisions here are simply harmonizing provisions. You'll know that on page 8, line 10, this is an amendment to page 8, line 10, this does in fact amend 13-506 to basically double the amount in terms of when the total operating budget, and it says "not including reserves, does not exceed \$10,000." That increases it to \$20,000 per biennial period just to make that I think commensurate. And then again if you would be kind enough to look on page 11, Section 8, the rest are all harmonizing provisions. This would...and Section 7 of the bill, this is an amendment to basically 13-509.01. On line 16, again just a "biennial period"--technical. But then on Section 8, this is the provision that requires a vote of the people and how you would put that in place. And again, the only amendment in the language that we have here is that it would apply to second-class cities. We have no problem if you want to include villages. The amendment also strikes on page 12, lines 15 through 20. And this was a Revisor change because they thought that that was already incorporated in the bill as is. So it would require a vote of the people. That could be at a special election. That special election could be held in conjunction with a primary or general election as well. So I know the mayor of Crete is here and would like to talk to you about why they think this is important. We think it is important for planning purposes. It does make it easier for those cities that do have unions to be able to do this. Both Lincoln and Omaha, or certainly Lincoln when they made the vote to do this, I mean one of the major things that they told the citizens was that this does help them in

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terms of long-range planning, helps them on personnel-related issues, and it provides the citizens themselves with an opportunity to know what the city is looking at down the road. They also allow themselves to do what the Legislature does, which is they can have an amended budget statement the second year around if they choose to do that. I'd be happy to respond to any questions that you might have. [LB868]

SENATOR MCGILL: I have a quick question just in terms of, why put it up to a vote of the people? Why do they feel like that's an important thing instead of just making a city council decision to go to that? [LB868]

LYNN REX: Well, you know, frankly I guess if I had my preference I don't know that a vote of the people on something like this is that necessary. [LB868]

SENATOR MCGILL: That's my question, yeah. [LB868]

LYNN REX: I think it gives comfort to people. I mean, it just seems to me that certainly with Lincoln and Omaha the reason is because they're charter cities. We only have two cities in the state that operate by charter, and that's the city of the metropolitan class--the city of Omaha; the city of the primary class--Lincoln. And so they were required to in Lincoln. But that being said, this seems pretty administrative in character. So we certainly wouldn't have any opposition if you take out the voters right to vote on this. To me this is purely administrative. [LB868]

SENATOR MCGILL: All right. Any other questions? Senator Krist. [LB868]

SENATOR KRIST: I know you said it a couple of times but just for the record, I think we'd be remiss if we didn't include all cities, all villages, in the opportunity to do this, because everyone knows, things happen during a budget cycle and the adjustment might be there. Could we just ask you before we exec on this to ensure that there isn't some vehement objection to that someplace; if there isn't some unintended consequences I'm not thinking of? Because it makes sense to me to just to allow everyone to operate this way, particularly if they're going back to get an affirmation by a vote of the people. [LB868]

LYNN REX: I mean, with villages you're only looking at a population range of 100 to 800, although give or take because there are still some villages that are below 100. There are some villages above 800 that had votes to keep and retain that status. So at the end of the day, none of them have asked for it. I don't see anything that is problematic with including them. Again, you might avoid having to come in with a bill down the road because somebody decides that they want to come forward and do this. [LB868]

SENATOR KRIST: Thank you. [LB868]

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SENATOR MCGILL: Any other questions? No. Thank you very much, Lynn. [LB868]

LYNN REX: Thank you very much. I would just underscore though that we...I'm sorry. [LB868]

SENATOR MCGILL: Oh, go ahead. [LB868]

LYNN REX: I was just going to underscore that we would certainly want to keep it though as an option, because I know in the village, villages are struggling to get their budgets done on an annual basis much less trying to do two years. But I could see there may be a village coming down the road that would say this might be something they want to consider. [LB868]

SENATOR MCGILL: Is it a manpower issue or just the size of the city and what kind of revenue...or village, and what kind of... [LB868]

LYNN REX: I think it's all of the above. I mean, many of our villages have one, possibly two people that work there: the city clerk...and even some of our second-class cities have only one other person, and that's the person that takes care of the swimming pool, if they're lucky enough to have one, the streets, and anything else that happens, and that's it. So I think it does come down to that. And a lot of the smaller villages work certainly with their certified public accountants, and they're the ones that actually help them prepare the budget. Because in the smaller villages, most of them do not have paid city clerks or village clerks. These are clearly volunteers. These are folks that are there and do it on their own time, and they don't have the type of skills to put together a pure budget, if you will. And that's why they work with their accountants to do that. But they're very good people who dedicate their time and effort to their little communities. [LB868]

SENATOR MCGILL: They love democracy. [LB868]

LYNN REX: Yes, they do. [LB868]

SENATOR MCGILL: All right. Thank you, Lynn. [LB868]

LYNN REX: Thank you very much. [LB868]

SENATOR MCGILL: Any other proponents? [LB868]

ROGER W. FOSTER: (Exhibit 5) Good afternoon, Senator McGill and members of the Urban Affairs Committee. My name is Roger Foster, R-o-g-e-r F-o-s-t-e-r. I am here on behalf of the city of Crete. I have the pleasure of serving as the city's mayor. I'm in full

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support of LB868. Allowing cities of the first class, by a vote of the people, to move to a biennium budget would give communities the freedom to do long-term planning at a savings to taxpayers. Currently we no more than submit our budget to the state and we need to start planning for the next year. The freedom to plan in a longer term will allow us to make better use of our time, tax dollars, and enable us to dedicate more time to needed projects. We currently make every effort to purchase in bulk, and moving to a biennium budget would offer opportunities to take advantage of this savings. I also see more competitive bidding with the ability to negotiate contracts in a two-year period that would naturally translate into lower costs. Purchasing at the start of a two-year budget cycle would also allow us to protect against inflation in costs we know we will incur over the budget cycle. With respect to labor contracts, which we will be in our first in our city's history that I know of, they can be very time-consuming, and having the ability to negotiate a two-year contract would save time and resources. So I would ask for your support of LB868. [LB868]

SENATOR MCGILL: Thank you, Mr. Mayor. Any questions? Senator Lambert. [LB868]

SENATOR LAMBERT: I see your letter here, you say by the vote of the people. How important is that to you, the vote of the people? Are you comfortable with just saying we're going to go on a two-year budget yourself or your by-council vote? [LB868]

ROGER W. FOSTER: I am. I mean, the council would still...I guess I look at the council as a vote of the people. I think the reason and the thought behind going to a vote of the people was to limit any opposition that there may be to the bill. But, I mean, personally I don't have issue with it if the Legislature would decide that giving that authority to first-class cities and the second, is as it seems that's a request as well. But, no, I would favor that. [LB868]

SENATOR LAMBERT: Okay. Thank you, Mayor. [LB868]

SENATOR MCGILL: All right. Thank you. Any others? Thank you, Mayor, for coming up. [LB868]

ROGER W. FOSTER: Thank you. [LB868]

SENATOR MCGILL: Any other proponents? Any opponents? Neutral? Well, that will close the hearing then on that bill and for the day. Thank you all for coming. [LB868]