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Urban Affairs Committee
February 14, 2012

[LB1001 LB1126 LB1132 LR376CA]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, January 14, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1126, LB1132, LB1001, and LR376CA. 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: Well, real quick, I'm going to start because while I have a quorum, then Senator Cook has to go deal with some matters. Welcome to the Urban Affairs Committee. This is a good time now to turn off your cell phones or put them on vibrate. If you're here to testify, of course, there are forms by both doors you can fill out and bring up with you as you come up to testify, where we will need you to say and spell your name for us for the record. Members of the committee that are here with us right now: Senator Bob Krist from the Omaha area; Senator Colby Coash, the Vice Chair of the committee, he's from Lincoln; and Laurie Holman is directly to my right, she is our research analyst for the committee. Directly to my left is: Senator Tanya Cook, who will be running away from us here for a moment; and then Senator Jim Smith from the Papillion area; and Katie Chatters is our committee clerk. And with that, we are going to use the light system today. About...we're going to give folks five minutes to testify, not quite as stringent as the three that some committees use. But we do anticipate a number of people testifying on a variety of bills today, so we're going to go ahead and use that. Senator Paul Lambert has joined us. Welcome.

SENATOR LAMBERT: Better late than never, right?

SENATOR MCGILL: Exactly.

SENATOR LAMBERT: Sorry.

SENATOR MCGILL: Oh, no, that's fine. And with that, Senator Mark Christensen is here with us to open on LB1126. Welcome. [LB1126]

SENATOR CHRISTENSEN: (Exhibit 1) Thank you, Madam Chair and members of the Urban Affairs Committee. I am Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District, here to introduce LB1126. Unfortunately, LB1126 as introduced does not accomplish the intent as requested of my office by Chris Loeffler, the Perkins County zoning administrator. As sometimes happens, misunderstandings and incorrect interpretations of the current statute led to drafting a bill that does quite the opposite of our intentions. Please accept my apologies for any confusion this may have caused you. I've handed out an amendment, AM1990, which I believe accomplishes the original intent. It strikes the original sections and replaces them with new sections. AM1990 to LB1126 seeks to provide the ability for villages to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

square off and extend their one-mile extraterritorial jurisdiction by requesting from the county to cede up to the next quarter section of land, extending beyond the current extraterritorial jurisdiction. Currently, in Section 13-327, the city of the first class may request from the county to cede land to the extent that the ETJ beyond their current two mile to ETJ. And the city of the second class may do the same by the current one-mile ETJ pursuant to conditions in Sections 13-327. LB1126 would provide similar authority to villages beyond the current ETJ to allow scoring off and provide a clearer idea of where the ETJ, or extraterritorial jurisdiction, ends. I believe Chris Loeffler, Perkins County zoning administrator, sent the committee her testimony, explains their situation very well. I've handed it out...I have handed it to you. I'd be glad to work with the committee and other parties with any concerns that you have, and I thank you for the consideration of LB1126 and urge its advancement in amended form. [LB1126]

SENATOR MCGILL: All right. Thank you, Senator Christensen. Are there any questions? No, thank you very much. At this time, we'll take proponents of the bill. [LB1126]

GARY KRUMLAND: 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, appearing in support of LB1126 and also in support of the AM1990 that Senator Christensen has offered. A law was passed a couple of years ago that allowed cities of the first class and second class to work with the counties where the county could cede zoning jurisdiction to them. And there's a situation specifically around the city of Bellevue where the city of Bellevue pretty much cut off an area that would have been in the county zoning, and both the county and city thought it would be more efficient if the city just did the regulation in that area. So that's where this bill came from originally. This is kind of a slightly different change on that. It extends it to villages, but the purpose is not really to cede the largest amounts of property. It's just that when a city or village adopts extraterritorial zoning jurisdiction, they can go out...cities of the second class can go out one mile, villages can go out one mile, cities of the first class can go out two miles. And if you draw a line around the city limits, you end up with arcs that cut across people's property. And so you may have a situation where if the city is zoning in one part of a person's property and the county is doing another, it creates some confusion. So the city and county try to get together to create the lines around existing section lines or roads or streets, whatever. And if a village could only go out one mile, that means they have to do it sometimes, you know, quarter...or three-quarters of a mile to hit the right lines. This gives them just a little more flexibility to work with the counties to have the specific lines that may occasionally go over the one mile, may occasionally go under the one mile. But it only...the village can only do that with the permission of the counties. The county and the village can get together and determine where those boundaries are. But they are then able to do it on current section lines, property lines, so that they're not dividing property with different regulations. And that's the purpose of this. And it only extends to...villages can only do an additional

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

quarter mile. So larger cities can work with the county and cede larger amounts; a village can only do a quarter of a mile additional under the amendment so that it clearly just applies to make sure that the lines are squared, I guess, rather than have the arcs. And that's the intent. The villages are those municipalities with a population of 800 or less. Be happy to answer any questions. [LB1126]

SENATOR MCGILL: All right. Any questions? No. Thank you, Gary. Are there any other proponents here? [LB1126]

LARRY DIX: (Exhibit 2) Good afternoon, Senator McGill. For the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials, appearing today in support of LB1126 as amended. Certainly we appreciate Senator Christensen working with us in getting this information out to us. This came from one of our zoning directors. And certainly what they're trying to do, Mr. Krumland explained it as well as I think anyone. I just wanted to make sure that since there were some issues that related to counties that we certainly were on the record saying this is absolutely fine with us. It works just fine with what they're trying to do. So with that, I'd be happy to answer any questions you may have. [LB1126]

SENATOR MCGILL: (Exhibit 15) All right. Any questions for Larry? No. Any other proponents? I will read into the record the testimony from Chris Loeffler that Senator Christensen made reference to in favor of this bill. Now is there anyone here opposed to LB1126? Anyone neutral? Senator Christensen, would you like to close? [LB1126]

SENATOR CHRISTENSEN: Just briefly, I'd like to thank you for your time and if the committee sees positive on this to send it out, I would like to try and get it towards consent calendar. Thank you. [LB1126]

SENATOR MCGILL: All right. Thank you very much. All right. That closes that hearing, and we will go onto LB1132. Senator Coash, can you take over? [LB1126]

SENATOR COASH: Okay. Senator McGill, welcome. [LB1132]

SENATOR MCGILL: All right. Thank you, members of the committee. I'm, of course, state Senator Amanda McGill from District 26 in Lincoln, and I'm here to introduce LB1132. The purpose of this bill is to revise the community development law to allow for county board approval of redevelopment projects in certain situations. Current law allows a city to acquire and develop undeveloped vacant land or land that is essential to the proper clearance or redevelopment of substandard or blighted areas necessary for a general community redevelopment program of the city if the land is within the city limits or within a three-mile radius of the city. LB1132 would allow the city to develop land within that three-mile radius without acquiring or annexing the land as part of a community development program if the county board approved the project. Currently,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

county boards do not play a role in approval of TIF projects. And I have a number of people coming up behind me to talk about this bill and situations that have led to the bringing of this bill. [LB1132]

SENATOR COASH: All right. Thank you, Senator McGill. Any questions? Okay. Thank you. We're going to start with the proponents. Welcome. [LB1132]

DAVID LUTTON: (Exhibit 3) Senators, good afternoon. My name is David Lutton, L-u-t-t-o-n. I am here to speak in favor of LB1132. I'm currently a resident of Ashland, Nebraska, and a member of the Saunders County Supervisors Board. I bring with me today a letter from the city of Ashland requesting you to advance this bill, as well as a resolution from the Saunders County Board requesting you to advance the bill. LB1132 makes sense to Saunders County, makes sense to the city of Ashland, and it makes sense to me. I don't know if Ashland is unique in its surrounding, but we have many areas within the three-mile jurisdiction of Ashland which we could use this bill to develop. Specifically to the north of Ashland, we have abandoned sand and gravel pits. They bring in little county revenue right now and do nothing for the benefit of the city of Ashland. It is not currently feasible for a developer to come in and develop these areas, but with LB1132, it could become economically feasible to do so. As the law is currently written, the city of Ashland could set up a project in these areas, but none of the taxes could be shared unless and until such time as Ashland would annex the property. An annexation is not feasible at this time either. LB1132 makes a project work with the coordination of the city and county. Only if such project would make sense to both the city and the county could it move forward. It just adds a weapon in the arsenal of cities and counties to recruit businesses and develop land further. A project such as this makes sense to the city because it can provide infrastructure and services to an area, thereby, adding current income and allowing the city to continue to develop and grow within the three-mile jurisdiction or radius. Even though the city would not receive current tax dollars from the project, unless it was annexed, these projects would benefit Ashland because we would be able to extend our services, water and sewer, to the projects. I'm always in favor of legislation that makes sense. This legislation makes sense. The way the law is written today, it doesn't do any good to the city of Ashland or the county. But the way it's written with the amendment, and it's a very small amendment, but it changes a lot of things for the city and it makes sense. Thank you. [LB1132]

SENATOR COASH: All right. Thank you, David. David, you said that annexation is not feasible for your community. Why not? [LB1132]

DAVID LUTTON: Well, you have to understand that the location right now, the project that I'm talking about is probably two miles outside of the extraterritorial jurisdiction of Ashland. You would have to be able to get to that area in order to annex it, and it's just not feasible with the type of land that is in there right now between Ashland and this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

development. [LB1132]

SENATOR COASH: I understand. [LB1132]

DAVID LUTTON: Most of it sits on the Platte River bottom, which means it's highly floodable and that type of land, and it just doesn't make sense for the city to go out and annex that. [LB1132]

SENATOR COASH: Okay. Thank you, David. Any questions for David? Senator Lambert. [LB1132]

SENATOR LAMBERT: I don't know that I totally understand all of this, but Ashland would be able to go out, put on...we'll use Ashland for an example... [LB1132]

DAVID LUTTON: Yeah [LB1132]

SENATOR LAMBERT: ...put on a TIF project... [LB1132]

DAVID LUTTON: They could propose a TIF project, yes. [LB1132]

SENATOR LAMBERT: ...then would they annex out to it? How would that work? [LB1132]

DAVID LUTTON: Well, initially they would not annex, but hopefully that is one of the goals that this legislation allows is that, okay, if you have an area two miles or three miles out, it gives us incentive to move in that direction with annexation. It allows the city to extend their services out there. So all that area in between, if it is feasible to develop or get to it, we could then go in and annex. [LB1132]

SENATOR LAMBERT: You would extend your services outside the city limits before it was part of the city? [LB1132]

DAVID LUTTON: Well, you have to understand that if somebody comes in with a proposal, it's got to benefit Ashland... [LB1132]

SENATOR LAMBERT: I...yeah. [LB1132]

DAVID LUTTON: ...which is three miles away. If there's no benefit to a city, the city is not going to propose the project. But if the city is able to see that, okay, we're going to benefit by this project because now we can extend our services, which in Ashland's case we're pretty geographically stopped from growing in directions. But if this would allow us to extend our services and give us the way to finance the extension of those services, it's a great win for Ashland. Ashland may never annex it, which is why

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

Saunders County now becomes involved because Saunders County may some day collect the taxes on this. I'll use an example: In Ashland, we have Big Sandy north of Ashland, which is too far to be a part of this. But Big Sandy has brought in, in excess of \$100 million in valuation to Saunders County. If we could do the same thing, and by using TIF in an area that could not be developed, we can gain additional valuation for the county and the city, what a great tool we have. You know, it just really lends itself to our area very well. [LB1132]

SENATOR LAMBERT: Okay. You would...I'm still...I'm sorry, I apologize that I'm not understanding it. [LB1132]

DAVID LUTTON: That's okay. And I'll go back and try to explain it better. [LB1132]

SENATOR LAMBERT: But you would set up a proposed TIF for this area. This is...go ahead, I'm sorry. [LB1132]

DAVID LUTTON: Yeah. What would happen, I would assume, is that a developer would bring plans to the city and say: Hey, we have this area that we would like to develop. But economically we cannot see any way of doing that because it's too expensive for us to put all the infrastructure in. Would the city be interested in allowing us to TIF the project, thereby getting payment or tax dollars to pay for the infrastructure? Well, if the city saw a benefit to it, I'm sure that they would send the proposals to the school district, to the fire, the rescue, everybody involved in something like this. [LB1132]

SENATOR LAMBERT: Sure. [LB1132]

DAVID LUTTON: If the city saw a benefit, at the end, they would then go forward with this. They would contact the county and coordinate this effort with the county. In my opinion, as a county supervisor, it's a great thing. I'm all for additional revenue and development in Saunders County. [LB1132]

SENATOR LAMBERT: And this couldn't be done through a development agreement? [LB1132]

DAVID LUTTON: Not at this time. Well, the development agreement, we'd still have to find a way to fund it, and the only way they're going to be able to fund this development is through TIF dollars. [LB1132]

SENATOR LAMBERT: Well, I mean, the development agreement with the contingency that this will be developed if TIF is available to us. [LB1132]

DAVID LUTTON: Absolutely. There would be a development agreement and there would have to be in that agreement what the gain is for the city of Ashland. They're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

going to have to say, we will allow extension of services or our proposed development will allow you to go out or make the provision for the extended services. Then it's a win-win for everybody actually. [LB1132]

SENATOR LAMBERT: But you think we need this in statute rather than just in a development agreement. I mean, I've seen cities... [LB1132]

DAVID LUTTON: We can't TIF right now the way...the way the statute reads is that it's really a nonfunctioning statute. It says, okay, you can go out and put this proposed development together, city, but we aren't going to let you use any of those funds for TIF unless and until you annex. Well, it could be 30 years before the city annexes this, which means there are no TIF dollars available. This little amendment allows the use of those TIF dollars between the city and the county. It just makes sense. [LB1132]

SENATOR LAMBERT: Okay, okay. All right. [LB1132]

DAVID LUTTON: And I hope I explained it to you. [LB1132]

SENATOR LAMBERT: Well, I know I...I mean, I've been aware of where development agreements come together with the contingency that TIF would be available, and then the city annexes out to it and then it's done. [LB1132]

DAVID LUTTON: Okay. Which is great if there's a feasibility of annexes that far outside the city. Right now in some of these locations, it's just not feasible the way the land lays... [LB1132]

SENATOR LAMBERT: Sure. [LB1132]

DAVID LUTTON: ...and what's between that development and the city of Ashland. [LB1132]

SENATOR LAMBERT: And you're in a...and I respectfully say this, you're in a great situation... [LB1132]

DAVID LUTTON: We are. [LB1132]

SENATOR LAMBERT: ...where the city and the county work together. I'm seeing instances where that doesn't always happen and one could hold up the other, but. And I'm just throwing out everything that's coming to mind for me. [LB1132]

DAVID LUTTON: And I would agree with you, but the way it's written out does no one any good. [LB1132]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

SENATOR LAMBERT: Yeah. [LB1132]

DAVID LUTTON: The way that statute sits, it doesn't allow any advantage to either city or county. At least this allows the two to get together and coordinate if, in fact, it makes sense to them. [LB1132]

SENATOR LAMBERT: Yeah. For instance, bring some common interest... [LB1132]

DAVID LUTTON: Yeah. [LB1132]

SENATOR LAMBERT: ...that maybe they can work together. [LB1132]

DAVID LUTTON: And I'm sure there are counties that don't agree, but...or get together, but we have a good county. [LB1132]

SENATOR LAMBERT: I've heard of them. (Laughter) But, anyway, thank you very much. Thank you. [LB1132]

DAVID LUTTON: Thank you. [LB1132]

SENATOR COASH: Thank you, Senator Lambert. Senator Krist. [LB1132]

SENATOR KRIST: What's sitting in between you and the land you want to TIF on? [LB1132]

DAVID LUTTON: Flood plain. [LB1132]

SENATOR KRIST: So... [LB1132]

DAVID LUTTON: So there's no development potential at all between Ashland and where this development sits. [LB1132]

SENATOR KRIST: But you're willing to talk about TIF money and put all the infrastructure and utilities through the flood plain... [LB1132]

DAVID LUTTON: Yes. [LB1132]

SENATOR KRIST: ...in order to get to the other side of it. [LB1132]

DAVID LUTTON: Absolutely. [LB1132]

SENATOR KRIST: And why not annex that piece of property? [LB1132]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

DAVID LUTTON: Well, if we could find a benefit to the city of Ashland to do it, then I'm sure they would look at doing it. [LB1132]

SENATOR KRIST: Wouldn't annexation be a benefit if you could develop and use TIF money on the other side? [LB1132]

DAVID LUTTON: Possibly. I guess that's something that has to look for. [LB1132]

SENATOR KRIST: You know, there's a real downside to TIF money. You're not going to see any tax revenue from TIF... [LB1132]

DAVID LUTTON: Fifteen years. [LB1132]

SENATOR KRIST: Exactly, and maybe 20 if one of our senators has his way. (Laughter) Yeah. But... [LB1132]

DAVID LUTTON: But you have to remember right now we're not getting any tax dollars either. Unless we find a way to economically make this area grow, we'll never see any additional tax dollars. [LB1132]

SENATOR KRIST: I understand that, but respectfully I'm going to tell you that if you get into a habit of hop skipping over places and doing it, they're going to call you Omaha before too long. (Laughter) [LB1132]

DAVID LUTTON: And we don't...you know, this is a specific project. It makes sense to our county. It gives Saunders County, who is not a very wealthy county, a way to increase our tax revenues. As you know, the state continually reduces the amounts available to cities and counties, and so we need to find new ways of generating tax dollars. You know, it may not make sense to everybody, but in our case is sure makes sense to us. [LB1132]

SENATOR KRIST: Well, and I understand and I don't understand...I don't have a clear picture of the topography and the geography. I'd have to take a look at it. But I'm going to tell you that my experience in the Bellevue and Omaha area is that there are plenty of commercial facilities that are built in flood plains. They shouldn't be, but they are. And I would worry long term that the city, village, townships, that we're enabling to do this would hopscotch and use this to potentially put themselves into a situation down the road that's going to be an issue. As long as the city and the county have thought this out and it's a particularly good relationship, great. But you're not going to be a commissioner for the rest of its history and potentially the city and the county are not going to get along. So I have some reservations about it. I understand the intent. And I just wanted to register a little concern. [LB1132]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

DAVID LUTTON: It doesn't stop our ability as the city of Ashland if we have an industry or somebody that would want to come in and build to annex that area or to go out to it. It doesn't slow that down at all. I think it just gives us a jump-start on that area and allows us to continue to expand and develop in those areas that maybe right now are not feasible to develop. [LB1132]

SENATOR KRIST: Thank you. Thank you, Chair. [LB1132]

SENATOR COASH: David, the TIF money would go to the county then? [LB1132]

DAVID LUTTON: No. The TIF money goes to the developers. The revenue after the 15 years, as long as it's not annexed, would come to the county. [LB1132]

SENATOR COASH: Okay. [LB1132]

DAVID LUTTON: That's...the county really doesn't have anything to lose in this situation because the counties can say, okay, if you annex, it will become cities, but if you don't,... [LB1132]

SENATOR COASH: The county gains it. [LB1132]

DAVID LUTTON: ...the county gains, and we gain anyway because of the increased valuation in Saunders County. [LB1132]

SENATOR COASH: Who...then with the repayment of the bonds, where does that fall then? If the development hasn't been annexed or even if it does, how does that affect which entity that repays the bonds? [LB1132]

DAVID LUTTON: I don't know. I don't know which... [LB1132]

SENATOR COASH: Whoever issues the bonds? [LB1132]

DAVID LUTTON: I'm assuming yes. [LB1132]

SENATOR COASH: Oh, okay. [LB1132]

DAVID LUTTON: And the city of Ashland isn't going to be one to issue the bonds. Probably the developer is going to issue those bonds or buy the bonds or whatever. [LB1132]

SENATOR COASH: Okay. Thank you, David. [LB1132]

DAVID LUTTON: Thank you. [LB1132]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

SENATOR COASH: Any other questions? [LB1132]

DAVID LUTTON: Thank you. [LB1132]

SENATOR COASH: Thank you. [LB1132]

DAVID LUTTON: Appreciate your consideration. [LB1132]

SENATOR COASH: Take the next proponent. Welcome, Larry. [LB1132]

LARRY DIX: (Exhibit 4) Good afternoon, Senator Coash and members of the committee. If I could have a page, I've got a letter of support here from Keith County that I'd like to enter into the record. And, you know, thus far we've had a lot of conversation about, you know, the city of Omaha and Ashland and more folks towards the eastern end of the state. We just came off of our county board workshop and talked specifically about this bill. And I'm here to tell you that it isn't just something that we are starting to see in some of the more metropolitan areas that are more populated areas. There are items that from a county board perspective, we like the idea of this because it does give us a little bit of an additional tool when there are businesses that are looking to move into a community that are not necessarily looking to move inside that community, and so they are in that extraterritorial jurisdiction. And, you know, it's odd...it's always funny. I always hear the conversation about, well, the cities and counties, you know, need to get along and sooner or later, you know, an election is going to come along and they're not going to get along. But I would contend that sooner or later there's an election going to come along and they are going to get along. And it's very cyclical. But, you know, we're pretty much to the day and age where, you know, I think we get beyond the getting along stage and we've got to look: what's the best for the tax base and for the state of Nebraska? And if we can bring some of these businesses in that aren't necessarily inside of a city limit but yet it brings value to the tax base and it brings people and jobs that probably are going to live in the city, then I think it's something that we need to look at because the toolbox for economic development for county government is fairly limited. County boards, for the most part, have the authority. If somebody is going to come in and say, we're going to...we're looking to build this fabulous facility but it's ten miles outside the city, can the county help us from an economic perspective, there's not a lot of toolbox...not a lot of tools in the county's toolbox. We can, in essence, contribute some money to a chamber of commerce or to an economic development corporation, and then it's up to them if they want to pass that money on. So we view this as a step in the right direction for future development all across the state of Nebraska. So with that, I'd be happy to answer any questions anybody has. [LB1132]

SENATOR COASH: Thank you, Larry. Senator Krist. [LB1132]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

SENATOR KRIST: Thanks. I'm just going to give you a hypothetical and it's a concern of mine. The city of Acme decides that they're going to go outside their ETJ and they use this, we pass it; it's enforced. They have a perfect agreement with the county. They start to build the ethanol plant on the other side of the ravine, and basically in between the city and the ethanol plant is a farm, obviously one that won't sell and doesn't want to be annexed or whatever the case might be. Do you see a problem with continuing to allow people to skip outside without the...I mean, if you annex the property and the tax value is there or it's not there...I'm not arguing about the property being...producing revenue, I am simply saying that if a city wants to go to five miles outside the city to build something, then they're going to have to put the utilities through that piece of property to begin with. I see eminent domain. I see a bunch of those things popping up to say, what if that piece of property continues to not be developed? Do you see any of those issues? [LB1132]

LARRY DIX: Well, you know, keep in mind the folks I'm representing from the county perspective, you know, we've had a number of the ethanol plants, you know, built beyond the extraterritorial jurisdiction. And some of those types of properties really don't always require all of the city amenities that come to them. We're looking at it from a point of view of another tool in the toolbox to bring businesses into the county somewhere. And, you know, the example you're giving here, and I'm not familiar with the Ashland example and what lies in between it, but we are seeing more and more businesses that...you know, some businesses are coming in and saying, you know, we're not looking for 5 or 10 acres, we may be looking for a business that is looking for 100 acres. And so we just want to have something to try to entice them to come to our state. [LB1132]

SENATOR KRIST: On the flip side of that, we've had a lot of discussion about shovel-ready property and bringing businesses in. I see a benefit to that kind of process. I just worry that, you know, my main problem with the city of Omaha is that they selectively annex and they hop over portions. And essentially we're going right back to that and we're going to make it possible, more possible, across the state. And I agree that we should get around the fact that it's a particular mayor or particular commissioner. We should talk about what's right for the county and the city. And in nirvana I'm sure that exists, but (laughter) I'm concerned that those people who are making decisions, that potentially...anyway, thank you. Thank you. [LB1132]

LARRY DIX: Sure, sure. [LB1132]

SENATOR COASH: Thank you, Senator Krist. Senator Ashford. [LB1132]

SENATOR ASHFORD: Well, I...the reasons you're giving for this piece of legislation is exactly the reason why communities across the state and across the county are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

merging with the counties. I mean, every single merger that's occurred in the last 20 years has basically been driven by this very economic development issue, which is whether the county annexes the city or the city annexes the...merges with the county. What has...this is fine to look at these things, these are very incremental, but the real issue, if we're talking about taxpayers, is driving economic development in an area that's within a county and to do that in a systematic way. Where you're really going to get bang for your buck, you're going to have to have one governmental entity determine whether this economic development, you know, project is worthwhile. Otherwise, you know, every year there's going to be another bill to add this to this to this to this. And not that this is bad, but the...I'm not lecturing, I guess, but the point is, that is what has driven so many communities and counties across the country to merge their decision-making process somehow. I mean, I don't know if...and some of it's been county executive-type governments and some have been city...you know, city governments, but... [LB1132]

LARRY DIX: Well, you know, a number of years ago, you know, when TIF happened, you know, and of course I think we now we could put everybody into a panic attack of saying, well, let's just have countywide TIFing, which quite honestly we think that's sort of a good idea. [LB1132]

SENATOR ASHFORD: But what's wrong the county executive? I mean, if you're going to get into a...TIF is one thing but actually making decisions that...the problem is not the tools, the problem is the government structure that...in my view, the problem is the government structure that is not streamlined enough to take advantage of opportunities when...I'm not criticizing your bill... [LB1132]

LARRY DIX: I understand. [LB1132]

SENATOR ASHFORD: ...that are...that take advantage of opportunities when they show themselves. And I think it's retarded our state and continues to do so. But we'll have...that's maybe another topic for another time. And I'm sure... [LB1132]

SENATOR COASH: Thank you, Senator Ashford. Any other questions for Larry? Seeing none, thanks, Larry. [LB1132]

LARRY DIX: Thank you. [LB1132]

SENATOR COASH: And as Larry said, we do have a letter of support from the Keith County Board of Commissioners we'll have placed in the record. Let's take the next proponent. Kim. [LB1132]

KIM ROBAK: Senator Coash and members of the committee, my name is Kim Robak, R-o-b-a-k. I'm here today on behalf of an organization called Grow Ashland, which is a

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Transcriber's Office

Urban Affairs Committee
February 14, 2012

group of community leaders and businesses who are interested in this legislation on behalf of the city of Ashland. You heard from Mr. Lutton earlier about some of the issues involved in this particular situation. But I wanted to explain in a little more detail why this is important, not just for Ashland but for other communities across the state. We've referred to the three-mile zone around a city as the extraterritorial jurisdiction. That's not what this is. In the redevelopment statutes, cities have an area of three miles currently there today in which as you're preparing a redevelopment plan, a TIF plan, that you can go beyond the city up to three miles. It's not the extraterritorial jurisdiction; it's a three-mile zone in the event that there's some land or issue or problem that you would like to take care of in that three-mile zone outside of the city. So you could have a redevelopment plan that included the city and a portion outside the city up to three miles. The statute today allows you to take every single step, do the redevelopment plan, do everything short of actually executing the plan unless you annex the land, in which case you don't need to be in that three-mile zone because you've already annexed it and it's part of the city and that provision of statute doesn't apply. So if you're in that three-mile zone and you have a redevelopment plan, you cannot execute it. What this statute would say only is, if you have a redevelopment plan and you're in that three-mile zone that you can execute that redevelopment plan without annexing the land. Now in theory there could be an issue of some land in between the land that you're attempting to develop. But if you're not annexing it, you don't have the question of skip annexation, of jumping over something because you're not actually annexing the land. You're simply developing it. The city is in control at all times. The city gets to determine if it wants this project. If it doesn't want to go out in that three-mile zone because of future issues with annexation and skipping over some land and it doesn't want to develop out to that area, if it's doesn't want to take its resources out there, then it won't propose it. So the city is in control at all times. But because you may be TIFing land in that three-mile area, and when you TIF it, there's no county or city tax that is going to be given away; it's only county tax that is given away because the city doesn't own that property. So we want, in this instance, to give the county the authority to say yes. So this is an opportunity for cities and counties to get together and say, you know what? There's a piece of property out here that's blighted, undeveloped, that would be of value to both the city and the county if it were developed. It's in that three-mile zone that exists today in statute. The city can today redevelop it, but I can't go all the way and actually TIF it until we get this statute passed. So this statute is the next logical step. I know that there is going to be some opposition testimony by the League of Municipalities. We're confused as to why, and we've had many discussions with members of the League staff about this issue. But as long as the city is always in control, then the city would never be in a situation where it wouldn't be able to control this whole issue. But if there is a concern, this issue has come up not just in Ashland but we understand the city of Wahoo has this issue and the community of Ogallala has the same issue. And we would be willing to limit this legislation to communities of 1 to 10,000 in order to allow those communities to deal with the issue, and it then wouldn't affect communities such as Lincoln and Omaha who may have concerns in that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

three-mile area. So with that...and one last comment, and that was the county does collect the tax and the county would then use that tax to pay for the bonds. Okay. [LB1132]

SENATOR COASH: All right. Thank you, Kim. I want to ask you about the actual project for your clients here. It was described as a vacant gravel pit. Would that...I mean, would that fit under the definition of blighted and substandard just because nobody is there? I mean... [LB1132]

KIM ROBAK: I don't know. Senator, that's a question. It may or may not. And if it does, then this statute applies to it; if it does not, this statute doesn't apply. That's a question that I think the lawyers and the bond council and everybody involved would have to figure out. So it gives them the tool. If, in fact, it is blighted and substandard, then, yes, this absolutely applies. But I wouldn't be able to answer that question. Everyone thinks and hopes it is but it may not be. And then this doesn't work. [LB1132]

SENATOR COASH: Well, I think that would be something to explore because if just because it's a vacant sandpit doesn't mean it's blighted and substandard. We may be trying for a tool here you're not going to be able to apply in your client's community. [LB1132]

KIM ROBAK: Right. And, Senator, exactly the case. And so I'm assuming that the folks involved in this are working that through with the bond council and lawyers. But even if it doesn't apply in this instance, there are at least two other communities when they saw this who said, oh, this is exactly what we've been looking for. We want to be able to develop out in that three-mile zone, but we aren't ready to annex. We may never annex, but we'd like to develop there. And with county approval, we will develop there. And so this gives those communities that tool. Okay. [LB1132]

SENATOR COASH: Okay. Thank you. Any questions for Kim? Senator Krist. [LB1132]

SENATOR KRIST: So the tax base that's deferred is a deferral for the state or, sorry, for the county tax base which pops up in 15 or 20 years. The utility is at the expense of the city and the city runs the project. And the bonds are issued by? [LB1132]

KIM ROBAK: I believe that the bonds would be issued either by the county or the developer, but it would be on the county side of things. So the county is the one who loses the revenue and that's why the county has to be the one that makes the...has some input in this. [LB1132]

SENATOR KRIST: Okay. My initial reaction is that if it's good for...if it's a valuable tool for three or four or five communities around the state, then I don't think we make it...I don't think...your suggestion about limiting its applicability I don't think is a good thing to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

do. But I'm not being negative. I'm just saying that if it's good policy, then we should make it across the board I think. So thank you. [LB1132]

KIM ROBAK: Thank you, Senator. [LB1132]

SENATOR COASH: Thank you, Senator Krist. Any further questions? Seeing none, thanks, Kim. [LB1132]

KIM ROBAK: Okay. Thank you. [LB1132]

SENATOR COASH: We'll take the next proponent. Any other proponents? You're coming up, Ricky? No. Okay. We will switch to the opponents of LB1132. There he is. (Laughter) [LB1132]

SENATOR KRIST: He was staging himself. [LB1132]

R.E. CUNNINGHAM: My name is Ricky Cunningham, spelled R-i-c-k-y--I do answer to Rick though--C-u-n-n-i-n-g-h-a-m. I'm the planning director, city of Omaha economic development. It's within the planning department of the city of Omaha. So kind of wearing two hats here today besides planning. I've got to tell you. We read this quite a bit and we debated where we were going to come in at. At best, we were going to come in neutral because at a first reading we thought, well, maybe this gives us some tools that we could use. Then we discovered, well, we can already pretty much do what we could...what this gives us except for maybe do the TIF. But we also looked at what...where we use TIF, how we use TIF, and we weren't likely to use it in this context ever. In fact, what we have come and asked you about is the Nebraska Redevelopment Act, which would give us ten miles and give us the ability to do a large project that actually is \$50 million or \$25 million, 125 employees, you know, a big redevelopment project. So today I'm in opposition of this bill because the reason for our opposition is that it applies another layer of approval to a TIF process that is right now by the constitution a city process, and now we're introducing the county as another player who has veto power. And we have been consistently against opening the door for another jurisdiction having veto power over a city tool. As I indicated, we have not done a TIF outside of our jurisdiction and we...basically all of our TIFs have been within the jurisdiction. We've been quite inundated with enough of those. I am also a little, not concerned but just would point out that there might be a slight conflict with LB924 that does set up the ability of a city to do a TIF outside of its city limits within ten miles and does set up a process for input from other taxing subdivisions within that area, but not veto power. They have the right to lodge an objection with the board and that board can consider that objection and whether or not it does designate the area as blighted and substandard. So we've got two different processes, perhaps, that could be in conflict potentially with both of these legislation. So we...you know, I was sitting back here listening and, you know, it seems to me that what this would do basically is sort of an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

end around for counties to have TIFing capabilities. And if that's what you want to do, then I think that's what you ought to do, figure out a way to do that and rather than going through the cities powers to do it, so. [LB1132]

SENATOR COASH: Okay. Thank you, Rick. Any questions for Mr. Cunningham? Seeing none, thank you. [LB1132]

R.E. CUNNINGHAM: Okay. Thank you. [LB1132]

SENATOR COASH: Hi, Lynn. [LB1132]

LYNN REX: Hello. Senator Coash, 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 here, unfortunately, opposing this measure. And I say unfortunately because obviously we've got at least a couple of cities we understand that may be interested in this. But we've got some problems with the implementation of how this would work. With that, I want to start by saying we're still willing to work with the parties to see if there's some way to make this work. But let me just share with you some of my concerns. First of all, even though this is the hearing on this particular bill, I'd ask you to look at LR376 which you have with you today, because this is Senator Mello's bill on the constitutional amendment. I'm referring to it so you can just look at the language in Article VIII, Section 12 so you have that handy. You'll note that Article VIII, Section 12 gives the power to tax increment financing for municipalities. This was cities and villages. They've got the one...they're the ones that have the authority under the constitution to pledge to issue...to go into debt to do this. There's no authority for counties to do that. Counties don't have the authority to do that. Now that being said, if one looks at the...so I think that is a huge issue that needs to be addressed. And I guess when I read this, I didn't realize that what they were looking at or considering was having the county issue the bonds. I don't think that's...I don't see how that can happen constitutionally, but you need to have all the lawyers and legal beagles look at that. But I would be shocked to see that they would think that that would be anything other than a violation of Article VIII, Section 12. So with that, if you look on page 5 of LB1132, you'll note that in line 1 it talks about corporate boundaries of a city. What cities now have the authority to do, and I think Kim did an excellent job of explaining the fact that right now there's a three-mile area wherein for planning purposes a city or village can say, you know, for a comprehensive plan we're going to look at this and we're going to see that we want...someday here, we're going to declare this land substandard and blighted. In fact, we may want to do that now. Maybe around Plattsmouth you want to declare some land around that three-mile area as substandard and blighted. Why? For planning purposes; to put people on notice. But the reality is the city of Plattsmouth and no city has the authority to put an actual TIF project there unless it's part of the city. There's a reason for that, because you want a city to grow out. You do not want donut holes out there. One of the concerns that we have, and I know in this particular project as I understand it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

from talking to the city administrator of Ashland, they're looking at a gravel pit. And I asked, you know, are there dilapidated roads? Are there houses that are falling apart? What's out there? It's gravel and that would be a real challenge. I don't know how one could say that that is substandard and blighted any more than you can say a cornfield is substandard and blighted. I just don't see how that fits the test. That being said, even if you can get past that, then you have the issue of the municipality itself basically extending all the utilities out there, and that would be paid for by citizens in Ashland in this particular case. And I just don't know if financially how one could make this work. And I think that's your point, Senator, when you were asking the questions. But I do understand that there are areas in the state. I know that from talking to Sidney, Nebraska, and their city manager out there, this bill would not help them but the concept is there, which is that they've got an area about ten miles from Sidney that is a 25,000-acre area of which 5,000 of it has dilapidated buildings and roads and...from an abandoned depot. And that might be something that they would like to do for an industrial park down the road. That's something that might be there and it would be a great benefit to a city to look at something like that. But that being said, when you look at this issue, fundamentally you want cities to be growing out. You don't want a situation where this bill could conceivably have you put a box store, a super Walmart, a super Target--and I love Target, (laugh) love Walmart, actually...well, I won't go there. In any event, let me just say that you could have a super, super box store out there and then the time comes where the city does want to annex. And the county would want to oppose that annexation because if they have sales tax authority, if they've been able to get sales tax authority of the vote of the people, they're going to want to keep that sales tax revenue, and that's problematic. And then you end up with donut holes just like cities had with SIDs and other sorts of developments and you have cities growing around these areas. And I know one of the issues has been, well, would a county ever do that? That's happened. Talked to some of the Sarpy County municipalities. That has happened in those cases...as you well know, and those cases have gone to the Supreme Court. So we're really concerned about just the public policy of it. We also, though, want to be accommodating to cities who are looking at options and some things that they can do to assist them with their development. We're happy to sit down and talk and walk through this. But, again, it wasn't until today that it struck me. I didn't realize they were planning on the county issuing the bonds. But even if they're not, then it's almost worse. Then you have the city issuing bonds and I don't know how you'd pass a public purpose test on a project that is not part of the corporate limits yet. There's some real problems here that need to be addressed and issues and challenges. But in terms of the intent of this bill, I understand the intent. I think we're certainly willing to work with this. I will tell you our executive board, which is comprised of 15 member cities across the state of Nebraska, 12 of them being elected, voted to oppose this bill. We did ask them, would they be supportive of having the authority to be able to put TIF projects in the ETZ without county board approval, and they would support that. By the same token, I understand the counties when we asked them would they be willing to support that, the answer was no. So I understand you've got two different sides here and we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

need to work on this. And I think there's probably more than two different sides. But I think it starts with the core issue of what's legally possible, and that starts with the constitution, Article VIII. With that, I'd be happy to answer any questions you might have. [LB1132]

SENATOR COASH: Thank you, Lynn. Senator Lambert. [LB1132]

SENATOR LAMBERT: Thank you for wearing that red suit. I got to buy my wife a Valentine's card. (Laughter) Thank you. [LB1132]

LYNN REX: I had to make a presentation...just for the record, I had to make a presentation for Valentine's Day at Irving Middle School today, and I was asked to wear red. I normally don't wear red. You look great in it. [LB1132]

SENATOR COOK: Why, thank you. [LB1132]

LYNN REX: So you're lucky you do that. I'm doing it under force and coercion, so. [LB1132]

SENATOR LAMBERT: You saved me. Thank you. But it's problematic to spend city money outside the city limits, isn't it? [LB1132]

LYNN REX: I think that's a huge issue that would need to be addressed. [LB1132]

SENATOR LAMBERT: Yeah. [LB1132]

LYNN REX: And perhaps that's why they thought the counties could issue the debt. I just don't see that there's constitutional authority for that. But, I mean, it's something that your legal counsel could certainly look at and review. [LB1132]

SENATOR LAMBERT: It could be quite complicated, I would think. [LB1132]

LYNN REX: Yes. [LB1132]

SENATOR LAMBERT: I mean, it's a city building a...or the county building a sewer and water system that hooks onto yours. Who takes ownership? [LB1132]

LYNN REX: Well, another thing, I mean, basically when I was visiting with the city administrator, when she outlined what it is which is basically a gravel pit, they want to make it into a lake, put residences around that. That is a perfect SID project. That's what the SID statutes were intended to address. But, again, I think that the efforts here by the county and the city to cooperate, I really commend that. I wish we had more cooperation between municipalities and counties, not less. So I really commend their

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

willingness to work together. And I think there's probably a way to get to yes and we're happy to sit down and work with the parties to do this. But as drafted, our board does not support it and, in fact, opposes it. [LB1132]

SENATOR LAMBERT: Thank you. [LB1132]

SENATOR COASH: Thank you, Lynn. Thank you, Senator Lambert. Seeing no other questions, thank you. [LB1132]

LYNN REX: Thank you. [LB1132]

SENATOR COASH: Any further opposition to LB1132? Seeing none, Senator McGill. [LB1132]

SENATOR MCGILL: All right. [LB1132]

SENATOR COASH: Oh, pardon me. Anyone here for neutral testimony? [LB1132]

SENATOR MCGILL: All right. I'll try to cover a couple of things. I think that there's a lot of misinformation running rampant. And to me, I brought this bill, just so you know my background, you know, I was approached by folks in Ashland who were interested in this. And then Senator Schilz signed on because he's interested in it for the Ogallala area. But we have a situation where both a city and a county want to work together, they want to develop this in unison. It goes back to what Senator Ashford says about encouraging merger when possible and working together when possible. You have two entities that do agree and work together to develop a part of their county and outside of a city, and that's something we should encourage to take place. And so, you know, I'm willing to work with all parties moving forward to do that. In terms of the bonding questions, I think it's unclear and we need to go back and do some research about who's taking out the bonds and all of that. I think there was some misspeaking, even on the proponents of this bill, because as far as I know...the bonding, the folks who give the bonds have to go...operate within our law. And this bill does not change our law on who can bond or what the circumstances are with bonding. And as far as I know, it's the bonding rating of the city that is used when it comes to taking out these bonds. And so I'll admit we all need to do a little more homework to find out exactly how that part of the bill would function. But otherwise when it comes to that ETJ area outside of those three miles, there's a lot a city can and already can do in terms of starting to develop. And kind of getting to one of your last thought, that this is really a step in the...just another step in the process to making a project materialize and some of these more unique situations that we may not see here in Lincoln. For instance, I don't have a huge personal dog in this fight. But I hope that we can all work together and cut through some of the misinformation about what cities and counties can and cannot do. A county right now has no legal standing to oppose an annexation, for instance, so concerns about,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

you know, if the city is helping or, you know, TIFing in this area, the county may not want to give it up later. They have no standing to be able to fight that annexation. So we need to work through some of this and get down to the facts and see if we can find a way to help a city and a county that want to work together, help them actually do that. [LB1132]

SENATOR COASH: All right. Thank you, Senator McGill. I guess we're done with this one. [LB1132]

SENATOR MCGILL: All right. Let me get my opening on the next bill here real quick.

SENATOR COASH: Okay. All right. We're going to move forward to Urban Affairs bill LB1001. [LB1001]

SENATOR MCGILL: All right. Hello, committee members, again. Once again, I'm Amanda McGill. I haven't changed my identity, and I'm introducing LB1001. This is something we've been working on now for a couple of years. This bill creates the Building Code Advisory Commission, which is to be an advisory body for this committee and the Legislature as we have the responsibility of adopting new safety codes for the state. After looking at code bills and interim studies for the past two years, I felt it was the right course of action to create a body of experts whose job it would be to review the newly developed codes as they are released every three years and make recommendations to us based on that review. We've worked with experts in the city of Lincoln to create a preliminary list--I emphasize "preliminary" list--of types of professionals we feel should be represented on this new committee. It is in no way perfect or exhaustive of the possible people who could be included. We've heard from others and many of them are here to testify today either opposed to this bill or neutral because they feel some other types of professionals should be on this board. And we are very open to that. I know we...it sounds like a lot of concerns rise out code officials versus industry officials, and anything that we did to not weigh those equally was unintentional. And so we're very open to who should make up that group, what industry groups should be on there, and so forth. This bill also contains language that will require state agencies to comply with the local building code of the city they are building in if that local code meets or exceeds the standards by the state building code and if the political subdivision regularly updates its local building code. So essentially if you're a government agency and you're building in Omaha and Lincoln and Kearney or wherever, that right now they go by the state code as opposed to the city of Omaha's code. So they may be building within the city of Omaha but not building to the Omaha code but to the state code. And so this is an idea I'd like to float out there to have those agencies actually build to the code of the city. And the final section of the bill removes the language that is currently in the state building code that allows state agencies to amend the state building code. In consultation with the Revisor of Statute's Office, we felt this language needed to be removed as it has been determined to be an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

unconstitutional delegation of legislative authority by the Nebraska Supreme Court to allow state agencies to amend statutes. So they could just make up their own building code, in essence. So we need to get that changed. And I'll just add here at the end that in terms of this advisory commission, we'd also like them to go back through some of the much older codes that are on statute. There's the skyscraper codes and all sorts of things that haven't been updated in decades, and maybe we don't even need those codes anymore if they're just hanging out there and haven't been updated for a long time. So we'd like that advisory board...it's my intention that advisory board would also look into some of those very outdated codes. With that, I'll take any questions. [LB1001]

SENATOR COASH: All right. Senator McGill, thank you. [LB1001]

SENATOR MCGILL: All right. [LB1001]

SENATOR COASH: Seeing no questions, we will open up the testimony on LB1001, starting with the proponents. Come on up. Welcome. [LB1001]

JAY G. DAVIS: Good afternoon. My name is Jay Davis, J-a-y D-a-v-i-s. I'm the superintendent of permits and inspection and assistant planning director for the city of Omaha. It's actually my pleasure to be back here. I was here, I can't remember if it was January or December, we were here to talk about this very subject. Basically after reading LB1001, the city of Omaha is in support of the bill, although we had several questions, and actually Senator McGill just actually addressed a couple of those question. How we make the makeup of the board, what the commission is, and what their official duties are as far as reviewing the codes and then making recommendations to the Legislature to pass those codes. I know last time I was here, codes are kind of a scary thing if you don't read them all the time. And we kind of read them all the time and understand them, and we certainly understand the safety factor involved all the way across the board. So when looking at what was out there right now, the one concern we had is we forgot a rather important element in our business, which is the commercial building community which is not on the board. But if the board makeup is not 100 percent complete yet, then we certainly do support that and would offer to help any way we can to go forward with that proposal. So with that being said, I'm going to be probably the shortest person you talked to all day, if anybody has any questions. [LB1001]

SENATOR COASH: Well, thank you, Jay. I don't see any questions. [LB1001]

JAY G. DAVIS: Perfect. I'm done. Thank you very much. [LB1001]

SENATOR COASH: Thank you for testifying. Welcome, Jerry. [LB1001]

JERRY STILMOCK: Good afternoon, Senators. My name is Jerry Stilmock, Jerry,

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Transcriber's Office

Urban Affairs Committee
February 14, 2012

J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of the Nebraska State Volunteer Firefighters Association in support of LB1001. The process is all too familiar in terms of what this committee and, you know, has gone through particularly in the International Residential Code and the information shared and the lobbying and the hours of contacts by those interested in the field of residential construction. And it seemed apparent that one of the opportunities to go about a different means of studying the issue is create the advisory committee, the volunteer firefighters and the emergency rescue personnel or members of whom I represent. I have been involved in other advisory committees. The process has worked quite well. And we're supportive of that. One of the items in terms of notice, we assume that as a state body, the advisory committee not only would...the notice provision, as the way the bill is written, notice is to be given by the chairperson out to the members of the committee. And we would assume that that would also be subject to being published and notified the way any state meetings are conducted so that the full citizenry of the state could be notified and we could attend those meetings as well. Of course in terms of the composite of the 14 members on the committee, we choose to come in in a support position. But we, too, as perhaps the others behind me are going to say, we'd like to ask anyway and support reasons therefore to have a member of the fire department, in fire suppression actually, as a member of the committee. Certainly as represented in the green copy, the State Fire Marshal is referenced to be a voting person of the 14-member committee. We believe that given the references that also appear and make up the committee that we would respectfully request that someone from the fire service be included in that committee. The...certainly if we were to purely take away a scale of the number of contacts that were involved and the efforts that were involved when the International Residential Code was considered, I would suggest to you, and your recall would refresh you, that those in the fire service were very involved. And we want to continue to be involved, and we figure the best way to do that is on a committee member status rather than upon invitation by the committee members. Thank you. [LB1001]

SENATOR COASH: Thank you, Jerry. Any questions for Mr. Stilmock? Seeing none, thank you. [LB1001]

JERRY STILMOCK: Thank you, Senator. [LB1001]

SENATOR COASH: We'll take the next proponent. [LB1001]

WILLIAM J. MUELLER: Chairman Coash, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Eastern Nebraska Development Council and the Nebraska Association of Commercial Property Owners and Chief Industries in support of LB1001. And I would like to thank Senator McGill for being willing to look at the composition of the committee. And to follow up on what Mr. Davis and the city of Omaha said, it wasn't an oversight that there are no commercial builders on this group, and that is something that came to our client's attention right

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

away. So it's good to see homebuilders involved. I think that you also want commercial builders, and I think that the committee should at least consider whether you want building owners involved in this discussion as well as residential owners. I know there are at least two of you who are on the Health and Human Services Committee, and I shouldn't use this comparison, but maybe this would be a little bit like the 407 process where at least another group looks at a building code before it comes before you so that at least you will know what, if any, issues there are with building codes. And we...this committee deals with building codes every session. I think it's accurate to say that generally these codes are not controversial. There have been at least two issues in the past that have been very controversial. Those, I think, would be identified by a committee like this. So our clients support them and we would like to continue working with Senator McGill on finding the right composition of this group. I'd be happy to answer any questions the committee may have. [LB1001]

SENATOR COASH: Thank you, Bill. Any questions? Senator Smith. [LB1001]

SENATOR SMITH: Thank you, Senator Coash. Mr. Mueller, you know, there seems to be something here in Section 71-6405 that kind of doesn't seem real relevant to the makeup of this advisory committee. Can you give me some background perspective on that in that... [LB1001]

WILLIAM J. MUELLER: I'm sorry, Senator, say that again. [LB1001]

SENATOR SMITH: It's the 71-6405 and it's dealing with the, except that state agencies shall comply with the applicable local building codes. [LB1001]

WILLIAM J. MUELLER: And that's a separate issue. That is, as I heard Senator McGill, and I wondered the same thing when I read this, the main part of the bill I think creates this code committee. But then the senator is also addressing an issue that I think arose a year ago with an unlawful delegation of legislative authority where you authorize another state entity to decide not to enforce a state statute. And they don't have that authority. The Legislature determines what the law is. That agency has to follow what the law is. I think that's a separate issue here. [LB1001]

SENATOR SMITH: So you're not particularly commenting on that, just not making... [LB1001]

WILLIAM J. MUELLER: I'm not commenting on that. [LB1001]

SENATOR SMITH: All right. Going back to the advisory committee then, it's fairly large. And knowing that it's difficult to get a consensus in such a large group, how would we then be able to make good sense of whatever the recommendation is not knowing what maybe a minority opinion might be, for example? [LB1001]

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Transcriber's Office

Urban Affairs Committee
February 14, 2012

WILLIAM J. MUELLER: And I have not given this a great deal of thought, but I do think that what this group would do is I think that they would identify controversial parts of the code. They would identify the arc fault protector. They would identify the sprinklers in residential. And I think at least the Legislature would know this is an area where there is disagreement. Ultimately the Legislature is going to have to adopt the building code. You're not going...you cannot give that authority to this committee. This committee would be an advisory committee. And I would hope that they would have some kind of a report and that they would identify issues where there was controversy. And I think if there were those on the committee that didn't support the inclusion of a particular requirement, I would hope that they would put that on the record. [LB1001]

SENATOR SMITH: All right. Thank you. [LB1001]

SENATOR COASH: Thank you, Senator Smith. Seeing no other questions, thank you. [LB1001]

WILLIAM J. MUELLER: Thank you. [LB1001]

SENATOR COASH: Next proponent. Fred. [LB1001]

FRED A. HOKE: (Exhibit 5) Mr. Chairman, members of the committee, my name is Fred Hoke, F-r-e-d H-o-k-e. I'm the director of building and safety for the city of Lincoln, also the manager of the Development Services Center. The handout that you have coming to you is the code adoption process that we use. There's nothing magical about it. But this bill reflects what's good about it. We certainly have a number of task forces and code study committees and boards of appeal within building and safety and our fire and our housing codes, and each of those has a number of individuals who serve and represent their respective professions on those. And that's what I guess I wanted to address in this particular bill that is being proposed. We have found and we've had some recent experience as recent as last evening with an access management legislation that we presented to the city council which came after three years of debate amongst a number of people. And finally we did what we probably should have done in the first place, and that is to make sure we have broad representation on the study committee, which is exactly what this bill does. It's better to have all of those issues out in the open and people debating those rather than having a small number of individuals who may have a particular interest in one aspect of it making those decisions. So from our perspective, this is a step in the right direction. As Senator Smith asked the question, that's a separate issue that you had asked the previous speaker, I'm sure that in the wisdom of the Legislature there will be an opportunity to be sure that the right number of people representing the right number of professions would be on this particular task force. We think it's important to get all of the issues out. We think that this is an opportunity for a number of people representing particular professions to be on a

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Transcriber's Office

Urban Affairs Committee
February 14, 2012

task force that identifies the issues, debates them. As the senator mentioned, perhaps even have a minority report that goes back to the Legislature. It is an advisory committee and we think it's important that all of the issues be addressed, and then the Legislature, legislators, have an opportunity to interact and make a decision that's going to be based on the best interests of the people of this state. Thank you. [LB1001]

SENATOR COASH: All right. Thank you, Fred. Any questions for Mr. Hoke? Don't see any. Thank you. We'll take the next proponent. Welcome. [LB1001]

JAMES TORRES: (Exhibit 6) Good afternoon, Senators and members of the Urban Affairs Committee. My name is James Torres, J-a-m-e-s T-o-r-r-e-s. I'm an architect currently employed with DLR Group and representing the American Institute of Architects, Nebraska Chapter. I appear before you today to testify in support of LB1001 which would create the Building Code Advisory Committee and amend the State Building Code. The Building Advisory Committee would bring together expertise from the design and construction industry and code officials to review newly published versions of codes for potential adoption by the Legislature. The committee would serve in keeping the state up to date with newer versions of the codes that address current health, safety, and welfare issues of building occupants. Furthermore, we would hope this committee would explore ongoing issues related to differing code interpretations and minimize the conflicts between different codes enforced. For example, the IGCC, the International Green Construction Code, will be released in mid-March. This will be an important code to discuss for Nebraska as a green practices and energy efficiency continue to be on the forefront. We believe that LB1001 would allow more consistent adoption of building codes across the state and will minimize conflicts and different interpretations of these codes to meet current safety for building occupants. [LB1001]

SENATOR COASH: Thank you, James. I don't see any questions. Appreciate it. Oh, I'm sorry, Senator Smith. [LB1001]

SENATOR SMITH: Thank you, Senator Coash. We did get a letter from the Nebraska Board of Engineers and Architects, and they recommended maybe a professional engineer be added to that. Any particular thoughts on that? [LB1001]

JAMES TORRES: Yes. I did see a copy of that letter and we would also support that letter, and we believe that would be very important on a committee to have an engineer involved. Yes. [LB1001]

SENATOR SMITH: Okay. Thanks. [LB1001]

SENATOR COASH: Senator Cook. [LB1001]

SENATOR COOK: Thank you, Mr. Chair. Are you aware of any similar entities among

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Transcriber's Office

Urban Affairs Committee
February 14, 2012

the other AIA groups around the country? [LB1001]

JAMES TORRES: Other entities that would... [LB1001]

SENATOR COOK: Other entities that have established this sort of...other states, rather, that have established something like the Building Code Advisory Committee. [LB1001]

JAMES TORRES: I am not aware of any other ones, Senator. [LB1001]

SENATOR COOK: Okay. Thank you. [LB1001]

SENATOR COASH: I don't see any other questions. Thank you. [LB1001]

JAMES TORRES: Okay. Thank you. [LB1001]

SENATOR COASH: Next proponent. Welcome. [LB1001]

JACKIE McCULLOUGH: (Exhibit 7) Good afternoon. Members of the committee, my name is Jackie McCullough, M-c-C-u-l-l-o-u-g-h. I'm the executive director for the American Council of Engineering Companies of Nebraska. And, Senator Smith, your question is an excellent question. And, yes, the engineers would like to be included in the advisory committee. ACEC represents engineering firms all across the country...I'm sorry, all across the state; nationally, all around the country of course. But we have inquired with Senator McGill about adding engineers and she seems receptive to that. And we're only here to submit our letter and let you know that we would like to be included. [LB1001]

SENATOR COASH: All right. Thank you, Jackie. I don't see any questions. Thank you. Any other proponents? Seeing none, any opponents? Welcome, Justin. [LB1001]

JUSTIN BRADY: Senator Coash, members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association and the Nebraska State Homebuilders. And they've got three points they'd like me to bring up on the bill. One of which I acknowledge...when I talked to Senator McGill, the first thing we talked about was the makeup of the board. As they first saw how the bill was drafted, they saw it as roughly nine, quote if you will in their mind, regulators, three or four from business and one or two from labor and felt that that...if we're going to have a committee discuss this and make a recommendation, that it should be in more equal representation across those lines. Second of all, they questioned the need for it. Right now if you were to take like the energy code or the plumbing code, you have the plumbing board or you have the energy office with the energy code that looks at these codes and has historically brought these to the Legislature. I would submit to you that for years there was not real discussion between

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

these boards and the industry. After a couple of the fights that have been in front of this committee, those lines of communication are now open. I mean, I can let you know that they contact my office regularly saying, hey, we're going to bring new codes. Can we submit them to you guys so we can talk about them to see if there's going to be any issues prior to just coming to this committee and saying...having it blow up right here at this table and then have it be in your guys' lap. At least you'll know ahead of time. Second of all is, Mr. Mueller had mentioned the 407 process, as those of you who are familiar with the Health Committee. I'd come about it as a different approach on the 407 process. It seems that that process, which is very similar but on the health side, has become to be used as an excuse or a reason why things happen in the Health Committee or in the Legislature. They come before the committee and say, you need to do this because the 407 process recommended you do it or we can't do it because they said you can't. And I would say that I would certainly like this if this were to move forward, that this committee not look at it like that, that it's solely a rubber stamp of what they're recommending, but strictly as an informational base. So with that, I'd try to answer any questions. [LB1001]

SENATOR COASH: Thank you, Justin. Did the realtors want a spot on this board? [LB1001]

JUSTIN BRADY: They would like a spot. They would like to be part of that regulating or equalizing the business and regulating side, if you will. [LB1001]

SENATOR COASH: All right. We'll add them to the growing list. [LB1001]

JUSTIN BRADY: (Laughter) Yes, growing list. [LB1001]

SENATOR COASH: All right. Thank you. Any questions for Mr. Brady? Senator Smith. [LB1001]

SENATOR SMITH: Thank you, Senator Coash. You know, I like what you're saying in terms of having a good balance between your government, labor, and business represented on the committee. And it does look like currently the makeup may be tilted a little bit towards the regulatory side that can potentially inadvertently stifle development. And I think that's what you're seeing in your representation. Is that right? [LB1001]

JUSTIN BRADY: Yes. And I will acknowledge as I spoke to Senator McGill, she acknowledged that she was willing to look at changing or adopting some of the changes to make that, in my opinion--I won't put words in her mouth--a more fair representation across those entities. And I think as you guys have all heard, there is differences between metropolitan, first class, primary, I mean, as you go across the state, whether it's in codes and/but also I'd submit it's also different on the building side and you should

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

have a representative from those different sized cities and communities as well.
[LB1001]

SENATOR SMITH: Thank you. [LB1001]

SENATOR COASH: Thank you, Senator Smith. Seeing no further questions, thank you, Justin. [LB1001]

JUSTIN BRADY: Thank you. [LB1001]

SENATOR COASH: Next opponent. "Mr. Fiscal Note." (Laughter) Welcome. [LB1001]

JOHN E. FALGIONE: (Exhibit 8) I'll bet you think this is going to be interesting, don't you? (Laughter) Good afternoon. Thank you, Senator Coash and members of the Urban Affairs Committee. For the record, my name is John Falgione, J-o-h-n F-a-l-g-i-o-n-e, and I am the State Fire Marshal. I'm here today to testify in opposition to LB1001. Now as a side note, you all have examples being passed to you of my prowess with the computer, so I apologize for the heading on that. Would you please disregard that. This is my testimony. This is not draft testimony, so. The listed purpose of LB1001 is to create the Building Code Advisory Committee, an advisory committee which advises the Legislature and the Urban Affairs Committee. The proposed bill lists the various groups to be represented and the terms of service for each representative. The State Fire Marshal is appointed as a permanent member of the committee and the agency is charged with providing staff support for the committee, as well as paying the committee's expenses out of the agency's budget. While the agency appreciates the Urban Affairs Committee's efforts to address the complexity associated with the adoption and enforcement of the building code, the State Fire Marshal agency has a number of concerns with the bill as drafted. First, the agency is statutorily charged with enforcing the National Fire Protection or NFPA codes. The agency does not have a statutory relationship to the building code nor does the agency have special expertise to the codes listed in LB1001. Second, since the bill's stated purpose is to have an advisory committee to the Legislature, it would be more consistent with the Nebraska State Constitution's separation of powers clause that the advisory committee would be located within the Legislature and appointed by the Legislature. Separation of powers also dictates that if an advisory committee is within the Legislature, then it should not contain members of either the judicial or executive branch. As a result, I believe the State Fire Marshal should not be a member of the committee nor should the agency be charged with providing it staff support or budgetary requirements for the committee. I also want to share some technical concerns regarding the proposed bill to help the committee in its deliberation of LB1001. Language in the bill suggests that the advisory committee review a wide range of codes beyond just the building code but often lacks the corresponding representative. One example of this would be the electrical code. There is not a single representative from the electrical industry on the committee.

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Transcriber's Office

Urban Affairs Committee
February 14, 2012

Finally, the bill allows the advisory committee to consult with experts in a number of areas such as electrical engineering, the insurance industry, fire suppression, and many others. However, there is no language detailing what these consultations shall include. The agency did note in our fiscal note that costs do exist with such consultations. Without more specific language detailing the nature of these consultations, it would create a substantial burden on whatever agency or branch is asked to provide budgetary support to the advisory committee. Thank you for your time and consideration and I'll be happy to answer any questions you might have. [LB1001]

SENATOR COASH: Thank you, John. Thank you for your feedback. See if we have any questions from the committee. Seeing none... [LB1001]

JOHN E. FALGIONE: Okay. Thank you. [LB1001]

SENATOR COASH: Thanks for coming today. Next opponent. Welcome. [LB1001]

RANDY ANDERSON: (Exhibit 9) Senator Coash, members of the committee, I'm Randy Anderson, R-a-n-d-y A-n-d-e-r-s-o-n. I'm the executive director of the Nebraska State Electrical Division, and we're the agency in charge of permitting and inspections for electrical in the state of Nebraska. I'm also a member of the International Association of Electrical Inspectors. And in that group, there's a Nebraska chapter which is a western section member, and there are 17 states in that group that we confer with on electrical codes, and you'll see on the second page there just so you'd know what states. It's a national, actually international, group that studies code, and that is where the State Electrical Board through my membership in the Nebraska chapter and the Nebraska chapter pays me to travel around to meet with other people on how we do codes. It is a knee-jerk deal. We're already talking about what's coming into the 2014 code, so this isn't something that people aren't aware of. This is a deal we've been doing since 1975. And I'm here today to testify in opposition, not over the overall bill, just the way some of it's written. And I've been in contact with Senator McGill and Laurie. We've worked with the Legislature since '75. The code is adopted at three-year intervals, and it's used as a minimum standard. And I'm talking the national electrical code right now, none of the building codes. The NEC is used as a minimum standard for new electrical installations across the country. Colleges, tech school, municipalities, electrical contractors, engineers, and architects, and so on, use this code everyday. The Electrical Board is concerned with the wording of this about how it encompasses other codes. Remember, a lot of building codes have sections in them that are on electrical. At this time, statute 81-2104(5) says that the National Electrical Code, 2011 code, is in force now, and it's the duty of the Electrical Board to review and bring that to the Legislature. I understand through Senator McGill this bill is not supposed to take any of that away, that the Electrical Board would still do that. But my board is very nervous when you have several building codes with several different interpretations of electrical that are not verbatim out of the electrical code. They take their own and milk it the way they want it. So the board

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

could be in support of this bill if the wording could be in there that the electrical would stay where it is now and that we wouldn't have three building codes and a National Electric Code and people deciding which one we're on. We already have jurisdictions where we have state, county, and city inspectors in a very small area, and we try very hard to try to keep us all on the same page. At this time, there was a comment earlier about every state agency would have to follow the State Building Code if they were in a city. At this time, the electrical is all inspected by our state inspectors if it's a state-owned building. So if you have a school in Omaha, Omaha has their own inspection district but we do the schools. At the med center, we do the med center. Anything state owned. If a county has a program, they would do the county courthouse. However, in a city if there's no county inspection, the state would do that county courthouse. So that's kind of how it breaks down. And in the bill when it says that you will follow what code each city has, and our code right now, our state act, requires that cities be as strict or stricter than the state. So if a city had...we have Omaha, does not let anything be run in commercial that's not in conduit. That's not a national code, that goes by occupancy. More than 100 people in a building means it has to be a raceway, a metal raceway or some type of raceway. But we have...but there's nothing, you know, statewide that says just because you're commercial you have to be in a conduit system. And those are the concerns the board brings to you. And I know in visiting with you, Laurie, we had discussed that this was meant to keep us separate and that's why it doesn't say anything about us, but the board feels that 81-2104(5) should be included in the bill and then they can support it to say if we have buildings codes, that's fine, but this is the electrical code that Nebraska uses. And that is all I have. [LB1001]

SENATOR COASH: Nice job, Randy. Thank you. Any questions? Seeing none, thank you for your testimony. [LB1001]

RANDY ANDERSON: Thank you very much. [LB1001]

SENATOR COASH: Any further opposition? Welcome. [LB1001]

JAMES HARPER: (Exhibit 10) Welcome...or thank you. Senator Coash and committee members, my name is Jim Harper, H-a-r-p-e-r, 4203 Springview Drive, Grand Island, Nebraska. And I am a retired building official and plans examiner here in the state. And I'm testifying in opposition to this bill. And it's...the bill itself has a lot of merit and I agree with the intent where it's trying to go, but the specifics of the bill raise some concerns on my part. Reviewing codes prior to their adoption by reference is a good idea. This bill outlines a procedure to do this for state-adopted codes. Local governments do committee reviews before preparing an ordinance for consideration. The state should do the same. Each new addition of the building code has hundreds of changes resulting from technology, economics, social change, and federal law. The same is true for electrical, mechanical, fire, energy, and plumbing codes. The approach taken by the bill attempts to bridge a gap that has been created by our reluctance as a state to have a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

building commission or similar comprehensive agency and the desire to establish minimum codes for buildings. And when I say reluctance, I'm not supporting a building commission or anything like that in the state. But it seems like historically we've been reticent to have a state building commission like maybe California or New York would have. In its present form I do not support the bill, but it could be made to work and is worth further investigation. It is hazy in scope. It seems to be about the State Building Code, that is the IBC, the IRC, and the IEBC, given the statute section that it's placed in, and then broadens to include many other codes that are addressed in other state law, and people previous to me have testified to that. Only Section 71-6405 is being changed. The impact on communities to adopt or not adopt building codes is unchanged. The state would be setting a minimum level building code for communities that elect to use building code, yet allowing local governments to use newer codes, additions of code, and higher standards than the state may require. Adoption of codes is covered in Sections 71-6406 for political subdivisions. Specifically I suggest: Limit the review responsibilities of the committee to the State Building Code component codes, that is the International Building Code, the International Residential Code, and International Existing Building Code. I would start small and expand the scope later, if desired. This would increase the chances of success. And just hearing some of the testimony previously to me, it seemed like immediately we're broadening and broadening. It seemed like it was getting unwieldy to me. Comprise...and this is where I'm really a little bit different than others that have testified, comprise the Building Advisory Committee of only city and county code officials. This group would be very objective and they are already studying the codes in their local jurisdictions. And I know there's a concern that maybe we're overly zealous on regulation. But when we study codes locally, we hear all those concerns and we take them into account, and I think we would be able to bring them to the...that skill to the table if we were...the committee in charge of this. Keep the committee a workable size, ranging from five to seven members. A smaller committee has more ownership in its work. Use the Nebraska Board of Architects and Engineers as a lead agency. And I think they're reticent to do that. But as an engineer myself, they seem to me like they would be a good candidate as the lead agency. Let this board appoint the advisory committee members. Trust them to get the proper representation of interests. This board has members who work with codes regularly in their professions. These are architects and engineers. They deal with the codes on a daily basis. Clarify who the committee reports its findings to. Meet at the request of the Legislature, board, Governor, and when new editions of the IRC, IBC, and the IECC are published. Allow the committee to develop its own rules of procedure compliant with laws for open meetings. And have the board monitor the committee for procedures, conduct, openness, fairness, diligence, and ethics. As far as expenses, make expenses of the committee part of the budget of the Board of Engineers and Architects. And talking about expenses, be aware that the expenses could involve more than just travel; it could involve purchasing of code books and code commentaries and things like of that nature. Thank you for your interest in codes--they're vital to the state--and for listening to my comments. Any questions? [LB1001]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

SENATOR COASH: Thank you, Jim. Do you want to be on this commission? [LB1001]

JAMES HARPER: Pardon me? [LB1001]

SENATOR COASH: Do you want to be on the board? [LB1001]

JAMES HARPER: I'd love to. [LB1001]

SENATOR COASH: Okay. [LB1001]

JAMES HARPER: But I'm not an active code official. I'm retired now. [LB1001]

SENATOR COASH: We'll add you to the list. Any questions for Jim before we let him go? [LB1001]

JAMES HARPER: Thank you. [LB1001]

SENATOR COASH: All right. Thank you, Jim. Any further opposition to LB1001? Welcome. [LB1001]

MICHAEL BENKER: My name is Michael Benker, builder/remodeler, and currently employed by the Home Builders Association. There's been a lot of good discussion today and things that we can work with that would improve this if it moves forward. But my biggest concern has to do with the makeup of the committee. And there's only one designated representative that is guaranteed to be a home builder, and many representatives from other industries. And some of these industries have four or five individuals that would be on the committee. In today's high-performance housing, the builder is the one that orchestrates all of the systems that make up the completed project, and making sure that these systems work together to function as they should is incredibly important. I do not doubt that the mechanical contractor, plumber, or other trades person wouldn't protect their industry's best interest, but that may not be the best interest of the homeowner. The builder is liable for the completed project and the delivery of the home to the homeowner. It would seem to me that a more balanced representation on this committee would be appropriate considering the risks, liabilities, and warranties involved. I'll keep it short as I think you can see what my primary concern is and we've had a lot of good discussion today. I'd be happy to answer any questions. [LB1001]

SENATOR COASH: Thank you, Michael. Senator Cook. [LB1001]

SENATOR COOK: Yes. Could you spell your last name? Did you say Denger? [LB1001]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

MICHAEL BENKER: Benker, B-e-n-k-e-r. [LB1001]

SENATOR COOK: Thank you. [LB1001]

SENATOR COASH: Thank you, Senator Cook. No further questions. Thank you, Michael. Any further opponents? Seeing none, is there anyone here to testify in a neutral capacity? All right. Welcome. [LB1001]

REBECCA KOLLER: Thank you. Senator Coash, members of the Urban Affairs Committee, my name is Rebecca Koller, R-e-b-e-c-c-a K-o-l-l-e-r, and I am director of facilities for the University of Nebraska. I am here today to speak in a neutral position regarding LB1001. The university has no issue with the legislative code advisory committee or with eliminating the authority to amend the building code. But we do have grave concerns with complying with local and state codes as opposed to a single state building code. First, we are a statewide institution and hire architects, engineers, and contractors based upon qualifications, not location. Adding an additional code they may not be familiar with will at minimum add time to a project and in the worst case could require tearing out and replacing work. Second, there is a question as to what meets or exceeds the standards of the State Building Code. In the case of waste pipe, Omaha stipulates a welded joint; Lincoln allows a no-hub connection; and the state code calls for a screw connection. Which one do we use? They all perform the same function. Third, who determines which code to use? Currently, our projects are reviewed by our internal building code officials and the State Fire Marshal's Office. Does the legislation require our projects to also be reviewed by local building and fire code officials? Who would issue building permits and perform inspections? And if they disagree, who has jurisdiction? The university complies with the 2009 International Building Code. The code was developed by experts and not subject to special interest groups, local designers, unions, or contractors. The way we administer the code as our own authority involves no amendments. It is efficient, streamlined, and simple to understand. We, therefore, respectfully ask that you allow us to continue administering a single code that provides excellent facilities for the citizens of Nebraska. [LB1001]

SENATOR COASH: Thank you, Ms. Koller. Any questions for Ms. Koller? Seeing none, appreciate you coming down. We'll take the next neutral testifier. Senator Rogert. [LB1001]

KENT ROGERT: Good afternoon. My name is Kent Rogert, R-o-g-e-r-t, and I'm here today representing the Nebraska Statewide Property Owners Association. Senator Coash, can we be on this committee? We would like to. (Laughter) [LB1001]

SENATOR COASH: We'll put you on the list. [LB1001]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

KENT ROBERT: We're here today testifying neutral. We think the intent of the bill is well-thought-out. We are, as many are here today, asking for membership on the committee for a couple of reasons. Ultimately, codes affect property owners probably the most as they are the folks who have code enforcement violations pushed upon them or imposed upon them. And for commercial property owners and residential property owners, single- and multi-family, it would be beneficial to have that voice on the committee to explain the process of how code enforcement affects those who are owning and renting homes. We also ask to include provisions for adequate public input. The bill sets up the committee but it doesn't set up any process for public input into that committee. It's mostly going to be a private affair or a closed-door affair, and we would ask to have some sort of public input added to the bill. [LB1001]

SENATOR COASH: All right. Thank you, Senator Robert. I don't see any questions. Next neutral testifier. Mary Jo. [LB1001]

MARY JO BOUSEK: Good afternoon. My name is Mary Jo Bousek, M-a-r-y J-o B-o-u-s-e-k, and I'm here as a board member of Lincoln's Real Estate Owners and Managers Association, REOMA. A little bit redundant, (laugh) a lot of redundancy here I think. But I appreciate Senator McGill's saying that this is a preliminary list of people on the committee, and all you need is a few more on the list and on the committee, right? (Laughter) Because I also agree that it's getting way too large. But I don't see anywhere, other than what Kent just said, I mean, of all these...I mean, of all these professionals deciding codes. But I've been a rental property owner and manager for over 25 years and have dealt with Lincoln codes. It's all been in Lincoln for that long. And as a consumer of all of these codes, I think we need to have a voice on this committee as to whether some of these codes are even necessary. That's probably a bad word for some of the professionals. But when you're...and I'm talking more about older buildings, not necessarily if you're building a brand new building. That's one thing. But if you're remodeling an older building, got to have these codes. Maybe they fit with a hundred-year-old building, maybe they don't. Maybe they're not practical or maybe they're not even necessary. So I would urge, however, you do this committee that's growing, that you have a consumer, a rental property owner, and it could be homeowner but really the rental property owners deal with codes more often than just a one-time homeowner, have a consumer on this committee to...for input as to whether we think these...some of these things are really necessary or how they can be put in place in an older building. Questions. [LB1001]

SENATOR COASH: All right. Thank you, Mary Jo. We'll add you to the list. [LB1001]

MARY JO BOUSEK: Okay. [LB1001]

SENATOR COASH: Any questions? Seeing none, thanks. Next neutral testifier. Welcome. [LB1001]

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Transcriber's Office

Urban Affairs Committee
February 14, 2012

RICHARD HAUFFE: My name is Richard Hauffe, R-i-c-h-a-r-d, last name, H-a-u-f-f-e. I am a regional manager in government relations with the International Code Council, the people where these codes come from. I am, however, a legal resident of the state of South Dakota, Senator, and I will not accept membership to this committee. (Laughter) But Nebraska is in my territory and I've been watching this process very closely, talking with Laurie at length, and having attended your hearings in September and October. Even if it was just down to, you know, what to do about a plumbing code, the discussion gets to be very, very large. The organization I work with is a nonprofit organization. Our objective is to come up with codes that meet growing and changing needs, realistic needs, in the built environment. But I...you know, the hearing today and the hearings that you held in the interim give you a pretty clear idea just how big and gangly this is. I'll just be really brief. And I think that Jim Harper may have offered some practical advice to find a way to narrow the scope as one method to at least get this started. I think you've invested a lot of time and energy into this. I think having a standing committee with institutional memory and expertise that can go from legislature to legislature to legislature is a wise course, especially considering that...you know, the same thing with the codes. They go on every three years and they're also built on previous experience and changing needs. So I think it's a wise move. I strongly encourage that you continue on this course. And I'll take any questions that anybody might have. I think there is...Senator Cook asked if there was a committee like this, I believe there is one up in North Dakota that acts as an advisory committee on a code bill. [LB1001]

SENATOR COASH: Thank you. I don't see any questions. [LB1001]

RICHARD HAUFFE: Good enough. [LB1001]

SENATOR COASH: Thanks for coming down from South Dakota today. [LB1001]

RICHARD HAUFFE: Thank you. [LB1001]

SENATOR COASH: Any further neutral testimony on LB1001? Okay. Get up there quick. [LB1001]

SENATOR MCGILL: All right. Lots of things to address. But this is what I wanted. You know, I wanted...I introduced this bill to have a good discussion over who should be on it, what it should look like. This was Laurie and I in my office saying we need to draft something to start the conversation, and I think we've had a really great conversation so far. I failed to really...I feel like for the record I should explain how we got here a little bit in that the Legislature...well, codes used to automatically be adopted without legislative input. Now we have to have input in accordance with the Supreme Court ruling. And then when we came to the point where we had the sprinkler debate last year, we took sprinklers out of the code but really we didn't have the expertise to say, is there anything

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

else in the code that taking these sprinklers out is going to impact. And I still don't have an answer to that. And so I think it is important that we have some other set of eyes that actually knows something about the code and isn't just responding to...no, because that was a controversial issue. We can look at the sprinklers. We took them out, but what other impacts are there? And the major cities in Nebraska have something like this, which is what we tried to model off of a little bit. Which brings me to talk about who's on this particular advisory commission. Like I said in my opening, I...wasn't intentional in terms of trying to put more regulators on this than industry members. In fact, I want to add many of the folks that came up here and spoke. But I was intentional in the fact that I want to have a higher number of folks representing rural areas than urban areas, because the fact of the matter is, Omaha, Lincoln, some of the other cities, do have their own code. And so this is a code that will be impacting largely rural Nebraska. So I do want to make sure that regardless of what industry someone is from that the representation is really from the community that this code...the state code is going to impact the heaviest. Other thoughts. Ironically, when it comes to the Fire Marshal's testimony, the original draft of this bill did have it under the legislative branch. And so that is something I'm very open to looking at and perhaps that is truly the best place for it. That's...I was the one who put it back in the other way. But he made a very valid point for why it should be under the legislative branch as opposed to the Fire Marshal's Office. And in relations to other codes and if we should start smaller, I'm open to that discussion. As Laurie and I have gone through some of the codes, there are a lot of other ones out there that aren't normally updated, like I said, are decades old. I think there are some from the '70s that are on the books. And so my intention in leaving it more broad was to allow for us to go back and look at some of those really outdated codes. But perhaps we start with, you know, the building codes, and then next year come back and ask them to specifically investigate some of those other older codes that are just hanging out on the books. We can probably possibly even strike them from the books. But I feel like we should have some sort of official advice from a group of people on whether or not that's wise. I think that's...I think I've covered most...oh, and in terms of what other states do, there are a lot of states that have a building commissioner or a building code czar, if you will, that's an employed person by the state of Nebraska. I didn't want to create the full-time position here for a state employee. I wanted it to be...I intentionally chose this advisory committee format instead of creating an office of building codes or whatever here in Nebraska because a lot of states have taken that route. And I think Iowa...yeah, Iowa has that, for instance. So with that, I will close and look forward to working on a new draft of this. [LB1001]

SENATOR COASH: (See also Exhibits 16-18) All right. Thank you, Senator McGill. Hello, Senator Mello. [LB1001]

SENATOR MCGILL: All right. Welcome, Senator Mello, our last bill of our hearings actually for the Urban Affairs Committee, so it's very appropriate that Senator Mello be here to end our hearings for the year (laugh) with LR376CA. [LR376CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

SENATOR MELLO: (Exhibits 11-13) Thank you, Chairwoman McGill, for that wonderful introduction and members of the Urban Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. Over the past few years, there have been numerous conversations in the Urban Affairs Committee about tax increment financing, including several hearings earlier this session. My office has been working extensively on TIF issues since the 2010 interim when this committee heard from numerous municipalities about the need to modernize and enhance our current TIF statutes. Unfortunately, the steps necessary to undertake such a modernization are far from complicated than simply amending the existing TIF statutes in the Community Development Law. Because TIF is subject to the limitations in Article VIII Section 12 of the Nebraska State Constitution, certain changes in our TIF statutes first require the passage of a constitutional amendment. LR376CA would be the first step towards making our TIF statutes more competitive with our surrounding states. The committee should have received a 2008 report from the Council of Development Finance Agencies which has a state-by-state comparison of TIF statutes from all 50 states and the District of Columbia. One of the comparisons made by the report is the maximum length of either the TIF districts or the TIF bonds. Nebraska is actually one of four states whose TIF projects have the strictest limitations. TIF bonds in Nebraska must be paid back within 15 years of the start of the project. While this puts Nebraska on even footing with our neighbors to the north and South Dakota, both Iowa and Kansas are at 20 years, Missouri is at 23 years, Wyoming is at 25 years, and Colorado ranges between 25 and 50 years depending upon the specific statutes being applied. In fact, most states have TIF repayment periods of 30 years, double our current limitation. Aside from the need to increase our TIF bond repayment periods for economic development purposes, the recent economic downturn has given us good reason to consider increasing the life span of TIF districts. An article that was just passed out...or, I'm sorry, an article that was just published in the state tax notes, which was just passed out, last week analyzed TIF districts in the state of Wisconsin over a 21-year period and found that TIF districts that were established in the wake of the recession as opposed to just before or after a recession took longer for their bonds to be repaid and were at much greater risk of failing to pay off their bonds entirely. The study referenced in the article basically found that because of the slow economic recovery, TIF life spans will have to be extended a number of years in order to cover the costs of the initial investment in many cases. In 2010, the state of Wisconsin extended their TIF periods from 23 years to 40 years to respond to this study. And I believe that Nebraska should consider following suit by increasing our TIF periods from 15 years to 20 years. LR376CA would do this, and it also contains a provision that would allow the Legislature to further extend TIF to 30 years in cases where more than 50 percent of the project area was formally state-owned property. In addition, LR376CA would address the longstanding concern of many Nebraskans that are, in order to use TIF an area must be dubbed substandard and blighted. As the committee already heard at the hearing on Senator Cornett's bill earlier this year, the stigma associated with having one's home

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

declared blighted can generate significant opposition to a TIF project, even when the proposed development otherwise has strong support within the community. Under LR376CA, the blighted and substandard language would be stricken and would be replaced by language requiring that the property and the redevelopment project be in need of rehabilitation or redevelopment. Representatives from numerous municipalities are here to discuss the benefits of this resolution and I would be happy to answer any questions you may have. [LR376CA]

SENATOR MCGILL: Thank you, Senator Mello. Looking through this, I'm surprised how many have unlimited lengths of time, no maximum. Any questions from the committee? No. We will...thank you, Senator Mello. [LR376CA]

SENATOR MELLO: Okay. Thank you. [LR376CA]

SENATOR MCGILL: Do you plan to stick around? [LR376CA]

SENATOR MELLO: I do have Appropriations Committee going on so I'll kind of wait and see as it goes. [LR376CA]

SENATOR MCGILL: Okay. First proponent. [LR376CA]

DOUG KINDIG: Good afternoon. [LR376CA]

SENATOR MCGILL: Good afternoon. [LR376CA]

DOUG KINDIG: (Exhibit 14) I'll try to make it quick so Senator Lambert can get home and cook his wife dinner also this evening, so it's a short... [LR376CA]

SENATOR MCGILL: (Laugh) Yes, she'd like that. [LR376CA]

DOUG KINDIG: ...short testimony, Senator. Good afternoon, Chairman McGill and members of the Urban Affairs Committee. My name is Douglas Kindig, K-i-n-d-i-g. I'm the mayor of the city of La Vista here today representing the United Cities of Sarpy County, which includes Gretna, Springfield, and the Papillion and La Vista area. We'd like to thank Senator Mello for his efforts to study and bring this forth today which we think can help improve the economic development options available for our municipalities and the state of Nebraska. So we'd like to express our appreciation for...to him and for you listening to us today. We believe that the proposed constitutional amendment to remove the substandard and blighted language for property in need of rehabilitation or redevelopment makes a lot of sense. You may recall that I have testified in previous years about the difficulty of meeting the tests of blighted and substandard if you follow the strict letter of the law. The proposed change would allow each jurisdiction to determine the areas in their community in need of rehabilitation or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

redevelopment which we believe is important in order to prevent areas of our communities from becoming substandard and blighted. We also support the measure to allow for an increase in the term of bonds from 15 to 20 years. This provides municipalities more flexibility based on the scope of the project. We also believe that the proposed changes will be a significant improvement to the current statutory authority and we encourage your support of LR376CA. Thank you for your time and I'd be happy to answer any questions this afternoon. [LR376CA]

SENATOR MCGILL: Thank you. Any questions? [LR376CA]

SENATOR ASHFORD: No, just to congratulate La Vista on (laugh) everything it's doing. Good competition. [LR376CA]

DOUG KINDIG: Thank you, Senator. If you approve this, we'll continue that trend. [LR376CA]

SENATOR ASHFORD: Well, even if we don't you probably will. (Laughter) [LR376CA]

DOUG KINDIG: Thank you. [LR376CA]

SENATOR MCGILL: With or without it. All right. Thank you very much for coming down to Lincoln. Next proponent. [LR376CA]

R.E. CUNNINGHAM: Waiting for my friend over here to go. [LR376CA]

SENATOR MCGILL: He knows he's a hard act to follow, so. [LR376CA]

R.E. CUNNINGHAM: My name is Ricky Cunningham, R-i-c-k-y, last name, C-u-n-n-i-n-g-h-a-m. I'm the planning director at the city of Omaha and I am here as a strong proponent for this constitutional amendment proposal. Basically we have testified before that one of the big problems we have...excuse me, challenges we have, and when we are forming a community redevelopment area and with the hopes of then using TIF, is the difficulty with the public understanding the use of blighted and substandard, those terms. And their unwillingness in most cases to basically change their understanding of it regardless of what the facts might present. And, therefore, we strongly suggest that if it is at all possible to just push that aside so that it's not a factor anymore. Because usually, you know, besides saying that my house is blighted and substandard, you know, if it's not that, if it's community redevelopment, if it's economic development, if it's jobs, they don't have a problem with that. They just have a problem if you're going to call their home blighted and substandard. And so if you'd certainly get rid of that, that's great. We have testified that we would love to have the option, not necessarily that it be mandated, but the option of going to longer terms, 20 or 25 years, especially for larger projects that could use that additional revenue to make the project a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

viable project. We would not...in fact, we're very excited about having the option of saying, okay, if you do this, this, and this, then we will consider 20 years versus 15. We have taken a hitting that...somebody hitting us up that we don't do anything less than 15 years and we pretty much, of the people we work with, know how to work the system and get their 15 years from us. I will...I'm here to say that most of our TIFs pay off in 12 years though. That's a factor not of a limiting factor but because our analysis of the projects and what we're going to give is so conservative that that's just how it ends up. We would like to suggest that in the terminology on line 15 of page 2 be expanded to include the city in case the city owns more than 50 percent of the property and it would be difficult to finance it at 20 years. Because we do have some instances and some other tools that might come to play where there might be a case where the city might end up owning most of the property that we want to move forward with a community redevelopment area and then TIF where that might cause an issue. And so we would love to have that kind of flexibility again to, in the case where it was merited, be able to go to a higher term than the 20 years. Once again, we'd like to express our appreciation to this committee for your vigilant attention to the TIF and how we can better sharpen that tool and polish it. I'd like to thank Senator Mello for his vigilance as it relates to this. And I'm available for any questions if you haven't heard enough from me. [LR376CA]

SENATOR MCGILL: Well, I was just out of curiosity's sake, when you're talking about bigger projects, you haven't gone below 15 years before, but. [LR376CA]

R.E. CUNNINGHAM: Basically, we have a criteria that says you do this, this, and this, we'll give you 15 years. [LR376CA]

SENATOR MCGILL: Okay. [LR376CA]

R.E. CUNNINGHAM: It's written that we can go 3, 10, or 15. [LR376CA]

SENATOR MCGILL: Okay. [LR376CA]

R.E. CUNNINGHAM: But everybody comes in... [LR376CA]

SENATOR MCGILL: You've just never had a small enough project to warrant a smaller... [LR376CA]

R.E. CUNNINGHAM: ...everybody comes in and they hit all of those items so that they get 15. But... [LR376CA]

SENATOR MCGILL: Okay. All right. I was just curious. [LR376CA]

R.E. CUNNINGHAM: Yeah. It is written that we have those option, but when a developer comes in he's...they know what the...we have an application package, we have the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

guidelines, so they just come in and make sure that they meet all those guidelines, so.
[LR376CA]

SENATOR MCGILL: Okay. All right. Senator Lambert. [LR376CA]

SENATOR LAMBERT: Back to what this conversation, that's an incentive for them to hit these guidelines, make them... [LR376CA]

R.E. CUNNINGHAM: Right. [LR376CA]

SENATOR LAMBERT: I mean, it's more hoops for them to jump through... [LR376CA]

R.E. CUNNINGHAM: Right. [LR376CA]

SENATOR LAMBERT: ...because I know... [LR376CA]

R.E. CUNNINGHAM: Exactly. [LR376CA]

SENATOR LAMBERT: ...I've had experience, you know, 12-year are common or what we've done, but it's...yeah, it's just a good tool to get the developer to maybe do a few more things that you... [LR376CA]

R.E. CUNNINGHAM: We're excited about, okay, how much further can we push people to get that 20 because...I mean, you know, jobs, low-moderate income impacts,... [LR376CA]

SENATOR LAMBERT: Look what you did to us. [LR376CA]

R.E. CUNNINGHAM: ...those kinds of things are part of the criteria to get to that 15. [LR376CA]

SENATOR LAMBERT: Yeah. [LR376CA]

R.E. CUNNINGHAM: And, you know, again, everybody can basically justify getting to that 15. [LR376CA]

SENATOR LAMBERT: Yeah, you pushed us to the 20, so. [LR376CA]

R.E. CUNNINGHAM: Well, 20 is good; (laughter) 25 would be better. [LR376CA]

SENATOR LAMBERT: Don't stop. [LR376CA]

SENATOR MCGILL: All right. [LR376CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

R.E. CUNNINGHAM: And bottom line, this would make us more competitive. In the city of Omaha, we are competing with the state of Iowa everyday, and so this certainly would help us to be more competitive and, as I indicated, would help those larger projects. Generally speaking, TIF is nothing more than a portion of the GAAP process. In the city of Omaha, many of our projects that have TIF also have Community Block Grant monies or other monies that we've had to put in in order to make those projects work. So it's...going to 20 years might at least allow TIF to cover more. [LR376CA]

SENATOR MCGILL: Okay. All right. Thank you very much, Rick. [LR376CA]

R.E. CUNNINGHAM: Thank you. [LR376CA]

SENATOR MCGILL: Next proponent. Hello, Senator. [LR376CA]

DAVID LANDIS: Senator McGill, remaining members of the Urban Affairs Committee, David Landis, urban development director for the city of Lincoln, here representing the city as it supports LR376CA, taking a position of support with respect to two of the three ideas and somewhat neutral on one of the ideas. The change from blighted and substandard to a need of rehabilitation is helpful with the fact that folks think that their property values will go down if there's an official designation that their land is blighted. That is not the fact. There's no body of evidence that supports that, but the public fear is there. Renaming that I think makes good sense. That doesn't mean that I...and I think it's not a fair statement that Mayor Kindig made, this is not where the city gets to determine what areas can be used. This is a gift of authority to the Legislature, not to individual cities. You will turn around and define what "in need of rehabilitation" is; individual cities will not. So it'll come back to you to turn that language into meaning. When it does, I want to make an argument that the original purpose of this statute was community development, community redevelopment, city building, not economic development, community development. I'd like to make a little bit of a distinction on that score. Fifteen years to twenty, I'm neutral on it. We've done more than 300 projects in the state of Nebraska. Omaha has done more than 120 of those projects. We've done about 55 in the city of Lincoln. And this committee did heavy work last year when it changed how we started the 15-year clock. And we got about two more years of benefits into that 15 years. Our developers came back to us. We redid some of our redevelopment agreements and put in as much as half a million dollars of those two years. But the developers had already agreed to the package that had 13 years. But when they found that there was another two years of benefits, oh, they wanted those two years of benefits. In other words what I'm saying is if you raise this to 20, everybody will come in for 20. And the point of the matter is I think the process is working relatively well at 15. And the ability of the public to get the greater tax benefit gets pushed off. Remember, this is a rate of return. We want to invest in the business so it builds our valuation, but you ultimately have to turn that into tax base for there to be the payoff.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

And when you push that frontier off for the tax base, you wait for the day when you start getting it back. So I think we're neutral on that one. The third one we haven't talked about and it's really Norfolk, Nebraska. I don't know if you know the story about this. I hope the language of this means that the land is now owned by the state, not was at one time owned by the state but is now owned by the state and is in need of redevelopment. I'll tell you what this is. It's the Norfolk Regional Center. They got a bunch of dilapidated buildings. Nobody can make a project that can be paid off in 15 years with the bonds that makes buying that land sensible. So it continues to be a blight on the community, and the tool that we have doesn't fit, and it's a state asset for which there is not a rational, market-based response. It's too expensive and 15 years of benefits won't cover it. However, here's a wrinkle. This idea was on the...this was on the ballot in I think 2005. Two issues on the ballot at that time. One was to change this whole statute to economic development and throw out blighted and substandard and community redevelopment and just say: cities, you get to use TIF for economic development. And, secondly, this provision for Norfolk. It lost. About 37 percent of the population supported and 60-some percent said no. That's worth remembering because the public supported the creation of this idea when it was sold on it as a community development city building tool. That's an important distinction to make. And the public has told the Legislature recently: We're not crazy for you to turn this into a wide open economic development tool. That's not what we created this for. And by the way, when you asked us our opinion, two to one we said no, we don't want that. I'm not so sure if so much time has passed that we want to throw that away. What I like about the bill, it's a constitutional amendment. It goes back to the people for permission, and that's a good idea. [LR376CA]

SENATOR MCGILL: All right. Any questions for Senator Landis here? Yeah, Senator Ashford. [LR376CA]

SENATOR ASHFORD: David, what...having been around for a lot of this stuff, what...are there other things that you would...in this area that you would like to see... [LR376CA]

DAVID LANDIS: There are a number of ideas that are allied to this but not identical. I really like Senator Mello's direction in two ways. First, it goes back to the source and that's the people. Like that. Secondly, there's nothing in here that undoes community development as the purpose. So I think he's stayed inside the original intent. But much of the political pressure since that time has been to pull TIF into more and more an economic development tool, not getting areas of a city that aren't growing well to grow better. This was originally designed to get at ghettos, barrios, and slums, and that really hasn't happened. It's...we've done some of it, but it's done a good deal more, and we've asked it to do more. And there's a reason for that. At the heart of this idea--nobody talks about it--is a constitutional provision for a uniform and proportionate taxation system. It's in our constitution. It makes Nebraska unique. Now at the turn of the century in 1900,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

40-some states had a uniform and proportionate clause in their constitution because railroads were saying: You don't give me tax breaks and I'll run my railroad someplace else. So railroads were getting fabulous tax breaks around the country. To stop that from happening, states passed uniform and proportionate clauses; we did too. Then in the twentieth century, states started repeating them one after another after another. We're down to a handful of states that have this provision in Nebraska, and I'll tell you what it means. It means we can't give property tax deals to people. Most states can. Most states, as part of the economic development package, allows you to abate property taxes in some way. We can't do it. Forty-some states can; we can't. So what have we done? We have not undone that clause. We've created four or five exceptions. One, agricultural valuation. We can treat ag land differently from other land. Another one, the greenbelt provision. We can treat greenbelt differently. Third, we recently did it for historic preservation. We can change the shape of historic preservation. And, fourth, the TIF, which means if you have an economic development strategy that you want, you have a tiny, little thing to push the idea through, which is the tax increment financing law. I'll tell you, we had a bill earlier today, you did, to talk about as I listened to it sound like a very sensible piece of rural development. That wasn't a city; that was a rural development and probably well in need of it. But the only tool available to solve that problem was to take this city building tool and stretch it to three miles outside the city to solve rural development. And the reason is, we do not have a rural development tool of any significance. So we're using tax increment financing in multiple ways and I think pulling it out of what the public told us they were excepting us to do. I'll tell you my answer to the thing. I think my answer to the thing is that the development community, the people who want economic development in this state, ought to find a constitutional amendment that does what they want it to do in rural areas, in the edges of cities, maybe in the cities that's maybe not tied to community...like community development but is tied to growth, job creation, or whatever, and sell that idea to the public. And that would get us off this practice of taking one idea and gradually molding it into something else. [LR376CA]

SENATOR ASHFORD: So then... [LR376CA]

SENATOR MCGILL: Senator Krist. [LR376CA]

SENATOR ASHFORD: Go ahead. Well I... [LR376CA]

SENATOR KRIST: Is that then...to that point earlier and this, is that then a county tool? [LR376CA]

DAVID LANDIS: You know what? It seems to me that if we say we want economic development, we know that there's a cry for economic development border to border, Senator. We want...counties want it. Cities want it. And what the business wants is pretty darn important as well. Now businesses might want to be in a county where they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

don't pay city taxes and pay 14 percent less in taxes because there's no city to pay. On the other hand, a city has something to offer that company as well. And if it's a free-for-all on economic development, so be it. So be it. [LR376CA]

SENATOR KRIST: Well, the city provides the infrastructure, the housing, the residential communities, the shopping centers,... [LR376CA]

DAVID LANDIS: Right. [LR376CA]

SENATOR KRIST: ...and the business then being outside the county if you use the Douglas County and Omaha example. And, again, though, as you heard me express earlier today, my issue still is, what if there's a disagreement over annexation and moving out into that unincorporated parts of Douglas County? [LR376CA]

DAVID LANDIS: Right. [LR376CA]

SENATOR KRIST: I just see that fight... [LR376CA]

DAVID LANDIS: Right. [LR376CA]

SENATOR KRIST: ...coming out on the horizon. [LR376CA]

DAVID LANDIS: Right. It seems to me that there's a big idea here, and that is, how would we update our tools for economic development which now place a distinction between cities and rural areas in this way? The ag area has two tools: greenbelt and lower valuation for farmland. Constitutional exceptions and they got exemptions. [LR376CA]

SENATOR ASHFORD: And exemptions. [LR376CA]

DAVID LANDIS: And the city has TIF, and that's the tool that we have. My guess is that there's an overarching thought about what the twenty-first century posture on property taxes as an economic development tool is. The rest of the country has moved there; we haven't. We've got a provision that's about a century and 25 years old. Most people have gone away from it. There's a good reason for that to continue, but we ought to open up the topic of economic development. What you've got with the TIF issues year in year out are ways when economic development issues are trying to push through something that was sold to the public about city building, and those are not identical. [LR376CA]

SENATOR ASHFORD: And that's why this is...it's by necessity a constitutional amendment because... [LR376CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

DAVID LANDIS: That's...I'll tell you what I like about it. What it says: is you're the public; tell us what you think. [LR376CA]

SENATOR ASHFORD: But it has to be because of the nature of our...the way we deal with real and personal property. [LR376CA]

DAVID LANDIS: Do you believe it? That's right. And we do have a relatively recent tool that I think the public said to us in 2005, we're not endorsing TIF as a wide-open economic development tool. Because that's exactly what essentially the question was to the public and they said no. But what is that economic development tool that the public would say yes to that makes sense for rural Nebraska? [LR376CA]

SENATOR ASHFORD: Which would then allow...either that or you get rid of the constitutional requirement on... [LR376CA]

DAVID LANDIS: Yes. For uniform and proportionate in which case... [LR376CA]

SENATOR ASHFORD: ...uniform and proportionate. We went... [LR376CA]

DAVID LANDIS: ...all of that then drops down to the Legislature. By the way, there's a downside to that. Minnesota has 23 different kinds of agricultural land by statutes, and the reason is they don't have a uniform and proportionate clause so they get to treat ag land differently. They get to treat any kind of section that they want to. So people come to the Legislature for economic tax breaks... [LR376CA]

SENATOR ASHFORD: Because there's no constitutional prohibition. [LR376CA]

DAVID LANDIS: ...because there's no constitutional prohibition. Exactly. So there's the problem. [LR376CA]

SENATOR ASHFORD: And I would agree with you, that I think that to some extent that cities are forced really to utilize TIF in areas that logically shouldn't be TIFed. [LR376CA]

DAVID LANDIS: Stretches it. [LR376CA]

SENATOR ASHFORD: Stretches it and strains in areas... [LR376CA]

DAVID LANDIS: Right. But the pressure is there for exactly what you heard. [LR376CA]

SENATOR ASHFORD: I know, but the areas would have developed anyway because it's in the middle of a development area or it's in a high commercial area. [LR376CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

DAVID LANDIS: And where does the pressure come from? The pressure comes for the desire to have economic development. [LR376CA]

SENATOR ASHFORD: Well, it comes from the development... [LR376CA]

DAVID LANDIS: We want growth. We want jobs. We want opportunity. [LR376CA]

SENATOR ASHFORD: Well, also developers want the tax break. [LR376CA]

DAVID LANDIS: And they want the tax breaks. And by the way, they're able to say to us, we can get them many other places. Lots of states and lots of cities will give us these. So the pressure is there, and then you look like you're "antibusiness," a dangerous label these days in politics, isn't it? [LR376CA]

SENATOR ASHFORD: And the only incentives that we ask why... [LR376CA]

DAVID LANDIS: If you show any restraint about what you're prepared to give them. [LR376CA]

SENATOR ASHFORD: And the reason we give...we're sort of locked into giving credits and exemptions on the state's side because there are no local incentives... [LR376CA]

DAVID LANDIS: That's right. [LR376CA]

SENATOR ASHFORD: ...that can be done. It's... [LR376CA]

DAVID LANDIS: Yeah. There's this...the TIF goes back to the constitution and there's a piece of problem...there's a problem there on the revenue side and the lack of well-thought-out continuum of harnessing the economic development issue with our tax code. [LR376CA]

SENATOR ASHFORD: Right. [LR376CA]

DAVID LANDIS: And we're working around that problem in strange ways otherwise. But this bill I think has some virtues of that because it goes back to the source and says, what about this. I think that's legitimate. [LR376CA]

SENATOR MCGILL: All right. Thanks for the discussion. Senator Smith. [LR376CA]

DAVID LANDIS: A little constitutional law history. That's wide off the base, isn't it? [LR376CA]

SENATOR SMITH: Very enlightening. But even though this is a constitutional

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

amendment, it's kind of foggy to the voter in terms of that it looks an awful lot like inner-city development or truly blighted area redevelopment, and so that's the concern. [LR376CA]

DAVID LANDIS: By the way, it was the hope originally. It was what the idea was sold on. What we weren't sold on was ethanol plants two miles outside of a town. What we weren't sold on was cornfields that get plowed under and, you know, a hotel close to the interstate. What it was sold on, and by the way, north Omaha. It was sold that the market won't solve that problem and this tool is designed to do situations like that. And in Nebraska that was the most demonstrable one. [LR376CA]

SENATOR ASHFORD: But it didn't work. [LR376CA]

DAVID LANDIS: And it hasn't worked there and the reason is the discrepancy between what the market will do and what the situation is presented is too great. [LR376CA]

SENATOR ASHFORD: In valuation. Right, and the valuation. Right. [LR376CA]

DAVID LANDIS: Where it has worked is where there's a difference between what the market wants to do and not a great deal of difference, and that gap can be (inaudible). You heard Mr. Cunningham say, this is about filling a gap, and the gap is so large in some circumstances this doesn't work. Enterprise zones didn't work. We tried that in the '80s. The gap was too large. So this tool does not work particularly well for what we had sold it on. [LR376CA]

SENATOR SMITH: And I'd go even further and say it may have unintended consequences in that it takes away... [LR376CA]

DAVID LANDIS: Perhaps. [LR376CA]

SENATOR SMITH: ...some of the development where it really needs to occur most inside the cities. [LR376CA]

DAVID LANDIS: Perhaps. Here's the problem. Here's what I acknowledge. I don't think the marketplace works well in those circumstances. It's hard even when you get the price of that land cheap, there are too many pieces of it, it's hard to assemble, the infrastructure under the land is old and it's worn out, and the developer wants to go to another place. So you can only get the market to move...you can bend the trend a little. My impression is you can't reverse trend. [LR376CA]

SENATOR SMITH: And if the incentives are equal, you're going to, you know, have it... [LR376CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

DAVID LANDIS: There you are. That's why they're called incentives. They persuade you to do something somewhat different than what you were going to do. I don't think they persuade you to do the reverse of what you were going to do. [LR376CA]

SENATOR SMITH: Thank you very much. [LR376CA]

DAVID LANDIS: You bet, Senator. [LR376CA]

SENATOR MCGILL: Senator Lambert. [LR376CA]

SENATOR LAMBERT: They have worked well in small-town Nebraska though in many cases, I think, TIF projects. [LR376CA]

DAVID LANDIS: I think they'd say, look, we've gotten some growth. Those towns have been hungry for growth. In many cases I would call it economic development rather than community development, and one of the reasons is we don't have a really good economic development tool for them and this is about as close as we can get. But it has been usable for them and it's gotten that kind of growth. And I don't begrudge them that. In the city of Lincoln I'd have to say I like that it's for community development. I like that we try to incentivize older and core neighborhoods and areas where the market has a harder time doing business. And I'll tell you why. Our city is doing well enough that in the places where it's easy to build, developers can make money on their own doing that on their own. [LR376CA]

SENATOR LAMBERT: Yeah. [LR376CA]

SENATOR ASHFORD: But what we did is we took the economic incentive business and we pushed it up to the state, correct? [LR376CA]

DAVID LANDIS: The Nebraska Advantage, LB775. [LR376CA]

SENATOR ASHFORD: LB775... [LR376CA]

DAVID LANDIS: Exactly. That's right. And notice they don't have a property tax piece. [LR376CA]

SENATOR ASHFORD: ...which you explained to us all in those days and how it was good. (Laughter) And it was good. [LR376CA]

DAVID LANDIS: That's right. Well, thank you. [LR376CA]

SENATOR ASHFORD: But it was driven to the state. [LR376CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

DAVID LANDIS: And notice it was sales tax, it was income tax, it was the place where a Legislature could draw distinctions or abate or forego. [LR376CA]

SENATOR ASHFORD: Right. [LR376CA]

DAVID LANDIS: There's no property tax provision in those incentives and the reason is, the uniform and proportionate taxation clause in the constitution. So our state incentives use tax bases where we can do that... [LR376CA]

SENATOR ASHFORD: And we could have gotten rid of that in those three special sessions during Nelson's years. [LR376CA]

DAVID LANDIS: I'm sorry, but I think there's probably a reality TV show that has to go back that far beyond memory. You know, this is like thrown of kings or something when you go back that far. It's like one of those HBO specials with people wearing chain mail armor if we go that far back. You know, Brad Ashford with a broadsword is how I think (laughter) he'd probably see that picture. It's well beyond the living memory of the folks here, but for a few. [LR376CA]

SENATOR MCGILL: Oh dear! Any other questions on anything since Senator Landis is the expert on it all? [LR376CA]

SENATOR ASHFORD: Let me think. No. [LR376CA]

SENATOR MCGILL: Thank you very much, Dave. Next proponent. [LR376CA]

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 your willingness to visit about this important issue today. We strongly support this measure, and this is just a little bit of background which did involve Senator Landis because he obviously worked a lot on this issue over a period of years. But in 2006, Senator Landis had a bill in, which is LR275CA, a proposed constitutional amendment. If you look on page 2 of this bill, that constitutes lines 8 through 17, and that's the language he's talking about which would say for state-owned property that you could have an additional 30 years. That actually was introduced in 2006 as LR275CA. That's an important thing to take into consideration because, as he noted, this was for the city of Norfolk, Hastings, cities that have state property all across Nebraska. And, regrettably, because your budget has been so tight, typically what has happened whether it's Chadron State College or Kearney University is that when there's a building there full of asbestos, then the state of Nebraska typically walks away from that. It's left in the city and a developer can't make a cash flow to do it in 20 years. And the reason why the word "previously owned," and maybe there's a way to tighten that up, but the reason why it's previously owned by the state is because by the time you actually use TIF, it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

got to be...it's no longer owned by the state. So it was actually my recommendation to put that word in there because you don't actually do it with state-owned property. The state can't do it itself. But, nevertheless, LR275CA was one proposal. Matt Connealy had LR272CA which was proposed the same year in 2006, and that proposal was one we did not support. We strongly supported the Landis proposal, LR275CA. We did not support Matt Connealy's proposal which was essentially to give counties the authority to TIF. It also removed the words "substandard and blighted." We were all about removing the words "substandard and blighted." We absolutely opposed then as we do now counties having the authority to TIF. And so what occurred on...I don't remember which stage of consideration, but basically LR275CA was amended into LR272CA so it became one measure, and that went on the ballot in 2006 as Amendment 6. And as Senator Landis rightfully indicated, that did not pass. It was overwhelmingly defeated. The League of Nebraska Municipalities opposed it, others opposed it. I know our opposition was because of the county language. The rest of it we would have supported but not that provision. Kent Rogert, when he was a state senator in 2007, introduced LR2CA which was identical to Amendment 6 which had just been defeated. And at that point, he was very kind in getting all the parties together, and the counties were very concerned because they wanted to make sure that they had the ability to TIF. And at that point, we had the same kind of discussion that we've had before here today, and that is basically box stores being created in counties, and then what happens when the city wants to annex and all of those issues came into consideration. And so we couldn't get consensus. The schools had issues, other people had issues. But looking at this measure, we think this is really something to move this issue forward in a very positive way. I think by removing the language "substandard and blighted" but yet leaving in the assurances that basically you're still dealing here with property that is in need of rehabilitation or redevelopment, that is what substandard and blighted means. It's just that it doesn't have this negative connotation to it which really is upsetting to people. So as a consequence, we think that's extremely positive. We think advancing it from 15 to 20 years for all projects where the city chooses to do that or a village, we think that's very important just because of the information that Senator Mello has presented to you. We're competing with other states. And it's not a situation that wouldn't be nice if we could just all do it within 15. And, by the way, I absolutely understand what Senator Landis is saying, which is basically if you have it, they will ask for it. I get that. But the problem is if they're not asking for it here, they're going to ask for it in Iowa, in Kansas, in Colorado, someplace where they can get it. And so that's a concern. That's why we think 20 years, it's really time to update it. We have got...I mean, I believe as Senator Mello said, there are only four states that have a 15-year limitation. So with that, we strongly support this measure. We think that it will really assist municipalities across the state. And I'd be happy to answer any questions that you have. But this has been a very controversial issue for a very, very long time, and I think this is a proposal that really could go to the voters and pass with appropriated funding and appropriate work behind it. [LR376CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Urban Affairs Committee
February 14, 2012

SENATOR MCGILL: All right. Thanks, Lynn. Any questions? No. [LR376CA]

LYNN REX: Thank you very much. We really appreciate Senator Mello introducing this measure. Thank you. [LR376CA]

SENATOR MCGILL: Thank you. Anyone else here in support of this LR? Anyone here opposed? Anyone here neutral? Senator Mello, anything you'd like to add? No. Senator Mello waives closing, so that ends the hearing for the session in Urban Affairs hearings. [LR376CA]