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Urban Affairs Committee
January 27, 2015

[LB116 LB131 LB149 LB168]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, January 27, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB168, LB116, LB131, and LB149. Senators present: Sue Crawford, Chairperson; John McCollister, Vice Chairperson; Colby Coash; Laura Ebke; Matt Hansen; Dan Hughes; and Bob Krist. Senators absent: None.

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

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

SENATOR CRAWFORD: And Senator Coash will probably joining us in a bit. He had a retirement bill.

SENATOR MCCOLLISTER: John McCollister, Senator from District 20, which is one small part of Omaha.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

SENATOR KRIST: Bob Krist, District 10, northwest Omaha and the city of Bennington.

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

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

COURTNEY BREITKREUTZ: I'm Courtney Breitkreutz and I'm the committee clerk.

SENATOR CRAWFORD: Thank you. Also assisting the committee are our committee pages: Donnie Earl from Lincoln, who is a political science major at UNL; and Colin Loberg from Wayne, who is an economics major at UNL. This afternoon we will be hearing four bills and we'll be taking them in the order listed outside the room. On each of the tables in the back of the

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room you will find green testifier sheets. If you are planning on testifying today, please fill out one and hand it to Courtney when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify but would like to record your position on a bill, please fill out the white sheets in the back of the room. We would ask, if you have any handouts, that you please bring at least ten copies and give them to one of the pages. If you need additional pages...if you need additional copies, the pages can help you make more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, and then from those in opposition, followed by those speaking in a neutral capacity. The introducer will then be given an opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name, and please spell both your first and last name for the record. So we'll take a show of hands to see how many people are planning to testify. That will help us know if we need to use the lights. Fourteen. Our magic rule is 15, so. (Laughter) So we will not use the lights but we do ask that you respect others following you and try to keep your testimony to five minutes or less. When you...so I would remind everyone to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB168. Welcome, Senator Mello. [LB168]

SENATOR MELLO: Good afternoon, Chairwoman Crawford, 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. I'm here to introduce LB168, which would update and modernize the Business Improvement District Act, as well as create a process for the expansion of existing business improvement districts. Business improvement districts are a valuable tool used by cities across the state to help fund improvements and developments within established business corridors. They offer a variety of benefits, including increasing the safety and attractiveness of a business corridor, promoting activities of businesses, assistance in filling vacant properties and vacant spaces, as well as long-term strategic planning for the corridor. To start off first to clarify, unfortunately, some misconceptions that may exist around business improvement districts, page 3, line 15 through line 22 clearly states in the bill that business improvement districts can only be established in an area of the city zoned for business, public, or commercial purposes. Unfortunately, my office had received some kind of communication that they thought it bled into residential neighborhoods, which obviously is not allowed under the Business Improvement District Act. Currently, there is no procedure in state statute that allows a city to expand an existing business improvement district. If a city wants to expand an existing district, they must either go through a lengthy and cumbersome process to eliminate the existing district and create a new, larger district in its place, or they must create a new business improvement district alongside a current district. Most recently, the city of Lincoln had to create three separate business improvement districts in their West Haymarket development project. LB168 would create a method for expanding current business improvement districts that mirrors the process of creating one while still maintaining important due process protections for property owners within the proposed expansion area. LB168 would also streamline the process for creating a business

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improvement district by eliminating the requirement that the proposed district goes to the city's planning commission between the business improvement board and the city council. The process would be further streamlined and clarified by removing the requirement for the city council to pass a resolution of intent and, instead, replacing it with a notification. This allows the city council to perform one official final action in the creation or the expansion of a district, rather than two separate actions which can be confusing to the business and property owners in the proposed district. LB168 retains the input of the owners and users of the space in the proposed district. Current statute states that if over 50 percent of the owners of assessable units in the proposed district protest the creation of a business improvement district, the proceedings will be terminated and the district will not be created. Current statute also states that if an occupation tax is to be used, over 50 percent of the users of the space can also protest and terminate the proceedings. This language is retained in Section 9, and the same language is added in Section 14 in order to provide these due process protections during the expansion of business improvement districts. The bill, as drafted, repeals Section 19-4024 but relocates that same language in two different sections of the bill. In the drafting of the bill, a word was accidentally omitted when the language was moved, and you should have all received a white copy of AM51 that corrects this omission and preserves that language as it currently exists in state statute. Representatives from the city of Lincoln, the city of Omaha, and the League of Municipalities will testify after me, and I have passed out letters of support from members of the Omaha City Council and the Omaha Downtown Improvement District for LB168. Thank you for your time and I'd be happy to answer any questions you may have. [LB168]

SENATOR CRAWFORD: Thank you, Senator Mello. Questions? Senator Krist. [LB168]

SENATOR KRIST: Thank you, Senator Crawford. Senator Mello, thanks for coming and for bringing the bill. You talk about the...imposing an occupation tax and you talk also about the ability for 50 percent of the occupants to protest. Is it your intention or is it the bill's intention then to allow for public hearing and for the municipality to abolish the occupation tax or to...is there a negotiation process or... [LB168]

SENATOR MELLO: Senator Krist, that's existing statute that we did not change, so we did not create any new taxing authority, so to speak, there. They have the ability now to levy an occupation tax within a business improvement district. [LB168]

SENATOR KRIST: Okay. [LB168]

SENATOR MELLO: The reality...what we did change was we streamlined the process between when a district is...and once again, we're talking about the expansion of districts, not...the creation process still stays the same. But in an expansion of a district we allow a more

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streamlined process for the business improvement district board, which is an elected board based from that district, to be able to propose expanded areas. And within that expanded area, if 50 percent...50 percent of the property owners within that expansion oppose the expanded area and/or oppose the implementation of an occupation tax, if that has already been levied in the area, then that expansion does not move forward. [LB168]

SENATOR KRIST: Okay. And where does the 30 percent come into play? [LB168]

SENATOR MELLO: I believe we're only talking 50 percent actually in the sense that up to 50 percent of the property owners, if they protest in opposition, then the district does not move...the expansion does not move forward. [LB168]

SENATOR KRIST: Yeah, I guess that's my confusion, because on page 7, Section 13, going into 1 through 7 on page 8, there's reference to in the event the city council has not acted to call a hearing to expand districts, then there's a 30 percent figure that's in there, and that's new language. [LB168]

TREVOR FITZGERALD: Senator,... [LB168]

SENATOR KRIST: Counsel. [LB168]

TREVOR FITZGERALD: ...that's to allow members in the district to petition to force the city council to hold a hearing (inaudible). Yeah. [LB168]

SENATOR KRIST: Okay. So the 30 percent is a petition; the 50 percent is... [LB168]

TREVOR FITZGERALD: Is to disapprove. [LB168]

SENATOR MELLO: Disapprove. [LB168]

TREVOR FITZGERALD: Yeah. [LB168]

SENATOR KRIST: Thank you, Counsel. Thank you, Senator Mello. Thank you, Chair. [LB168]

SENATOR CRAWFORD: Any other questions? Yes, Senator McCollister. [LB168]

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SENATOR McCOLLISTER: Thank you, Senator Crawford. The appeal process, and that's a process initiated by the city at all times or for every expansion or creation of a district? [LB168]

SENATOR MELLO: The appeal process starts initially with the board itself that can go and approach the city in the sense that they want to expand. Under the bill, it would allow them to move forward to the city and let them know they're going to want to expand the business improvement district. The reality--they still have to follow the process laid out in the bill, which requires first the board and the property owners within the proposed district to have to go through that process first to get the determination of the approval...to get the approval first of the property owners before they would submit it to the city council for their notification. [LB168]

SENATOR McCOLLISTER: And what, they do that by mail? Is that what I understand? [LB168]

SENATOR MELLO: You know what, I think, Senator McCollister, I think mostly it's done by mail, the election. When you create a business improvement district there's not, so to speak, a separate meeting that's held where individuals can come and cast their vote live. It's normally done through mail. And I'm in the process right now of assisting with a business improvement district in my...in a neighboring...Senator Nordquist's legislative district in south Omaha. We're in the process of doing that right now and that's the way we're going to be doing it, is through mail. [LB168]

SENATOR McCOLLISTER: And it goes to the board or does it go to the city to tabulate the results? [LB168]

SENATOR MELLO: You know what, I can't tell you exactly, Senator McCollister, because that talks about, I guess, the creation of the district. We simply allow for the expansion of a district in the bill. The procedures follow the same mechanism, so I'm sure... [LB168]

SENATOR McCOLLISTER: Well,... [LB168]

SENATOR MELLO: ...I'm sure that the city of Omaha can explain how they go about it in regards to the counting and tabulation of the votes in comparison. [LB168]

SENATOR McCOLLISTER: Thank you. [LB168]

SENATOR MELLO: The first process, though, always has to go to the business improvement board first though before it goes to the city. [LB168]

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SENATOR CRAWFORD: Other questions? So I believe that the bill outlines that if this petition is going forward that everyone, all the property owners and users of space are notified by mail. [LB168]

SENATOR MELLO: Correct. [LB168]

SENATOR CRAWFORD: So they would know that this is happening so that if 50 percent or more want to object, they have notice to. [LB168]

SENATOR MELLO: They have the ability to do that. [LB168]

SENATOR CRAWFORD: And notice to contact their city council on how they'd like them to vote on this ordinance. [LB168]

SENATOR MELLO: Correct. [LB168]

SENATOR CRAWFORD: Thank you. Other questions? Thank you. [LB168]

SENATOR MELLO: Thank you. [LB168]

SENATOR CRAWFORD: Are you staying for closing? [LB168]

SENATOR MELLO: I will, but I may waive closing. [LB168]

SENATOR CRAWFORD: Okay. Thank you. So now we'll hear from proponents of LB168. Welcome. [LB168]

TIMOTHY SIEH: (Exhibits 1 and 2) Welcome. Good afternoon, Madam Chair. Timothy Sieh, on behalf of the city of Lincoln, T-i-m-o-t-h-y S-i-e-h. I serve as an assistant city attorney for the city of Lincoln and come before you today to say that the city of Lincoln supports LB168 in its current form. We thank Senator Mello for bringing the bill and we have two reasons for supporting the bill. As Senator Mello discussed in his testimony, we were recently in the process of trying to expand our downtown BIDs into the West Haymarket area. There are three existing BIDs in the downtown area, and what we discovered and what we confirmed, I guess, when we attempted to incorporate the West Haymarket was that we had no means in the statute to actually expand the existing BIDs into that area. So, those of us who have created these districts, we have discovered that this is a rather time-consuming and cumbersome process. In the example of the

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West Haymarket area, there would have been the formation of a business improvement board, which is done by appointment. That board then gets together and makes recommendations as to what the boundaries of the district might be, what improvements might be made in the district, and then what services might be offered in that district. In the course of doing that, it took several months to come up with those recommendations. Those recommendations are then forwarded on to the city council. In the city of Lincoln, we have a planning commission hearing as well. It then goes to the city council, where we have two hearings. One hearing is to pass a resolution of intent. The second hearing is to actually establish the business improvement district. We believe LB168 does a nice job of, one, allowing us to expand that business improvement district but, secondly, creates a little more streamlined process for accomplishing that while recognizing the due process requirements of notifying the property owners and business owners. [LB168]

SENATOR CRAWFORD: Thank you. Could I...I'm not sure if I caught your spelling of your name at the beginning. [LB168]

TIMOTHY SIEH: I can do that again. [LB168]

SENATOR CRAWFORD: Okay. Thank you. [LB168]

TIMOTHY SIEH: T-i-m-o-t-h-y, last name is spelled S-i-e-h. [LB168]

SENATOR CRAWFORD: Thank you. [LB168]

TIMOTHY SIEH: I guess I would then go into a little bit of the streamlining process and what we tried to do or why we think that this bill is a good idea. LB168 removes from the process the resolution of intent, which is passed by the city council currently. The resolution of intent is passed after the business improvement board has made recommendations. If your city has a planning commission, the planning commission has weighed in on the issue. Then the city council gets these recommendations and has the opportunity to pass a resolution of intent. The resolution of intent creates nothing. Resolution of intent is essentially a notice requirement that says...that is sent out to say four pieces of information: one, what the proposed boundaries would be; two, the time and place of any public hearing that would be held in front of the city council to consider the formation of the business improvement district; three, the proposed improvements or services to be provided through the business improvement district; and four, any...the estimated costs associated with those improvements or services and the means by which revenue would be raised to pay for those costs. What that signified to us is that the resolution of intent is essentially a notice requirement and the resolution of intent is mailed out to affected property owners and published in the newspaper, much as we do with a number of our other

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items. And what, I guess, we have observed through that is we can provide that same notice to property owners simply by mailing out the recommendations from the business improvement board to the affected property owners, the affected business owners, as well as publishing it, just the same as we do with a resolution of intent. And that's why the change you see from striking or repealing 19-4024, which is the resolution of intent statute, and incorporating it into...and I don't recall the specific section. But that was the purpose of doing that. And so with that, we think that you can remove the resolution of intent, you can still provide affected property owners with the two crucial pieces of information, knowing what is being proposed and allowing them to participate in the public discussion. The protest procedures are still all in place. The ability of 50 percent of property owners to protest and have the proceedings terminated still exists, while at the same time we've taken several weeks out of the process of creating one of these and allowed business and property owners to actually receive the benefits that are designed and that are intended rather than making them wait additional time while someone across the street from them may be receiving the same benefits already. And so for those reasons, the city of Lincoln supports LB168. We thank, again, Senator Mello for his work on this issue. And I would be happy to answer any questions you might have. [LB168]

SENATOR CRAWFORD: Thank you. Any questions? [LB168]

SENATOR KRIST: Stayed under five minutes. [LB168]

SENATOR CRAWFORD: Seeing none, thank you. [LB168]

TIMOTHY SIEH: Thank you. [LB168]

SENATOR CRAWFORD: Welcome. [LB168]

BERNARD in den BOSCH: Good afternoon, Senator Crawford,... [LB168]

SENATOR CRAWFORD: Good afternoon. [LB168]

BERNARD in den BOSCH: ...members of the committee. My name is Bernard in den Bosch: first word is spelled B-e-r-n-a-r-d; last name is three words, first word is lowercase i-n, second word is lowercase d-e-n, and third word is capital B-o-s-c-h. I've done it a few times, unfortunately. I'm testifying on behalf of the city of Omaha. I am a deputy city attorney in the city of Omaha, and I have amongst my responsibilities assisting business improvement boards in creating business improvement districts. And I would also like to thank Senator Mello for his assistance and leadership in bringing this bill before you. The city of Omaha is interesting. In the

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mid-'80s there were three active BIDs and then nobody heard about a BID for about 20 years. Starting in about 2000, the...some members of the downtown community were interested in creating a BID and the BID...a business improvement area board was formed, and that's really the first part of the process. That's a board appointed by the city...appointed by the mayor, confirmed by the city council, people who are in the community who are interested in potentially looking at creating a business improvement district. It took approximately seven years and three false starts before they were able to create a board. There was, to say the least, a fair amount of skepticism, a fair amount of unhappiness and concerns by people in the community. But approximately in 2007 the board was able to get a BID formed that had probably 30 percent of the assessed value that was originally contemplated and that particular downtown business improvement board has been very active in everything from wayfounding to clean and save to improving trees and a variety of other projects. What it has spurred is a desire through many established business areas in Omaha to have business improvement districts, and we have seen the creation first of Benson and Dundee of business improvement districts that have had significant projects and have been, frankly, the gateway for additional growth projects in those communities. We've also had the creation of the Blackstone Business Improvement District, the Elkhorn Business Improvement District, and we've also recently created a South Omaha Business Improvement Area Board. There was one of those in the mid-'70s and that had been inactive for roughly 25 years. So the merits of business improvement districts have become something that the members of the community are embracing. And the concept of being able to expand business improvement districts was something that I know Joe Gudenrath, who was the executive director of the Omaha Downtown Improvement District Area Board, was very interested in doing, because as the downtown BID has been successful, there have been a number of businesses who have come to the BID and said, hey, we want to be part of this. And prior to this bill being adopted, there was really no simple way to do it without creating a whole "nother" BID, dissolving the one that's in existence and starting over from scratch, something that nobody wanted to do. And there was really no desire among some of those businesses to try to start a new BID with just a couple of businesses. They wanted to be part of this project that's been successful and they see the direction it's going. So the primary, at least, benefit from our basis when the bill was first talked about is here is an ability to allow people who are interested in becoming part of the BID that would go to the board, those people that live in the community, convince them that they're worthy additions to the business improvement district, and then allow a mechanism for the city council, after considering input from everybody, to add those areas. And we think that is...provides a tremendous opportunity. And we know that if the bill would happen to be adopted, there are people lining up for the opportunity to join our downtown business improvement district. Some of the other changes--and I'm not going to go into the detail the gentleman from Lincoln did, obviously, he did an excellent job of portraying them--again will speed up the process only because, at least under the way BIDs have been created, you had roughly three hearings that were effectively the same thing. And it meant you ended up as opposed, and sometimes that meant the different people were spread out and you didn't have

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everybody at the table at the same time expressing their views. So the city of Omaha believes that this bill will not only make the process smoother, it modernizes a lot of the language in how the bill is formatted but is also particularly interested in the ability for BIDs themselves to be able to expand and include other people who are interested in being involved. So we express our support, And again, I would also be more than happy to address and answer any questions. [LB168]

SENATOR CRAWFORD: Thank you, Mr. in den Bosch. Questions? Senator Krist. [LB168]

SENATOR KRIST: Thank you, Chair. And thank you for coming. In the inclusion of those people that want to become part of the BID, is their occupation tax then grandfathered in? Are they going to proceed with the same kind of a tax profile, or does that again change the profile of the BID in your mind? [LB168]

BERNARD in den BOSCH: I would anticipate that any area that was included would then be subject to the same methodology of assessment. Now on the downtown BID there's an assessment methodology that's based on assessed value. So if you were talking about expanding that particular business improvement district, those people would be subject to the same things. Now on the downtown BID, like many of our BIDs, there's a cap. There's the maximum amount that that particular BID can assess. And absent some change to the maximum amount, which was a whole "nother" process, they would then be contributing and presumably would spread the expense out between more entities. [LB168]

SENATOR KRIST: Okay. Thank you. [LB168]

SENATOR CRAWFORD: Other questions? Senator McCollister. [LB168]

SENATOR MCCOLLISTER: Thank you, Senator Crawford. Are there any other obligations that could occur, would occur, would accrue to those folks wishing to expand into the district? [LB168]

BERNARD in den BOSCH: The obligations that they're going to have are primarily...are only financial. That's the only thing it would require. And that's something that they're going to know about ahead of time. Since the BID is already created, it's a creature of ordinance, everybody can see what the rules are, we're obligated to make sure we notify those people before that vote ever occurs. I mean in our downtown BID, will they have some other...they'll have some other opportunities but not obligations. They'll be able to vote, for example, for the board that runs the downtown improvement district. They'll have some ability to get services from the executive

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director. But as far as obligations, we've talked a little bit about that already where the amount that would be paid by the district would be spread out. They would be included within that, whatever assessment methodology or occupation tax. We don't do occupation taxes in any of our BIDs in Omaha. We either do assessed, assessment by square footage or by assessed value. [LB168]

SENATOR McCOLLISTER: Thank you. [LB168]

SENATOR CRAWFORD: Other questions? I have a question. [LB168]

BERNARD in den BOSCH: Oh, no problem. [LB168]

SENATOR CRAWFORD: As Senator Mello clarified that this is only for areas that are zoned business, commercial, but there might be some residents living in those areas. Can you just clarify what the bill would mean for those individuals who happen to have an apartment or a home in those areas? [LB168]

BERNARD in den BOSCH: Well, and the language, I know, because the first time I reviewed the bill I had the same concern that there was new language being added, and there isn't. [LB168]

SENATOR CRAWFORD: Okay. [LB168]

BERNARD in den BOSCH: It was actually language being moved from one area to the other. And I...the language...what it requires is that you be a recognized business area. I don't know that you have to necessarily be zoned for business but it's a recognized business area. [LB168]

SENATOR CRAWFORD: Okay. [LB168]

BERNARD in den BOSCH: There is no question there are residences that will sometimes be within those recognized business areas. To the extent that they receive some benefit from the BID, I believe there's a method...under the methodology they can be asked to pay something or assess it. I know in Omaha's case, we have the downtown BID residences are assessed at half the rate of other property. An income-assistant residence is another half of that. We have some BIDs where residential property is totally exempt and there's others where they have...they pay a part. But generally, it's at some reduced level of...some reduced level of assessment if they happen to be stuck in those boundaries. [LB168]

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SENATOR CRAWFORD: And so those residents, though, would receive the notification... [LB168]

BERNARD in den BOSCH: Right. [LB168]

SENATOR CRAWFORD: ...and have the same right of refusal of 50 percent, to include some residents who wanted to refuse. They would have that same right of refusal. Is that correct? [LB168]

BERNARD in den BOSCH: Absolutely. Before we could even form the BID or expand it, they would have to... [LB168]

SENATOR CRAWFORD: Okay. [LB168]

BERNARD in den BOSCH: ...they would get a notice and have the same opportunity. [LB168]

SENATOR CRAWFORD: And the notice would include probably those provisions of if the rental space is half the assessment or... [LB168]

BERNARD in den BOSCH: I believe the assessment methodology is something where not only are we supposed to tell them...we have to tell them the amount it's going to be, but we have to tell them how people are going to have to pay for it. [LB168]

SENATOR CRAWFORD: Excellent. Thank you so much. [LB168]

SENATOR McCOLLISTER: One more. [LB168]

SENATOR CRAWFORD: Other questions? Senator McCollister. [LB168]

SENATOR McCOLLISTER: Sorry. Thank you, Senator Crawford. The rate at which they'd be taxed is at the discretionary authority of the BID board? [LB168]

BERNARD in den BOSCH: No. The BID board will make a recommendation to the city council for any business improvement district that's going to be created. The ordinance that the city council adopts is the formal document that indicates how the proceeds are going to be assessed. In every instance that I've been involved, the city council has gone along with the recommendation of the business improvement board. [LB168]

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SENATOR McCOLLISTER: I understand. Thank you. [LB168]

SENATOR CRAWFORD: Thank you. Any other questions? Thank you. [LB168]

BERNARD in den BOSCH: Thank you. Have a good afternoon. [LB168]

SENATOR CRAWFORD: Welcome. [LB168]

LYNN REX: (Exhibit 3) Thank you. Senator Crawford, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First, we'd also like to thank Senator Mello for the work of not only his work but the work of his staff and the long period of time within which he has worked with us and the eight cities in the state of Nebraska that have BIDs. We're sending that notice out to you right now so that you have the list. It's Alliance, Chadron, Columbus, Grand Island, Hastings, Kearney, Lincoln, and Omaha. So it's a metropolitan class city with Omaha, primary class with Lincoln, and then six cities of the first class. As you note in the bill itself, second-class cities already have the authority as well, but we have no second-class cities that have done it. We are strongly supporting this measure. We support the fact that it streamlines the process. It creates a process by which statutorily you can expand a BID and, of course, the most important thing for us as well is it protects the due process rights. So we strongly support the measure. Appreciate all the work which has been really intensive, and I know Trevor also worked on this when he was working with Senator Mello. So this is a long overdue effort and thank you very much for all your help too. And I'm happy to respond to any questions you might have. [LB168]

SENATOR CRAWFORD: Thank you, Ms. Rex. Any questions? [LB168]

LYNN REX: Thank you. [LB168]

SENATOR CRAWFORD: Seeing none, other proponents. Is there anyone here to speak in opposition of LB168? Anyone who wishes to speak in a neutral capacity for LB168? Would you like to close, Senator Mello? He's waiving closing. All right. Let's make sure...we have a few letters to enter into the record. We have a letter of support from Omaha City Council members Franklin Thompson, Chris Jerram, and Ben Gray; and we have a letter of support from Omaha Downtown Improvement Districts; and a letter of support from Terry Uland of the Downtown Lincoln Association. With that, we will close the hearing on LB168 and open the hearing on LB116. Welcome. [LB168]

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SENATOR HAAR: Thank you. Chairwoman Crawford, members of the committee, just like to open by saying I look around at the young people on your committee that...which is all of you and I got to remind you that as you grow older, as you will, you also grow more tired. (Laughter) Okay. So my office was contacted by board members of SID 6, more commonly known as Emerald, Nebraska. If you drive out on west O Street, Highway 6, you'll pass through Emerald. SID 6 is a small district with less than 25 different property owners. State law currently requires each SID to have five board members. My constituents in Emerald are having a hard time finding individuals who want to serve on the board. Two of the current board members are over the age of 90--that's why I brought up my initial comments--and, understandably, wish to retire from this responsibility, although they take it very seriously. The board members have been unable to find replacements. LB116 allows SIDs that have been in existence for at least eight years and have fewer than 70 property owners to vote to reduce their board from five to three. This will allow small SIDs to have a full and functioning board. I also have an amendment to present to you, and I think you all have a copy of that, that addresses some technical issues with the bill. The amendment limits the ability to reduce the number of board members only for predominantly residential SIDs and will clarify the voting procedure for electing the three members. When we started work on this, we weren't aware that there were also not just residential SIDs but some business SIDs. I'm happy to work with the committee staff and others so that we can address the problem without any unintended consequences. And we may hear a few more technicalities today that need fixing. I hope you'll consider this. Again, we can't fix the aging process. I wish I could. (Laugh) Thank you very much. [LB116]

SENATOR CRAWFORD: Thank you, Senator Haar. Any questions for Senator Haar? Senator Krist. [LB116]

SENATOR KRIST: Thank you, Chair. Just very briefly, Senator Haar, is that the right number? Is that the right break point, the 70 in terms of reducing the population or are we looking at a moving target? [LB116]

SENATOR HAAR: No, we think that's a good number. My LA has been talking with various people as we learned about SIDs, and that seems to be a good number. [LB116]

SENATOR KRIST: Okay. Thank you. [LB116]

SENATOR CRAWFORD: Other questions? Are you planning to stay to close? [LB116]

SENATOR HAAR: I think not. [LB116]

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SENATOR CRAWFORD: Okay. [LB116]

SENATOR HAAR: I will go back to Appropriations. But thank you for your consideration and my LA is here to take detailed notes. [LB116]

SENATOR CRAWFORD: And we will follow-up with the questions? Excellent. Thank you. Thank you, Senator Haar. [LB116]

SENATOR HAAR: Thank you so much. [LB116]

SENATOR CRAWFORD: So we will now hear from proponents of LB116. Welcome. [LB116]

ANGELLA HERTZEL: Hello. Thank you for having me. My name is Angella Hertzelt, A-n-g-e-l-l-a, Hertzelt, H-e-r-t-z-e-l. I am the board president of SID 6 in Emerald. It has become a position I kind of inherited from my mother. She was the board president before she passed away and I became a property owner. (Laughter) So I have five board members as of now. To get to that five, I had to write a 95-year-old woman onto the ballot so I could make sure I met the requirements that I needed to. And I called Anne (phonetic) and said, Anne (phonetic), I know you've done this forever, can you please help me out. And she said, of course, yes, because what are we going to do. I have tried several times to talk to other property owners but we technically, we have 21 hookups in Emerald; 13 are residential; 8 are commercial. Of those residential, there are property owners that own more than one property. So they rent them. And basically they are all...my youngest member besides me and my husband is Jane who will be next, and 60 and above and far above. And I've talked to some other property...like some business owners. They don't care. In their civic duty I guess they don't. As long as they can drink water, that's good, that I have to get for them and take water samples and they can flush their toilets, they don't really care what's going on. Even when we've had problems fixing things and needing to do things, they know that it'll get taken care of which it always just does. So I would love to sit here and say that I will never have to worry about it, even if it becomes three board members. You know, I'm hoping that maybe younger people will move out there or Lincoln will take us over. I've talked to the NRD trying, which my mom tried and failed horribly years ago to try to get them to take us over because we're just so small. And it's all volunteer. You know, so we do book work. We fill out our loans, do all of our things that we need to do just so that we can drink water. You know, and that took a process to even get that done. But for us, you know, I know that there's...when someone had asked about different SIDs, from the research that I learned I think that there's only like three or four of us anywhere that's under 50, if that. I think there might be three. I believe we are the smallest. Most of the SIDs are, you know, hundred or so, close to more. So they have a lot more people to get involved in the matter. But I am here to support this bill, so hopefully I can have a board because bottom line is I don't really know what happens. What happens to me

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if I don't have five people? I don't know what happens then. So I would like to keep it so it's something I could try to maintain and maybe by the time Jane, the woman who's going to speak next, which I know she would love to retire from it, too, but we just don't have that option (Laughter) because I don't have a third one. So that would be great. But I just wanted to say I support the bill and if you have any questions, I can answer them. [LB116]

SENATOR CRAWFORD: Excellent. Thank you, Ms. Hertz. And we do appreciate that you care. I know it's a lot of effort and a lot of time that it takes to do this for your SID and I appreciate that you've been willing to step up and do that. [LB116]

ANGELLA HERTZEL: Thank you. [LB116]

SENATOR CRAWFORD: You're welcome. Any questions? Senator Krist. [LB116]

SENATOR KRIST: Thank you, Chair. And having been in your position as an SID president and association... [LB116]

ANGELLA HERTZEL: Since 2010. [LB116]

SENATOR KRIST: You have been since 2010? Having been in your position before, I empathize. Do you think that it's easier for us or should be more accommodating for us to change the statute to arrive at a baseline or to allow individual circumstances like yours to apply for a waiver to the statute or an exception? [LB116]

ANGELLA HERTZEL: I guess I haven't heard, to be honest, any other issues with other towns or any other SIDs. I think that we are the one that's just kind of in a pickle because I have nobody who wants to step up. So I think that if we could get it down...you know, I think that the 70 is a good number and I think that that would be pretty much clear-cut. I don't think that there's going to really be any other issues with any other towns, just us. [LB116]

SENATOR KRIST: I kind of worry about special legislation in some cases where we're doing something for one or two, and that's why I bring that up. [LB116]

ANGELLA HERTZEL: Well, I think that's why he wanted to do the bill with the 70 so it's including all SIDs, and then you have 70 and above has to have five, you know, and below because you just don't have the people. When you don't have the people you can't have the SID. [LB116]

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SENATOR KRIST: Okay. Thank you. [LB116]

ANGELLA HERTZEL: Thank you. [LB116]

SENATOR CRAWFORD: Thank you. Other questions? Seeing none, thank you for your testimony. [LB116]

ANGELLA HERTZEL: Thank you. [LB116]

SENATOR CRAWFORD: Other proponents for LB116? Welcome. [LB116]

JANE SWANSON: Good afternoon. I am Jane Swanson, J-a-n-e S-w-a-n-s-o-n, and I am the clerk of the SID 6. And I think Angella did an excellent job in explaining our problems. I'm one I...to tell you the truth, I can't even remember how many years I've served on the board. I didn't realize it was going to be for life when we signed on, and my husband had served before I had. We are...one thing about our SID with the small number of people we had, several years ago we had to get a new water system besides our sewer system. We have no debt other than what we owe for our water system right now. We're completely debt free. Twenty-one people, we're a very, very viable entity. All our bills are paid. We owe no one, which I think is a lot to be said for that number of people and the billings we have. And we just had to raise our rates slightly this last year because we wanted to make ourselves just a little bit of a cushion because we know there are going to be some repairs. But there again with the number of people that we don't have anyone to pull from when we need another board member. And it would just be to our best if we had three people rather than five. And I know when legislation was set up all those years ago, and my husband happened to be on the board when that all started, it was not...there wasn't really a distinction, a big enough distinction between small numbers, and I don't think anybody realized there would be such a small SID as ours that would run into a problem like we have. [LB116]

SENATOR CRAWFORD: Thank you, Ms. Swanson, and thank you for your service to your SID and those citizens through being on the board for so long. Questions? Senator McCollister. [LB116]

SENATOR MCCOLLISTER: Thank you, Senator Crawford. Just curious, does your SID provide garbage service? [LB116]

JANE SWANSON: Nope. Maybe we should start that, too. (Laughter) [LB116]

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SENATOR McCOLLISTER: How do you...do the individual owners provide for garbage service? [LB116]

JANE SWANSON: Um-hum. We have a garbage service that is located by Denton, and that's usually...that's the one that most people use. [LB116]

SENATOR McCOLLISTER: And majority of the property owners contract with the same company? [LB116]

JANE SWANSON: Um-hum. [LB116]

SENATOR McCOLLISTER: But that was done individually. [LB116]

JANE SWANSON: Yes, individual. [LB116]

SENATOR McCOLLISTER: Thank you. [LB116]

JANE SWANSON: Um-hum. [LB116]

SENATOR McCOLLISTER: Thanks for appearing. [LB116]

SENATOR CRAWFORD: I have another question. So with a board of five, I assume three is a quorum. Do you have an active set of three who generally attend? [LB116]

JANE SWANSON: Yes, yes. [LB116]

SENATOR CRAWFORD: Okay. [LB116]

JANE SWANSON: Every month we have three. And then sometimes one of the older ones...they do try to make it but, like I said, with their age and their health it's really difficult for them at this stage now. [LB116]

SENATOR CRAWFORD: Thank you. Other questions? Thank you. [LB116]

JANE SWANSON: Thank you. [LB116]

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SENATOR CRAWFORD: Other proponents? Welcome. [LB116]

LYNN REX: Chairman McGill (sic), members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We just wanted to very quickly go on record in support of this. We think it's a practical solution to a problem that does need to be addressed. I'd be happy to answer any questions. [LB116]

SENATOR CRAWFORD: Thank you. Questions for Ms. Rex? Thank you. [LB116]

LYNN REX: Thank you. [LB116]

SENATOR CRAWFORD: Any other proponents that would like to speak? Anyone here to testify in opposition to LB116? Anyone to testify in a neutral capacity? Thank you. Welcome. [LB116]

JON BLUMENTHAL: Thank you. Madam Chairperson, senators, thank you. My name is Jon Blumenthal, J-o-n B-l-u-m-e-n-t-h-a-l. I'm from the Baird Holm Law Firm in Omaha, Nebraska, and my firm serves as bond counsel to the majority of sanitary improvement districts in Nebraska. First of all, let me say thank you to the trustees from District 6 who are here today, that we do appreciate their service as well, and we're sympathetic to their issue. The reason we're here today or the reason I'm here today, sanitary improvement districts depend upon the ability to issue tax-exempt bonds for the majority if not all of their infrastructure. In recent years, the IRS has increased its scrutiny upon bonds issued by political subdivisions. The issue that concerns us in particular, in May of 2013, the IRS issued a technical advice memorandum in the state of Florida that a Florida community development district is not a division of state or local government and, therefore, is not a political subdivision for purposes of the Internal Revenue Code. In that instance, there was a specific issue where the IRS concluded that the developer controlled the district and, therefore, despite its purportedly being a political subdivision the IRS concluded that this district was not a division of state or local government and the district was not eligible to issue tax-exempt bonds. Obviously, this isn't Florida. We're here in Nebraska. This issue is on the radar of political subdivisions throughout the country, including sanitary improvement districts. While this particular technical advice memorandum called into question the tax exempt status of bonds issued by other special districts controlled by one or more landowner, most commentators on this issue believe and hope that its scope is limited given the unique nature of the district in question. We are concerned, however, that the reduction in trustees from five to three could be seen as a concentration of control by the Internal Revenue Service. If such a determination were made by the IRS that there is a concentration of control within SIDs in Nebraska, it could potentially put the tax-exempt nature of bonds and construction fund warrants into jeopardy which would jeopardize the existence of SIDs in Nebraska. Again, we respectfully express this position on the bill. Again, we are sympathetic to

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District 6. I would point out that in that instance, like Madam Chairperson pointed out, that there still is a quorum with three. The district can still operate and function with three trustees, and that there is also a statutory procedure in place to allow for an administrator for a district who's having trouble meeting the requirements. And, again, I empathize. It can be difficult at times to find people to serve. But that being said, we certainly want to preserve SIDs as political subdivisions within the state of Nebraska. Open for any questions. [LB116]

SENATOR CRAWFORD: Thank you, Mr. Blumenthal. Questions? Senator McCollister. [LB116]

SENATOR McCOLLISTER: Thank you, Senator. Would the waiver process put us in better legal stead with the IRS than what we're contemplating here? [LB116]

JON BLUMENTHAL: When you say the waiver... [LB116]

SENATOR McCOLLISTER: As outlined by Senator Krist, utilizing a waiver, a hardship waiver of some kind. [LB116]

JON BLUMENTHAL: Again, we believe that the administrator procedure that currently resides in the statute would allow...takes care of this problem and essentially is already that answer, allowing the district to appoint an administrator to run the affairs of the district. [LB116]

SENATOR McCOLLISTER: Okay. Thank you. [LB116]

SENATOR CRAWFORD: Senator Krist. [LB116]

SENATOR KRIST: Thank you. Which then brings in the question of forcing an SID of their stature to actually have to pay for an administrator on the board which to me is not a viable option. But to expand on the waiver or exemption process, and I was going there because of the IRS notations in the past few years. If something is so small that they can't have five members who are volunteers to get there and we do have one administrative function in place who may not qualify to be but is not going to have be paid. If we put an exemption or a waiver process in place for the anomaly and didn't risk the rest of the SIDs, could you speak to me then about what the IRS or what some other authority might say about our SIDs, because the last thing that I want to do is put all SIDs in jeopardy for something that we would change for one or two. [LB116]

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JON BLUMENTHAL: And, again, we're speaking in hypotheticals as to what the IRS may or may not do and that's a difficult position to be in, and I certainly for many reasons wouldn't want us, you know, be in that position. [LB116]

SENATOR KRIST: Right. [LB116]

JON BLUMENTHAL: But that being said, again, it's that concentration of control issue. Our fear is that by highlighting that issue you're bringing scrutiny to SIDs as political subdivisions where there currently isn't that scrutiny. And, again, we wouldn't feel that scrutiny is warranted. We believe rightly that SIDs are political subdivisions. I want to make that clear. Well, certainly they are political subdivisions. We feel that the IRS should uphold that distinction if they ever called that into question. Again though we feel that it's just an unnecessary instance here where we could call that into scrutiny. As to whether the waiver avoids that scrutiny, I don't have an answer for that, Senator. [LB116]

SENATOR KRIST: Okay. Thank you. [LB116]

SENATOR CRAWFORD: Thank you. Other questions? Thank you for your testimony. [LB116]

JON BLUMENTHAL: Thank you, Senators. [LB116]

SENATOR CRAWFORD: Anyone else who wishes to testify in a neutral capacity for LB116? Do we have any letters? I do not believe we have any letters to read into the record for LB116, so that closes our hearing on LB116. And we will open our hearing on LB131. Welcome, Senator Craighead. [LB116]

SENATOR CRAIGHEAD: Good afternoon, Chairwoman Crawford and members of the Urban Affairs Committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d. I represent Legislative District 6 of Omaha and Douglas County. I am here today to present for the Urban Affairs Committee's consideration LB131 relating to annexation of sanitary and improvement districts or SIDs. The bill was brought to me by the city of Omaha. As you know, SIDs are a political subdivision created under Nebraska law. They have certain rights, duties, and obligations under state law. They are used most heavily in Douglas and Sarpy Counties for the purpose of development of housing additions within the extraterritorial planning jurisdictions of cities. SIDs are chartered, platted, and developed with the express and well-known position of one day being part of a municipal corporation through annexation. During the course of their existence, SIDs take on debt and raise funds in order to purchase and maintain public conveniences and infrastructures. SIDs are managed by an elected board of trustees. SIDs know they are living on

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borrowed time in the sense that they know some day they will be annexed by a city and dissolved as a legal entity. LB131 is offered to provide some guidance to cities and SIDs relating to the expenditure of funds once annexation intentions are known. I have prepared and filed an amendment to further clarify this guidance. In particular, LB131 would require a SID to obtain permission to expend funds once the SID receives notice from a city council of the city's proposal to annex territory within the SID. In particular, funds held by a SID during the course of evaluation by a city to determine the feasibility of annexation shall not be spent. Thank you for your consideration. I welcome questions you may have. We also have representatives with us today from the city of Omaha, including Cassie Seagren, deputy chief of staff of economic development, and Al Herink, comptroller for the city of Omaha, as well as Jack Cheloha, lobbyist for the city of Omaha, who can give additional expert insight. [LB131]

SENATOR CRAWFORD: Thank you, Senator Craighead. Questions? Senator Krist. [LB131]

SENATOR KRIST: Thank you, Chair. Hi. Welcome. [LB131]

SENATOR CRAIGHEAD: Hi. [LB131]

SENATOR KRIST: My concern and I'll just vocalize it now and then the experts, technical experts, can come up and tell me I don't need to be concerned. My concern is that the process of annexation may indeed take a period of time and that what you're doing to a sanitary improvement district that has paid their bills faithfully and executed certain programs now would, for example, instead of building the common recreational area that's been planned for years and years and that these folks have build into, they'd have to get permission in order to spend any money. My concern is that if you're going to annex then you allow that sanitary improvement district to pay its bills until the date that you annex. So not that I...I'm just concerned. So I voiced it. [LB131]

SENATOR CRAIGHEAD: Normal bills would be taken cares of but at that point a SID couldn't go out and say, okay, now we're going to go out and build a fountain or now we're going to do this. It would be the normal and customary expenses without large capital expenditures. [LB131]

SENATOR KRIST: Okay. And from my personal experience people who are in an SID that are governing themselves one day wake up and find out they're on an annexation list and they have put money aside for or have planned to bond for a capital improvement. That's why they live there. That's why they chose to live there. And that would put an end to that should that annexation authority decide no, you can't do that. So, yeah. [LB131]

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SENATOR CRAIGHEAD: Correct. [LB131]

SENATOR KRIST: All right. Thank you. [LB131]

SENATOR CRAIGHEAD: Yes, thank you. [LB131]

SENATOR CRAWFORD: Other questions? I have a question. Just on the theme of paying the regular bills, the amendment says except upon approval by the city's finance director or designee. Have you had any discussions with city finance directors over what that would look like in terms of would they be approving each expense or coming up with an agreement with the sanitary improvement districts about which kinds of expenses would be approved and not approved? [LB131]

SENATOR CRAIGHEAD: I have not and I'm going to defer that question to the experts. [LB131]

SENATOR CRAWFORD: Okay. All right. Thank you. Other questions? Thank you. Will you be staying to close? [LB131]

SENATOR CRAIGHEAD: Yes. [LB131]

SENATOR CRAWFORD: All right. Excellent. Thank you. [LB131]

SENATOR CRAIGHEAD: Thank you. [LB131]

SENATOR CRAWFORD: So we will now hear from proponents of LB131. Welcome. [LB131]

CASSIE SEAGREN: (Exhibits 1 and 2) Welcome. Good afternoon, Senator Crawford and members of the Urban Affairs Committee. My name is Cassie, C-a-s-s-i-e, Seagren, S-e-a-g-r-e-n, and I am the deputy chief of staff for economic development for the city of Omaha. The city of Omaha asks for your support of LB131 which would restrict sanitary and improvement districts, SIDs, from spending assets after receiving a notice of proposed annexation. SIDs have played an important role in the development of the city of Omaha. SIDs are a highly flexible and functional vehicle for development of new commercial, residential, or mixed-use areas. From a developer's standpoint, they serve as a means of financing the cost of new basic services such as water and sewer infrastructure, roads, and sidewalks. SIDs also allow the board of trustees, the governing body responsible for the construction and maintenance of the public improvements, as

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well as the financial well-being of the SID to contract out for other services, such as increased security, improving parks and playgrounds, and trash collection. From the municipality standpoint, SIDs provide for future growth, one that is orderly, in conformance with structural standards, and consistent with the city's master plan. Another way that the city of Omaha continues to grow is through annexation. As of the end of 2014, there were over 140 SIDs within the city of Omaha's extraterritorial jurisdiction. In order to narrow down that list and study whether or not annexation is feasible, the city of Omaha starts with four criteria. (1) To close the islands, those areas completely surrounded by the city; (2) a tax levy less than or equal to 60 cents; (3) a debt ratio of 5 percent or less; and (4) whether or not there's retail located within the SID. It should be noted that an SID only has to meet at least one of those to be considered. From there, we continue to evaluate areas further by looking at the revenues they produce as well as the debts that are outstanding. We also evaluate the cost of providing city services including police and fire protection, solid waste collection, snow removal, street and public property maintenance. I have provided you with a copy of the ten-year debt service analysis that we completed for the 2014 annexation package. This package was one of the largest annexation packages in recent history and included 17 residential and business SIDs bringing in over 8,700 new residents and \$930 million in new valuation. It also decreased residential property taxes for almost all. This annexation package over a ten-year period was a net positive for the city of Omaha. As you can see, an important factor in the decision to annex an SID or not is its financial health. If decisions are made to make major financial expenditures or commitments without the city's knowledge, it could have severe consequences on the entire feasibility of an annexation package. The city of Omaha views SIDs as a positive mechanism. It allows for future growth, continued development, and job creation. Our support of LB131 isn't to limit the ability of an SID. LB131 will allow for cities to participate in spending decisions made by the SID board of trustees during the annexation process with the intent to require SIDs to continue business as usual and eliminate the potential for major financial commitments and expenditures that would be detrimental to the financial feasibility of an annexation package. You may hear of some other technical issues with the bill and we would be interested in working with anyone involved on addressing those and making this a win-win situation for all involved. Thank you for your time and I'll be happy to answer any questions. [LB131]

SENATOR CRAWFORD: Thank you, Ms. Seagren. Questions? Senator Krist. [LB131]

SENATOR KRIST: Thank you, Chair. You heard my point before. So I'm just going to give you a what-if here, and then we'll talk about how maybe we can solve the issue and talk about potentially solving it. You gave us a good synopsis of your criteria, no question. I've always had issues with the hop-skip method that you try to contiguously, you know, and we're talking about places like Miracle Hills Lake and those things that the asset is something that you don't want to take a risk with, so you go around the outside. [LB131]

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CASSIE SEAGREN: Correct. [LB131]

SENATOR KRIST: So we've had some disagreements and agreements on that policy or procedure but specifically on this particular issue let me say that the Deer Creek...the SID that includes four Deer Creek homeowners associations all have their own desire to do certain things. Deer Creek, that SID, 453 or whatever it is right now, decides that one of their capital improvements after developing for years and years and years is just outside of Players Club they want to build a public park kind of complex. That's been in the plans. That's been working. That's not normal expenditure by your definition. So that's been planned and now you decide on Tuesday that you're on the annexation list. Your proposing at that point, if I understand this legislation, that on Wednesday that board has to come back to the city of Omaha and say you can't spend that \$250,000 because you're on the annexation list. [LB131]

CASSIE SEAGREN: If I'm understanding your question correctly, yes, that would be the intent of this. [LB131]

SENATOR KRIST: Well, just for the record, my intent is to tell you that if there's a project planned and it's on the books, then we should talk about the potential of adjusting what you want and what the SID might have in mind. By that I mean if this has been planned, the money has been programmed, then there has to be some accommodation. Those 500 or 600 people have made a decision to spend that money and make their community better. That community then will become part of Omaha and I can't imagine that you would disagree that it would be better in terms of the accommodation. [LB131]

CASSIE SEAGREN: No, I wouldn't disagree in that at all. You know, one thing...I can't speak for previous administrations as I, you know, joined with this administration. One thing that we have started to do with our annexation is really take a proactive approach to it. So we start early. We start often. We're starting to have conversations. I know that there are people in this room that know that we're going through that process. We'll be working with them to continue to, okay, what sort of major capital improvements within your SID are you planning to have that might not show up in your budget as we start to take a look at some of those things. I think some of those are a case-by-case basis. Obviously, the one you speak of is one that would be a public benefit and that we would consider. [LB131]

SENATOR KRIST: Okay. Well, in order for me to be positive about this initiative I would have to see in statute that those things that are already on the books that have been decided on by that population that will soon become residents of the city of Omaha would be accommodated for. [LB131]

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CASSIE SEAGREN: Okay. [LB131]

SENATOR CRAWFORD: Thank you. Other questions? Senator McCollister. [LB131]

SENATOR McCOLLISTER: Thank you, Senator. There was some motivation that brought the city to initiate this bill, LB131. Does this kind of thing occur frequently? [LB131]

CASSIE SEAGREN: It's my understanding and I know Al Herink, our comptroller, who's had many years of experience with annexation can speak a little bit further to this, but it is my understanding that, yes. I mean, it does happen. I would tell you last year I don't believe it happened nearly as much but it has happened. And when you start looking at the financials, you know, for instance we budget \$100,000 for every new police officer. We've been lucky. In 2015 and 2016 as we increase our police officers are sworn strength that that's already within the police budget. So we don't necessarily include that within the package when we do the annexation calculations. However, if we were not to have those increases, those are additional costs that we would have to factor in. So if there is a cash balance on hand, and that's really the group that we're talking about, the cash balance as well as the debt, the bond debt. When you start looking at that, if one of those spikes it could potentially throw off that entire calculation. [LB131]

SENATOR McCOLLISTER: Senator Krist indicated on an ongoing SID that's planning ahead and has made plans, maybe even published those plans, have you actually seen where an SID would go out and spend a bunch of money just prior to the annexation or in anticipation of the annexation? [LB131]

CASSIE SEAGREN: Me, personally, I have not. I've only been with the city for about 19, almost 20 months now, and we've only had one annexation package. But I can tell you that from what I've been told by city staff across different departments, things like that have happened in the past where cash is run down, whether it's major capital expenses or, you know, just some of the day to day. We understand that there's day-to-day expenses. And our intent is not to eliminate the complete halt to that process. We understand that those have to go through a process as well. It's just to make sure that when we are taking on that risk, because annexation could be a risk, it's as calculated as possible. [LB131]

SENATOR McCOLLISTER: How do you separate one from the other? [LB131]

CASSIE SEAGREN: It's tough. It's very tough. But if you have projects on board, I mean, you know a lot of the SIDs, especially those that are in our ETJ, I mean, they go through our

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planning process. We typically know those types of improvements. I would tell you a lot of it is working with the SID communities, those fiscal agents, as well as attorneys and making sure that as we're looking at the annexation package, especially those older SIDs. As you can see on the map, we do have quite a few SIDs that are 15 years and older within our ETJ that we continue to work through and make sure those improvements that are planned and are part of the SID's decision--I mean, I live in an SID, I understand that--are still being done to meet those residents' needs but ultimately being able to grow the city as well. [LB131]

SENATOR McCOLLISTER: Thank you very much. [LB131]

CASSIE SEAGREN: You're welcome. [LB131]

SENATOR CRAWFORD: Thank you. Other questions? Thank you for your testimony. Other proponents. Welcome. [LB131]

ALLEN HERINK: (Exhibit 3) Good afternoon. Chairperson Crawford and members of the Urban Affairs Committee, my name is Allen Herink, spelled A-l-l-e-n H-e-r-i-n-k. I am the comptroller for the city of Omaha, and over the past 20-years-plus I have served the city, served on the city's annexation committee, and I'm here today on behalf of the city to testify in support of LB131. Annually, the annexation committee develops, then recommends to the mayor and city council an annexation package. The committee is made up of representatives from several departments, including police, fire, parks, public works, planning, and finance. The committee determines what specific city services will be required in each proposed annexation area and then calculates the cost of these services. The finance and planning departments then project the revenues that will be produced by the annexed areas. The study by the committee covers a ten-year period. The goal is to have a balanced package of revenues and expenditures in the package. I have distributed a summary of the city's 2014 annexation package for your review. Revenues that are included in the analysis include property tax, sales tax, wheel tax, and assets from annexed areas. Assets from annexed areas are revenues addressed by this bill. And I've highlighted it on your sheet that I've passed out there too. These assets are highly liquid and consist of cash and investments. These assets are accumulated by the SID for a number of purposes such as calling debt and making payments on existing debt. As in the example which was distributed, the city's 2014 annexation package identified \$6.8 million to be available to the city from the SIDs at time of annexation. These revenues are critical for maintaining a balanced annexation package. Through LB131, the city is asking for limited control of these assets from the period of public notification to the effective date of annexation. Our intent is not to take control of day-to-day business of an SID during this transition period but only be a partner in managing these assets. Thanks for your time this afternoon. If you have any questions I'll be glad to answer them. [LB131]

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SENATOR CRAWFORD: Thank you, Mr. Herink. Questions? I have a question. So you identify an SID in an annexation package... [LB131]

ALLEN HERINK: Sure. [LB131]

SENATOR CRAWFORD: ...and then you said you would notify them. So is that notification really the first time they would know they're on that target list? [LB131]

ALLEN HERINK: I would think so. Our process right now is it's about a four-month process from the time it begins going to the planning board which is some time in, oh, I would say May, and the effective date then of annexation is in this case was September 3. So we had like a four- or five-month period that these SIDs knew they were going to get annexed. And at that time we would just like to step in and be able to see what their major expenses are and that type of thing. We work in partnership with these people all the time. We're not in there to run day-to-day business. If they have streets that need to be brought up to city standards, we pass...let them do that. Have no problem with that. We don't want to inherit a bunch of things that the city has to go out and update anyway. If the parks aren't up to city standards, we think that...we have no problems with them spending funds to get them up to city standards. But it's when they go in excess and maybe you want to spruce up a little bit too much, that's the kind of things we'd like to take a review of, have the finance director approve, and get future or advance notification from the SID. Again, I think you can ask most of the SID people here that we're not here to...we've worked with them over the years to transition from an SID, the city, and there's been very few problems. But there have been abuses, and this just is going to take care of the major ones. [LB131]

SENATOR CRAWFORD: Could you speak to any abuses that you have seen? Any specific cases or specific kinds of expenses that you would consider abuses? [LB131]

ALLEN HERINK: Well, you know, there's been times where an SID has signed a long-term garbage agreement. And, you know, we have a city pick up that does the whole city and we can do it a lot cheaper than an SID can. Those are the kinds of things we'd like to look at. We had an SID years ago that had a golf course and they signed a 30-year management agreement to have a private person manage the golf course. Well, again, we operate nine golf course ourselves by the city. They knew they were going to get annexed and they wanted to stiff it to the city. So these are the kind of things we're looking at. And, you know, again, when we annex these things we want the facilities and the streets to be up to city standards and we have no problem doing general maintenance and that. You have to remember, most of these SIDs that we plan to annex are mature SIDs. They're, you know, 75 or 80 percent developed. They've been there 5 to 35 years. And most of the improvements are in already. And if they need to put some in and they

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ask the finance director, we'll be glad to let them do it, especially if they have the funds available and, you know, we can get it into the budget. [LB131]

SENATOR CRAWFORD: Senator McCollister. [LB131]

SENATOR McCOLLISTER: You do a financial feasibility when you look at this list, isn't that correct? The list of projects that you annexed in '14. [LB131]

ALLEN HERINK: You know, what we do, that's another thing, when we look at every SID we have public works go out and look at the SID. So they go out and note the streets. They notice if the streets need...have chuck holes, if there's some development that has to be hit. The parks department goes and inspects the parks, gives us a list of expenditures they think need to be improved in the parks. So it's not like we're going out there blindly and don't know what need to...again, we want to get them up to city standards. Some of these SIDs may want to go over city standards and that's the kind of thing that we kind of prohibited, we don't want to do. [LB131]

SENATOR McCOLLISTER: Well, just looking at Woodbridge a project that's in the... [LB131]

ALLEN HERINK: You're getting into specifics with me, Senator, but I'll do the best I can. [LB131]

SENATOR McCOLLISTER: Yeah, yeah, yeah. As I look at the financial feasibility of that one, it seems pretty lacking. So you must have a pretty wide range of standards that you use when you when you approve some property? [LB131]

ALLEN HERINK: Oh, what we try to do, we take the good ones and the bad ones. [LB131]

SENATOR McCOLLISTER: Okay. [LB131]

ALLEN HERINK: And some of them...and that's what you folks all thought...we thought at one time we were just out cherry-picking. It doesn't work like that. We take the good ones with the bad ones. Generally, a residential SID, the prospects of just annexing that by itself are pretty slim. So, again, we get a balanced package, some are over, some are under, and we don't want them to stay out there too long and that's why we do that. We don't cherry-pick. [LB131]

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SENATOR McCOLLISTER: So you try to get contiguous properties and avoid the hopping around. [LB131]

ALLEN HERINK: Oh, they have to be contiguous. That's state law. Well, not only...the advantage of getting something contiguous is that it's easier to provide services if it's right next to the neighborhood you're already doing. You're picking up garbage. You tell the...you know, Deffenbaugh to go back out there and do that, the neighborhood next door. But if you have to drive five miles out to give service it's inefficient. So we look at all the different variables. You know, police protection, fire protection, that type of thing also. So, again, it's a complicated process and we try to find some winners here so we can take some older SIDs that maybe have an older park that needs a lot of care and that type of thing and the park costs are high and that's why we haven't been able to annex it, and we include that SID in the thing. So it's...again, it's a total package that we look at and we think it's important to have it as a balanced package because we don't want the current citizens of Omaha have to pay for...citizens outside the city pay for their bills that they've run up. So we do our best to get it current. So in the case of this thing, we identified 6.8 and, you know, we need that money to come in to make it a balanced package. And a lot of...and I rambling a little bit? A lot of the savings we get to make them balance are in the off years. Initially, it's kind of expensive but maybe in year five, six, seven, and eight we've paid off some debt and we can generate some savings that way and it makes the ten year balance basically. [LB131]

SENATOR McCOLLISTER: Well, thank you for helping a, quote, wet behind the ears senator to understand. (Laughter) [LB131]

ALLEN HERINK: Well, it's no big deal. [LB131]

SENATOR CRAWFORD: Thank you. Senator Krist. [LB131]

SENATOR KRIST: Definition of cherry-picking I don't want to go into today. But the point I make is that the responsibility in annexation, responsibility in terms of how you annex is clearly in the statute that the property has to be contiguous. [LB131]

ALLEN HERINK: Sure. [LB131]

SENATOR KRIST: And in the past, the city of Omaha has bypassed areas in terms of getting to another area which financially is better. That was the reference I made. So I'm not accusing you of cherry-picking. I'm telling you that in my estimation there have been areas of the city that have been bypassed because financially it's not in the city's best interest. So to clarify. [LB131]

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ALLEN HERINK: Yeah, and you know...can I give you an example where we might bypass an SID for a few years and it has nothing to do with...there may be a county road that's going to get built, say 144th Street in the city, and we know the county is going to pick up the cost of that next year, but there's an SID that's contiguous to that. Well, if we annex that this year and don't let the county pay for it, we're on the hook to fix that road when the county would have done it anyway. [LB131]

SENATOR KRIST: So that's good business. [LB131]

ALLEN HERINK: So, you know, it's just looking at things ahead and we don't want to, again, have the current citizens pay a lot to annex people that isn't necessary. And that county road probably should have been improved years ago. [LB131]

SENATOR KRIST: So it's good business and I'll agree with that. But you heard my objection... [LB131]

ALLEN HERINK: Oh, and I agree with you. [LB131]

SENATOR KRIST: ...and my objection is clear that in every section of this proposed change to statute we're saying once you decide and you make the assessment, then they can't spend their money unless you tell them to. That's what it says. So what I'm saying is what I think the accommodation needs to be, where's the arbitration part of this? If they don't agree at the time that you decide what their assets are, you're basically taking all the power away from that SID board for that four-, five-, six-month period during the annexation process. I don't think that's fair and I just don't think that the citizens of the SIDs that took the extra step, I mean, realistically if you go into an SID you're doing so because you're developing an area and it's a great tool. It's a great management tool if it's used correctly. It's a great investment for those that invest. It's great for the people who are building there. But at some point the logical end is annexation. [LB131]

ALLEN HERINK: Sure. [LB131]

SENATOR KRIST: And I believe in that four- to six-month period this language is telling them we don't care where you wanted to spend your money. We've made the assessment and we're freezing your assets. That's my issue with this, so. [LB131]

ALLEN HERINK: Maybe we can work on the language a little bit. [LB131]

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SENATOR CRAWFORD: I have another question just while we're talking about clarifying in language. So the two examples that you gave of concern about abuses were both cases of a long-term contract. And so I just wondered if in your mind, I mean, the language that talks about prohibited from spending assets really protects you from someone setting up a 30-year golf contract or the 40-year garbage contract. [LB131]

ALLEN HERINK: Yeah, I think the garbage contract would...again, they're spending those assets to pay that. [LB131]

SENATOR CRAWFORD: They'd have to spend some assets to put the contract in place. [LB131]

ALLEN HERINK: Yeah. [LB131]

SENATOR CRAWFORD: So you think it would still provide a tool for addressing those issues. [LB131]

ALLEN HERINK: Um-hum. [LB131]

SENATOR CRAWFORD: Thank you. Other questions? Thank you so much. Appreciate your testimony. [LB131]

ALLEN HERINK: Thank you. [LB131]

SENATOR CRAWFORD: Other proponents? Welcome. [LB131]

LYNN REX: Chairman Crawford, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We do appear before you today in strong support of LB131. We think it is an issue that does need to be addressed. You may remember back in the time in the era of Senator Fenger, who represented Bellevue at the time, there were serious changes made to the SID statutes because of all of the profound abuses that had occurred over the years. So over the years, there have been a number of changes to these SID statutes. And this is one that still lingers and does need to be addressed. I think Senator Krist has pointed out a legitimate issue and we're more than happy to work with the committee, city of Omaha, and others to try to address those. Most SIDs in the state, of course, are located in Douglas and Sarpy Counties. You'll have a bill before you later this year from Senator Scheer. There's an SID in Stanton County. There's one maybe in Kearney, but not many SIDs elsewhere in the state. But we would like to meet with those other folks and also try to address any issues

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that this committee might have. This is extremely important legislation. There have been abuses in the past and we want to make sure that those don't happen again. [LB131]

SENATOR CRAWFORD: Thank you, Ms. Rex. Questions? I have a question. [LB131]

LYNN REX: Yes. [LB131]

SENATOR CRAWFORD: Just in your work with municipalities, can you talk about some examples of those abuses that you have seen? [LB131]

LYNN REX: Well, for example, and these are old examples, you know, going back to prior to some of the renovations in the statute that occurred when John Cavanaugh...I don't know that he was necessarily hired by the committee, but he certainly was responsible for some of the major rewrites because of the concerns that were occurring with developer-driven SIDs where basically the funds when the annexation notice was given, then all of a sudden the funds were gone. And...or, for example, there would be not projects, Senator Krist, that had been on the planning books for years by the SID where they'd been setting money back to have the fountain or whatever it may be, but rather great, now we're going to get annexed. This is what we've wanted so now we're going to spend that down and we're going to do that fountain. Nobody had thought of the fountain before. So in any event, there are some...there have been some abuses. I think that the laws have been dramatically improved over the years, but, notwithstanding, this is one lingering issue that is significant and does need to be addressed. We'd be happy to work with you on any amendments or any technical changes that need to be brought forward, as well as the substantive issue that you raised, Senator Krist. [LB131]

SENATOR CRAWFORD: Thank you, Ms. Rex. Any other questions? Thank you for your testimony. [LB131]

LYNN REX: Thank you. [LB131]

SENATOR CRAWFORD: Any other proponents? Now we'll hear from opponents, please. Opponents of LB131. Welcome. [LB131]

ROBERT WOOD: Senator Crawford, committee members, my name is Robert Wood, R-o-b-e-r-t W-o-o-d. I'm with Kuehl Capital Corporation and serve as a municipal advisor to approximately 150 SIDs in the Omaha metro area acting in a fiduciary capacity to these districts with respect to their financial interests. I'm here testifying in opposition to LB131 in its current form. As written, the bill is likely to have some unintended consequences. Without specific

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approval from the city, it does not allow a district to spend existing funds for operational expenses such as street light bills, accounting and audit services, legal counsel, engineering, registering on paying agent services, insurance, and routine scheduled maintenance. This could lead to late payment penalties and additional expenses. The language of the bill would also not allow a district to keep up with unforeseen repairs and maintenance of existing infrastructure such as streets, sewers, lift stations, storm water management, and erosion control. All this could be budgeted for, there's no way to anticipate the timing of it. When those expenses happen, it's important to get them fixed quickly because if it's not fixed it can lead to personal property damage, cars, homes, buildings, and potentially create safety issues as well. Additionally, it would not allow for cash redemption of outstanding warrant debt nor would it allow for scheduled debt service payments on outstanding general obligation bonds which could result in default. And then, finally, there's not language that defines when the spending limitation would end or when it would terminate. Once notified by a city that a district was being looked at for annexation, a district could end up being in a position where they would have to seek approval for any and all expenses going forward. Could I answer any questions? [LB131]

SENATOR CRAWFORD: Thank you, Mr. Wood. Questions? Senator Krist. [LB131]

SENATOR KRIST: I have to kind of disagree. I think the way that this language sets in here I don't believe that there would be a prohibition, although it's not in the statute that there would be a prohibition on those kind of normal expenses. The city would expect the insurance to be paid I would hope. But, again, it's not in here. [LB131]

ROBERT WOOD: Correct. [LB131]

SENATOR KRIST: So on those particular issues which you've mentioned, there are several that I would take exception to. However, your point about once notified, when can they start spending again? Does the city have to notify you, oh, you're off the list now, and that six-month period that you...we were under your control there's not specific termination of the prohibition within the statute. It's not written that way. [LB131]

ROBERT WOOD: Correct, Senator. That's the way we interpret it. [LB131]

SENATOR KRIST: Okay. So that...just to be clear, that's...you know, I like to be evil to both sides when I'm...okay. (Laughter) [LB131]

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ROBERT WOOD: Absolutely. And to address your former comment, you know, unless we go the city and ask permission, I mean, it freezes all funds. So we would have to go there even for ongoing... [LB131]

SENATOR KRIST: Okay. And then just briefly, give me an...in all your dealings with how many SIDs? [LB131]

ROBERT WOOD: Approximately 150, including the Deer Creek ones that you brought up. [LB131]

SENATOR KRIST: Okay. So in your experience, have there been gross misconducts once they've been notified of annexation? [LB131]

ROBERT WOOD: Not in our experience. We encourage districts to keep their street maintenance up and, you know, in the summer when these hit, that's when those contracts are happening. You know, every year the districts we represent budget for these expenses that they would expend, I mean. [LB131]

SENATOR KRIST: Yeah, and part of mine, it's just not a fountain as it's been mentioned or a playground... [LB131]

ROBERT WOOD: Correct. That would have through the city, a capital improvement would have to go through the city ahead of time anyway. [LB131]

SENATOR KRIST: Yeah. I would also say that in the case of a couple of SIDs that I know there's certain times of the year that they do put money into landscaping. Is that then an acceptable bill that the city is going to allow them to spend? And I don't know the answer to that, so. [LB131]

ROBERT WOOD: We have a great relationship with the city of Omaha and we're in contact with them on a regular basis. I think this is a problem that we can find a solution for but it would have to be a compromise on both sides and meet in the middle. [LB131]

SENATOR KRIST: Thank you, sir. [LB131]

SENATOR CRAWFORD: Thank you. Other questions? Could you for edification of the committee and the record just clarify what you...you were talking about the fact that if there's a

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capital expense there would be a discussion together. Could you just clarify how that works?
[LB131]

ROBERT WOOD: Yes, Senator. If there was a park improvement, that has to be approved by city parks. So we haven't seen a case where a district would go out and spend money on something that would have to be approved by the city without getting that approval. Anything basically through the construction fund that's a capital improvement has to get approval through the city.
[LB131]

SENATOR CRAWFORD: Senator McCollister. [LB131]

SENATOR McCOLLISTER: Thank you, Senator Crawford. Have there been occasions where an SID had engaged in a project where it didn't meet city standards? [LB131]

ROBERT WOOD: No. By their formation they're required to meet the city standards. [LB131]

SENATOR McCOLLISTER: Okay. [LB131]

ROBERT WOOD: That's why it has to go through...that's a great question, that's why it has to go through the city process and then get approval so it does meet the city standards for when they do annex it. [LB131]

SENATOR CRAWFORD: So I have just one follow-up question on that then. If that's the case, then would a city have a good understanding of the capital improvement plans for an SID because of that ongoing relationship with one another? [LB131]

ROBERT WOOD: Absolutely, because they require it. [LB131]

SENATOR CRAWFORD: Okay. So if an SID had been planning for a park improvement five years down the road, that would have been a discussion because of this capital improvement process. [LB131]

ROBERT WOOD: Yes, yes. [LB131]

SENATOR CRAWFORD: Thank you, Mr. Wood. Questions? Sure, Senator Krist. [LB131]

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SENATOR KRIST: One more follow up. Now when we speak about SIDs all over the state, and this is to Lynn...to Ms. Rex's point, we speak about SIDs all over the state, and there are many. [LB131]

ROBERT WOOD: Yes. [LB131]

SENATOR KRIST: The concentration that we're talking about in the Omaha area, and this was brought by the city of Omaha or it was asked for by the city of Omaha, have to comply with the city building codes for residential and commercial within the SID. Those building permits are issued with the city of Omaha, and then there's an additional Douglas County with roads, with curbs, with cuts, with all those kind of things. [LB131]

ROBERT WOOD: Correct. [LB131]

SENATOR KRIST: So in the case of an SID, they're already complying with the city building codes and the county's provisions... [LB131]

ROBERT WOOD: Yes. [LB131]

SENATOR KRIST: ...as they would, say, within Douglas County. Again, being evil on both sides, there are counties and places in the state where that's not the case, where building something is not controlled by a city planning or even maybe a county oversight. And that has always been a problem in terms of annexation and code. So to be clear, maybe a problem in one part of the state, not a problem in another part of the state. [LB131]

ROBERT WOOD: I would agree with that. [LB131]

SENATOR KRIST: Okay. Thank you very much. [LB131]

SENATOR CRAWFORD: Thank you, Mr. Wood. Senator McCollister. [LB131]

SENATOR McCOLLISTER: One more. Sorry. Thank you. Is the city failing to recognize those projects are ongoing or have been initiated and then they're surprised when all of a sudden the money is expended out of the SID? [LB131]

ROBERT WOOD: I don't think so. I think the city is very competent in what they do. I think when they start looking at an annexation package they're looking at that cash as part of the...one

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of the components of whether it works or not. I would say that they need to look at it from what's budgeted that's going to get spent because they're planning for these. In many cases, these are older districts and their maintenance costs are going to be a little higher for sewer and the streets. And in many cases they save up for three, four years. They raise their levies so they can save up to do certain repairs. And, you know, all of a sudden if they can't spend that money, they feel like that money is being taken from them and they paid extra taxes for those specific improvements. [LB131]

SENATOR McCOLLISTER: Thank you. [LB131]

SENATOR CRAWFORD: Any other questions? Thank you, Mr. Wood. [LB131]

ROBERT WOOD: Thank you for your time. [LB131]

SENATOR CRAWFORD: Other proponents...excuse me, opponents? [LB131]

BRIAN DOYLE: Good afternoon, Madam Chair. My name is Brian Doyle, B-r-i-a-n D-o-y-l-e. I'm here today on behalf of the Eastern Nebraska Development Council. That's a group of engineers, attorneys, developers, home and commercial builders that are interested in the SID finance business. Additionally, my law firm represents over 100 different SIDs. I'd like, first, just to thank Senator Crawford who met with us earlier this year to discuss a number of SID issues. This wasn't one of them. Senator Krist, I know we've met several times on SID issues and I've always appreciated your input on this topic. I'm testifying here today in opposition of LB131 as it's currently drafted, including the amendment. With that being said, I believe this is an issue that's really in search of a compromise. I think Senator Krist has alluded to several of the issues that we have. I think there is reasonable compromise that could be done. As the bill is currently written, it could stop any SID in its tracks from spending any money. That's the plain and simple language of this bill. I think it's important to note that what we're talking about here is general fund expenditures of an SID. That's money for maintenance and upkeep of the public infrastructure. Now, I would give you the example of, an SID might spend three or four years building up a cash balance in their general fund. It'd be just like you saving for a new car. They've saved some cash with the intent of spending it on their own neighborhood. This money is money that has already been collected from the taxpayers of the SID and now this statute is saying, okay, taxpayers of that SID, you've collected this money for your general operations and for maintenance of the infrastructure there and now we're telling you that you can't spend it. And we're telling you that you can't spend it potentially for an indefinite period of time under the way this statute is written. When we talk about capital improvements, capital improvements come from a separate fund, typically from a bond fund. Okay. Any capital improvement that is put in by an SID requires under statute some form of governmental approval, whether it's a county-

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level approval, whether it's a city-level approval. So large capital infrastructure can't be put in without the jurisdiction having some sort of approval level. I'd like to kind of go back and visit some of the topics that were brought up before. There were a couple of points. The city talked about long-term contracts and that some SIDs were entering into long-term contracts for trash. Fortunately for all of you, I think I'll be back on February 10 to discuss an SID bill that purports to give SIDs the authority to collect trash. We don't believe that state statute actually provides for that. I certainly, if I was advising the city, would tell them to cancel those trash contracts. I don't think they're legal. I don't think SID statute provides for that. I don't want to sound antagonistic to the city. We have had discussions already prior to this hearing today with the city. We've reached out to them. I think we've had productive discussions. I think that there is a reasonable solution here. I, again, want to reiterate, LB131 as it's drafted presents enormous problems for SIDs. That being said, we do want to find a solution here. We think there's a reasonable solution here. You know, we look forward to working both with the senator and with city staff on finding that solution. [LB131]

SENATOR CRAWFORD: Excellent. Thank you, Mr. Doyle. And I appreciate your openness to working with Senator Craighead's office and the city on coming up with some ideas for a solution. Appreciate that very much. Questions? Senator Krist. [LB131]

SENATOR KRIST: I should have asked this with the others and I didn't because I made a habit of doing this in the time that I've been here in sitting behind these desks. Did you happen to reach out to Senator Craighead's office in advance of this hearing? [LB131]

BRIAN DOYLE: We haven't had the opportunity. My understanding is that some of our fellow members that are actually sitting back in the room have had some brief discussions. I think from the tone of Senator Craighead's introduction that she's more than willing to work with the SID community on improving the bill. [LB131]

SENATOR KRIST: Okay. And I see some head nodding. And I think that's important to respect the senator's position. Someone came to her with an issue. If we communicate those before we ever come in here it helps in terms of working things out before. [LB131]

BRIAN DOYLE: Sure. [LB131]

SENATOR KRIST: But I do agree with you. I think accommodation can be made on both sides. I would not like to see someone put the city in a bad position. I also respect those SIDs for taking the risks that they have to improve their communities and to develop the city's...the future of the city. So there's an accommodation here. I'm just not sure that this is the answer. Thanks for your testimony. [LB131]

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BRIAN DOYLE: I agree entirely. I think that there...the bill as drafted is too ambiguous as to what the restrictions are. Arguably it's so broad that it covers absolutely everything, including what Mr. Wood testified to about possibly not being able to pay your bonds as they come due. That's clearly not the intent of the city. [LB131]

SENATOR KRIST: Right. [LB131]

BRIAN DOYLE: But intent and statutory language are two different things. We might intend one thing but we need to address in the statute what the reality is. [LB131]

SENATOR KRIST: Yeah. The only body that has the luxury of intent is the Legislature. (Laughter) So, thank you. [LB131]

SENATOR CRAWFORD: Thank you, Senator Krist. Other questions? Thank you, Mr. Doyle. [LB131]

BRIAN DOYLE: Thank you. [LB131]

SENATOR CRAWFORD: Other opponents that would like to testify? Welcome. [LB131]

MARK WESTERGARD: Good afternoon, Chairperson Crawford and members of the committee. My name is Mark Westergard, M-a-r-k W-e-s-t-e-r-g-a-r-d. I'm a professional engineer and I'm a member of the American Council of Engineering Companies of America, or ACEC, of Nebraska and I am here in that capacity this afternoon. We oppose LB131 as it is written today for several reasons, most of which have been mentioned here already today. The perspective of my testimony and of ACEC is that most of our members are the engineers that represent the SIDs and we deal with daily expenditure issues with the SIDs, such as street and sewer repairs, improvements to sidewalks and parks and trails, drainage issues, and continuous needs such as street lights, mowing, and street cleaning. So that's our perspective that we're coming from. Again, in no way a negative turn to the city of Omaha because they need to do what they need to do. But as Senator Craighead called it, the course of evaluation for annexation is really different in timing and process than the resolution that is mentioned in the proposed LB131. During that course of evaluation really the city's evaluation is very internal and it's very quiet and that becomes public at the time of resolution. So we're kind of talking about two different things and we agree that this can be done with some coordination and some language improvements to the bill. But as it is written today, it would be difficult to accept the language as it is today. The other reasons we really had for opposition to this bill have already been mentioned. I won't go through them again. I just want to emphasize that ACEC opposes it as it's

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written but, again, we feel that with some language improvements and some clarifications this...something could be worked out. So thank you. Be happy to answer any questions. [LB131]

SENATOR CRAWFORD: Thank you, Mr. Westergard. Questions? You are willing to work with Senator Craighead on improvements or suggestions? [LB131]

MARK WESTERGARD: Our group will, yes. [LB131]

SENATOR CRAWFORD: Excellent. Thank you. Thank you. Any other opponents of the bill? Is there anyone here to testify in a neutral capacity on the bill? I don't believe we have any letters to read into the record on this bill, so this...would you like to close? [LB131]

SENATOR CRAIGHEAD: Thank you, Senator Crawford and the Urban Affairs Committee. I believe what we need to do here is make sure that we can figure out a win-win for the city and the SIDs. SIDs know from the time that they're formed that they are living on borrowed time and at some point they will be annexed. The city does take into account the financial situation of an SID before annexation. I think what some of the things we need to do--and I very much appreciate hearing from both the proponents and the opponents of this bill--but I believe what we need to do is define what funds can be spent when an SID is to be annexed and I think we also need to determine in this bill what time frame can be used for annexation. Is it four months? Is it six months? It can't go on indefinitely. So I am very hopeful that we can work with both the proponents and the opponents to amend this bill so that you can pass it through committee. [LB131]

SENATOR CRAWFORD: Excellent. Thank you. Any other last questions? Thank you so much. That closes the hearing on LB131. We will open the hearing on LB149. This will be our last bill that we'll be hearing this afternoon. [LB131]

TREVOR FITZGERALD: Looks like we scared them off. [LB149]

SENATOR CRAWFORD: Welcome. [LB149]

TREVOR FITZGERALD: Good afternoon, Chairwoman Crawford and members of the Urban Affairs Committee. For the record, my name is Trevor Fitzgerald, T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d, and I'm introducing LB149 on behalf of the committee. LB149 is the last of four committee-introduced bills this session and is the product of the committee's LR555 interim study this past fall. Sanitary and improvement districts, or SIDs, are a type of limited purpose political subdivision that is unique to Nebraska, as the committee has heard today, primarily utilized in

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urban areas to facilitate growth outside of city limits. SIDs tend to be heavily concentrated in the Omaha metropolitan area. Because most SIDs do not have any residents when they are formed, SID elections do not follow the basic principle of one-person, one-vote. Boards of trustees for SIDs are instead elected by a vote of the property owners within the SID on two separate ballots. One ballot which only residents of the SID can vote on and another where property owners get one vote for each piece of property they own within the SID. SID elections are also not held during the primary or general election but instead are conducted entirely by mail ballot and take place on the first Tuesday after the second Monday in September. In preparing mail ballots for SID elections, the county election commissioner or county clerk must contact the register of deeds to determine those SID residents and property owners that are eligible to vote not more than 75 days prior to the election. As brought to the committee's attention during the LR555 interim study by the Douglas County Election Commission, this 75-day window commonly falls around the Fourth of July holiday. LB149 would simply change this window from 75 days to 80 days, allowing additional time for election officials and SID representatives to meet statutory deadlines for SID elections. While the Douglas County Election Commissioner was unable to be here today to testify, the committee should have received a letter of support from Commissioner Phipps in their materials. There will be others behind me to testify but I'd be happy to answer any questions the committee may have at this time. [LB149]

SENATOR CRAWFORD: Thank you, Mr. Fitzgerald. Questions? Thank you. [LB149]

TREVOR FITZGERALD: Thank you. [LB149]

SENATOR CRAWFORD: Now, we'll now hear from proponents of LB149. Welcome. [LB149]

WAYNE BENA: Chairwoman Crawford, members of the committee, good afternoon. My name is Wayne Bena, W-a-y-n-e B-e-n-a, and I am proud to serve as the election commissioner for Sarpy County Nebraska. Sarpy County isn't the smallest in size but the third largest in population and also has the second largest number of SIDs in the state of Nebraska. I come before you in support of this bill today. But for the record, I also do live in an SID. I'm a former board of trustee member before my appointment as election commissioner, and I'm also married to the best board of trustee member our SID has ever had (laughter). And that has nothing to do with the fact that this hearing is on the Internet and possibly being watched. (Laughter) It was...I had heard that this change in the law as we've talked about in our quarterly big three election commissioner meetings for quite some time and at one portion of this change was in an election cleanup bill that I had introduced in the Government Committee until I was told by Douglas County that this committee was taking on this. And I will say as a person who usually hangs out in the Government Committee, it was nice to be able...as my first election bill to testify is coming to a different committee that doesn't have lights, however, I left my 30-minute testimony

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at the office, so you'll be happy. As committee counsel easily said, this is the July Fourth dilemma. Our office has no problem getting the list out in 75 days. But because of that 10-day window that the law firms have to get out the notice of election to their residents, sometimes that falls around the July Fourth holiday. And with vacation schedules, weekends, or what have you, some law firms are a little pressed for time to get that out. We have no problem going from 75 to 80. It doesn't affect our process at all. If by some chance though there's a property transfer in that five days that might affect who's actually on that list, there's provisions already in the law of how that person can go ahead and get a ballot. Sarpy County just as we have 120 SIDs, we have 59 SIDs in odd years. About 8,600 ballots; 61 in even years, about 13,500 ballots. But listening to some of the testimony in the prior bills today we might become the number one I hear quite shortly. It looks like Omaha is trying to make a move. I don't know. So with that, I appreciate having the opportunity to come to a different committee. But I want to end my testimony going is that except for Senator Hansen, many of your aren't...you're not on the Government Committee and if there are election bills that you ever have questions on, I am an elections geek. I love what I do. I don't feel that I work for a living but I have a mortgage so I still have to take that paycheck. So if there are election bills that you might not have a great relationship with your election commissioner or county clerk or just want something, please feel free to call me at my office any time. This is what I love to do. You're going to see me down here for election bills probably quite often in the next few months, so. With that, I welcome any questions before my drive back home. [LB149]

SENATOR CRAWFORD: Thank you, Mr. Bena. And I appreciate your patience being here and sharing your elections expertise with the committee. Are there any questions we'd like to ask? Senator Krist. [LB149]

SENATOR KRIST: Just a comment. Thanks. Great to see you again, Wayne. And in my day geek was a bad word, but guaranteed I have respected your opinion on many issues. Thank you. [LB149]

SENATOR CRAWFORD: Any other questions? Thank you. Anyone else wishing to speak in support of LB149? Welcome. [LB149]

BRIAN DOYLE: Good afternoon. Again, my name is Brian Doyle, B-r-i-a-n D-o-y-l-e. As I testified before, my law firm represents over 100 different SIDs. I was contacted earlier this year, earlier last year by the Douglas County Election Commissioner about this issue. We've had a great working relationship both with Mr. Bena and his office and the Douglas County election commissioner. We think this is a commonsense bill that really takes a burden off the employees at the election commissioner's staff. We fully support the bill. We think it's a good idea. The Douglas County election commissioner, I know they couldn't be here today, but they did ask me

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if I would come down and speak in support of it on behalf of numerous SIDs. It truly is a bill that should be an easy pass. Thank you. [LB149]

SENATOR CRAWFORD: Thank you. Any questions? Thank you. Thank you. Anyone else that wishes to speak as a proponent of LB149? Is there anyone wishing to speak as an opponent of LB149? Anyone wishing to speak in a neutral capacity to LB149? We have a letter of support to read into the record from Douglas County election commissioner. Any other letters? That's it. So this will close the public hearing on LB149. And we will be entering into Executive Session. [LB149]