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Urban Affairs Committee  
February 03, 2015

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[LB266 LB295 LB304]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 3, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB295, LB304, and LB266. Senators present: Sue Crawford, Chairperson; John McCollister, Vice Chairperson; Laura Ebke; Matt Hansen; Dan Hughes; and Bob Krist. Senators absent: Colby Coash.

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

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

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

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

SENATOR EBKE: Laura Ebke, District 32, four counties southwest of here.

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

SENATOR CRAWFORD: So the other senators, I'm sure, will be joining us as they are able to join us after their hearings. Also assisting the committee are 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 three bills and we'll be taking them in the order listed outside of the room. On each of the tables in the back of the room you will find the yellow testifier sheets. If you are planning on testifying today, please fill one out 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 the bill, please fill out the white sheets in the back of the room. We would ask if you have any handouts, please bring at least ten copies and give them to one of the pages. If you need additional copies or help with copies, please let the pages know. 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 the opportunity to make a closing statement if they wish to do so. We ask that you begin your testimony by giving us your first name and last name and please spell both of

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them for the record. Looks like we don't have a our magic number, 15, to use lights, so we will not be using lights today. But we do ask that you try to keep your testimony to five minutes to respect those who are following you. I would remind everyone, including senators, to please turn off your cell phones or put them on vibrate. And with that we will begin today's hearing with LB295. Welcome, Senator Scheer.

SENATOR SCHEER: Thank you, Chairperson Crawford. And welcome to my colleagues on Urban Affairs. This is my first opportunity to visit with you folks this year. I'm here...my name is Jim Scheer, by the way, S-c-h-e-e-r, representing the 19th District in northeast Nebraska, Madison and a little bit of Stanton County. I'm here to introduce LB295. And I'd like to sort of explain the reason behind that. All communities, regardless of size, have a zoning jurisdiction that they control, even though it is not part of their area. So in my case, for example, Norfolk has a zoning jurisdiction of approximately two or three miles, I don't...I can't tell you specifically what it is and perhaps somebody can correct me, but in true essence it doesn't make any difference, the city does have that zoning jurisdiction. The problem comes into play with that the folks that are outside the city limits that are affected by the decisions of those zoning changes have really no recourse because they elect county commissioners or supervisors, they have no ability to be part of the electoral process for the city council. And so sometimes that might create a rub between the two entities. And right now there's really no process for those two to try to get along. And to give you an example, what may happen, for example, someone may go to the city council and say, gee, you have a shortage of housing. We bought a quarter of land; we can develop it. It's a mile and half south of town. We think it's a great location. We can put up affordable housing. This will go a long ways to help your lack of housing in your community. City council could say, boy, that really is a great idea, that does help us. All those thing would be true. So they say, fine, we will rezone that for you so you can do what you're wanting to do. But on the flip side, that's under the county's jurisdiction, so the county might very well have said, if someone had asked, we don't have infrastructure to take care of that. We don't have additional patrolmen or deputy sheriffs to be able to respond to that large of area. It is two miles off the highway, or whatever paved road it might be. We don't have the funds to bring those up to a paved area so that the commerce can go back and forth and the residents can go back and forth. Although, very well intended, it doesn't meet our needs from our financial capacity and we really would have some reservations about doing that. Now one would say that the two entities should be able to communicate, but unfortunately, in a lot of instances, that just doesn't happen from a practical standpoint. The bill that I'm introducing would give counties the ability to also have a yes or no determination on that request that would be within their jurisdiction, but also within the zoning jurisdiction of the community. After I introduced the bill, I've had several conversations with the League of Municipalities. Their concern is it might somewhat slow the process, or there might be some adversarial positions between counties and cities that in some areas where communities are very close to each other, they may try to pick winners or losers as far as different communities because of the location of things. I'm not trying to fix a problem that

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doesn't exist. It somewhat exists, but I'm not trying to put an undue burden upon the cities in order to be able for them to expand and grow as well. And working with some individuals to try to come up with language that would be, perhaps, more palatable I am suggesting that your legal counsel and two or three other people that I've been working with come up with an amendment that facilitates a structural change in what we are looking at is having that once the city has had a planning committee meeting then the planning committee has reviewed that and sent a recommendation to the community or the city council that the city council then would give the county commissioners a 30-day window to provide a response to that action in a formal setting, either from a written communique or testimony at the city council meeting so that at least on record everybody understands where everybody is at and what the concerns might be. It does not impact the city. They still can have that ability to make those decisions, but it also now includes the county, at least in the thought process and the communication process by statute. Hopefully this will work. I would think that it would. If it doesn't, perhaps in another two, four, six years, somebody else may want to look at that, but at least this gets the point where at least everybody is communicating and knows what's going on within each other's jurisdiction. Thumbnail sketch that's what the bill being introduced would do, however, I do acknowledge the problems that this may create from a city's perspective so trying to work within the realms of how would best work with them. I believe the amendment, probably, is the wiser choice as far as working that ultimate solution. With that I would close and answer any questions. [LB295]

SENATOR CRAWFORD: All right, thank you. We've been joined by Senator Krist and Senator Hughes. Questions? Senator Krist. Senator Krist. [LB295]

SENATOR KRIST: Thank you, Chair. And thanks for bringing it, Senator Scheer. Just two quick questions: When you talked about the conversations that you've had after you introduced, specifically were...number one, were they concerned that there was no time limit or a finite time that the cities then would be waiting or that the counties would be waiting or what was their...what was the major concern? [LB295]

SENATOR SCHEER: My opinion, what I believe was the strongest concern was that if you, in some areas, that counties and cities have a very adversarial position. And they were concerned that sometimes because of a county's position, not necessarily because it is bad policy, but because of personalities it would stop or stymie the growth of communities as they move forward. So I thought in talking with them that perhaps the solution, or the compromise, is that at least allowing by statute the counties the ability to come testify or submit a written answer or preference on what the city may ultimately do at least gets it in the city's record, as well as allowing them to present their concerns or support of that project as well so that it continues to be in the preview of the city's, but it allows more input from counties. And the 30 days is, I believe, a workable time frame because most counties, that I'm aware of, like, you know, I'm not aware of all 93, but most of them will meet twice a month. So if they were given the 30-day

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notice, it usually would give them at least one meeting to discuss it and maybe a second one to approve it, because that's a two-week period. Most cities meet twice a month as well and are probably then would facilitate them still being able to hit a city meeting within that 30-day period. So it still keeps the movement of whatever they're trying to accomplish, but it may extend it, obviously, a 30-day period in the middle here, to at least get the input from the counties. [LB295]

SENATOR KRIST: Then the other...the last question, and maybe for you or maybe just for legal counsel, by definition, if you've got a doughnut hole in the middle of a city, is that by definition the ETJ? [LB295]

TREVOR FITZGERALD: Yes. [LB295]

SENATOR KRIST: It is, okay, so it covers the internal skipped annexed portion of any city or... [LB295]

SENATOR SCHEER: Um-hum. Correct. [LB295]

SENATOR KRIST: Okay. Thank you. [LB295]

SENATOR CRAWFORD: Yes, Senator McCollister. [LB295]

SENATOR McCOLLISTER: Yeah, thank you, Senator. And so, as I understand the process, if something is initiated by the city and then counties don't now have the authority to act on a zoning change. [LB295]

SENATOR SCHEER: If it is within their zoning ribbon around whatever size of community, some communities have one mile; I think metropolitan areas, maybe, have a four-mile jurisdiction. Whatever the size of community, they have the zoning jurisdiction, not the county that may...those people may reside in. So, ultimately, as my example, those that would want an area rezoned for housing, or whatever else it might be, would not go to the county and request, even though it's county ground, would not ask for the rezoning from the county. It would be requested from the city. [LB295]

SENATOR McCOLLISTER: So, in other words, we're giving counties more authority than they've had in the past. [LB295]

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SENATOR SCHEER: Well, I guess I wouldn't necessarily...I'm going to be honest, it's not really an authority, but at least it's an opportunity to communicate with those that are going to be making the decision. So at least their input would be on record and either from a support or an opposition, which, I think, is at least a better process than we have right now. Right now, they don't have to ask for it, they don't have to take it. They can do unilaterally whatever they would like to do. And I just think we...we need to have government agencies working better together. [LB295]

SENATOR McCOLLISTER: But we are giving them now up or down authority on a city project. [LB295]

SENATOR SCHEER: No, we are not. [LB295]

SENATOR McCOLLISTER: Okay. [LB295]

SENATOR SCHEER: No, this is just a recommendation. This is not... [LB295]

SENATOR McCOLLISTER: Okay. [LB295]

SENATOR SCHEER: You are correct in the bill as drafted, that is exactly what would have happened. [LB295]

SENATOR McCOLLISTER: Okay. [LB295]

SENATOR SCHEER: My suggestion and the reason I didn't spend a lot of time on the bill was because the amendment would only give them an advisory or a input... [LB295]

SENATOR McCOLLISTER: I got it. [LB295]

SENATOR SCHEER: ...from the basis of support or opposition. [LB295]

SENATOR McCOLLISTER: I understand. Thank you. [LB295]

SENATOR SCHEER: So, yes, thank you for the correction. [LB295]

SENATOR McCOLLISTER: Thank you, Senator. [LB295]

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SENATOR CRAWFORD: Thank you. Other questions? So to clarify, you're thinking the planning committee meets and they notify the county and then before this goes before the council, the council members would have that in their packet, probably, the county statement of some kind. [LB295]

SENATOR SCHEER: For approval there would be a 30-day...yeah...they would have a 30-day window for the county to provide its input on whatever that item might be. [LB295]

SENATOR CRAWFORD: Okay. Thank you. Other questions? Thank you. Are you staying to close? [LB295]

SENATOR SCHEER: If things move quickly, but I do have...I'm second in my committee so I'm shuffling around and then I've got another one. [LB295]

SENATOR CRAWFORD: Okay. Okay, all right, great. Thank you. All right, we'll now hear from proponents. Welcome. [LB295]

ELAINE MENZEL: Chairman Crawford, oh, excuse me. Chairman Crawford and members of the Urban Affairs Committee, I've not testified in front of you before, therefore the hesitation. I will attempt to talk to you, fighting a cold, so, I'm...my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials appearing in support of LB295. We support Senator Scheer's efforts to work with the league in terms of his proposed amendment and the concepts for recognizing county-board input with the extraterritorial jurisdiction is important to us. If you have any questions, I'd be glad to try to answer them. [LB295]

SENATOR CRAWFORD: Thank you. Thank you. Any questions? Yes, Senator Ebke. [LB295]

SENATOR EBKE: Can you give us an example of when this might not be approved by the county board? [LB295]

ELAINE MENZEL: Actually, that would have been under the proposed legislation. The way it's being proposed with Senator Scheer's...as I understand it... [LB295]

SENATOR EBKE: Right. Advisory...okay, so can you give me an example of when the county board might not, you know, might say--well no, we really don't think you ought to take this to the cities. I mean, are there any concrete examples (inaudible) in terms of... [LB295]

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ELAINE MENZEL: Okay, I believe I'm following your inquiry at this point. I had a list of two or three examples prior to the proposed amendment being brought to my attention. And for instance, a municipality could approve a conditional permit for a gravel pit outside the city limits in the extraterritorial jurisdiction that has a significant impact on county roads, for instance. And therefore, that would be a position where the counties would want to have some input. Another would be a municipality issues a building permit for a house and the property owner doesn't realize the road is still a county road and they need to get a driveway permit from the county. And then thirdly, a municipality approving construction of a home that blocks natural drainage. The city didn't consider, necessarily, the impact home construction would have on a county road and county road damage. And those are coming from highway superintendents, obviously, that's the vein of the examples there. [LB295]

SENATOR EBKE: Thank you. [LB295]

SENATOR CRAWFORD: Thank you. Other questions? Thank you for your testimony. [LB295]

ELAINE MENZEL: Thank you. [LB295]

SENATOR CRAWFORD: Thank you. Other proponents of LB295? Any opponents of LB295? [LB295]

GARY KRUMLAND: Senator Crawford, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. And I'm appearing as an opponent, but I could very...be neutral. I just thought it would save time if I came up now. (Laughter) We do oppose the original bill. It would have caused problems; it would have delayed action. And the way it was written, one could interpret it to mean building codes, building permits, things like that would all have to go through the county. Senator Scheer was very willing to work with us. And I think we've got an agreement in concept. We just haven't had time to refine the language and we just need to do that. And when we do, I'd like to bring it back to the committee and offer it maybe as a committee amendment. And as Senator Scheer mentioned, it will be a situation where if a city has a zoning proposal in the extraterritorial zoning jurisdiction, it would give notice to the county and the county would then have the opportunity to provide input to the city council. And Senator Scheer suggested 30 days. That makes sure that every county board will have a chance to meet, even if they meet once a month, they'll have a chance to meet. We want to add some language that made it clear that there's a time limit or if they decide quicker, they can do it, because sometimes some of these issues are time sensitive so we want to be able to get something through. So if the county is okay or if they send in their suggestions, then the city can proceed. One of the things we talked about too, is because of unique circumstances in some of the larger counties to limit it to those counties with

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population under 100,000. So Sarpy, Douglas, and Lancaster would be exempt simply because of their unique situation. So, we really appreciate Senator Scheer's willingness to work with us and to address the concerns he has and address the concerns we had. And I'm hopeful in very a quick time we can...we just didn't have time to get all the language refined to present to you today. And I should apologize for that. But we should have it in the next few days. Happy to answer any questions. [LB295]

SENATOR CRAWFORD: All right. Thank you, Mr. Krumland. Sure. [LB295]

GARY KRUMLAND: Oh, maybe I can just mention real quickly--all cities and villages do have authority to extend their zoning beyond the corporate limits of the city. Metropolitan class and primary-class cities, which are Omaha and Lincoln, can go out three miles. Cities of the first class, which are those between 5,000 and 100,000, can go out two miles. And cities of the second class and villages, which are basically municipalities below 5,000 can go out one mile. [LB295]

SENATOR CRAWFORD: Thank you for that clarification. [LB295]

GARY KRUMLAND: So, that's the area that we're going to be discussing. [LB295]

SENATOR CRAWFORD: Yes. Thank you. Questions? Yes, Senator Krist. [LB295]

SENATOR KRIST: Thank you, Chair. I'm going to use your time in the chair to simply ask--is somebody coming up here from Omaha and Douglas County? Yes, okay. Well then, I won't ask you the question I was going to ask. [LB295]

GARY KRUMLAND: Okay. [LB295]

SENATOR KRIST: You're free. [LB295]

SENATOR CRAWFORD: Other questions? I will ask--what would be the logic from your perspective about excluding the larger counties or municipalities? [LB295]

GARY KRUMLAND: It was just...well, part of it is the...like for example, Lancaster County and Lincoln have the same planning department. So Omaha covers, virtually, the whole county. [LB295]

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SENATOR CRAWFORD: Okay. [LB295]

GARY KRUMLAND: And then Sarpy County already has some unique situations that they have some like annexation. They have a special procedure for annexation just applies to them that doesn't...so because of their unique situation, we thought it would be easier and work better just to exclude them at this stage. [LB295]

SENATOR CRAWFORD: Thank you. Other questions? Thank you. Anyone else here to testify in a opposition to LB295? [LB295]

JACK CHELOHA: Good afternoon, Madam Chair, members of the Urban Affairs Committee. My name is Jack Cheloha, first name is spelled J-a-c-k, the last name spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. Today, I would like to put on the record our opposition to LB295 as drafted and presented to you. Let me thank Senator Scheer and the League of Nebraska Municipalities for conducting meetings and inviting us to share our thoughts with Senator Scheer and for the compromise that they're "working on" if you will. We haven't seen the final draft at this point. We would be supportive of the compromise if it does include the exclusion of those counties above 100,000. And I'll tell you a little bit why we ask for that, if you will. First and foremost, through the years as Nebraska wrote its laws on annexation and city development and growth, we think it was a very wise of previous legislators to give that extraterritorial planning jurisdiction because we had hoped as our state grew and grew in population we all hoped that cities would grow in size and they would be able to annex territory and therefore you would like that territory to be in compliance with whatever your health and safety and other zoning designations were as the growth came to be if you will. And so that's...we feel that's very wise to have that authority. If I can take you back, oh, roughly about 20 years. When I first started working for the city of Omaha, there was a then a senator named Dwite Pedersen. He represented western Douglas County, at the time then city of Elkhorn, and he had similar concerns within Douglas County relative to annexations and development, etcetera. And so through a series of meetings with Senator Pedersen, we came to, at the time, a compromise which he thought was a good idea and the city thought was a good idea and we think since it was implemented it has worked pretty well. What we have done is we have added a member from the three-mile extraterritorial planning jurisdiction, a resident of that area, to our city planning board. And with that, they've been able to express opinions relative to developments and get more of a harmonious feel in terms of developing the areas outside of the city which, eventually, we know will become part of Omaha. And that's worked real well for us. Some other reasons why...articulated that we don't think a bill of this magnitude would be necessary for us in Omaha and Douglas County is we work together pretty well on development. We have the city and county representative body share the same office space. In fact, they're on the same floor. We communicate on development together. Likewise, in the metro area we feel that there's still, when it comes to major development, there's still a very good source of

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information relative through the public media and public written press, etcetera. But likewise, we still have the various stages before development can go forward with the notices before the planning board, the three readings before the city council with the public hearing. And for those reasons and because of the...what...if I can...may call it this, the Dwite Pedersen compromise, we feel that we pretty well have it covered and therefore we would ask to be excluded from the legislation. I'll try to answer any questions you might have now. [LB295]

SENATOR CRAWFORD: Thank you, Mr. Cheloha. Questions? Senator Krist. [LB295]

SENATOR KRIST: Thank you, Chair. And you answered the biggest question which is how do we interface with Douglas County? I wanted to put that on the record. And the other part is, regardless of where you're building in the ETJ, the building codes are enforced and the actual permits are issued by the city within the ETJ which is... [LB295]

JACK CHELOHA: That is correct. [LB295]

SENATOR KRIST: Yeah, which is an important... [LB295]

JACK CHELOHA: And, ultimately, we'll address that even further with another bill in this same committee today. [LB295]

SENATOR KRIST: Good. Thank you very much. Thank you, Chair. [LB295]

SENATOR CRAWFORD: Any other questions? Thank you. [LB295]

JACK CHELOHA: Thank you. [LB295]

SENATOR CRAWFORD: Any other opponents that wish to testify? Anyone else who wishes to testify in opposition to LB295? Does anyone wish to testify in a neutral capacity to LB295? Do you wish to close, Senator Scheer? [LB295]

SENATOR SCHEER: I apologize, I did miss a little bit of Gary's presentation and part of that...and I...I was amiss in not bringing that forward. The committee...or in working with that, it would be my intent to exclude Lancaster, Sarpy, and Douglas County from that, mostly because they're already doing that as a joint basis. In answer to Senator Ebke, maybe a direct response or an example, I don't know that it would have changed anything, but for example, in Norfolk someone wanted to operate a stock car track. So it was within their miles of jurisdiction. The

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folks living in that area...it's a lot of times when you're putting things in, no one wants something around their area, so they were very concerned and they went to their commissioners. The commissioner--we don't...we can't do a thing about it; it's within theirs, we have no input, they do what they want to do. And I'm not trying to take sides, but that's how I came up with the bill, to be quite honest, is that it just seemed to me that if we're doing things in each other's backyards, there should be more communication or more respect for the entities with each other so that it's more "harmness" as far as the relationship of the two entities. Pure and simple, just trying to make sure that everyone communicates. [LB295]

SENATOR CRAWFORD: Thank you. Any other questions for the senator? Thank you. [LB295]

SENATOR SCHEER: Thank you very much. [LB295]

SENATOR CRAWFORD: Sure. Do we have any letters? No letters to enter into the record, so this closes the public hearing on LB295. We'll move next to the public hearing on LB304. Senator Hansen. [LB295]

SENATOR HANSEN: (Exhibit 1) Good afternoon, Chairwoman Crawford, members of the Urban Affairs Committee. I'm Senator Matt Hansen, M-a-t-t H-a-n-s-e-n, representing LD26 in northeast Lincoln, here to introduce LB304. This bill would adopt the Municipal Custodianship for Dissolved Homeowners Associations Act. This bill provides a simple process for dissolved homeowners associations, commonly known as HOAs, to apply for or achieve reinstatement. This act would also allow municipalities in which the dissolved HOA is located to seek and be granted custodianship of the HOA until it is reinstated. HOAs are determined inactive or dissolved when the members do not hold meetings, elect officers, or otherwise conduct HOA business. This eventually leads to the HOA failing to file its biannual report and pay the \$20 biannual fee with the Secretary of State's Office. Once the HOA fails to file with the Secretary of State, it can become administratively dissolved. There's currently a statutory process for HOAs to be reinstated for five years with very little cost or effort. The problem with dissolved HOAs comes into play when the HOA has been dissolved for periods longer than five years. There's currently no procedure to reinstate those HOAs. However, due to the restrictive covenants and the deeds, the now defunct HOA still has control over the common property of the neighborhood. This creates quite the legal conundrum whereby deed...the only owner and administrator of certain lands no longer exists and by statute, after five years, cannot come back into existence. This is the problem addressed by LB304. Without an active and functioning HOA, there is no one to collect assessments, perform maintenance, or conduct the business of the HOA that is needed to benefit the surrounding property owners, as well as the municipality. These are all covenants of the HOA agreed to perform and are permanently tied to the deeds of the property owners. But once the HOA has been administratively dissolved, there's no one there

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to perform these duties. It makes it very difficult and often impossible for the municipality to make improvement to the infrastructure if there is no practical way for them to assess the properties or collect the money that is needed for reimbursement or even to have authority to work on the common property in the first place. These HOAs can present significant problems for a municipality. For example, many HOAs have drainage lines on common property that, ultimately, connect to city storm drains. Under dissolved HOA, these drains may not be properly maintained resulting to flooding or damage to public areas or damage to the public storm drains. This is a current problem. For example, the city of Lincoln currently has 26 HOAs that are inactive or dissolved. As new owners move into the neighborhood that they are typically unaware of the history or services provided by the HOA sometimes leading to confusion where the new owners mistake HOA-controlled property for city-owned public property leading to them making requests to the city. LB304 and the included amendment, AM134, is written to address these problems in two ways. First, it provides a simple path to reinstatement for dissolved HOAs outside the five-year window. Secondly, it allows for municipalities as a last resort to be granted temporary custodianship by the district court. This bill would allow for municipalities to help owners organize and reinstate the HOAs. But if the owners still fail to do so, the municipalities can petition the district court to appoint the municipality as custodian and manage the neighborhood and HOA common property. The municipality would then be able to do the maintenance or other work necessary to operate the HOA and protect the assets of the neighborhood. At any point during the custodianship, the property owners may reinstate the HOA, or the municipality can ask the court for permission to terminate the custodianship. Included in your committee books is an amendment, AM134, to the bill. This makes a few changes including changes references from cities to municipalities. It adds in a new definition for members of HOAs. And restructures, largely, Section 5, as well as adds in a specific fee for HOAs providing reinstatement. In closing, LB304 and the introduced amendment provides process for dissolved HOAs to apply for and be reinstated by the Secretary of State, including those which have been dissolved for longer than five years and which currently bear...by doing so by statute. It would further create a process for municipalities to be granted custodianship of the HOA of which would allow the municipality to provide upkeep of common property in the HOA. I would ask the committee to advance LB304 and the amendment. And I would be happy to answer any questions. [LB304]

SENATOR CRAWFORD: Thank you. Questions for Senator Hansen? Senator Krist. [LB304]

SENATOR KRIST: Thank you, Chair. Is it, just to be clear, is it your intention that AM134 completely replaces LB304? [LB304]

SENATOR HANSEN: Yes, it is to completely replace. And that was just largely done in the case if we used the term "city" frequently. And it was easier to, one, replace that with "municipality." Just offer new continuous language. [LB304]

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SENATOR KRIST: So if there's any debate, it's going to be over the amendment itself, which takes the place of LB304. The other question, I guess, is...you're talking about an HOA that actually exists in the city limits, not within an SID? [LB304]

SENATOR HANSEN: Yes, that was the intent, within city limits. [LB304]

SENATOR KRIST: Okay. How about the HOA that exists in an SID? [LB304]

SENATOR HANSEN: This, actually, is kind of my Lincoln perspective showing. In our area, SIDs are not common, but, however, HOAs are. And so I wrote...we worked on this from the perspective of the city. [LB304]

SENATOR KRIST: Okay. Because the language in both of them, as far as I can tell, addresses HOA, but there's an inference that the HOA is within a municipality within a city, not necessarily in an ETJ where they would belong with an SID. So I'd point that out to you as you start discussing it and, maybe, making even, potential, further changes. Last question, I guess, is that in the reference to the HOA, was there any...in your discussion or your investigation, any discovery of covenants that would have been binding that the real estate agents or the transfer of real estate would have had to discuss the covenants from one HOA to the next? [LB304]

SENATOR HANSEN: I'm not sure if I understand your question, Senator. [LB304]

SENATOR KRIST: It's my experience that the homeowners association has to operate under some kind of guidelines, and usually those are covenants. You can't build a shed; you need to build this...you need to do it this way, you need to do it that way. So if there are covenants in place, then they would have to be discussed in terms of the relevancy of reorganization of the HOA, I would think. But it may...maybe there's somebody behind you that can talk to that specific. [LB304]

SENATOR HANSEN: There might be somebody beside me. [LB304]

SENATOR KRIST: A lot of head nodding going on. [LB304]

SENATOR HANSEN: Certainly, certainly. And that was, certainly...the idea of restricted covenants tied to deeds and kind of some of the problems that creates when people don't, necessarily, plan into the future was definitely some of the ideas starting this bill. [LB304]

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SENATOR KRIST: Okay. Thank you, Senator. [LB304]

SENATOR CRAWFORD: Senator McCollister. [LB304]

SENATOR McCOLLISTER: Let me make sure I understand. And thank you for appearing. Thank you, Senator Crawford. Would those restrictive covenants cease to exist once the HOA terminated its existence? [LB304]

SENATOR HANSEN: It's my understanding that they would not. In fact, that the HOA ceasing to exist would actually be considered, maybe, a violation of the restrictive covenants just in the sense of if the restrictive covenants creates a governing board and empowers an HOA, that should continue because since they're tied to the deeds they wouldn't, necessarily, have a way to eliminate that in the future. [LB304]

SENATOR McCOLLISTER: Huh, that's interesting. Thank you. [LB304]

SENATOR HANSEN: You're welcome. [LB304]

SENATOR CRAWFORD: Other questions? I have a question. So the bill talks about if the homeowners association is dissolved and not reinstated pursuant to the Nebraska Nonprofit Corporation Act, which I think, maybe, you discussed in your opening, but just to clarify, what that condition would be that it would not be able to be reinstated. I think you mentioned a time limit or something. [LB304]

SENATOR HANSEN: Yes. Currently, there under our statute is a five-year time limit where you cannot...if you've been administratively dissolved, that is you're dissolved for a failure to file the correct reports, pay the correct fee, you can be dissolved by the Secretary of State's Office. And currently under statute, you can only reestablish yourself within a five-year window. [LB304]

SENATOR CRAWFORD: Okay. So this kicks in after that five-year window? Does the bill then...the custodial powers in the bill, to try to make sure that property is taken care of, does that kick in at all in that five-year window or that's all after that five-year window? If I understand what you're saying. [LB304]

SENATOR HANSEN: Yes. I would have to clarify. [LB304]

SENATOR CRAWFORD: Okay. [LB304]

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SENATOR HANSEN: It's...the powers would kick in after the HOA has been administratively dissolved. [LB304]

SENATOR CRAWFORD: Okay. All right. So there might be in some...we don't know for sure what happens in that five-year window. This would kick in after that five-year window? Is that true? The ability to have the district court offer...create this custodian responsibility? [LB304]

SENATOR HANSEN: It would be my intent to probably have it kick in either way and we can define it... [LB304]

SENATOR CRAWFORD: Okay, okay...so...I guess that's what I should have asked is--what is your intent? [LB304]

SENATOR HANSEN: Yes. It's to have...is the municipality...for example, if...you know, I can imagine a situation which an HOA is barely hanging on, barely fulfilling the minimum requirements to not be dissolved. They finally do get dissolved and a problem comes up, you know, two and a half years later. It would not be my intent to make the city wait another two and a half years before starting a court process. [LB304]

SENATOR CRAWFORD: Okay. Okay. That's helpful to hear, your intent. Thank you. Other questions? Thank you. [LB304]

SENATOR HANSEN: Great. Thank you. [LB304]

SENATOR CRAWFORD: I assume you're staying around to close. [LB304]

SENATOR HANSEN: Yes. [LB304]

SENATOR CRAWFORD: We'll now hear from proponents of LB304. Welcome. [LB304]

CHRIS CONNOLLY: (Exhibits 2 and 3) Welcome. Chairman Crawford, members of the committee, thank you for your time this afternoon. My name is Chris, C-h-r-i-s, Connolly, C-o-n-n-o-l-l-y. I'm an assistant city attorney for the city of Lincoln and I'm here to testify in support of this bill today, specifically the amendment. [LB304]

SENATOR CRAWFORD: Okay, thank you. [LB304]

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CHRIS CONNOLLY: First of all, I would like to thank Senator Hansen for introducing this bill. I would also ask that you ask all those questions again of me, if you wish, since I've been very much involved in many of the details. And so I'll be happy to respond to those and I'll try and catch some of those as I'm going along here as part of my remarks. This started about a year and a half ago when our weed control authority sent to me, a weed lien that needed to be foreclosed on. The bill had been languishing for several years without being paid. Weed Control told me that the HOA that owned the property no longer existed and they couldn't find anyone to take responsibility for the bill. There were also concern that they would need to keep mowing this property and putting more liens on it, but that no one would pay for it. The city wasn't interested in acquiring this land through a foreclosure which was a common area for the neighborhood and consisted of some trees, a small green area, a drainage liner that was connected to a storm sewer that runs under a city street here in Lincoln. Selling the property to another property...another party through the foreclosure would have created a legal nightmare and so we weren't interested in that. Further investigation revealed that this particular HOA had been dissolved for over 30 years. It wasn't hard to imagine how this happened. The declaration of covenants had been filed in 1974 by the developer and a homeowners association was, in fact, organized at that time and the purposed was to conduct the business of the property owners and maintain the common area. Over time though, people moved away, passed away, or simply became disinterested and the new owners were not aware that the HOA was responsible for the common area. Some people would take care of some small portion behind their homes, but there was no coordinated effort with the neighbors. The situation apparently worked for many years until enough grass wasn't being mowed that weed control had to get involved. When we, as the city, began to look at the property again, we realized that the drainage liner was not being maintained and threatened the storm sewer and the street above it. There were no provisions for reinstating corporations that have been dissolved for more than five years, as Senator Hansen so aptly discussed. So we talked with the neighbors at a meeting and tried to convince them to form a new HOA. It was expensive; they weren't looking forward to doing that. The only other option was to have the city take over the property; and that was something we didn't want to do for many reasons. Fortunately, this neighborhood has stepped up and collectively maintained the area, with a little bit of assistance from the city, but an HOA still needs to be formed to conduct the business of and maintain the assets of the owners and to reestablish some continuity for the neighborhood. The common area belongs to the neighborhood and the neighborhood needs to take care of it, not the city. We did further research on other HOAs and found out that there's 212 HOAs in Lancaster County, 26 of which were dissolved, and 22 of those had been dissolved for five years or more. And so this may not seem like a large number, it's still important to note that we have no effective way to deal with even one dissolved HOA that's been dissolved for more than five years. And as my initial example demonstrated, one abandoned common area could lead to significant damage to city infrastructure. Almost all HOAs have some form of infrastructure that requires maintenance; usually this is a drainage system, but may also include roads, pedestrian access easements, and sewer systems just to name a few. Failure to maintain these improvements jeopardizes the city's

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infrastructure and the private property owners as well. Someone needs to manage the maintenance, and the city does not want to, nor should the taxpayers be required to maintain private property. There's no law that allows the city to enter onto a common area, do the maintenance, and assess the cost back to those property owners. LB304 takes a two-pronged approach to fixing this problem, again as Senator Hansen indicated. First and foremost, we want to create a clear and easy path for reinstatement of the corporation. If we want the owners to be responsible for the common areas and the infrastructure, then we need to give them the tools to do so. Making reinstatement a simple process will encourage action by the property owners. And this bill will do that. Reinstatement is the prime goal of this bill. That's what we're seeking. While our priority is reinstatement, we have to acknowledge the possibility that some neighborhoods won't take advantage of the simplified and inexpensive process, therefore we need a backstop or a course of last resort to provide maintenance. And that's where the second prong, the custodianship procedure, becomes available. Can't be used until other efforts at reinstatement have failed to work. At that point, the city can petition the district court for an order permitting it to become the custodian for the assets of the dissolved HOA. Our fees and expenses can be assessed to the individual lots in the subdivision. It's important to note that the city itself does not become the HOA, and has no authority to reinstate the HOA on it's own. We simply would have the authority to manage the assets and recover our costs. We believe that by assessing costs that will much likely be higher than if done privately, the property owners will be motivated to reinstate the HOA. We don't want to be in the HOA business and will gladly withdraw if the HOA is reinstated. Now having said that, I know there were a couple of questions about various things involving the covenants. And what happens here is that the covenants are filed of record when the subdivision is formed and the HOA is then subsequently formed, or it's formed at the same time, as the enforcement mechanism for those covenants. So if the HOA, which is a nonprofit corporation, is dissolved for whatever reason, the covenants are still of record and still apply to the properties. There's just no method to enforce them on the property owners. And so that's why we get into this difficult situation where there is an obligation still on the property owners to be responsible for this area, but there's no one to enforce it and there's no organization to collect the monies and actually see to it that the maintenance is conducted. So with that, I'll be happy to take other questions. [LB304]

SENATOR CRAWFORD: Excellent. Thank you so much. Questions? Senator Krist. [LB304]

SENATOR KRIST: Of course. Thanks, Chair. I'm at a loss here because what you're saying is that those communities had to come to Lincoln and get building permits to have these properties built. There had to be an interface with your city building folks. So there's no SID involved. [LB304]

CHRIS CONNOLLY: Correct. [LB304]

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SENATOR KRIST: There's an HOA involved. You have taxation authority over them because they reside in parts of the city that you, essentially, have allowed to build out. [LB304]

CHRIS CONNOLLY: Correct. [LB304]

SENATOR KRIST: They've met your building codes. [LB304]

CHRIS CONNOLLY: Correct. [LB304]

SENATOR KRIST: Why then does the HOA have to be reformed? [LB304]

CHRIS CONNOLLY: Well, because the city doesn't own it. It's still private property and it's owned... [LB304]

SENATOR KRIST: That's a dilemma that you caused by allowing them to build and not own...that you not own the property. It's like having an SID without having an SID. [LB304]

CHRIS CONNOLLY: In some ways that may be true. But it's a way that works for us in Lincoln because the developers...we do give the developers some flexibility in how to put their subdivisions together. And by doing that, they're not required to meet all city standards. Now we save the building code for individual houses, yes, they must meet building code, that's true. But when you get in certain other aspects such as drainage and maybe other infrastructure that the city might otherwise have standards for, we may be a little bit flexible in allowing them to do that. The trade-off is, they're responsible for it and they have to remain responsible. The property owners own that property and we want to maintain it that way. The city is not stepping in to take it over. That's what we're trying to avoid. [LB304]

SENATOR KRIST: Well, if they would have been an SID, they would have had to comply with all of the building codes including the infrastructures. [LB304]

CHRIS CONNOLLY: That's correct. That is...yes, that is...yes. [LB304]

SENATOR KRIST: So what you developed is an SID process without an SID, so you don't have anybody that's holding the bag that you can go back and say--you haven't complied and you're responsible. [LB304]

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CHRIS CONNOLLY: That's correct. We now...the organization was not self-sustaining as an SID would be, that's correct. And that's...the idea of being able to reinstate the corporation, though, is the only thing we're really looking to do here, because once it's reinstated, now there is an organization that can do all the things that the enforcement mechanisms that an SID can and should be doing...and if there's an organization there, then we as a city, if we find that certain things aren't being done, if the drainage lines aren't being maintained, if there's a flooding potential and that sort of thing, we can get an injunction to require the homeowners association to take those actions. And they can do it and then they can go back and spread those costs out to the property owners just like the SID would do. Now they would do it as a taxing matter, but you still have the neighborhood paying for it. And that's really what we want to do. The problem... [LB304]

SENATOR KRIST: Well, then it's understandable, because you don't want the rest of the citizens to pay for it. [LB304]

CHRIS CONNOLLY: Correct. [LB304]

SENATOR KRIST: The unfortunate part of this is if you had a homeowners association that's 40 years old, they were defunct 30 years ago, now the covenants have either have or have not been relayed to the next owner within the homeowners association, now you're asking for someone who has just maybe purchased that property to move into a situation where you have to gut the sewer system and start over again because it never complied with code to begin with. [LB304]

CHRIS CONNOLLY: Well, the property owners, as they're buying the property, should be getting told that the covenants are there. And so all the obligations are still there. What's missing is the HOA itself, just a nonprofit. And so if they're not being told that, they should be getting told that their house is subject to those covenants. And if there's an HOA that needs to be reinstated somehow or organized as such that's it's allowed to go ahead and enforce those covenants, that's what we're looking for. [LB304]

SENATOR KRIST: But the covenants, and not to be argumentative, but here's my problem--it's a problem of fairness. You've allowed a builder to go in and potentially, in your own words, build a substandard infrastructure which doesn't match city code and now by having the homeowners association go defunct you have nobody who is accountable for common area and infrastructure changes that may or may not...or should have happened during that time and maintenance. So now you're going back into that organization and...organization, going back into that neighborhood and asking them to reform an HOA so that they can pay to have these things done. I find it, you know, a little precarious. I'll just say that. [LB304]

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CHRIS CONNOLLY: I understand. And, you know, we...the functions between an SID and an HOA are quite similar. The monitoring of an SID, because it has to have certain officers that are there all the time, can't fail the same way that the HOA can. Obviously, SIDs have...can have problems of their own, but the basic premise of the SID still applies with the HOA and that is you're having a community pay for those infrastructures. And you're right, there may have been people that had thought that there weren't going to be any other dues or any other expenses going into moving into that property. I understand that. But at the same time, that's a function of buying...of purchasing the property and being alerted that you're going to have these responsibilities to begin with. That's not what the city does. And so, and our main goal, really, is to protect city infrastructure, number one, but, obviously, we want to maintain the condition of the properties for the benefit of the entire neighborhood as well. It's more generalized as far as the neighborhood is concerned. [LB304]

SENATOR KRIST: Is there any reason why "Professor" Landis didn't come see us today? [LB304]

CHRIS CONNOLLY: This wasn't specifically in his ballpark. (Laughter) But it certainly would have been...he would have been more entertaining than I am, I agree with that. [LB304]

SENATOR KRIST: It might not be in his ballpark, but I'll bet he was playing a base in this one someplace along the line. Anyway, thank you. [LB304]

SENATOR CRAWFORD: Other questions? I have a few questions. [LB304]

CHRIS CONNOLLY: Sure. [LB304]

SENATOR CRAWFORD: So when the homeowners association dissolves and there's common property, who owns that property legally? [LB304]

CHRIS CONNOLLY: Yeah, and that's a good question that we haven't exactly figured out. It's...if the HOA owns the property, which by deed they do and it dissolves, it's up in the air as to who actually owns it. If it was a corporation...a for-profit corporation, you might say that the shareholders own it. But here it's not quite the same. You can try and make the argument that the property owners, being the members, are the ones that own it. But you aren't going to be able to...it's a difficult argument to make stick if you were trying to...if you were in litigation for example. [LB304]

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SENATOR CRAWFORD: So, you don't...just to clarify, if there's a common property and there's a weed problem, you don't feel you have the legal authority to fix the weed problem and assess the people who are in those properties who would have been in the homeowners association when it still existed? [LB304]

CHRIS CONNOLLY: We have the authority to go on it and conduct the...we can cut the weeds, we can trim the trees, if that's what's necessary. We can, under a number of ordinances, we could do that, just as we could with any other private property. [LB304]

SENATOR CRAWFORD: Okay. [LB304]

CHRIS CONNOLLY: But, you're right. We have no ability, right now, to go back and assess those properties. Now, and I should clarify that this is on older properties, on older HOA situations or subdivisions. On newer ones, what we have started to do in the last couple of years is to include more language in the redevelopment agreements that says the city can go onto these properties, and again, this will be recorded as to each lot, can go onto the property, can do the maintenance, and then can assess it back. And again, that will...that will run with the land so that all the lot owners are aware that they have that shared responsibility. [LB304]

SENATOR CRAWFORD: Thank you. Senator McCollister. [LB304]

SENATOR McCOLLISTER: I'm afraid...thank you, Senator. I'm afraid I'm going to display my unfamiliarity with all of this. I know that a city can annex an SID. Can you do the same thing with an HOA? [LB304]

CHRIS CONNOLLY: We do; but when we do, the property remains private. It's still privately held. [LB304]

SENATOR McCOLLISTER: So they retain certain rights. [LB304]

CHRIS CONNOLLY: Yes. And those were all spelled out in the declaration, when the subdivision is formed. [LB304]

SENATOR McCOLLISTER: When that occurs, what services does it typically...the city typically provide? [LB304]

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CHRIS CONNOLLY: Well, I mean, we'll still provide water and electric and all those kinds of services. But streets may be private, for example. There are some that have private sewer systems that will connect up with the city; and that will typically be one of the areas that we will use city standards for is to make sure that there is a good sewer system. So it depends on the subdivision and how it was negotiated when the redevelopment agreement or the development agreement was put together with the city as to what services are going to be provided and how they're going to interface with city services. But streets, for example, is one of them where not all the streets in the city of Lincoln belong to the city of Lincoln. [LB304]

SENATOR McCOLLISTER: Thank you. [LB304]

SENATOR KRIST: Buyer beware. [LB304]

SENATOR CRAWFORD: Senator Hughes. [LB304]

SENATOR HUGHES: Following on Senator McCollister's vein of not being very familiar with this; most of the HOAs you're talking about are outside the city limits? [LB304]

CHRIS CONNOLLY: Most of them are in. [LB304]

SENATOR HUGHES: Okay. So then who's paying the taxes on an HOA? Is that the HOA's responsibility as that part of the homeowner's association is paying...? [LB304]

CHRIS CONNOLLY: Real estate that's actually owned by the HOA, I guess, I'm not sure, exactly, what the assessor's office does each time with the taxes, but it would be the HOA's responsibility. I know that there are some times when they will value the property at zero because there's no access to the property. If you're talking about a green space that's behind everyone's homes and there's no streets, there's probably drainage. Drainage is really the number one infrastructure that these HOAs will have that we're concerned about. And so if there's nothing else other than the green space in there and it's not really developable because it's a detention pond or something else, the assessor's office will frequently value that at zero. So there may not be taxes actually being paid. But it depends on the common area, I believe. [LB304]

SENATOR HUGHES: So, if there was a common area that was more of a playground or park-type area, I mean, would that be assessed at that point? [LB304]

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CHRIS CONNOLLY: It might be. And, Senator, I'm sorry, I don't really know the answer to that. But if it's something that is developable, that people have access to, that you could drive to, for example, it may be taxable. I can't really answer that question. [LB304]

SENATOR CRAWFORD: Senator Ebke, did you...Senator Ebke. [LB304]

SENATOR EBKE: Yeah, I just...thank you, Senator. I'm just a little curious as one who lives in a development that wouldn't be in an HOA, necessarily, but has...we have a lot of green space back behind our houses, wooded areas, and things like that. So if I read this right, if the city...if a city were to determine that that area needed to be fixed up and there was no longer an HOA because the development was created 30 years ago. In that instance, the city could decide, under the custodial agreement, the custodianship, the city could go in, clean that area up and then place a lien for payment on each of the properties in the whole division? In the area that's immediately behind the...? [LB304]

CHRIS CONNOLLY: If it's...yes, if it's a common area that is part of a subdivision, and the HOA has been dissolved, then even if it's not a property that is directly benefitting...in other words, it may be a property that's often that green space that you're describing,... [LB304]

SENATOR EBKE: Right. [LB304]

CHRIS CONNOLLY: ...if the original declaration said that all of the properties in the subdivision are responsible for that green space, then yes, all the properties would be assessed. We would be following whatever the original declaration says. [LB304]

SENATOR EBKE: Okay. [LB304]

SENATOR CRAWFORD: All right. Senator Krist. [LB304]

SENATOR KRIST: Just a follow-up: You testified that there are how many of these in the Lincoln area that have come to mind? [LB304]

CHRIS CONNOLLY: There are currently 26 that we know of that are dissolved. Twenty-two of which have been dissolved for more than five years. [LB304]

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SENATOR KRIST: So following along with Senator Hughes' line of questioning, obviously, if there was an assessment on common property, no one has been paying the taxes on that common property. Wouldn't that be true? [LB304]

CHRIS CONNOLLY: Well, when you say "taxes", that's a different situation because there are dues that are typically paid for the HOA. And those dues have not been paid, that's correct. And I would guess or assume that taxes have not been paid. But again, not all of those properties are actually taxed, because it depends on how the assessor's office structures it and looks at it. [LB304]

SENATOR KRIST: So the HOA's that have been formed in recent years, obviously, have been tightened up in the language and you have control over those. [LB304]

CHRIS CONNOLLY: Right. [LB304]

SENATOR KRIST: What you're asking is to go back in time and fix a problem that Lincoln had with the original language. [LB304]

CHRIS CONNOLLY: Yes, with older HOA's, older neighborhoods that have had, you know, a turnover, really. And that's been kind of the biggest problem, the reason why these would not continue is with the turnover in the neighborhood...officers of the HOA may move away and not make sure that there's some continuity in what's going on with the HOA and hand it off and make sure that meetings continue. [LB304]

SENATOR KRIST: So I go back to one of my original questions...and I know you didn't...I mean, I think it's a question that has to be answered before we're able to take some action. Who has the taxing authority? And if you already have the taxing authority, why are you coming to us for a change in that HOA? Because you should be able to say, folks, your sewer system didn't match up before, your taxes just gone up \$40 on your assessment because your sewer system has to be fixed. We, the city of Lincoln, are going to come in and do that. And in any case, I don't...I just think it's a fairness issue that if that's what needs to happen, then jump to the end of this game on that two-pronged fork and take possession and do what you have to do, because, otherwise, you're going to be putting the burden on the homeowner that maybe, as you said, the covenants were or were not disclosed at the time of purchase of the property. You see where I'm going with this? [LB304]

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CHRIS CONNOLLY: I think I understand your fairness concern that people are moving into the neighborhood and they're not recognizing that they have this obligation there. Is that fair? Is that correct? [LB304]

SENATOR KRIST: Pretty good, yeah. [LB304]

CHRIS CONNOLLY: Okay. [LB304]

SENATOR KRIST: And if a real estate agent is not...the fair disclosure is not saying that there are covenants here and the HOA has been defunct for 30 years, they're not doing their job. [LB304]

CHRIS CONNOLLY: I agree with that. And I, you know, we want, obviously, people to be moving into the neighborhood to fully understand their obligations. Everything is on record, so when the title report comes back, it's going to reflect that. And whether they're being told that or they understand it, I don't know that. But that's part of what's happening here. [LB304]

SENATOR KRIST: Okay. Thank you. [LB304]

SENATOR CRAWFORD: Senator Hughes. [LB304]

SENATOR HUGHES: I'm sure you've looked at all the city statutes, there's nothing in the city statutes that would allow you to take care of this problem. You have to come to the Legislature for a change...or a new law, basically? [LB304]

CHRIS CONNOLLY: Yeah. Yeah, there's really...again, it's not that we couldn't go in and maybe do some of the work; certainly we have the authority to cut weeds, for example. We probably don't have the authority to go in and simply repair a liner, a drainage liner, for example. Can we take certain steps to protect ourselves and maybe get an injunction that would allow us to do certain things on a property? Yes, we probably could do that, but what we're really missing is the ability to go back and assess those costs back to those property owners, the people that are benefiting from it the most. And whatever steps that we would be taking, while we do care about the neighborhood in general, we're really kind of being sort of defensive for the city first. And that may not resolve, for example, flooding issues that come up for the rest of the neighborhood. Now, obviously, if there are flooding problem, we're going to get involved anyway. But what we're trying to avoid is having us having to step in and assuming an entire problem because the neighbors were unable, for one reason or another, to keep the HOA going. [LB304]

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SENATOR HUGHES: Okay. Thank you. [LB304]

SENATOR CRAWFORD: Senator McCollister. [LB304]

SENATOR McCOLLISTER: Thank you, Senator. I'd argue, though, the fairness issue is larger than that. To the extent you burden the rest of the taxpayers of the city with taking care of those HOA properties is unfair too. [LB304]

CHRIS CONNOLLY: That's correct. And we...that's what I was saying as part of my testimony is that we don't believe that the city should be taking care of a private property, under any circumstances and in other situations, but this is one of them. [LB304]

SENATOR McCOLLISTER: Thank you. [LB304]

SENATOR CRAWFORD: Other questions? So to clarify, when we're thinking about the custodian part of the bill, so are you thinking that the custodian prong comes into play after the five years? So it only would be after that dissolution that the custodian prong might come in? [LB304]

CHRIS CONNOLLY: And let me, yeah, and let me clarify that; that's good, thank you for asking that. [LB304]

SENATOR CRAWFORD: Sure. [LB304]

CHRIS CONNOLLY: The reinstatement under this bill could really happen at any time in this section. There's currently a section under the corporations act that allows reinstatement within five years. This bill would allow this to occur within five years also, or after five years. So it's any time. [LB304]

SENATOR CRAWFORD: Oh, okay. Okay. [LB304]

CHRIS CONNOLLY: So steps could be taken, including custodianship, could occur before five years is out. If we discover that the HOA has been administratively dissolved, and if we make our demand and we've taken some steps to try and get them to reorganize and they still won't do it, and we're seeing an increasing threat, then at that point, yes, the city could start with the custodianship proceedings. [LB304]

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SENATOR CRAWFORD: Thank you. Any other questions? Thank you, Mr. Connolly, very helpful. [LB304]

CHRIS CONNOLLY: Thank you. [LB304]

SENATOR CRAWFORD: Other proponents of LB304? Welcome. [LB304]

LYNN REX: Senator Crawford, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We do come before you today in support of this measure. I'm not prepared to tell you how many other cities have HOAs, or how many they have. We are going to do a survey and find that out and we'll report back to you on that. But we do know that other cities do have HOAs. And I would think that in answer to some of the questions, or at least in part, that, certainly, the realtor involved...if you're going to purchase property in an HOA area, certainly at a minimum you're going to find out what the covenants are. I don't know how you get clean title without that. And I would think if the realtor was doing his or her job well, you would also know that you're in an HOA. So how these HOAs become defunct over a period of time, I think I can understand that, because people just let it happen and don't take care of business. But clearly, you have the issue where when these developments occur within municipalities, many times the developers and the homeowners are going to want to have a certain area where only their kids get to play. They paid for the park equipment, it's their equipment. There are liability issues that come into play about anybody that gets injured on that. And that's private property. And so in deference to Senator McCollister, that's exactly right, the city should not have the burden. Other taxpayers should not have the burden of that liability when that's on private property anymore than if you have a swing set on your...in your own home or in the backyard, the city is not going to be liable if somebody gets hurt on your swing set. So this is a very common sort of thing. But we do think this is an issue that does need to be addressed when these HOAs become defunct. And we do know that this has happened in cities other than just Lincoln, Nebraska. I'd be happy to answer any other questions you may have. [LB304]

SENATOR CRAWFORD: Thank you. Questions? Thank you, Ms. Rex. [LB304]

LYNN REX: Thank you very much. [LB304]

SENATOR CRAWFORD: Thank you. Anyone else wishing to testify in support of LB304? Anyone wishing to testify in opposition to LB304? Anyone wishing to testify in a neutral capacity? Welcome. [LB304]

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ROBERT HALLSTROM: (Exhibit 4) Chairman Crawford, thank you. Members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the Nebraska Bankers Association in a neutral position on LB304. I had submitted testimony not knowing whether I'd be able to personally appear here this afternoon, but glad I did have the opportunity. I talked with Senator Hansen this morning real generally about our issue of concern and clarification. And if you look at page 4 of the bill, starting in line 27, I just noticed there's a typo there, it should say: "In the event." But nonetheless, the issue that we're focusing on is that there's a creation of a lien on all of the lots in the same manner as set forth in the covenants for assessment of cost. There is a current statute, 52-2001, that establishes the lien for assessments by statute rather than by covenant. And it has a specific statutory prioritization that gives assessments priority in some cases, but not in cases in which there is a first lien on the real estate by a mortgagor or deed of trust. And we would just ask the committee's consideration and we'll work with Senator Hansen and the committee in crafting an amendment that will ensure that that priority regimen will apply to this particular scenario. Be happy to address any questions. [LB304]

SENATOR CRAWFORD: Thank you, Mr. Hallstrom. Senator Krist. [LB304]

SENATOR KRIST: Thank you, Chair. Bob, thanks for coming. How does a person purchase a house and go through the process of obtaining a loan and not know that there are covenants or responsibilities that he, the new homeowner, would have and know that his homeowners association is defunct? [LB304]

ROBERT HALLSTROM: Well, you may have gotten your lien before all of that happened in terms of the association going defunct. [LB304]

SENATOR KRIST: Well, we just had testimony that the city of Lincoln has discovered that they've had some that have been under...defunct for 30 years. You tell me nobody in that HOA turned over in that time period? I agree with Senator McCollister, it's a fairness issue throughout. Citizens shouldn't be paying for a defunct HOA with...but I got to believe, having just gone through this process, all those papers that you sign, I mean, there has to have been covenants that were relayed to the new homeowner and...I mean in the closing process, that would have had to have happened, wouldn't it, in normal situations? [LB304]

ROBERT HALLSTROM: Well, the issue, Senator, if I'm tracking the...the issue in this area has always been...and there's similar law with regard to condominiums that's more long standing than the homeowners associations. The homeowners association's statutory provisions, for the most part, have only come into play in terms of real specifics with respect to at least assessment liens and priority thereof, to my knowledge, fairly recently. And the long-standing issue of contention

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in this area is whether or not the mere fact that a covenant is on file or the homeowners' organizational documents are on file should be notice that there is an assessment lien out there. And the reason that becomes important is that the statutes traditionally have said, even though that covenant may be...or those documents may be on file from way back when, when the association or the condominium was originally created, that the attachment of the homeowner's assessment lien only comes into being once it's delinquent because the statute provides for a notice of lien to be filed. And so if there's no delinquencies, no lien is created until the delinquency occurs and the secondary step of filing the notice of lien has been filed. So the priority regime that's been set up in the statute has kind of split the baby in half. It said if you have a first lien on real estate that's filed before the delinquency occurs, therefor the homeowner's assessment lien attaches. And then, subsequently, the notice is filed, you are going to prevail under those circumstances. But if you have a secondary lien, you're not going to be prioritized. And so you can have what we would traditionally refer to as a hidden lien because you never know when it becomes delinquent, when it comes into being, that under that situation if you have a secondary lien position you're not going to be prioritized. We've argued that that ought to be the case, but we've not gotten there. And the law has remained that only the first lien on that real estate has priority and only if the first lien was filed before the delinquent homeowners assessment came into being. In this case, when we get to the dissolved, defunct homeowners association-type of situation, you may have had notices of liens filed and nobody is going to go in after that fact and they aren't, as a practical matter, because it's defunct. There's nobody out there in terms of the homeowners association. But you may still have liens on those properties that are still out there. [LB304]

SENATOR KRIST: Okay, so I'm not going to beat this up all day, but you're a banker and you put a...you loan me the money to go buy a piece of property in an HOA. You're only concerned that that property is worth what you're loaning out, 8 percent, or whatever that loan might be. You're not concerned that the HOA may have liability to the city? In which case, why doesn't the city just put a lien on the properties and stop this? I mean, we're talking first and first and first in the lien process. [LB304]

ROBERT HALLSTROM: Well,...and, Senator, they can do that. My issue is that you're going to have had a first lien position that was established in advance of the homeowners association becoming defunct. [LB304]

SENATOR KRIST: Which goes away when it becomes defunct? Question? [LB304]

ROBERT HALLSTROM: Not with regard to the homeowners association. I presume the folks still live in the house. The house is still there. The homeowners association may just simply have gone belly up. [LB304]

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SENATOR KRIST: Okay. [LB304]

ROBERT HALLSTROM: You still have your lien on the real estate that I presume continues to exist. [LB304]

SENATOR CRAWFORD: All right, thank you. [LB304]

SENATOR KRIST: Still clear as mud, but that's okay. [LB304]

ROBERT HALLSTROM: Yeah. And it's an issue where oftentimes is clear as mud. [LB304]

SENATOR CRAWFORD: Senator McCollister. [LB304]

SENATOR MCCOLLISTER: Thank you, Senator. I agree with Senator Krist. Isn't it the responsibility of the title company to provide information or evidence of liens whether they're active, inactive, obsolete; every lien should be mentioned in the title company's search? [LB304]

ROBERT HALLSTROM: It is, Senator. And the tough nut to crack here, in terms of explaining how this system works, because it is a little bit different, is the fact that the homeowners' assessments don't become of record until (A) the delinquency occurs, and (B) the notice of lien is filed by the homeowners association. So you can have a situation...and that's why the bankers have suggested that renewed looks should be given as to whether only first liens should be protected because whether you've got a first lien or a second lien, you've got the potential for that to come in after the fact and bite you in the bottom in terms of priority. So the example would be--I go in, I take a first lien on one of the homes within the homeowners association. The title company does their search and there are no delinquent homeowners association dues at that time. So the record appears to be clean. I have a first lien. Six months later there is a delinquency. The homeowners association follows the statute and files its lien. At that point, as to the first lien, I'm home free, because at the time I did my title search, at the time I took a first lien and there was no notice of lien on record for anybody to find. That is not the situation if I was taking a second lien. I could have taken a second lien on the property; done the title search, there's no delinquencies, nothing's filed of record. And in that case, the statutes provides that when the notice of lien is filed by the homeowners association, that now trumps my second lien on the property. So it's a hidden lien of sorts. [LB304]

SENATOR KRIST: Duh-dum-dum.... [LB304]

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SENATOR McCOLLISTER: It's been my experience, if there's a comma out of place, that the sale doesn't occur. But thank you, Bob. [LB304]

ROBERT HALLSTROM: This one you're not going to find. When the title company does the search, there's no notice of lien on record because there's no delinquency. They tell the bank, there's nothing filed of record, but the statute says if it's a second lien, bank loses; if it's a first lien, bank wins in terms of priority. [LB304]

SENATOR McCOLLISTER: I'm surprised the bankers let that get away. [LB304]

ROBERT HALLSTROM: We've been back on occasion. [LB304]

SENATOR CRAWFORD: Thank you. Other questions? [LB304]

ROBERT HALLSTROM: And maybe I should have just stood on my written testimony that I submitted. Thank you. [LB304]

SENATOR CRAWFORD: Thank you. Anyone else wishing to testify in a neutral capacity? Welcome. [LB304]

JACK CHELOHA: Madam Chairwoman and members of the Urban Affairs Committee, my name is Jack Cheloha, that's J-a-c-k, last name is spelled C-h-e-l-o-h-a. I apologize, but I missed the proponent testimony because I had to walk out and check on another hearing. So technically I am...I like the bill. I'm in favor of LB304, but if you want a neutral-positive, you can list it that way too, whatever you're most comfortable with. First, because of the nature of your questions so far, let me tell you I am not a real estate lawyer. I've never practiced in real estate. And so I'm going to try to just give you some general information as to why the city of Omaha thinks this might be a helpful tool to us should the need arise. Right now, the city of Omaha there is...within the city now we recognize...and there are 55, roughly, active homeowners associations. However, they wanted me to note that there are 115 SIDs within our three-mile area, or extraterritorial jurisdiction. Now when a city plats a new subdivision, they, typically, are in reliance on the written agreement with the homeowners association which promises to do the maintenance on certain out lots that serve as common areas or drainage facilities. Problems can arise and often do arise if a homeowners association goes defunct and no one in the neighborhood wants to step up and revive it and/or properly maintain those out lots. This bill would allow a city to either ask the neighbors to revive that homeowners association and resume the maintenance duties. Or if they refuse, it gives us another option, the city could get a court order and take the out lots in as custodians maintain them and then assess the cost of that maintenance against all the lots within

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the homeowners association. So because of those things and the way it's spelled out, we do think that it could be beneficial to us. However, most of our employees couldn't think of an instance where we've had something come to fruition at the immediate time where we would need this. A lot of times, even when we annex areas, the SIDs and homeowners association will come to the city and say--we would like to take care of the maintenance of certain common areas and out lots just because they feel that they may be able to give them more attention to which the SID residents are more accustomed than the city's parks department, or whoever is responsible for either mowing or maintaining them after they become annexed. Let's see...I think those are most of the points I wanted to make that...like you said, I mean, instead of spreading the cost to the responsibility of the city as a whole, we would like those that reside in an area to be responsible for those things that they may have even agreed to on the front end. Not necessarily the current resident, but the people that, you know, started the home development in the first place. So I'll try to answer any questions you might have. [LB304]

SENATOR CRAWFORD: Senator Krist. [LB304]

SENATOR KRIST: Not a question, just a comment... [LB304]

JACK CHELOHA: Yes, sir. [LB304]

SENATOR KRIST: I don't know where I stand on this thing yet. I think there are still some issues here and I'm sure we'll be able to talk to Senator Hansen, but if HOAs inside of SIDs are not exempt from this, I won't support it at all. And I think you understand better than anybody... [LB304]

JACK CHELOHA: Sure. [LB304]

SENATOR KRIST: ...it's...when you have an SID that has three homeowners associations inside of it and one of them goes belly up, for lack of better terms, it's not your responsibility, it's the SID's responsibility with the common property. So some kind of exception has to be made to make that very clear. [LB304]

JACK CHELOHA: Right. Okay. I appreciate that. Thank you. [LB304]

SENATOR CRAWFORD: Thank you. Other questions? Thank you. [LB304]

JACK CHELOHA: Thank you. [LB304]

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SENATOR CRAWFORD: (Exhibit 5) Anyone else wishing to testify in the neutral capacity? We did have a letter from Nebraska (Bankers) Association in the neutral capacity, as well as testimony in neutral capacity from the bankers, excuse me. We had a letter from the Nebraska Bankers Association in neutral capacity. Thank you. Would you like to close, Senator Hansen? [LB304]

SENATOR HANSEN: I guess I will just close by thanking the committee for hearing my bill and asking insightful questions. Going off your point, Senator Krist, I do think a lot of this legal precedent in this area is clear as mud and that's why I'd be interested in working with the committee and any interested parties and continuing going forward whether that's an issue in dealing to the priority of liens or to how this affects SIDs. Be happy to work with the committee and with that I'd yield to any questions. [LB304]

SENATOR CRAWFORD: Thank you. Other questions? Thank you, Senator Hansen. [LB304]

SENATOR HANSEN: Thank you. [LB304]

SENATOR CRAWFORD: This closes the public hearing on LB304. And I will turn the chair over to Senator McCollister. [LB304]

SENATOR MCCOLLISTER: Thank you very much. We now open the hearing for bill LB266. And we'll ask Senator Crawford to open. [LB266]

SENATOR CRAWFORD: Thank you. Good afternoon, Vice Chairman McCollister and members of the Urban Affairs Committee. My name is Senator Sue Crawford, S-u-e C-r-a-w-f-o-r-d. I represent the 45th Legislative District which includes Bellevue, Offutt, and eastern Sarpy County. LB266 is designed to clarify the authority of municipalities to enforce nuisance ordinances in their extraterritorial zoning jurisdiction, commonly referred to as the ETJ. While Section 18-1720 currently provides municipalities with the authority to regulate nuisances within the ETJ, several sections of statute located elsewhere are unclear regarding nuisance enforcement authority in ETJ or even appear to contradict that authority. As returning members of the committee may recall, the issue of ordinance enforcement in the ETJ was a major point of discussion during the LR555 interim study this fall. While all classes of municipality have clear authority to enforce subdivision agreements, zoning ordinances, and building codes within ETJ the authorized municipalities to enforce other ordinances within ETJ is inconsistent. LB266 would merely clarify the existing authorized municipalities to regulate nuisances within ETJ. LB266 would not expand the authority of municipalities to enforce nuisance ordinances beyond that which is already allowed under Section 18-1720. And more importantly, it would not mandate the regulation of nuisances in the ETJ by municipalities. Since residents living in ETJs

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do not pay city property taxes, in most cases city officials will prioritize nuisance enforcement within city limits and will likely continue to enforce nuisances on a complaint basis in the ETJ. The committee should have received a copy of AM122 which corrects a drafting error in the green copy of the bill. Section 8 of the bill mistakenly identifies the ETJ for cities of the second class as a two-mile radius instead of the one-mile radius. It's not my intention to double the size of the ETJ for cities of the second class, so the amendment corrects that issue. I believe others will be behind me to testify, but I'd be happy to answer any questions the committee may have at this time. [LB266]

SENATOR McCOLLISTER: Thank you, Senator. [LB266]

SENATOR CRAWFORD: Thank you. [LB266]

SENATOR McCOLLISTER: Any questions? No questions. [LB266]

SENATOR CRAWFORD: All right. [LB266]

SENATOR McCOLLISTER: Thank you very much, Senator. Proponents? You're up. [LB266]

GARY KRUMLAND: Senator McCollister, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, appearing on behalf of the League of Nebraska Municipalities in support of LB266. As Senator Crawford mentioned, there is a statute on the books right now that does allow all classes of cities and villages to extend nuisance enforcement into their extraterritorial zoning jurisdiction. And some of you are aware of this, there are five classes of municipality. Each class of municipality has their own set of statutes. There's also a set of statutes in Chapter 18 which apply to all classes of cities. And then Chapter 19 applies to some combination of classes, but not all of them. Chapter 18 is the chapter where the statute applies as mentioned, 18-1720. I did some legislative history on it. It was first adopted in 1939. In 1969, it was amended to contain its current language. So the authority to extend into the zoning jurisdiction beyond the city limits has been on the books since 1969. But each class of city has their own statutes on nuisance too. And none of those has the same language, even though the law would apply. So, basically, LB266 maintains a current law, but it tells everybody what the law is and in the chapters for the city...each class of city. So it's, basically, clarifying and letting people know what the law has been. We've gotten a lot of calls on this question, so I've referred a lot to 18-1720, but a lot of people don't realize it's hidden back there in this chapter. So, I'd be happy to answer any questions. [LB266]

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SENATOR McCOLLISTER: Thank you, Gary. Any questions? Thank you very much. Next proponent. [LB266]

SENATOR KRIST: You're sure you're a proponent this time? [LB266]

JACK CHELOHA: I am. [LB266]

SENATOR KRIST: Okay. Just wondering. [LB266]

JACK CHELOHA: Thank you. [LB266]

SENATOR McCOLLISTER: Proponent, I'm sorry...thank you. [LB266]

JACK CHELOHA: Senator McCollister and members of the Urban Affairs Committee, my name is Jack Cheloha, the first name is spelled J-a-c-k, last name is spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. I want to testify in favor, or proponent, of LB266. We're all in favor of clarification. We think the bill...let me back up. Omaha is a metropolitan class city. Primarily the governing statutes for us are found in Chapter 14. If you look at Chapter 14, it was explicitly listed there for us to have the three-mile jurisdiction relative to these. However, the bill writes it more succinctly and more for clarity and continuity throughout the statute, therefore we support it. I'll try to answer any questions. [LB266]

SENATOR McCOLLISTER: Thank you, Jack. Questions? Thank you very much. [LB266]

JACK CHELOHA: Thank you. [LB266]

SENATOR McCOLLISTER: Additional proponents? Seeing none, opponents? Seeing none, those people that would wish to testify in a neutral basis. With that we close the hearing on LB266...oh, Senator Crawford, would you care to close? [LB266]

SENATOR CRAWFORD: No, that's fine, I'll waive closing. [LB266]

SENATOR McCOLLISTER: All right. Thank you. [LB266]